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CRYPTO AROUND THE WORLD

Cryptoassets regulatory update around the world in 20 questions

EMEA | USA | APAC

Introduction

2017 brought the ICO Boom, 2018 brought the Crypto Winter, and 2019 and 2020 brought a trend of regulatory activity around the globe, where governments began settling on approaches to regulating the crypto industry.
In light of re-invigorated crypto investment activity thus far in 2021, we expect that regulators will remain active for the foreseeable future as cryptoassets become more and more mainstream. Therefore, financial institutions offering crypto-related services will be expected to assess, address and mitigate the risks associated with cryptoassets, namely, fulfilling their anti-money laundering and combatting the financing of terrorism (AML/CFT) obligations.

An impetus behind the 2019 and 2020 trend was the June 2019 guidance and interpretative note issued by the Financial Action Task Force (FATF), in which the FATF set out additional requirements for virtual assets and virtual asset service providers and expanded the scope of AML/CFT rules applicable to a broad range of providers of crypto-related products and services, such as custodians and exchanges. The FATF asserted an expectation that its members implement new rules within the next 12 months that matched FATF's standards. At that time, the US Financial Action Enforcement Network ("**FinCEN**") had already issued guidance that mirrored the standards issued by the FATF. Thereafter, the EU's Fifth Money Laundering Directive ((EU) 2018/843) ("**5MLD**") implemented, among other objectives, the FATF's recommendations with regard to certain digital asset service providers. 5MLD was required to be implemented into national law by 10 January 2020, but only 19 member states fully transposed 5MLD in 2020. Other countries around the world adopted similar regulatory guidance or requirements.

Nonetheless, there remains notable variety in the guidance and standards implemented. For example, each EU member state fulfilled its obligations under 5MLD as it deemed fit since the 5MLD was a minimum harmonization directive. Consequently, those EU member states that introduced registration and licensing requirements for digital asset service providers did so in a varied manner. The EU is, hence, quite fragmented with regard to cryptoasset service providers. Further, Switzerland issued guidance that imposes stricter standards than those included in the FATF's standards, and the US published proposed guidance that followed a similarly stricter approach. Adding to the dynamic landscape, FATF is also expected to release updated guidance for virtual assets and virtual asset service providers sometime in 2021 after the completion of a public comment period.

Drawing on the global reach of our regulatory expertise at Baker McKenzie, this publication highlights developments and various approaches in AML/CFT and cryptoassets regulation in EMEA, North America and APAC jurisdictions. A list of experts is included at the end of this publication.

EMEA | USA | APAC

EMEA

1. What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?
2. Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?
3. What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?
4. Is there a need for registration or licensing?
5. Are there criminal or administrative sanctions in case of noncompliance?
6. Are there thresholds triggering client identification duties for occasional clients?
7. Is it possible to externalize AML duties in your country?
8. How many licenses/registrations have been delivered as of January 2021?
9. Did your country regulate services/professions related to crypto/virtual assets beyond AML?
10. Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?
11. Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?
12. Are there specific tax provisions applicable in your country?
13. Is the accounting regime of crypto/virtual assets clear in your country?
14. Did your country regulate ICOs?
15. What are the main provisions?
16. Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?
17. Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?
18. Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?
19. Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?
20. Are there any other relevant rules or provisions you would like to mention?

1 What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?

Belgium	The Belgian Act of 20 July 2020 *laying down miscellaneous provisions on the prevention of money laundering and terrorist financing and on the limitation of the use of cash,* which amends the Belgian Act of 18 September 2017 *on the prevention of money laundering and the financing of terrorism and on the limitation of the use of cash* ("**AML Act**").
France	Law n° 2019-486 of 22 May 2019 (PACTE-law), Ordinance 2020-115 of 12 February 2020 strengthening the national system for combating money laundering and terrorist financing; Ordinance n° 2020-1544 of 9 December 2020 strengthening the anti-money laundering and anti-terrorist financing framework applicable to digital assets.
Germany	The Money Laundering Act (*Geldwäschegesetz*; "**GwG**") and the German Banking Act (*Kreditwesengesetz*; "**KWG**"). Both acts were amended by the Act to implement the Amendment Directive to the Fourth EU Money Laundering Directive (*Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU Geldwäscherichtlinie*) of 12 December 2019, which went into effect largely on 1 January 2020.
Italy	The Legislative Decree no. 125 of 3 October 2019 ("**5MLD Implementing Decree**") implemented the 5MLD in Italy, amending Legislative Decree no. 231 of 21 November 2007 ("**Italian AML Decree**"). It is worth highlighting that before the entry into force of the 5MLD, Italy was the first EU country to extend AML duties to cryptocurrencies services providers, through the Legislative Decree no. 90 of 25 May 2017, which amended the Italian AML Decree.
Netherlands	Dutch Act on the prevention of money laundering and terrorist financing (*Wet ter voorkoming van witwassen en financieren terrorisme*, "**AML Act**").

1 What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?

Spain	The Royal Decree Act 7/2021, dated 27 April 2021 implemented the 5MLD in Spain, amending Act 10/2010, dated 28 April, on the prevention of money laundering and terrorist financing ("**AML Act**").
Switzerland	No direct applicability of the 5MLD (Switzerland is not a member of the EU or European Economic Area (EEA)). However, Switzerland generally implements FATF standards.
UK	Money Laundering and Terrorist Financing (Amendment) Regulations 2019, which amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
Ukraine	Law No. 361-IX "On the prevention of and counteraction to legalization (laundering) of criminal proceeds, financing of terrorism and proliferation of weapons of mass destruction" dated 6 December 2019 ("**AML Law**"). The AML Law came into effect on 28 April 2020.

2 Did your country regulate crypto/virtual asset providers with regard to AML? What are the provisions?

Belgium	Prior to 5MLD, Belgian law did not regulate crypto/virtual asset providers with regard to AML.
France	Yes. Prior to the implementation of 5MLD, certain activities rendered on cryptoassets were already subject to AML/CFT provisions.
Germany	Prior to the implementation of 5MLD, certain cryptoassets (in particular, security tokens and currency tokens) were already treated as financial instruments within the meaning of the KWG, and security tokens were treated as securities within the meaning of the Securities Trading Act (*Wertpapierhandelsgesetz*; "**WpHG**") and the German Securities Prospectus Act (*Wertpapierprospektgesetz*). As a result, providers of financial services relating to such types of tokens were already subject to a license requirement under the KWG and were obligated persons under the GwG.
Italy	The Legislative Decree no. 125 of 3 October 2019 ("**5MLD Implementing Decree**") implemented the 5MLD in Italy, amending Legislative Decree no. 231 of 21 November 2007 ("**Italian AML Decree**"). It is worth highlighting that before the entry into force of the 5MLD, Italy was the first EU country to extend AML duties to cryptocurrencies services providers, through the Legislative Decree no. 90 of 25 May 2017, which amended the Italian AML Decree.
Netherlands	No.
Spain	Prior to implementation of 5MLD, Spanish law did not regulate crypto/virtual asset providers with regard to AML. Now, the AML Act includes crypto/virtual asset providers as AML obliged entities.
Switzerland	Swiss Act on Anti-Money Laundering (AMLA) and respective ordinances, particularly the Swiss Financial Market Supervisory Authority (FINMA)-AML-Ordinance are applicable. However, no specific crypto-related laws or regulations exist.

2 Did your country regulate crypto/virtual asset providers with regard to AML? What are the provisions?

UK

No. The UK did not specifically regulate cryptoasset providers for AML purposes prior to 5MLD (please see our answer to Question 10 below).

While no crypto-specific consumer protection provisions are in place, the FCA operates a licensing and authorization regime, under which only authorized or exempt firms can provide specified activities in relation to specified investments. Any firm in breach of this is committing a criminal offense. Guidance from the FCA indicated in PS 19/22 and CP 19/3 notes that it is possible for certain cryptoassets and crypto-businesses to fall within this framework and require authorization. However, this is not absolute; crypto-businesses will need to examine whether their cryptoasset is a "specified investment" and whether their activity is a "specified activity" in order to fall within this regime or whether they involve the provision of some other regulated product or service (e.g., electronic money or a payment service). If they fall within the framework, and an exemption does not apply, they will need a license to carry out their activity.

One of the key purposes of this regime is consumer protection. By ensuring that consumers only receive advice from regulated and authorized entities, consumers are less likely to receive negligent advice on their investment activity.

HM Treasury recently consulted on whether to regulate financial promotions relating to cryptoassets, and further detail on the results of this consultation is expected in due course. In a policy statement in October 2020, the FCA set out its ban on the sale of derivatives and exchange traded notes that reference certain types of unregulated, transferable cryptoassets to retail clients. Furthermore, from 6 January 2021, the sale of retail crypto derivatives was prohibited in the UK.

Ukraine

Yes, under the AML Law (please see our answer to Question 1 below).

Law No. 361-IX "On the prevention of and counteraction to legalization (laundering) of criminal proceeds, financing of terrorism and proliferation of weapons of mass destruction" dated 6 December 2019 ("**AML Law**"). The AML Law came into effect on 28 April 2020.

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

Belgium

Mandatory registration with the Belgian Financial Services and Markets Authority (FSMA), who will also exercise supervision over them, is required for:

- providers of services for exchanges between virtual currencies and fiduciary currencies
- custodian wallet providers

Note that various execution measures by royal decree are still required to fully implement and regulate the abovementioned entities.

France

Mandatory license:

- crypto/fiat exchange service providers
- custodian wallet providers
- crypto/crypto exchange service providers
- operation of a trading platform

Voluntary license:

- the four just mentioned for the mandatory license

+

- RTO
- portfolio management
- investment advice
- underwriting
- guaranteed investment
- unsecured investment

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

Germany

As a preliminary remark in relation to cryptoassets, the 5MLD was implemented by including cryptoassets in the definition of financial instruments and creating the new licensable activity of crypto custody.

Mandatory license:

- all MiFID services related to cryptoassets
- principal brokerage (sale and purchase of financial instruments in one's own name, but for the account of others)
- investment brokerage (transmission of orders or influencing someone's preparedness to buy or sell financial instruments, which in Germany requires a banking license)
- investment advice
- operation of an MTF
- placement
- operation of an OTF
- contract brokerage (entering into sale and purchases of financial instruments in the name and on behalf of the client)
- portfolio management
- own account trading
- securities custody (in relation to security tokens) (a type of banking business in Germany)
- underwriting (in relation to security tokens) (a type of banking business in Germany)

and/or

- custody of cryptoassets or of private cryptographic keys which serve to hold cryptoassets

3 Indicate the services/professions related to crypto/virtual assets that are regulated with regard to AML.

Italy

Obliged subjects:

- providers engaged in services related to the use of virtual currencies, including every physical or legal person that provides to a third party, professionally as well as online, services functional to the use, the exchange and the storage of virtual currency and the conversion from or into currencies having legal tender or in digital representations of value, including those convertible into other virtual currencies as well as the services of issuance, offering, transfer and clearing and any other service functional to the purchase, negotiation or intermediation in the exchange of the same currencies; and/or
- custodian wallet providers

Netherlands

Mandatory license:

- crypto/fiat currency exchange providers; and/or
- custodian wallet providers

Spain

The AML Act includes the following virtual asset service providers as obliged entities with regard to AML:

- Providers of exchange between virtual currencies and fiduciary currencies; and
- Custodian wallet providers.

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

Switzerland

Regulated with regard to AML are financial intermediaries according to the AMLA, i.e., anyone who provides payment services or who issues or manages funds for another person. According to FINMA guidelines, this includes:

- issuing of payment tokens (synonymous with cryptocurrencies)
- exchange of a cryptocurrency for fiat money or a different cryptocurrency
- offering of services to transfer payment tokens if the service provider maintains the private key (custody wallet provider)

However, decentralized trading platforms are only subject to the AMLA if they have the possibility of intervening in the transactions of their users (e.g., blocking a transaction). Noncustodian wallet providers and miners are not subject to the AMLA.

UK

Mandatory license:

- cryptoasset exchange providers, including cryptoasset automated teller machines, peer to peer providers, cryptoasset issuers and initial exchange offerings; and/or
- custodian wallet providers

Ukraine

The AML Law refers to a virtual asset service provider as an individual or a legal entity acting for another individual or a legal entity with respect to:

- exchange of virtual assets
- transfer of virtual assets
- custody and/or administration of virtual assets or instruments, which enable their control
- participation and provision of financial services related to offering of the issuer and/or sale of virtual assets

4 Is there a need for registration or licensing?

Belgium	Yes. Virtual currency exchange providers and custodian wallet providers will be obliged to register with the Belgian FSMA. However, various execution measures by royal decree are still required to fully implement such registration requirements and regulate such entities.
France	Yes. Some digital asset service providers must be registered and all digital asset service providers can apply for a voluntary license.
Germany	Yes, a license is required.
Italy	Yes. Providers engaged in services related to the use of virtual currencies and custodian wallet providers must inform the Italian Ministry of Finance (MEF) about their activity with virtual currencies and are required to enroll on a special section of the register of moneychanger entities held by the *Organismo degli Agenti e dei Mediatori* (OAM), although the relevant technicalities for fulfilling such additional obligations have not been issued yet. Therefore, the Italian registration requirements are not applicable as of today (3 September 2020).
Netherlands	Yes. All crypto service providers need to register with the Dutch Central Bank (*De Nederlandsche Bank*, "**DNB**"). Until 21 November 2020, a transitional regime applied to crypto services providers who were already active before 21 May 2020 and have requested registration before that date. Such providers may continue to carry out their activities during the registration process.

4 Is there a need for registration or licensing?

Spain	Yes. Virtual asset services providers established in Spain and virtual asset providers established in other countries that offer their services to Spanish residents (through branch, agents or free provision) need to register with the Bank of Spain ("**BoS**"). Said BoS register is expected to be operational within 6 months after publication of the AML Act (i.e. by the end of October 2021). A transitional regime applies to crypto services providers who were already active before 29 April 2021. Such providers may continue to carry out their activities and need to register with the BoS before 29 January 2022.
Switzerland	According to the AMLA, financial intermediaries have a duty to join a self-regulating organization (SRO) recognized by FINMA. The SROs specify the due diligence obligations under AMLA regulations and ensure that these are complied with by the member financial intermediaries. In addition, the SROs must carry out inspections to ensure that the member financial intermediaries comply with their obligations.
UK	Yes, must be registered with the Financial Conduct Authority (FCA) for AML purposes.
Ukraine	Virtual asset service providers need to register as obliged entities with the State Financial Monitoring Service of Ukraine. Also, the Ministry of Digital Transformation of Ukraine contemplated adoption of special licensing terms based on the AML Law (please refer to our legal alert regarding this). To date, however, this has not been implemented.

5 Are there criminal or administrative sanctions in case of noncompliance?

Belgium

Noncompliance with the AML Act may result in administrative fines of not less than EUR 5,000 and no more than EUR 5 million (for natural persons) or not less than EUR 10,000 and no more than 10% of the annual net turnover (for legal entities).

As mentioned, future royal decree(s) will provide for a specific set of rules concerning the following aspects of the abovementioned entities:

- registration with the Belgian FSMA
- conditions for operating their activities
- supervision of the FSMA

Accordingly, such royal decree(s) may contain additional sanctions.

France

Yes. The mandatory registration grants the service providers a monopoly. Anyone who infringes the monopoly is criminally liable (maximum of two years in prison and a EUR 30,000 fine).

A provider who opts for the voluntary license and does not comply with its obligations may also be sanctioned (administratively) by the Financial Markets Authority.

5 Are there criminal or administrative sanctions in case of noncompliance?

Germany	Rendering of financial services or banking activity without license is a criminal act that can be punished with imprisonment (up to five years) and severe monetary penalties. At present, criminal sanctions can only be levied against individuals, but not against corporations. Where criminal acts are committed on behalf of a corporation, administrative fines can be levied against the corporation if the criminal act was committed by directors or officers of the corporation or if the corporation violated its duty to properly supervise their employees, i.e., no proper compliance measures were taken to prevent unauthorized banking or financial services business from being performed with German residents. Monetary penalties may be significant and elements of the penalty may be determined based on a percentage of the offender's annual revenues (up to 10%). An affiliate or officer of an affiliate should usually only be subject to a sanction by the BaFin if it would be involved in the violation. Currently, legislative plans are underway to also allow criminal sanctions against associations, including corporations, directly.
Italy	Yes. Noncompliance with the AML obligations may lead to pecuniary administrative sanctions up to EUR 1 million (or the higher between EUR 5 million of the 10% of the annual turnover if the obliged subject is also a regulated entity) in case of particularly serious and repeated violations. Breaches of the registration requirements will not be subject to sanctions until the adoption of the relevant technicalities. The applicable sanctions have not been established yet.
Netherlands	Yes. Providing crypto services in the Netherlands without (timely) registration with DNB is a criminal offense and can be sanctioned with a prison sentence (maximum two years), community service or a fine (maximum EUR 21,750).

5 Are there criminal or administrative sanctions in case of noncompliance?

Spain	Yes. The AML Act considers the provision of virtual asset services without the required registration to be a (**i**) very serious administrative infringement (sanctioned with a fine of three to five times the amount of profits derived from the infringement; or 10% of the provider's annual turnover), or (**ii**) a serious administrative infringement if the activity is carried out in a merely occasional or isolated manner (sanctioned with a fine of two to three times the amount of the profits derived from the infringement; or 5% of the annual turnover).
Switzerland	Yes. Any person who fails to comply with the duty to report in terms of Article 9 of the AMLA (in the event of a suspicion of money laundering) shall be liable to a fine not exceeding CHF 500,000. If the offender acts through negligence, he or she shall be liable to a fine not exceeding CHF 150,000. Any dealer that wilfully violates its duty under Article 15 of the AMLA (dealers' duty to verify their due diligence duties by appointing an audit firm) to appoint an audit firm shall be liable to a fine not exceeding CHF 100,000. If it acts through negligence, it shall be liable to a fine not exceeding CHF 10,000. Further criminal sanctions pursuant to Article 305ter of the Swiss Criminal Code in case of insufficient diligence in financial transactions apply in the form of imprisonment of up to one year or monetary penalty.
UK	Yes, failure to comply with the MLRs could constitute an offense. Firms that fail to register but carry on trading could be subject to fines and supervisory enforcement action from the FCA. The FCA has also consulted on the use of additional powers that have been granted under the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 in relation to information gathering (including by appointing a skilled person and new disciplinary powers (for example, the right to impose directions on a cryptoasset provider). This consultation has now closed and the response is awaited. Where cryptoassets fall within a regulated asset class, failure to hold the proper authorizations may be an offense and could give rise to fines/imprisonment. For regulated entities, breach of regulatory requirements (for example, selling crypto derivatives in breach of the ban) could result in regulatory sanctions.

5 Are there criminal or administrative sanctions in case of noncompliance?

Ukraine

Yes. Failure to ensure proper organization and conduct of financial monitoring could result in a fine of up to 10% of overall annual turnover (up to UAH 135,150,000 - approx. USD 4,831,960 or EUR 3,983,200).

Additionally, obliged entities are subject to liability for various other offenses resulting from noncompliance with the AML Law. Sanctions for committing such offenses include *inter alia* revocation of a license or other permits and imposition of fines. The responsible officer of the obliged entity could also face imprisonment.

6 Are there thresholds triggering client identification duties for occasional clients?

Belgium	Yes, occasional clients need to be identified in the following cases: ▪ transactions exceeding the threshold of EUR 1,000 ▪ irrespective of the amount, if the entity receives the payment in cash or via anonymous electronic money
France	Yes, occasional clients must only be identified for transactions above EUR 1,000.
Germany	In the case of money transfers subject to Regulation (EU) 2015/847, the threshold is EUR 1,000 and in all other cases EUR 15,000. However, these thresholds apply only to occasional transactions outside of an existing customer relationship. It is unrealistic to assume that one of the above services would be delivered outside of a customer relationship, and hence, we do not think these thresholds matter in practice.
Italy	Yes, occasional clients must only be identified for transactions above EUR 15,000. Separate transactions which appear part of an aggregate transaction are considered as a single transaction. Similarly, occasional clients must be identified when carrying out an occasional transaction that amounts to a transfer of funds (in the definition of the Wire Transfer Regulations) exceeding EUR 1,000.
Netherlands	In-scope cryptoasset providers and custodian wallet providers must conduct CDD on any of these occasions: i. when establishing a business relationship ii. when conducting incidental transactions or related transactions with a value of at least EUR 15,000 iii. when they suspect (the risk of) money laundering or terrorist financing, or doubt the veracity of any documents or information previously obtained iv. when the client is a resident of a high-risk country v. when conducting a transaction involving the transfer of funds as set out in the Wire Transfer Information Regulation (EU) 2015/847 for an amount exceeding EUR 1,000

6 Are there thresholds triggering client identification duties for occasional clients?

Spain	Yes, obliged entities shall identify and verify, by means of reliable documents, the identity of all natural or legal persons who intend to establish business relations or intervene in any occasional transactions whose amount is equal to or greater than EUR 1,000. Additionally, obliged entities shall identify the beneficial owner and take appropriate risk-based measures to verify its identity prior to the establishment of business relations, the execution of electronic transfers exceeding EUR 1,000 or the execution of other occasional transactions exceeding EUR 15,000 (i.e. this limit is only applicable for UBO, the limit for client identification is EUR 1,000 as reflected above).
Switzerland	Yes. Compliance with due diligence duties, including client identification duties, may be dispensed with by the financial intermediary if the business relationship only involves assets of low value and there is no suspicion of money laundering or terrorist financing. Article 11 of FINMA-AMLO sets out thresholds in different scenarios.
UK	In-scope cryptoasset providers and custodian wallet providers must conduct CDD when establishing a business relationship, when they suspect money laundering, doubt the veracity of any documents or information previously obtained, or when carrying out an occasional transaction that amounts to a transfer of funds (in the definition of the Wire Transfer Regulations exceeding EUR 1,000) or other occasional transactions amounting to EUR 15,000 or more.
Ukraine	Yes. Occasional clients must be identified for transactions equal to or exceeding UAH 30,000 (approx. USD 1,073 or EUR 884).

7 Is it possible to externalize AML duties in your country?

Belgium	Yes, due diligence requirements can be outsourced to a third party under certain conditions. However, the use of outsourcing by an entity to fulfil its legal and regulatory AML obligations should in no way lessen the responsibility of the entity concerned to have an appropriate and efficient organization and to fulfil its legal and regulatory obligations in this regard, nor transfer this responsibility to the service provider.
France	Yes. All AML-related duties, with the exception of suspicious transactions, can be externalized.
Germany	Yes, but a differentiation must be made between the outsourcing of KYC and the outsourcing of internal safeguarding measures. In the first case, there is a further differentiation between outsourcing to obligated parties and to other parties. In the case of outsourcing to other parties, a written agreement is required and the party must be reliable and properly supervised, e.g., through random checks. In the case of outsourcing of internal safeguarding measures, the outsourcing must be notified to the regulatory authority who could object against the outsourcing if supervision were impaired.
Italy	Yes. Obliged subjects can externalize CDD duties to third-party providers, subject to compliance with specific outsourcing requirements. However, should the information gathered by the third-party providers appear insufficient, false or not conclusive in order to identify the client, the obliged subject is required to directly conduct the CDD.

7 Is it possible to externalize AML duties in your country?

Netherlands	Firms are permitted to outsource their AML functions but remain responsible for complying with the requirements of the AML Act and all AML systems and controls related to outsourced activities. Structural outsourcing requires a written outsourcing agreement.
Spain	Yes, customer due diligence measures can be outsourced to third parties subject to the AML Act, as well as to the organizations or federations of these entities, with the exception of ongoing monitoring of the business relationship. Specific AML tasks may also be outsourced to service providers which are not AML obliged entities. Nonetheless, outsourcing does not relieve obliged entities from ensuring that their responsibilities under the AML Act are fulfilled.
Switzerland	Yes. The financial intermediary may delegate the identification of the contracting party, the determination of the control holder or the beneficial owner of assets and additional AML duties, but it remains ultimately responsible for the proper fulfillment of the delegated duties. Delegation is subject to different requirements depending on the nature of the delegate.
UK	Firms are permitted to outsource their AML functions, but they remain responsible for all AML systems and controls related to outsourced activities. In addition, certain roles generally cannot be outsourced. For instance, the role of the money laundering reporting officer must be assigned to a person with sufficient seniority and independence in the firm. There is a separate "reliance" arrangement that can also be used under regulation 39 of the MLRs.
Ukraine	Yes. An obliged entity may outsource its client identification and verification duties to an agent by way of entering into a written agreement with the agent. The obliged entity is ultimately responsible for financial monitoring conducted by the agent.

8 How many licenses/registrations have been delivered as of January 2021?

Belgium	None, as the registration procedure is not yet in place.
France	Ten (as of 4 March 2021).
Germany	The information is unavailable. We are aware of several entities that have applied for the license.
Italy	None.
Netherlands	One (as of 7 October 2020). No further information is available as the transitional regime still applies. (NB: We understand that DNB is really busy with this and has a special task force that handles registration requests).
Spain	None. The registration was not in place as of January 2021.
Switzerland	No explicit statistics on how many financial intermediaries have joined an SRO since June 2020 are available. However, a database of financial intermediaries who have joined an SRO is available and searchable on an individual basis.
UK	In response to a FOIA request in December 2020, the FCA revealed that 1 firm authorised as an OTF / MTF had applied to conduct cryptoasset activities. In addition, 26 firms which have been or are seeking permission under the Financial Services and Markets Act, Payment Services Directive or Electronic Money Services Directive have also applied for registration in relation to cryptoasset services.
Ukraine	The information is unavailable. That said, the State Financial Monitoring Service of Ukraine published recommendations for virtual asset service providers on how to apply for registration.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Belgium

No, there is still no specific prudential regulatory framework in place for crypto/virtual asset providers, albeit that such service providers are subject to general financial services laws and conduct of business requirements that may be applicable to them when providing regulated (financial) services (such as prospectus requirements, MiFID II requirements, MAR, consumer law protection requirements, certain specific regulations of the FSMA, etc.).

France

Yes, the registration and the license trigger duties beyond AML.

Minimum capital: between EUR 50,000 and EUR 150,000.

OR

Insurance: must cover at least EUR 400,000 per claim and EUR 800,000 per year

Organizational duties:

- directors fit and proper
- effective beneficiaries
- conflicts of interest
- sound computer system
- clear, accurate and non-misleading information
- customer complaints management system
- pricing policy
- etc.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Germany

Capital requirements for MiFID services range from EUR 50,000 to EUR 730,000 depending on the type of services and whether or not customer monies/assets are held. For crypto custody, an initial capital of at least EUR 125,000 will be required.

All providers will be subject to normal organizational duties under the Banking Act (but for the avoidance of doubt, not the prudential regulation under MiFID, except where the cryptoassets were to be considered securities at the same time).

This would include in particular:

- proper risk management
- directors fit and proper
- adequate human and technical resources
- emergency concepts, particularly regarding IT outage
- proper compensation systems

In its guidance note on crypto custody business, BaFin stresses that it expects a robust IT strategy. New capital requirements will apply under the Investment Firm Regulation (EU) 2019/2033 (IFR) and the Investment Firm Directive (EU) 2019/2034 (IFD). The German law implementing this new regime is expected to enter into force on 26 June 2021.

