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TRINIDAD AND TOBAGO

TECHNICAL ASSISTANCE REPORT – TECHNICAL ASSISTANCE ON FINTECH REGULATION AND LEGISLATION

This technical assistance report on Trinidad and Tobago was prepared by a staff team of the International Monetary Fund. It is based on the information available at the time it was completed on July 2023.

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TECHNICAL ASSISTANCE REPORT

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Technical Assistance on Fintech Regulation and
Legislation

July 2023

Prepared By

Parma Bains, Jose Garrido, and Dirk Jan Grolleman

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Monetary and Capital Markets
Legal

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GLOSSARY

CBDC	Central Bank Digital Currency
CBTT	Central Bank of Trinidad and Tobago
CSA	Canadian Securities Administrators
DLT	Distributed Ledger Technology
EMI	E-Money Issuer
FATF	Financial Action Task Force
FIUTT	Financial Intelligence Unit of Trinidad and Tobago
IH	Innovation Hub
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering
JFSC	Joint Fintech Steering Committee
JIH	Joint Innovation Hub
LEG	Legal Department
MCM	Monetary and Capital Markets Department
MiCA	Markets in Crypto Assets Regulation (EU)
PFMID	Financial Market Infrastructure Department
PSP	Payment Service Provider
RFP	Request for Proposal
RS	Regulatory Sandbox
SMEs	Small and Medium Enterprises
TA	Technical Assistance
TC	Technical Committee
TTSEC	Trinidad and Tobago Securities and Exchange Commission
TTIFC	Tobago International Financial Centre
VASP	Virtual Asset Service Provider

PREFACE

At the request of the Central Bank of Trinidad and Tobago (CBTT), and Trinidad and Tobago Securities and Exchange Commission (TTSEC), a Monetary and Capital Markets (MCM) Department mission, supported by the Legal Department (LEG) conducted desk-based capacity development and visited Port of Spain in-person during April 26–28, 2023, to assist the CBTT improve its licensing and supervisory regime for e-money, and improve its institutional arrangements for fintech regulation.

The mission also supported TTSEC by carrying out a desk-based review to determine the efficacy of its existing legislation in relation to fintech, while also providing high-level technical assistance (TA) on the prudential and conduct regulation of crypto assets.

The mission held meetings with representatives from CBTT, TTSEC, and the private sector. The mission wishes to thank the authorities and private sector entities in Trinidad and Tobago for their warm hospitality, cooperation, and productive discussions.

EXECUTIVE SUMMARY

The impact of fintech in Trinidad and Tobago is currently concentrated in the payments sector. In meeting with firms utilizing fintech, trade bodies, and public authorities, we found that the impact of fintech is not yet broad based and is permeating primarily in relation to e-money and payment service providers (PSP), and more slowly in other areas such as crowdfunding, robo-advice, and crypto assets. While data on the impact of fintech are limited, we use public information, conversations with authorities and market participants, and applications for licensing and outreach for regulatory support as guides, which suggest that fintech remains relatively concentrated.

This report covers the three areas where technical assistance (TA) was provided by the mission team. First, the mission focused on the licensing and supervision of e-money issuers (EMI). Industry participants and authorities were concerned about the length of licensing processes, and the challenging engagement of market participants with the e-money pilot regime (also known as the sandbox). Second, the mission covered institutional arrangements for fintech regulation, specifically reviewing the Innovation Hub (IH) and the regulatory sandbox (RS). Third, the mission conducted a legislative review of securities legislation to determine whether it covered new business models generated by fintech, in particular crypto assets.

The current e-money framework and licensing process can be further enhanced. In line with the prevailing international practice, the authorities should consider an entity based regulatory and supervisory approach for EMIs. The supervisory requirements and expectations for the orderly winddown of weak or failing EMIs need to be elaborated. The authorities also requested inputs on the practices in other jurisdictions regarding “closed-loop” payment systems,¹ transaction and wallet limits, and interoperability. Getting more familiar with the way these issues are dealt with in other jurisdictions, or requesting additional TA on such issues, will help further tailor requirements to the market, improve the communication with the industry, and speed up the licensing process, which currently appears protracted and may inhibit market development.

Regulatory authorities are working to understand the impact of fintech on financial markets. They have created a director level Joint Fintech Steering Committee (JFSC) and a staff level Technical Committee (TC) to guide the regulatory response to fintech. Authorities have developed a Joint Innovation Hub (JIH) and a version of a RS—and are working to develop a broader RS. There are resource constraints with few dedicated fintech staff members, and neither the RS nor the JIH operate as intended due to challenges around their design and desired outcomes.

¹ Closed loop payment instruments are different from open loop payment instruments because they can only be used at a specific retailer (e.g., a gift card issued by a retailer with which you can only buy something at the retailer).

Authorities should carry out a feasibility study with an aim of improving the JIH, but a RS should not be a priority. The JIH has the potential for pooling resources and improving collaboration on fintech regulation for authorities and is likely to deliver positive outcomes and serve a genuine market need while helping authorities achieve their mandates. The TC is well placed to operate as a JIH and should be repurposed as such. Staff have provided detail on how to achieve this within the TA Report. However, development of a broader RS should not be a priority and staff recommend pausing the project given there does not exist a clear need at the current time.

