

Appendix 1 - Benchmarking

Note 1 The summaries below adopt the taxonomy in paragraphs 2 and 5 of the paper; footnotes indicate where a different term is used in a jurisdiction to describe an equivalent crypto asset.

Abu Dhabi Global Market

1. In ADGM, a framework of rules and guidance has been implemented to clarify the regulatory treatment of Security Tokens¹ and utility tokens, and to bring specified activities involving exchange tokens² within the definition of existing regulated activities.
2. Security Tokens are not defined as a new class of regulated financial instruments. Guidance states that, where a crypto asset is assessed to exhibit the characteristics of a regulated security, the FSRA may deem it to be a security³ and subject to the same regulation as the relevant class of conventional security.
3. As regards categories of crypto asset other than Security Tokens:
 - a) the scope of certain regulated activities involving financial instruments (e.g. dealing as a market operator, custodian or intermediary) has been extended to capture the same activities when they involve exchange tokens. Additional conduct of business rules and guidance will apply and the ADGM FSRA stipulates, on a case-by-case basis, which exchange tokens are permitted for a given authorised person; and
 - b) utility tokens fall outside the regulatory perimeter.
4. Security Token Markets (**STMs**) are subject to the existing requirements applicable to market intermediaries and market operators, with additional guidance in place to address risks specific to crypto assets such as technology governance and security. A STM which is a MTF may only admit Security Tokens to trading where it is a secondary listing, or they are offered by way of an exempt offer. Clearing and settlement can be undertaken by a recognised clearing house, or a person authorised to provide custody in respect of Security Tokens, either of which must be a separate legal entity to the STM. The FSRA is not likely to allow Security Tokens to be traded on an OTF, as its policy position is that a STM should be operated on a non-discretionary basis.
5. The usual prospectus disclosure requirements applicable to conventional securities will apply to an offering of Security Tokens. Guidance has been issued to emphasise the key disclosure requirements in the context of Security Tokens, including disclosure (with due prominence) of the rights associated with a particular Security Token. An exempt offer document does not require the FSRA's approval, but the

¹ Defined as "*Digital Securities*".

² Defined as "*Virtual Assets*".

³ Using a power similar to that available to the DFSA under GEN A2.4.1.

FSRA will review it in the context of determining whether the token offered is deemed to be a Security.

EU

6. In September 2020, the EC published draft rules on: (i) applying MiFID II to Security Tokens; (ii) creating a new regulatory regime for crypto assets other than security tokens; and (iii) launching a crypto market infrastructure sandbox.
7. The EC proposes to amend the definitions of “*financial instruments*” under MiFID II to clarify that they include financial instruments based on DLT. Under the proposals, Security Tokens will be subject to the full scope of the existing EU regime for financial instruments (MiFID II, Prospectus Directive, Transparency Directive, Market Abuse Directive, Short Selling Regulation, Central Securities Depositories Regulation, and Settlement Finality Directive).
8. Crypto assets other than Security Tokens will be subject to a new Regulation on Markets in Crypto Assets (MiCA). Exchange tokens will be subject to varying requirements, depending upon whether or not they constitute e-money or an asset-referenced token (i.e. stablecoin), including the nature of the issuer and publication of a ‘white paper’, which has been submitted to the relevant regulator. Issuers of utility tokens will be required to publish a white paper that has been submitted to the relevant regulator.
9. Crypto asset service providers will have to obtain authorisation for providing custody, operating a trading platform, operating an exchange, executing orders, placing, receiving/transmitting orders and/or advising. General requirements cover conduct, own funds or insurance, operations, outsourcing, safeguarding, complaints management. Specific requirements are attached to each service individually, taking into consideration additional risks that DLT-based solutions may cause.
10. The proposed crypto market infrastructure sandbox will allow investment firms and market operators to trade security tokens through a DLT MTF (with a security settlement system) in a pilot regime across the EU, allowing firms and regulators time for gaining required experience.