Italy

No.

There are no additional regulatory constraints for providers engaged in services related to the use of virtual currencies and custodian wallet providers beyond the aforementioned AML duties and the envisaged registration requirements on the OAM register under Italian law.

Netherlands

No, there is no specific financial regulatory framework in place for crypto/virtual asset providers. However, depending on the qualification of the relevant cryptoasset, crypto issuers and service providers may provide regulated (financial) services and be subject to general financial services laws and conduct of business requirements (including prospectus requirements, MiFID II requirements, MAR, and consumer law protection requirements). Certain specific regulations of the FSMA may apply.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Spain

As mentioned in question 4, in line with article 47.1 of 5MLD, the AML Act includes the registration of those entities with the Bank of Spain (financial regulator supervisor). The AML Act does not provide for general regulatory oversight (for example in relation to general conduct or governance rules) beyond AML, save for the need to comply with integrity and reputation requirements in line with banking regulation. The AML Act does not clarify if such integrity and reputation requirements should be complied with by the entity seeking registration, its board of directors and/or significant shareholders. We expect that guidance from the Bank of Spain will be published in this regard during 2021.

In any case, depending on the features of the relevant crypto asset, crypto issuers and service providers may fall under the scope of general financial services regulatory framework (in particular MiFID, Prospectus Directive, etc). Additionally, a recent regulation on advertising activities related to cryptoassets has been issued (see question 10 for further information).

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Switzerland

Yes, but not explicitly for crypto/virtual assets. The respective entity falls — depending on the structure of the asset, the entity and its business model — under existing rules and regulations, particularly:

- Banking Act/Ordinance (in the case of commercial acceptance of public contributions)
- Financial Market Infrastructure Act/Ordinance (qualification as securities, licensing requirement for trading systems, reporting requirements for derivatives, trading regulations)
- Financial Institutions Act (authorization requirements as securities dealer)
- Financial Services Act/Ordinance (obligation to issue prospectus for publicly offered securities, conduct rules)
- Collective Investment Schemes Act (licensing requirement for investment funds)
- Money Laundering Act (as discussed herein).

The following major provisions for crypto/virtual asset service providers concerning (i) minimum capital, (ii) insurance and (iii) specific organizational duties exist:

i. Public deposits may not be accepted on a commercial basis (from more than 20 persons) without a banking license. However, exceptions exist, under certain conditions, regarding a) fintech-license, permitting commercial acceptance of public deposits of up to CHF 100 million, and b) sandbox, permitting acceptance of a maximum of public deposits of up to CHF 1 million.
ii. Professional liability insurance is required for client advisors upon entry into the register.
iii. In addition to the rules of conduct for financial services, obligations apply to financial service providers concerning organizations and conflicts of interest. Organizational duties concern primarily ensuring an adequate operational organization fulfilling regulatory obligations, whereby employees and contracted third parties must have certain qualifications and client advisors must be entered into a register.

A new DLT platform license will likely enter into force in 2021. This is a standalone platform license for the trading of tokenized securities.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

UK

No, the regulatory framework is still developing within the UK. However, regulatory license requirements may be triggered depending on the type of asset — for example, if the asset was considered a security token, collective investment scheme or e-money. Both the FCA and the HM Treasury have released consultations and guidance relating to cryptoassets. The HMT consultations suggests that initially only “stablecoins” will be subject to licensing rules in the UK.

Ukraine

The draft law "On Virtual Assets" (Draft Law) was adopted in the first reading by the Verkhovna Rada of Ukraine on 2 December 2020.

The Draft Law provides for the following requirements for virtual asset service providers:

- They need to be registered with the Ministry of Digital Transformation.
- Their directors and founders must have an excellent business reputation in accordance with anti-money laundering requirements.
- They must disclose information about their ownership structure that allows for identification of the ultimate beneficial owners or confirm their absence.
- They must develop and conduct documented internal procedures required under anti-money laundering legislation.
- They must develop and conduct documented rules on processing of personal data as required under the Law of Ukraine "On Protection of Personal Data."
- Those service providers who are engaged in arranging, issuing and/or sale of "financial virtual assets" will be required to apply for the special financial services license.
- The Cabinet of Ministers of Ukraine will be obliged to further develop a detailed procedure and requirements for the state registration of virtual asset service providers.

The Draft Law is currently being revised and its text is expected to change before its adoption in the second reading by the Verkhovna Rada of Ukraine.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

Belgium	Various general consumer protection requirements are in place, which also apply to crypto/virtual asset providers when dealing with consumers. Depending on the circumstances, crypto/virtual assets may also qualify as "financial instruments", "investment instruments" or "investment products", potentially triggering various specific regulatory requirements respectively under MiFID II, the Prospectus Regulation and Belgium's Transversal Royal Decree (which contains various conduct of business requirements when commercializing financial products to consumers). The FSMA also banned the marketing to retail clients of financial products whose return depends directly or indirectly on virtual money.
France	Yes, only licensed entities can do direct solicitation. Merely registered entities are prohibited from direct solicitation. In case of infringement, criminal liability attaches (maximum five years in prison and maximum fine of EUR 375,000 that can be fivefold for legal persons). There are no specific rules on consumer law or financial compensation scheme. If a crypto/virtual asset qualifies as a financial instrument, all relevant rules applying to financial instruments will apply to the crypto/virtual asset, including financial compensation schemes.
Germany	There are no specific rules around consumer protection, advertising or financial compensation schemes for investment services related to cryptoassets or crypto custody. For the sake of completeness, BaFin has issued a general order under Article 42 MiFIR ("product intervention") that bans CFDs offered to retail clients, with some limited exemptions, which require mandatory initial margin protection for small investors. The initial margin protection for CFDs with cryptocurrencies as underlying amounts to 50%, which is the highest protection compared to other types of CFDs. Further conditions apply for coming under the exemption from the product ban on CFDs.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

Italy

At the beginning of 2020, the Consob (the Italian securities and markets authority), following public consultations with market operators, scholars, law firms and other stakeholders, published a final report on "Initial offerings and exchange of cryptoassets," providing guidance on how ICOs can be compliant with general Italian law and financial regulations, without further legislative or regulatory interventions.

According to the Consob, ICOs of tokens that fall under the scope of the definitions of "financial instruments" or "investment products" (i.e., the so-called security tokens) are subject to the ordinary rules regulating the offer of financial instruments. As this is an area of maximum harmonization within the EU legal system, the Consob expects the ESMA to take the lead in developing a tailored regulatory framework for the offer of crypto-financial instruments.

Furthermore, the Italian financial regulations contemplate the domestic definition of "financial products," which includes financial instruments and any other form of investment with a financial nature. In this respect, it is likely that tokens other than security tokens, in particular the so-called utility tokens, might fall under the definition of financial products. In order to guarantee an adequate level of investor protection, without applying the ordinary rules regulating the offer of financial instruments, the Consob is of the opinion that ICOs and the exchange of utility tokens which qualify as financial products must be carried out through authorized platforms (i.e., platforms which are subject to requirements similar to the crowd funding platforms), which would be required to enroll on a register held by the Consob. This system aims to guarantee the protection of investors in two ways: on the one hand, the authorized platforms scrutinize the issuers of tokens, admitting to ICOs and exchange only the cryptoassets that appear more worthy, and on the other hand, the register held by the Consob allows for supervision over the authorized platforms, monitoring illicit conducts.

Netherlands

Under Dutch law, various general consumer protection requirements are in place that also apply to crypto/virtual asset providers when dealing with consumers. Also, depending on the qualification of the relevant cryptoasset as, for example, a financial instrument or security, prospectus requirements and MiFID II or other investor protection requirements may apply.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

Spain	Yes, the Spanish Parliament has approved on 12 March 2021 an amendment to the Spanish Securities Market Act to reinforce the legal framework protecting investors with regard to the advertising of crypto assets. This recent development grants the CNMV (as the financial services regulator) supervisory powers to control the advertising of crypto assets or other assets and instruments that are presented to the public as an investment opportunity, even if they are not activities or products subject to financial services supervision in Spain. For such purposes, the CNMV will issue within the next few weeks draft rules on the scope and content of the rules that crypto advertising should comply with.
Switzerland	There is no specific investor protection with regard to crypto/virtual assets. However, FINMA pays particular attention to digital assets.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

UK	While no crypto-specific consumer protection provisions are in place, the FCA operates a licensing and authorization regime, under which only authorized or exempt firms can provide specified activities in relation to specified investments. Any firm in breach of this is committing a criminal offense. Guidance from the FCA indicated in PS 19/22 and CP 19/3 notes that it is possible for certain cryptoassets and crypto-businesses to fall within this framework and require authorization. However, this is not absolute; crypto-businesses will need to examine whether their cryptoasset is a "specified investment" and whether their activity is a "specified activity" in order to fall within this regime or whether they involve the provision of some other regulated product or service (e.g., electronic money or a payment service). If they fall within the framework, and an exemption does not apply, they will need a license to carry out their activity. One of the key purposes of this regime is consumer protection. By ensuring that consumers only receive advice from regulated and authorized entities, consumers are less likely to receive negligent advice on their investment activity. HM Treasury recently consulted on whether to regulate financial promotions relating to cryptoassets, and further detail on the results of this consultation is expected in due course. In a policy statement in October 2020, the FCA set out its ban on the sale of derivatives and exchange traded notes that reference certain types of unregulated, transferable cryptoassets to retail clients. Furthermore, from 6 January 2021, the sale of retail crypto derivatives was prohibited in the UK.
Ukraine	No. On the contrary, back in 2017, all three financial services regulators made a public statement discouraging investment by indicating that the regulatory framework is very unclear and any investor would not be protected by the state. However, public policy has changed since then and the Draft Law now aims to create a legal framework pertaining to circulation of virtual assets, which is designed to protect investors and/or end users of virtual assets.

11 Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?

Belgium	There are currently no specific rules requiring banks to provide crypto/virtual asset providers with bank accounts. Therefore, the ease of accessing a bank account will vary depending on the bank and crypto/virtual asset provider. However, the Belgian Act of 8 November 2020 introducing provisions on the basis banking service for companies in Book VII of the Code of Economic Law introduced a legal right to a bank account for non-consumers, which is particularly relevant for enterprises in AML-sensitive sectors, such as the diamond industry (and the crypto/virtual asset industry). The new rules will enter into force on 1 May 2021, subject to a few exceptions. As of that date, if at least three banks refuse to offer basic banking services, a company can submit a request to the Belgian basic banking services chamber to obtain basic banking services. Note however that the basic banking services scope does not include so-called safeguarding accounts (which may thus impact crypto/virtual asset service providers if they require such type of accounts for the operation of their business).
France	Yes, licensed and registered service providers have a legal certainty to obtain access to a bank account.
Germany	There are no rules requiring banks to provide cryptoasset providers with bank accounts (except where those cryptoasset providers are regulated payment services firms). Therefore, the ease of accessing a bank account will vary depending on the bank and cryptoasset provider.
Italy	Since cryptoasset service providers are not strictly regulated by law, we are of the opinion that Italian banks would adopt a case-by-case approach, based on the complexity and risk profile of the cryptoassets and the related services, to give access to bank accounts.
Netherlands	There are no regulatory requirements preventing this. However, banks have been reluctant to open bank accounts for certain industries, including crypto service providers, due to their own KYC/AML obligations. Therefore, it can be a lengthy and complex process to open a Dutch bank account as a crypto service provider (we do not yet know if and how the new registration requirement (positively) affects this).

11 Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?

Spain	There are currently no specific regulations requiring credit institutions to provide crypto asset providers with bank accounts. Therefore, the ease of accessing a bank account will vary depending on the credit institution and cryptoasset provider.
Switzerland	Swiss banks are hesitant to engage in banking relationships with crypto/virtual asset service providers, i.e., access to a Swiss bank account is rather unlikely with traditional institutions. There are two new "digital banks" that may offer such services.
UK	There are no rules requiring banks to provide cryptoasset providers with bank accounts (except where those cryptoasset providers are regulated "payment service providers"). Therefore, the ease of accessing a bank account will vary depending on the bank and cryptoasset provider.
Ukraine	There are currently no rules in place regarding the opening of bank accounts for virtual asset service providers. At the same time, the Draft Law provides that virtual asset service providers are allowed to open and use accounts with banks and other financial entities.

12 Are there specific tax provisions applicable in your country?

Belgium	Under Belgian law, there are no specific tax provisions dealing with crypto/virtual assets. Depending on the way the revenue in the context of virtual currency/assets is generated, the taxation will differ. If the profit resulting from the cryptoassets is derived in the framework of a professional activity or is derived by a company, it will be characterized as professional income and taxed accordingly. When an individual realizes profits based on cryptoassets (outside the context of their professional activity), there are two possibilities. If the transactions fit within the normal management of a private estate and if they are not speculative, the profit resulting therefrom will be tax-exempt. If the transactions do not fit within the normal management of a private estate or if they are speculative, the profit will be taxed as miscellaneous income at a tax rate of 33% (plus communal surcharges). There are a number of tax rulings in which it was concluded that the capital gains resulting from cryptoassets are to be characterized as miscellaneous income.
France	Yes, occasional trading in cryptoassets benefits of a flat tax of 30% on capital gains.
Germany	No. However, the Federal Ministry of Finance has provided some guidance around cryptoassets held as part of business assets and as part of private assets, and with regard to VAT questions, on its website.

12 Are there specific tax provisions applicable in your country?

Italy

There are no specific tax provisions. However, the tax ruling published by the Italian tax authority dated 2 September 2016 (No. 72/E), concerning the tax treatment of professional cryptocurrency service providers, stated that the fee for the intermediation services of traditional currencies with cryptos, carried out directly and in a professional manner, is subject to income taxes.

Furthermore, the cryptocurrency amount which at the end of the fiscal year is directly owned by the exchanger should be valued by referring to the average official quotation of online platforms where virtual currency trades occur.

In a ruling dated 2018, the ITA clarified that cryptocurrency spot transactions carried out outside of business activities by individuals do not generate taxable income or deductible losses, in the absence of speculative purposes.

Nevertheless, even in the absence of speculative purposes, the following transactions generate "other income" of a financial nature subject to a substitute tax of 26%:

- cryptocurrency spot transactions, provided that the transferred cryptos have been withdrawn from electronic portfolios (so-called wallet) for which the average balance exceeds EUR 51,645.69, for at least seven continuous working days in the fiscal year
- cryptocurrency forward purchase and sale

From a reporting standpoint, holders of cryptocurrencies should indicate the cryptocurrency amount owned in Section RW of the income tax return (in this section, foreign financial investments and assets should be indicated) for the purposes of fulfilling tax monitoring obligations. Although from a reporting standpoint cryptocurrencies are treated as financial assets held abroad, IVAFE (tax on the value of financial assets held abroad) is not due.

With specific regard to tokens tax treatment, the tax ruling No. 14/E of 29 September 2018 affirmed that the assignment of a utility token by the issuer is not fiscally relevant as it is considered a mere financial movement. It forms the taxable base at the moment of the inclusion in the P/L and when the good/service connected to the token is transferred/provided. From a personal income tax standpoint, the same ruling stated that the assignment by the token holder of a utility token for consideration is subject to a 26% substitutive tax.

12 Are there specific tax provisions applicable in your country?

Netherlands

No specific tax provisions apply to cryptocurrencies in the Netherlands. Please find below a high-level overview of the personal income tax and VAT considerations in relation to cryptocurrencies.

Personal income tax
Depending on the way the income in the context of cryptoassets is generated, the taxation will differ. Income in the context of cryptoassets may qualify as income from an enterprise (Box I), of which business profits are taxed at a progressive rate. Cryptoassets could also be considered a saving or investment (Box III). The taxation of a taxpayer's savings and investments is based on a deemed income basis, with the fair market value of the taxpayer's property, minus the amount of their outstanding debts and minus a basic allowance, as the taxable base.

VAT
In general, no VAT is charged on the mere holding and using of cryptocurrencies to pay for goods and services. Furthermore, transactions involving the exchange of cryptocurrencies are regarded as financial services and should therefore be VAT-exempt.

Spain

No. However, the Spanish Tax Authorities have issued some rulings on how cryptocurrencies and related activities, such as mining, should be regarded for PIT, VAT, Local Taxes, Wealth Tax, etc. Moreover, still awaiting for Parliamentary action, there is a Draft stating reporting obligations for cryptocurrencies holders (tax form 720).

12 Are there specific tax provisions applicable in your country?

Switzerland	No particular regime or general rules apply. However, the Swiss Federal Tax Administration has released a working paper concerning cryptocurrencies and initial coin/token offerings (ICOs/ITOs) as the subject of property, income and profit tax, withholding tax and stamp duties. Therein, different types of crypto/virtual assets are distinguished and, depending on their nature, possible tax consequences are described accordingly.
UK	HMRC guidance indicates that profits from trading activity in exchange tokens, such as bitcoin, by businesses will form part of trading profits and will be subject to corporation tax (or income tax in the case of an individual carrying on a financial trade). If an activity concerning an exchange token is not a trading activity and not charged to tax in another way, the activity will be treated as the disposal of a capital asset and potentially give rise to a chargeable gain or loss.
Ukraine	No. However, a draft law on the taxation of transactions with cryptoassets was registered in the Verkhovna Rada of Ukraine in December 2019 (for more information, please refer to our legal alert and our blog post).

13 Is the accounting regime of crypto/virtual assets clear in your country?

Belgium	As far as we are aware, there are no specific Belgian rules or guidelines regarding the accounting treatment of crypto/virtual assets.
France	Yes, the Accounting Standards Authority (ANC) amended its general chart of accounts to introduce accounting rules for token issuers and subscribers on 10 December 2018.
Germany	No. We are not aware of any national guidance.
Italy	No, the Italian account principles do not contain specific provisions concerning cryptoassets.
Netherlands	No. We are not aware of any specific rules in this respect.
Spain	There are no specific regulations regarding the accounting treatment of crypto/virtual assets. However, the ICAC (Spanish Accounting and Audit Institute) has issued some rulings in which it interpreted that, under the current accounting regime, crypto/virtual assets must be regarded as (i) intangible assets, or (ii) inventory if they are intended for sale in the ordinary course of the holder's business.
Switzerland	No, differing opinions as to the classification of crypto/virtual assets within the applicable Swiss accounting rules exist. With regard to the handling of bitcoin and initial coin offerings in accounting according to Swiss law, EXPERTsuisse, an expert association for auditing in Switzerland, has released a Q&A excerpt.

13 Is the accounting regime of crypto/virtual assets clear in your country?

UK	No, the Financial Reporting Council is yet to issue detailed guidance on the accounting regime for cryptoassets. We note though that local accounting bodies (such as the Institute of Chartered Accountants in England and Wales) have issued guidance on the accounting treatment of cryptoassets for their members.
Ukraine	No. In theory, virtual assets could be classified as intangible assets under the national accounting standards.

14 Did your country regulate ICOs?

Belgium	Under Belgian law, there are no specific laws or regulations regarding ICOs. However, depending on how the ICO is structured, various financial services laws and regulations may apply, such as the MiFID II regime, prospectus requirements, the AIFMD, MAR, etc. In 2017, the FSMA published a communication regarding the various laws and regulations that may apply to ICOs.
France	Yes, through the PACTE law (see above). An issuer of crypto/virtual assets that are not already regulated through other provisions (e.g., security tokens) can apply for an optional visa to the AMF.
Germany	There is no explicit regulation of ICOs, but the German regulator BaFin has issued various guidance. In essence, the German view was (even before the implementation of 5MLD) that cryptocurrencies were to be treated as financial instruments in the form of units of account. Any token representing a financial right against the issuer or a membership right is a security. The guidance on utility tokens is not fully clear. A pure voucher for future goods or services is not a security, but if in reality it is a corporate finance tool and the primary purpose is to create any investment opportunity, the utility token can be characterized as a security.
Italy	If a cryptoasset does not qualify as a financial instrument, an investment product or a financial product, the relevant ICO is not regulated under Italian law. (Please see our answer to Question 10 below for more information) At the beginning of 2020, the Consob (the Italian securities and markets authority), following public consultations with market operators, scholars, law firms and other stakeholders, published a final report on "Initial offerings and exchange of cryptoassets," providing guidance on how ICOs can be compliant with general Italian law and financial regulations, without further legislative or regulatory interventions. According to the Consob, ICOs of tokens that fall under the scope of the definitions of "financial instruments" or "investment products" (i.e., the so-called security tokens) are subject to the ordinary rules regulating the offer of financial instruments. As this is an area of maximum harmonization within the EU legal system, the Consob expects the ESMA to take the lead in developing a tailored regulatory framework for the offer of crypto-financial instruments.

14 Did your country regulate ICOs?

Spain

No, there are no specific Spanish laws or regulations regarding ICOs. However, depending on how the ICO is structured, various financial services laws and regulations may apply, such as the MiFID II regime, prospectus requirements, and AIFMD, amongst others. In 2018, the CNMV published their criteria in relation to ICOs, in particular when they should be treated as public offerings of transferable securities, leading to limitations to its offering in Spain.

Switzerland

Not specifically. However, the Swiss Financial Market Supervisory Authority (FINMA) has published ICO guidelines laying out how financial market legislation is applied with regard to ICOs. ICOs, depending on the manner in which they are designed, fall under the existing laws and regulations according to Question 9. Please see our answer to Question 9 below for more information.

From our answer to Question 9 –

Yes, but not explicitly for crypto/virtual assets. The respective entity falls — depending on the structure of the asset, the entity and its business model — under existing rules and regulations, particularly:

- Banking Act/Ordinance (in the case of commercial acceptance of public contributions)
- Financial Market Infrastructure Act/Ordinance (qualification as securities, licensing requirement for trading systems, reporting requirements for derivatives, trading regulations)
- Financial Institutions Act (authorization requirements as securities dealer)
- Financial Services Act/Ordinance (obligation to issue prospectus for publicly offered securities, conduct rules)
- Collective Investment Schemes Act (licensing requirement for investment funds)
- Money Laundering Act (as discussed herein).

The following major provisions for crypto/virtual asset service providers concerning (i) minimum capital, (ii) insurance and (iii) specific organizational duties exist:

i. Public deposits may not be accepted on a commercial basis (from more than 20 persons) without a banking license. However, exceptions exist, under certain conditions, regarding a) fintech-license, permitting commercial acceptance of public deposits of up to CHF 100 million, and b) sandbox, permitting acceptance of a maximum of public deposits of up to CHF 1 million.

15 What are the main provisions?

Belgium	Not applicable.
France	Optional visa: ▪ information document ▪ promotional communication ▪ safekeeping of assets ▪ AML duties
Germany	If the token is a security, a prospectus under the EU Prospectus Regulation will be required for a public offering of token, unless an exemption applies. Given the clarification upon the implementation of the 5MLD, many services surrounding token offerings are regulated activities, particularly investment brokerage, placement or trading for own account.
Italy	Not applicable.
Netherlands	Not applicable.

What are the main provisions?

Spain

Not applicable.

Switzerland

Please see our answer to Question 9 (below for more information.

Yes, but not explicitly for crypto/virtual assets. The respective entity falls — depending on the structure of the asset, the entity and its business model — under existing rules and regulations, particularly:

- Banking Act/Ordinance (in the case of commercial acceptance of public contributions)
- Financial Market Infrastructure Act/Ordinance (qualification as securities, licensing requirement for trading systems, reporting requirements for derivatives, trading regulations)
- Financial Institutions Act (authorization requirements as securities dealer)
- Financial Services Act/Ordinance (obligation to issue prospectus for publicly offered securities, conduct rules)
- Collective Investment Schemes Act (licensing requirement for investment funds)
- Money Laundering Act (as discussed herein).

The following major provisions for crypto/virtual asset service providers concerning (i) minimum capital, (ii) insurance and (iii) specific organizational duties exist:

i. Public deposits may not be accepted on a commercial basis (from more than 20 persons) without a banking license. However, exceptions exist, under certain conditions, regarding a) fintech-license, permitting commercial acceptance of public deposits of up to CHF 100 million, and b) sandbox, permitting acceptance of a maximum of public deposits of up to CHF 1 million.
ii. Professional liability insurance is required for client advisors upon entry into the register.
iii. In addition to the rules of conduct for financial services, obligations apply to financial service providers concerning organizations and conflicts of interest. Organizational duties concern primarily ensuring an adequate operational organization fulfilling regulatory obligations, whereby employees and contracted third parties must have certain qualifications and client advisors must be entered into a register.

A new DLT platform license will likely enter into force in 2021. This is a standalone platform license for the trading of

16 Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?

Belgium	Yes, depending on how the crypto/virtual asset is structured, different sets of rules may apply, e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to such financial instrument will be subject to MiFID II requirements.
France	Yes, securities tokens must follow all relevant and existing financial regulations (prospectus, financial services on securities tokens, etc.). This being said, only non-listed securities issued in France can be registered on a blockchain.
Germany	Please see our answers to Questions 10, 13, and 14 below for more information In addition, BaFin has issued a general ruling that restricts the offering of CFDs to retail investors. For CFDs with cryptocurrencies as an underlying, the highest initial margin protection applies (50% of the contact value). From our answer to Question 10 – There are no specific rules around consumer protection, advertising or financial compensation schemes for investment services related to cryptoassets or crypto custody. For the sake of completeness, BaFin has issued a general order under Article 42 MiFIR ("product intervention") that bans CFDs offered to retail clients, with some limited exemptions, which require mandatory initial margin protection for small investors. The initial margin protection for CFDs with cryptocurrencies as underlying amounts to 50%, which is the highest protection compared to other types of CFDs. Further conditions apply for coming under the exemption from the product ban on CFDs. From our answer to Question 13 – No. We are not aware of any national guidance. From our answer to Question 14 – There is no explicit regulation of ICOs, but the German regulator BaFin has issued various guidance. In essence, the Germa

16 Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?

UK	It is possible for cryptoassets and crypto-businesses to fall within the FCA's licensing regime. For further information on this, please see our response to Question 10 above.
Ukraine	Generally, there are no provisions regarding this. However, in 2017, three financial services regulators of that time (the National Bank of Ukraine (NBU), the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets) issued a joint statement on the legal status of cryptocurrency. Such statement indicated that cryptocurrency cannot be regarded as money, currency, a payment method of another country, currency value, electronic money, securities or money surrogate. The regulators undertook to further work on the question of the legal status of cryptocurrency. Further, under the Draft Law: ▪ The virtual assets do not constitute a payment method in the territory of Ukraine. ▪ The virtual asset secured by the rights of owners of equity, debt, mortgage, derivative securities, derivative financial instruments and money market instruments is defined as a financial virtual asset.

17 Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?

