
CRYPTOCURRENCY REGULATION: LEGAL CHALLENGES AND OPPORTUNITIES

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ABSTRACT

Cryptocurrency has long been associated with minimal regulation, but this perception is rapidly shifting as governments worldwide begin to establish frameworks for digital currencies. While discussions on regulating crypto assets have been ongoing for some time, the urgency intensified following a series of bank failures linked to crypto-related activities. These events appear to have accelerated efforts to introduce accounting and reporting guidelines for crypto assets, as reported by Reuters last year. In the European Union, regulatory measures were already in progress before the collapse of the FTX crypto exchange.² India remains undecided on cryptocurrency regulation, refraining from both legalizing and banning its use. A proposed bill seeks to prohibit all private cryptocurrencies in the country, but it has not yet been brought to a vote. currently, crypto investments are subject to a 30% tax, along with a 1% tax deduction at source (TDS) on crypto transactions. Despite ongoing discussions, India has yet to implement a complete ban or establish a clear regulatory framework for cryptocurrencies. The Finance Bill of 2022 classified virtual digital assets as property and introduced tax guidelines for taxing income derived from them.³

KEYWORDS: Cryptocurrency, Minimal regulation, Governments, Digital currencies

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² World Economic Forum, **Global Cryptocurrency Regulations Are Changing**, World Econ. F., (May 2024), <https://www.weforum.org/stories/2024/05/global-cryptocurrency-regulations-changing/>.

³ Megan DeMatteo, **Cryptocurrency Regulations Around the World**, Investopedia, (Jan. 12, 2024), <https://www.investopedia.com/cryptocurrency-regulations-around-the-world-5202122>.

INTRODUCTION

As cryptocurrency transitions from the margins to the mainstream, its libertarian origins are in conflict with the increasing need for financial regulation. Bitcoin, created in response to the 2008 financial crisis, was introduced in 2009 as a peer-to-peer electronic cash system designed to function without intermediaries. Initially envisioned as a decentralized alternative to conventional finance, cryptocurrency now finds itself engaged in negotiations with traditional financial stakeholders, including governments, institutions, and legacy financial systems. For crypto investors, it is essential to grasp the complexities of this evolving environment. Navigating the balance between the original idealistic goals of cryptocurrency and the practical realities of its adoption demands a deep understanding of the regulatory challenges and opportunities. Let's explore the challenging intersection where disruptive technology meets established governance.

LEGAL OPPORTUNITIES IN CRYPTOCURRENCY REGULATION

Gary Gensler, SEC Chair, stated that crypto assets deserve the same protections as traditional securities. However, SEC Commissioners from both parties disagree with his approach. Republican Commissioners Hester M. Peirce and Mark T. Uyeda argue that current securities laws are too broad for crypto and new laws should be created. On the other hand, Democratic Commissioner Caroline A. Crenshaw criticized the approval of Bitcoin ETFs, claiming Bitcoin markets are vulnerable to fraud and manipulation due to lack of regulation.

Courts have supported some of the SEC's actions while rejecting others. For example, in *SEC v. Coinbase*, a court agreed that Coinbase's staking program operated as an unregistered security intermediary but dismissed claims about its wallet app. Similarly, in *SEC v. Binance*, a judge partially dismissed the SEC's case against Binance but allowed claims regarding Binance's sale of its token, BNB, to proceed.⁴

⁴ O'Melveny & Myers LLP, *The Ever-Shifting Landscape of U.S. Crypto Regulation*, <https://www.omm.com/insights/alerts-publications/the-ever-shifting-landscape-of-us-crypto->

Meanwhile, eToro settled with the SEC for \$1.5 million, agreeing to restrict U.S. customers to trading only Bitcoin, Bitcoin Cash, and Ether, suggesting that the SEC does not consider Ether a security. The SEC has also targeted other players in the crypto space, such as Galois Capital, which failed to protect client assets, and Cumberland DRW, which was accused of engaging in unregistered securities transactions.

In response to the SEC's aggressive stance, crypto companies are challenging the agency's actions. Coinbase asked a federal court to force the SEC to create new rules for digital assets. Crypto.com, after receiving a notice from the SEC, filed a lawsuit against the agency for expanding its jurisdiction beyond legal limits, asking for clarification on whether the SEC or CFTC regulates certain crypto products.

- **Investor Protection**

The debate over cryptocurrencies versus traditional assets like cash and stocks remains intense, with decentralization at its core. Blockchain technology eliminates intermediaries such as banks and governments, making transactions independent and drawing increasing interest.

