



LOOKING OVER THE HORIZON: The Emerging Legal and Regulatory Framework for Cryptocurrency & Other Digital Assets

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PRESENTATION OUTLINE

1. Overview of Cryptocurrencies and Digital Assets

2. The ECCU Legislative Landscape - Virtual Asset Business Acts and Draft Regulations

3. Conclusions



Overview of Cryptocurrencies



Overview of Cryptocurrencies

- During the last decade, the use of Bitcoin and other cryptocurrency has become increasingly popular in the financial system, not only as a payment tool but also as a financial asset. Some jurisdictions have imposed outright bans while others are advocates.
- El Salvador and the Central African Republic (CAR) have made Bitcoin Legal Tender.
- Approximately 22,932 cryptocurrencies with a market capitalization of 1.1 trillion USD.
- Most subscribed – Bitcoin (BTC), Ethereum (ETH), Tether (USDT) (approx. 800 bn).



Overview of Digital Assets

Cryptocurrency

A type of digital currency that uses **cryptography** for security and anti-counterfeiting measures by securing the transactions and controlling the creation of new units.



Stablecoins

Stablecoin assets are crypto tokens that are designed to mirror or equal the price of a fiat currency like the US dollar. It was intended to be a response of the volatility of crypto.



Tokenized Assets

Tokenisation of assets involves the **digital representation of real (physical) assets** on distributed ledgers, or the issuance of traditional asset classes in tokenised form (e.g. stocks, bonds, gold). Fungible vs. Non-Fungible Tokens (NFT).



CBDC

Central bank digital currencies (CBDCs) are a form of digital currency **issued by a country's central bank**. Unlike cryptocurrencies, their value is fixed by the central bank and equivalent to the country's fiat currency.



Decentralized Finance

Decentralized finance - an emerging model for organizing and enabling cryptocurrency-based transactions, exchanges and financial services. All transactions for buying, selling, loans and payments with cryptocurrency can occur **without a central authority in a peer-to-peer (P2P) approach**.

