

Title	2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update
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Mandate(s)	C&D No 33 of CGAP 2022
Objective	To report on the status of the 2006 Securities Convention, 1985 Trusts Convention, and 2015 Principles, including the outcomes of the 2022 CODIFI Conference concerning these instruments
Action to be Taken	For Decision <input checked="" type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	Annex I – Table of Securities Regulators’ Approaches to Blockchain Digital Assets and Instruments
Related Documents	N/A

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2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update

I. Introduction

- 1 This document reports on developments regarding the core HCCH Conventions and instruments that aim to enhance access to justice, access to finance, and facilitate cross-border cooperation in the area of international commercial, digital and financial law. These instruments are
- *Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* (Securities Convention);
 - *Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition* (Trusts Convention); and
 - *2015 Principles on Choice of Law in International Commercial Contracts* (HCCH Principles).

The effective implementation and operation of these instruments is supported by the International Commercial, Digital and Financial Law Division at the Permanent Bureau (PB).

- 2 In fulfilment of Conclusion and Decision (C&D) No 33 and following the mandate of the Council on General Affairs and Policy (CGAP) in March 2022,¹ the inaugural HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference) was successfully held online from 12 to 16 September 2022. This Preliminary Document (Prel. Doc.) reports on the background and relevant discussions from the CODIFI Conference concerning the Securities Convention, the Trusts Convention and the HCCH Principles. It also addresses possible topics and areas for future work based on the outcomes arising from the CODIFI Conference. The report of the CODIFI Conference is provided as Annex I in Prel. Doc. No 3A.²
- 3 CODIFI sessions were organised along six thematic tracks. Three focused on the 2006 Securities Convention, the 1985 Trusts Convention, and the Principles on the Choice of Law in International Commercial Contracts. The other three tracks focused on the private international law (PIL) issues surrounding the growing digital economy, which are separately addressed in Prel. Doc. No 3A mentioned above.

II. Key recommendations for the Securities Convention discussed at the CODIFI Conference

- 4 The Securities Convention entered into force in 2017 for each of its three Contracting Parties.³ Although the Convention's primary PIL rule provides clarity and practical answers for the law applicable to securities held with an intermediary, no new Contracting Parties have joined the instrument. In the interim, technological advances in the financial technology (fintech) industry have enabled new forms of selling and holding securities and securities-like products. These developments provide opportunities to review the operation of the Convention and assess steps that may be taken to increase acceptance of its framework, while also taking into account the Convention's future role in relation to securities-like assets and intermediary businesses on digital platforms.

¹ C&D No 33 of CGAP 2022; see also C&D No 38 of CGAP 2021, available on the HCCH website www.hcch.net under "Governance" then "Council on General Affairs and Policy" then "Archive (2000-2022)".

² "Digital Economy and the HCCH Conference on Commercial, Digital and Financial Law Across Borders (CODIFI Conference): Report", Prel. Doc. No 3A of January 2023 for the attention of CGAP 2023, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy".

³ A status table detailing *inter alia* the dates of signature, ratification and entry into force of the Contracting Parties to the Securities Convention is available on the HCCH website at www.hcch.net under "Instruments" then "Conventions and other Instruments" then "2006 Securities Convention" then "Status table".

- 5 The advent of distributed ledger technology (DLT) applications in capital markets means that securities are now capable of being held, transferred, cleared and settled on a blockchain. It is expected that the scope of securities laws in various jurisdictions will expand to account for these innovations, especially concerning legal entitlements recorded via DLT.⁴ Moreover, the securities field is likely to see ongoing change and continuous technological development in the near future. Critically, therefore, the scope of Articles 1 and 2, which address only financial instruments and assets, may benefit from further study as to their interpretation in light of developments in technology and applications.
- 6 The PB has examined 18 jurisdictions⁵ spanning every region of the world to understand approaches taken by domestic securities regulators in light of developments in technology and applications. More than half of the assessed jurisdictions⁶ recognise or seek to characterise certain digital assets or digital offerings as securities that fall within their existing legal frameworks. In efforts to provide regulatory clarity on the blockchain landscape, public consultations and legislative measures⁷ are underway in some of these jurisdictions in order to regulate transactions traded through electronic exchange platforms. A table tracking these developments is provided in Annex I, *infra*.
- 7 In this context, specific PIL challenges may arise. In particular, the determination of jurisdiction and applicable law are likely to emerge as contentious issues amidst competing national policies, which exhibit a range of approaches as to whether to classify digital securities under the traditional category of securities. For example, the US Securities and Exchange Commission has claimed jurisdiction over all transactions on the Ethereum blockchain based on the location of nodes within its territory.⁸
- 8 Experts speaking at the CODIFI Conference addressed a range of topics on the Securities Convention, including the reasons to encourage accession to the Convention, the continued relevance of the Convention, the role of negotiable instruments, and the intersection of the Securities Convention and DLT. Clarity on the value of the primary rule and fall-back rules in the Convention may, according to one expert, be particularly helpful in assisting Members with the development of domestic securities laws and rules.⁹ This may take the form of the development of a Frequently Asked Questions guide or other similar material by the PB. The envisioned impact is enhanced awareness of how the Securities Convention will interact with domestic financial systems, and improved visibility of the Convention as a tool for unification of securities regulation across jurisdictions.
- 9 In addition, opportunities have arisen to re-examine the Convention in light of the growth of DLT use cases. The Convention may provide support for future PIL challenges, particularly where DLT applications rely on intermediation rather than peer-to-peer approaches for trading.¹⁰ Moreover, there is a need to study the effects that new categories of assets have on the trading, clearing,

