

Title	2006 Securities Convention and Digital Developments in respect of Securities Markets: Update
Document	Prel. Doc. No 13A of January 2025
Author	PB
Agenda Item	Item III.3.a
Mandate(s)	C&D Nos 53 and 54 of CGAP 2024
Objective	Update on status of work relating to the 2006 Securities Convention and digital developments in respect of securities markets
Action to be Taken	For Decision ☒ For Approval ☐ For Discussion ☐ For Action / Completion ☐ For Information ☒
Annexes	Update to Annex of Prel. Doc. 10A of January 2023 (Legal Frameworks and Case Studies of Tokenisation of Securities)
Related Documents	Prel. Doc. No 15A of February 2024

Table of Contents

I.	Introduction	2
II.	Status of Work	2
III.	PIL Issues Relating to Digital and Tokenised Securities	3
A.	Digitisation and Tokenisation of Securities.....	3
B.	Determining Jurisdiction and Applicable Law in Securities Markets in light of Technological Developments relating to Distributed Storage Mechanisms	4
IV.	Alignment with the Digital Tokens Project / Proposed Experts' Group	4
V.	Proposal for CGAP.....	5
VI.	Annex.....	7

2006 Securities Convention and Digital Developments in respect of Securities Markets: Update

I. Introduction

- 1 At its March 2024 meeting, the Council on General Affairs and Policy (CGAP) noted the work of the Permanent Bureau (PB) in relation to the 2006 Securities Convention and digital developments in respect of securities markets. CGAP mandated the PB, in partnership with relevant subject-matter experts, and subject to available resources, to study the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as distributed ledger technology (DLT); assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology; and identify opportunities, in the context of the digital economy, for the desirability and feasibility of future normative guidance concerning securities.¹ This Prel. Doc. reports on the work carried out over the last year in fulfilment of these mandates.

II. Status of Work

- 2 The 2006 Securities Convention entered into force in 2017 for each of its three Contracting Parties.² Although the Convention's primary private international law (PIL) rule provides clarity and practical answers for the law applicable to securities held with an intermediary, no new Contracting Parties have joined the instrument over the last year. The 2006 Securities Convention continues to remain relevant in the context of the continued digitisation of the global economy and the added complexity of novel use cases, keeping in mind that, for (digital) book-entry securities held through intermediaries where no tokenisation is involved, the solutions provided in the framework of the 2006 Securities Convention continue to stand.
- 3 As was reported to CGAP ahead of its meetings in March 2023 and March 2024, technological advancement, in particular in relation to decentralised and distributed mechanisms (including DLT) means that the scope of securities laws in various jurisdictions is expected to expand, especially concerning legal entitlements recorded via such mechanisms.³ The PB has continued to monitor the jurisdictions that were examined in 2023 in order to understand approaches taken by domestic securities regulators and legislative bodies, and to monitor the challenges to determining applicable law and jurisdiction that may arise as a result of these competing national approaches.⁴
- 4 Updates over the last year are provided in Annex I, where blue text indicates new legislative developments and case studies added to supplement the material presented in Prel. Doc. No 10A of January 2023.⁵ In summary, most of the studied jurisdictions have continued to clarify legal frameworks with respect to tokens, digital assets, and securities, specifying under what conditions a token is characterised as a security as well as requirements for the registration and trade of the token. In addition to securities and other similar financial instruments, tokenisation of real-world

¹ Conclusion & Decision (C&D) No 54 of CGAP 2024, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy" and "Archive 2000-2024".

² A status table detailing *inter alia* the dates of signature, ratification and entry into force of the Contracting Parties to the Securities Convention is available on the HCCH website at www.hcch.net under "Instruments" then "Conventions and other Instruments" then "2006 Securities Convention" then "Status table".

³ "2006 Securities Convention, 1985 Trusts Convention, 2015 Principles on Choice of Law: Update", Prel. Doc. No. 10A of February 2023, available on the HCCH website at www.hcch.net (see path indicated in note 1), para. 5.

⁴ The PB began the study in 2023 with 18 jurisdictions spanning every region of the world, and continues to monitor these jurisdictions while considering which other jurisdictions to add to the study in order to provide a balanced and inclusive examination. See Annex I of Prel. Doc. No 10A of January 2023, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy" and "Archive 2000-2024".

⁵ Prel. Doc. No 10A of January 2023, available on the HCCH website at www.hcch.net under "Governance" then "Council on General Affairs and Policy" and "Archive 2000-2024".

assets (RWAs) and of real estate, especially to fractionalise the underlying property for purposes of consumer investment, are commonly observed to fall under the frameworks for tokenised securities.

- 5 These developments indicate a continuation of trends presented in 2024: the growing institutional and regulatory familiarity with decentralisation and distributed technologies across various jurisdictions, together with commercial dynamics of sustained cost pressures and client service expectations,⁶ have led to participants in capital markets increasingly using DLT-enabled solutions to tokenise traditional financial instruments and distribute digital securities to investors.⁷ Additionally, the ability to fractionalise property for retail investment has been identified by some jurisdictions as a compelling tool to enable greater access to financial markets and savings products.⁸
- 6 Furthermore, the offerings of tokenised securities appear to vary among factors that may be significant for PIL, such as their legal and statutory bases, issuing institutions, registration and oversight mechanisms, DLT infrastructure (e.g. public, private, permissioned, or permissionless network) and ability for a consumer to effect a further sale of the token.

