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Government attitude and definition

Government attitude

The regulation of cryptoassets in the UK has developed alongside the evolution of the technology itself. In 2018, the Cryptoassets Taskforce brought together HM Treasury (**HMT**), the Financial Conduct Authority (the **FCA**) and the Bank of England (the **BoE**) to coordinate the UK's approach to regulating cryptoassets and distributed ledger technology (**DLT**) as it relates to financial services. Following this, in April 2022, the UK government expressed its intention to make the UK a global hub for cryptoasset technology and investment.

In line with this stated intention, 2023 proved to be a pivotal year for the UK legislative and regulatory landscape for cryptoassets, with the following key developments:

- The enactment of the Financial Services and Markets Act 2023 (**FSMA 2023**) in June, which established the powers to introduce the "phase 1" regulatory framework for fiat-backed stablecoins and related payment systems, and to create financial market infrastructure sandboxes, the first of which was the Digital Securities Sandbox (the **DSS**) introduced in December. FSMA 2023 also introduced the framework for a Designated Activities Regime (**DAR**), designed to enable HMT to designate certain activities that do not require prior authorisation in order to make regulations relating to the performance of those activities.
- HMT's consultation on the "phase 2" broader financial services regulatory regime for cryptoassets, published in February (the **Consultation**) and subsequently responded to by HMT in October (the **Consultation Response**).
- The implementation of the "Travel Rule", a global recommendation from the Financial Action Task Force (**FATF**), which came into effect in September, requiring cryptoasset businesses to collect, verify and share information about cryptoasset transfers.
- The introduction of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2023 (the **FP Amendment Order**), which brought qualifying cryptoassets within scope of the financial promotions regime with effect from October.

UK policymakers and regulators have expressed their intention to encourage growth, innovation and competition in the industry, while protecting UK consumers and maintaining stability and market integrity – a balance that policymakers and regulators in other jurisdictions have found difficult to strike.

In-scope cryptoassets

FSMA 2023 introduced a new definition of "cryptoasset" under the Financial Services and Markets Act 2000 (**FSMA 2000**), being:

> "*[A]ny cryptographically secured digital representation of value or contractual rights that –*
>
> *(a) can be transferred, stored or traded electronically, and*
>
> *(b) that uses technology supporting the recording or storage of data (which may include distributed ledger technology).*"

This definition is similar to the broad definition used in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as expanded by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 to cover cryptoassets) (the **MLRs**), with the main difference being that the FSMA definition references a wider range of underlying technology.

The Consultation identifies four broad types of cryptoassets:

1. Security tokens, which amount to a "specified investment" as set out in the Financial Services and Markets Act (2000) (Regulated Activities) Order (the **RAO**). These may provide rights such as ownership, repayment of a specific sum of money, or entitlement to a share in future profits. They may also be transferable securities or financial instruments under the EU's Markets in Financial Instruments Directive II (**MiFID II**).
2. Exchange tokens, often referred to as "cryptocurrencies", such as Bitcoin and Litecoin, which are not issued or backed by a central bank or other central body. They are intended primarily to be used as a means of exchange (although they are also used for investment purposes) and include stablecoins and other asset-referenced tokens.
3. Utility tokens, which provide digital access to a specific service or application (*e.g.*, digital advertising or file storage). Utility tokens include governance tokens and fan tokens.
4. Non-fungible tokens (**NFTs**), which confer digital ownership rights of a unique asset (*e.g.*, a piece of digital art).

Certain types of cryptoasset identified above, particularly stablecoins, may also fall within the definition of e-money under the E-Money Regulations 2011 (the **EMRs**), insofar as they represent "monetary value", are issued on receipt of funds "for the purpose of making payment transactions", and are accepted by persons other than the issuer.

The FCA's perimeter Guidance on Cryptoassets (PS19/22) sets out more detail on the different types of cryptoassets and their interactions with the existing regulatory perimeter.

Central bank digital currency

Like central banks in many other jurisdictions, the BoE is considering the introduction of a central bank digital currency (**CBDC**), consulting with HMT on a digital pound in February 2023 and publishing a joint response in January 2024. In the same month, the House of Commons Treasury Committee published a report summarising its views on the need for a CBDC, noting that the BoE should proceed with care. It highlighted the need for further exploratory work in the design phase and emphasised that strong privacy safeguards are critical. A decision is yet to be made as to whether a CBDC will be introduced in the UK.

Financial services regulation

As mentioned above, the UK government has set the wheels in motion for creating a comprehensive financial services regulatory framework for cryptoassets. However, until this is established, unless cryptoassets fall within the traditional regulatory perimeter under FSMA 2000 and the RAO (*i.e.*, unless they are security tokens) or the EMRs (*i.e.*, unless they are e-money), they will remain regulated only for anti-money laundering (**AML**) and counter-terrorism financing (**CTF**) purposes in respect of exchange and custody activities under the MLRs (discussed further under "*AML requirements*" below).