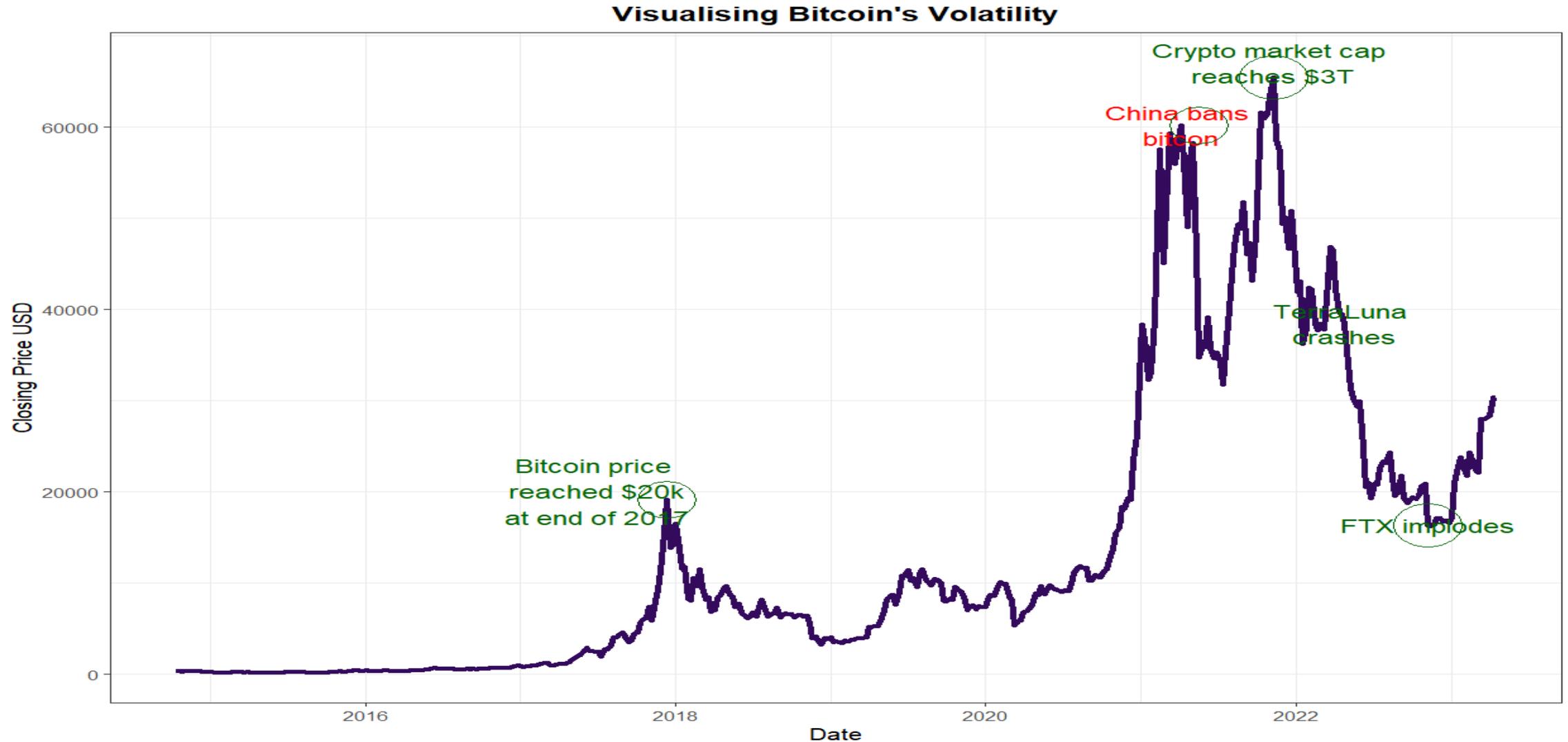


Why regulate? RISKS!

- **Technological Risks** – hacking, theft (415 mil in FTX), data mining and storage (outsourcing storage).
- **Volatility** (450 bn lost in collapse of Terra in May 2022).
- **Liquidity Risk** – insufficient reserves in the event of collapse.
- **AML/CFT Risks** – “cryptocurrency payments allow greater anonymity than traditional noncash payment methods” FATF. (Silk Road seizure 2013 – 33.6 mil usd in Bitcoin).
- **Financial Stability** – tax evasion, cryptoization (not legal tender), depletion of foreign reserves.
- **Regulatory risks** – regulatory arbitrage (different frameworks in different countries).



The volatility of crypto makes it mainly a speculative asset, marked by the collapse of many of major players....



Global Standard-Setting Bodies

Financial Stability Board (FSB)

- In February 2022, the FSB published a risk assessment on crypto-assets.
- The assessment outlined the FSB's concerns over the rapid growth in crypto-assets.
- Challenges included the national application of crypto asset regulation and supervision, gaps in the application, **including cross-border cooperation**

Basel Committee

- In December 2022, the Basel Committee on Banking Supervision ("BCBS") finalized a standard for banks to manage their exposure to cryptoassets (the "Crypto Standard").
- The Committee proposed a strict new rule that would require banks to **set aside a dollar in capital** for every dollar of bitcoin owned.

International Organization of Securities Commissions (IOSCO)

- In July 2022, IOSCO published its Crypto-Asset Roadmap for 2022-2023 which sets out its regulatory policy agenda and work program for the sector.
- The taskforce is also charged with **coordinating with other standard setting bodies** on Fintech and crypto-related matters



Global Standard-Setting Bodies

Financial Action Task Force (FATF) Recommendation 15

- In October 2021, the FATF published its **UPDATED GUIDANCE: A RISK-BASED APPROACH TO VIRTUAL ASSETS AND VIRTUAL ASSET SERVICE PROVIDERS**.
- The Updated Guidance requires that VASPs be regulated for anti-money laundering and countering the financing of terrorism (AML/CFT) purposes, that they be licensed or registered, and subject to effective systems for monitoring or supervision.



The ECCU Legislative Landscape



Legislative Framework

Antigua and Barbuda

- **Digital Assets Business Act 2020**
 - **Regulations 2021**
- **Virtual Asset Business Act 2021**

Grenada

- **Virtual Asset Business Act 2021**

• **Montserrat – n/a**

Saint Lucia

- **Virtual Asset Business Act 2022**

Anguilla

- **Utility Token Offering Act 2018**
- **Digital Asset Business Act 2023**
 - **Regulations 2023**

Dominica

- **Virtual Asset Business Act 2022**

Saint Kitts and Nevis

- **Virtual Asset Act 2020**
- **Virtual Asset (Amendment) Act 2021**

Saint Vincent and the Grenadines

- **Virtual Asset Business Act 2022**





Background

This Virtual Assets legislative initiative began in **2018** to address the rising need for oversight of the entry and conduct of business regarding crypto assets in the Eastern Caribbean Currency Union (ECCU).