III. PIL Issues Relating to Digital and Tokenised Securities

A. Digitisation and Tokenisation of Securities

- 7 Digital securities are instruments issued on a DLT or comparable protocol which are functionally equivalent to certificated securities.⁹ Creating a digital security means that “a right (a claim, a corporate right, etc.) is entered into a registry meeting the statutory minimum requirements for securities registries”.¹⁰ Registration in a securities registry “has the legal effect that a right is subject to specific rules for the transfer and assertion of the right, as defined by the underlying system”.¹¹ This has several consequences that may have implications for PIL:
 - a. **Control and / or possession:** As digital securities are controlled through a private key infrastructure (the DLT or comparable protocol),¹² to effect a transaction, the holder of the private key can change the status of the distributed database. This ability to change the status of the database that is conferred on the holder of the private key is comparable to control or possession of a movable, physical asset.¹³ Therefore, similar to the possession of certificated securities, what is being transferred is the right to control entries in the securities registry.
 - b. **Tamper-proof registries that permit direct control and validation by holders of digital securities:** Digital and / or tokenised securities that are held on a DLT-enabled solution ensure that any changes are validated by participants in accordance with an agreed-upon

⁶ World Economic Forum, “[Digital Assets, Distributed Ledger Technology and the Future of Capital Markets](#)” Insight Report, May 2021.

⁷ *Ibid.*

⁸ See for example, Annex I, developments of Cameroon.

⁹ H. Kuhn and K. Löber, “Crypto Securities and Other Digital Assets: Aspects of Substantive and Regulatory Law”. In Thomas Keijser (ed), *Transnational Securities Law*, (2nd ed.), para. 10.14. See also para. 10.16, where the authors also distinguish dematerialised or uncertificated securities, which also have no physical representation by can be based on any kind of technology aside from a DLT protocol.

¹⁰ H. Kuhn and K. Löber, “Crypto Securities and Other Digital Assets: Aspects of Substantive and Regulatory Law”. In Thomas Keijser (ed), *Transnational Securities Law*, (2nd ed.), para. 10.82.

¹¹ H. Kuhn and K. Löber, “Crypto Securities and Other Digital Assets: Aspects of Substantive and Regulatory Law”. In Thomas Keijser (ed), *Transnational Securities Law*, (2nd ed.), para. 10.82.

¹² *Ibid.*, para. 10.15.

¹³ *Ibid.*

validation mechanism and are reflected in all copies of the ledger.¹⁴ This immutability ensures transparent and tamper-proof registries,¹⁵ and the direct changes effected allow direct control and validation by holders of digital and / or tokenised securities. This also ensures identity verification¹⁶ and enables risk and collateral management in real time.

The impact of digitising and tokenising securities on a DLT-enabled solution thus may generate efficiency gains through the consolidation of previously separated infrastructures for the issuance, custody, trading and clearing and settlement of securities transactions on one single platform.¹⁷

B. Determining Jurisdiction and Applicable Law in Securities Markets in light of Technological Developments relating to Distributed Storage Mechanisms

- 8 As discussed in previous years, there may be challenges in attributing a *situs* to digital and / or tokenised securities. This in turn makes it challenging to determine the applicable law or the relevant jurisdiction on the basis of traditional connecting factors or jurisdictional grounds. In the absence of clear connecting factors or jurisdictional grounds linking DLT-based digital and / or tokenised securities or a distributed storage mechanism to a specific jurisdiction, it has been noted that party autonomy to choose the law governing the contract may be a good means for ensuring legal certainty.¹⁸ Where there is a valid choice of law, granting parties the autonomy to choose the applicable law in governing their contractual relationship has proven to be an efficient approach. Where digital securities are (i) recorded on permissionless distributed systems; (ii) not held by identified securities intermediaries; and (iii) have no express (or valid) choice on the applicable law, reference to the location of one of the parties to the transaction, if such location be known, may provide a connecting factor for such transaction.
- 9 In respect of the choice of law in governing proprietary rights in securities held by an (identified) intermediary, Article 4 of the 2006 Securities Convention attaches the choice of law to certain physical presence criteria that the relevant intermediary should meet at the time of the account agreement. Additionally, Article 5 of the 2006 Securities Convention provides fall-back rules to refer intermediated securities to the law under which the relevant intermediary is incorporated or otherwise organised or, failing such incorporation or organisation, to the law of its principal place of business. In the context of digital securities, the connecting factors used in the 2006 Securities Convention in determining the applicable law for digital securities held by identified intermediaries continue to remain relevant. Another relevant consideration regarding the application of the 2006 Securities Convention would be the case of an intermediary which is not identified or registered as such (e.g. DLT-based services with no corporate form) but which performs functions typical of securities intermediaries.

IV. Alignment with the Digital Tokens Project / Proposed Experts' Group

- 10 The mandate of the Digital Tokens Project excludes consideration of the topic of securities; work relating to digital developments in securities markets, including securities tokens, is undertaken in the framework of this post-Convention study of the 2006 Securities Convention.¹⁹

¹⁴ H. Kuhn and K. Löber, *supra* note 10, para. 10.07.

¹⁵ D. Patel and E. Ganne, "[Blockchain & DLT in Trade: A Reality Check](#)", November 2019.

¹⁶ S. Blemus and D. Guégan, "[Initial crypto-asset offerings \(ICOs\), tokenization and corporate governance](#)", *Capital Markets Law Journal*, Vol. 15, Issue 2, April 2020.

¹⁷ H. Kuhn and K. Löber, *supra* note 10, para 10.02.