Belgium	Yes, depending on how the crypto/virtual asset is structured, different sets of rules may apply, e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to such financial instruments will be subject to MiFID II requirements.
France	Yes, if the underlying crypto/virtual asset qualifies as a financial instrument (security token). In this case, the scope of the regulation is exactly the same as the one applying to financial instruments (MiFID, MiFIR, Prospectus, etc.). For crypto/virtual assets that do not qualify as financial instruments, digital asset service providers are regulated by the law of 22 May 2019 (PACTE). Please see above for more details.
Germany	Activities regarding cryptoassets that are cryptocurrencies will submit the services listed in Question 3 to a financial services license requirement. See Question 9 for more details on the scope of the regulation. Activities with cryptoassets that are, at the same time, securities will trigger an additional application of the rules for investment firms under the Securities Trading Act, which implements MiFID, i.e., conduct of business rules (customer KYC, acting in the best interest of the customer, information obligations, etc.) and prudential rules (conflicts of interest, inducements, best execution, segregation of assets, etc.).
Italy	Please see our answer to Question 10 for the regulations applicable to security tokens and utility tokens. From our answer to Question 10 – At the beginning of 2020, the Consob (the Italian securities and markets authority), following public consultations with market operators, scholars, law firms and other stakeholders, published a final report on "Initial offerings and exchange of cryptoassets," providing guidance on how ICOs can be compliant with general Italian law and financial regulations, without further legislative or regulatory interventions. According to the Consob, ICOs of tokens that fall under the scope of the definitions of "financial instruments" or "investment products" (i.e., the so-called security tokens) are subject to the ordinary rules regulating the offer of financial instruments. As

17 Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?

Netherlands	This would only be the case where the relevant token, coin or instrument qualifies as a financial instrument or security under MiFID II.
Spain	Yes, depending on how the crypto/virtual asset is structured, different sets of rules will apply (e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to it will be subject to MiFID II requirements).
Switzerland	From our answer to Question 9 – Yes, but not explicitly for crypto/virtual assets. The respective entity falls — depending on the structure of the asset, the entity and its business model — under existing rules and regulations, particularly: ▪ Banking Act/Ordinance (in the case of commercial acceptance of public contributions) ▪ Financial Market Infrastructure Act/Ordinance (qualification as securities, licensing requirement for trading systems, reporting requirements for derivatives, trading regulations) ▪ Financial Institutions Act (authorization requirements as securities dealer) ▪ Financial Services Act/Ordinance (obligation to issue prospectus for publicly offered securities, conduct rules) ▪ Collective Investment Schemes Act (licensing requirement for investment funds) ▪ Money Laundering Act (as discussed herein). The following major provisions for crypto/virtual asset service providers concerning (i) minimum capital, (ii) insurance and (iii) specific organizational duties exist: i. Public deposits may not be accepted on a commercial basis (from more than 20 persons) without a banking license. However, exceptions exist, under certain conditions, regarding a) fintech-license, permitting commercial acceptance of public deposits of up to CHF 100 million, and b) sandbox, permitting acceptance of a maximum of public deposits of up to CHF 1 million. ii. Professional liability insurance is required for client advisors upon entry into the register. iii. In addition to the rules of conduct for financial services, obligations apply to financial service providers concerning organizations and conflicts of interest. Organizational duties concern primarily ensuring an adequate operational organization fulfilling regulatory obligations, whereby employees and contracted third parties must have certain

18 Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?

Belgium	Yes, the FSMA banned the marketing to retail clients of financial products whose return depends directly or indirectly on virtual money.
France	No, cryptoasset tumblers are not directly forbidden but digital assets are defined in such a way that they must ensure the identification of the owner. This might have an indirect effect on tumblers.
Germany	No, but this tumbler service could be considered a participation in the act of money laundering.
Italy	No, there are no additional regulations applicable to other activities related to crypto/virtual assets, including cryptoasset tumblers.
Netherlands	No. The DNB and the Dutch Authority for the Financial Markets (*Autoriteit Financiële Marketen* (AFM)) have repeatedly warned about the significant risks associated with cryptos, particularly with regard to financial crime and the vulnerability to deception, fraud, manipulation and cybercrime. Also, in 2018, the DNB and the AFM issued joint recommendations to the (European) legislator, including to amend the European regulatory framework to enable blockchain-based development of SME funding and to reconcile the national and the European regulatory definitions of security (especially regarding cryptos that are comparable to shares or bonds).
Spain	No.
Switzerland	Although no specific rules in this regard concerning crypto/virtual assets are in place, companies offering financial intermediary services in this area are subject to the AMLA. See our answer to Question 3.

18 Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?

UK	Yes, in October 2020, the FCA set out its intention to ban the sale of derivatives and exchange-traded notes that reference certain types of unregulated, transferable cryptoassets to retail clients. From 6 January 2021, the ban on the sale of retail crypto derivatives came into effect.
Ukraine	Generally, no. However, in 2014, the NBU issued a letter stating that Bitcoin is a money surrogate, which practically prohibits its use on the territory of Ukraine. This letter was consequently canceled by the NBU in 2018.

19 Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?

Belgium	As far as we are aware, no Belgian court, tribunal, government agency, regulatory authority or other decision-making body officially held or asserted that the owner or holder of crypto/virtual assets has *in rem* "property" rights (*eigendom*) over such assets under the laws of Belgium. Although this would require further legal analysis, it is probably the better view that the holder or "owner" of the crypto/virtual assets merely owns the rights and/or receivables attached to such assets
France	There is little case law on digital/cryptoassets. In a ruling of 26 February 2020, the lower commercial court (*tribunal de commerce*) held that Bitcoin is an intangible, consumable and fungible good and it should be assimilated to legal money in the case of a loan. Consequently, any loan in bitcoins has the effect of transferring property to the borrower with all the legal consequences that entails (especially in terms of *usus* and *fructus*).
Germany	There is no case law. We note, however, that — initiated by the recent introduction of the definition of cryptoassets in the KWG — views in legal literature have been expressed that, for the purposes of the enforcement on the assets of a debtor, cryptoassets held by such debtor constitute "other property rights" within the meaning of the German Civil Procedure Act, meaning that they can be attached and realized in an enforcement action against the debtor.
Italy	Yes, in the leading Italian case involving cryptocurrencies, the BitGrail case. BitGrail, an Italian cryptocurrencies exchange that allowed the conversion into legal tender currency only through the Nano cryptocurrency, was declared bankrupt after the theft of EUR 150 million from the company's sole wallet. Although the company proposed a reimbursement plan to its customers, the Italian prosecutors filed for bankruptcy. The Court of Florence ordered the seizure of cryptocurrencies and money property of BitGrail and of one of its directors for their liability as custodians of the wallet, thus assuming that cryptocurrencies are properties that might be the G28 object of precautionary measures.
Netherlands	Yes. According to the Dutch tax authorities, cryptoassets are considered a property for personal income tax purposes.

19 Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?

Spain	There is no formal position from regulatory bodies in this regard, but some court decisions have indirectly recognized the nature of crypto asset as property and applied general civil law rules. In particular, the Spanish Supreme Court (Decision STS 2109/2019) held that, in the case of a criminal deception (scam), the appropriate procedure is to repair the damage and compensate the harm done, by returning the monetary amount provided (damages) to those affected/the victims, plus a supplement for the harm equivalent to the profitability of the price of the bitcoins between the moment of investment and the end date of their respective agreements.
Switzerland	No.
UK	On 13 December 2019, in the case of AA v. Persons Unknown [2019] EWHC 3556 (Comm), the UK Commercial Court granted an interim proprietary injunction over Bitcoin, thereby treating the cryptoasset as property. The reason for this is that bitcoins are: (i) capable of ownership; (ii) capable of being defined; (iii) permanent; (iv) have stability since ordinary assets are also subject to deterioration, corruption and loss; and (v) not disqualified from being property due to their distinctive features. The UK Jurisdiction Taskforce has also released its statement on the question of whether cryptoassets are likely to constitute “property” under UK law. In the view of the UKJT, depending on their ultimate structure, cryptoassets may meet the criteria to be classified as “property” in the UK. This question though is ultimately to be determined by the courts.

19 Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?

Ukraine

The first version of the Draft Law established that a virtual asset is a separate category of property, among other special categories, such as

i. money
ii. an enterprise as a whole property unit
iii. currency values
iv. securities etc.

However, the revised Draft Law provides that the virtual assets fall into a category of intangible benefits, among other intangible benefits, such as:

i. results of intellectual, creative activity and other intellectual property rights objects
ii. information
iii. personal non-property benefits

20 Are there any other relevant rules or provisions you would like to mention?

Belgium	Not applicable.
France	Not applicable.
Germany	Not applicable.
Italy	Not applicable.
Netherlands	Not applicable.
Spain	Asides from rulings clarifying the tax treatment applicable to cryptocurrencies and activities derived thereto, cryptocurrencies have been identified as a priority by the Spanish Tax Authorities Annual Plan which includes, among others, main targets to be audited.
Switzerland	The Swiss National Council recently approved a new framework law aiming to improve the legal conditions for the application of distributed ledger technology (DLT). The framework law will now have to pass the state council and, realistically, it is expected to come into force by mid-2021. When passed, the new legal framework will introduce changes to existing Swiss laws and regulations, particularly in the areas of banking law and financial market law. Noteworthy, in particular with regard to the new DLT framework law, is the introduction of a digital book-entry security that can be transferred electronically, rather than requiring a written declaration of assignment as is currently the case.

20 Are there any other relevant rules or provisions you would like to mention?

UK	Not applicable.
Ukraine	Not applicable.

USA

1. What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?
2. Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?
3. Indicate the services/professions related to crypto/virtual assets that are regulated with regard to AML.
4. Is there a need for registration or licensing?
5. Are there criminal or administrative sanctions in case of noncompliance?
6. Are there thresholds triggering client identification duties for occasional clients?
7. Is it possible to externalize AML duties in your country?
8. How many licenses/registrations have been delivered as of January 2021?
9. Did your country regulate services/professions related to crypto/virtual assets beyond AML?
10. Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?
11. Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?
12. Are there specific tax provisions applicable in your country?
13. Is the accounting regime of crypto/virtual assets clear in your country?
14. Did your country regulate ICOs?
15. What are the main provisions?
16. Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?
17. Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?
18. Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?
19. Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?
20. Are there any other relevant rules or provisions you would like to mention?

1 What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?

USA

The Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq*., and its implementing regulations at 31 C.F.R. Chapter X, as promulgated by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), provide the US AML regulatory framework that may be applicable to virtual currency businesses at the federal level (state-level requirements may also apply).

2 Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?

USA

Yes, under the BSA (see our answer to Question 1), if the provider meets the definition of a covered financial institution under the statute.

From our answer to Question 1 –

The Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq*., and its implementing regulations at 31 C.F.R. Chapter X, as promulgated by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), provide the US AML regulatory framework that may be applicable to virtual currency businesses at the federal level (state-level requirements may also apply).

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

USA

FinCEN has issued guidance indicating that several categories of virtual asset service providers qualify as Money Services Businesses (MSBs) under FinCEN's regulations. Whether an entity qualifies as an MSB depends on the facts and circumstances of a particular business model, but includes persons engaged in the exchange of virtual currency for real currency, funds or other virtual currency, and persons engaged as a business in issuing a virtual currency, and who have the authority to redeem such virtual currency.

Certain virtual asset service providers may be required to register with the Securities and Exchange as a broker-dealer and would therefore be excluded from the FinCEN definition of MSB. However, such providers would still be required to comply with BSA AML requirements applicable to broker-dealers.

4 Is there a need for registration or licensing?

USA

Yes. MSBs must be registered with FinCEN. Money transmissions are regulated at the state level as well (49 states have money transmission laws). Some states require registration for businesses engaged in cryptocurrency transmission, while others expressly exempt cryptocurrency transfers.

5 Are there criminal or administrative sanctions in case of noncompliance?

USA

Yes, failure to comply with BSA registration requirements results in a civil penalty of USD 5,000 for each day a registration violation continues.

Any person who knowingly conducts, controls, manages, supervises, directs or owns all or part of an unlicensed money transmitting business is subject to fines and/or imprisonment for up to five years.

6 Are there thresholds triggering client identification duties for occasional clients?

USA

The FinCEN AML program requirements applicable to MSBs do not contain an explicit customer identification requirement (except in circumstances where the MSB is provider or seller of prepaid access). However, FinCEN has issued guidance reflecting an expectation that MSBs "determine both the identity and the profile of its customers."

7 Is it possible to externalize AML duties in your country?

USA

Yes, duties may be outsourced provided that the organization conducts sufficient due diligence and monitoring of the third party. The organization nonetheless remains ultimately responsible for compliance.

8 How many licenses/registrations have been delivered as of January 2021?

USA

The number of registrations is not published. But FinCEN maintains a publicly available database of all registered MSBs (although, it is not possible to determine from the information in the database whether the MSB is a virtual assets service provider).

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

USA

Yes, but the rules are not crypto-specific. The rules applying to a crypto-related entity depend on the type of entity, and apply in the same way they would if the entity were engaged in traditional financial activity. In some states, there are regulations specific to cryptocurrency businesses. New York and Louisiana are two states that license cryptocurrency businesses.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

USA

The Securities Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) and the Consumer Financial Protection Bureau (CFPB) monitor and address concerns about misleading, fraudulent, unregistered promotors and price manipulation, among other issues. The Federal Trade Commission (FTC) as well as state securities regulators have used their enforcement powers to sanction unfair and deceptive practices in connection with investments in cryptocurrencies.

11 Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?

USA

No, in practice, nationally recognized banks have been reluctant to accept accounts for some crypto-related companies due to compliance concerns. However, on 22 July 2020 the US Office of the Comptroller of the Currency (OCC), a regulatory agency charged with overseeing nationally chartered banks, published an interpretive letter clarifying national banks' and federal savings associations' authority to have custody of cryptocurrency on behalf of customers. On 21 September 2020, the OCC published an interpretive letter clarifying national banks' and federal savings associations' authority to hold "reserves" on behalf of customers who issue certain stablecoins. On 4 January 2021, the OCC published an interpretative letter concluding that national banks and thrift institutions may validate, store and record payments transactions by serving as a node on an INVN, and these institutions may use independent node verification networks and related stablecoins to carry out other permissible payment activities.

12 Are there specific tax provisions applicable in your country?

USA

Yes. The Internal Revenue Service (IRS) treats cryptoassets as "property" for federal income tax purposes. Consequently, tax rules applying to the exchange and disposition of property apply, meaning that the sale or exchange of a cryptoasset will generate a gain or loss that is a taxable event. With respect to the income tax effects of hard forks and airdrops, the IRS also issued a revenue ruling that noted that a hard fork may not always result in an airdrop. The revenue ruling acknowledges that even if a hard fork results in issuance of units of a new cryptocurrency, a taxpayer may not have "dominion and control" over those units if they are airdropped in a wallet managed through a cryptocurrency exchange and the cryptocurrency exchange that does not support the newly created cryptocurrency. However, if the exchange later supports the newly created cryptocurrency, the taxpayer is considered as receiving the cryptocurrency at that time, which may trigger income tax consequences.

To highlight the IRS's belief that many cryptoasset transactions go unreported, starting with the 2020 tax year, the IRS added the following question on the first page of the individual income tax return, "At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?" The IRS published FAQs that are intended to assist taxpayers in determining whether they must answer "yes" to this question.

13 Is the accounting regime of crypto/virtual assets clear in your country?

USA

There is no clear guidance from the Financial Account Standards Board on treatment of cryptoassets. General practice is that cryptoassets are treated under the framework for "intangibles," consistent with International Financial Reporting Standards treatment. The AICPA issued non-authoritative guidance in December 2019 and July 2020 on the accounting standards for accountants to accept engagements for cryptocurrency-based businesses.

14 Did your country regulate ICOs?

USA

The SEC has not issued separate rules for ICOs. Rather it applies existing law to determine whether an ICO offering qualifies as a "security" under the so-called Howey test. If it does, then there must be compliance with the registration requirements under the securities laws, unless the offer and sale qualify for an exemption from the registration requirements. The SEC has issued very few "no action" letters with respect to the issuance of digital tokens.

15 What are the main provisions?

USA

See our answer to Question 14.

From our answer to Question 14 –

The SEC has not issued separate rules for ICOs. Rather it applies existing law to determine whether an ICO offering qualifies as a "security" under the so-called Howey test. If it does, then there must be compliance with the registration requirements under the securities laws, unless the offer and sale qualify for an exemption from the registration requirements. The SEC has issued very few "no action" letters with respect to the issuance of digital tokens.

16 Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?

USA

Yes, cryptoassets that qualify as securities or cryptoasset products that constitute other types of financial products are subject to all of the rules typically applicable to securities and financial products, as relevant. In published remarks, SEC commissioners have indicated that Bitcoin is not a security and Ether is no longer a security.

17 Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?

USA

Yes, parties who serve as brokers, custodians, fund and pool managers, financial advisers or other similar roles will be regulated by the SEC and the CFTC, among others.

18 Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?

USA

No, other crypto-specific activities are not expressly prohibited but this does not preclude activities from being considered, deemed or interpreted as violating existing laws.

19 Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?

USA

The IRS considers cryptoassets to be property for US tax purposes. A number of courts have indirectly found cryptocurrencies to be property in applying, for example, property forfeiture statutes to cryptocurrency.

20 Are there any other relevant rules or provisions you would like to mention?

USA

In December 2020, FinCEN proposed requirements for certain transactions involving digital assets by which banks and MSBs would be required to submit reports, keep records and verify the identity of customers in relation to transactions above certain thresholds involving wallets not hosted by a financial institution (also known as unhosted or self-hosted wallets) or wallets hosted by a financial institution in certain jurisdictions identified by FinCEN. The proposed rule also added reporting requirements for digital asset transactions exceeding USD 10,000 in value. Pursuant to the proposed rule, banks and MSBs would have 15 days from the date on which a reportable transaction occurs to file a report with FinCEN. Further, this proposed rule would require banks and MSBs to keep records of a customer's digital asset transactions and counterparties, including verifying the identity of their customers, if a counterparty uses an unhosted or otherwise covered wallet and the transaction is greater than USD 3,000. As of February 2021, progress on these proposed requirements has been halted under the newly inaugurated president's administration.

Separately, prior comments from FinCEN indicated that it did not expect Reports of Foreign Bank and Financial Accounts (FBARs) for non-US virtual currency accounts because the applicable regulations do not define a foreign account holding virtual currency as a type of account reportable on an FBAR. However, a 31 December 2020 Notice from FinCEN makes clear that it intends to expand the definition under the applicable provisions of the BSA to include virtual currency accounts.

APAC

1. What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?
2. Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?
3. What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?
4. Is there a need for registration or licensing?
5. Are there criminal or administrative sanctions in case of noncompliance?
6. Are there thresholds triggering client identification duties for occasional clients?
7. Is it possible to externalize AML duties in your country?
8. How many licenses/registrations have been delivered as of January 2021?
9. Did your country regulate services/professions related to crypto/virtual assets beyond AML?
10. Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?
11. Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?
12. Are there specific tax provisions applicable in your country?
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18. Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?
19. Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?
20. Are there any other relevant rules or provisions you would like to mention?

1 What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?

Australia	Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ("**AML/CTF Act**")
Hong Kong	Hong Kong's anti-money laundering framework aligns with the FATF standards. The relevant legislation is the Anti-Money Laundering and Counter Terrorist Financing Ordinance (AMLO) which is supplemented by industry/service specific guidance from the relevant regulators. The 5th AMLD does not have application in Hong Kong.
Singapore	Singapore's anti-money laundering regulatory framework is aligned with FATF standards, but does not incorporate the 5MLD into its regulatory regime. The relevant AML regulations that apply to crypto/virtual assets depend on the nature and characterization of the crypto/virtual asset. Crypto/virtual assets that are digital payment tokens or e-money tokens are regulated under the Payment Services Act 2019 ("**PS Act**") and the relevant AML regulations are set out in (i) the Monetary Authority of Singapore (MAS) Notice PSN01 ("**PSN01**"), which applies to payment service providers that provide, among other things, account issuance services, domestic money transfer services or cross-border money transfer services, and (ii) MAS Notice PSN02 ("**PSN02**"), which applies to payment service providers that provide digital payment token (DPT) services. Crypto/virtual assets that are securities tokens (i.e., constitute a capital markets product) are regulated under the Securities and Futures Act (SFA) and the relevant AML regulations are set out in MAS Notice SFA04-N02.

1 What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?

Taiwan	Taiwan's anti-money laundering regulatory framework is mainly based on the FATF; Taiwan's legislation does not additionally incorporate the 5MLD into the existing regulatory regime.
Thailand	Article 7 of the Emergency Decree on Digital Asset Businesses, B.E. 2561 ("**Digital Asset Decree**") stipulates that digital asset businesses and digital token offering system providers (i.e., ICO portal) are considered "financial institutions" as defined under the Anti-money Laundering Act, B.E. 2542 (1999) as amended ("**AML Act**"). Therefore, digital asset businesses and the ICO portal are subject to the requirements of the Thai anti-money laundering laws, which include the AML Act, the Counter-terrorism and Proliferation of Weapon of Mass Destruction Financing Act, B.E. 2559 (2016) ("**CFT Act**"), and other sub-regulations.

2 Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?

Australia	Yes, under the AML/CTF Act.
Hong Kong	The standards that apply depend on the nature and regulatory status of the crypto/virtual assets and services being provided. Licensed crypto/virtual asset service providers are required to comply with the AMLO or the industry specific requirements that are determined by the relevant regulator.
Singapore	Please see above. DPT service providers are regulated under the PS Act and are subject to the AML regulations under the PSN02. Do note that amendments to the PS Act have been enacted to expand MAS' regulation of virtual asset service providers (VASPs) and to align MAS' regulation of VASPs with the FATF standards. As of 23 February 2021, no indication has yet been provided on when these amendments will come into force.
Taiwan	Yes, crypto/virtual assets providers are required to comply with the Money Laundering Control Act (Article 5 II). Among the virtual asset providers, the operator of a security token proprietary trading business is specifically asked to follow the 'Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens' as well (Article 6 and 9). Other relevant laws/guidance include: (1) the Counter-Terrorism Financing Act; (2) the Regulations Governing Anti-Money Laundering of Financial Institutions; (3) the Regulations Governing Internal Audit and Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Securities and Futures Business and Other Financial Institutions Designated by the Financial Supervisory Commission (FSC); and (4) the Taiwan Securities Association Template for Guidelines Governing Anti-Money Laundering and Countering Terrorism Financing of Securities Firms.
Thailand	See our answer to Question 1.

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

Australia	When digital currency is exchanged for fiat money in the course of carrying on a digital currency exchange business, e.g., P2P exchanges, digital wallets, crypto ATMs, payment providers.
Hong Kong	Hong Kong has to date adopted the position that most crypto/virtual assets are already covered by existing regulations including the Securities and Futures Ordinance (SFO), the Payment Services and Stored Value Facility Ordinance (Payment Systems and SVF Ordinance) and the Banking Ordinance. Depending on the nature of the proposed activity, it is possible that one or more licensing/registration requirements may be applicable. A detailed analysis is required to determine whether, and how, an activity may be regulated. Hong Kong has also commenced public consultations on a proposed revised licensing regime that would be applicable to Virtual Asset Service Providers and further monitoring will be required to determine the scope of the final approach.
Taiwan	As of February 2021, Taiwan's government is still developing the regulatory framework for services/professions related to crypto/virtual assets' AML issues.
Thailand	The Digital Asset Decree regulates digital asset businesses and the ICO portal. 1. Digital asset businesses include: ▪ digital asset exchange ▪ digital asset broker ▪ digital asset dealer ▪ other businesses relating to digital assets as prescribed by the Ministry of Finance (MOF) under the recommendation of the Securities and Exchange Commission (SEC); as of now, the MOF has not yet determined any additional businesses 2. Digital token offering system providers or the ICO Portal is a provider of an electronic system for an offering of newly issued digital tokens that is responsible for screening the characteristics of digital tokens to be offered, the qualifications of the issuer and the completeness and accuracy of the registration statement and draft prospectus for the offering of digital tokens or any other information to be disclosed through such service provider.

3 What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?

Singapore

The PS Act

1. Dealing in DPTs or facilitating the exchange of DPTs
   The PS Act regulates the service of dealing in DPTs or facilitating the exchange of DPTs (i.e., by establishing/operating an exchange for the buying or selling of DPTs, where the operator of the exchange takes possession of money or DPTs). Such services could include operating a cryptocurrency exchange and providing cryptocurrency execution services. As discussed, amendments to the PS Act have been enacted (but have not yet come into force) and, pursuant to such amendments, additional services that may be regulated under the service of dealing in DPTs or facilitating the exchange of DPTs may include cryptocurrency/asset custody services and custodian wallet services for DPTs, among others.

2. E-money issuance and/or account issuance
   The PS Act also regulates crypto/virtual assets that constitute "e-money" (e.g., stablecoins with values pegged to a fiat currency), and in particular the service of issuing e-money tokens as well as the service of providing account issuance services (e.g., by issuing the wallet that holds such e-money tokens).

The SFA

1. Dealing in capital markets products
2. Providing custodial services
3. Operating an organized market

Crypto/virtual assets that constitute capital markets products (e.g., tokens that are (i) akin to shares in that they confer ownership rights/interests in a body corporate, (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder or (iii) derivatives or units in a collective investment scheme) are regulated under the SFA. In particular, (a) a person that deals in such crypto/virtual tokens may be treated as dealing in capital markets products, (b) a person that is a custodian of such tokens may be treated as providing custodial services and (c) a person that operates an exchange that facilitates offers to buy or sell such crypto/virtual tokens that are derivatives contracts, securities or units in a CIS may be considered to be operating an "organized market" under the SFA, and may be regulated as an approved exchange or a recognized market operator. These services are regulated under the AML regulations issued pursuant to the SFA (such as SFA04-N02).

4 Is there a need for registration or licensing?

Australia	Yes, enrolment with the Australian Transaction Reports and Analysis Centre (AUSTRAC), and digital currency exchange registration.
Hong Kong	Yes, depending on the proposed activities. See previous answers.
Singapore	Yes. Licensing as a payment service provider under the PS Act may be required where the PS Act applies. Where the SFA applies, a capital markets service license or approval as an approved exchange or recognized market operator may be required. The licensing/approval requirements hinge on the characterization of the crypto/virtual asset and the nature of the business being carried out.
Taiwan	The registration or licensing of crypto/virtual assets merchants might be required. The regulatory treatment hinges on the business activities concerned and the types of cryptoassets/cryptocurrency involved in such business activities. For instance, a crypto merchant who intends to operate the business of proprietary trading of security tokens has to (1) obtain approval from the regulator, the FSC, to establish a securities firm and then (2) apply for a securities business operation license. If a securities firm serves as the issuer of a security token offering itself, it should also submit its application with the prospectus and relevant documents to the Taipei Exchange. For an issuer other than the securities firm to engage in the security token offering planning to raise funds of no more than TWD 30 million (approximately USD 1.04 million), the issuer must (1) incorporate and register a company limited by shares under the laws of Taiwan and (2) further apply to the securities firm for its due diligence review with the prospectus and relevant materials enclosed. When the amount that the issuer is planning to raise exceeds TWD 30 million, the issuer will be subject to the Financial Technology Development and Innovative Experimentation Act and should apply to enter into the regulatory sandbox. For those crypto/virtual assets merchants who meet the regulatory sandbox requirement, the licensing requirement might be temporarily exempted.
Thailand	Yes. Digital asset business operators need to apply for relevant licenses from the MOF through the SEC. The ICO portal needs to apply for a prior approval from the SEC.