4 F. Heindler (2019), “The Law Applicable to Third-Party Effects of Transactions in Intermediated Securities”, *Uniform Law Review*, Vol. 24, p. 696.

5 See Annex I – Table of Securities Regulators’ Approaches to Blockchain Digital Assets and Instruments.

6 Out of the 18 countries surveyed, the approach in 10 countries considered cryptocurrencies as a form of securities. These countries include Australia, Canada, Japan, Kenya, Malaysia, Nigeria, Singapore, Switzerland, the United Kingdom and the United States of America. The remaining countries that do not consider cryptocurrencies to be securities include Bahrain, Botswana, Brazil, Cameroon, the People’s Republic of China, South Africa, Korea, and the United Arab Emirates (UAE).

7 See Annex I: For example, draft bills on crypto assets are currently being discussed in Brazil while Kenya’s central bank invited the public for its views on the potential introduction of a digital currency in February 2022.

8 US Securities and Exchange Commission against Ian Balina, Civil Action No 1:22-CV-950 filed on 19 September 2022, para. 69.

9 CODIFI Conference, A. Kwan, “Opening of the HCCH Securities Convention Track”, 12 September 2022.

10 CODIFI Conference, E. Micheler, “The Securities Conventions and Distributed Ledger Technology”, 15 September 2022.

settlement and holding of securities.¹¹ These subjects could form the topic of a desirability and feasibility study for a future instrument, such as a possible protocol, to be attached to the Securities Convention.

- 10 Absent uniform definitions of appropriate connecting factors for DLT-based securities,¹² the Securities Convention or a follow-up instrument or protocol may be increasingly attractive. The PB continues to study the current and future role of the Convention, especially in the context of the increasing digitisation of the global economy and the potential layer of complexity added by novel DLT use cases.
- 11 CGAP may want to consider mandating the PB, in partnership with subject-matter experts, to study the matter of the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as DLT,¹³ assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology and applications, and identify opportunities for the Securities Convention to serve as a starting point in the discussion of the desirability and feasibility of future normative guidance. In light of the success of the CODIFI Conference and experts' feedback, CGAP may also want to consider the possibility of mandating preparations by the PB, resources permitting, for an online colloquium on this topic.

III. Key recommendations for the Trusts Convention discussed at the CODIFI Conference

- 12 A full discussion of challenges and opportunities for the Trusts Convention, including proposals for potential future work, is presented in Prel. Doc. No. 10C.¹⁴ This section briefly summarises the main recommendations discussed at the CODIFI Conference.
- 13 Experts at the CODIFI Conference recommended that further study of the interpretation of analogous institutions in Article 2 of the Trusts Convention, with a focus on clarifying the divergences in interpretation between the English and French versions of the Article.¹⁵ Whether analogous institutions for the purposes of Article 2 would include foundations and endowments, institutions and developments relating to the *waqf* in Islamic legal traditions, and DAOs and other similar structures could also be further explored.
- 14 Other areas for review of the Trusts Convention that were suggested at the CODIFI Conference include:
- examining how the Convention applies to a trust by declaration,¹⁶ for example by refining Articles 4 and 15(d);¹⁷
 - examining the Convention in light of recent case law, for example, how the courts have applied Article 7 of the Convention;¹⁸
 - fostering predictability and certainty by adding a list of trustee fiduciary duties;¹⁹ and

¹¹ *Ibid.*

¹² F. Heindler (2019), *op. cit.* note 4, p. 710.