¹⁸ H. Kuhn and K. Löber, *supra* note 10, para 10.96.

¹⁹ Prel. Doc. No 5B of January 2024, para. 13. Prel. Doc. No. 5B excludes from the scope of its proposal work relating to "[s]ecurities, whether held directly or indirectly, noting that questions of PIL regarding securities, both held with an intermediary and those held in a disintermediated system, are being examined within the study on the 2006 Securities

- 11 Multiple discussions at the meetings of the Digital Tokens Project addressed the scope of this exclusion, with participants noting that tokenised securities constitute a portion of current and anticipated tokenisation use cases. Participants discussed whether certain implementations of tokens are ultimately forms of securities, and also noted that new financial regulations differ as to whether securities are included or excluded within the definition of tokens and assets.²⁰ Some participants noted that the exclusion does not prevent participants from studying the matter of securities, but that the output of the work will not include guidance on the topic. Participants also noted that the exclusion may broadly limit consideration of classes of tokens such as governance tokens.²¹
- 12 Ultimately, participants were mindful not to overly constrain the room for discussion within the Digital Tokens Project by adopting (and excluding) a broad definition of securities.²² In light of the discussions within the Digital Tokens Project, in the case CGAP decides to establish the proposed Experts' Group on Digital Tokens (EG) as unanimously recommended by the participants of the Digital Tokens Project, it is proposed that the proposed EG may discuss, in general and basic terms, certain use cases that concern securities tokenisation in order to clearly establish if and when the exclusion is applicable. The PB will then record such use cases raised in the reports of the meetings on Digital Tokens. In order to ensure alignment between the work on the Digital Tokens and the post-Convention work under the 2006 Securities Convention, this list of use cases may constitute an independent workstream to be addressed in light of the existing framework of the 2006 Securities Convention.

V. Proposal for CGAP

- 13 In light of the above, the PB proposes the following C&D for CGAP's consideration:
- CGAP took note of the PB's work in relation to the 2006 Securities Convention and digital developments in respect of securities markets.
- CGAP mandated the PB, in partnership with relevant subject-matter experts, and subject to available resources, to continue to:
- study the determination of jurisdiction and applicable law in the context of securities markets in light of developments in technology such as distributed ledger technology;
 - assess the ramifications of the growing attention that financial services and securities industries have accorded to developments in technology; and
 - identify opportunities, in the context of the digital economy and in the context of other normative work for the desirability and feasibility of future normative guidance concerning securities.

Convention and digital developments in respect of securities markets". The PB is to ensure coordination and alignment between the work proposed in Prel. Doc. No. 5B and this ongoing work relating to the 2006 Securities Convention and digital developments in respect of securities markets.

²⁰ Prel. Doc. No 4 of November 2024, Annex II, paras 15, 30, 46. Participants discussed, for example, whether the record of a token itself can be considered a security, or if the token represents and a security and the pair together form a linked asset. With respect to regulation, participants noted that the Market in Crypto-Assets Regulation (MiCA) treats financial instruments and crypto-assets separately. Similarly, the Rapport sur la détermination de la loi applicable aux actifs inscrits en registres distribués (HCJP Report) differentiates between financial instruments and other digital assets on DLT. See also Annex IV, para. 35-39, discussing the notion of ledger-based securities under the Swiss DLT law.

²¹ Prel. Doc. No 4 of November 2024, Annex IV, para. 52.

²² Prel. Doc. No 4 of November 2024, Annex II, para. 22.

The PB will report to CGAP 2026. If the report identifies work that would extend beyond monitoring, including the possible development of a PIL framework, CGAP will decide whether such work shall be conducted, with due consideration of resource implications. If CGAP decides that such work is to be conducted, it shall be reflected expressly in the HCCH's Work Programme.

ANNEX

Table of Securities Regulators' Approaches to Blockchain Digital Assets and Instruments / Update of 2024 on Tokenisation of Securities Legal Frameworks and Case Studies

No.	Country	Securities Regulator	Legislation/ Regulation/ Guidelines/Case Studies
1.	Australia	Australian Securities and Investments Commission (ASIC)	Since 2018, crypto exchanges are required to register¹ with the Australian Transaction Reports and Analysis Centre (AUSTRAC), which maintains the Digital Currency Exchange Register. In May 2019, ASIC issued updated regulatory requirements for both ICOs and cryptocurrency trading.² In 2021, Australia announced plans to introduce a new licensing framework specifically for cryptocurrency exchanges. In 2024, ASIC published updates to Information Sheet 225, including guidance on scenarios where a digital asset made available to consumers might be categorised as an offer of: a security, a facility for making a financial investment, interests in a managed investment scheme, a derivative, or a non-cash payment facility.³
2.	Bahrain	Central Bank of Bahrain (CBB)'s Capital Markets Supervision Directorate (CMSD)	In 2019, Bahrain published a regulatory module governing crypto assets. The government made the dealings of crypto-centric businesses legal with the due permission of the Central Bank. The regulatory framework contains comprehensive regulations to govern and license 'Regulated Crypto-Asset Services' and is included in Volume 6 of the CBB Rulebook that governs capital markets.⁴ The Central Bank of Bahrain has issued amendments to its Crypto-assets Module, expanding the scope to address Digital Token Offerings under regulated crypto-assets activities. In

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

² Australian Securities & Investments Commission, available at <https://asic.gov.au/regulatory-resources/digital-transformation/crypto-assets/>.

