



UNCHARTED WATERS

A Primer on Virtual Currency Regulation Around the World

Updated July 2018

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Acknowledgements

The authors would like to thank Ely Ratner, Elizabeth Rosenberg, Zachary Goldman, and Kaleigh Thomas for their reviews of this report. The authors would also like to thank Neil Bhatiya for his assistance. Finally, the authors would like to acknowledge Tristan Campos and Maura McCarthy for their assistance with the production of this report.

Introduction

Nearly 10 years have passed since the quiet release of Bitcoin, the cryptocurrency that set off a worldwide frenzy for alternative currencies. Cryptocurrencies such as Bitcoin hold the potential to reshape the global financial system by creating decentralized means of exchange that do not require government intervention or intermediaries, while also affording a degree of anonymity. Attracted by this promise, investors, entrepreneurs, speculators, and criminals have flocked to this financial technology. But today Bitcoin and the hundreds of other virtual currencies that it inspired remain at the fringes of regulation around the world. Delayed and contradictory regulatory responses have no doubt encouraged innovation and disruption in the financial sector, but they have concurrently abetted financial crime and national security threats, including terrorism. (See, for example, the report “Terrorist Use of Virtual Currencies,” published by the Center for a New American Security in May 2017.) Virtual currencies have yet to scale to a point where this lack of oversight and regulation poses existential risks in the form of terrorist financing. However, if the growth continues without concerted international efforts to address the risks, countries will face the reality of an ungoverned, shadow financial system able to aid and abet worldwide terrorism, sanctions evasion, and money laundering.

This paper maps the diverse regulatory responses to virtual currency around the world in order to identify trends and patterns in the laws. Part I offers a picture of the state of regulation of cryptocurrencies in a wide array of countries, including many of the most significant global financial centers and those that have crafted distinctive policy responses to the rise of cryptocurrency. Part II covers the different approaches taken by U.S. regulatory and enforcement agencies. Part III offers a glossary of relevant terms to help bridge the expertise gap between the different constituencies active in the virtual currency space.

Part I discusses the approaches various countries have taken in defining and regulating virtual currencies and suggests how countries have differed on even the most basic questions. Specifically, Part I characterizes a country’s regulatory approach through three categories: its definition of a virtual currency, the target of regulation, and regulatory actions and policies. A first step in regulating cryptocurrency is determining what exactly this new technology is. For this reason, this section identifies how each country has chosen to define

virtual currencies. On the most permissive end of the spectrum, countries have defined cryptocurrency as a legal form of payment. More conservative regulators have categorized it as an asset or commodity, akin to a work of art or a glass bead rather than money. These attempts across and within governments to define cryptocurrency reflect the central challenge to its regulation: Virtual currencies possess attributes of cash, currency, property, and even securities, but they cannot be regulated as any one of these categories exclusively. In many cases, regulators have simply found it useful to identify what cryptocurrency is not and ruled out its status as legal tender.

Second, this section classifies a country’s approach toward virtual currencies based on its target of regulation. Bitcoin and its peers have inspired an ecosystem of institutions and intermediaries to facilitate their use. For example, exchanges have sprung up to ease the conversion of fiat currencies into virtual currencies. As governments have adapted their regulatory frameworks, they have chosen different targets, including the cryptocurrencies themselves, specific new enablers such as exchanges, or even financial institutions writ large.

Finally, Part I lists significant regulatory and policy actions that suggest the direction and rationale behind a country’s approach to virtual currencies. While most nations are only beginning to craft regulatory responses to the rise of virtual currencies, these early enforcement decisions and regulatory pronouncements can serve as valuable precedents to distinguish between different governments’ emerging approaches. The research in Part I finds that among nations that have begun experimenting with regulatory approaches to cryptocurrency, efforts have largely tracked along three vectors: taxation, anti-money laundering (AML), and securities law considerations around initial coin offerings (ICOs). (See Glossary for additional information.) These regulatory streams address the challenges that have arisen from the cash-like, commodity-like, and security-like characteristics of cryptocurrency. The uncertain definition of virtual currencies has spurred authorities’ attempts to provide holders with clarity around their tax treatment, accounting for the first regulatory vector. These tax-related efforts have occurred in a number of countries where regulators have otherwise been silent on cryptocurrencies.

The second, less common, regulatory vector has responded to some of the unique risks posed by virtual currencies. Though not necessarily intended for criminal use, virtual currencies can entail serious financial integrity risks, primarily as a result of their lack of transparency. Some cryptocurrencies, such

as Monero, inherently achieve cash's near-total anonymity. But even Bitcoin, which only provides a layer of privacy by assigning participants pseudonyms, can be made nearly anonymous with services designed to make Bitcoin transactions nearly untraceable for law enforcement. Recognizing these cryptocurrencies' illicit finance risk, governments including the European Union and United States have explicitly extended AML regulations to include parties dealing in virtual currencies. Other countries have pointed to AML programs as a reason to ban the use of cryptocurrency altogether.