However, the question arises—should crypto be regulated? While it has fueled financial innovation, it also presents risks, particularly fraud and hacking. In 2022 alone, crypto hacks caused \$3.8 billion in losses, and the collapse of FTX wiped out over \$2 trillion, triggering mass withdrawals and frozen accounts.

These crises led regulators to scrutinize digital assets more closely. While crypto remains volatile, proper regulation could help prevent fraud, manipulation, and illicit activities like moneylaundering and terrorism financing. It could also address environmental concerns related to high energy consumption.⁵

[regulation/#:~:text=Summary%3A%20This%20article%20explores%20potential%20changes%20in%20cryptocurrenncy,of%20digital%20asset%20regulation%20in%20the%20United%20States](#) (last visited Jan. 30, 2025).

⁵ **Crypto Regulation: The Opportunities and Challenges That Lie Ahead**, Nasdaq (Dec. 8, 2023), <https://www.nasdaq.com/articles/crypto-regulation:-the-opportunities-and-challenges-that-lie-ahead>.

Determining who should regulate crypto remains unclear. Authorities cite anti-money laundering (AML) policies, monetary stability, and Know Your Customer (KYC) requirements as key regulatory concerns. However, central banks acknowledge that no single country can ban crypto entirely, emphasizing the need for global cooperation.

A unified regulatory framework requires clear objectives, enforcement tools, and asset classifications. While the U.S. plays a dominant role in private crypto investments, a coordinated international approach may be the most effective solution.

LEGAL CHALLENGES IN CRYPTOCURRENCY REGULATION

- **Decentralization vs. Centralized Control**

Data governance is not a one-size-fits-all concept; each organization must tailor its approach based on its unique business objectives, size, complexity, and organizational culture.

For large, highly regulated, and complex organizations, a centralized data governance model may be the most effective, ensuring uniform data management across all departments. Conversely, smaller and less regulated organizations might find a decentralized model more suitable, offering increased flexibility and autonomy. Organizations that fall between these extremes may benefit from a hybrid approach, combining centralized oversight with decentralized execution.

Since data flows across multiple departments within an organization, centralized governance helps maintain consistency and efficiency in data usage. However, a decentralized structure can be advantageous by addressing internal concerns, granting departments greater control, and ensuring direct accountability in data reporting.⁶

⁶ **Decentralized vs. Centralized Data Governance**, Lepide (Jan. 31, 2025), <https://www.lepide.com/blog/decentralized-vs-centralized-data-governance/>.

Ultimately, the optimal data governance framework should strike a balance between organizational needs, data management goals, and stakeholder requirements to ensure an effective and efficient governance strategy.

- **Privacy vs. Regulatory Compliance**

The regulatory framework for cryptocurrencies remains complex and ever-changing. Initially, crypto operated with minimal oversight, but as the industry matures, regulators and firms are working to establish clearer guidelines. In the U.S., agencies like the SEC, CFTC, Treasury, and DOJ shape policies focused on security, financial integrity, and consumer protection, influencing global standards. The Travel Rule mandates financial institutions to track fund transfers, posing challenges for crypto's pseudonymous nature.⁷ Meanwhile, Central Bank Digital Currencies (CBDCs) raise concerns over privacy and government oversight. Compliance, particularly through Know Your Customer (KYC) rules, is crucial for mainstream adoption, balancing regulation with crypto's core principles.

INTERNATIONAL APPROACHES TO CRYPTOCURRENCY REGULATION

International organizations and forums are increasingly assessing the impact of digital currencies, addressing areas such as global financial stability, regulatory coordination, and anti-money laundering measures. The G-7 and G-20 finance ministers advocate for harmonized crypto regulations, while the Financial Stability Board (FSB) monitors risks but finds no immediate threat to global stability. The IMF, led by Christine Lagarde, supports international oversight and has advised against certain national digital currencies. The Basel Committee evaluates banks' crypto exposure, and the FATF has adapted anti-money laundering rules for virtual assets. IOSCO raises concerns about investor protection in ICOs, while the BIS examines the risks and benefits of digital fiat currencies. The World Bank remains skeptical of cryptocurrencies but has leveraged

⁷ Bitfinit Network, **Privacy vs. Regulatory Compliance: Examining the Tension Between Privacy and Regulatory Requirements**, Blog.Bitfinit.Network (Jan. 31, 2025), <https://www.blog.bitfinit.network/privacy-vs-regulatory-compliance-examining-the-tension-between-privacy-and-regulatory-requirements/>.

blockchain for financial instruments. These organizations collectively shape the evolving global regulatory landscape for digital assets.⁸