¹³ *Ibid.*

¹⁴ "1985 Trusts Convention: Updates and possible future work", Prel. Doc. No 10C of December 2022 for the attention of CGAP 2023, available on the HCCH website at www.hcch.net (see path indicated in note 2).

¹⁵ CODIFI Conference, "Trusts / Attitudes Towards Trusts and Analogous Institutions", 14 September 2022; CODIFI Conference, F. Nosedà, "Trusts Closing", 16 September 2022.

¹⁶ CODIFI Conference, D. Beckner, "Attitudes Towards Trusts and Analogous Institutions", 14 September 2022; CODIFI Conference, M. Lupoi, "Attitudes Towards Trusts and Analogous Institutions", 14 September 2022.

¹⁷ CODIFI Conference, A. Chong, "Trends in Jurisprudence Interpreting the Trusts Convention", 14 September 2022.

¹⁸ CODIFI Conference, A. Chong, *ibid.*

¹⁹ CODIFI Conference, D. Beckner, *op. cit.* note 16.

- examining who can fill the role of the trustee when digital finance users make use of trusts.²⁰

Further study could be undertaken into the claim that results of a survey amongst legal practitioners revealed that choice of domestic law is most often preferred even if that State is a signatory to the Trusts Convention.²¹

- 15 Experts also identified a growth of recent initiatives in jurisdictions such as the People’s Republic of China, Hungary, Israel, Japan, Korea, Switzerland, and in various parts of Latin America.²² These jurisdictions have developed institutions analogous to trusts in the years following the conclusion of the Trusts Convention, and engagement with these jurisdictions would support a wider understanding of trusts and analogous institutions²³ and widen participation in the Trusts Convention.

IV. Key recommendations for the HCCH Principles discussed at the CODIFI Conference

- 16 A full discussion of challenges and opportunities for the HCCH Principles, including proposals for potential future work, is presented in Prel. Doc. No. 10B. This section briefly summarises the main recommendations discussed at the CODIFI Conference.

- 17 Speakers at the CODIFI Conference emphasised the role of parties’ choice of law agreements in international commercial dealings and the importance of upholding the principle of party autonomy. Suggestions from experts at the CODIFI Conference for the HCCH Principles include:

- developing default applicable law rules in the absence of a (valid) choice of law²⁴ and in international data transactions;
- reconsidering the scope of the 2015 Principles with relation to certain contracts, such as insurance contracts;²⁵
- clarifying the scope of party autonomy, including in the context of (investment) arbitration.²⁶

Notably, a majority of experts discussing the HCCH Principles indicated the need for and importance of developing a set of choice of law rules in international contracts aimed at protecting weaker parties, such as consumers and individual employees.²⁷

V. Proposal for CGAP

- 18 The PB invites CGAP to note the issues described in this document in relation to the Securities Convention, the Trusts Convention, and the HCCH Principles, as well as the outcomes of the CODIFI Conference relevant to these instruments. Having in mind the limited resources at the PB and the work programme assigned to the International Commercial, Digital and Financial Law Division, the PB proposes the following Conclusions and Decisions for CGAP’s consideration:

²⁰ CODIFI Conference, G. Grisel, “Attitudes Towards Trusts and Analogous Institutions”, 14 September 2022.

²¹ CODIFI Conference, G. Grisel, *ibid.*

²² CODIFI Conference, F. Nosedá, *op. cit.* note 16.

²³ *Ibid.*

²⁴ CODIFI Conference, G. Cordero-Moss, R.F. Oppong, L. Gama, G. Xu and N. Zhao, “The Role of the Principles in International Commercial Dispute Resolution”, 15 September 2022; CODIFI Conference, D. Goddard, “The Role of Party Autonomy in International Commercial Contracts”, 15 September 2022. CODIFI Conference, D. Girsberger, “Opening of the HCCH Principles Track”, 12 September 2022; and CODIFI Conference, Y. Nishitani, “The Principles in the Modernisation of National and Regional Laws” 14 September 2022.

²⁵ CODIFI Conference, S.C. Symeonides, “Principles Closing”, 16 September 2022.

²⁶ CODIFI Conference, G. Cordero-Moss, R.F. Oppong, L. Gama, G. Xu and N. Zhao, *op. cit.* note 24).