³ ASIC, Updates to INFO 225: Digital assets: Financial products and services (December 2024), available at <https://download.asic.gov.au/media/iktkpn20/attachment-to-cp381-published-4-december-2024.pdf>.

⁴ Central Bank of Bahrain Issues Regulations governing Crypto-Asset Services, available at <https://www.tamimi.com/law-update-articles/central-bank-of-bahrain-issues-regulations-governing-crypto-asset-services/>.

			determining whether a digital token qualifies as a security, the CBB will examine the underlying economic purpose of the digital token, its structure, characteristics, as well as the rights attached to the digital token. ⁵
3.	Botswana	-	While Botswana does not have a regulatory framework to govern cryptocurrency trading and does not have an exchange, it passed a bill in February 2022 to regulate digital assets trading. The new rules seek that any company that offers cryptocurrency services, or anything related to digital tokens, should obtain a license from the Non-Bank Financial Institutions Regulatory Authority. ⁶
4.	Brazil	Security and Exchange Commission (SEC)	Crypto assets are not yet regulated in Brazil, with the legal status of utility tokens and cryptocurrencies undefined by any Brazilian law or regulatory authority. However, security tokens are considered securities and are thus regulated by the SEC.⁷ The SEC is aiming for changes in the country's legal framework regarding cryptocurrencies. A few bills on cryptoassets are currently being discussed in Brazil. A relevant example is Bill of Law No. 4401/2021,⁸ which was approved by the Senate in April 2022 and is expected to be approved by the Chamber of Deputies in the near future. This is comprehensive legislation that would regulate transactions involving certain cryptoassets conducted through electronic platforms, according to which digital asset service providers – such as crypto exchanges – would need to seek licence from a national authority – most probably the Central Bank of Brazil – in order to operate and transactions involving cryptoassets. Brazil's securities regulator published a guidance note addressing when a digital asset is considered a security and specifying what disclosures are to be made.⁹ Brazil's Central Bank governor announced that the country is preparing to introduce regulations for stablecoins and asset tokenisation in 2025.¹⁰

⁵ CBB Issues a New Regulatory Framework for Digital Tokens Further Developing the Crypto-Assets Market, 30 March 2023, available at <https://www.cbb.gov.bh/media-center/cbb-issues-a-new-regulatory-framework-for-digital-tokens-further-developing-the-crypto-assets-market/>.

⁶ Botswana to Regulate Crypto That Feared Becoming "Wild West", 02 February 2022, available at <https://www.bloomberg.com/news/articles/2022-02-02/botswana-to-regulate-crypto-that-was-feared-becoming-wild-west>.

⁷ Brazilian guide on cryptoassets, 24 January 2023, available at <https://www.lewsaloma.com.br/publications/article/brazilian-guide-on-cryptoassets>.

⁸ A copy of Bill of Law No. 4401/2021 is available at <https://www25.senado.leg.br/web/atividade/materias/-/materia/151264>.

⁹ Brazil's Securities regulator defines which crypto-assets are securities, 14 October 2022, available at <https://www.ledgerinsights.com/brazil-securities-regulator-cvm-crypto-assets-securities/>.

¹⁰ Brazil Poised to Regulate Stablecoins and Tokenized Assets by 2025, Says Central Bank Chief, 15 October 2024, available at <https://www.pymnts.com/cpi-posts/brazil-poised-to-regulate-stablecoins-and-tokenized-assets-by-2025-says-central-bank-chief/>.

5.	Cameroon	-	The Government of Cameroon has not legislated on cryptocurrencies as yet, and no regulation or framework exists for the use or trade in cryptocurrencies. In 2015, however, Cameroon reportedly trialled a bitcoin-like digital currency called Trest. Although the results of the tests were “excellent”, the high cost associated with electricity usage when processing cryptocurrency transactions acted as a hindrance to further testing of the use of cryptocurrencies within Cameroon.¹¹ A pilot project was launched by a non-governmental organisation in partnership with a Francophone African crypto investment platform to offer fractionalised tokenised government bonds to enable retail investors to enter the market at low price points. The project sought to explore whether such a product could provide savings and investment opportunities for low-income individuals. Almost half of registered users of the pilot reported that this was their first time accessing a savings product, in part because the scheme was accessible with a minimum required investment of USD \$1.53.¹²
6.	Canada	Canadian Securities Administrators (CSA)	The CSA and the Investment Industry Regulatory Organization of Canada (IIROC) have issued guidance requiring crypto trading platforms and dealers in Canada to register with the local provincial regulators.¹³ The Ontario Securities Commission has actively enforced the regulations against several unregistered foreign trading platforms.¹⁴ CSA issued a notice¹⁵ in 2017 on the applicability of existing securities laws to cryptocurrencies, if the person or company selling the securities is conducting business from within Canada or if there are Canadian investors.

¹¹ Blockchain and Cryptocurrency in Africa by Baker Mackenzie, available at https://www.bakermckenzie.com/-/media/files/insight/publications/2019/02/report_blockchainandcryptocurrencyreg_feb2019.pdf at p. 18.

¹² Leveraging Tokenized and Fractionalized Bonds for Individuals in Cameroon 25 April 2024, available at <https://www.mercycorps.org/research-resources/leveraging-tokenized-fractionalized-bonds>

¹³ Cryptocurrency regulations by country, available at <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2022/04/Cryptos-Report-Compendium-2022.pdf>.

¹⁴ *Ibid.*

¹⁵ See CSA Staff Notice 46-307 available at https://www.osc.ca/sites/default/files/pdfs/irps/csa_20170824_cryptocurrency-offerings.pdf.