In response to the Financial Action Task Force's (FATF) Recommendation 15, member countries were required to **assess and mitigate** the risks associated with virtual asset financial activities and providers; **license or register** providers and subject these activities and/or providers to **supervision or monitoring** by competent national authorities.

The Virtual Asset Business Act

- “**virtual asset**” means a **digital representation of value** that can be digitally **traded**, or **transferred**, and can be used for **payment or investment** purposes and does not include digital representations of fiat currency or security;
- “**virtual asset business**” means the conduct of one or more of the following activities or operations for or on behalf of another person—
 - (a) **exchange** between a virtual asset and fiat currency;
 - (b) **exchange** between one or more forms of virtual assets;
 - (c) **transfer** of a virtual asset whether or not for value;
 - (d) **safekeeping or administration** of a virtual asset or instruments enabling control over a virtual asset; and
 - (e) participating in and **provision of financial services** related to an issue or sale of a virtual asset.



Activities covered

- The definition contemplates the coverage of activity, in respect of **all limbs** that is carried out **for or on behalf of another person** for commercial reasons.
- For example, for the purposes of **limb (c)** in a typical **P2B/P2P** transaction, where a person accepts cryptocurrency as a form of payment for **goods or services**, while the acceptance by the business of the cryptocurrency will not be caught by the definition, and would therefore not be considered a regulated activity, the service provider that **facilitates** the transfer of the cryptocurrency from the person to the business or transfers the cryptocurrencies from one cryptocurrency address or account to another would be caught by the definition.



Registration

- (1) Any person who wishes to be registered to offer or operate virtual asset business shall apply to the Authority for registration.
- (2) name, address, statement of scope, officers, affiliates, shareholders, AML/CFT rules, policies and procedures, risk assessment, any other information.
- Authority reviews application, may request further information, grant or refuse application.



Registration cont.

- The Authority shall not grant registration unless the Authority is satisfied that the—
 - (a) person is a **fit and proper** person to be engaged in virtual asset business;
 - (b) application is in order and the **application fee** prescribed in Schedule 1 has been paid;
 - (c) **requirements** of this Act have been complied with; and
 - (d) person would be able to fulfil the obligations of a registrant under this Act.
- Conditions may be imposed on the grant of an application.





Considerations for Fitness and Probity



Escrow – Liquidity Risk

Grenada, Dominica

- (1) A registrant shall place in escrow, with a registered trust company or with an entity or person whose business is the provision of trust or custodial services, assets to discharge financial obligations to clients of the registrant and such assets shall be equivalent to **40 percent** of the total value of client funds held by the registrant.

Saint Kitts and Nevis, Saint Lucia – 15 %.

Saint Vincent and the Grenadines – 100,000 or 25% of financial obligations to clients.



Prospectus

- A registrant **shall not** participate in or provide financial services related to the issue or offer for sale of a virtual asset without—
 - (a) submitting a prospectus to the Authority for review at least 14 days before the proposed date of its publication;
 - (b) a statement of no objection to the prospectus by the Authority; and
 - (c) publishing the prospectus prior to the issue or offer for sale.
- The registrant shall submit to the Authority any proposed amendment to a prospectus for a statement of no objection by the Authority.



Annual Audit and Risk Report

- A registrant shall appoint annually an **auditor** who shall be a **chartered accountant**, a **certified public accountant**, a member of the **Institute of Chartered Accountants of the Eastern Caribbean** or some **other professionally qualified accountant** satisfactory to the Authority to perform an audit....
- A registrant shall within **4 months** of the end of the financial year submit the audited financial statements to the Authority.
- If the auditor suspects a **criminal offence, suspicious transaction or breach** there must be a report forthwith to the Authority.