In addition to the regulatory frameworks under the RAO, the EMRs and the MLRs, the advertisement of certain products or activities in relation to cryptoassets, where they are aimed at or are otherwise "capable of having an effect in the UK", may be subject to restrictions set out in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the **FPO**). This will depend on whether the product or activity falls within the definition of a "controlled investment" or "controlled activity" under the FPO, which are broadly similar to the concepts of a "specified investment" and a "specified activity" under the RAO. Cryptoassets were brought within the definition of a "controlled investment" in October 2023, with security tokens having already been within scope (discussed further under "*Financial promotions*" below).

Proposed regulatory regime

The Consultation Response largely confirmed the proposed approach to cryptoasset regulation in the UK as set out in the Consultation. Notably, the proposed regime will apply to cryptoasset activities provided "in or to" the UK, thereby casting a wider geographical net than that for traditional assets under FSMA 2000 (which, with some limited exceptions, applies only to activities carried out "in" the UK).

In summary, the government intends to effect change in two phases:

i. **Phase 1** prioritises: (i) the creation of FCA regulated activities under the RAO for the issuance and custody of fiat-backed stablecoins that are issued in the UK; (ii) the regulation of payment services relating to certain fiat-backed stablecoins where used in a UK payment chain under the Payment Services Regulations 2017 (the **PSRs**); and (iii) the regulation by the BoE of systemic payment systems using stablecoins and related service providers.

ii. **Phase 2** will introduce a comprehensive regime that brings non-security token cryptoassets within the scope of the existing FSMA 2000/RAO framework. A wide range of activities is proposed to be regulated under this regime, including (i) issuance, (ii) exchange, (iii) investment and risk management, (iv) lending, borrowing and leverage, and (v) safeguarding and/or administration (*i.e.*, custody).

    The proposed regime will cover a broad range of cryptoassets, including exchange tokens, utility tokens, NFTs, asset-referenced tokens, commodity-linked tokens, crypto-backed tokens, algorithmic tokens, governance tokens and fan tokens.

    The FCA will also provide regulatory clarity on staking activity, establishing a classification system for various staking models based on the perceived risk. As part of this clarification, HMT intends on distinguishing certain manifestations of staking from the collective investment scheme (**CIS**) framework prescribed under FSMA 2000, which has been well received by the industry (although it remains to be seen how this will be framed in any final rules). The FCA has also called for evidence on Decentralised Finance (**DeFi**), which does not fall within the scope of either of the initial phases of regulation (echoing the current "wait-and-see" approach to DeFi in many other jurisdictions).

Phase 1 was expected to be introduced during 2024, with Phase 2 following in 2025. However, due to the general election and change of government in the UK in July 2024, these timelines are expected to slip.

Sales regulation

The sale of cryptoassets in the UK may be subject to sales regulations that fall into three broad categories: (i) the financial promotions regime; (ii) the Prospectus Regulation regime; and (iii) consumer protection and online/distance selling legislation.

Financial promotions

A financial promotion is an invitation or inducement that is communicated in the course of business to engage in investment activity. The financial promotions regime applies to communications relating to "controlled activities" (such as buying/selling) in respect of "controlled investments" (such as shares, bonds or derivatives), each as defined in the FPO.

Where a cryptoasset meets the definition of a "specified investment" under the RAO (*i.e.*, it is a security token), then it will likely fall within the traditional definition of "controlled investment" and therefore be within scope of the regime.

Additionally, in June 2023, the government passed the FP Amendment Order, which brought "qualifying cryptoassets" within the scope of the FPO with effect from 8 October 2023. Broadly, a "qualifying cryptoasset" is any cryptographically secured digital representation of value or contractual rights that is transferable and fungible (meaning it does not include NFTs), but excluding cryptoassets that meet the definition of e-money, or an existing "controlled investment" (*i.e.*, a security token). This broad definition covers most cryptoassets not captured by the scope of the traditional regime. In practice, most transactions and activities relating to qualifying cryptoassets are likely to be "controlled activities", therefore falling within scope of the regime, as the definition of a "controlled activity" includes: (i) dealing (*i.e.*, buying and selling); (ii) arranging deals; (iii) managing; (iv) advising on; and (v) agreeing to carry on specified activities.

Accordingly, communications that are invitations or inducements to engage in such activities in respect of qualifying cryptoassets will no longer be permitted, unless they:

a. are communicated by an FCA/PRA (Prudential Regulation Authority)-authorised person;

b. are approved by an FCA/PRA person;

c. are communicated by a cryptoasset firm registered under the MLRs; or

d. fall within an exemption from the financial promotions regime.

It is important to note in this respect that while cryptoasset firms registered with the FCA under the MLRs can approve and communicate their own financial promotions, they cannot (unlike FCA/PRA-authorised firms) approve the financial promotions of others.