5 Are there criminal or administrative sanctions in case of noncompliance?

Australia	Yes, civil penalty provisions have a maximum penalty of AUD 21 million. In determining a pecuniary penalty, the Federal Court of Australia will have regard to: 1. the nature and extent of the contravention; and 2. the nature and extent of any loss or damage suffered as a result of the contravention; and 3. the circumstances in which the contravention took place; and 4. whether the person has previously been found by the Federal Court in proceedings under this Act to have engaged in any similar conduct; and 5. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in proceedings under a law of a State or Territory to have engaged in any similar conduct; and 6. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct; and 7. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in proceedings under the Financial Transaction Reports Act 1988 to have engaged in any similar conduct.
Hong Kong	Engaging in unlicensed activities or failing to comply with applicable AML requirements could constitute an offence. Firms or individuals could be subject to fines, imprisonment and other supervisory enforcement action from the Securities and Futures Commission (SFC), the Hong Kong Monetary Authority (HKMA), the Customs and Excise Department (CED) or other relevant regulators.
Singapore	Yes, criminal sanctions are imposed under the PS Act and the SFA for failure to comply with the licensing regime. Noncompliance with the AML regulations may result in warnings, directives to remediate the noncompliance, material fines, suspensions, withdrawal of licenses, or criminal sanctions imposed by the MAS, depending on the nature, extent and severity of such noncompliance. A person who fails to comply with the AML regulations may be liable upon conviction to a fine not exceeding SGD 1 million and, in the case of a continuing offense, to a further fine of SGD 100,000 for every day or part of a day during which the offense continues after conviction.

5 Are there criminal or administrative sanctions in case of noncompliance?

Taiwan	Concerning the failure of licensing/registration, the sanctions depend on the crypto/asset business activities involved. Regarding the AML compliance issues, there are criminal and administrative sanctions under the Money Laundering Control Act. Nonetheless, there is no crypto/virtual asset-specific criminal or administrative sanction.
Thailand	Yes. Criminal sanctions are imposed under the Digital Asset Decree for activities relating to digital assets pursued in contravention of the regulations. This includes penalties of fines and imprisonment. The amount of the fines and terms of imprisonment vary, depending on the offense. Criminal sanctions are also imposed under the AML Act where, *inter alia*, the regulated business fails to comply with the requirements under the AML Act, such as failure to conduct KYC on the customer (a fine not exceeding THB 1 million, and fines of THB 10,000 for every day until it has been rectified).

6 Are there thresholds triggering client identification duties for occasional clients?

Australia	Customer identification (KYC) must be conducted before the company provides a designated service (i.e., the service of exchanging digital currency for fiat money) under s 32 of the AML/CTF Act. This is the case for all clients and is not determined by a threshold amount.
Hong Kong	All in scope licensed providers must conduct AML/CFT processes when establishing a business relationship with a customer and thereafter undertake reviews on a periodic basic. In the event they suspect money laundering or other illegal activities, a suspicious transaction report must be filed. Occasional transfers are subject to varying requirements regarding the extent of information that is required to be obtained depending on the amount and methodology used for a transfer.
Singapore	Yes, customer due diligence measures are required to be performed before establishing business relations with any client, regardless of whether such customer is an occasional client. Customer due diligence measures are also required to be carried out on customers with whom business relations have not otherwise been established, before effecting or receiving any funds or undertaking any transaction (exceeding a specified amount) for such customer.
Taiwan	The Money Laundering Control Act does not set a general benchmark. The threshold triggering the client identification duties is industry-specific. There is currently no crypto/virtual asset-specific guidance on the trigger threshold.
Thailand	No. Regulated businesses are required to conduct customer identification duties (KYC) and customer due diligence (CDD) on every customer before every transaction when engaged by a client, regardless of whether or not such customer is an occasional customer.

7 Is it possible to externalize AML duties in your country?

Australia	Yes, customer identification procedures may be carried out by an agent of the reporting entity. However, the reporting entity must include AML/CTF-specific clauses in the contractual agreement with the agent.
Hong Kong	Yes, the administrative duties may be outsourced, for example, to another licensed entity, provided that the organisation proposing to outsource the services conducts sufficient due diligence and monitoring of the third-party service provider undertaking the AML activities on its behalf. The regulatory responsibility for compliance with AML obligations including the filing of any STR's and other requirements cannot be outsourced.
Singapore	Yes, it is possible for AML functions to be outsourced, but the licensed entity remains responsible and accountable for all outsourced AML functions. The outsourcing of AML functions will likely constitute a material outsourcing arrangement under the MAS Guidelines on Outsourcing, and the licensed entity should comply with the requirements under the MAS Guidelines on Outsourcing, including conducting a robust assessment of the service provider and establishing mechanisms to monitor and control the outsourcing arrangement on an ongoing basis.
Taiwan	Firms are permitted to outsource their AML functions but remain responsible for all AML systems and controls related to outsourced activities. However, to what extent externalization is allowed is industry-specific and subject to the self-regulatory rules. It should be noted that the securities firm is prohibited from externalizing AML duties, except if it is otherwise permitted by laws or regulations of the Financial Supervisory Commission in Taiwan. (See Article 7 of the Regulations Governing Anti-Money Laundering of Financial Institutions).
Thailand	Certain AML duties and functions, e.g., KYC and CDD, may be outsourced to third parties, assuming that the third parties are qualified under the relevant regulations. However, the company, which is the regulated business, remains responsible for complying with the regulations.

8 How many licenses/registrations have been delivered as of January 2021?

Australia	Media has reported 310 digital currency exchange registrations with AUSTRAC; however, there is no formal media release from AUSTRAC on this point.
Hong Kong	The ongoing total count of successful registrations across the various business types is not published at an aggregated level, but the registries which record details of all licensed entities or individuals are publicly accessible.
Singapore	Information is not available, but the public can search the Financial Institutions Directory to verify whether a particular entity is licensed.
Taiwan	As of the end of December 2020, an FSC official confirmed that no applicant had applied for FSC's approval to operate the business of proprietary trading of security tokens; thus, no license/registration has been delivered. Nonetheless, we understand an ongoing application is under its review: a crypto merchant is applying to enter into the regulatory sandbox, expecting FSC to exempt the licensing requirement. However, as of February 2021, FSC has not finalized its decision on the said application.
Thailand	As of 26 August 2020, the SEC has granted the following licenses: 1. licenses for digital token offering system providers: four licenses. 2. licenses for digital asset businesses: ▪ eight digital asset exchange licenses ▪ five digital asset broker licenses ▪ one digital asset dealer license

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Australia	The regulatory framework is still developing in Australia. The Australian Securities and Investments Commission had released significant guidance as to when a cryptoasset could be deemed a financial product. To the extent that a cryptoasset is characterized as a financial product, organizational competence, insurance and capital requirements would apply. From a commercial perspective, it is likely various insurances would be required regardless.
Hong Kong	The Hong Kong regulators generally take a technology neutral approach to regulation. The rules applying to a crypto-related entity depend on the type of entity and the types of activity that are undertaken and they generally apply in the same way as if the entity engaged in traditional financial services activities. The various regulated activities in Hong Kong are subject to requirements which may include minimum capital, segregation of client assets, fit and proper tests for individuals and large shareholders. There are also key positions that are required to be filled within licensed organisations by suitably experienced and licensed individuals.
Singapore	Yes. 1. Minimum capital requirements: a. PS Act: (i) standard payment institution license: SGD 100,000; (ii) major payment institution license: SGD 250,000 b. SFA: Minimum capital requirement hinges on the business activities involved. 2. Insurance is not mandatory for a license under the PS Act but may be a licensing condition imposed by the MAS prior to the grant of a license under the SFA. 3. Yes, the organizational structure of an entity that wishes to be licensed is subject to the approval of the MAS. A licensee is also required to obtain the prior approval of the MAS for the appointment of directors and CEOs, and such directors and CEOs must meet the prescribed fit and proper criteria.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Taiwan

Yes.

1. The minimum capital requirement hinges on the business activities involved. For instance, TWD 100 million (approximately USD 3.46 million) for the security token trading business.
2. No, it is not mandatory.
3. Yes, it mainly covers the aspects below:
   a. qualification of directors/senior executives
   b. internal control system
   c. beneficiary ownership
   d. IT system,
   e. information security, and so forth. But the organizational duties might differ among distinct crypto/virtual asset
   f. services providers.

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Thailand

Yes. The digital asset businesses and ICO Portal are regulated under the Digital Asset Decree. Applicable licenses or approval must be obtained before commencing the business. These service providers must have certain qualifications and comply with the ongoing requirements under the Digital Asset Decree.

1. Minimum capital requirements: There are certain paid-up registered capital requirements for each type of business operator, as follows:
   - digital asset businesses
   - digital asset exchange
   - for an exchange: ≥ THB 50 million
   - for a non-asset-keeping exchange: ≥ THB 10 million
   - for an asset-keeping exchange that has no ability to access or transfer customers' assets without their approval on one-time basis: ≥ THB 10 million
   - digital asset broker
   - for a broker: ≥ THB 25 million
   - for a non-asset-keeping broker: ≥ THB 1 million
   - for an asset-keeping broker without the ability to access or transfer customers' assets without their approval on one-time basis: ≥ THB 5 million
   - digital asset dealer
   - for a dealer: ≥ THB 5 million
   - digital token offering system providers: ≥ THB 5 million

9 Did your country regulate services/professions related to crypto/virtual assets beyond AML?

Thailand

2. Insurance requirement: There is no specific insurance requirement under the Digital Asset Decree.
3. Organizational duties requirements: Certain organizational duties are prescribed under the Digital Asset Decree, including the issues below:
   - Digital asset businesses
   - The management structure and operating system of the digital asset business must be in accordance with the requirements under the SEC notifications. For example, there must be a thorough and clear determination of the organizational structure, roles, powers, duties and responsibilities of directors, executives and personnel.
   - Digital token offering system providers
   - The provider must have an appropriate and sufficient management, operation and personnel for effective and responsible business operation in compliance with applicable laws, regulations and business operation standards.
   - There must be certain working systems, which enable the business operator to operate as an ICO portal, including a system to screen digital tokens that will be offered, a system to contact and provide services to investors, etc.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

Australia	To the extent that the cryptoasset is regulated under the AML/CTF Act or the Corporations Act 2001 (Cth), yes, Australia has significant consumer protections in place to protect such investors. For example, a financial services provider must ensure that any statements (e.g., even on a website or social media marketing) are not misleading and deceptive under Australian law.
Hong Kong	Please see our previous responses. If a license is required and the activities are regulated, they will be subject to the same monitoring as other financial services. These may include suitability requirements regarding investments and restrictions on the classes of investors to which products or services may be offered.
Singapore	There is no legislation that specifically protects investors of crypto/virtual assets. However, the Consumer Protection (Fair Trading) Act (CPFTA) protects consumers against unfair practices. Investors may be protected under the CPFTA to the extent that they are consumers (i.e., individuals who, otherwise than exclusively in the course of business, receive goods or services from a supplier). Similarly, the Unfair Contract Terms Act (UCTA) applies in the case of a consumer dealing with a business entity, and to the extent they fall within the statutory definition of consumers under the UCTA, they would be protected.

10 Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?

Taiwan	No, neither the Consumer Protection Act nor the Financial Consumer Protection Act applies to investors of crypto/virtual assets. The reasons include: (1) The investor concept does not fall within the definition of consumers; (2) most crypto/virtual asset services providers do not meet the definition of "financial service enterprise"' listed in the Financial Consumer Protection Act; and (3) the investors allowed to participate in such transactions are sophisticated and, thus, expressly excluded by the Financial Consumer Protection Act.
Thailand	The Digital Asset Decree contains provisions governing practices that are considered to be unfair, including, but not limited to, circulation of false information, speculative trading based on inaccurate or incomplete information, insider trading and market manipulation. There are also subordinate regulations issued by the SEC regulating business operators to ensure the protection of investors. For ICO investments, the regulations impose certain requirements (e.g., investors must pass the client suitability assessment), and limit certain types of investors and the ability to invest (e.g., retail investors are limited to investments of THB 300,000 per person in a particular digital token offering).

11 Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?

Australia	Yes, we have seen crypto/virtual asset providers accepted in this way.
Hong Kong	The ease of accessing a bank account will vary depending on the bank and cryptoasset provider. Depending on the specific product or service offered by the crypto asset provider and its licensing conditions, the appointment of a separate custodian to hold customer assets may be required.
Singapore	Yes, it is easy for service providers to have access to a bank account as long as they are duly licensed. However, in the event a crypto/virtual asset service provider is not licensed, or is not able to show to a bank that it has submitted a license application, it is possible that they might be rejected by the bank.
Taiwan	Yes, it is easy for service providers to have access to a bank account as long as they are registered or licensed. However, crypto/virtual asset service providers not registered or licensed might be rejected by the bank. The reason is that the anti-money laundering regulations concerning the crypto/virtual assets remain unclear and provide no further guidance on compliance, thus making the financial institutions unwilling to undertake the risks and refuse those service providers' requests to open a bank account.
Thailand	Licensed digital asset business providers and approved ICO portals under the Digital Asset Decree are able to access bank accounts. This is still subject to more information about the scheme and details of how and for what purposes these service providers will access bank accounts.

12 Are there specific tax provisions applicable in your country?

Australia

Goods and Services Tax (GST)
From 1 July 2017, the purchase and sale of cryptocurrency is treated as equivalent to money for purposes of GST where certain criteria are met.

Treasury Laws Amendment (2017 Measures No. 6) Act 2017 amended the A New Tax System (Goods and Services Tax) Act 1999 ("**GST Act**") with the effect that a supply of cryptocurrency is not treated as a supply unless it is provided as consideration for another supply of money or cryptocurrency — for example, in debt trading or foreign currency exchanges. If there is such a supply, it will be treated as a financial supply for GST purposes.

'Cryptocurrency' is defined for GST Act purposes as digital units of value that are designed to be fungible and:

a. can be provided as consideration for a supply; and
b. are generally available to members of the public without any substantial restrictions on their use as consideration; and
c. are not denominated in any country's currency; and
d. do not have a value that depends on, or is derived from, the value of anything else; and
e. do not give an entitlement to receive, or to direct the supply of, a particular thing or things, unless the entitlement is incidental to:
    i. holding the digital units of value; or
    ii. using the digital units of value as consideration

12 Are there specific tax provisions applicable in your country?

Australia

However, cryptocurrency does not include:

f. money; or
g. a thing that, if supplied, would be a financial supply for a reason other than being a supply of one or more digital units of value to which paragraphs (a) to (f) apply.

The Australian Taxation Office (**ATO**) provides examples of cryptocurrencies that would be considered cryptocurrencies for GST purposes, including Bitcoin, Ethereum, Litecoin, Dash, Monero, ZCash, Ripple, YbCoin. The ATO notes that a cryptocurrency with value based on something else or that gives an entitlement or privileges to something else would not be a cryptocurrency for GST purposes, for example: a token that is aligned with an Australian or foreign currency (e.g., a "stablecoin"), or gives you an entitlement to use software application services.

Income tax
Very broadly, the ATO considers that a cryptocurrency is generally a Capital Gains Tax (**CGT**) asset for tax purposes under the Income Tax Assessment Act 1997 (ITAA 97).

As a result, if a capital gain is made on the disposal of a cryptocurrency, some or all of the gain may be taxed under the CGT regime. The ATO does note that in some limited circumstances, certain capital gains or losses from disposing of a cryptocurrency that is a personal use asset may be disregarded. Records of each cryptocurrency transaction are generally needed to be kept in order to work out whether a capital gain or loss from each CGT event has been made.

12 Are there specific tax provisions applicable in your country?

Australia	Where one cryptocurrency is disposed of to acquire another cryptocurrency, the ATO's view is that you dispose of one CGT asset and acquire another CGT asset. In relation to a 'chain split,' the ATO's view is that it should not result in a derivation of ordinary income or a capital gain at the time of receiving the 'new' cryptocurrency. However, if the new cryptocurrency is held as an investment, a capital gain may be made when it is disposed. For the purposes of working out the capital gain, the ATO considers that the cost base of a new cryptocurrency received as a result of a chain split is zero. Alternatively and in relation to businesses, the ATO's view is that if cryptocurrency is held for sale or exchange in the ordinary course of business, the trading stock rules may apply rather than the CGT rules. Generally, proceeds from the sale of cryptocurrency held as trading stock in a business are ordinary income, and the cost of acquiring cryptocurrency held as trading stock may be deductible. For the ATO, if a business is not a cryptocurrency business, but uses cryptocurrency in its business activities, that cryptocurrency should be accounted for as other assets or items used in the business. For example, if a business received cryptocurrency for goods or services provided as part of a business, the business would need to include the value of the cryptocurrency in Australian dollars as part of its ordinary income.
Hong Kong	Under Departmental Interpretation and Practice Notes No. 39 (DIPN 39) issued by the Inland Revenue Department (IRD), the tax treatment of “digital assets”, which include digital tokens (such as utility tokens and security tokens) and cryptocurrencies, is to be determined applying the existing provisions in the Inland Revenue Ordinance (Cap. 112) (IRO). Under the IRO, a person is liable to Hong Kong profits tax to the extent that he carries on a trade, profession or business in Hong Kong, and derives Hong Kong sourced profits (excluding profits from the sale of capital assets) from such trade, profession or business. No capital gains tax is levied in Hong Kong.
Singapore	No.

12 Are there specific tax provisions applicable in your country?

Taiwan

Currently, there are no crypto/virtual asset-specific tax provisions in Taiwan.

The tax obligations hinge on factors such as classification of crypto/virtual assets and the role of the taxpayers (the platform, the issuer, the miner or the investors). The regulations in this regard disperse and are not yet finalized, given there is no clear guidance on whether and how the activities fit into/correspond to the existing framework.

Thailand

Yes, the Emergency Decree on Amendment of the Revenue Code (No. 19), B.E. 2561 has been issued along with the Digital Asset Decree.

1. This Revenue Code stipulates the following:
   - the new types of taxable income, which includes:
     - share of the profit or any benefit derived from holding or having possession of digital tokens
     - capital gains from the transfer of a cryptocurrency or digital token
2. Withholding tax obligations

13 Is the accounting regime of crypto/virtual assets clear in your country?

Australia	There is no clear guidance on this from Australian authorities yet.
Hong Kong	IFRS is generally followed in Hong Kong.
Singapore	We are not aware of any specific Singapore accounting standards or guidelines regarding crypto/virtual assets.
Taiwan	There is no specific accounting regime for crypto/virtual assets other than for the security tokens. Under the guidance on accounting issues related to Security Tokens, the accounting regime is based on IAS32, or IFRS9.
Thailand	Currently, there are no specific Thai accounting standards or guidelines regarding digital assets.

14 Did your country regulate ICOs?

Australia	The Australian Securities and Investments Commission's (ASIC) had noted that an initial coin offering (ICO) may constitute a managed investment scheme (MIS). Specifically, if the value of token (i.e., the rights or benefits) is derived from or related to the management of the arrangement or scheme, then it is likely that the issuer of the ICO is offering an MIS. This means the ICO would be a financial product for the purposes of the Corporations Act, and would therefore be subject to Australian financial services law as well as Australian consumer laws regarding the offer of services or products. The ASIC information sheet on Initial coin offerings and cryptoassets (INFO 225) was refreshed in May 2019 following consultation to which Baker McKenzie provided a report. INFO 225 provides guidance on how the Corporations Act may apply to cryptoassets. Under the Corporations Act, persons dealing in financial products must hold an Australian financial services license (AFSL). Importantly, ASIC notes that each cryptoasset must be assessed on an individual basis considering the cryptoasset's specific rights and features.
Hong Kong	Yes. A firm proposing to undertake an ICO must consider registration and other legal requirements under existing securities laws. The SFC has issued extensive guidance as to how it considers these laws apply to an ICO.

14 Did your country regulate ICOs?

Singapore	This depends on the meaning of "ICOs" and the nature/characterization of the "token" being offered. Offers of utility tokens (e.g., a token which only gives users the right to information or to participate in certain rewards/memberships, and which is not a DPT, e-money token or security token) are not regulated, but offers of securities tokens (e.g., tokens that are: (i) akin to shares in that they confer ownership rights/interests in a body corporate; (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder; or (iii) derivatives or units in a collective investment scheme) are regulated. Any offering of tokens that are DPTs or e-money may also be regulated under the PS Act.
Taiwan	Yes, ICO regulations primarily involve the Securities and Exchange Act and its related ruling, with the Banking Act. Whether an ICO constitutes the issuance of securities under the Securities and Exchange Act should be determined by Taiwanese jurisprudence on a case-by-case basis. The FSC Securities and Futures Bureau has released Ruling No. 1080321164, providing further guidance on the factors which should be considered when making such decisions. If the court takes the position that it is not, the ICO itself may constitute illegal acceptance of deposits/investments, which concerns violations of the Banking Act. It should be noted that ICO fraud may trigger enhanced punishment under Article 339-4 of Criminal Code.
Thailand	This depends on the meaning of "ICOs." If it is an offering of digital tokens, it is regulated under the Digital Asset Decree. However, if it is an offering of other instruments in an electronic form (e.g., securities), it might fall under other laws (e.g., the Securities and Exchange Law) depending on the type of digital instrument.

15 What are the main provisions?

Australia	Not applicable.
Hong Kong	To the extent that the crypto/virtual assets constitute shares / debentures of a company or securities as defined in the SFO, the prospectus registration requirement under the Companies (Winding Up and Miscellaneous Provisions) Ordinance or offering document authorisation requirement under the SFO apply, unless an exemption is available.
Singapore	Any offers of securities tokens would be subject to product offering rules under the SFA, including without limitation prospectus requirements. Any dealing in security tokens may also constitute the regulated activity of dealing in capital markets products under the SFA, for which licensing must be obtained. Any offers of tokens that constitute DPTs or e-money would be regulated under the PS Act, under the regulated activity of providing digital payment tokens and e-money issuance services respectively, and a license to conduct such regulated activities must be obtained.
Taiwan	1. Articles 6 and 174 of Securities and Exchange Act 2. FSC Securities and Futures Bureau Ruling No. 1080321164 3. Articles 29, 29-1, 125 of Banking Act.
Thailand	Under the Digital Asset Decree, a digital token offering must be done through an approved digital token offering system provider, in compliance with the relevant regulations. The token issuer must also obtain prior approval from the SEC and must file a registration statement and draft prospectus with the SEC Office before the public offering.

16 Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?

Australia	As above, ASIC had indicated that each cryptoasset should be assessed on an individual basis. The most likely characterizations of a cryptoasset from an Australian financial services perspective are interest in a MIS, security, derivative and noncash payment facility.
Hong Kong	Yes, the Hong Kong regulators generally take a technology neutral position when it comes to regulatory oversight. Cryptoassets that qualify as securities or cryptoasset products that constitute other types of financial products and services are subject to all rules typically applicable to securities and financial products, as relevant.
Singapore	Yes, as discussed above, crypto/virtual assets that constitute capital markets products (e.g., tokens that are: (i) akin to shares in that they confer ownership rights/interests in a body corporate; (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder; or (iii) derivatives or units in a collective investment scheme) are regulated under the SFA.
Taiwan	Yes, securities tokens are specifically regulated, which are subject to the Securities and Exchange Act of Taiwan and relevant securities token offerings regulations (with a few exemptions). Please refer to our responses to Question 4 for more details about the registration/licensing regime. Concerning other regulatory requirements that apply, kindly note that there are also requirements regarding the internal control system, the personnel, the application of capital/funds, the eligibility of token investors, and the prospectus. (See Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens.) However, the Taiwan government has not provided clear guidance on crypto/virtual assets other than the security tokens.

16 Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?

Thailand

Under the Digital Asset Decree, "digital assets" can be mainly categorized as:

1. Digital tokens, which means a unit of data messages created on an electronic system or network for the purposes of
   - determining the right of a person to participate in investment in any project or undertaking (i.e., investment token); or
   - determining the right to acquire goods or services or any other specific right as specified in an agreement between the issuer and the holder (i.e., utility token); and
   - any other right-representing unit as prescribed under the SEC notifications.
2. Cryptocurrencies, which means a unit of data messages created on an electronic system or network for use as a medium of exchange, with a view to acquiring goods, services or any other rights or exchanging digital assets and also include a unit of any other data messages prescribed under the SEC notifications.

However, other digital instruments (e.g., digital securities) might fall under other laws (e.g., the securities and exchange law) depending on the type of digital instrument.

17 Are services or activities related to crypto/virtual assets regulated under the financial services regulatory/licensing regime in your country? If so, what is the scope of this regulation?

Australia	Yes, as above, any cryptoasset that can be characterized as a financial product provided to Australian residents will be required to hold an AFSL, unless an appropriate exemption applies.
Hong Kong	Yes, parties who serve as brokers, custodians, fund managers, investment managers, automated trading services operators, trustee etc., or other simiilar roles will be regulated. Please refer to our response to question 3 above.
Singapore	Yes. Aside from the product offering rules that may be triggered in the case of ICOs involving securities tokens: (a) a person that deals in securities tokens may be treated as dealing in capital markets product; and (b) a person that is a custodian of such tokens may be treated as providing custodial services, and a capital markets services license under the SFA must be obtained. In addition, a person that operates an exchange that facilitates offers to buy or sell tokens that are derivatives contracts, securities or units in a collective investment scheme may be considered to be operating an "organized market" under the SFA, and must be an approved exchange or a recognized market operator.
Taiwan	For security tokens, please see our responses to Question 4 and Question 16. For crypto/virtual assets that do not qualify as security tokens, the regulatory landscape is unclear since the Taiwan government has not yet guided the relevant services or activities.
Thailand	Yes. The digital asset businesses and ICO Portal are regulated under the Digital Asset Decree. Relevant licenses or approvals must be obtained before commencing the business.

18 Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?

Australia	No, though the Australian Competition and Consumer Commission (ACCC) had made it clear that they are monitoring this industry closely. Please refer to the media release in August 2019.
Hong Kong	No, other crypto-specific activities are not expressly prohibited but that does not preclude activities from being considered, deemed or interpreted as being subject to or otherwise violating existing laws.
Singapore	Please refer to our above responses.
Taiwan	Please refer to our responses to Questions 14 to 17.
Thailand	There is no specific prohibition on using a cryptocurrency as payment for goods and services. It will not be considered a legal tender; instead, use of a cryptocurrency will be based on the principle of freedom of contract and the agreed arrangements between the parties to a transaction or contract.

19 Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?