			In 2021, the CSA published guidance¹⁶ for crypto issuers that own or hold crypto assets. Requirements for cryptocurrency exchanges to register with the Financial Transactions and Reports Analysis Centre of Canada (FinTRAC) were also introduced. In 2023, the CSA published guidance noting that value-referenced crypto assets (VRCAs), “assets designed to maintain a stable value over time by referencing the value of a fiat currency or any other value or right, or combination thereof”, may constitute securities and/or derivatives in several jurisdictions.¹⁷
7.	People’s Republic of China	-	There is a blanket ban on cryptocurrencies and all crypto transactions and mining as of September 2021.¹⁸ In 2023, guidance from the Securities and Futures Commission and Hong Kong Monetary Authority clarified the framework for tokenised securities through guidance in the Tokenised Securities Circular and the Tokenised Investment Products Circular.¹⁹ Hong Kong was the jurisdiction offering the first tokenised security in the APAC region;²⁰ while, Hong Kong securities brokers have issued native tokenised securities²¹ and fixed-income tokenised funds.²²
8.	Japan	Financial Services Agency (FSA)	Amendments to the Financial Instruments and Exchange Act (FIEA), which is the legislation that regulates securities within Japan, took effect in May 2020 and introduced the term “crypto asset”.²³ Cryptocurrencies that are classified as securities fall under the statutory authority of FIEA.²⁴

¹⁶ See CSA Staff Notice 51-363 available at https://www.osc.ca/sites/default/files/2021-03/csa_20210311_51-363_observations-disclosure-crypto-asset.pdf.

¹⁷ See CSA Staff Notice 21-333 available at https://www.osc.ca/sites/default/files/2023-10/csa_20231005_21-333_crypto-platforms-vrca.pdf.

¹⁸ China's top regulators ban crypto trading and mining, sending bitcoin tumbling, 24 September 2021, available from <https://www.reuters.com/world/china/china-central-bank-vows-crackdown-cryptocurrency-trading-2021-09-24/>.

¹⁹ Hong Kong lays out comprehensive guidance on crypto and tokenised securities-related activities by intermediaries, along with guidance on tokenisation of investment products, 11 December 2023, available at <https://www.herbertsmithfreehills.com/notes/fsrandcorprime/2023-12/hong-kong-lays-out-comprehensive-guidance-on-crypto-and-tokenised-securities-related-activities-by-intermediaries-along-with-guidance-on-tokenisation-of-investment-products>

²⁰ Asia witnesses its first tokenised security via Bank of China's BOCI, 13 June 2023, available at <https://fintech.global/2023/06/13/asia-witnesses-its-first-tokenised-security-via-bank-of-chinas-boci/>

²¹ Linklaters advises GF Securities (Hong Kong) on the successful launch of its tokenised securities in Hong Kong SAR, 25 January 2024, available at <https://www.linklaters.com/en/about-us/news-and-deals/deals/2024/january/linklaters-advises-gf-securities-on-the-successful-launch-of-its-tokenised-securities-in-hong-kong>

²² Linklaters advises Harvest Global Investments on the launch of its tokenised fund in Hong Kong SAR, 18 January 2024, available at <https://www.linklaters.com/en/about-us/news-and-deals/deals/2024/january/linklaters-advises-harvest-global-investments-on-the-launch-of-its-tokenised-fund-in-hong-kong-sar>

²³ For example, see Art. 63-11 of the PSA available at https://www.japaneselawtranslation.go.jp/en/laws/view/3965/en#ie_ch4sc2at6.

²⁴ Japan and Cryptocurrency, available at <https://freemanlaw.com/cryptocurrency/japan/>.

			Nonetheless, cryptocurrencies in Japan are largely regulated because they largely fall under the Payment Services Act (PSA) – that recognises Bitcoin and other digital currencies as legal property – or the FIEA. In December 2021, the FSA indicated that it would propose legislation in 2022 to regulate issuers of stablecoins and toughen regulations to prevent money laundering.²⁵ The Financial Instruments and Exchange Act (FIEA) of 1948, as amended in May 2020, includes tokenised securities representing bonds, shares, funds and derivatives.²⁶ An industry report on the security token market of financial year 2023 noted that the total issuance amount of security tokens in Japan in FY 2023 was JPY 97.6 billion, where 85% of products were real estate beneficiary certificate issuance trusts and 13% were corporate bonds.²⁷
9.	Kenya	Capital Markets Authority (CMA)	In Kenya, cryptocurrency is primarily regulated by the following acts: (1) The National Payments Systems Act (NPSA) administered by the Central Bank of Kenya (CBK); (2) the Capital Markets Act (CMA) administered by the Capital Markets Authority (CMA); and (3) the Kenya Information and Communication Act (KICA) administered by the Communications Authority. Cryptocurrencies that qualify as securities are regulated under the CMA, which is the agency charged with overseeing the public offers of securities within Kenya. Even though the CMA has not yet classified cryptocurrency as securities, the legislation empowers the CMA with broad discretion to classify certain cryptocurrencies as securities.²⁸ In February 2022, Kenya's central bank invited the public for views on the potential introduction of a digital currency, in a shift from its original opposition to crypto assets.²⁹ A number of ongoing tokenisation efforts in Kenya concern tokenisation of gold, real estate, and farmland.³⁰ The Nairobi Securities Exchange joined the Hedera Council in October 2024,

²⁵ Stablecoins to face new restrictions in Japan, 07 December 2021, available at <https://asia.nikkei.com/Spotlight/Cryptocurrencies/Stablecoins-to-face-new-restrictions-in-Japan>.