- **Countries with Established Crypto Regulations**

Different countries have adopted varying approaches to cryptocurrency regulation, with some integrating crypto into existing anti-money laundering (AML) and taxation laws, while others have enacted specific legislation. Canada was among the first to regulate cryptocurrencies, bringing them under the oversight of the Canadian Securities Administrators (CSA) and provincial authorities. Amendments to its AML framework in 2014, followed by further regulations in 2020 and 2021, mandated registration, record-keeping, and suspicious activity reporting for crypto-related businesses. Similarly, Australia incorporated cryptocurrencies into its financial regulations in 2014, later expanding AML rules to cover crypto exchanges in 2017 and introducing licensing requirements in 2019. However, its recent efforts to establish a comprehensive market regulation framework remain in consultation. Bermuda and Gibraltar, both offshore financial hubs, have implemented structured regulatory frameworks, with Gibraltar even facilitating crypto-based securities trading through its stock exchange. El Salvador took a unique approach by making Bitcoin legal tender in 2021, requiring businesses to accept it as payment while ensuring conversion to U.S. dollars.⁹ Estonia, once a major crypto hub due to its lenient licensing policies, has since tightened its regulatory stance under its 2022 AML law, revoking numerous licenses to enhance compliance.

FUTURE OF CRYPTOCURRENCY REGULATION

FIT 21 classifies digital assets into three categories: digital commodities, restricted digital assets, and permitted payment stablecoins, with detailed regulations only for the first two. The U.S.

⁸ Congressional Research Service, **Cryptocurrency: The Economics of Money and Selected Policy Issues**, R45440 (updated Apr. 9, 2021), <https://crsreports.congress.gov/product/pdf/R/R45440>.

⁹ Techopedia, **Crypto Regulations: Inside the Global Landscape**, <https://www.techopedia.com/crypto-regulations-inside-the-global-landscape> (last visited Jan. 31, 2025).

Commodities Futures Trading Commission (CFTC) oversees digital commodities, while the U.S. Securities and Exchange Commission (SEC) regulates restricted digital assets. To qualify as a digital commodity under FIT 21, an asset must undergo certification by the SEC, which assesses its decentralization. This assessment considers factors like ownership distribution, voting power, control over blockchain functionality, the recentness of source code changes, and the marketing of the asset as an investment. The SEC has 60 days to approve or deny the request, and if the asset is deemed decentralized, it must then be registered with the CFTC. If the SEC rejects the asset, it must provide a detailed analysis, and its decision can be appealed in federal court. Once certified by both the SEC and CFTC, the asset is considered a digital commodity and can be traded on platforms.¹⁰

CONCLUSION

The regulation of cryptocurrencies presents significant challenges due to their decentralized nature, which prevents the establishment of a universal regulatory approach. This lack of a global standard leads to disparate methods across countries, with nations like the US and China either introducing regulatory frameworks or imposing outright bans. However, these measures are insufficient given the borderless operation of cryptocurrencies. The European Union's MiCA framework offers a promising starting point, but broader international cooperation is essential. Consumer protection is a major concern, as the absence of strong legal safeguards often leads to scams and exchange failures. Tax compliance is also problematic, as the decentralized structure makes it difficult to trace transactions, resulting in tax evasion and financial losses for governments. Additionally, the anonymity of certain cryptocurrencies complicates the enforcement of measures like the EU's 5AMLD.¹¹

¹⁰ Thomson Reuters Institute, *The Future of Crypto Regulation: What is FIT 21?* (Sept. 20, 2024), <https://www.thomsonreuters.com/en-us/posts/government/crypto-regulation-fit-21/>.

¹¹ Jus Corpus, *Legal Challenges in the Regulation of Cryptocurrencies: A Global Perspective*, <https://www.juscorpus.com/legal-challenges-in-the-regulation-of-cryptocurrencies-a-global-perspective/> (last visited Jan. 31, 2025).

The most effective way to improve crypto regulation is by creating a global framework. Since cryptocurrencies transcend borders, relying solely on national laws is inadequate. International collaboration, potentially through organizations like FATF, is crucial to prevent regulatory arbitrage. Strengthening consumer protection is essential to prevent issues like fraud, hacks, and the loss of funds, as seen in incidents such as Mt. Gox. While tracking crypto transactions is challenging, governments can adopt systems to link exchanges with tax authorities, as Australia has done. Lastly, enforcing robust AML and KYC regulations will help curb the use of cryptocurrencies for illegal activities and address the complexities surrounding their regulation.