Gibraltar

11. In March 2018, Gibraltar issued a policy statement setting out high level details of the proposed legislation to govern the regulatory treatment of certain crypto assets (“Token Regulations”). These new regulations will add to existing rules which apply to firms, since January 2018, using DLT to store or transmit value belonging to others (“DLT Regulations”).
12. Security Tokens are not defined as a new class of regulated financial instrument and are not intended to fall within the scope of either Token Regulations or DLT Regulations. According to the policy statement, “*the public offering of tokens that constitute securities are already adequately caught by existing securities legislation and do not require further regulation*”.

13. As regards categories of crypto assets other than Security Tokens:
 - a) DLT Regulations apply to activities involving exchange tokens,⁴ to the extent those activities constitute the storage or transfer of value belonging to others using DLT. They require a firm conducting such activities to be authorised and to comply with high level principles. In September 2020, additional guidance was issued to clarify regulatory expectations around the implementation of each principle, covering areas, such as financial resources, risk management, client assets, governance; and
 - b) Token Regulations will establish a new regulated activity of providing investment and ancillary services relating to both exchange tokens and utility tokens.⁵ These Regulations will also introduce rules relating to the promotion, sale and distribution of utility tokens to the public, containing both disclosure and financial crime related provisions.
14. Token Regulations will introduce a new regulated activity of operating a secondary market platform used for trading tokens and their derivatives. It is not yet clear if operating a STM will fall within the definition of this new regulated activity, or whether that definition will only capture secondary market platforms. The proposed rules are primarily intended to restrict organised trading in tokens to regulated platforms, establish transparency rules and introducing conduct of business requirements.

Hong Kong

15. In Hong Kong, the SFC has issued a number of statements clarifying its position on crypto assets⁶ and has implemented a framework of regulation to govern the operation of a STM.
16. Security Tokens are not defined as a new class of regulated financial instruments. The SFC has stated that, where crypto assets fall under the definition of “*securities*” or “*futures contracts*”, they will likely fall within the regulatory perimeter and be governed by existing regulation.
17. Exchange tokens and utility tokens will generally fall outside the regulatory perimeter, although a consultation has been published on proposals to make regulation mandatory for exchange token markets.
18. A STM must be authorised to deal in securities and operate an ATS. A STM is subject to the existing regulatory requirements for conducting those activities, with additional requirements to address risks specific to the nature of crypto assets,

⁴ The precise definition of the broad category equivalent to exchange tokens is not yet available, but the intention is for that category to include tokens that function solely as decentralised virtual currency or as central bank-issued digital currency.

⁵ The precise definition of the broad category equivalent to utility tokens is also not yet available, but that category seems intended to be a residual category of crypto assets which are neither securities nor exchange tokens (unless they constitute an outright gift or donation, in which case they will be outside the regulatory perimeter).

⁶ The SFC uses the term “*virtual assets*” to describe crypto assets generally, but does not seek to define different categories of crypto assets in its statements.

including compliance with specified terms and conditions, imposed as licence conditions. The requirements are extensive and include restricting use of the platform to professional investors, disclosing a list of risks specific to crypto assets, conducting due diligence prior to admitting instruments to trading and (if providing custody) insuring the risks associated with custody of crypto assets.

19. Security Tokens are subject to the existing prospectus requirements applicable to conventional securities.

Japan

20. In May 2020, Japan revised its crypto asset regulatory framework through amendments to the Payment Services Act (PSA) and Financial Instruments and Exchange Act (FIEA).
21. The amendments include introducing a definition of Security Tokens⁷ and stipulating that crypto assets falling within that definition are, unless an exemption applies, subject to the same regulation as conventional, high liquidity securities.
22. As regards categories of crypto asset other than Security Tokens:
 - a) providers of exchange services in exchange tokens⁸ are regulated under PSA and AML legislation and are required to be authorised by the Japan FSA. The amendments introduce more extensive requirements around, for example, disclosure, leverage limits and protection of client assets. The amendments also extend regulation to providers of exchange token custody services and trading in exchange token derivatives; and
 - b) utility tokens⁹ remain outside the regulatory perimeter following the amendments.
23. While there is an extensive framework of existing rules applicable to platforms which provide exchange services in respect of exchange tokens, they do not apply to services provided in respect of Security Tokens. STMs will, therefore, remain subject to the existing requirements applicable to market intermediaries and market operators dealing in conventional securities.