²⁶ Article 4 – The unexpected reason behind the unexpected rise of tokenisation in Japan, 03 June 2024, available at <https://futureoffinance.biz/article-4-the-unexpected-reason-behind-the-unexpected-rise-of-tokenisation-in-japan/>

²⁷ BOOSTRY Releases Japan Security Token Market Report, 02 April 2024, available at <https://www.nomuraholdings.com/news/nr/etc/20240402/bstr20240402.html>

²⁸ Kenya and Cryptocurrency, available at <https://freemanlaw.com/cryptocurrency/kenya/>.

²⁹ Kenya's central bank tests public opinion about digital currencies, 10 February 2022, available at <https://www.reuters.com/technology/kenyas-central-bank-tests-public-opinion-about-digital-currencies-2022-02-10/>.

³⁰ Kenya Follows Zimbabwe's Lead in Tokenising Real-World Assets, Expanding Access to Investment Opportunities, 12 November 2024, available at <https://www.thezimbabwemail.com/technology-science/kenya-follows-zimbabwes-lead-in-tokenising-real-world-assets-expanding-access-to-investment-opportunities/>

			signalling its intent to participate in tokenisation initiatives on Hedera's public permissioned network. ³¹
10.	Malaysia	Securities Commission (SC)	The SC issued guidelines on the regulation of various digital currency platforms operating in the country. The Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 stated that digital tokens are “securities” for purposes of securities laws.³² In October 2024, the SC announced the introduction of a regulatory sandbox and planned improvements to the regulatory framework to encourage securities tokenisation. Corporations developing solutions in areas like financial inclusiveness, Islamic finance and retirement solutions are encouraged to apply to participate in the sandbox.³³
11.	Nigeria	Securities and Exchange Commission of Nigeria (SEC)	The Nigerian Securities and Exchange Commission (SEC) published a new rulebook, the New Rules on Issuance, Offering Platforms and Custody of Digital Assets, in May 2022 to provide regulatory clarity on its cryptocurrency landscape. This publication covers rules on issuance of digital assets as securities, registration requirement for Digital Assets Offering Platforms (DAOPs), registration requirements for Digital Asset Custodians (DACs), rules on Virtual Assets Service Providers (VASPs) and rules on Digital Assets Exchange (DAX).³⁴ The SEC operates two programmes to test digital asset-related firms' technology and operation models prior to granting full registration. Firms participating in 2024 provide functions including tokenisation of real estate, agriculture, and infrastructure.³⁵
12.	Singapore	Monetary Authority of Singapore (MAS)	In 2017, the MAS clarified ³⁶ that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under the Securities and Futures Act (SFA). As yet, the SFA does not specify the same.

³¹ The Nairobi Securities Exchange (NSE) Joins the Hedera Council to Expedite Tokenization of Securities in Kenya's Capital Markets, 30 October 2024, available at <https://hedera.com/blog/the-nairobi-securities-exchange-nse-joins-the-hedera-council-to-expedite-tokenization-of-securities-in-kenyas-capital-markets>

³² Capital Markets and Services Act 2007, Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token), Order 2019, available at <https://www.sc.com.my/api/documentms/download.ashx?id=8c8bc467-c750-466e-9a86-98c12fec4a77>.

³³ SC Unveils Three Initiatives to Spur Innovation, 01 October 2024, available at <https://www.sc.com.my/resources/media/media-release/sc-unveils-three-initiatives-to-spur-innovation>

³⁴ SEC Nigeria's Consolidated Rules and Regulations, available at <https://sec.gov.ng/regulation/rules-codes/>.

³⁵ Press Release: Update on the SEC's Accelerated Regulatory Incubation Program and Regulatory Incubation Program, 29 August 2024, available at <https://sec.gov.ng/press-release-update-on-the-secs-accelerated-regulatory-incubation-program-and-regulatory-incubation-program/>

³⁶ MAS clarifies regulatory position on the offer of digital tokens in Singapore, 01 August 2017, available at <https://www.mas.gov.sg/news/media-releases/2017/mas-clarifies-regulatory-position-on-the-offer-of-digital-tokens-in-singapore>

			Its regulatory approach towards digital tokens is to look beyond common labels and examine the features and characteristics of each digital token, to determine the applicable regulatory requirements.³⁷ The 2019 Payment Services Act³⁸ brought exchanges and other cryptocurrency businesses under the regulatory authority of MAS from January 2020 and imposed a requirement for them to obtain a MAS operating license. As reported in 2023, the regulatory approach towards digital tokens is to look beyond common labels and examine the features and characteristics of each digital token, to determine the applicable regulatory requirements—a digital token may constitute capital markets products including shares, debentures, and securities-based derivatives contracts.³⁹ In November 2024, the MAS announced plans to advance tokenisation in financial services through development of market infrastructures, industry frameworks, and access to common settlement facility for tokenised assets.⁴⁰
13.	South Africa	Financial Conduct Authority (FSCA)	The FSCA has yet to implement any regulations, but a regulatory framework is expected in the near future.⁴¹ South Africa's National Treasury budget review published in February 2022⁴² formally introduced the move to declare cryptocurrencies as financial products. The state also plans to enhance the monitoring and reporting of cryptocurrency transactions to comply with exchange regulations in the country. The South African Reserve Bank is also set to introduce regulations that will see cryptocurrencies classed and treated as financial assets.⁴³

³⁷ MAS' Guide to Digital Token Offerings' dated 26 May 2020 available at <https://www.mas.gov.sg/-/media/MAS/Sectors/Guidance/Guide-to-Digital-Token-Offerings-26-May-2020.pdf>.

