

# OFFSHORE REGULATION OF CRYPTO: IS THERE SUCH A THING AS A SAFE HAVEN?

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**In the wake of the FTX debacle, with billions of dollars of investors' money disappearing into thin air, the knotty question of crypto regulation is fairly and squarely in the public eye. With cryptocurrencies and crypto assets now becoming more mainstream, the need to protect the consumer and how best to do so, is becoming a matter of urgent concern to governments across the Globe.**

Of the major global players, the European Union is first off the starting-block, with its **Markets in Crypto-Assets Regulation** set to become effective in December 2024. Following hard on its heels will be the UK's planned crypto-asset regulation, with HM Treasury proposals published in October 2023 intended to "provide greater protection and transparency" to investors. The UK Government plans to introduce legislation in 2024 to implement these proposals.

While these proposals may be welcome news for investors, certain offshore jurisdictions, such as Gibraltar, had the foresight some years ago to introduce crypto regulation, anticipating the tidal wave of investment that the nascent industry would attract. A round-trip around some of these jurisdictions gives a worthwhile overview of the innovative approaches taken in anticipation of just some of the challenges that have been thrown up in crypto investment.

## Gibraltar

Leading the field is Gibraltar. This British Overseas Territory first began to get to grips with crypto in 2014, with the creation by financial regulators and policymakers of a Cryptocurrency Working Group.

This led to the Distributed Ledger Technology ("DLT") Framework, a first of its kind, which was introduced in 2018 and intended to provide regulatory certainty for DLT firms based in and operating from Gibraltar. In line with that approach was HM Government of Gibraltar's stated objectives to provide a responsive regulatory framework; encourage growth in technology and fintech in the jurisdiction; to provide sufficient flexibility to enable the effective regulation of novel business activities; and to enhance consumer confidence in the sector.



The DLT Framework (promulgated in Regulations passed in 2017) sets out ten principles upon which the Gibraltar crypto regulatory regime is based and requires DLT providers (those using DLT for storage or transfer of value) based there to conduct business honestly and with integrity; protect client assets; observe good corporate governance; have good risk management practices; provide customer care; maintain sufficient financial resources; have an effective cyber security regime; observe financial crime requirements; have a sound business continuity plan; and maintain market integrity (by the prevention of insider trading and other forms of market abuse).

Gibraltar is therefore at the forefront of global regulation in the crypto space. Gibraltar is enjoying the fruits of this foresight, an example being that it is now the third-highest jurisdiction of choice for crypto hedge funds after the BVI and the Cayman Islands.

## British Virgin Islands

The BVI recently introduced the Virtual Assets Service Providers Act 2022 ("VASP"). This introduces a registration regime for DLT businesses engaged in the custody and exchange business and makes them subject to supervision by the BVI Financial Services Commission. The VASP Act defines a "VASP" as a virtual asset service provider who provides, as a business, a virtual asset service and is registered to conduct certain activities on behalf of another person, such as exchange between virtual assets and fiat currencies; exchange between one or more forms of virtual assets; and transfer or safekeeping of virtual assets.



To many investors who have had their fingers burned in the Globix liquidation, this may be too little too late. Globix (or to give it its full name, Miracle World) was a BVI crypto company that went into liquidation in 2022. Investors lost out to the tune of \$42 million. Interestingly, the Supreme Court of Gibraltar granted the liquidators a freezing injunction and other orders on the basis that digital assets were being controlled from Gibraltar.

### Cayman Islands

The leading global financial centre of the Cayman Islands introduced its own Virtual Assets (Service Providers) Act in 2020 in recognition of the newly adopted international standards set by the Financial Action Task Force (“**FATF**”). The Cayman “**VASP**” Act is being introduced in two phases, the first requiring virtual asset service providers to be registered with the Cayman Islands Monetary Authority (“**CIMA**”) under the relevant Anti-Money Laundering Regulations and the second dealing with licensing and other matters. As yet, phase two has not been implemented.

The VASP Act underlines the legitimacy of digital assets and cryptocurrencies in the Cayman Islands and regulates businesses providing services related to virtual assets. All VASPs (being entities incorporated or registered in the Cayman Islands providing a virtual asset service as

a business or in the course of business) must be registered with the CIMA, or obtain a waiver or hold a sandbox licence. Even if a business does not provide a virtual asset service, as defined, it may still be caught under AML regulations, the Securities Investment Business Act or the Money Services Act.

### Bermuda

Bermuda is another jurisdiction that is leading from the front and is recognised as a global leader in the regulation of DLT and cryptocurrency-based services and related activities. The Bermuda framework identifies all cryptocurrencies, digital coins and tokens as “digital assets”.

The framework consists of two arms: the Digital Asset Business Act (“**DABA**”) which contains a licensing regime for businesses looking to conduct “digital asset business” and the Digital Asset Issuance Act (“**DAIA**”). The Bermuda Monetary Authority (“**BMA**”) continues to promulgate rules and regulations supplementing **DABA** and exercises supervisory and enforcement powers over regulated digital asset businesses.



The Bermuda Government has also introduced a sandbox licensing regime as well as one of the world’s first digital asset business bank licensing regimes that provides for a banking licence to be issued to persons seeking to provide traditional banking services to the digital asset sector.

### The Bahamas

In 2020, the Digital Assets and Registered Exchanges (“**DARE**”) Act came into force, designed to provide a regulatory framework for digital asset businesses and digital asset activities permitted in The Bahamas. This framework was designed to protect investors and consumers; align with international AML and terrorist financing standards; and manage and mitigate attendant risks.

The Securities Commission of The Bahamas has undertaken a review of that law and a new **DARE** Bill 2023 has been drafted which is designed to provide even greater focus on consumer and investor protection. Perhaps not surprising given the **FTX** debacle.



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