The last regulatory theme has focused on the surging ICO market, which collectively fundraised more than \$4 billion in 2017 alone. In ICOs, the tokens awarded to investors are similar to securities released in an initial public offering – but, due to the unregulated nature of cryptocurrencies, the ICO market around the world has been ridden with fraud. In the wake of a Chinese ban on ICOs in October 2017, many regulators have prohibited, applied greater scrutiny, or warned investors against the cryptocurrency fundraising mechanism.

As of this paper's publication, a number of countries remain locked in internal debates about the future of virtual currency regulation. As the world's largest economy and the central node of the global financial system, the United States has the unequaled ability to set standards and precedents that inform global norms on virtual currencies. Thus, Part II details the approach taken by different regulators in the United States. U.S. resolution of some of these debates is likely to influence rule-making elsewhere and perhaps even serve as the basis of a more globalized approach to virtual currency regulation. Moreover, the United States has one of the world's most comprehensive regulatory apparatuses and, consequently, the ability to consider attendant technical matters in depth. For these reasons, Washington and state-level policymakers are standard-setters in confronting the myriad challenges and conflicts that the regulation of virtual currencies will raise in disparate fields. U.S. regulatory dominance in this space, however, is not guaranteed; some Asian countries in particular have responded to the growth of virtual currencies with more speed and clarity. Part II offers both insight into what may be a harbinger of the global regulatory framework around virtual currencies and a case study in the complexities of creating a cogent virtual currency regulatory framework at the nation-state level.

Though regulators around the world may be facing many of the same challenges raised by cryptocurrency, there is little coordination or consensus

among and within nations on the regulatory path forward. Ultimately, greater uniformity in the regulation of virtual currencies would help ease compliance burdens on companies, prevent crime, and accelerate innovation.

Part I: Virtual Currency Regulation Abroad

The regulatory approach to virtual currencies across the world has varied widely. Governments have not only embraced different definitions of what constitutes a “virtual currency.” They have also tackled different legal and policy questions raised by these technologies, including their tax treatment, anti-money laundering/countering the financing of terrorism (AML/CFT) implications, reporting requirements, and conduct rules for financial institutions dealing with them. The following table offers guidance on virtual currencies' status across jurisdictions, and it illustrates, above all, that there is no global consensus about the definition or treatment of virtual currencies. Finally, by listing regulatory actions and policies, it highlights different precedents set on a country level.

Many governments – the United States included – have attempted to fold virtual currencies into existing regulatory systems, explicitly or implicitly extending the reach of existing laws. Others have identified the potential advantage of being a first-mover. For this reason, some have created whole-sale virtual currency-friendly frameworks. Others are actively considering new regulatory regimes to encourage controlled growth of ICOs and cryptocurrency. By contrast, a handful of countries have banned cryptocurrency altogether. Even within nations, consensus is elusive: Different agencies of the same government may adopt conflicting approaches; lack of clarity about cryptocurrency's status may result in the application of unexpected laws; and a sudden crackdown might inexplicably retreat months later. On the international stage, divisions among actors have similarly hampered the creation of multilateral frameworks. Attempts to create an international consensus on cryptocurrency regulation – such as at a G20 meeting in March 2018 – have not achieved concrete action among diverging policymaker interests. If there is any theme to be identified in the global response to cryptocurrency's rise, it is instability.

Africa



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Egypt	N/A	Virtual currencies and financial institutions	Egypt's central bank has stated that banks should not deal with virtual currencies. ¹ The Egyptian Financial Supervisory Authority has stated that Bitcoin trading is illegitimate and not permissible. ²
Nigeria	Virtual currencies are explicitly not legal tender. ³	Virtual currencies, financial institutions, and virtual currency exchanges	The Central Bank of Nigeria first called for regulation of virtual currencies in 2015. ⁴ Since then, both the Central Bank and the Securities and Exchange Commission have issued warnings that exchanges and virtual currencies are not regulated, cautioning users about the risk of losing money, and highlighting virtual currencies' connection to terrorism financing and money laundering. ⁵
South Africa	Cryptocurrencies are not legal tender. ⁶ Cryptocurrencies are regarded as "assets of an intangible nature." ⁷	Virtual currencies	The South African central bank has warned about the risks inherent in virtual currencies and is studying those risks. ⁸ The South African Revenue Service stated that gains and losses on cryptocurrencies are subject to tax. ⁹



Asia and Oceania

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Australia	Bitcoin and virtual currencies are treated as money for the purposes of the goods and services tax, meaning that virtual currencies themselves will not be taxed during the taxable exchange of goods or services, but are otherwise undefined. ¹⁰	Virtual currencies and virtual currency exchanges	Virtual currency exchanges are required to register with the nation's anti-money laundering agency and implement anti-money laundering/countering the financing of terrorism (AML/CFT) programs. Virtual currency is treated like physical cash for the purposes of these regulations. ¹¹ In July 2018, the Australian tax authority joined an international cooperation effort to fight cryptocurrency crimes. (See Part II.) ¹²
Bangladesh	Bitcoin is not considered legal tender.	Virtual currencies	Bitcoin and other virtual currencies were banned in 2014, and their use is punishable under AML laws. ¹³
China	The People's Bank of China defines Bitcoin as a "virtual good," not a currency. ¹⁴	Financial institutions and virtual currency exchanges	Financial institutions and banks are prohibited from using Bitcoin. ¹⁵ In September 2017, China banned initial coin offerings (ICOs), closed the nation's Bitcoin exchanges, ¹⁶ and limited access to international exchanges. ¹⁷ The People's Bank of China has also explored the creation of a state virtual currency. ¹⁸