³⁸ See Art. 2, Payment Services Act available at <https://sso.agc.gov.sg/Acts-Supp/2-2019/Published/20190220?DocDate=20190220>.

³⁹ A GUIDE TO DIGITAL TOKEN OFFERINGS by Monetary Authority of Singapore, available at <https://www.mas.gov.sg/-/media/mas/sectors/guidance/guide-to-digital-token-offerings-26-may-2020.pdf>

⁴⁰ MAS Announces Plans to Support Commercialisation of Asset Tokenisation, 04 November 2024, available at <https://www.mas.gov.sg/news/media-releases/2024/mas-announces-plans-to-support-commercialisation-of-asset-tokenisation>

⁴¹ Crypto regulations in South Africa, 25 February 2022, available at <https://www.michalsons.com/blog/crypto-regulations-in-south-africa/56081#:~:text=Crypto%20Assets%20%26%20Tax&text=The%20South%20African%20Revenue%20Ser vice,disposed%20of%20with%20capital%20intent>.

⁴² Budget Review by National Treasury of Republic of South Africa, 23 February 2022, available at <http://www.treasury.gov.za/documents/national%20budget/2022/review/FullBR.pdf>.

⁴³ Bitcoin not a currency? South Africa to regulate crypto as financial asset, 12 July 2022, available at <https://cointelegraph.com/news/bitcoin-not-a-currency-south-africa-to-regulate-crypto-as-financial-asset>.

14.	Republic of Korea	Financial Services Commission (FSC)	Cryptocurrencies are not considered legal tender nor a financial asset. Exchanges, while legal, are part of a closely monitored regulatory system overseen by the Financial Supervisory Service (FSS). As of 6 September 2022, the FSC has revealed plans to launch a distinct digital securities market with a view towards institutionalising and promoting cryptocurrencies.⁴⁴ The envisioned digital securities market would accept tokens that use blockchain. However, these tokens must be registered as electronic securities. Legislation to authorise security token offerings was abandoned during the previous legislative session (May 2020 to May 2024) but is expected to be reintroduced in the current legislative session.⁴⁵ This follows announcements in February 2023 that financial authorities would allow the issuance and distribution of tokenised securities.⁴⁶
15.	Switzerland	Financial Market Supervisory Authority (FINMA)	Switzerland imposes a registration process on cryptocurrency exchanges, which must obtain a license from FINMA in order to operate. FINMA applies existing financial legislation to offerings, including securities trading. In 2021, the DLT Act⁴⁷ was introduced with the goal of adjusting Swiss laws to take advantage of cryptocurrency innovation. The DLT Act constitutes an umbrella legislation that introduces a new concept of so-called DLT Securities (including the newly introduced registered uncertificated securities)⁴⁸ under the Swiss Code of Obligations allowing for the tokenisation of rights, claims and financial instruments.⁴⁹ The Swiss legal framework allows for registered tokens on certain blockchains to record a right that may only be enforced and transferred through that ledger; the rights that can be

⁴⁴ South Korea is getting serious on crypto securities- Here's how, 08. September 2022, available at <https://ambcrypto.com/south-korea-is-getting-serious-on-crypto-securities-heres-how/>.

⁴⁵ Current State of the STO Market in South Korea, 13 June 2024, available at <https://reports.tiger-research.com/p/current-state-of-the-kr-sto-market-eng>

⁴⁶ Will security token offering legislation gain traction this time, 01 December 2024, available at https://www.koreatimes.co.kr/www/biz/2024/11/602_387347.html

⁴⁷ Federal Council brings DLT Act fully into force and issues ordinance, 18 June 2021, available at <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-84035.html>.

⁴⁸ Switzerland: Swiss Legislative Package on DLT, 23 January 2021, available at <https://www.globalcompliance.news.com/2021/01/23/switzerland-swiss-legislative-package-on-dlt-07012021/#:~:text=On%2025%20September%202020%2C%20the,as%20a%20leading%2C%20innovative%20and>.

⁴⁹ Tokenization of Investment Fund Units, 25 May 2023, available at <https://www.mme.ch/en/magazine/articles/tokenization-of-investment-fund-units>

			incorporated including securities, claims, shares, some intellectual property rights, and financial instruments. ⁵⁰
16.	United Arab Emirates	Securities and Commodities Authority (SCA) Also: Financial Services Regulatory Authority (FRSA)	The Abu Dhabi Global Market, a regulatory body, issued a comprehensive layout on the regulations to be followed while carrying out crypto-related transactions. This regulatory approach identifies categories of digital assets or instruments. Virtual assets including non-fiat virtual currencies are treated as commodities.⁵¹ The Dubai Multi Commodities Centre (DMCC) has also termed cryptocurrencies as commodities and opened the avenues for businesses holding a DMCC issued license to trade in this commodity.⁵² The SCA is taking crypto lawmaking to another level by publicising their draft legislation for crypto-asset sale, tokenisation of assets, crypto exchanges and more; and to ask the public for feedback so they can tailor their laws better to local needs. The UAE is also creating a joint digital currency with the Kingdom of Saudi Arabia. The joint crypto Aber, which is built on the blockchain, is sending a clear message that both governments are eager to use cryptocurrency technology and even on testing it out on a state-level for bank dealings and government transactions between the two countries.⁵³ Real estate tokenisation projects are gaining popularity in the UAE, giving rise to questions as to the characteristics of the token, the prevailing regulatory framework (such as onshore UAE, the Dubai International Financial Centre, or the Abu Dhabi Global Market).⁵⁴
17.	United Kingdom	Financial Conduct Authority (FCA)	The regulation of crypto assets falls into three categories as identified by the FCA in its Guidance on Crypto Assets: ⁵⁵ security tokens, e-money tokens and unregulated tokens.