Australia	In Australia so far, there has been little guidance as to whether a cryptoasset would be recognized as property in law, though commentators have noted that in considering the Australian general law and economic tests for property, it is likely that cryptoassets such as Bitcoin would constitute property. Property is generally thought about in the context of "rights over things capable of being identified." Where something does not meet the accepted indicia for property, in practice, the definition does not standstill and the indicia adapts so that a "thing" is not improperly excluded.
Hong Kong	The position in Hong Kong remains unclear. The HKMA has previously noted that crypto assets like Bitcoin are not "money or currencies". They have been referred to within the Legislative Council as being "a kind of virtual commodity created in the virtual world". The SFC considers that many, though not all, crypto assets could be securities and subject to regulation under existing laws. There have not, however, been any court or other decisions which have clarified that crypto/virtual assets are "property" under the laws of Hong Kong. The ownership of crypto assets and their transfer between private individuals are not currently subject to any legal restrictions."
Singapore	It has been held in a recent decision of the Singapore International Commercial Court that cryptocurrencies (in that case, Bitcoin and Ethereum) are treated as a form of property for the purpose of constituting a trust. However, it remains to be seen what the exact proprietary nature of cryptocurrencies is, and how other forms of cryptoassets (which may have different features) would be characterized under Singapore law.
Taiwan	From the FSC's and the Central Bank's perspectives, crypto/virtual assets are not currency and classified as "virtual commodity." This approach has also been confirmed by the Taiwan High Court. However, they are silent on whether these can constitute "property." It should be noted that such virtual commodity with the nature of security will constitute securities under the Securities and Exchange Act.
Thailand	Cryptocurrencies are considered "digital assets" under the Digital Asset Decree, and digital assets are regarded as intangible assets under the existing VAT law. The trading of digital assets would therefore be subject to VAT at the current rate of 7% under the current law.

20 Are there any other relevant rules or provisions you would like to mention?

Australia	No.
Hong Kong	No.
Singapore	Not applicable.
Taiwan	No.
Thailand	Regarding financial service provision related to digital assets (e.g., digital asset wallets, digital asset transfer applications, etc.), other relevant laws will need to be taken into account (e.g., payment law, exchange control law) to ensure that the service or product can be offered in Thailand.

APPENDIX

Australia

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ("**AML/CTF Act**")
2	**Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?**	Yes, under the AML/CTF Act.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	When digital currency is exchanged for fiat money in the course of carrying on a digital currency exchange business, e.g., P2P exchanges, digital wallets, crypto ATMs, payment providers.
4	**Is there a need for registration or licensing?**	Yes, enrolment with the Australian Transaction Reports and Analysis Centre (AUSTRAC), and digital currency exchange registration.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes, civil penalty provisions have a maximum penalty of AUD 21 million. In determining a pecuniary penalty, the Federal Court of Australia will have regard to: 1. the nature and extent of the contravention; and 2. the nature and extent of any loss or damage suffered as a result of the contravention; and 3. the circumstances in which the contravention took place; and 4. whether the person has previously been found by the Federal Court in proceedings under this Act to have engaged in any similar conduct; and

Australia

5	**Are there criminal or administrative sanctions in case of noncompliance? Indicate the sanctions.**	5. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in proceedings under a law of a State or Territory to have engaged in any similar conduct; and 6. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct; and 7. if the Federal Court considers that it is appropriate to do so — whether the person has previously been found by a court in proceedings under the Financial Transaction Reports Act 1988 to have engaged in any similar conduct.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Customer identification (KYC) must be conducted before the company provides a designated service (i.e., the service of exchanging digital currency for fiat money) under s 32 of the AML/CTF Act. This is the case for all clients and is not determined by a threshold amount.
7	**Is it possible to externalize AML duties in your country?**	Yes, customer identification procedures may be carried out by an agent of the reporting entity. However, the reporting entity must include AML/CTF-specific clauses in the contractual agreement with the agent.
8	**How many licenses/registrations have been delivered as of January 2021?**	Media has reported 310 digital currency exchange registrations with AUSTRAC; however, there is no formal media release from AUSTRAC on this point.

Australia

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	The regulatory framework is still developing in Australia. The Australian Securities and Investments Commission had released significant guidance as to when a cryptoasset could be deemed a financial product. To the extent that a cryptoasset is characterized as a financial product, organizational competence, insurance and capital requirements would apply. From a commercial perspective, it is likely various insurances would be required regardless.
10	**Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?**	To the extent that the cryptoasset is regulated under the AML/CTF Act or the Corporations Act 2001 (Cth), yes, Australia has significant consumer protections in place to protect such investors. For example, a financial services provider must ensure that any statements (e.g., even on a website or social media marketing) are not misleading and deceptive under Australian law.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Yes, we have seen crypto/virtual asset providers accepted in this way.
12	**Are there specific tax provisions applicable in your country?**	Goods and Services Tax (GST) From 1 July 2017, the purchase and sale of cryptocurrency is treated as equivalent to money for purposes of GST where certain criteria are met.

Australia

12 **Are there specific tax provisions applicable in your country?**

Treasury Laws Amendment (2017 Measures No. 6) Act 2017 amended the A New Tax System (Goods and Services Tax) Act 1999 ("**GST Act**") with the effect that a supply of cryptocurrency is not treated as a supply unless it is provided as consideration for another supply of money or cryptocurrency — for example, in debt trading or foreign currency exchanges. If there is such a supply, it will be treated as a financial supply for GST purposes.

'Cryptocurrency' is defined for GST Act purposes as digital units of value that are designed to be fungible and:

a. can be provided as consideration for a supply; and
b. are generally available to members of the public without any substantial restrictions on their use as consideration; and
c. are not denominated in any country's currency; and
d. do not have a value that depends on, or is derived from, the value of anything else; and
e. do not give an entitlement to receive, or to direct the supply of, a particular thing or things, unless the entitlement is incidental to:
    i. holding the digital units of value; or
    ii. using the digital units of value as consideration

Australia

12 **Are there specific tax provisions applicable in your country?**

However, cryptocurrency does not include:

f. money; or
g. a thing that, if supplied, would be a financial supply for a reason other than being a supply of one or more digital units of value to which paragraphs (a) to (f) apply.

The Australian Taxation Office (**ATO**) provides examples of cryptocurrencies that would be considered cryptocurrencies for GST purposes, including Bitcoin, Ethereum, Litecoin, Dash, Monero, ZCash, Ripple, YbCoin. The ATO notes that a cryptocurrency with value based on something else or that gives an entitlement or privileges to something else would not be a cryptocurrency for GST purposes, for example: a token that is aligned with an Australian or foreign currency (e.g., a "stablecoin"), or gives you an entitlement to use software application services.

Income tax
Very broadly, the ATO considers that a cryptocurrency is generally a Capital Gains Tax (**CGT**) asset for tax purposes under the Income Tax Assessment Act 1997 (ITAA 97).

As a result, if a capital gain is made on the disposal of a cryptocurrency, some or all of the gain may be taxed under the CGT regime. The ATO does note that in some limited circumstances, certain capital gains or losses from disposing of a cryptocurrency that is a personal use asset may be disregarded. Records of each cryptocurrency transaction are generally needed to be kept in order to work out whether a capital gain or loss from each CGT event has been made.

Australia

12	**Are there specific tax provisions applicable in your country?**	Where one cryptocurrency is disposed of to acquire another cryptocurrency, the ATO's view is that you dispose of one CGT asset and acquire another CGT asset. In relation to a 'chain split,' the ATO's view is that it should not result in a derivation of ordinary income or a capital gain at the time of receiving the 'new' cryptocurrency. However, if the new cryptocurrency is held as an investment, a capital gain may be made when it is disposed. For the purposes of working out the capital gain, the ATO considers that the cost base of a new cryptocurrency received as a result of a chain split is zero. Alternatively and in relation to businesses, the ATO's view is that if cryptocurrency is held for sale or exchange in the ordinary course of business, the trading stock rules may apply rather than the CGT rules. Generally, proceeds from the sale of cryptocurrency held as trading stock in a business are ordinary income, and the cost of acquiring cryptocurrency held as trading stock may be deductible. For the ATO, if a business is not a cryptocurrency business, but uses cryptocurrency in its business activities, that cryptocurrency should be accounted for as other assets or items used in the business. For example, if a business received cryptocurrency for goods or services provided as part of a business, the business would need to include the value of the cryptocurrency in Australian dollars as part of its ordinary income.
13	**Is the accounting regime of crypto/virtual assets clear in your country?**	There is no clear guidance on this from Australian authorities yet.
14	**Did your country regulate ICOs?**	The Australian Securities and Investments Commission's (ASIC) had noted that an initial coin offering (ICO) may constitute a managed investment scheme (MIS). Specifically, if the value of token (i.e., the rights or benefits) is derived from or related to the management of the arrangement or scheme, then it is likely that the issuer of the ICO is offering an MIS.

Australia

14	**Did your country regulate ICOs?**	This means the ICO would be a financial product for the purposes of the Corporations Act, and would therefore be subject to Australian financial services law as well as Australian consumer laws regarding the offer of services or products. The ASIC information sheet on Initial coin offerings and cryptoassets (INFO 225) was refreshed in May 2019 following consultation to which Baker McKenzie provided a report. INFO 225 provides guidance on how the Corporations Act may apply to cryptoassets. Under the Corporations Act, persons dealing in financial products must hold an Australian financial services license (AFSL). Importantly, ASIC notes that each cryptoasset must be assessed on an individual basis considering the cryptoasset's specific rights and features.
15	**What are the main provisions?**	Not applicable.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	As above, ASIC had indicated that each cryptoasset should be assessed on an individual basis. The most likely characterizations of a cryptoasset from an Australian financial services perspective are interest in a MIS, security, derivative and noncash payment facility.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, as above, any cryptoasset that can be characterized as a financial product provided to Australian residents will be required to hold an AFSL, unless an appropriate exemption applies.

Australia

18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, though the Australian Competition and Consumer Commission (ACCC) had made it clear that they are monitoring this industry closely. Please refer to the media release in August 2019.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	In Australia so far, there has been little guidance as to whether a cryptoasset would be recognized as property in law, though commentators have noted that in considering the Australian general law and economic tests for property, it is likely that cryptoassets such as Bitcoin would constitute property. Property is generally thought about in the context of "rights over things capable of being identified." Where something does not meet the accepted indicia for property, in practice, the definition does not standstill and the indicia adapts so that a "thing" is not improperly excluded.
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Belgium

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	The Belgian Act of 20 July 2020 *laying down miscellaneous provisions on the prevention of money laundering and terrorist financing and on the limitation of the use of cash,* which amends the Belgian Act of 18 September 2017 *on the prevention of money laundering and the financing of terrorism and on the limitation of the use of cash* ("**AML Act**").
2	**Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?**	Prior to 5MLD, Belgian law did not regulate crypto/virtual asset providers with regard to AML.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	Mandatory registration with the Belgian Financial Services and Markets Authority (FSMA), who will also exercise supervision over them, is required for: ▪ providers of services for exchanges between virtual currencies and fiduciary currencies ▪ custodian wallet providers Note that various execution measures by royal decree are still required to fully implement and regulate the abovementioned entities.
4	**Is there a need for registration or licensing?**	Yes. Virtual currency exchange providers and custodian wallet providers will be obliged to register with the Belgian FSMA. However, various execution measures by royal decree are still required to fully implement such registration requirements and regulate such entities.

Belgium

5	**Are there criminal or administrative sanctions in case of noncompliance?**	Noncompliance with the AML Act may result in administrative fines of not less than EUR 5,000 and no more than EUR 5 million (for natural persons) or not less than EUR 10,000 and no more than 10% of the annual net turnover (for legal entities). As mentioned, future royal decree(s) will provide for a specific set of rules concerning the following aspects of the abovementioned entities: ▪ registration with the Belgian FSMA ▪ conditions for operating their activities ▪ supervision of the FSMA Accordingly, such royal decree(s) may contain additional sanctions.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes, occasional clients need to be identified in the following cases: ▪ transactions exceeding the threshold of EUR 1,000 ▪ irrespective of the amount, if the entity receives the payment in cash or via anonymous electronic money
7	**Is it possible to externalize AML duties in your country?**	Yes, due diligence requirements can be outsourced to a third party under certain conditions. However, the use of outsourcing by an entity to fulfil its legal and regulatory AML obligations should in no way lessen the responsibility of the entity concerned to have an appropriate and efficient organization and to fulfil its legal and regulatory obligations in this regard, nor transfer this responsibility to the service provider.

Belgium

8	**How many licenses/registrations have been delivered as of January 2021?**	Zero, as the registration procedure is not yet in place.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	No, there is still no specific prudential regulatory framework in place for crypto/virtual asset providers, albeit that such service providers are subject to general financial services laws and conduct of business requirements that may be applicable to them when providing regulated (financial) services (such as prospectus requirements, MiFID II requirements, MAR, consumer law protection requirements, certain specific regulations of the FSMA, etc.).
10	**Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?**	Various general consumer protection requirements are in place, which also apply to crypto/virtual asset providers when dealing with consumers. Depending on the circumstances, crypto/virtual assets may also qualify as "financial instruments", "investment instruments" or "investment products", potentially triggering various specific regulatory requirements respectively under MiFID II, the Prospectus Regulation and Belgium's Transversal Royal Decree (which contains various conduct of business requirements when commercializing financial products to consumers). The FSMA also banned the marketing to retail clients of financial products whose return depends directly or indirectly on virtual money.

Belgium

11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are currently no specific rules requiring banks to provide crypto/virtual asset providers with bank accounts. Therefore, the ease of accessing a bank account will vary depending on the bank and crypto/virtual asset provider. However, the Belgian Act of 8 November 2020 introducing provisions on the basis banking service for companies in Book VII of the Code of Economic Law introduced a legal right to a bank account for non-consumers, which is particularly relevant for enterprises in AML-sensitive sectors, such as the diamond industry (and the crypto/virtual asset industry). The new rules will enter into force on 1 May 2021, subject to a few exceptions. As of that date, if at least three banks refuse to offer basic banking services, a company can submit a request to the Belgian basic banking services chamber to obtain basic banking services. Note however that the basic banking services scope does not include so-called safeguarding accounts (which may thus impact crypto/virtual asset service providers if they require such type of accounts for the operation of their business).
12	**Are there specific tax provisions applicable in your country?**	Under Belgian law, there are no specific tax provisions dealing with crypto/virtual assets. Depending on the way the revenue in the context of virtual currency/assets is generated, the taxation will differ. If the profit resulting from the cryptoassets is derived in the framework of a professional activity or is derived by a company, it will be characterized as professional income and taxed accordingly. When an individual realizes profits based on cryptoassets (outside the context of their professional activity), there are two possibilities. If the transactions fit within the normal management of a private estate and if they are not speculative, the profit resulting therefrom will be tax-exempt. If the transactions do not fit within the normal management of a private estate or if they are speculative, the profit will be taxed as miscellaneous income at a tax rate of 33% (plus communal surcharges). There are a number of tax rulings in which it was concluded that the capital gains resulting from cryptoassets are to be characterized as miscellaneous income.

Belgium

13	**Is the accounting regime of crypto/virtual assets clear in your country?**	As far as we are aware, there are no specific Belgian rules or guidelines regarding the accounting treatment of crypto/virtual assets.
14	**Did your country regulate ICOs?**	Under Belgian law, there are no specific laws or regulations regarding ICOs. However, depending on how the ICO is structured, various financial services laws and regulations may apply, such as the MiFID II regime, prospectus requirements, the AIFMD, MAR, etc. In 2017, the FSMA published a communication regarding the various laws and regulations that may apply to ICOs.
15	**What are the main provisions?**	Not applicable.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, depending on how the crypto/virtual asset is structured, different sets of rules may apply, e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to such financial instrument will be subject to MiFID II requirements.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, depending on how the crypto/virtual asset is structured, different sets of rules may apply, e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to such financial instruments will be subject to MiFID II requirements.

Belgium

18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Yes, the FSMA banned the marketing to retail clients of financial products whose return depends directly or indirectly on virtual money.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	As far as we are aware, no Belgian court, tribunal, government agency, regulatory authority or other decision-making body officially held or asserted that the owner or holder of crypto/virtual assets has *in rem* "property" rights (*eigendom*) over such assets under the laws of Belgium. Although this would require further legal analysis, it is probably the better view that the holder or "owner" of the crypto/virtual assets merely owns the rights and/or receivables attached to such assets
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

France

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Law n° 2019-486 of 22 May 2019 (PACTE-law), Ordinance 2020-115 of 12 February 2020 strengthening the national system for combating money laundering and terrorist financing; Ordinance n° 2020-1544 of 9 December 2020 strengthening the anti-money laundering and anti-terrorist financing framework applicable to digital assets.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Yes. Prior to the implementation of 5MLD, certain activities rendered on cryptoassets were already subject to AML/CFT provisions.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	Mandatory license: ▪ crypto/fiat exchange service providers ▪ custodian wallet providers ▪ crypto/crypto exchange service providers ▪ operation of a trading platform Voluntary license: ▪ the four just mentioned for the mandatory license + ▪ RTO ▪ portfolio management ▪ investment advice ▪ underwriting ▪ guaranteed investment ▪ unsecured investment

France

4	**Is there a need for registration or licensing?**	Yes. Some digital asset service providers must be registered and all digital asset service providers can apply for a voluntary license.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. The mandatory registration grants the service providers a monopoly. Anyone who infringes the monopoly is criminally liable (maximum of two years in prison and a EUR 30,000 fine). A provider who opts for the voluntary license and does not comply with its obligations may also be sanctioned (administratively) by the Financial Markets Authority.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes. The mandatory registration grants the service providers a monopoly. Anyone who infringes the monopoly is criminally liable (maximum of two years in prison and a EUR 30,000 fine). A provider who opts for the voluntary license and does not comply with its obligations may also be sanctioned (administratively) by the Financial Markets Authority.
7	**Is it possible to externalize AML duties in your country?**	Yes. All AML-related duties, with the exception of suspicious transactions, can be externalized.
8	**How many licenses/registrations have been delivered as of January 2021?**	Ten (as of 4 March 2021).

France

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes, the registration and the license trigger duties beyond AML. Minimum capital: between EUR 50,000 and EUR 150,000. OR Insurance: must cover at least EUR 400,000 per claim and EUR 800,000 per year **Organizational duties:** ▪ directors fit and proper ▪ effective beneficiaries ▪ conflicts of interest ▪ sound computer system ▪ clear, accurate and non-misleading information ▪ customer complaints management system ▪ pricing policy ▪ etc.
10	**Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?**	Yes, only licensed entities can do direct solicitation. Merely registered entities are prohibited from direct solicitation. In case of infringement, criminal liability attaches (maximum five years in prison and maximum fine of EUR 375,000 that can be fivefold for legal persons). There are no specific rules on consumer law or financial compensation scheme. If a crypto/virtual asset qualifies as a financial instrument, all relevant rules applying to financial instruments will apply to the crypto/virtual asset, including financial compensation schemes.

France

11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Yes, licensed and registered service providers have a legal certainty to obtain access to a bank account.
12	**Are there specific tax provisions applicable in your country?**	Yes, occasional trading in cryptoassets benefits of a flat tax of 30% on capital gains.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	Yes, the Accounting Standards Authority (ANC) amended its general chart of accounts to introduce accounting rules for token issuers and subscribers on 10 December 2018.
14	**Did your country regulate ICOs?**	Yes, through the PACTE law (see above). An issuer of crypto/virtual assets that are not already regulated through other provisions (e.g., security tokens) can apply for an optional visa to the AMF.
15	**What are the main provisions?**	Optional visa: ▪ information document ▪ promotional communication ▪ safekeeping of assets ▪ AML duties

France

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, securities tokens must follow all relevant and existing financial regulations (prospectus, financial services on securities tokens, etc.). This being said, only non-listed securities issued in France can be registered on a blockchain.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, if the underlying crypto/virtual asset qualifies as a financial instrument (security token). In this case, the scope of the regulation is exactly the same as the one applying to financial instruments (MiFID, MiFIR, Prospectus, etc.). For crypto/virtual assets that do not qualify as financial instruments, digital asset service providers are regulated by the law of 22 May 2019 (PACTE). Please see above for more details.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, cryptoasset tumblers are not directly forbidden but digital assets are defined in such a way that they must ensure the identification of the owner. This might have an indirect effect on tumblers.

France

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	There is little case law on digital/cryptoassets. In a ruling of 26 February 2020, the lower commercial court (*tribunal de commerce*) held that Bitcoin is an intangible, consumable and fungible good and it should be assimilated to legal money in the case of a loan. Consequently, any loan in bitcoins has the effect of transferring property to the borrower with all the legal consequences that entails (especially in terms of *usus* and *fructus*).
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Germany

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	The Money Laundering Act (*Geldwäschegesetz*; "**GwG**") and the German Banking Act (*Kreditwesengesetz*; "**KWG**"). Both acts were amended by the Act to implement the Amendment Directive to the Fourth EU Money Laundering Directive (*Gesetz zur Umsetzung der Änderungsrichtlinie zur Vierten EU Geldwäscherichtlinie*) of 12 December 2019, which went into effect largely on 1 January 2020.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Prior to the implementation of 5MLD, certain cryptoassets (in particular, security tokens and currency tokens) were already treated as financial instruments within the meaning of the KWG, and security tokens were treated as securities within the meaning of the Securities Trading Act (*Wertpapierhandelsgesetz*; "**WpHG**") and the German Securities Prospectus Act (*Wertpapierprospektgesetz*). As a result, providers of financial services relating to such types of tokens were already subject to a license requirement under the KWG and were obligated persons under the GwG.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	As a preliminary remark in relation to cryptoassets, the 5MLD was implemented by including cryptoassets in the definition of financial instruments and creating the new licensable activity of crypto custody. **Mandatory license:** ▪ all MiFID services related to cryptoassets ▪ principal brokerage (sale and purchase of financial instruments in one's own name, but for the account of others) ▪ investment brokerage (transmission of orders or influencing someone's preparedness to buy or sell financial instruments, which in Germany requires a banking license)

Germany

3	**What are the services/professions related to crypto/virtual assets that are regulated with regards to AML?**	▪ investment advice ▪ operation of an MTF ▪ placement ▪ operation of an OTF ▪ contract brokerage (entering into sale and purchases of financial instruments in the name and on behalf of the client) ▪ portfolio management ▪ own account trading ▪ securities custody (in relation to security tokens) (a type of banking business in Germany) ▪ underwriting (in relation to security tokens) (a type of banking business in Germany) and/or ▪ custody of cryptoassets or of private cryptographic keys which serve to hold cryptoassets
4	**Is there a need for registration or licensing?**	Yes, a license is required.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Rendering of financial services or banking activity without license is a criminal act that can be punished with imprisonment (up to five years) and severe monetary penalties.

Germany

5	**Are there criminal or administrative sanctions in case of noncompliance?**	At present, criminal sanctions can only be levied against individuals, but not against corporations. Where criminal acts are committed on behalf of a corporation, administrative fines can be levied against the corporation if the criminal act was committed by directors or officers of the corporation or if the corporation violated its duty to properly supervise their employees, i.e., no proper compliance measures were taken to prevent unauthorized banking or financial services business from being performed with German residents. Monetary penalties may be significant and elements of the penalty may be determined based on a percentage of the offender's annual revenues (up to 10%). An affiliate or officer of an affiliate should usually only be subject to a sanction by the BaFin if it would be involved in the violation. Currently, legislative plans are underway to also allow criminal sanctions against associations, including corporations, directly.
6	**Are there thresholds triggering client identification duties for occasional clients?**	In the case of money transfers subject to Regulation (EU) 2015/847, the threshold is EUR 1,000 and in all other cases EUR 15,000. However, these thresholds apply only to occasional transactions outside of an existing customer relationship. It is unrealistic to assume that one of the above services would be delivered outside of a customer relationship, and hence, we do not think these thresholds matter in practice.
7	**Is it possible to externalize AML duties in your country?**	Yes, but a differentiation must be made between the outsourcing of KYC and the outsourcing of internal safeguarding measures.

Germany

7	**Is it possible to externalize AML duties in your country?**	In the first case, there is a further differentiation between outsourcing to obligated parties and to other parties. In the case of outsourcing to other parties, a written agreement is required and the party must be reliable and properly supervised, e.g., through random checks. In the case of outsourcing of internal safeguarding measures, the outsourcing must be notified to the regulatory authority who could object against the outsourcing if supervision were impaired.
8	**How many licenses/registrations have been delivered as of January 2021?**	Information unavailable. We are aware of several entities that have applied for the license.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Capital requirements for MiFID services range from EUR 50,000 to EUR 730,000 depending on the type of services and whether or not customer monies/assets are held. For crypto custody, an initial capital of at least EUR 125,000 will be required. All providers will be subject to normal organizational duties under the Banking Act (but for the avoidance of doubt, not the prudential regulation under MiFID, except where the cryptoassets were to be considered securities at the same time). This would include in particular: ▪ proper risk management ▪ directors fit and proper

Germany

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	▪ adequate human and technical resources ▪ emergency concepts, particularly regarding IT outage ▪ proper compensation systems In its guidance note on crypto custody business, BaFin stresses that it expects a robust IT strategy. New capital requirements will apply under the Investment Firm Regulation (EU) 2019/2033 (IFR) and the Investment Firm Directive (EU) 2019/2034 (IFD). The German law implementing this new regime is expected to enter into force on 26 June 2021.
10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	There are no specific rules around consumer protection, advertising or financial compensation schemes for investment services related to cryptoassets or crypto custody. For the sake of completeness, BaFin has issued a general order under Article 42 MiFIR ("product intervention") that bans CFDs offered to retail clients, with some limited exemptions, which require mandatory initial margin protection for small investors. The initial margin protection for CFDs with cryptocurrencies as underlying amounts to 50%, which is the highest protection compared to other types of CFDs. Further conditions apply for coming under the exemption from the product ban on CFDs.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are no rules requiring banks to provide cryptoasset providers with bank accounts (except where those cryptoasset providers are regulated payment services firms). Therefore, the ease of accessing a bank account will vary depending on the bank and cryptoasset provider.
12	**Are there specific tax provisions applicable in your country?**	No. However, the Federal Ministry of Finance has provided some guidance around cryptoassets held as part of business assets and as part of private assets, and with regard to VAT questions, on its website.

Germany

13	**Is the accounting regime of crypto /virtual assets clear in your country?**	No. We are not aware of any national guidance.
14	**Did your country regulate ICOs?**	There is no explicit regulation of ICOs, but the German regulator BaFin has issued various guidance. In essence, the German view was (even before the implementation of 5MLD) that cryptocurrencies were to be treated as financial instruments in the form of units of account. Any token representing a financial right against the issuer or a membership right is a security. The guidance on utility tokens is not fully clear. A pure voucher for future goods or services is not a security, but if in reality it is a corporate finance tool and the primary purpose is to create any investment opportunity, the utility token can be characterized as a security.
15	**What are the main provisions?**	If the token is a security, a prospectus under the EU Prospectus Regulation will be required for a public offering of token, unless an exemption applies. Given the clarification upon the implementation of the 5MLD, many services surrounding token offerings are regulated activities, particularly investment brokerage, placement or trading for own account.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	See Questions 10, 13, and 14. In addition, BaFin has issued a general ruling that restricts the offering of CFDs to retail investors. For CFDs with cryptocurrencies as an underlying, the highest initial margin protection applies (50% of the contact value).

Germany

17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Activities regarding cryptoassets that are cryptocurrencies will submit the services listed in Question 3 to a financial services license requirement. See Question 9 for more details on the scope of the regulation. Activities with cryptoassets that are, at the same time, securities will trigger an additional application of the rules for investment firms under the Securities Trading Act, which implements MiFID, i.e., conduct of business rules (customer KYC, acting in the best interest of the customer, information obligations, etc.) and prudential rules (conflicts of interest, inducements, best execution, segregation of assets, etc.).
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, but this tumbler service could be considered a participation in the act of money laundering.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	There is no case law. We note, however, that — initiated by the recent introduction of the definition of cryptoassets in the KWG — views in legal literature have been expressed that, for the purposes of the enforcement on the assets of a debtor, cryptoassets held by such debtor constitute "other property rights" within the meaning of the German Civil Procedure Act, meaning that they can be attached and realized in an enforcement action against the debtor.
20	**Are there any other relevant rules or provisions you would like to mention?**	Not applicable.