Asia and Oceania



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Hong Kong	The government has noted that Bitcoin is “not legal tender, but a virtual commodity.” Without backing from an issuer and with such volatile pricing, Bitcoin cannot be considered a means of payment. ¹⁹	N/A	In September 2017, Hong Kong’s Securities and Futures Commission released a statement that the tokens released in an ICO, “depending on the facts and circumstances of an ICO,” may be securities that are subject to securities law. ²⁰
India	Virtual currencies are not considered legal tender. ²¹	Financial institutions	In April 2018, the Reserve Bank of India barred regulated financial institutions from providing services to cryptocurrency exchanges and traders. ²² The Indian finance ministry has yet to make a final ruling on a formal ban. ²³
Indonesia	Virtual currencies are not considered currency or legal tender. ²⁴	Virtual currency and virtual currency exchanges	Indonesia forbids the use of virtual currencies as payment, and payment system processors are banned from processing virtual currency transactions. ²⁵ In June 2018, Indonesia’s Futures Exchange Supervisory Board announced a ruling allowing cryptocurrencies to be traded on the country’s futures exchange as commodities. ²⁶ Other regulations about exchanges have yet to be announced by the country’s central bank.



Asia and Oceania

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Japan	Virtual currencies are recognized as a legal method of payment effective April 1, 2017. ²⁷	Virtual currency exchanges	Virtual currency exchanges must be registered with the Financial Services Agency, obey minimum capital and cybersecurity requirements, and undergo audits, among other stipulations. ²⁸ As of July 1, 2017, Bitcoin transactions became exempt from Japan's consumption tax. ²⁹ The following year, in the wake of a \$530 million heist from a Japanese exchange, the registration process for exchanges grew stricter, requiring that assets be held on machines not connected to the internet and additional AML measures be taken. ³⁰ In June 2018, Japan rejected a cryptocurrency exchange application for the first time, citing unsatisfactory "know your customer" (KYC) and security measures. ³¹
Kyrgyzstan	Virtual currencies are not considered legal tender. ³²	Virtual currencies	Virtual currencies were banned in 2014. ³³
Philippines	Virtual currencies are defined as "digital units of exchange" that do not have legal tender status.	Virtual currency exchanges	Exchanges are required to apply for a certificate of registration, register with AML authorities, and are subject to fees. ³⁴ In January 2018, the Securities and Exchange Commission (SEC) filed a cease-and-desist order against operators of an ICO, citing the sale of securities without a license. ³⁵ The SEC plans to release regulations regarding ICOs by the end of 2018. The Philippines' Cagayan Economic Zone Authority is also drafting cryptocurrency regulations, with plans to issue a maximum of 25 licenses to exchange platforms. ³⁶

Asia and Oceania



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Singapore	Virtual currencies are neither securities nor legal tender. ³⁷	Virtual currency exchanges	The Monetary Authority of Singapore monitors exchanges for AML/CFT purposes, and the proposed Payment Processing Bill would formalize that regulation. ³⁸ The bill would also require virtual currency exchanges meeting a funds minimum to hold a payment services license. ³⁹ The tax treatment depends on how the service is provided. For example, companies that buy and sell cryptocurrencies must pay taxes based on gains from their sale, but gains from long-term investments in Bitcoin are considered capital and therefore not taxed, since Singapore does not have a capital gains tax. ⁴⁰
South Korea	N/A	N/A	In September 2017, just weeks after China banned ICOs, South Korea did the same. ⁴¹ In December 2017, South Korea's Financial Services Commission banned Bitcoin futures trading, and the following month, regulators announced that cryptocurrency traders would be banned from using anonymous bank accounts, in a move to reduce virtual currencies' use in money laundering. ⁴² However, encouraging a potential reversal, the South Korean National Assembly proposed lifting the ban on ICOs in May 2018, urging the South Korean administration to support establishing a legal basis for cryptocurrency trading, including ICOs. ⁴³
Taiwan	Bitcoin is a commodity, not a currency. ⁴⁴	Financial institutions and virtual currency exchanges	Taiwan's Financial Supervisory Commission has banned banks from transacting in Bitcoin (receiving or exchanging). ⁴⁵ In April 2018, regulators also announced their intention to apply AML rules to cryptocurrencies. ⁴⁶



Asia and Oceania

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Thailand	Thailand considers Bitcoin to be “electronic data,” rather than a currency. ⁴⁷	Virtual currency exchanges	Trading cryptocurrencies for foreign currencies might be considered a foreign exchange activity and require a license to be legal. ⁴⁸ Trading bitcoins for baht, the Thai currency, does not require a license, according to a statement by a Bank of Thailand official in 2014. ⁴⁹ However, in March 2018, Thailand announced a new value-added tax on cryptocurrency trades and capital gains tax on returns. ⁵⁰
Vietnam	In 2014, the Bank of Vietnam issued a guidance warning organizations and citizens to exercise caution with virtual currencies, clarifying that Bitcoin is not legal tender in Vietnam. ⁵¹	Financial institutions	The use of virtual currencies for payment is banned. ⁵² After authorities discovered a cryptocurrency company’s multimillion-dollar scam in April 2018, financial institutions were banned from transacting in virtual currency.