²⁷ CODIFI Conference, D. Girsberger, *op. cit.* note 24); CODIFI Conference, G. Cordero-Moss, R.F. Oppong, L. Gama, G. Xu and N. Zhao, *op. cit.* note 24); and CODIFI Conference, S.C. Symeonides, “Principles Closing”, *op. cit.* note 25.

CGAP mandated the PB, in partnership with subject-matter experts,

- to study the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as DLT,
- to assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology and applications, and
- to identify opportunities for the Securities Convention to serve as a starting point in the discussion of the desirability and feasibility of future normative guidance.

CGAP further mandated the PB, resources permitting, to explore the possibility of organising an online colloquium on these topics. The PB will report to CGAP at its 2024 meeting.

ANNEX

Annex I – Table of Securities Regulators’ Approaches to Blockchain Digital Assets and Instruments

S/No.	Country	Are cryptocurrencies considered securities?	Securities Regulator	Legislation/ Regulation/ Guidelines
1.	Australia	Yes	Australian Securities and Investments Commission (ASIC)	<p>Since 2018, crypto exchanges are required to register¹ with the Australian Transaction Reports and Analysis Centre (AUSTRAC), which maintains the Digital Currency Exchange Register.</p> <p>In May 2019, ASIC issued updated regulatory requirements for both ICOs and cryptocurrency trading.²</p> <p>In 2021, Australia announced plans to introduce a new licensing framework specifically for cryptocurrency exchanges.</p>
2.	Bahrain	No	Central Bank of Bahrain (CBB)’s Capital Markets Supervision Directorate (CMSD)	<p>In 2019, Bahrain published a regulatory module governing crypto assets. The government made the dealings of crypto-centric businesses legal with the due permission of the Central Bank.</p> <p>The regulatory framework contains comprehensive regulations to govern and license ‘Regulated Crypto-Asset Services’ and is included in Volume 6 of the CBB Rulebook that governs capital markets.³</p>
3.	Botswana	No	-	<p>While Botswana does not have a regulatory framework to govern cryptocurrency trading and does not have an exchange, it passed a bill in February 2022 to regulate digital assets trading. The new rules seek that any company that offers cryptocurrency services, or anything related to digital tokens, should obtain a license from the Non-Bank Financial Institutions Regulatory Authority.⁴</p>

¹ For example, in April 2022, the ASIC charged a Melbourne-based cryptocurrency lender of falsely claiming it held an Australian credit licence (ACL) when it did not. See <https://smstrusteenews.com.au/2022/04/22/asic-prosecutes-cryptocurrency-lender/>.

² See <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/>.

³ See <https://www.tamimi.com/law-update-articles/central-bank-of-bahrain-issues-regulations-governing-crypto-asset-services/>.

⁴ See <https://www.bloomberg.com/news/articles/2022-02-02/botswana-to-regulate-crypto-that-was-feared-becoming-wild-west>.

4.	Brazil	No (as yet)	Security and Exchange Commission (SEC)	<p>Crypto assets are not yet regulated in Brazil, with the legal status of utility tokens and cryptocurrencies undefined by any Brazilian law or regulatory authority. However, security tokens are considered securities and are thus regulated by the SEC.⁵</p> <p>The SEC is aiming for changes in the country’s legal framework regarding cryptocurrencies. A few bills on cryptoassets are currently being discussed in Brazil. A relevant example is Bill of Law No. 4401/2021,⁶ which was approved by the Senate in April 2022 and is expected to be approved by the Chamber of Deputies in the near future. This is comprehensive legislation that would regulate transactions involving certain cryptoassets conducted through electronic platforms, according to which digital asset service providers – such as crypto exchanges – would need to seek licence from a national authority – most probably the Central Bank of Brazil – in order to operate and transactions involving cryptoassets.</p>
5.	Cameroon	No	-	<p>The Government of Cameroon has not legislated on cryptocurrencies as yet, and no regulation or framework exists for the use or trade in cryptocurrencies.</p> <p>In 2015, however, Cameroon reportedly trialled a bitcoin-like digital currency called Trest. Although the results of the tests were “excellent”, the high cost associated with electricity usage when processing cryptocurrency transactions acted as a hindrance to further testing of the use of cryptocurrencies within Cameroon.⁷</p>
6.	Canada	Yes	Canadian Securities Administrators (CSA)	<p>The CSA and the Investment Industry Regulatory Organization of Canada (IIROC) have issued guidance requiring crypto trading platforms and dealers in Canada to register with the local provincial regulators.⁸</p> <p>The Ontario Securities Commission has actively enforced the regulations against several unregistered foreign trading platforms.⁹</p>

⁵ See <https://www.levysalomao.com.br/publications/article/brazilian-guide-on-cryptoassets>.