Hong Kong

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Hong Kong's anti-money laundering framework aligns with the FATF standards. The relevant legislation is the Anti-Money Laundering and Counter Terrorist Financing Ordinance (AMLO) which is supplemented by industry/service specific guidance from the relevant regulators. The 5th AMLD does not have application in Hong Kong.
2	**Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?**	The standards that apply depend on the nature and regulatory status of the crypto/virtual assets and services being provided. Licensed crypto/virtual asset service providers are required to comply with the AMLO or the industry specific requirements that are determined by the relevant regulator.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	Hong Kong has to date adopted the position that most crypto/virtual assets are already covered by existing regulations including the Securities and Futures Ordinance (SFO), the Payment Services and Stored Value Facility Ordinance (Payment Systems and SVF Ordinance) and the Banking Ordinance. Depending on the nature of the proposed activity, it is possible that one or more licensing/registration requirements may be applicable. A detailed analysis is required to determine whether, and how, an activity may be regulated. Hong Kong has also commenced public consultations on a proposed revised licensing regime that would be applicable to Virtual Asset Service Providers and further monitoring will be required to determine the scope of the final approach.
4	**Is there a need for registration or licensing?**	Yes, depending on the proposed activities. See previous answers.

Hong Kong

5	**Are there criminal or administrative sanctions in case of noncompliance? Indicate the sanctions.**	Engaging in unlicensed activities or failing to comply with applicable AML requirements could constitute an offence. Firms or individuals could be subject to fines, imprisonment and other supervisory enforcement action from the Securities and Futures Commission (SFC), the Hong Kong Monetary Authority (HKMA), the Customs and Excise Department (CED) or other relevant regulators.
6	**Are there thresholds triggering client identification duties for occasional clients?**	All in scope licensed providers must conduct AML/CFT processes when establishing a business relationship with a customer and thereafter undertake reviews on a periodic basic. In the event they suspect money laundering or other illegal activities, a suspicious transaction report must be filed. Occasional transfers are subject to varying requirements regarding the extent of information that is required to be obtained depending on the amount and methodology used for a transfer.
7	**Is it possible to externalize AML duties in your country?**	Yes, the administrative duties may be outsourced, for example, to another licensed entity, provided that the organisation proposing to outsource the services conducts sufficient due diligence and monitoring of the third-party service provider undertaking the AML activities on its behalf. The regulatory responsibility for compliance with AML obligations including the filing of any STR's and other requirements cannot be outsourced.
8	**How many licenses/registrations have been delivered as of January 2021?**	The ongoing total count of successful registrations across the various business types is not published at an aggregated level, but the registries which record details of all licensed entities or individuals are publicly accessible.

Hong Kong

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	The Hong Kong regulators generally take a technology neutral approach to regulation. The rules applying to a crypto-related entity depend on the type of entity and the types of activity that are undertaken and they generally apply in the same way as if the entity engaged in traditional financial services activities. The various regulated activities in Hong Kong are subject to requirements which may include minimum capital, segregation of client assets, fit and proper tests for individuals and large shareholders. There are also key positions that are required to be filled within licensed organisations by suitably experienced and licensed individuals.
10	**Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?**	Please see previous responses. If a license is required and the activities are regulated, they will be subject to the same monitoring as other financial services. These may include suitability requirements regarding investments and restrictions on the classes of investors to which products or services may be offered.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	The ease of accessing a bank account will vary depending on the bank and cryptoasset provider. Depending on the specific product or service offered by the crypto asset provider and its licensing conditions, the appointment of a separate custodian to hold customer assets may be required.
12	**Are there specific tax provisions applicable in your country?**	Under Departmental Interpretation and Practice Notes No. 39 (DIPN 39) issued by the Inland Revenue Department (IRD), the tax treatment of “digital assets”, which include digital tokens (such as utility tokens and security tokens) and cryptocurrencies, is to be determined applying the existing provisions in the Inland Revenue Ordinance (Cap. 112) (IRO). Under the IRO, a person is liable to Hong Kong profits tax to the extent that he carries on a trade, profession or business in Hong Kong, and derives Hong Kong sourced profits (excluding profits from the sale of capital assets) from such trade, profession or business. No capital gains tax is levied in Hong Kong.

Hong Kong

13	**Is the accounting regime of crypto/virtual assets clear in your country?**	IFRS is generally followed in Hong Kong.
14	**Did your country regulate ICOs?**	Yes. A firm proposing to undertake an ICO must consider registration and other legal requirements under existing securities laws. The SFC has issued extensive guidance as to how it considers these laws apply to an ICO.
15	**What are the main provisions?**	To the extent that the crypto/virtual assets constitute shares / debentures of a company or securities as defined in the SFO, the prospectus registration requirement under the Companies (Winding Up and Miscellaneous Provisions) Ordinance or offering document authorisation requirement under the SFO apply, unless an exemption is available.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, the Hong Kong regulators generally take a technology neutral position when it comes to regulatory oversight. Cryptoassets that qualify as securities or cryptoasset products that constitute other types of financial products and services are subject to all rules typically applicable to securities and financial products, as relevant.

Hong Kong

17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, parties who serve as brokers, custodians, fund managers, investment managers, automated trading services operators, trustee etc., or other simiilar roles will be regulated. Please refer to our response to question 3 above.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, other crypto-specific activities are not expressly prohibited but that does not preclude activities from being considered, deemed or interpreted as being subject to or otherwise violating existing laws.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	The position in Hong Kong remains unclear. The HKMA has previously noted that crypto assets like Bitcoin are not "money or currencies". They have been referred to within the Legislative Council as being "a kind of virtual commodity created in the virtual world". The SFC considers that many, though not all, crypto assets could be securities and subject to regulation under existing laws. There have not, however, been any court or other decisions which have clarified that crypto/virtual assets are "property" under the laws of Hong Kong. The ownership of crypto assets and their transfer between private individuals are not currently subject to any legal restrictions."
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Italy

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	The Legislative Decree no. 125 of 3 October 2019 ("**5MLD Implementing Decree**") implemented the 5MLD in Italy, amending Legislative Decree no. 231 of 21 November 2007 ("**Italian AML Decree**"). It is worth highlighting that before the entry into force of the 5MLD, Italy was the first EU country to extend AML duties to cryptocurrencies services providers, through the Legislative Decree no. 90 of 25 May 2017, which amended the Italian AML Decree.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	See our answer to Question 1.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	**Obliged subjects:** ▪ providers engaged in services related to the use of virtual currencies, including every physical or legal person that provides to a third party, professionally as well as online, services functional to the use, the exchange and the storage of virtual currency and the conversion from or into currencies having legal tender or in digital representations of value, including those convertible into other virtual currencies as well as the services of issuance, offering, transfer and clearing and any other service functional to the purchase, negotiation or intermediation in the exchange of the same currencies; and/or ▪ custodian wallet providers

Italy

4	**Is there a need for registration or licensing?**	Yes. Providers engaged in services related to the use of virtual currencies and custodian wallet providers must inform the Italian Ministry of Finance (MEF) about their activity with virtual currencies and are required to enroll on a special section of the register of moneychanger entities held by the *Organismo degli Agenti e dei Mediatori* (OAM), although the relevant technicalities for fulfilling such additional obligations have not been issued yet. Therefore, the Italian registration requirements are not applicable as of today (3 September 2020).
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. Noncompliance with the AML obligations may lead to pecuniary administrative sanctions up to EUR 1 million (or the higher between EUR 5 million of the 10% of the annual turnover if the obliged subject is also a regulated entity) in case of particularly serious and repeated violations. Breaches of the registration requirements will not be subject to sanctions until the adoption of the relevant technicalities. The applicable sanctions have not been established yet.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes, occasional clients must only be identified for transactions above EUR 15,000. Separate transactions which appear part of an aggregate transaction are considered as a single transaction. Similarly, occasional clients must be identified when carrying out an occasional transaction that amounts to a transfer of funds (in the definition of the Wire Transfer Regulations) exceeding EUR 1,000.

Italy

7	**Is it possible to externalize AML duties in your country?**	Yes. Obliged subjects can externalize CDD duties to third-party providers, subject to compliance with specific outsourcing requirements. However, should the information gathered by the third-party providers appear insufficient, false or not conclusive in order to identify the client, the obliged subject is required to directly conduct the CDD.
8	**How many licenses/registrations have been delivered as of January 2021?**	Not applicable.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	No. There are no additional regulatory constraints for providers engaged in services related to the use of virtual currencies and custodian wallet providers beyond the aforementioned AML duties and the envisaged registration requirements on the OAM register under Italian law.
10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	At the beginning of 2020, the Consob (the Italian securities and markets authority), following public consultations with market operators, scholars, law firms and other stakeholders, published a final report on "Initial offerings and exchange of cryptoassets," providing guidance on how ICOs can be compliant with general Italian law and financial regulations, without further legislative or regulatory interventions. According to the Consob, ICOs of tokens that fall under the scope of the definitions of "financial instruments" or "investment products" (i.e., the so-called security tokens) are subject to the ordinary rules regulating the offer of financial instruments. As this is an area of maximum harmonization within the EU legal system, the Consob expects the ESMA to take the lead in developing a tailored regulatory framework for the offer of crypto-financial instruments.

Italy

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	Furthermore, the Italian financial regulations contemplate the domestic definition of "financial products," which includes financial instruments and any other form of investment with a financial nature. In this respect, it is likely that tokens other than security tokens, in particular the so-called utility tokens, might fall under the definition of financial products. In order to guarantee an adequate level of investor protection, without applying the ordinary rules regulating the offer of financial instruments, the Consob is of the opinion that ICOs and the exchange of utility tokens which qualify as financial products must be carried out through authorized platforms (i.e., platforms which are subject to requirements similar to the crowd funding platforms), which would be required to enroll on a register held by the Consob. This system aims to guarantee the protection of investors in two ways: on the one hand, the authorized platforms scrutinize the issuers of tokens, admitting to ICOs and exchange only the cryptoassets that appear more worthy, and on the other hand, the register held by the Consob allows for supervision over the authorized platforms, monitoring illicit conducts.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Since cryptoasset service providers are not strictly regulated by law, we are of the opinion that Italian banks would adopt a case-by-case approach, based on the complexity and risk profile of the cryptoassets and the related services, to give access to bank accounts.

Italy

12 **Are there specific tax provisions applicable in your country?**

There are no specific tax provisions. However, the tax ruling published by the Italian tax authority (ITA) dated 2 September 2016 (No. 72/E), concerning the tax treatment of professional cryptocurrency service providers, stated that the fee for the intermediation services of traditional currencies with cryptos, carried out directly and in a professional manner, is subject to income taxes.

Furthermore, the cryptocurrency amount which at the end of the fiscal year is directly owned by the exchanger should be valued by referring to the average official quotation of online platforms where virtual currency trades occur.

In a ruling dated 2018, the ITA clarified that cryptocurrency spot transactions carried out outside of business activities by individuals do not generate taxable income or deductible losses, in the absence of speculative purposes.

Nevertheless, even in the absence of speculative purposes, the following transactions generate "other income" of a financial nature subject to a substitute tax of 26%:

- cryptocurrency spot transactions, provided that the transferred cryptos have been withdrawn from electronic portfolios (so-called wallet) for which the average balance exceeds EUR 51,645.69, for at least seven continuous working days in the fiscal year
- cryptocurrency forward purchase and sale

Italy

12	**Are there specific tax provisions applicable in your country?**	From a reporting standpoint, holders of cryptocurrencies should indicate the cryptocurrency amount owned in Section RW of the income tax return (in this section, foreign financial investments and assets should be indicated) for the purposes of fulfilling tax monitoring obligations. Although from a reporting standpoint cryptocurrencies are treated as financial assets held abroad, IVAFE (tax on the value of financial assets held abroad) is not due. With specific regard to tokens tax treatment, the tax ruling No. 14/E of 29 September 2018 affirmed that the assignment of a utility token by the issuer is not fiscally relevant as it is considered a mere financial movement. It forms the taxable base at the moment of the inclusion in the P/L and when the good/service connected to the token is transferred/provided. From a personal income tax standpoint, the same ruling stated that the assignment by the token holder of a utility token for consideration is subject to a 26% substitutive tax.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	No, the Italian account principles do not contain specific provisions concerning cryptoassets.
14	**Did your country regulate ICOs?**	Please see above our answer to Question 10. If a cryptoasset does not qualify as a financial instrument, an investment product or a financial product, the relevant ICO is not regulated under Italian law.
15	**What are the main provisions?**	Not applicable.

Italy

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	See our answer to Question 10 for the regulations applicable to security tokens and utility tokens.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Please see our answer to Question 10 for the regulations applicable to security tokens and utility tokens.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, there are no additional regulations applicable to other activities related to crypto/virtual assets, including cryptoasset tumblers.

Italy

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	Yes, in the leading Italian case involving cryptocurrencies, the BitGrail case. BitGrail, an Italian cryptocurrencies exchange that allowed the conversion into legal tender currency only through the Nano cryptocurrency, was declared bankrupt after the theft of EUR 150 million from the company's sole wallet. Although the company proposed a reimbursement plan to its customers, the Italian prosecutors filed for bankruptcy. The Court of Florence ordered the seizure of cryptocurrencies and money property of BitGrail and of one of its directors for their liability as custodians of the wallet, thus assuming that cryptocurrencies are properties that might be the G28 object of precautionary measures.
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Netherlands

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Dutch Act on the prevention of money laundering and terrorist financing (*Wet ter voorkoming van witwassen en financieren terrorisme*, "**AML Act**").
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Not applicable.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	**Mandatory license:** ▪ crypto/fiat currency exchange providers; and/or ▪ custodian wallet providers
4	**Is there a need for registration or licensing?**	Yes. All crypto service providers need to register with the Dutch Central Bank (*De Nederlandsche Bank*, "**DNB**"). Until 21 November 2020, a transitional regime applied to crypto services providers who were already active before 21 May 2020 and have requested registration before that date. Such providers may continue to carry out their activities during the registration process.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. Providing crypto services in the Netherlands without (timely) registration with DNB is a criminal offense and can be sanctioned with a prison sentence (maximum two years), community service or a fine (maximum EUR 21,750).

Netherlands

6	**Are there thresholds triggering client identification duties for occasional clients?**	In-scope cryptoasset providers and custodian wallet providers must conduct CDD on any of these occasions: i. when establishing a business relationship ii. when conducting incidental transactions or related transactions with a value of at least EUR 15,000 iii. when they suspect (the risk of) money laundering or terrorist financing, or doubt the veracity of any documents or information previously obtained iv. when the client is a resident of a high-risk country v. when conducting a transaction involving the transfer of funds as set out in the Wire Transfer Information Regulation (EU) 2015/847 for an amount exceeding EUR 1,000
7	**Is it possible to externalize AML duties in your country?**	Firms are permitted to outsource their AML functions but remain responsible for complying with the requirements of the AML Act and all AML systems and controls related to outsourced activities. Structural outsourcing requires a written outsourcing agreement.
8	**How many licenses/registrations have been delivered as of January 2021?**	One (as of 7 October 2020). No further information is available as the transitional regime still applies. (NB: We understand that DNB is really busy with this and has a special task force that handles registration requests).
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	No, there is no specific financial regulatory framework in place for crypto/virtual asset providers. However, depending on the qualification of the relevant cryptoasset, crypto issuers and service providers may provide regulated (financial) services and be subject to general financial services laws and conduct of business requirements (including prospectus requirements, MiFID II requirements, MAR, and consumer law protection requirements). Certain specific regulations of the FSMA may apply.

Netherlands

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	Under Dutch law, various general consumer protection requirements are in place that also apply to crypto/virtual asset providers when dealing with consumers. Also, depending on the qualification of the relevant cryptoasset as, for example, a financial instrument or security, prospectus requirements and MiFID II or other investor protection requirements may apply.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are no regulatory requirements preventing this. However, banks have been reluctant to open bank accounts for certain industries, including crypto service providers, due to their own KYC/AML obligations. Therefore, it can be a lengthy and complex process to open a Dutch bank account as a crypto service provider (we do not yet know if and how the new registration requirement (positively) affects this).
12	**Are there specific tax provisions applicable in your country?**	No specific tax provisions apply to cryptocurrencies in the Netherlands. Please find below a high-level overview of the personal income tax and VAT considerations in relation to cryptocurrencies. **Personal income tax** Depending on the way the income in the context of cryptoassets is generated, the taxation will differ. Income in the context of cryptoassets may qualify as income from an enterprise (Box I), of which business profits are taxed at a progressive rate. Cryptoassets could also be considered a saving or investment (Box III). The taxation of a taxpayer's savings and investments is based on a deemed income basis, with the fair market value of the taxpayer's property, minus the amount of their outstanding debts and minus a basic allowance, as the taxable base.

Netherlands

12	**Are there specific tax provisions applicable in your country?**	**VAT** In general, no VAT is charged on the mere holding and using of cryptocurrencies to pay for goods and services. Furthermore, transactions involving the exchange of cryptocurrencies are regarded as financial services and should therefore be VAT-exempt.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	We are not aware of any specific rules in this respect.
14	**Did your country regulate ICOs?**	No, unless the relevant coin or instrument qualifies as a financial instrument or security under MiFID II (and the Prospectus Regulation).
15	**What are the main provisions?**	Not applicable.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	This would only be the case where the relevant token, coin or instrument qualifies as a financial instrument or security under MiFID II (and the Prospectus Regulation). This can be the case, for example, for securities tokens, funds of cryptoassets and derivatives relating to cryptoassets.

Netherlands

17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	This would only be the case where the relevant token, coin or instrument qualifies as a financial instrument or security under MiFID II.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No. The DNB and the Dutch Authority for the Financial Markets (*Autoriteit Financiële Marketen* (AFM)) have repeatedly warned about the significant risks associated with cryptos, particularly with regard to financial crime and the vulnerability to deception, fraud, manipulation and cybercrime. Also, in 2018, the DNB and the AFM issued joint recommendations to the (European) legislator, including to amend the European regulatory framework to enable blockchain-based development of SME funding and to reconcile the national and the European regulatory definitions of security (especially regarding cryptos that are comparable to shares or bonds).
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that crypto assets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	Yes. According to the Dutch tax authorities, cryptoassets are considered a property for personal income tax purposes.

Netherlands

20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Singapore

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Singapore's anti-money laundering regulatory framework is aligned with FATF standards, but does not incorporate the 5MLD into its regulatory regime. The relevant AML regulations that apply to crypto/virtual assets depend on the nature and characterization of the crypto/virtual asset. Crypto/virtual assets that are digital payment tokens or e-money tokens are regulated under the Payment Services Act 2019 ("**PS Act**") and the relevant AML regulations are set out in (i) the Monetary Authority of Singapore (MAS) Notice PSN01 ("**PSN01**"), which applies to payment service providers that provide, among other things, account issuance services, domestic money transfer services or cross-border money transfer services, and (ii) MAS Notice PSN02 ("**PSN02**"), which applies to payment service providers that provide digital payment token (DPT) services. Crypto/virtual assets that are securities tokens (i.e., constitute a capital markets product) are regulated under the Securities and Futures Act (SFA) and the relevant AML regulations are set out in MAS Notice SFA04-N02.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Please see above. DPT service providers are regulated under the PS Act and are subject to the AML regulations under the PSN02. Do note that amendments to the PS Act have been enacted to expand MAS' regulation of virtual asset service providers (VASPs) and to align MAS' regulation of VASPs with the FATF standards. As of 23 February 2021, no indication has yet been provided on when these amendments will come into force.

Singapore

3 **What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**

The PS Act

1. Dealing in DPTs or facilitating the exchange of DPTs
   The PS Act regulates the service of dealing in DPTs or facilitating the exchange of DPTs (i.e., by establishing/operating an exchange for the buying or selling of DPTs, where the operator of the exchange takes possession of money or DPTs). Such services could include operating a cryptocurrency exchange and providing cryptocurrency execution services. As discussed, amendments to the PS Act have been enacted (but have not yet come into force) and, pursuant to such amendments, additional services that may be regulated under the service of dealing in DPTs or facilitating the exchange of DPTs may include cryptocurrency/asset custody services and custodian wallet services for DPTs, among others.

2. E-money issuance and/or account issuance
   The PS Act also regulates crypto/virtual assets that constitute "e-money" (e.g., stablecoins with values pegged to a fiat currency), and in particular the service of issuing e-money tokens as well as the service of providing account issuance services (e.g., by issuing the wallet that holds such e-money tokens).

Singapore

3 **What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**

The SFA

1. Dealing in capital markets products
2. Providing custodial services
3. Operating an organized market

Crypto/virtual assets that constitute capital markets products (e.g., tokens that are (i) akin to shares in that they confer ownership rights/interests in a body corporate, (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder or (iii) derivatives or units in a collective investment scheme) are regulated under the SFA. In particular, (a) a person that deals in such crypto/virtual tokens may be treated as dealing in capital markets products, (b) a person that is a custodian of such tokens may be treated as providing custodial services and (c) a person that operates an exchange that facilitates offers to buy or sell such crypto/virtual tokens that are derivatives contracts, securities or units in a CIS may be considered to be operating an "organized market" under the SFA, and may be regulated as an approved exchange or a recognized market operator. These services are regulated under the AML regulations issued pursuant to the SFA (such as SFA04-N02).

Singapore

4	**Is there a need for registration or licensing?**	Yes. Licensing as a payment service provider under the PS Act may be required where the PS Act applies. Where the SFA applies, a capital markets service license or approval as an approved exchange or recognized market operator may be required. The licensing/approval requirements hinge on the characterization of the crypto/virtual asset and the nature of the business being carried out.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes, criminal sanctions are imposed under the PS Act and the SFA for failure to comply with the licensing regime. Noncompliance with the AML regulations may result in warnings, directives to remediate the noncompliance, material fines, suspensions, withdrawal of licenses, or criminal sanctions imposed by the MAS, depending on the nature, extent and severity of such noncompliance. A person who fails to comply with the AML regulations may be liable upon conviction to a fine not exceeding SGD 1 million and, in the case of a continuing offense, to a further fine of SGD 100,000 for every day or part of a day during which the offense continues after conviction.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes, customer due diligence measures are required to be performed before establishing business relations with any client, regardless of whether such customer is an occasional client. Customer due diligence measures are also required to be carried out on customers with whom business relations have not otherwise been established, before effecting or receiving any funds or undertaking any transaction (exceeding a specified amount) for such customer.

Singapore

7	**Is it possible to externalize AML duties in your country?**	Yes, it is possible for AML functions to be outsourced, but the licensed entity remains responsible and accountable for all outsourced AML functions. The outsourcing of AML functions will likely constitute a material outsourcing arrangement under the MAS Guidelines on Outsourcing, and the licensed entity should comply with the requirements under the MAS Guidelines on Outsourcing, including conducting a robust assessment of the service provider and establishing mechanisms to monitor and control the outsourcing arrangement on an ongoing basis.
8	**How many licenses/registrations have been delivered as of January 2021?**	Information is not available, but the public can search the Financial Institutions Directory to verify whether a particular entity is licensed.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes. 1. Minimum capital requirements: a. PS Act: (i) standard payment institution license: SGD 100,000; (ii) major payment institution license: SGD 250,000 b. SFA: Minimum capital requirement hinges on the business activities involved. 2. Insurance is not mandatory for a license under the PS Act but may be a licensing condition imposed by the MAS prior to the grant of a license under the SFA. 3. Yes, the organizational structure of an entity that wishes to be licensed is subject to the approval of the MAS. A licensee is also required to obtain the prior approval of the MAS for the appointment of directors and CEOs, and such directors and CEOs must meet the prescribed fit and proper criteria.

Singapore

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	There is no legislation that specifically protects investors of crypto/virtual assets. However, the Consumer Protection (Fair Trading) Act (CPFTA) protects consumers against unfair practices. Investors may be protected under the CPFTA to the extent that they are consumers (i.e., individuals who, otherwise than exclusively in the course of business, receive goods or services from a supplier). Similarly, the Unfair Contract Terms Act (UCTA) applies in the case of a consumer dealing with a business entity, and to the extent they fall within the statutory definition of consumers under the UCTA, they would be protected.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Yes, it is easy for service providers to have access to a bank account as long as they are duly licensed. However, in the event a crypto/virtual asset service provider is not licensed, or is not able to show to a bank that it has submitted a license application, it is possible that they might be rejected by the bank.
12	**Are there specific tax provisions applicable in your country?**	No.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	We are not aware of any specific Singapore accounting standards or guidelines regarding crypto/virtual assets.

Singapore

14	**Did your country regulate ICOs?**	This depends on the meaning of "ICOs" and the nature/characterization of the "token" being offered. Offers of utility tokens (e.g., a token which only gives users the right to information or to participate in certain rewards/memberships, and which is not a DPT, e-money token or security token) are not regulated, but offers of securities tokens (e.g., tokens that are: (i) akin to shares in that they confer ownership rights/interests in a body corporate; (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder; or (iii) derivatives or units in a collective investment scheme) are regulated. Any offering of tokens that are DPTs or e-money may also be regulated under the PS Act.
15	**What are the main provisions?**	Any offers of securities tokens would be subject to product offering rules under the SFA, including without limitation prospectus requirements. Any dealing in security tokens may also constitute the regulated activity of dealing in capital markets products under the SFA, for which licensing must be obtained. Any offers of tokens that constitute DPTs or e-money would be regulated under the PS Act, under the regulated activity of providing digital payment tokens and e-money issuance services respectively, and a license to conduct such regulated activities must be obtained.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, as discussed above, crypto/virtual assets that constitute capital markets products (e.g., tokens that are: (i) akin to shares in that they confer ownership rights/interests in a body corporate; (ii) akin to debentures in that they evidence an issuer's indebtedness to the token holder; or (iii) derivatives or units in a collective investment scheme) are regulated under the SFA.

Singapore

17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes. Aside from the product offering rules that may be triggered in the case of ICOs involving securities tokens: (a) a person that deals in securities tokens may be treated as dealing in capital markets product; and (b) a person that is a custodian of such tokens may be treated as providing custodial services, and a capital markets services license under the SFA must be obtained. In addition, a person that operates an exchange that facilitates offers to buy or sell tokens that are derivatives contracts, securities or units in a collective investment scheme may be considered to be operating an "organized market" under the SFA, and must be an approved exchange or a recognized market operator.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Please refer to our above responses.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	It has been held in a recent decision of the Singapore International Commercial Court that cryptocurrencies (in that case, Bitcoin and Ethereum) are treated as a form of property for the purpose of constituting a trust. However, it remains to be seen what the exact proprietary nature of cryptocurrencies is, and how other forms of cryptoassets (which may have different features) would be characterized under Singapore law.
20	**Are there any other relevant rules or provisions you would like to mention?**	Not applicable.