The Americas



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Argentina	Argentine law defines virtual currencies as “the digital representation of value that can be the object of digital commerce and whose functions constitute a means of exchange, and/or a unit of account, and/or a store of value, but that are not legal tender, issued or guaranteed by any country or jurisdiction.” ⁵³	Financial institutions	Argentina’s Unidad de Información Financiera requires financial institutions and other regulated entities to report all virtual currency transactions monthly as an AML measure. ⁵⁴ An April 2018 loosening of ATM regulations may permit the spread of virtual currency ATMs. ⁵⁵
Bolivia	N/A	Virtual currencies	Any currency not issued by a government, including virtual currencies, is banned. ⁵⁶
Canada	A 2014 amendment to Canada’s AML/CFT law defined businesses dealing in virtual currencies as money services businesses (MSBs), though the amendment has not yet gone into effect. Bitcoin is not considered legal tender. Only bank notes and coins issued under the Bank of Canada and Royal Canadian Mint Acts are legal tender.	Virtual currency users and exchanges	In June 2018, the Department of Finance proposed regulations to implement the 2014 amendments to the AML/CFT law, which would require businesses that deal with virtual currencies to register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), the financial intelligence unit, and maintain an AML/CFT program. Regarding taxation, since virtual currencies are considered commodities, profits from transactions in Bitcoin are taxed as a barter transaction, which is subject to income tax. Canada’s provincial securities regulators have approved two ICOs’ exemptions from securities law requirements in the context of the Canadian Securities Administrators’ regulatory sandbox, which was launched in February 2017. In August 2017, the Canadian Securities Administrators released a notice that “many ... cryptocurrency offerings involve sales of securities.” In July 2018, the Canadian tax authority joined an international cooperation effort to fight cryptocurrency crimes. (See Part II.)



The Americas

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Colombia	Virtual currencies are not recognized as legal tender, currency, or securities. ⁶³	Virtual currencies	The use of virtual currencies is not illegal, but the Financial Superintendency of Colombia released a circular in June 2017 urging citizens to use caution with virtual currency. ⁶⁴
Ecuador	N/A	Virtual currencies	Virtual currencies were banned in 2014 to eliminate competition for Ecuador's own state-run virtual currency, a project that has since been wound down. ⁶⁵
Mexico	Virtual currencies are not legal tender. ⁶⁶	Financial institutions and virtual currency exchanges	In 2014, the Bank of Mexico released a statement that implied that banks were prohibited from dealing with or in virtual currency. The following year, the government clarified that the transactions would be subject to similar scrutiny to those conducted using cash or precious metals. The Financial Technology Law set out broad regulations related to fintech and virtual currency in March 2018, requiring that financial technology institutions only conduct business with approved cryptocurrencies in accordance with secondary regulations yet to be released.
United States	Virtual currencies are not legal tender. They are considered commodities by the Commodity Futures Trading Commission for the purposes of regulating derivatives contracts and interstate commerce, and property for tax purposes. In other cases, virtual currencies are considered money by the Financial Crimes Enforcement Network (FinCEN) and state regulators and securities by the SEC.	Virtual currency exchanges and virtual currencies	See Part II for a more detailed exploration of virtual currency regulation in the United States.

Europe



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Czech Republic	N/A	Virtual currency exchanges	If the value of a purchase or sale of virtual currencies exceeds €1,000, it is subject to reporting under the Czech Republic's AML laws. ⁷⁰
Denmark	Bitcoin and similar virtual currencies are understood to be a "monetary alternative ... unlike money, they typically have no central issuer." According to the Danish central bank, virtual currency "does not have any real trading value compared to gold and silver, and thus is more similar to glass beads."	N/A	N/A
Estonia	N/A	Virtual currencies and virtual currency exchanges	Virtual currencies are subject to a capital gains tax and value-added tax (VAT). ⁷³ The Estonian Supreme Court also ruled that exchanges that conduct trades over €1,000 must meet their customers in person and keep identification records. ⁷⁴
European Union	N/A	Virtual currency exchanges and wallets	The European Parliament adopted the Fifth AML Directive that extends AML/CFT regulations to include virtual currency exchanges and wallet providers. ⁷⁵ The European Court of Justice ruled in 2015 that buying and selling bitcoins was tax-exempt. ⁷⁶