In addition to categorising cryptoassets as "Restricted Mass Market Investments"[1], the FCA has introduced specific new financial promotions rules for cryptoassets[2] relating to: (i) the inclusion of risk warnings and summaries; (ii) not offering any monetary or non-monetary incentives to invest; (iii) offering a 24-hour cooling-off period for first-time investors; (iv) providing a personalised risk warning pop-up; (v) implementing client categorisation; and (vi) conducting an appropriateness assessment in respect of whether the specific investment is appropriate for the specific consumer based on the product and client categorisation. This is supported by finalised non-handbook guidance under FG23/3.

As the FCA noted in September 2023, shortly before the expansion of the financial promotions regime to cover cryptoassets in October, cryptoasset firms have faced particular challenges in complying with the so-called "back end" rules relating to personalised risk warnings, the 24-hour cooling-off period, client categorisation and appropriateness assessments. In recognition of this, the FCA offered applicant firms an extension until 8 January 2024 to comply with these rules. Notwithstanding this, in August 2024, the FCA published the findings from its review of cryptoasset firms' compliance with the financial promotions rules, noting widespread failings.

Breach of the financial promotion restriction is a criminal offence punishable by a fine and/or up to two years' imprisonment. In addition, FSMA 2000 provides that if a person enters into a controlled agreement as a customer or exercises any rights conferred by a controlled investment in consequence of an unlawful communication, such agreement or obligation is unenforceable against the customer and the customer is entitled to recover: (a) any money or other property paid or transferred by the customer under the agreement or obligation; and (b) compensation for any loss sustained by the customer as a result of having parted with it. This is of particular significance in the case of volatile controlled investments such as cryptoassets. Finally, breach of the prohibition may affect any officer, manager or beneficial owners' ability to satisfy the "fit and proper requirements" under the MLRs.

Prospectus Regulation

FSMA 2000 and the onshored UK Prospectus Regulation require firms to make available an approved prospectus to the public, before (i) transferable securities are offered to the public, or (ii) a request is made for transferable securities to be admitted to a regulated market situated or operating in the UK.

These requirements relate to transferable securities and so, to determine whether this regime is applicable to cryptoassets, it must be established whether the relevant cryptoasset is a transferable security. If it is a transferable security and is offered to the public or admitted to trading on a regulated market, the issuer must publish a prospectus. Transferable securities are defined for these purposes under the onshored UK Markets in Financial Instruments Regulation (**MiFIR**). It is a criminal offence to make an offer or request admission to trading of transferable securities without an approved prospectus, although a number of exemptions are available (*e.g.*, public offers made to "qualified investors" or fewer than 150 persons). These rules are most likely to be relevant to security tokens.

In the Consultation, the government proposes to establish an issuance and disclosures regime for cryptoassets tailored to their specific attributes. As with traditional securities offerings, restrictions will be placed on public offerings of a cryptoasset and its admission to a cryptoasset trading venue without a prospectus. As proposed, the proposed DAR, introduced by FSMA 2023 and designed to enable HMT to designate certain activities that do not require prior authorisation in order to make regulations relating to the performance of those activities, would be used as a basis to develop rules governing prospectus requirements for non-security token cryptoassets, which would generally follow the principles of the intended reform of the onshored UK Prospectus Regulation. Certain exemptions are intended to be made available according to the type or scope of public offer, including offers below a *de minimis* monetary threshold, offers made only to "qualified investors", and offers made to fewer than 150 persons. Where there is no issuer (*e.g.*, Bitcoin), the trading venue would be required to take on the responsibilities of the issuer if they wish to admit the asset for trading.[3]

General advertising, online/distance selling and consumer protection legislation

Those marketing cryptoassets are also required to comply with the Code of Non-broadcast Advertising and Direct & Promotional Marketing (the **CAP Code**) and the Advertising Standards Authority (the **ASA**) guidelines.

The ASA provides various standards as to how cryptoassets may be promoted and advertised. Among other things, these standards provide that advertisement should not be misleading or contain false information and should not imply that crypto investments are riskless, or low-risk, trivial decisions. Any advertisement must also prominently and clearly state that:

- cryptocurrencies are unregulated in the UK;
- any profits may be subject to capital gains tax (**CGT**); and
- the value of investments is variable.

Outside the requirements of the UK financial regulatory framework, other legislation may be relevant to the sale or offering of cryptocurrency and services related to them, including the following:

- The Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008 apply in relation to consumers (*i.e.*, individuals acting outside of their trade, business, craft or profession) and provide them with statutory rights and remedies against suppliers of goods, services and digital content. Further restrictions are imposed on the kinds of contractual terms that can be enforced against consumers.
- The Electronic Commerce Regulations 2022 apply more generally and impose requirements on businesses that offer or provide goods or services digitally. Whether the legislation applies depends on whether the business being conducted is subject to UK regulation.