Spain

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	The Royal Decree Act 7/2021, dated 27 April 2021 implemented the 5MLD in Spain, amending Act 10/2010, dated 28 April, on the prevention of money laundering and terrorist financing ("AML Act").
2	**Did your country regulate crypto/virtual asset providers with regard to AML? What are the laws/provisions?**	Prior to implementation of 5MLD, Spanish law did not regulate crypto/virtual asset providers with regard to AML. Now, the AML Act includes crypto/virtual asset providers as AML obliged entities.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	The AML Act includes the following virtual asset service providers as obliged entities with regard to AML: ▪ Providers of exchange between virtual currencies and fiduciary currencies; and ▪ Custodian wallet providers.
4	**Is there a need for registration or licensing?**	Yes. Virtual asset services providers established in Spain and virtual asset providers established in other countries that offer their services to Spanish residents (through branch, agents or free provision) need to register with the Bank of Spain ("BoS"). Said BoS register is expected to be operational within 6 months after publication of the AML Act (i.e. by the end of October 2021). A transitional regime applies to crypto services providers who were already active before 29 April 2021. Such providers may continue to carry out their activities and need to register with the BoS before 29 January 2022.

Spain

5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. The AML Act considers the provision of virtual asset services without the required registration to be a (i) very serious administrative infringement (sanctioned with a fine of three to five times the amount of profits derived from the infringement; or 10% of the provider's annual turnover), or (ii) a serious administrative infringement if the activity is carried out in a merely occasional or isolated manner (sanctioned with a fine of two to three times the amount of the profits derived from the infringement; or 5% of the annual turnover).
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes, obliged entities shall identify and verify, by means of reliable documents, the identity of all natural or legal persons who intend to establish business relations or intervene in any occasional transactions whose amount is equal to or greater than EUR 1,000. Additionally, obliged entities shall identify the beneficial owner and take appropriate risk-based measures to verify its identity prior to the establishment of business relations, the execution of electronic transfers exceeding EUR 1,000 or the execution of other occasional transactions exceeding EUR 15,000 (i.e. this limit is only applicable for UBO, the limit for client identification is EUR 1,000 as reflected above).
7	**Is it possible to externalize AML duties in your country?**	Yes, customer due diligence measures can be outsourced to third parties subject to the AML Act, as well as to the organizations or federations of these entities, with the exception of ongoing monitoring of the business relationship. Specific AML tasks may also be outsourced to service providers which are not AML obliged entities. Nonetheless, outsourcing does not relieve obliged entities from ensuring that their responsibilities under the AML Act are fulfilled.

Spain

8	**How many licenses/registrations have been delivered as of January 2021?**	None. The registration was not in place as of January 2021.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	As mentioned in question 4, in line with article 47.1 of 5MLD, the AML Act includes the registration of those entities with the Bank of Spain (financial regulator supervisor). The AML Act does not provide for general regulatory oversight (for example in relation to general conduct or governance rules) beyond AML, save for the need to comply with integrity and reputation requirements in line with banking regulation. The AML Act does not clarify if such integrity and reputation requirements should be complied with by the entity seeking registration, its board of directors and/or significant shareholders. We expect that guidance from the Bank of Spain will be published in this regard during 2021. In any case, depending on the features of the relevant crypto asset, crypto issuers and service providers may fall under the scope of general financial services regulatory framework (in particular MiFID, Prospectus Directive, etc). Additionally, a recent regulation on advertising activities related to cryptoassets has been issued (see question 10 for further information).

Spain

10	**Does your country specifically protect investors of crypto/virtual assets (e.g., consumer law, advertising, financial compensation scheme, etc.)?**	Yes, the Spanish Parliament has approved on 12 March 2021 an amendment to the Spanish Securities Market Act to reinforce the legal framework protecting investors with regard to the advertising of crypto assets. This recent development grants the CNMV (as the financial services regulator) supervisory powers to control the advertising of crypto assets or other assets and instruments that are presented to the public as an investment opportunity, even if they are not activities or products subject to financial services supervision in Spain. For such purposes, the CNMV will issue within the next few weeks draft rules on the scope and content of the rules that crypto advertising should comply with.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are currently no specific regulations requiring credit institutions to provide crypto asset providers with bank accounts. Therefore, the ease of accessing a bank account will vary depending on the credit institution and cryptoasset provider.
12	**Are there specific tax provisions applicable in your country?**	No. However, the Spanish Tax Authorities have issued some rulings on how cryptocurrencies and related activities, such as mining, should be regarded for PIT, VAT, Local Taxes, Wealth Tax, etc. Moreover, still awaiting for Parliamentary action, there is a Draft stating reporting obligations for cryptocurrencies holders (tax form 720).
13	**Is the accounting regime of crypto/virtual assets clear in your country?**	There are no specific regulations regarding the accounting treatment of crypto/virtual assets. However, the ICAC (Spanish Accounting and Audit Institute) has issued some rulings in which it interpreted that, under the current accounting regime, crypto/virtual assets must be regarded as (i) intangible assets, or (ii) inventory if they are intended for sale in the ordinary course of the holder's business.

Spain

14	**Did your country regulate ICOs?**	No, there are no specific Spanish laws or regulations regarding ICOs. However, depending on how the ICO is structured, various financial services laws and regulations may apply, such as the MiFID II regime, prospectus requirements, and AIFMD, amongst others. In 2018, the CNMV published their criteria in relation to ICOs, in particular when they should be treated as public offerings of transferable securities, leading to limitations to its offering in Spain.
15	**What are the main provisions?**	Not applicable.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, depending on how the crypto/virtual asset is structured, different sets of rules will apply (e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to it will be subject to MiFID II requirements, prospectus requirements, and AIFMD, amongst others). Please see Question 14 above.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, depending on how the crypto/virtual asset is structured, different sets of rules will apply (e.g., if a crypto/virtual asset qualifies as a financial instrument, any investment services in relation to it will be subject to MiFID II requirements).
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No.

Spain

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	There is no formal position from regulatory bodies in this regard, but some court decisions have indirectly recognized the nature of crypto asset as property and applied general civil law rules. In particular, the Spanish Supreme Court (Decision STS 2109/2019) held that, in the case of a criminal deception (scam), the appropriate procedure is to repair the damage and compensate the harm done, by returning the monetary amount provided (damages) to those affected/the victims, plus a supplement for the harm equivalent to the profitability of the price of the bitcoins between the moment of investment and the end date of their respective agreements.
20	**Are there any other relevant rules or provisions you would like to mention?**	Aside from rulings clarifying the tax treatment applicable to cryptocurrencies and activities derived thereto, cryptocurrencies have been identified as a priority by the Spanish Tax Authorities Annual Plan which includes, among others, main targets to be audited.

Switzerland

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	No direct applicability of the 5MLD (Switzerland is not a member of the EU or European Economic Area (EEA)). However, Switzerland generally implements FATF standards.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Swiss Act on Anti-Money Laundering (AMLA) and respective ordinances, particularly the Swiss Financial Market Supervisory Authority (FINMA)-AML-Ordinance are applicable. However, no specific crypto-related laws or regulations exist.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	Regulated with regard to AML are financial intermediaries according to the AMLA, i.e., anyone who provides payment services or who issues or manages funds for another person. According to FINMA guidelines, this includes: ▪ issuing of payment tokens (synonymous with cryptocurrencies) ▪ exchange of a cryptocurrency for fiat money or a different cryptocurrency ▪ offering of services to transfer payment tokens if the service provider maintains the private key (custody wallet provider) However, decentralized trading platforms are only subject to the AMLA if they have the possibility of intervening in the transactions of their users (e.g., blocking a transaction). Noncustodian wallet providers and miners are not subject to the AMLA.

Switzerland

4	**Is there a need for registration or licensing?**	According to the AMLA, financial intermediaries have a duty to join a self-regulating organization (SRO) recognized by FINMA. The SROs specify the due diligence obligations under AMLA regulations and ensure that these are complied with by the member financial intermediaries. In addition, the SROs must carry out inspections to ensure that the member financial intermediaries comply with their obligations.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. Any person who fails to comply with the duty to report in terms of Article 9 of the AMLA (in the event of a suspicion of money laundering) shall be liable to a fine not exceeding CHF 500,000. If the offender acts through negligence, he or she shall be liable to a fine not exceeding CHF 150,000. Any dealer that wilfully violates its duty under Article 15 of the AMLA (dealers' duty to verify their due diligence duties by appointing an audit firm) to appoint an audit firm shall be liable to a fine not exceeding CHF 100,000. If it acts through negligence, it shall be liable to a fine not exceeding CHF 10,000. Further criminal sanctions pursuant to Article 305ter of the Swiss Criminal Code in case of insufficient diligence in financial transactions apply in the form of imprisonment of up to one year or monetary penalty.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes. Compliance with due diligence duties, including client identification duties, may be dispensed with by the financial intermediary if the business relationship only involves assets of low value and there is no suspicion of money laundering or terrorist financing. Article 11 of FINMA-AMLO sets out thresholds in different scenarios.

Switzerland

7	**Is it possible to externalize AML duties in your country?**	Yes. The financial intermediary may delegate the identification of the contracting party, the determination of the control holder or the beneficial owner of assets and additional AML duties, but it remains ultimately responsible for the proper fulfillment of the delegated duties. Delegation is subject to different requirements depending on the nature of the delegate.
8	**How many licenses/registrations have been delivered as of January 2021?**	No explicit statistics on how many financial intermediaries have joined an SRO since June 2020 are available. However, a database of financial intermediaries who have joined an SRO is available and searchable on an individual basis.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes, but not explicitly for crypto/virtual assets. The respective entity falls — depending on the structure of the asset, the entity and its business model — under existing rules and regulations, particularly: ▪ Banking Act/Ordinance (in the case of commercial acceptance of public contributions) ▪ Financial Market Infrastructure Act/Ordinance (qualification as securities, licensing requirement for trading systems, reporting requirements for derivatives, trading regulations) ▪ Financial Institutions Act (authorization requirements as securities dealer) ▪ Financial Services Act/Ordinance (obligation to issue prospectus for publicly offered securities, conduct rules) ▪ Collective Investment Schemes Act (licensing requirement for investment funds) ▪ Money Laundering Act (as discussed herein).

Switzerland

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	The following major provisions for crypto/virtual asset service providers concerning (i) minimum capital, (ii) insurance and (iii) specific organizational duties exist: i. Public deposits may not be accepted on a commercial basis (from more than 20 persons) without a banking license. However, exceptions exist, under certain conditions, regarding a) fintech-license, permitting commercial acceptance of public deposits of up to CHF 100 million, and b) sandbox, permitting acceptance of a maximum of public deposits of up to CHF 1 million. ii. Professional liability insurance is required for client advisors upon entry into the register. iii. In addition to the rules of conduct for financial services, obligations apply to financial service providers concerning organizations and conflicts of interest. Organizational duties concern primarily ensuring an adequate operational organization fulfilling regulatory obligations, whereby employees and contracted third parties must have certain qualifications and client advisors must be entered into a register. A new DLT platform license will likely enter into force in 2021. This is a standalone platform license for the trading of tokenized securities.
10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	There is no specific investor protection with regard to crypto/virtual assets. However, FINMA pays particular attention to digital assets.

Switzerland

11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Swiss banks are hesitant to engage in banking relationships with crypto/virtual asset service providers, i.e., access to a Swiss bank account is rather unlikely with traditional institutions. There are two new "digital banks" that may offer such services.
12	**Are there specific tax provisions applicable in your country?**	No particular regime or general rules apply. However, the Swiss Federal Tax Administration has released a working paper concerning cryptocurrencies and initial coin/token offerings (ICOs/ITOs) as the subject of property, income and profit tax, withholding tax and stamp duties. Therein, different types of crypto/virtual assets are distinguished and, depending on their nature, possible tax consequences are described accordingly.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	No, differing opinions as to the classification of crypto/virtual assets within the applicable Swiss accounting rules exist. With regard to the handling of bitcoin and initial coin offerings in accounting according to Swiss law, EXPERTsuisse, an expert association for auditing in Switzerland, has released a Q&A excerpt.
14	**Did your country regulate ICOs?**	Not specifically. However, the Swiss Financial Market Supervisory Authority (FINMA) has published ICO guidelines laying out how financial market legislation is applied with regard to ICOs. ICOs, depending on the manner in which they are designed, fall under the existing laws and regulations according to Question 9 (above).
15	**What are the main provisions?**	See our answer to Question 9.

Switzerland

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	See our answer to Question 9.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	See our answer to Question 9.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Although no specific rules in this regard concerning crypto/virtual assets are in place, companies offering financial intermediary services in this area are subject to the AMLA. See our answer to Question 3.

Switzerland

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	No.
20	**Are there any other relevant rules or provisions you would like to mention?**	The Swiss National Council recently approved a new framework law aiming to improve the legal conditions for the application of distributed ledger technology (DLT). The framework law will now have to pass the state council and, realistically, it is expected to come into force by mid-2021. When passed, the new legal framework will introduce changes to existing Swiss laws and regulations, particularly in the areas of banking law and financial market law. Noteworthy, in particular with regard to the new DLT framework law, is the introduction of a digital book-entry security that can be transferred electronically, rather than requiring a written declaration of assignment as is currently the case.

Taiwan

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Taiwan's anti-money laundering regulatory framework is mainly based on the FATF; Taiwan's legislation does not additionally incorporate the 5MLD into the existing regulatory regime.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Yes, crypto/virtual assets providers are required to comply with the Money Laundering Control Act (Article 5 II). Among the virtual asset providers, the operator of a security token proprietary trading business is specifically asked to follow the 'Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens' as well (Article 6 and 9). Other relevant laws/guidance include: (1) the Counter-Terrorism Financing Act; (2) the Regulations Governing Anti-Money Laundering of Financial Institutions; (3) the Regulations Governing Internal Audit and Internal Control System of Anti-Money Laundering and Countering Terrorism Financing of Securities and Futures Business and Other Financial Institutions Designated by the Financial Supervisory Commission (FSC); and (4) the Taiwan Securities Association Template for Guidelines Governing Anti-Money Laundering and Countering Terrorism Financing of Securities Firms.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	As of February 2021, Taiwan's government is still developing the regulatory framework for services/professions related to crypto/virtual assets' AML issues.

Taiwan

4	**Is there a need for registration or licensing?**	The registration or licensing of crypto/virtual assets merchants might be required. The regulatory treatment hinges on the business activities concerned and the types of cryptoassets/cryptocurrency involved in such business activities. For instance, a crypto merchant who intends to operate the business of proprietary trading of security tokens has to (1) obtain approval from the regulator, the FSC, to establish a securities firm and then (2) apply for a securities business operation license. If a securities firm serves as the issuer of a security token offering itself, it should also submit its application with the prospectus and relevant documents to the Taipei Exchange. For an issuer other than the securities firm to engage in the security token offering planning to raise funds of no more than TWD 30 million (approximately USD 1.04 million), the issuer must (1) incorporate and register a company limited by shares under the laws of Taiwan and (2) further apply to the securities firm for its due diligence review with the prospectus and relevant materials enclosed. When the amount that the issuer is planning to raise exceeds TWD 30 million, the issuer will be subject to the Financial Technology Development and Innovative Experimentation Act and should apply to enter into the regulatory sandbox. For those crypto/virtual assets merchants who meet the regulatory sandbox requirement, the licensing requirement might be temporarily exempted.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Concerning the failure of licensing/registration, the sanctions depend on the crypto/asset business activities involved. Regarding the AML compliance issues, there are criminal and administrative sanctions under the Money Laundering Control Act. Nonetheless, there is no crypto/virtual asset-specific criminal or administrative sanction.
6	**Are there thresholds triggering client identification duties for occasional clients?**	The Money Laundering Control Act does not set a general benchmark. The threshold triggering the client identification duties is industry-specific. There is currently no crypto/virtual asset-specific guidance on the trigger threshold.

Taiwan

7	**Is it possible to externalize AML duties in your country?**	Firms are permitted to outsource their AML functions but remain responsible for all AML systems and controls related to outsourced activities. However, to what extent externalization is allowed is industry-specific and subject to the self-regulatory rules. It should be noted that the securities firm is prohibited from externalizing AML duties, except if it is otherwise permitted by laws or regulations of the Financial Supervisory Commission in Taiwan. (See Article 7 of the Regulations Governing Anti-Money Laundering of Financial Institutions).
8	**How many licenses/registrations have been delivered as of January 2021?**	As of the end of December 2020, an FSC official confirmed that no applicant had applied for FSC's approval to operate the business of proprietary trading of security tokens; thus, no license/registration has been delivered. Nonetheless, we understand an ongoing application is under its review: a crypto merchant is applying to enter into the regulatory sandbox, expecting FSC to exempt the licensing requirement. However, as of February 2021, FSC has not finalized its decision on the said application.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes. 1. The minimum capital requirement hinges on the business activities involved. For instance, TWD 100 million (approximately USD 3.46 million) for the security token trading business. 2. No, it is not mandatory. 3. Yes, it mainly covers the aspects below: a. qualification of directors/senior executives b. internal control system c. beneficiary ownership d. IT system, e. information security, and so forth. But the organizational duties might differ among distinct crypto/virtual asset f. services providers.

Taiwan

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	No, neither the Consumer Protection Act nor the Financial Consumer Protection Act applies to investors of crypto/virtual assets. The reasons include: (1) The investor concept does not fall within the definition of consumers; (2) most crypto/virtual asset services providers do not meet the definition of "financial service enterprise'" listed in the Financial Consumer Protection Act; and (3) the investors allowed to participate in such transactions are sophisticated and, thus, expressly excluded by the Financial Consumer Protection Act.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Yes, it is easy for service providers to have access to a bank account as long as they are registered or licensed. However, crypto/virtual asset service providers not registered or licensed might be rejected by the bank. The reason is that the anti-money laundering regulations concerning the crypto/virtual assets remain unclear and provide no further guidance on compliance, thus making the financial institutions unwilling to undertake the risks and refuse those service providers' requests to open a bank account.
12	**Are there specific tax provisions applicable in your country?**	Currently, there are no crypto/virtual asset-specific tax provisions in Taiwan. The tax obligations hinge on factors such as classification of crypto/virtual assets and the role of the taxpayers (the platform, the issuer, the miner or the investors). The regulations in this regard disperse and are not yet finalized, given there is no clear guidance on whether and how the activities fit into/correspond to the existing framework.

Taiwan

13	**Is the accounting regime of crypto/ virtual assets clear in your country?**	There is no specific accounting regime for crypto/virtual assets other than for the security tokens. Under the guidance on accounting issues related to Security Tokens, the accounting regime is based on IAS32, or IFRS9.
14	**Did your country regulate ICOs?**	Yes, ICO regulations primarily involve the Securities and Exchange Act and its related ruling, with the Banking Act. Whether an ICO constitutes the issuance of securities under the Securities and Exchange Act should be determined by Taiwanese jurisprudence on a case-by-case basis. The FSC Securities and Futures Bureau has released Ruling No. 1080321164, providing further guidance on the factors which should be considered when making such decisions. If the court takes the position that it is not, the ICO itself may constitute illegal acceptance of deposits/investments, which concerns violations of the Banking Act. It should be noted that ICO fraud may trigger enhanced punishment under Article 339-4 of Criminal Code.
15	**What are the main provisions?**	1. Articles 6 and 174 of Securities and Exchange Act 2. FSC Securities and Futures Bureau Ruling No. 1080321164 3. Articles 29, 29-1, 125 of Banking Act.

Taiwan

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, securities tokens are specifically regulated, which are subject to the Securities and Exchange Act of Taiwan and relevant securities token offerings regulations (with a few exemptions). Please refer to our responses to Question 4 for more details about the registration/licensing regime. Concerning other regulatory requirements that apply, kindly note that there are also requirements regarding the internal control system, the personnel, the application of capital/funds, the eligibility of token investors, and the prospectus. (See Taipei Exchange Rules Governing the Operation by Securities Firms of the Business of Proprietary Trading of Security Tokens.) However, the Taiwan government has not provided clear guidance on crypto/virtual assets other than the security tokens.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	For security tokens, please see our responses to Question 4 and Question 16. For crypto/virtual assets that do not qualify as security tokens, the regulatory landscape is unclear since the Taiwan government has not yet guided the relevant services or activities.

Taiwan

18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Please refer to our responses to Questions 14 to 17.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	From the FSC's and the Central Bank's perspectives, crypto/virtual assets are not currency and classified as "virtual commodity." This approach has also been confirmed by the Taiwan High Court. However, they are silent on whether these can constitute "property." It should be noted that such virtual commodity with the nature of security will constitute securities under the Securities and Exchange Act.
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

Thailand

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Article 7 of the Emergency Decree on Digital Asset Businesses, B.E. 2561 ("**Digital Asset Decree**") stipulates that digital asset businesses and digital token offering system providers (i.e., ICO portal) are considered "financial institutions" as defined under the Anti-money Laundering Act, B.E. 2542 (1999) as amended ("**AML Act**"). Therefore, digital asset businesses and the ICO portal are subject to the requirements of the Thai anti-money laundering laws, which include the AML Act, the Counter-terrorism and Proliferation of Weapon of Mass Destruction Financing Act, B.E. 2559 (2016) ("**CFT Act**"), and other sub-regulations.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	See our answer to Question 1.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	The Digital Asset Decree regulates digital asset businesses and the ICO portal. 1. Digital asset businesses include: ▪ digital asset exchange ▪ digital asset broker ▪ digital asset dealer ▪ other businesses relating to digital assets as prescribed by the Ministry of Finance (MOF) under the recommendation of the Securities and Exchange Commission (SEC); as of now, the MOF has not yet determined any additional businesses

Thailand

3	**What are the the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	2. Digital token offering system providers or the ICO Portal is a provider of an electronic system for an offering of newly issued digital tokens that is responsible for screening the characteristics of digital tokens to be offered, the qualifications of the issuer and the completeness and accuracy of the registration statement and draft prospectus for the offering of digital tokens or any other information to be disclosed through such service provider.3rase
4	**Is there a need for registration or licensing?**	Yes. Digital asset business operators need to apply for relevant licenses from the MOF through the SEC. The ICO portal needs to apply for a prior approval from the SEC.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. Criminal sanctions are imposed under the Digital Asset Decree for activities relating to digital assets pursued in contravention of the regulations. This includes penalties of fines and imprisonment. The amount of the fines and terms of imprisonment vary, depending on the offense. Criminal sanctions are also imposed under the AML Act where, *inter alia*, the regulated business fails to comply with the requirements under the AML Act, such as failure to conduct KYC on the customer (a fine not exceeding THB 1 million, and fines of THB 10,000 for every day until it has been rectified).
6	**Are there thresholds triggering client identification duties for occasional clients?**	No. Regulated businesses are required to conduct customer identification duties (KYC) and customer due diligence (CDD) on every customer before every transaction when engaged by a client, regardless of whether or not such customer is an occasional customer.

Thailand

7	**Is it possible to externalize AML duties in your country?**	Certain AML duties and functions, e.g., KYC and CDD, may be outsourced to third parties, assuming that the third parties are qualified under the relevant regulations. However, the company, which is the regulated business, remains responsible for complying with the regulations.
8	**How many licenses/registrations have been delivered as of January 2021?**	As of 26 August 2020, the SEC has granted the following licenses: 1. licenses for digital token offering system providers: four licenses. 2. licenses for digital asset businesses: ▪ eight digital asset exchange licenses ▪ five digital asset broker licenses ▪ one digital asset dealer license
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes. The digital asset businesses and ICO Portal are regulated under the Digital Asset Decree. Applicable licenses or approval must be obtained before commencing the business. These service providers must have certain qualifications and comply with the ongoing requirements under the Digital Asset Decree. 1. Minimum capital requirements: There are certain paid-up registered capital requirements for each type of business operator, as follows: ▪ digital asset businesses ▪ digital asset exchange ▪ for an exchange: ≥ THB 50 million ▪ for a non-asset-keeping exchange: ≥ THB 10 million ▪ for an asset-keeping exchange that has no ability to access or transfer customers' assets without their approval on one-time basis: ≥ THB 10 million ▪ digital asset broker

Thailand

9 **Did your country regulate services/professions related to crypto/virtual assets beyond AML?**

- for a broker: ≥ THB 25 million
- for a non-asset-keeping broker: ≥ THB 1 million
- for an asset-keeping broker without the ability to access or transfer customers' assets without their approval on one-time basis: ≥ THB 5 million
- digital asset dealer
- for a dealer: ≥ THB 5 million
- digital token offering system providers: ≥ THB 5 million

2. Insurance requirement: There is no specific insurance requirement under the Digital Asset Decree.
3. Organizational duties requirements: Certain organizational duties are prescribed under the Digital Asset Decree, including the issues below:
   - Digital asset businesses
   - The management structure and operating system of the digital asset business must be in accordance with the requirements under the SEC notifications. For example, there must be a thorough and clear determination of the organizational structure, roles, powers, duties and responsibilities of directors, executives and personnel.
   - Digital token offering system providers
   - The provider must have an appropriate and sufficient management, operation and personnel for effective and responsible business operation in compliance with applicable laws, regulations and business operation standards.
   - There must be certain working systems, which enable the business operator to operate as an ICO portal, including a system to screen digital tokens that will be offered, a system to contact and provide services to investors, etc.

Thailand

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	The Digital Asset Decree contains provisions governing practices that are considered to be unfair, including, but not limited to, circulation of false information, speculative trading based on inaccurate or incomplete information, insider trading and market manipulation. There are also subordinate regulations issued by the SEC regulating business operators to ensure the protection of investors. For ICO investments, the regulations impose certain requirements (e.g., investors must pass the client suitability assessment), and limit certain types of investors and the ability to invest (e.g., retail investors are limited to investments of THB 300,000 per person in a particular digital token offering).
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	Licensed digital asset business providers and approved ICO portals under the Digital Asset Decree are able to access bank accounts. This is still subject to more information about the scheme and details of how and for what purposes these service providers will access bank accounts.
12	**Are there specific tax provisions applicable in your country?**	Yes, the Emergency Decree on Amendment of the Revenue Code (No. 19), B.E. 2561 has been issued along with the Digital Asset Decree. 1. This Revenue Code stipulates the following: ▪ the new types of taxable income, which includes: ▪ share of the profit or any benefit derived from holding or having possession of digital tokens ▪ capital gains from the transfer of a cryptocurrency or digital token 2. Withholding tax obligations
13	**Is the accounting regime of crypto/ virtual assets clear in your country?**	Currently, there are no specific Thai accounting standards or guidelines regarding digital assets.

Thailand

14	**Did your country regulate ICOs?**	This depends on the meaning of "ICOs." If it is an offering of digital tokens, it is regulated under the Digital Asset Decree. However, if it is an offering of other instruments in an electronic form (e.g., securities), it might fall under other laws (e.g., the Securities and Exchange Law) depending on the type of digital instrument.
15	**What are the main provisions?**	Under the Digital Asset Decree, a digital token offering must be done through an approved digital token offering system provider, in compliance with the relevant regulations. The token issuer must also obtain prior approval from the SEC and must file a registration statement and draft prospectus with the SEC Office before the public offering.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Under the Digital Asset Decree, "digital assets" can be mainly categorized as: 1. Digital tokens, which means a unit of data messages created on an electronic system or network for the purposes of ▪ determining the right of a person to participate in investment in any project or undertaking (i.e., investment token); or ▪ determining the right to acquire goods or services or any other specific right as specified in an agreement between the issuer and the holder (i.e., utility token); and ▪ any other right-representing unit as prescribed under the SEC notifications. 2. Cryptocurrencies, which means a unit of data messages created on an electronic system or network for use as a medium of exchange, with a view to acquiring goods, services or any other rights or exchanging digital assets and also include a unit of any other data messages prescribed under the SEC notifications. However, other digital instruments (e.g., digital securities) might fall under other laws (e.g., the securities and exchange law) depending on the type of digital instrument.