Europe

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Finland	In 2014, the Finland Central Bank classified Bitcoin as a commodity, not a payment instrument or currency. Meanwhile, that same year, the Finnish Central Board of Taxes declared Bitcoin to be a payment instrument for the purposes of VAT exemption. ⁷⁷	N/A	Finland's Financial Supervisory Authority warned citizens of the risks with virtual currencies, calling them "a highly speculative investment." ⁷⁸
France	Bitcoin exchanges should be considered a payment service provider, according to a 2011 court decision. ⁷⁹ In December 2017, the governor of the Bank of France said that Bitcoin is not a currency, but a speculative asset. ⁸⁰	Virtual currency exchanges and users	France is actively considering an ICO licensing regime that would encourage and regulate token sales. ⁸¹ In 2014, it updated tax rules to make Bitcoin subject to capital gains tax. In April 2018, the French Council of State reclassified cryptocurrencies as movable property, decreasing the rate of taxation on cryptocurrency sales. Mined coins are still taxed as income. ⁸²
Germany	Bitcoin is a "unit of account," which can be used for tax and trading purposes, similar to "private money" (currency issued by a private organization, rather than by a government). ⁸³	Virtual currency exchanges	The German Ministry of Finance announced in February 2018 that it would no longer tax virtual currencies when they are used as payment. ⁸⁴

Europe



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Iceland	Virtual currencies are not a recognized currency or form of legal tender. ⁸⁵	Virtual currency exchanges	The Icelandic central bank previously stated that the Foreign Exchange Act, which restricts the purchase or transfer of foreign currency, applied to virtual currency exchanges, which effectively prevented their operation. In March 2017, these capital controls were significantly loosened. ⁸⁶
Jersey (Channel Islands)	N/A	Virtual currency exchanges	Virtual currency exchanges with an annual turnover below £150,000 are not required to register as exchanges. ⁸⁷ Exchanges dealing in larger amounts, however, are required to register with the Jersey Financial Services Commission and comply with AML and CFT regulations. ⁸⁸
Luxembourg	Virtual currencies are not legal tender. ⁸⁹	Virtual currency exchanges	All financial activities, including exchanges, have to be licensed by the minister of finance. ⁹⁰ In 2016, Luxembourg licensed a Bitcoin exchange with a payment institution license – the first fully EU-licensed exchange in Europe. ⁹¹ In 2018, regulators warned investors of the risks of ICOs and volatility of virtual currency. ⁹²
The Netherlands	Under a 2014 decision, about a transaction in bitcoins that was not completed, courts defined it as a medium of exchange (not “common money,” “legal tender,” or “electronic money”). ⁹³ In a February 2018 case about bitcoin mining proceeds, the Court of Amsterdam said that Bitcoin is a “transferable value” with characteristics of property. ⁹⁴	Virtual currencies	The Dutch government allows virtual currencies to be considered objects for the purposes of seizing them from criminals and selling them for fiat currency. ⁹⁵ In July 2018, the Dutch tax authority joined an international cooperation effort to fight cryptocurrency crimes. (See Part II.) ⁹⁶



Europe

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Norway	Bitcoin is classified as an asset, rather than money or currency. ⁹⁷	Virtual currencies	Norway exempted virtual currency from VAT to mirror the 2015 decision by the European Court of Justice to do so. ⁹⁸ The Oslo District Court ruled in May 2018 that Nordea, Norway's largest bank, could close a local bitcoin exchange's account, citing money laundering risks. ⁹⁹
Poland	Virtual currencies are not considered legal tender or electronic money. ¹⁰⁰	Virtual currency exchanges and users	The trading and mining of virtual currencies is considered an "official economic activity," to be included in national statistics. ¹⁰¹ In April 2018, Polish taxpayers were advised to file taxes on cryptocurrency trading and profits. ¹⁰²
Russia	Cryptocurrency transactions are considered foreign currency transactions by Russia's tax agency. ¹⁰³ The governor of the Russian Central Bank said in June 2017 that she viewed Bitcoin as a digital asset rather than a currency, but that view-point has yet to be translated into regulation. ¹⁰⁴	Virtual currencies	In 2014, the Ministry of Finance proposed fining and penalizing any use of electronic currency, but the bill was eventually withdrawn in 2016. ¹⁰⁵ This was confirmed by a document released by the tax agency, which recognized cryptocurrencies legally as foreign currency transactions. ¹⁰⁶ Russia had been expected to release new virtual currency guidelines by July 1, 2018, that may formally legalize and regulate cryptocurrencies. ¹⁰⁷ While the first reading of the bill, "On Digital Financial Assets," was approved by the Duma, it had yet to be passed as of the July 1 deadline. ¹⁰⁸

Europe



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Spain	The Treasury advised in 2014 that Bitcoin is not legal tender, instead calling it “convertible virtual currency.” ¹⁰⁹	Online gambling sites using cryptocurrencies	Betting sites that use Bitcoin and other cryptocurrencies have to obtain the relevant licenses to operate, although cryptocurrencies are not technically recognized as money. ¹¹⁰ Otherwise, Spain has not issued regulations related to virtual currencies. Spain clarified that Bitcoin transactions are exempt from VAT after the 2015 European Court of Justice decision. ¹¹¹
Sweden	The Swedish government indicated in 2014 that it views cryptocurrencies as assets, like art or antiques, ¹¹² and in 2016 affirmed this statement, noting that their pricing is too volatile to be considered official currency. ¹¹³	Virtual currency miners and traders	If virtual currencies are mined in certain ways – “in a professional and cost efficient manner over a longer period with the appropriate equipment,” generating 25 or more bitcoins (or the equivalent in other forms of virtual currency) per year, or if the mining “is expected to create a surplus as measured over the full financial calculation period” – it is considered income from economic activity, rather than income from employment, subjecting the surplus to tax as income from a business activity. It is not subject to VAT, but virtual currencies may be taxed as capital gains. Virtual currencies are also banned from being used to buy or sell scrap metal and waste, as a measure to reduce theft of those items. Cash has already been banned from use in those transactions because of its anonymity. ¹¹⁴