Taxation

At the time of writing, there is no specific tax regime to govern how cryptoasset transactions are taxed; therefore, the current tax rules must be considered and applied, although some uncertainty remains as to their application. The UK tax authority, HM Revenue & Customs (**HMRC**), recognises there are different types of cryptoassets; however, their tax treatment will depend on the nature and use of the cryptoasset in question.

HMRC has published a cryptoasset manual (CRYPTO) providing limited guidance on the taxation of cryptoassets. It is important to note that HMRC is not bound by its published guidance; however, it is useful for interpreting how HMRC might approach a tax case that will be decided on its facts.

HMRC does not treat any of the currently available cryptoassets as equivalent to money or fiat currency; therefore, tax rules that apply to money do not apply to cryptoassets. Additionally, cryptoassets contributed to pension funds would not be treated as a tax-relievable contribution.

Taxation of individuals

HMRC guidance contains the following general points relating to how individuals who own cryptoassets are to be taxed:[4]

- buying and selling cryptoassets will most likely amount to personal investment activity (as opposed to trading activity) such that CGT would be payable on any gains an individual realises on disposal;
- if an individual is involved in a "trade" of cryptoassets, any trading profits would be subject to income tax (**IT**), rather than CGT; and
- cryptoassets received as a form of payment from an employer would be subject to IT and National Insurance contributions (**NICs**).

Disposals include (but are not limited to):

- selling cryptoassets for money;
- exchanging one type of cryptoasset for a different type of cryptoasset;
- giving cryptoassets away to another person; and
- using cryptoassets to pay for goods or services.

A UK tax-resident but non-domiciled individual who claims the remittance basis of taxation is normally only subject to UK IT and CGT in respect of non-UK sourced income and capital gains (arising from the disposal of non-UK situated assets), respectively, that have been remitted to the UK. HMRC guidance treats the situs of cryptoassets as being the jurisdiction in which the beneficial owner of the cryptoassets is tax-resident. Therefore, UK tax-resident individuals, regardless of their domicile status, would be subject to UK IT or CGT in respect of income arising and capital gains realised on cryptoassets they beneficially own, regardless of whether such income or gains have been remitted to the UK. It is irrelevant whether

the cryptoassets are held by a centralised exchange or that the owner does not have the private key or it is stored outside the UK. The only way to change the situs of the cryptoassets would be to hold them via a non-UK company. HMRC notes that this may differ where the tokens relate to real-world assets (**RWA**). Care needs to be taken with HMRC's position, which has yet to be tested in the courts.

HMRC has sent "nudge letters" to individuals that they consider may own cryptoassets and have declared their tax liability. Individual taxpayers should keep detailed records in respect of every cryptoasset transaction. HMRC can gather information from cryptoasset exchanges with additional information becoming available through the OECD-led Crypto Asset Reporting Framework (**CARF**) from 2026. Broadly, CARF contains a suite of due diligence and reporting requirements that applies to entities and individuals dealing with cryptoassets. CARF also contains a Multilateral Competent Authority Agreement on automatic exchange of information (the **MCAA**) to facilitate the exchange of information between signatories to the MCAA.

DeFi

The transfer of cryptoassets for the purpose of lending or staking triggers a capital disposal and potentially a "dry tax charge" under CGT rules. HMRC has noted that existing tax rules do not reflect the economic reality and result in a significant compliance burden. HMRC has consulted on the creation of new rules for DeFi; however, at the time of writing, no new rules have been finalised.

Returns from lending or staking cryptoassets are not treated as interest as HMRC does not consider cryptoassets to be money or fiat currency. How the return is taxed will depend on whether the receipt has the nature of capital or revenue.

Taxation of businesses

In respect of how transactions involving exchange tokens undertaken by companies and other businesses (including sole traders and partnerships) would be treated, HMRC has indicated the following:[5]

- corporation tax (**CT**) legislation, which relates to money or fiat currency, would not apply to cryptoassets as HMRC does not consider cryptoassets to be money;
- where activity such as buying and selling exchange tokens amounts to a "trade", the receipts and expenses of the trade will form part of the calculation of the trading profit in respect of that business for CT purposes;
- loan relationships: cryptoassets typically fall outside loan relationship rules as they are not considered money or representative of a creditor-debtor relationship; and
- where the activity does not amount to a "trade", and is not charged to CT in another way, the activity might be treated as the disposal of a capital asset such that any gain arising from the disposal would be charged to CT as a chargeable gain.

HMRC has published only limited guidance in relation to VAT, stating that VAT is due on goods or services paid with cryptoassets. However, this does not apply to the transfer of tokens themselves (CRYPTO45000). HMRC's position is provisional, subject to EU VAT rules and cryptoasset regulation changes, which, following Brexit, may diverge. There remains uncertainty regarding the VAT treatment for NFTs and RWAs.