⁶ A copy of Bill of Law No. 4401/2021 is available at <https://www25.senado.leg.br/web/atividade/materias/-/materia/151264>.

⁷ See https://www.bakermckenzie.com/-/media/files/insight/publications/2019/02/report_blockchainandcryptocurrencyreg_feb2019.pdf at p. 18.

⁸ See <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/04/Cryptos-Report-Compendium-2022.pdf>.

⁹ *Ibid.*

				<p>CSA issued a notice¹⁰ in 2017 on the applicability of existing securities laws to cryptocurrencies, if the person or company selling the securities is conducting business from within Canada or if there are Canadian investors.</p> <p>In 2021, the CSA published guidance¹¹ for crypto issuers that own or hold crypto assets. Requirements for cryptocurrency exchanges to register with the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC) were also introduced.</p>
7.	People's Republic of China	No	-	There is a blanket ban on cryptocurrencies and all crypto transactions and mining as of September 2021. ¹²
8.	Japan	Yes, if defined as such.	Financial Services Agency (FSA)	<p>Amendments to the Financial Instruments and Exchange Act (FIEA), which is the legislation that regulates securities within Japan, took effect in May 2020 and introduced the term “crypto asset”.¹³ Cryptocurrencies that are classified as securities fall under the statutory authority of FIEA.¹⁴</p> <p>Nonetheless, cryptocurrencies in Japan are largely regulated because they largely fall under the Payment Services Act (PSA) – that recognizes Bitcoin and other digital currencies as legal property – or the FIEA.</p> <p>In December 2021, the FSA indicated that it would propose legislation in 2022 to regulate issuers of stablecoins and toughen regulations to prevent money laundering.¹⁵</p>
9.	Kenya	Yes, if defined as such	Capital Markets Authority (CMA)	In Kenya, cryptocurrency is primarily regulated by the following acts: (1) The National Payments Systems Act (NPSA) administered by the Central Bank of Kenya (CBK); (2) the Capital Markets Act (CMA) administered by the Capital Markets Authority (CMA); and (3) the Kenya Information and Communication Act (KICA) administered by the Communications Authority. Cryptocurrencies that qualify as securities are regulated under the CMA, which is the agency charged with

¹⁰ See CSA Staff Notice 46-307 available at https://www.osc.ca/sites/default/files/pdfs/irps/csa_20170824_cryptocurrency-offerings.pdf.

¹¹ See CSA Staff Notice 51-363 available at https://www.osc.ca/sites/default/files/2021-03/csa_20210311_51-363_observations-disclosure-crypto-asset.pdf.

¹² See <https://www.reuters.com/world/china/china-central-bank-vows-crackdown-cryptocurrency-trading-2021-09-24/>.

¹³ For example, see Art. 63-11 of the PSA available at https://www.japaneselawtranslation.go.jp/en/laws/view/3965/en#je_ch4sc2at6.

¹⁴ See <https://freemanlaw.com/cryptocurrency/japan/>.

¹⁵ See <https://asia.nikkei.com/Spotlight/Cryptocurrencies/Stablecoins-to-face-new-restrictions-in-Japan>.

				<p>overseeing the public offers of securities within Kenya. Even though the CMA has not yet classified cryptocurrency as securities, the legislation empowers the CMA with broad discretion to classify certain cryptocurrencies as securities.¹⁶</p> <p>In February 2022, Kenya’s central bank invited the public for views on the potential introduction of a digital currency, in a shift from its original opposition to crypto assets.¹⁷</p>
10.	Malaysia	Yes	Securities Commission (SC)	The SC issued guidelines on the regulation of various digital currency platforms operating in the country. The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 stated that digital tokens are “securities” for purposes of securities laws. ¹⁸
11.	Nigeria	Yes	Securities and Exchange Commission of Nigeria (SEC)	The Nigerian SEC published a new rulebook, the New Rules on Issuance, Offering Platforms and Custody of Digital Assets, in May 2022 to provide regulatory clarity on its cryptocurrency landscape. This publication covers rules on issuance of digital assets as securities, registration requirement for Digital Assets Offering Platforms (DAOPs), registration requirements for Digital Asset Custodians (DACs), rules on Virtual Assets Service Providers (VASPs) and rules on Digital Assets Exchange (DAX). ¹⁹
12.	Singapore	Yes, if defined as such.	Monetary Authority of Singapore (MAS)	<p>In 2017, the MAS clarified²⁰ that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under the Securities and Futures Act (SFA). As yet, the SFA does not specify the same.</p> <p>Its regulatory approach towards digital tokens is to look beyond common labels and examine the features and characteristics of each digital token, to determine the applicable regulatory requirements.²¹</p>

