

The Law of Crypto Assets

Maume / Maute / Fromberger

2022

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The Law of Crypto Assets

A Handbook

edited by

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Preface

Distributed ledger technology (DLT) and blockchain are two emblematic examples of innovative technologies that allow new business models and opportunities. Since the introduction of the internet, no other innovations have caused such a stir in the global business community. The current development is remarkable. Before 2017, Bitcoin or initial coin offerings were only known to tech enthusiasts. Only four years later, various countries have introduced legislation regarding the freshly-dubbed ‘crypto assets’. Issues such as the suitability of cryptocurrencies for money-laundering as well as their impact on energy consumption and climate change have found their way into the general media. While some countries compete to create a suitable legal ‘crypto environment’, others react with crackdowns on the fledging crypto scene. The establishment of DLT-based digital currencies seems only a question of time.

At present, the pressing question is how this new technology fits into the current legal framework. Are token offerings subject to prospectus requirements; and if so, which ones? What is the regulatory status of crypto exchanges? Can cryptocurrencies be considered as legal tender? Are crypto assets subject to taxation like ‘normal’ assets? Where are the gaps in the regulatory quilt?

In this book, we attempt to answer as many of these questions as possible. The focus is on the laws of the European Union. This is not just because of the size of the internal market and the strength of its economies. Although commonly considered as sluggish, EU lawmakers have demonstrated surprising agility in implementing regulation specifically tailored to crypto assets. The 5th Anti-Money Laundering Directive from 2018 was one of the first pieces of legislation that specifically addressed crypto-specific issues. The extensive Regulation for Markets in Crypto Assets (MiCAR) is expected to come into force in 2022. This will be accompanied by a pilot regime for crypto marketplaces. In addition, the existing EU rules for financial markets regulation have proved surprisingly well-suited for tackling the challenges presented by crypto assets. These EU-law based issues are discussed in the first half of this book, including inter alia EU private international law, consumer protection law, financial services and prospectus law, payment services law, data protection law, taxation law and funds regulation.

However, many countries, both inside and outside the EU, have enacted national legislation on crypto assets. Therefore, the second half of the book provides an overview of the development of crypto regulation in various major financial marketplaces. These country reports include inter alia the US, the UK, France, Germany, Russia, the PR of China, Singapore, Australia and New Zealand. It is our hope that these chapters allow further comparisons between jurisdictions and promote the international debate on best practice in the crypto space.

It is our view that we are currently witnessing the ‘law of crypto assets’ as a distinct area of law. This book is supposed to contribute towards an exchange of ideas and further harmonisation of crypto laws. It is current as at 1 July 2021. We appreciate all kinds of feedback.

Munich/Augsburg, Germany, October 2021

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