HMRC guidance has considered venture capital scheme rules, with no specific rules applying directly to cryptoassets. Schemes like the enterprise investment scheme can apply to share investments, if the usual conditions are met, into companies that have cryptoasset-related activities. The guidance further clarifies that activities related to cryptoassets do not, on their own, disqualify businesses from these schemes. However, eligibility may be affected by dealing, exchanging, brokering, or mining cryptoassets. It is possible to apply to HMRC for a clearance to determine eligibility, though HMRC is within its rights to decline to give assurance due to factual uncertainty.

Where cryptoassets are used for employee remuneration, IT and NICs are due on the value of the cryptoassets that are received by the employee. The value of the cryptoassets being received is considered to be "money's worth". Where the cryptoasset is considered by HMRC to be a "readily convertible asset", both employee and employer NICs are payable, and PAYE must be operated.

The Investment Manager Exemption (the **IME**) is a statutory concession, which provides that a UK-based investment manager will not be treated as a UK representative of a non-UK resident fund if certain conditions are met. These conditions include limits as to the types of transactions that can qualify for the IME. A list of qualifying transactions is set out in the investment transactions list (the **ITL**). HMRC published regulations to implement this change in December 2022, which came into force on 1 January 2023.[6] Changes to the ITL for the purposes of the regulations will only apply to the IME and not to other tax whitelists. Notably, the regulations have adopted the wide definition of "cryptoasset" in CARF, save for certain exclusions.[7]

Stamp duty and stamp duty reserve tax are unlikely to be chargeable on the transfer of tokens. However, every case will be considered on its own facts and circumstances. Stamp duty land tax is not payable on transfers of exchange tokens as such transfers are not considered by HMRC to be land transactions; however, if exchange tokens are given as consideration for a land transaction, the tokens would fall within the definition of "money or money's worth" and would be chargeable to stamp duty land tax.

Money transmission laws and anti-money laundering requirements

AML requirements

The MLRs impose a general duty on in-scope cryptoasset businesses to maintain appropriate risk-based policies and procedures to prevent situations where their systems might be used for money laundering or terrorist financing. The MLRs transposed the provisions of the Fourth Money Laundering Directive ((EU) 2015/849) (**MLD4**) into UK law; their scope was further widened in January 2020 when the Fifth Money Laundering Directive ((EU) 2018/843) (**MLD5**) was incorporated into UK law. This brought businesses carrying on certain cryptoasset activities in the UK within scope of the MLRs, requiring them to be registered with the FCA.

In-scope cryptoasset businesses are expected to have been complying with the MLRs since 10 January 2020. The MLRs define a cryptoasset as "*a cryptographically secured digital representation of value or contractual rights that uses a form of DLT and can be transferred, stored or traded electronically*".

The MLRs apply to businesses identified as being most vulnerable to the risk of being used for money laundering and terrorist financing purposes. In-scope businesses are referred to as "relevant persons", as listed in regulation 8(2) and (3). The implementation of MLD5 brought CEPs and CWPs (defined below) within scope of the MLRs as relevant persons; consequently, any person carrying out cryptoasset business that is captured in the definitions below is impacted.

A cryptoasset exchange provider (**CEP**) is a firm or sole practitioner who, by way of business, provides one or more of the following services, including where the firm or sole practitioner does so as creator or issuer of any of the cryptoassets involved:

- exchanging, or arranging or making arrangements with a view to the exchange of, cryptoassets for money or money for cryptoassets;
- exchanging, or arranging or making arrangements with a view to the exchange of, one cryptoasset for another; or
- operating a machine that uses automated processes to exchange cryptoassets for money or money for cryptoassets.

The FCA makes clear that businesses operating cryptoasset automated teller machines and peer-to-peer providers are in scope of the MLRs, as well as businesses that issue new cryptoassets such as initial coin offerings (**ICOs**) or initial exchange offerings (**IEOs**).

A custodian wallet provider (**CWP**) is a firm or sole practitioner who, by way of business, provides services to safeguard, or to safeguard and administer, either of the following when providing these services:

- cryptoassets on behalf of its customers; or
- private cryptographic keys on behalf of its customers to hold, store and transfer cryptoassets.

The JMLSG Guidance (defined below) clarifies that the definition of a CWP is meant to exclude non-custodial wallets. Therefore, firms who merely hold and store cryptographic keys, but are not involved in their transfer (the owner of the cryptoassets interacting with the payment system directly), are not likely to be in scope of the definition. This includes hardware wallet manufacturers and cloud storing service providers.

The FCA has stated that it will consider the commercial element, commercial benefit, the relevance to other business by the relevant firm, and the regularity/frequency of activities as factors impacting its decisions on whether cryptoasset activity is carried on "by way of business".

Notably, a person might be a CEP or CWP, irrespective of whether they are otherwise regulated in the UK, if they carry on cryptoasset business that is in scope of the new definitions. Therefore, MLR requirements for cryptoasset businesses apply to both regulated and otherwise unregulated cryptoasset businesses in the UK.