¹⁶ See <https://freemanlaw.com/cryptocurrency/kenya/>.

¹⁷ See <https://www.reuters.com/technology/kenyas-central-bank-tests-public-opinion-about-digital-currencies-2022-02-10/>.

¹⁸ Capital Markets and Services Act 2007, Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 available at <https://www.sc.com.my/api/documentms/download.ashx?id=8c8bc467-c750-466e-9a86-98c12fec4a77>.

¹⁹ See <https://sec.gov.ng/regulation/rules-codes/>.

²⁰ See <https://www.mas.gov.sg/news/media-releases/2017/mas-clarifies-regulatory-position-on-the-offer-of-digital-tokens-in-singapore> dated 1 August 2017.

²¹ MAS’ Guide to Digital Token Offerings’ dated 26 May 2020 available at <https://www.mas.gov.sg/-/media/MAS/Sectors/Guidance/Guide-to-Digital-Token-Offerings-26-May-2020.pdf>.

				The 2019 Payment Services Act ²² brought exchanges and other cryptocurrency businesses under the regulatory authority of MAS from January 2020 and imposed a requirement for them to obtain a MAS operating license.
13.	South Africa	No	Financial Sector Conduct Authority (FSCA)	<p>The FSCA has yet to implement any regulations, but a regulatory framework is expected in the near future.²³</p> <p>South Africa’s National Treasury budget review published in February 2022²⁴ formally introduced the move to declare cryptocurrencies as financial products. The state also plans to enhance the monitoring and reporting of cryptocurrency transactions to comply with exchange regulations in the country.</p> <p>The South African Reserve Bank is also set to introduce regulations that will see cryptocurrencies classed and treated as financial assets.²⁵</p>
14.	Republic of Korea	No	Financial Services Commission (FSC)	<p>Cryptocurrencies are not considered legal tender nor a financial asset. Exchanges, while legal, are part of a closely monitored regulatory system overseen by the Financial Supervisory Service (FSS).</p> <p>As of 6 September 2022, the FSC has revealed plans to launch a distinct digital securities market with a view towards institutionalizing and promoting cryptocurrencies.²⁶</p> <p>The envisioned digital securities market would accept tokens that use blockchain. However, these tokens must be registered as electronic securities.</p>
15.	Switzerland	Yes	Financial Market Supervisory Authority (FINMA)	Switzerland imposes a registration process on cryptocurrency exchanges, which must obtain a license from FINMA in order to operate. FINMA applies existing financial legislation to offerings, including securities trading.

²² See Art. 2, Payment Services Act available at <https://sso.agc.gov.sg/Acts-Supp/2-2019/Published/20190220?DocDate=20190220>.

²³ See <https://www.michalsons.com/blog/crypto-regulations-in-south-africa/56081#:~:text=Crypto%20Assets%20%26%20Tax&text=The%20South%20African%20Revenue%20Ser vice.disposed%20of%20with%20capital%20intent>.

²⁴ See <http://www.treasury.gov.za/documents/national%20budget/2022/review/FullBR.pdf>.

²⁵ See <https://cointelegraph.com/news/bitcoin-not-a-currency-south-africa-to-regulate-crypto-as-financial-asset>.

²⁶ See <https://ambcrypto.com/south-korea-is-getting-serious-on-crypto-securities-heres-how/>.

