

Chapter 5

Comparative Review of the Regulatory Framework of Cryptocurrency in Selected Jurisdictions

Karisma Karisma

University Malaya, Malaysia

ABSTRACT

This chapter compares the current legal and regulatory landscape of cryptocurrency regulations of selected countries. Countries have adopted distinct and disparate regulatory approaches in regulating cryptocurrency. Countries such as Gibraltar, Malta, Switzerland, Singapore, and certain states in the United States have enacted proactive, enabling, and industry-specific laws to regulate cryptocurrency. The Philippines and Denmark are relatively forward-looking in their endeavour to regulate cryptocurrency by allowing its utilization and/or trade but with a restrictive and cautious approach. Certain countries have imposed rigorous restrictions or banned the usage or trade of cryptocurrency. With the rapid evolution and emergence of cryptocurrency markets, policymakers are adopting different trajectories to develop a suitable regulatory framework to regulate cryptocurrency. Countries around the world should harness the capabilities of cryptocurrency by devising favourable regulations rather than inhibit the application of cryptocurrency.

INTRODUCTION

Cryptocurrency is the first major blockchain innovation and the most notable blockchain application. Cryptocurrency is garnering the attention of investors, government, policymakers, academics, and other stakeholders all over the world more than ever before. In recent years, cryptocurrency has been widely used, and with the emergence and evolution of cryptocurrency, the regulatory endeavours of countries have been intensified. This chapter focuses on cryptocurrency policies, legislations, and regulations in selected jurisdictions. The pertinent areas explored are matters relating to legality and limits in the

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utilisation of cryptocurrency. The regulatory approaches adopted by countries are divided into four categories. The first category encompasses countries that have enacted proactive and enabling laws. The second category explores jurisdictions that are relatively proactive in their endeavour to regulate cryptocurrency, allowing the utilisation and/or trade of cryptocurrency but with a restrictive and cautious approach. The third category examines countries that have completely restricted or banned the usage and trade of cryptocurrency. The fourth category evaluates the regulatory landscape of cryptocurrency in the United States. With the rapid evolution and use of cryptocurrency around the world, regulatory bodies are adopting different trajectories. Some countries aspire to win the inter-jurisdictional race of becoming crypto havens by enacting enabling laws, whilst other countries adopt a cautious and restrictive approach.

BACKGROUND

Cryptocurrency was first introduced by Satoshi Nakamoto in 2008, in a white paper, where Nakamoto proposed “a purely peer-to-peer version of electronic cash [which] would allow online payments to be sent directly from one party to another without going through a financial institution”.(Nakamoto, 2008) Cryptocurrencies are decentralized, “peer-to-peer” currency systems that are not controlled by the government or institution, causing them to be resistant to government interference.(Lacity, 2020) Besides that, by the application of cryptocurrencies, there is no reliance on third-party intermediaries, namely banks and financial institutions.(Lacity, 2020) Services concerning transactions through cryptocurrencies are automated and community-driven. The transactions of cryptocurrencies are cryptographically protected and are shared on a blockchain ledger which constitutes a “universal record of truth”.(Lacity, 2020)

With the emergence of cryptocurrencies, it has become pertinent to regulate the market with suitable regulatory frameworks. Cryptocurrencies may be used for illicit purposes by malicious individuals or business entities, due to their characteristics of anonymity, immutability, and irreversibility of transactions which makes it a suitable market platform to make possible the cybercrime wave.(Chokor & Alfieri, 2021) Therefore, there is a need to regulate cryptocurrencies to prohibit illegal and illicit activities such as money laundering due to the uncertainties surrounding transactions involving cryptocurrencies. Countries in the first category have enacted robust anti-money laundering laws to protect the interest of consumers. These anti-money laundering laws impose obligations to monitor financial transactions and contain provisions on customer due diligence or know your customer requirements.(Quintais et al., 2019) Cryptocurrency service providers should comply with similar rules applicable to financial institutions because of the nature of cryptocurrency exchanges.(Gürçan, 2019)

The second objective of enacting appropriate laws is to increase government revenues through taxes imposed on individuals or business entities who engage in any cryptocurrency transactions.(Chokor & Alfieri, 2021) Nevertheless, no consensus has been reached by countries on the appropriate legal classification of cryptocurrencies resulting in complexity in the system. (Chokor & Alfieri, 2021) As elucidated below, some countries are facing a massive challenge to delineate national rules with clarity. Besides that, cryptocurrency regulations adopted by different countries are dissimilar, and no unified regulatory approach has been devised thus far. Thirdly, cryptocurrency markets are highly volatile, and by enacting regulations, financial stability can be achieved.(Chokor & Alfieri, 2021)

Scholars have proposed the harmonization and integration of cryptocurrency regulations by the adoption of a unified approach.(Cumming et al., 2019) Facilitating a consistent regulatory approach is pertinent to deter individuals or business entities from transacting in countries that have in place more

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