To adhere to the MLRs, businesses must comply with various obligations, such as: obtaining registration with the FCA; ongoing risk assessments; maintenance of appropriate policies, controls and procedures; staff training; customer due diligence; record keeping; reporting; and compliance with the "Travel Rule" obligations to collect, verify and share information about cryptoasset transfers. For example, on 30 August 2022, the Office of Financial Sanctions Implementation (**OFSI**) updated its guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA**) to reflect reporting obligation measures coming into force. The regulations extend the definition of "relevant firms" that have financial sanctions reporting obligations to include CEPs and CWPs, and they are therefore required to notify OFSI of certain information.

The Joint Money Laundering Steering Group published guidance (the **JMLSG Guidance**) that further clarifies how the MLRs relate to cryptoassets. The guidance highlights the AML risks relevant in the sector and considers how CEPs and CWPs should interpret the AML requirements in an appropriate manner relating to cryptoassets.

Money transmission laws

Firms that engage in the transfer of money "by way of business", including money transmitters and money service businesses that are not subject to an exemption from registration, are supervised by the FCA under the PSRs and the EMRs.[8] These regulations aim to ensure the security and efficiency of payment services and e-money issuance within the UK. Money transmission businesses are subject to regular audits and compliance checks by the FCA to ensure they meet their regulatory requirements with respect to money laundering supervision (including customer due diligence, record keeping, and reporting suspicious activity).[9]

The FCA may determine that certain types of cryptoassets trigger the regulatory perimeter under the EMRs where they constitute e-money tokens (*e.g.*, fiat-backed stablecoins that are used for payments) and under the PSRs where used in regulated payment services (*e.g.*, the provision of payment services in respect of stablecoins that constitute e-money). This determination by the FCA would depend on the specific characteristics of the cryptoassets and their use cases.

Promotion and testing

In line with the UK government's stated intention to make the UK a global hub for cryptoassets, there are a number of initiatives that strive to encourage innovation in this area. Most of these initiatives are supported by the FCA, which established an Innovation Hub in November 2018.

The FCA's Innovation Hub aims to provide direct support to innovative firms that are trying to launch into the market. It does so through several initiatives:

- The DSS, which was the first financial market infrastructure sandbox enacted under the powers introduced under FSMA 2023, came into effect in January 2024. It allows firms and regulators to experiment with emerging technologies, including DLT and digital asset platforms in relation to certain financial services activities. These activities include those of a central securities depository (**CSD**) or a trading venue (or both), including a multilateral trading facility (**MTF**), an organised trading facility (**OTF**), or a recognised investment exchange (**RIE**). Such activities resemble those observed in traditional financial markets but place an emphasis on encouraging the use of innovative technology. At the time of writing, the FCA and BoE are reviewing responses to their joint consultation paper, which considered the implementation and operation of the DSS; such responses will prove instructive as to the final guidance and Policy Statement (which are yet to be published).
- The **Regulatory Sandbox** provides an opportunity for businesses of all sizes, authorised and unauthorised, incumbent or new players, to pilot the commercial and regulatory viability of their products and services in a live environment under supervision. To be accepted, the test project must have a clear objective and must confer a clear positive impact on consumers. On acceptance, the firm will be allocated a dedicated case manager to support in the test's development and implementation. If, however, a firm that is accepted into the sandbox is engaging in regulated activities, then they must apply for the relevant authorisation or registrations.
- The **Digital Sandbox** allows firms to test and develop proofs of concept in a digital testing environment, enabling firms to develop, collaborate, and test new products and solutions. The Digital Sandbox was launched permanently following around 60% of pilots making positive progress, including receipt of funding/partnerships, launching products, and receiving industry rewards and recognitions.
- The **Global Financial Innovation Network** (**GFIN**) is an international network of financial regulators and related organisations committed to supporting financial innovation in the best interests of consumers. The network aims to provide a more efficient way for innovative firms to interact with regulators as the firms look to scale new ideas.
- **TechSprints** form part of the FCA's regulatory toolkit to bring together market participants, including regulators (from across and outside financial services), to collaborate to develop technology-based ideas or proofs of concept to address specific industry challenges. As well as exploring solutions, TechSprints are intended to act as a catalyst for change to help unlock the potential benefits of technology innovation.
- **CryptoSprint** events were held by the FCA in May and June 2022, providing an opportunity to explore potential UK policy solutions for the regulation of cryptoassets. This is the first time that the FCA had gathered views from industry and other stakeholders to help it understand emerging cryptoasset market practices and help shape future policy.

Additionally, in March 2022, the Centre for Finance, Innovation and Technology (the **CFIT**) published terms of reference[10] announcing that the CFIT model will comprise a "coalitions" approach, striving to support the growth of the sector. The CFIT is a virtual body that enables enhanced connectivity across the regions and provides research and data capabilities in financial technology and innovation. The initial work of the CFIT will focus on unlocking datasets to show the potential of open finance in delivering better financial outcomes for small and medium-sized enterprises (**SMEs**) and consumers across the UK.