Europe

	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Switzerland	Virtual currencies are classified as an asset. ¹¹⁵	Virtual currency kiosks and platforms	There are licensing requirements for operators of virtual currency kiosks and platforms, and the commercial sale and purchase of virtual currencies is subject to AML law. In July 2017, the Swiss financial markets regulator approved the first private Swiss bank for Bitcoin asset management – a sign of Switzerland’s embrace of cryptocurrency. ¹¹⁶ ICOs are treated as securities on a case-by-case basis. ¹¹⁷
United Kingdom	The UK uses the term “digital currency,” defined as “an asset that only exists electronically ... designed to be used to make payments.” The Bank of England has described cryptocurrencies as “combin[ing] new payments systems with new currencies that are not issued by a central bank.” ¹¹⁸	Virtual currency exchanges, but not other virtual currency companies or wallets	The UK has stated that AML regulations will apply to virtual currency exchanges. ¹¹⁹ Other persons dealing with digital currencies, however, will not be subject to AML regulations, on the basis that exchanges present the most significant criminal concern as the point where virtual currencies are traded for fiat currency. ¹²⁰ In 2014, the UK lifted the VAT placed on mining and transacting in bitcoin and other cryptocurrencies. ¹²¹ In July 2018, the UK tax authority joined an international cooperation effort to fight cryptocurrency crimes. (See Part II.) ¹²²

Middle East



	DEFINITIONS	TARGET OF REGULATION	REGULATORY ACTIONS AND POLICIES
Israel	The Tax Authority classifies virtual currency as property, not currency. ¹²³	Virtual currency exchanges and users	The government released a circular in February 2018 explaining that virtual currency sales would be subject to a capital gains tax and miners and other traders to a VAT. ¹²⁴ In June 2017, a Tel Aviv court upheld a bank's refusal to service a Bitcoin exchange on the grounds that the exchange cannot fully fulfill AML requirements without knowing its end users. ¹²⁵
Jordan	Virtual currencies are not considered legal tender. ¹²⁶	Financial institutions	Financial institutions, including banks, payment processing companies, and currency exchanges, cannot transact in virtual currencies, including Bitcoin. ¹²⁷
Lebanon	The governor of the Lebanese central bank characterized virtual currencies as commodities in an October 2017 speech. ¹²⁸	Financial institutions	In a 2013 notice about the dangers of virtual currency, the Bank of Lebanon alerted financial institutions they were banned from dealing with "e-money," or virtual currencies. ¹²⁹
Turkey	Bitcoin is not considered electronic money. ¹³⁰	N/A	Turkey's 2013 law on payment services and electronic money does not apply to Bitcoin. ¹³¹
United Arab Emirates	The Financial Services Regulatory Authority (FSRA) considers virtual currencies to be "commodities" similar to precious metals. ¹³²	N/A	The Central Bank of United Arab Emirates released guidance in January 2017 that appeared to outlaw all virtual currencies, but was clarified to exempt bitcoin and other cryptocurrencies. ¹³³ In October that year, the FSRA said it would apply AML and KYC rules to ICOs and regulate tokens released through ICOs as securities on a case-by-case basis. ¹³⁴

Part II: Virtual Currency at Home

The United States plays a central role in the global financial system. It is the world's largest economy, the U.S. dollar is the global reserve currency, and New York is the central node in the system. Because of these endowments, the United States is a principal player in creating rules and norms for the global financial system. After the September 11, 2001, attacks, for example, U.S. leadership and policy innovation played a defining role in strengthening the global anti-money laundering and countering terrorist financing framework.

The United States has invested heavily in creating a truly comprehensive regulatory apparatus. Particularly in some areas, such as in its sanctions implementation and enforcement capabilities, this apparatus is unequalled internationally. This primacy has meant that U.S. agencies and regulators have often been the first to encounter new difficulties raised by virtual currencies. For example, Venezuela's creation of a state cryptocurrency for the purposes of sanctions evasion forced the Office of Foreign Assets Control (OFAC), the U.S. sanctions enforcement agency, to issue guidance incorporating cryptocurrency transactions into its enforcement of sanctions.

Part II therefore describes the U.S. regulatory approach toward virtual currencies. Understanding this emerging framework in the United States can also offer insights into the intrastate conflicts and complexities that arise in this space, as well as hint at their potential resolutions. At this early stage of crafting regulatory responses to virtual currency, many governments, including the United States', find their internal regulatory agencies at odds because of the many different functions and constituencies touched by virtual currency. As Part II demonstrates, a number of U.S. regulatory and enforcement agencies have made rulings or brought enforcement actions pertaining to virtual currencies, each seeking to offer its own imprint on the nascent policy landscape. These divergent approaches illustrate the challenge of crafting cogent national policies – let alone the international frameworks necessary to address the global risks of virtual currency.