Thailand

17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes. The digital asset businesses and ICO Portal are regulated under the Digital Asset Decree. Relevant licenses or approvals must be obtained before commencing the business.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	There is no specific prohibition on using a cryptocurrency as payment for goods and services. It will not be considered a legal tender; instead, use of a cryptocurrency will be based on the principle of freedom of contract and the agreed arrangements between the parties to a transaction or contract.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	Cryptocurrencies are considered "digital assets" under the Digital Asset Decree, and digital assets are regarded as intangible assets under the existing VAT law. The trading of digital assets would therefore be subject to VAT at the current rate of 7% under the current law.
20	**Are there any other relevant rules or provisions you would like to mention?**	Regarding financial service provision related to digital assets (e.g., digital asset wallets, digital asset transfer applications, etc.), other relevant laws will need to be taken into account (e.g., payment law, exchange control law) to ensure that the service or product can be offered in Thailand.

UK

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Money Laundering and Terrorist Financing (Amendment) Regulations 2019, which amends the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Not applicable. The UK did not specifically regulate cryptoasset providers for AML purposes prior to 5MLD (please also see our response to question 10).
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	Mandatory license: ▪ cryptoasset exchange providers, including cryptoasset automated teller machines, peer to peer providers, cryptoasset issuers and initial exchange offerings; and/or ▪ custodian wallet providers
4	**Is there a need for registration or licensing?**	Yes, must be registered with the Financial Conduct Authority (FCA) for AML purposes**.**
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes, failure to comply with the MLRs could constitute an offense. Firms that fail to register but carry on trading could be subject to fines and supervisory enforcement action from the FCA. The FCA has also consulted on the use of additional powers that have been granted under the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 in relation to information gathering (including by appointing a skilled person and new disciplinary powers (for example, the right to impose directions on a cryptoasset provider). This consultation has now closed and the response is awaited. Where cryptoassets fall within a regulated asset class, failure to hold the proper authorizations may be an offense and could give rise to fines/imprisonment. For regulated entities, breach of regulatory requirements (for example, selling crypto derivatives in breach of the ban) could result in regulatory sanctions.

UK

6	**Are there thresholds triggering client identification duties for occasional clients?**	In-scope cryptoasset providers and custodian wallet providers must conduct CDD when establishing a business relationship, when they suspect money laundering, doubt the veracity of any documents or information previously obtained, or when carrying out an occasional transaction that amounts to a transfer of funds (in the definition of the Wire Transfer Regulations exceeding EUR 1,000) or other occasional transactions amounting to EUR 15,000 or more.
7	**Is it possible to externalize AML duties in your country?**	Firms are permitted to outsource their AML functions, but they remain responsible for all AML systems and controls related to outsourced activities. In addition, certain roles generally cannot be outsourced. For instance, the role of the money laundering reporting officer must be assigned to a person with sufficient seniority and independence in the firm. There is a separate "reliance" arrangement that can also be used under regulation 39 of the MLRs.
8	**How many licenses/registrations have been delivered as of January 2021?**	In response to a FOIA request in December 2020, the FCA revealed that 1 firm authorised as an OTF / MTF had applied to conduct cryptoasset activities. In addition, 26 firms which have been or are seeking permission under the Financial Services and Markets Act, Payment Services Directive or Electronic Money Services Directive have also applied for registration in relation to cryptoasset services.

UK

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	No, the regulatory framework is still developing within the UK. However, regulatory license requirements may be triggered depending on the type of asset — for example, if the asset was considered a security token, collective investment scheme or e-money. Both the FCA and the HM Treasury have released consultations and guidance relating to cryptoassets. The HMT consultations suggests that initially only “stablecoins” will be subject to licensing rules in the UK.
10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	While no crypto-specific consumer protection provisions are in place, the FCA operates a licensing and authorization regime, under which only authorized or exempt firms can provide specified activities in relation to specified investments. Any firm in breach of this is committing a criminal offense. Guidance from the FCA indicated in PS 19/22 and CP 19/3 notes that it is possible for certain cryptoassets and crypto-businesses to fall within this framework and require authorization. However, this is not absolute; crypto-businesses will need to examine whether their cryptoasset is a "specified investment" and whether their activity is a "specified activity" in order to fall within this regime or whether they involve the provision of some other regulated product or service (e.g., electronic money or a payment service). If they fall within the framework, and an exemption does not apply, they will need a license to carry out their activity. One of the key purposes of this regime is consumer protection. By ensuring that consumers only receive advice from regulated and authorized entities, consumers are less likely to receive negligent advice on their investment activity. HM Treasury recently consulted on whether to regulate financial promotions relating to cryptoassets, and further detail on the results of this consultation is expected in due course. In a policy statement in October 2020, the FCA set out its ban on the sale of derivatives and exchange traded notes that reference certain types of unregulated, transferable cryptoassets to retail clients. Furthermore, from 6 January 2021, the sale of retail crypto derivatives was prohibited in the UK.

UK

11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are no rules requiring banks to provide cryptoasset providers with bank accounts (except where those cryptoasset providers are regulated "payment service providers"). Therefore, the ease of accessing a bank account will vary depending on the bank and cryptoasset provider.
12	**Are there specific tax provisions applicable in your country?**	HMRC guidance indicates that profits from trading activity in exchange tokens, such as bitcoin, by businesses will form part of trading profits and will be subject to corporation tax (or income tax in the case of an individual carrying on a financial trade). If an activity concerning an exchange token is not a trading activity and not charged to tax in another way, the activity will be treated as the disposal of a capital asset and potentially give rise to a chargeable gain or loss.
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	No, the Financial Reporting Council is yet to issue detailed guidance on the accounting regime for cryptoassets. We note though that local accounting bodies (such as the Institute of Chartered Accountants in England and Wales) have issued guidance on the accounting treatment of cryptoassets for their members.
14	**Did your country regulate ICOs?**	If the ICO falls within the regime described in our response to Question 10 above, then the relevant firm will require authorization or exemption to trade. Additionally, while not a form of regulation, the FCA published a statement in 2017 indicating that ICOs are high risk and recommended that persons should only invest in an ICO if they are experienced investors confident in the quality of the ICO project and if they are prepared to lose their entire stake. Where the relevant cryptoassets constitute securities then the onshored Prospectus Regulations applies to the ICO (subject to applicable exemptions).

UK

15	**What are the main provisions?**	Not applicable.
16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	It is possible for cryptoassets and crypto-businesses to fall within the FCA's licensing regime. For further information on this, please see our response to Question 10 above.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	It is possible for cryptoassets and crypto-businesses to fall within the FCA's licensing regime. For further information on this, please see our response to Question 10 above.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Yes, in October 2020, the FCA set out its intention to ban the sale of derivatives and exchange-traded notes that reference certain types of unregulated, transferable cryptoassets to retail clients. From 6 January 2021, the ban on the sale of retail crypto derivatives came into effect.

UK

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	On 13 December 2019, in the case of *AA v. Persons Unknown* [2019] EWHC 3556 (Comm), the UK Commercial Court granted an interim proprietary injunction over Bitcoin, thereby treating the cryptoasset as property. The reason for this is that bitcoins are: (i) capable of ownership; (ii) capable of being defined; (iii) permanent; (iv) have stability since ordinary assets are also subject to deterioration, corruption and loss; and (v) not disqualified from being property due to their distinctive features. The UK Jurisdiction Taskforce has also released its statement on the question of whether cryptoassets are likely to constitute “property” under UK law. In the view of the UKJT, depending on their ultimate structure, cryptoassets may meet the criteria to be classified as “property” in the UK. This question though is ultimately to be determined by the courts.
20	**Are there any other relevant rules or provisions you would like to mention?**	Not applicable.

Ukraine

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	Law No. 361-IX "On the prevention of and counteraction to legalization (laundering) of criminal proceeds, financing of terrorism and proliferation of weapons of mass destruction" dated 6 December 2019 ("**AML Law**"). The AML Law came into effect on 28 April 2020.
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Yes, under the AML Law (see our answer to Question 1).
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	The AML Law refers to a virtual asset service provider as an individual or a legal entity acting for another individual or a legal entity with respect to: ▪ exchange of virtual assets ▪ transfer of virtual assets ▪ custody and/or administration of virtual assets or instruments, which enable their control ▪ participation and provision of financial services related to offering of the issuer and/or sale of virtual assets
4	**Is there a need for registration or licensing?**	Virtual asset service providers need to register as obliged entities with the State Financial Monitoring Service of Ukraine. Also, the Ministry of Digital Transformation of Ukraine contemplated adoption of special licensing terms based on the AML Law (please refer to our legal alert regarding this - https://bakerxchange.com/rv/ff005768ab4161d336a8970d3b42a2109027ad3e). To date, however, this has not been implemented.
5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes. Failure to ensure proper organization and conduct of financial monitoring could result in a fine of up to 10% of overall annual turnover (up to UAH 135,150,000 - approx. USD 4,831,960 or EUR 3,983,200).

Ukraine

5	**Are there criminal or administrative sanctions in case of noncompliance?**	Additionally, obliged entities are subject to liability for various other offenses resulting from noncompliance with the AML Law. Sanctions for committing such offenses include *inter alia* revocation of a license or other permits and imposition of fines. The responsible officer of the obliged entity could also face imprisonment.
6	**Are there thresholds triggering client identification duties for occasional clients?**	Yes. Occasional clients must be identified for transactions equal to or exceeding UAH 30,000 (approx. USD 1,073 or EUR 884).
7	**Is it possible to externalize AML duties in your country?**	Yes. An obliged entity may outsource its client identification and verification duties to an agent by way of entering into a written agreement with the agent. The obliged entity is ultimately responsible for financial monitoring conducted by the agent.
8	**How many licenses/registrations have been delivered as of January 2021?**	Information unavailable. That said, the State Financial Monitoring Service of Ukraine published recommendations for virtual asset service providers on how to apply for registration.
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	The draft law "On Virtual Assets" (Draft Law) was adopted in the first reading by the Verkhovna Rada of Ukraine on 2 December 2020. The Draft Law provides for the following requirements for virtual asset service providers: ▪ They need to be registered with the Ministry of Digital Transformation. ▪ Their directors and founders must have an excellent business reputation in accordance with anti-money laundering requirements.

Ukraine

9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	▪ They must disclose information about their ownership structure that allows for identification of the ultimate beneficial owners or confirm their absence. ▪ They must develop and conduct documented internal procedures required under anti-money laundering legislation. ▪ They must develop and conduct documented rules on processing of personal data as required under the Law of Ukraine "On Protection of Personal Data." ▪ Those service providers who are engaged in arranging, issuing and/or sale of "financial virtual assets" will be required to apply for the special financial services license. ▪ The Cabinet of Ministers of Ukraine will be obliged to further develop a detailed procedure and requirements for the state registration of virtual asset service providers. The Draft Law is currently being revised and its text is expected to change before its adoption in the second reading by the Verkhovna Rada of Ukraine.
10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	No. On the contrary, back in 2017, all three financial services regulators made a public statement discouraging investment by indicating that the regulatory framework is very unclear and any investor would not be protected by the state. However, public policy has changed since then and the Draft Law now aims to create a legal framework pertaining to circulation of virtual assets, which is designed to protect investors and/or end users of virtual assets.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	There are currently no rules in place regarding the opening of bank accounts for virtual asset service providers. At the same time, the Draft Law provides that virtual asset service providers are allowed to open and use accounts with banks and other financial entities.

Ukraine

12	**Are there specific tax provisions applicable in your country?**	No. However, a draft law on the taxation of transactions with cryptoassets was registered in the Verkhovna Rada of Ukraine in December 2019 (for more information, please refer to our legal alert and our blog post).
13	**Is the accounting regime of crypto /virtual assets clear in your country?**	No. In theory, virtual assets could be classified as intangible assets under the national accounting standards.
14	**Did your country regulate ICOs?**	No. At the same time, the Draft Law includes general provisions regarding ICOs. Also, at one point, the former Ministry of Economic Development and Trade of Ukraine contemplated such specific regulation, which has not been implemented as of today. For more information, please refer to our blog post.
15	**What are the main provisions?**	Under the Draft Law, an issuance of a virtual asset is defined as its introduction into civil circulation by means of its creation. Virtual asset service providers are allowed to render financial services related to a public offering of virtual assets on behalf of the issuer. For more information, please refer to our blog post.

Ukraine

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Generally, there are no provisions regarding this. However, in 2017, three financial services regulators of that time (the National Bank of Ukraine (NBU), the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets) issued a joint statement on the legal status of cryptocurrency. Such statement indicated that cryptocurrency cannot be regarded as money, currency, a payment method of another country, currency value, electronic money, securities or money surrogate. The regulators undertook to further work on the question of the legal status of cryptocurrency. Further, under the Draft Law: ▪ The virtual assets do not constitute a payment method in the territory of Ukraine. ▪ The virtual asset secured by the rights of owners of equity, debt, mortgage, derivative securities, derivative financial instruments and money market instruments is defined as a financial virtual asset.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	No. However, the Draft Law establishes that the participation and provision of financial services related to the offering of the issuer and/or sale of virtual assets are to be additionally regulated under the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets." Therefore, where the underlying asset would be a "financial virtual asset," the relevant service provider may need to apply for the relevant financial services license if the envisaged activity would be related to the participation in a public offer and/or sale of relevant assets.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	Generally, no. However, in 2014, the NBU issued a letter stating that Bitcoin is a money surrogate, which practically prohibits its use on the territory of Ukraine. This letter was consequently canceled by the NBU in 2018.

Ukraine

19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	The first version of the Draft Law established that a virtual asset is a separate category of property, among other special categories, such as i. money ii. an enterprise as a whole property unit iii. currency values iv. securities etc. However, the revised Draft Law provides that the virtual assets fall into a category of intangible benefits, among other intangible benefits, such as: i. results of intellectual, creative activity and other intellectual property rights objects ii. information iii. personal non-property benefits
20	**Are there any other relevant rules or provisions you would like to mention?**	No.

USA

1	**What are the law/provisions transposing the 5MLD with regard to crypto/virtual assets?**	The Bank Secrecy Act (BSA), 31 U.S.C. 5311 *et seq*., and its implementing regulations at 31 C.F.R. Chapter X, as promulgated by the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), provide the US AML regulatory framework that may be applicable to virtual currency businesses at the federal level (state-level requirements may also apply).
2	**Did your country regulate crypto/virtual asset providers with regards to AML? What are the laws/provisions?**	Yes, under the BSA (see our answer to Question 1), if the provider meets the definition of a covered financial institution under the statute.
3	**What are the services/professions related to crypto/virtual assets that are regulated with regard to AML?**	FinCEN has issued guidance indicating that several categories of virtual asset service providers qualify as Money Services Businesses (MSBs) under FinCEN's regulations. Whether an entity qualifies as an MSB depends on the facts and circumstances of a particular business model, but includes persons engaged in the exchange of virtual currency for real currency, funds or other virtual currency, and persons engaged as a business in issuing a virtual currency, and who have the authority to redeem such virtual currency. Certain virtual asset service providers may be required to register with the Securities and Exchange as a broker-dealer and would therefore be excluded from the FinCEN definition of MSB. However, such providers would still be required to comply with BSA AML requirements applicable to broker-dealers.
4	**Is there a need for registration or licensing?**	Yes. MSBs must be registered with FinCEN. Money transmissions are regulated at the state level as well (49 states have money transmission laws). Some states require registration for businesses engaged in cryptocurrency transmission, while others expressly exempt cryptocurrency transfers.

USA

5	**Are there criminal or administrative sanctions in case of noncompliance?**	Yes, failure to comply with BSA registration requirements results in a civil penalty of USD 5,000 for each day a registration violation continues. Any person who knowingly conducts, controls, manages, supervises, directs or owns all or part of an unlicensed money transmitting business is subject to fines and/or imprisonment for up to five years.
6	**Are there thresholds triggering client identification duties for occasional clients?**	The FinCEN AML program requirements applicable to MSBs do not contain an explicit customer identification requirement (except in circumstances where the MSB is provider or seller of prepaid access). However, FinCEN has issued guidance reflecting an expectation that MSBs "determine both the identity and the profile of its customers."
7	**Is it possible to externalize AML duties in your country?**	Yes, duties may be outsourced provided that the organization conducts sufficient due diligence and monitoring of the third party. The organization nonetheless remains ultimately responsible for compliance.
8	**How many licenses/registrations have been delivered as of January 2021?**	The number of registrations is not published. But FinCEN maintains a publicly available database of all registered MSBs (although, it is not possible to determine from the information in the database whether the MSB is a virtual assets service provider).
9	**Did your country regulate services/professions related to crypto/virtual assets beyond AML?**	Yes, but the rules are not crypto-specific. The rules applying to a crypto-related entity depend on the type of entity, and apply in the same way they would if the entity were engaged in traditional financial activity. In some states, there are regulations specific to cryptocurrency businesses. New York and Louisiana are two states that license cryptocurrency businesses.

USA

10	**Does your country specifically protect investors of crypto/virtual assets? (e.g., consumer law, advertising, financial compensation scheme etc.)?**	The Securities Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC) and the Consumer Financial Protection Bureau (CFPB) monitor and address concerns about misleading, fraudulent, unregistered promotors and price manipulation, among other issues. The Federal Trade Commission (FTC) as well as state securities regulators have used their enforcement powers to sanction unfair and deceptive practices in connection with investments in cryptocurrencies.
11	**Is it easy for crypto/virtual asset service providers to have access to a bank account in your country?**	No, in practice, nationally recognized banks have been reluctant to accept accounts for some crypto-related companies due to compliance concerns. However, on 22 July 2020 the US Office of the Comptroller of the Currency (OCC), a regulatory agency charged with overseeing nationally chartered banks, published an interpretive letter clarifying national banks' and federal savings associations' authority to have custody of cryptocurrency on behalf of customers. On 21 September 2020, the OCC published an interpretive letter clarifying national banks' and federal savings associations' authority to hold "reserves" on behalf of customers who issue certain stablecoins. On 4 January 2021, the OCC published an interpretative letter concluding that national banks and thrift institutions may validate, store and record payments transactions by serving as a node on an INVN, and these institutions may use independent node verification networks and related stablecoins to carry out other permissible payment activities.
12	**Are there specific tax provisions applicable in your country?**	Yes. The Internal Revenue Service (IRS) treats cryptoassets as "property" for federal income tax purposes. Consequently, tax rules applying to the exchange and disposition of property apply, meaning that the sale or exchange of a cryptoasset will generate a gain or loss that is a taxable event. With respect to the income tax effects of hard forks and airdrops, the IRS also issued a revenue ruling that noted that a hard fork may not always result in an airdrop.

12	**Are there specific tax provisions applicable in your country?**	The revenue ruling acknowledges that even if a hard fork results in issuance of units of a new cryptocurrency, a taxpayer may not have "dominion and control" over those units if they are airdropped in a wallet managed through a cryptocurrency exchange and the cryptocurrency exchange that does not support the newly created cryptocurrency. However, if the exchange later supports the newly created cryptocurrency, the taxpayer is considered as receiving the cryptocurrency at that time, which may trigger income tax consequences. To highlight the IRS's belief that many cryptoasset transactions go unreported, starting with the 2020 tax year, the IRS added the following question on the first page of the individual income tax return, "At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?" The IRS published FAQs that are intended to assist taxpayers in determining whether they must answer "yes" to this question.
13	**Is the accounting regime of crypto/ virtual assets clear in your country?**	There is no clear guidance from the Financial Account Standards Board on treatment of cryptoassets. General practice is that cryptoassets are treated under the framework for "intangibles," consistent with International Financial Reporting Standards treatment. The AICPA issued non-authoritative guidance in December 2019 and July 2020 on the accounting standards for accountants to accept engagements for cryptocurrency-based businesses.
14	**Did your country regulate ICOs?**	The SEC has not issued separate rules for ICOs. Rather it applies existing law to determine whether an ICO offering qualifies as a "security" under the so-called Howey test. If it does, then there must be compliance with the registration requirements under the securities laws, unless the offer and sale qualify for an exemption from the registration requirements. The SEC has issued very few "no action" letters with respect to the issuance of digital tokens.
15	**What are the main provisions?**	See our answer to Question 14.

USA

16	**Are specific types of crypto/virtual assets regulated under the financial services regulatory/licensing regime or subject to legal restrictions in your country (e.g., securities tokens, derivatives over cryptoassets, etc.)?**	Yes, cryptoassets that qualify as securities or cryptoasset products that constitute other types of financial products are subject to all of the rules typically applicable to securities and financial products, as relevant. In published remarks, SEC commissioners have indicated that Bitcoin is not a security and Ether is no longer a security.
17	**Are services or activities related to crypto/virtual assets regulated under the financial services regulatory / licensing regime in your country? If so, what is the scope of this regulation?**	Yes, parties who serve as brokers, custodians, fund and pool managers, financial advisers or other similar roles will be regulated by the SEC and the CFTC, among others.
18	**Are activities related to crypto/virtual assets otherwise covered by any other specific rules (e.g., rules prohibiting the use of cryptoasset tumblers, etc.)?**	No, other crypto-specific activities are not expressly prohibited but this does not preclude activities from being considered, deemed or interpreted as violating existing laws.
19	**Has any court, tribunal, government agency, regulatory authority or other decision-making body held or asserted that cryptoassets are "property" under the laws of your jurisdiction (and therefore subject to the ordinary rights attaching to such property)?**	The IRS considers cryptoassets to be property for US tax purposes. A number of courts have indirectly found cryptocurrencies to be property in applying, for example, property forfeiture statutes to cryptocurrency.

USA

20 **Are there any other relevant rules or provisions you would like to mention?**

In December 2020, FinCEN proposed requirements for certain transactions involving digital assets by which banks and MSBs would be required to submit reports, keep records and verify the identity of customers in relation to transactions above certain thresholds involving wallets not hosted by a financial institution (also known as unhosted or self-hosted wallets) or wallets hosted by a financial institution in certain jurisdictions identified by FinCEN. The proposed rule also added reporting requirements for digital asset transactions exceeding USD 10,000 in value. Pursuant to the proposed rule, banks and MSBs would have 15 days from the date on which a reportable transaction occurs to file a report with FinCEN. Further, this proposed rule would require banks and MSBs to keep records of a customer's digital asset transactions and counterparties, including verifying the identity of their customers, if a counterparty uses an unhosted or otherwise covered wallet and the transaction is greater than USD 3,000. As of February 2021, progress on these proposed requirements has been halted under the newly inaugurated president's administration.

Separately, prior comments from FinCEN indicated that it did not expect Reports of Foreign Bank and Financial Accounts (FBARs) for non-US virtual currency accounts because the applicable regulations do not define a foreign account holding virtual currency as a type of account reportable on an FBAR. However, a 31 December 2020 Notice from FinCEN makes clear that it intends to expand the definition under the applicable provisions of the BSA to include virtual currency accounts.

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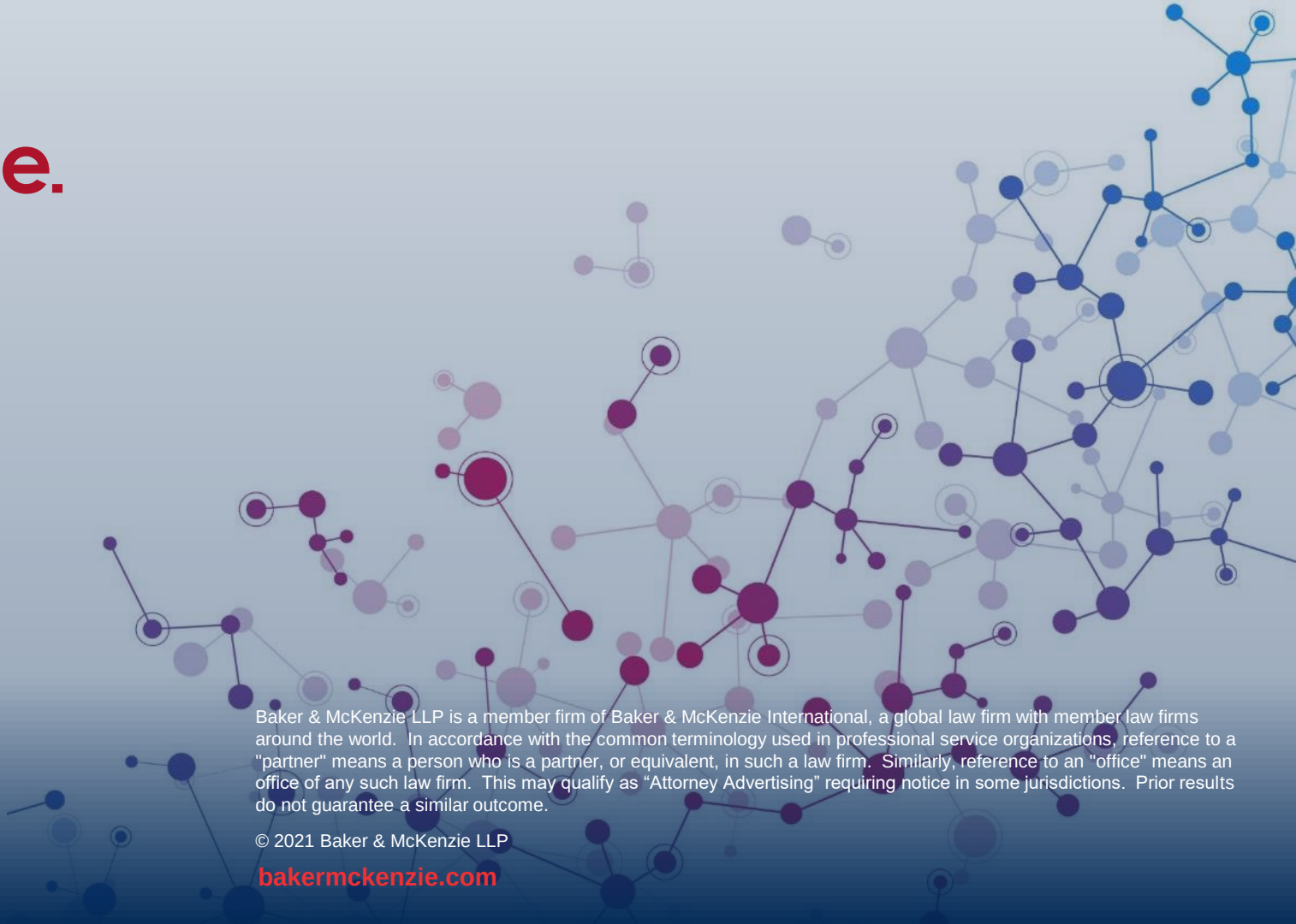

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