The government has also announced plans to establish a Cryptoasset Engagement Group to work closely with the industry. This would involve the BoE and other key industry figures meeting regularly to discuss the direction of the cryptoasset industry and how best to support its growth.

All the above are part of the government's plan to make the UK a global hub for cryptoasset technology, with the measures helping firms to invest, innovate and scale up in the UK.[11] Additionally, and given that the UK has a "second-mover advantage" following the prior implementation of the EU's Markets in Crypto-assets Regulation (**MiCAR**) and regulatory regimes in other jurisdictions, the Consultation also has significant potential to increase innovation within the UK market.[12]

Academic legal clarity

Several key publications are seeking to enhance legal clarity around digital assets, though they do not purport to change regulatory aspects.

Law Commission – final report and Draft Digital Assets Bill

In August 2022, the Law Commission for England and Wales (the **Commission**) launched a detailed consultation[13] that contained reform proposals to better recognise and protect digital assets, especially crypto-tokens.

In June 2023, the Commission issued its final report on digital assets[14] setting out a tripartite approach to addressing the legal uncertainty that remains in the evolving digital asset market.[15] To reduce this residual uncertainty, the Commission recommended law reform to ensure that the current legal system can reinforce the strength of the digital asset ecosystems while ensuring that the private law of England and Wales remains a dynamic, flexible tool that will give UK market participants a global competitive advantage in the space.[16] To achieve this, the Commission's final report: (i) prioritises the development of common law; (ii) proposes targeted statutory reform to support the existing common law position or where the further development of common law is not feasible; and (iii) recommends that the UK government create a panel of technical experts, legal practitioners, academics, and judges to provide non-binding guidance.

The Commission's key recommendation from the consultation, as reiterated in the final report, is the explicit recognition of a third category of personal property for "data objects"; this would recognise digital assets as distinct things, capable of being objects of personal property rights. The definition is supplemental to the two existing categories of "things in possession" and "things in action", as digital assets risk falling between the two categories; the Commission recommends express statutory confirmation that a thing will not be deprived of legal status as an object of personal property rights merely by reason of the fact that it is neither a thing of action nor a thing in possession. To qualify as a data object and attract property rights, a digital asset should:

- be composed of data represented in an electronic medium, including in the form of computer code, electronic, digital, or analogue signals;
- exist independently of persons (who may claim to own them) and the legal system (which could be relied on when trying to enforce rights relating to them); and
- be rivalrous; that is, their use by one person inherently prevents simultaneous use by another person.

Divestibility could then serve as an indicator as to whether a digital asset constitutes a data object if the transfer of the object results in the transferor being deprived of it. The Commission recognises that crypto-tokens and cryptoassets can generally satisfy this criterion.

The Commission also proposed a new concept of control via common law, intending to strike a balance between recognising the unique features of data objects while retaining the benefits of the law of possession. Control would depend on the factual ability to determine whether a person has use over the data object, rather than any legal rights they might possess in relation to it. A person in control of a data

object can: exclude others from using it; use and transfer it; and identify themselves as the person able to carry out these rights. However, in accordance with the existing legal concept of possession, there is no requirement of intention. The Commission acknowledges that this concept might not be able to address complex legal mechanisms and arrangements, such as custody and collateral arrangements.

After consulting on a draft Digital Assets Bill (the **Draft Bill**) in February 2024, the Commission published a revised version alongside a supplemental report in July 2024 making clear that the Draft Bill's objective is to "make provision about the types of things that are capable of being objects of personal property rights". The Draft Bill retains the original substance but takes into account responses from consultees. Although comprising only two clauses, the main operative provisions provide that "a thing … is not prevented from being the object of personal property rights merely because" it is neither a thing in possession nor a thing in action. The Draft Bill will extend to England and Wales only and will come into force automatically two months after it receives Royal Assent.

UK Jurisdiction Taskforce – legal statements

The Commission's consultation draws on the conclusions of the UK Jurisdiction Taskforce (the **UKJT**) Legal Statement[17] published in 2019 on the Status of Cryptoassets and Smart Contracts, which concluded that: (i) cryptoassets are property; (ii) cryptoassets can, at least to some extent, be owned, transferred, assigned, and made the subject of security interests; and (iii) smart contracts are capable of being contracts under English law. This has been adopted and upheld by the High Court of England and Wales when it held that particular cryptoassets were capable of constituting a form of property.[18] In April 2021, the UKJT published its Digital Dispute Resolution Rules,[19] which were to be incorporated into on-chain digital relationships and smart contracts. This established an arbitration regime for settling any disputes relating to cryptoassets, smart contracts, or other novel digital technologies.

In February 2023, the UKJT published a legal statement confirming that English law already supports a range of digital securities structures, without the need for statutory intervention.[20]

This was followed in April 2024 by the UKJT's publication of a legal statement on digital assets and English insolvency law, building on the analysis in previous legal statements.