Malaysia

24. In Malaysia, a framework of rules and guidance has been put in place to prescribe certain crypto assets as regulated securities and to regulate the operation of electronic platforms which facilitate trading of those crypto assets.

⁷ The defined term is “*Electronically Recorded Transferable Rights*”.

⁸ The defined term used for this category of crypto asset was changed from “*Virtual Currency*” to “*Crypto Asset*”.

⁹ utility tokens are effectively a residual category, capturing crypto assets which do not fall within the definition of a Crypto Asset or an Electronically Recorded Transferable Right.

25. A crypto asset is prescribed as a regulated security (and so subject to the regulation applicable to conventional securities) where it is either:
- a) exchanged for investors' monies,¹⁰ which are then pooled and managed by the issuer in the expectation that the investors will receive a return or appreciation in value; or
 - b) an exchange token¹¹ which is traded on a platform and in respect of which any form of return or capital appreciation is expected.
26. Categories of crypto asset which are not prescribed as securities were outside the regulatory perimeter. There are, however, proposals under consultation to regulate the initial offering of those categories of crypto asset.
27. In October 2020, additional safety requirements were enforced for digital platform operators that host initial public offerings, custodians and for issuers of crypto assets. Issuers are now required to have a white-paper, with distinct content requirements, approved by the platform operator before admission to offering. STMs¹² are subject to specific additional requirements, as well as being broadly subject to the same requirements as other recognised securities and derivatives markets. Those requirements include:
- a) submitting a detailed application for regulatory approval prior to admitting a given crypto asset to trading;
 - b) establishing and maintaining a verifiably secured storage medium for investors' crypto assets; and
 - c) providing clear and certain final settlement, either intra-day or real time.

Singapore

28. In Singapore, guidance has been issued to clarify the regulatory treatment of crypto assets.
29. Security Tokens are not defined as a new class of regulated financial instruments. MAS will determine whether a crypto asset falls within the definition of an existing "*capital markets product*" (e.g. a share, bond or unit in a collective investment scheme) and is consequently subject to existing regulation, by examining its structure and characteristics, including the rights attached to it.

¹⁰ Whether fiat money or exchange tokens.

¹¹ Defined as "*digital currency*".

¹² Defined as a Digital Asset Exchange and refers to an electronic platform which facilitates the trading of prescribed crypto assets.

30. Exchange tokens¹³ and related activities fall within the scope of payment services regulation for AML/CTF purposes. utility tokens generally fall outside the regulatory perimeter.
31. A person who establishes or operates a trading platform dealing in Security Tokens must (unless exempt) be authorised as an approved exchange or recognised market operator. That person will then be subject to the same regulation as a trading platform dealing in conventional capital markets products. Similarly, Security Tokens are subject to the existing prospectus requirements applicable to conventional capital markets products.

UK

32. In the UK, the FCA has issued guidance to clarify the regulatory treatment of crypto assets. The FCA guidance describes three main classes of crypto assets, of which Security Tokens and a sub-set of exchange tokens (e-money) are regulated.
33. Security Tokens are not defined as a new class of regulated financial instruments. Under the FCA guidance, a crypto asset will constitute a Security Token when it provides rights and obligations akin to such specified investments and will be subject to the same regulatory treatment as that specified investment. The FCA guidance also sets out a discussion, illustrated by case studies, as to when a crypto asset will be akin to certain specified investments.
34. Both exchange tokens (except to the extent they qualify as e-money) and utility tokens will generally fall outside the regulatory perimeter (albeit certain exchange tokens do fall within the scope of the UK AML and CTF regime). Consultation papers have, however, been published with proposals to bring currently unregulated tokens within the financial promotions regime (where they are fungible and transferable) and to classify and regulate stablecoins as a separate class of token.
35. Given that Security Tokens fall within existing definitions of regulated investments, STMs will be subject to the same requirements applicable to market intermediaries and market operators dealing in such investments. Security Tokens will also be subject to the same prospectus disclosure requirements applicable to such investments.

¹³ Defined as “*digital payment tokens*”.