				In 2021, the DLT Act ²⁷ was introduced with the goal of adjusting Swiss laws to take advantage of cryptocurrency innovation. The DLT Act constitutes an umbrella legislation that introduces a new concept of so-called DLT Securities (including the newly introduced registered uncertificated securities) ²⁸ under the Swiss Code of Obligations allowing for the tokenization of rights, claims and financial instruments. ²⁹
16.	United Arab Emirates	No	Securities and Commodities Authority (SCA) Also: Financial Services Regulatory Authority (FRSA)	<p>The Abu Dhabi Global Market, a regulatory body, issued a comprehensive layout on the regulations to be followed while carrying out crypto-related transactions. This regulatory approach identifies categories of digital assets or instruments. Virtual assets including non-fiat virtual currencies are treated as commodities.³⁰</p> <p>The Dubai Multi Commodities Centre (DMCC) has also termed cryptocurrencies as commodities and opened the avenues for businesses holding a DMCC issued license to trade in this commodity.³¹</p> <p>The SCA is taking crypto lawmaking to another level by publicizing their draft legislation for crypto-asset sale, tokenization of assets, crypto exchanges and more; and to ask the public for feedback so they can tailor their laws better to local needs.</p> <p>The UAE is also creating a joint digital currency with the Kingdom of Saudi Arabia. The joint crypto Aber, which is built on the blockchain, is sending a clear message that both governments are eager to use cryptocurrency technology and even on testing it out on a state-level for bank dealings and government transactions between the two countries.³²</p> <p>*Note: All other countries in the Middle East region have either deemed crypto assets to be illegal or are yet to develop clear regulations.³³</p>

²⁷ See <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-84035.html>.

²⁸ See <https://www.globalcompliancenews.com/2021/01/23/switzerland-swiss-legislative-package-on-dlt-07012021/#:~:text=On%2025%20September%202020%2C%20the.as%20a%20leading%2C%20innovative%20and.>

²⁹ See <https://www.globallegalinsights.com/practice-areas/blockchain-laws-and-regulations/switzerland>.

³⁰ See <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/united-arab-emirates#footnote-055-backlink>.

³¹ *Ibid.*

³² See <https://blog.fasset.com/cryptocurrency-regulations-crypto-legal-middle-east/>.

³³ See <https://crystalblockchain.com/articles/2021-crypto-regulations-in-the-middle-east/>.

17.	United Kingdom	Yes, if defined as such.	Financial Conduct Authority(FCA)	<p>The regulation of crypto assets falls into three categories as identified by the FCA in its Guidance on Crypto Assets:³⁴ security tokens, e-money tokens and unregulated tokens.</p> <p>Security tokens are virtual currencies with characteristics that mean they provide rights and obligations akin to traditional instruments, such as shares, debentures or units in a collective investment scheme.</p> <p>Together with e-money tokens which are virtual currencies meeting, the definition of electronic money, both fall into the UK regulatory perimeter as 'specified investments' under the Financial Services and Markets Act 2000 (FSMA).³⁵</p> <p>The FCA has indicated that at least some types of virtual currencies may be transferable securities. In particular, it identifies that traditional shares issued on a public blockchain may be transferable securities, and that some security tokens may 'amount to a transferable security more akin to regulated equity-based crowdfunding'.³⁶</p> <p>In January 2022, the UK government announced plans for legislation to address cryptoasset advertisements and protect consumers from misleading claims.³⁷</p>
18.	United States of America	Yes	Securities and Exchange Commission (SEC)	<p>The Financial Crimes Enforcement Network (FinCEN) proposed a cryptocurrency regulation (expected by Fall 2022) to impose data collection requirements on cryptocurrency exchanges and wallets for anti-money laundering purposes.</p> <p>The proposed rules³⁸ would clarify that the definition of “money” under the Bank Secrecy Act applies to virtual currencies and would also apply to domestic and cross-border transactions involving digital assets that have legal tender status.</p>

³⁴ Policy Statement PS19/22: Guidance on Cryptoassets published by the *Financial Conduct Authority (FCA)* on 31 July 2019, available at <https://www.fca.org.uk/publications/policy-statements/ps19-22-guidance-cryptoassets>.

³⁵ See <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/united-kingdom#footnote-094-backlink>.

³⁶ Para. 6 of the FCA's written submission to the House of Commons Treasury Committee digital currencies inquiry, published 22 May 2018, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/digital-currencies/written/81677.pdf>.

³⁷ See <https://www.gov.uk/government/news/government-to-strengthen-rules-on-misleading-cryptocurrency-adverts>.

³⁸ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1506-AB41>.

				Note: In August 2022, US Senators introduced the Digital Commodities Consumer Protection Act that seeks to close regulatory gaps between state and federal regulation of cryptocurrencies. If passed, the DCCPA would make the CFTC the leading oversight agency for cryptocurrencies that aren't otherwise deemed securities.
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