Commodity Futures Trading Commission (CFTC)

The Commodity Futures Trading Commission is an independent U.S. agency that regulates the futures, options, derivatives, and other products subject to the Commodity Exchange Act.

Definition

The CFTC defines Bitcoin and other virtual currencies as commodities, ruling that a commodity could include “all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in,” and “Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”¹³⁵

Major Regulatory and Enforcement Actions

The CFTC has called for a “do no harm” approach to Bitcoin regulation.¹³⁶ At the same time, it began enforcing Bitcoin-related laws after Bitcoin derivatives became more popular.¹³⁷ On September 17, 2015, the CFTC took its first action against an unregistered Bitcoin options trading platform, Derivabit, which would “connect buyers and sellers of Bitcoin option contracts,” for “operating a facility for the trading or processing of commodity options without complying with the CEA [Commodity Exchange Act] or CFTC regulations.”¹³⁸ On September 24, 2015, the CFTC settled charges against TeraExchange, a provisionally registered Bitcoin swap execution facility, for violating the CEA's prohibition on wash trading and prearranged trading.¹³⁹ The agreement had no financial penalty associated with it.¹⁴⁰ On June 2, 2016, the CFTC fined the Bitcoin exchange Bitfinex \$75,000 “for offering illegal off-exchange financed retail commodity transactions in bitcoin and other cryptocurrencies, and for failing to register as a Futures Commission Merchant,” violating the CEA.¹⁴¹ In September 2017, the CFTC took its first anti-fraud enforcement action involving virtual currencies by filing a complaint against Gelfman Blueprint and its CEO for operating what the Commission said was a Bitcoin Ponzi scheme. The CFTC has tried to solidify its jurisdiction after a federal court decision affirming that cryptocurrency is a commodity.¹⁴² The CFTC has additionally issued information around cryptocurrency issues, including warning customers to exercise caution in buying digital coins and tokens and offering guidance on cryptocurrency-related derivatives.¹⁴³

Financial Crimes Enforcement Network (FinCEN)

The Financial Crimes Enforcement Network, a bureau within the U.S. Treasury Department, focuses on protecting the financial system from illicit use and money laundering and to protect U.S. national security by collecting, sharing, and analyzing financial intelligence.

Definition

FinCEN does not consider Bitcoin and other virtual currencies “currencies” because they do not have “legal tender status in any jurisdiction.”¹⁴⁴ FinCEN ruled that a virtual currency exchanger is, however, a money transmitter.¹⁴⁵ Individual Bitcoin miners may not necessarily be money services businesses (MSBs). The bureau has stated that “[t]o the extent that a user mines Bitcoin and uses the Bitcoin solely for the user’s own purposes and not for the benefit of another, the user is not an MSB under FinCEN’s regulations, because these activities involve neither ‘acceptance’ nor ‘transmission’ of the convertible virtual currency.”¹⁴⁶ In a February 2018 letter, FinCEN clarified that developers who sell convertible virtual currencies in the form of ICO coins or tokens or exchanges that sell ICO coins or tokens are money transmitters. It added, however, that ICO arrangements may vary.¹⁴⁷

Major Regulatory and Enforcement Actions

In 2015, FinCEN fined Ripple Labs for not registering as an MSB and not flagging suspicious transactions.¹⁴⁸ In 2017, FinCEN fined virtual currency exchange BTC-e and Alexander Vinnik (who supervised the exchange’s transactions) for “willfully” violating MSB registration and AML program requirements.¹⁴⁹ Vinnik was also arrested and charged with a range of other crimes.

Internal Revenue Service (IRS)

The Internal Revenue Service is a bureau within the U.S. Treasury Department tasked with U.S. tax collection and with administering the Internal Revenue Code.

Definition

According to the IRS, virtual currencies, including Bitcoin, are considered property, not currency, for tax purposes. As a result, “a payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property,” and the taxes that apply to property transactions.¹⁵⁰

Major Regulatory and Enforcement Actions

In November 2017, a federal court ordered the virtual currency exchange Coinbase to turn over records for an estimated 14,000 customers to the IRS in a tax evasion probe.¹⁵¹ The ruling followed a yearlong legal fight between Coinbase and the IRS, which had initially requested the records of all customers who had bought virtual currency from the exchange between 2013 and 2015. The agency requested the records after noting the discrepancy between the number of Americans who reported cryptocurrency holdings in their taxes and the number of Americans involved in the exchange. The court ordered Coinbase to hand over identifying records for users who transacted with more than \$20,000 in a single year between 2013 and 2015. In July 2018, the IRS announced a plan to join tax enforcement authorities from the UK Australia, Canada, and the Netherlands in a new joint task force focusing on cryptocurrency crimes.¹⁵²

Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control is an agency in the U.S. Treasury Department tasked with administering and enforcing economic and trade sanctions.

Definition

OFAC defines virtual currency as “a digital representation of value that functions as (i) a medium of exchange; (ii) a unit of account; and/or (iii) a store of value; is neither issued nor guaranteed by any jurisdiction; and does not have legal tender status in any jurisdiction.” For the purposes of OFAC compliance, obligations are the same regardless of whether a transaction is denominated in digital currency or traditional fiat currency.¹⁵³

Major Regulatory and Enforcement Actions

OFAC released guidance on virtual currencies after Venezuelan attempts to launch the petro cryptocurrency to evade U.S. sanctions. In addition to general guidance on virtual currencies, the Trump administration has also released a specific executive order banning the use of the petro. OFAC has indicated that virtual currency wallets can be included in identifying information in sanctions designations going forward.