Mining

How cryptoassets are "mined" (*i.e.*, the process by which miners are rewarded, if successful, with new units of a particular cryptoasset for completing a specified activity and thus validating and adding transactions to a blockchain) depends on the consensus mechanism adopted by a particular blockchain. For example, transactions are validated on the Bitcoin blockchain via the proof-of-work (**PoW**) consensus mechanism, which requires validators to compete to solve complex mathematical equations.[21]

This was also the case for the Ethereum blockchain until September 2022, when its highly anticipated transition to the proof-of-stake (**PoS**) consensus mechanism took place. During this software upgrade (termed the Ethereum Merge (the **Merge**)), the original execution layer of the Ethereum blockchain merged with a new PoS consensus layer, which subsequently resulted in transactions being validated via a PoS consensus mechanism. As an alternative to the competitive PoW validation method, PoS relies on validators selected at random to confirm transactions and create new blocks. The Merge laid the technical foundation for future scalability improvements on the Ethereum blockchain and was implemented to address some of the issues experienced with PoW: comparatively, the Merge is more secure, less energy-intensive, and has increased throughput. Together, these features have allowed transactions and blocks to be approved more quickly than with PoW. However, the PoS consensus mechanism may potentially give rise to regulatory scrutiny due to the staking component of the process.

With PoS, participating validator nodes operating on a PoS network must stake capital (*i.e.*, tokens) into a smart contract on the network to be eligible to validate transactions. Notwithstanding PoS validator

nodes being selected at random, they have an increased likelihood of being selected to validate by virtue of having a large number of tokens staked in the deposit contract (*e.g.*, to participate as a validator, a user must stake 32 ETH). These tokens represent value "put at stake" that can be destroyed if the validator acts dishonestly when reviewing, proposing, and sending blocks.[22] Recognising the profitability of staking, service providers have emerged that offer customers the option to stake their tokens to the service provider's validator node, thereby increasing their chances of being selected to validate new blocks and subsequently earn staking rewards, which are then passed on to customers in proportion to their tokens staked (**Validator Service Providers**).

Staking activities via Validator Service Providers may fall within the definition of a CIS pursuant to section 235 of FSMA 2000. For example, it may be argued that this activity constitutes a CIS if: (i) participants do not have day-to-day control over the management of cryptoassets staked with a validator node; (ii) participants' assets are pooled together by the validator nodes; (iii) a participant has an expectation of profits by way of their participation in the staking process; and (iv) the staked cryptoassets are managed by the Validator Service Provider as operator of the scheme. Notwithstanding the foregoing, each project will likely be assessed on a case-by-case basis as there are additional elements to the CIS definition that may or may not be satisfied depending on a particular project's mechanics. The relationship between staking and the definition of a CIS has not yet been tested, but HMT has indicated that it is prioritising legislative clarification in this regard.

HMT has noted that there may not be a justification to regulate the activity of mining in and of itself; however, it has questioned industry participants as to whether other regulatory outcomes should be pursued in regulating mining (*e.g.*, "miner extractable value", whereby miners select how to sequence transactions to extract value from other traders). Accordingly, the mining of cryptoassets generally falls outside of the existing regulatory perimeter and are not expressly regulated activities in the UK (apart from HMRC considering any profits derived from mining activities to be taxable for individuals and businesses either as trading profits or under the miscellaneous income provisions).

Border restrictions and declaration

Upon arrival in the UK, individuals carrying £10,000 or more in cash must declare this fact to HMRC on a customs declaration form. At the time of this writing, there are no express border restrictions against transporting cryptoassets into the UK for personal or investment purposes provided any applicable customs and declaration requirements are adhered to. HMRC does not consider cryptoassets to constitute currency or money; however, there is a possibility that a declaration of cryptoasset holdings upon re-entry into the UK would be required if it is determined that a cryptoasset constitutes a "good", as cryptoassets are subject to tax reporting obligations.[23]

Reporting requirements

Reporting requirements contained in financial regulation or AML legislation may apply in relation to cryptocurrency transactions. The MLRs also contain a broad reporting requirement applicable to CEPs and CWPs, which means that they must produce information that the FCA requires relating to their compliance with the MLRs.

Estate planning and testamentary succession

HMRC has confirmed that it considers cryptoassets to be property for the purposes of inheritance tax. UK-domiciled (or deemed domiciled) individuals (for tax purposes) are subject to UK inheritance tax on their worldwide estates. As such, cryptoassets will form part of the individual's estate and will be subject to the standard inheritance tax rate of 40% (assuming the value of the estate exceeds the £325,000

tax-free threshold). The taxable amount on the cryptoasset(s) will be calculated on the individual's death. Executors cannot claim for any rebate on cryptoassets. Non-UK-domiciled individuals are, subject to exceptions, subject to taxation of any assets held and situated in the UK.

A testator should instruct their personal representative on how to acquire the cryptographic keys and details of wallet service providers, otherwise the value of cryptoassets left to beneficiaries of an estate will be lost.

Endnotes

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