Suspension of Registration

- The Authority may if necessary **suspend registration** by giving 10 days written notice to the registrant, if the registrant:
 - (a) has contravened a provision of this Act;
 - (b) has been registered pursuant to an application where a false declaration was made;
 - (c) ceases to operate or offer virtual asset business in excess of 90 days;
 - (d) made a request for revocation or suspension to the Authority;
 - (e) enters liquidation, is wound up or otherwise dissolved;
 - (f) is no longer a fit and proper person to be a registrant;
 - (g) is conducting business in a manner that is detrimental to the public interest or clients;
 - (h) misrepresents or provides false information in a prospectus; or
 - (i) is convicted of an offence.



Revocation of Registration

- Registration shall be revoked on the expiration of 5 days from the date of notice given by the Authority if the registrant **fails to rectify the issues which caused its suspension**, within 30 days.
- Authority may revoke or suspend registration **without notice** if it is in the **public interest or to protect clients**.



Offences

- (a) directly or indirectly makes a false or misleading declaration or omits to disclose a material fact for the purpose of gaining or retaining a client;
- (b) directly or indirectly makes a false declaration in an application for registration;
- (c) offers or operates virtual asset business in or from (country) without being registered under this Act; or
- (d) otherwise contravenes a provision of this Act for which a penalty is not provided.



Penalties

Criminal

- **Dominica** - summary conviction to a fine of \$150,000 and imprisonment for three years.
- **Grenada, Saint Lucia and Saint Vincent and the Grenadines** - summary conviction to a fine of \$10,000 and imprisonment of 2 years.
- **St. Kitts and Nevis** - summary conviction to a fine not exceeding \$100,000 and imprisonment for a period not exceeding five years.

Administrative – (recoverable as a civil debt)

- \$5000.00 – Grenada, Dominica St. Vincent, St. Lucia, \$5000.00 and \$10,000.00 St. Kitts, \$10,000.00, \$25,000.00 and \$500.00 per day
Antigua



Fees

Grenada	Dominica	Saint Vincent and the Grenadines	Saint Lucia, Saint Kitts
Application Fee - \$2,500	Application Fee - \$10,800	Application Fee - \$4,000	By Regulation
Registration Fee - \$10,000 Late Fee - \$2,500	Registration Fee - \$32,400 Late Fee - \$6,750	Registration Fee - \$12,000 Late Fee - \$100 (per day renewal remains unpaid)	



The Draft ECCU Virtual Asset Business Regulations



Draft Regulations

- Interesting **definitions** – originator, beneficiary, market abuse
- **Additional** minimum financial requirements
- **KYC requirements** – Originator and Beneficiary information to accompany transaction
- **Internal policies, procedures, systems and controls** **adequate and suitable** for the **performance** of a virtual asset business and appropriate to the **size and nature** of its operations (including human resources)



Draft Regulations

- Satisfactory arrangements for **safeguarding and administration of assets** including but not limited to **data management and protection, security access control and cyber security safeguards**, and clear terms of agreement between participants,
- **systems and procedures** to address **complaints by purchasers, customers and users**, and
- **Maintenance of appropriate policies of insurance** on such terms and conditions as may be determined by the Authority for the purpose of indemnifying registrant/licensee against risk/liability.



Draft Regulations

Registrant must have:

- Sound, effective and comprehensive strategies, **processes and risk management systems** to **assess and maintain**, on an ongoing basis, the amounts, types and distribution of financial resources, non-financial resources, own funds and unimpaired capital adequate to cover the nature and level of the risks to which it is, or might be, exposed, such that there is no significant risk that its liabilities cannot be met as they fall due, and that in the event of a winding up, its business can be wound up in an orderly manner, minimizing harm to consumers, market integrity or to other market participants;
- **systems and controls** applied to its business activities are adequate and appropriate for the scale and nature of those business activities, including systems and controls which adequately and appropriately address the **recording, storing, protecting and transmission of information**, the effecting and **monitoring of transactions**, the **timely discharge**, whether by performance, compromise or otherwise, of the rights and liabilities of the parties to transactions, the **safeguarding and administration of assets** belonging to investors, shareholders, and in the event of disruption of a virtual asset service, **business continuity and planning**.



Conclusions

The regulatory landscape is still developing.

Virtual Assets Business involves great risk and requires a concerted response. It is expected that the legislative framework for virtual asset business in the ECCU, on completion, will contribute to maintaining the integrity and stability of the ECCU financial sector, promote a sound enabling environment for provision of virtual assets services and facilitate innovation in the sector.



Thank you



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