Securities and Exchange Commission (SEC)

The Securities and Exchange Commission is an independent federal U.S. agency tasked with the enforcement of U.S. securities law, the issuance and amendment of rules, oversight of market participants and private regulatory organizations, and coordination with other securities regulation authorities.

Definition

According to the SEC, virtual coins or tokens that are offered as part of an ICO may be securities, depending on the facts and circumstances of the ICO.¹⁵⁴ The SEC has said future determinations about whether ICOs constitute securities will depend on the facts, circumstances, and economic realities of the transactions, pointing to a flexible categorization.¹⁵⁵

Major Regulatory and Enforcement Actions

The SEC has warned about the potential risks of virtual currencies for investors.¹⁵⁶ It has also called for regulation as a means of creating certainty and pre-empting a crackdown on an unregulated market at a later date.¹⁵⁷ At the end of 2015, the SEC charged fraudulent bitcoin mining companies with conducting a Ponzi scheme.¹⁵⁸ On March 10, 2017, the SEC denied a bitcoin exchange-traded fund on the grounds that “significant markets for bitcoin are unregulated,” so the exchange “would currently be unable to enter into, the type of surveillance-sharing agreement” necessary to “help address concerns about the potential for fraudulent or manipulative acts and practices in this market.”¹⁵⁹ On March 28, 2017, the SEC denied a proposal from the NYSE Arca to list and trade an exchange-traded product, the SolidX Bitcoin Trust, for similar reasons.¹⁶⁰ On July 25, 2017, the SEC released a report on a coin issuance by The DAO (a Decentralized Autonomous Organization), finding that the tokens it sold investors as a part of its 2016 ICO qualified as securities. It also determined that platforms that traded DAO tokens were securities exchanges.¹⁶¹ After its report on The DAO, the SEC has deepened its scrutiny of ICOs, halting alleged scams and unregistered securities such as Centra Tech and Munchee.¹⁶²

State-Level Regulators

Bitcoin exchanges and other virtual currency businesses may be subject to licensing requirements with state-level regulators. Some state regulators have issued guidance that clarifies whether virtual currencies fall under the scope of existing state laws.

Example: New York Department of Financial Services (NYDFS)

New York Department of Financial Services is the department in the New York state government tasked with regulation of financial services.

Major Regulatory and Enforcement Actions

NYDFS administers the first-of-its-kind BitLicense regime, the most comprehensive set of state guidelines to regulate virtual currency exchanges. BitLicenses are required for the transmission, storing, holding, or maintaining custody or control of virtual currency; buying, selling, or performing exchange services as a customer business; and controlling, administering, or issuing a virtual currency.¹⁶³ The regime targets nonbank financial intermediaries using virtual currency¹⁶⁴ rather than merchants or consumers accepting as payment or purchasing goods with virtual currency.¹⁶⁵ NYDFS has been active in regulating virtual currency companies: So far, it has granted nine BitLicenses and two charters to virtual currency companies.¹⁶⁶

Part III: Glossary

AML (ANTI-MONEY LAUNDERING): A regulatory system designed to prevent the process of making illicitly acquired proceeds appear legal.

CFT: Countering the financing of terrorism: a regulatory system designed to prevent funds from being used to support terrorist acts or organizations.

CRYPTOCURRENCY: A type of virtual currency that uses cryptographic techniques for security, including to verify currency ownership and transactions made using the currency.

EXCHANGE: The Financial Action Task Force (FATF), the global standard-setter for anti-money laundering and countering terrorist financing, defines an exchange as “an entity or individual engaged as a business in the exchange of virtual currency for real currency, funds, or other forms of virtual currency and also precious metals, and vice versa, for a fee (commission).”

ICO (INITIAL COIN OFFERING): A method of raising money for new cryptocurrency projects by distributing a portion of the initial coin supply among early investors, similar to an initial public offering.

KYC (KNOW YOUR CUSTOMER): A component of AML/CFT, due diligence requirements to identify and verify the identity of customers.

LEGAL TENDER: Money that is legally valid for the payment of debts and must be accepted when offered.

MINER: The SEC defines miners as those who “engage in a set of prescribed complex mathematical calculations in order to add a block to the blockchain and thereby confirm bitcoin transactions included in that block’s data. A miner’s proposed block is added to the blockchain once a majority of the nodes on the Bitcoin network confirms the miner’s work. Miners that are successful in adding a block to the blockchain are automatically awarded bitcoins for their effort plus any transaction fees paid by transferors whose transactions are recorded in the block.”

MSB (MONEY SERVICES BUSINESS): A term used by regulators to identify financial institutions that are not banks, such as currency dealers or exchangers, check cashers, and money transmitters.

VIRTUAL CURRENCY: FATF defines virtual currency as a “digital representation of value that can be digitally traded and functions as (1) a medium of exchange and/or (2) a unit of account and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction.”

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