⁵⁰ Prel. Doc. No 4 of November 2024, Annex IV, para. 35.

⁵¹ ADGM launches crypto asset regulatory framework, 25 June 2018, available at <https://www.adgm.com/media/announcements/adgm-launches-crypto-asset-regulatory-framework>

⁵² *Ibid.*

⁵³ Saudi Arabia, UAE jointly pilot cross border digital currency, 21 January 2019, available at <https://www.ledgerinsights.com/saudia-arabia-uae-digital-currency-cbdc/>

⁵⁴ Tokenisation of UAE Real Estate, 16 October 2023, available at <https://www.twobirds.com/en/insights/2023/uae/tokenisation-of-uae-real-estate>

⁵⁵ Policy Statement PS19/22: Guidance on Cryptoassets published by the Financial Conduct Authority (FCA) on 31 July 2019, available at <https://www.fca.org.uk/publications/policy-statements/ps19-22-guidance-cryptoassets>.

			Security tokens are virtual currencies with characteristics that mean they provide rights and obligations akin to traditional instruments, such as shares, debentures or units in a collective investment scheme. Together with e-money tokens which are virtual currencies meeting, the definition of electronic money, both fall into the UK regulatory perimeter as 'specified investments' under the Financial Services and Markets Act 2000 (FSMA).⁵⁶ The FCA has indicated that at least some types of virtual currencies may be transferable securities. In particular, it identifies that traditional shares issued on a public blockchain may be transferable securities, and that some security tokens may 'amount to a transferable security more akin to regulated equity-based crowdfunding'.⁵⁷ In January 2022, the UK government announced plans for legislation to address cryptoasset advertisements and protect consumers from misleading claims.⁵⁸ In addition to points reported in 2023 which had already set out a framework for tokenised securities, the UK has been progressing its research and piloting of fund tokenisation.⁵⁹ In September 2024 the Bank of England and the Financial Conduct Authority opened applications to participate in a Digital Securities Sandbox.⁶⁰
18.	United States of America	Securities and Exchange Commission (SEC)	The Financial Crimes Enforcement Network (FinCEN) proposed a cryptocurrency regulation (expected by Fall 2022) to impose data collection requirements on cryptocurrency exchanges and wallets for anti-money laundering purposes.

⁵⁶ Virtual Currency Regulation Review, 08 October 2021, available at <https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2021/10/virtual-currency-regulation-review.html>

⁵⁷ Para. 6 of the FCA's written submission to the House of Commons Treasury Committee digital currencies inquiry, published 22 May 2018, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/treasury-committee/digital-currencies/written/81677.pdf>.

⁵⁸ Government to strengthen rules on misleading cryptocurrency adverts, 18 January 2022, available at <https://www.gov.uk/government/news/government-to-strengthen-rules-on-misleading-cryptocurrency-adverts>.

⁵⁹ Fund tokenization, 24 November 2023, available at <https://www.fca.org.uk/firms/cryptoassets-our-work/fund-tokenisation>

⁶⁰ Guidance on the operation of the Digital Securities Sandbox, 30 September 2024, available at <https://www.bankofengland.co.uk/financial-stability/digital-securities-sandbox/guidance-on-operation-digital-securities-sandbox>

			The proposed rules⁶¹ would clarify that the definition of “money” under the Bank Secrecy Act applies to virtual currencies and would also apply to domestic and cross-border transactions involving digital assets that have legal tender status. Note: In August 2022, US Senators introduced the Digital Commodities Consumer Protection Act that seeks to close regulatory gaps between state and federal regulation of cryptocurrencies. If passed, the DCCPA would make the CFTC the leading oversight agency for cryptocurrencies that aren’t otherwise deemed securities. Most implementations of tokenised real-world assets, with a focus on yield generation and appreciation in value, will cause them to be treated as securities under the Securities Act⁶². The US has not implemented comprehensive regulations specifically for issuing security instruments on the blockchain, and therefore tokenised real-world assets need to be structured in a way that complies with the Securities Act, including registration under a number of possible pathways.⁶³ US Treasury notes on public blockchains, offered by multiple token projects, have in total exceeded USD \$1 billion.⁶⁴
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⁶¹ Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status by Department of the Treasury USA, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1506-AB41>.

⁶² Tokenized Real-World Assets: Pathways to SEC Registration, 09 May 2024, available at <https://www.fenwick.com/insights/publications/tokenized-real-world-assets-pathways-to-sec-registration>.

⁶³ Tokenized Real-World Assets: Pathways to SEC Registration, 09 May 2024, available at <https://www.fenwick.com/insights/publications/tokenized-real-world-assets-pathways-to-sec-registration>.

⁶⁴ Over \$1B in U.S. Treasury Notes Has Been Tokenized on Public Blockchains, 28 Mar 2024, available at <https://www.coindesk.com/markets/2024/03/28/over-1b-in-us-treasury-notes-has-been-tokenized-on-public-blockchains>.