The existing legal regime (Securities Act 2012) does not cover new fintech developments, such as crypto assets activities. The Securities Act, influenced by North American models, faces similar issues in determining whether crypto assets fall under the concept of securities or investment contracts. There are no enabling provisions in the Act that would allow for the use of tokens as securities. In contrast, other jurisdictions in the region (e.g., the Bahamas, Bermuda, Cayman Islands) have adopted comprehensive legislation to promote the use of crypto assets.

The authorities should conduct an impact assessment for legal and regulatory reforms to assist them in the development of a strategy for crypto assets. An impact assessment should evaluate the costs and benefits of legal and regulatory action in the context of the relative importance of crypto assets activities in the country, and the existence of competing legislative and regulatory priorities. If the strategic decision is to proceed with the establishment of a reformed legal framework, targeted legal changes supported by comprehensive regulation would be the recommended approach. Other alternatives, such as a detailed legal regime, or using exemptions to accommodate the needs of new activities, present more disadvantages, such as the lengthy and cumbersome legislative process or the lack of a legal basis for the use of general exemptions.

Table 1. Trinidad and Tobago: Key Recommendations

Recommendations and Authority Responsible for Implementation	Timeline²	Paragraph	Responsible Authority
Consider adopting an entity based regulatory approach for EMIs	ST	57	CBTT
Elaborate the regulatory and supervisory expectations facilitating the orderly winddown of weak or failing EMIs	MT	58	CBTT
Streamline the licensing process and consider further sharpening the payments and EMI regulatory perimeter	ST	60	CBTT
Review and consider aligning to (while taking into account local circumstances) best international practices to transaction and wallet limits, interest compensation on e-wallet balances, and interoperability	ST	59	CBTT
Technical Committee to be repurposed as a Joint Innovation Hub following stakeholder consultation and processes streamlined	ST	68	CBTT, TTSEC
Transparent and ongoing evaluations of the operation of the Joint Innovation Hub with clear communications with stakeholders	MT	70	CBTT, TTSEC
Authorities to improve international cooperation through playing pro-active roles in regional bodies and improving collaboration with peer regulators through closer working, including using Fintech Cooperation Agreements	ST	81	CBTT, TTSEC
Impact assessment on the introduction of a legal and regulatory regime for crypto assets	ST	83	TTSEC
Targeted legal amendments and/or regulation of crypto asset activities	MT	89	Ministry of Finance, TTSEC

² ST= *short term*, 6–12 months; MT= *medium term*, 12–24 months.

I. INTRODUCTION AND BACKGROUND

- 1. CBTT and TTSEC have requested the assistance of MCM and LEG to review the existing legislation, and review and potentially improve the licensing and supervision of e-money, and their institutional approach to monitoring fintech.** Following a request at the Spring Meetings 2022, authorities submitted separate formal requests for TA on fintech regulation. MCM requested a joint submission by both authorities to minimize duplication and ensure greater consistency of support. CBTT and TTSEC submitted a joint request for TA, and following discussions to clarify the scope, staff agreed to provide support on e-money licensing and supervision and a review of the regulatory sandbox (RS) to CBTT and a legislative review and support on crypto regulation to TTSEC. Staff carried out virtual webinars to better understand market developments. This was followed by an in-person visit to Port of Spain between April 26–28, 2023, where staff met with both authorities, as well as key industry stakeholders, before providing final recommendations.
- 2. This report reflects the main findings and recommendations from the April 2023 mission to Port of Spain.** This report focuses narrowly on the request of authorities in relation to the licensing and supervision of e-money by CBTT, the operation of the IH and RS at both authorities, and a review of existing securities legislation by TTSEC.
- 3. Authorities in Trinidad and Tobago are taking steps to monitor and respond to the impact of technology driven innovation in financial services (fintech).** The growth of fintech driven firms and business models has recently gathered pace in Trinidad and Tobago, and authorities are taking steps to allow them to better monitor and respond to the challenges of fintech while harnessing the benefits.
- 4. The overall impact of fintech in Trinidad and Tobago remains concentrated in payments, but there is a growing broader ecosystem.** According to authorities and market participants, most technology driven innovation is happening in the payments sector with a growing number of EMIs and PSPs. This is reflected by the number of applications the authorities have received for licensing and outreaches for regulatory support. Fintech is permeating, more slowly, in other financial market sectors, primarily in relation to crowdfunding, robo-advice, and crypto assets.
- 5. There are several authorities that play a role in the development and regulation of fintech in Trinidad and Tobago.** The CBTT, TTSEC, and the Financial Intelligence Unit of Trinidad and Tobago (FIUTT) all play key roles in relation to monitoring, supervising, and regulating the impact of fintech on financial markets. The Trinidad and Tobago International Financial Centre (TTIFC), a fintech incubator, is the lead agency tasked by the Ministry of Finance to foster digital financial services across Trinidad and Tobago. The Fintech Association of Trinidad and Tobago is a non-profit trade body that aims to be a collective voice for fintech development in the country.

II. AREAS OF FOCUS

A. Licensing and Supervision of E-Money (CBTT)

6. E-money is regulated by the Central Bank of Trinidad and Tobago (CBTT). The Financial Institutions Act (2008) defines e-money as a monetary value representing a claim on the issuer that is stored on an electronic device, issued on the receipt of funds not less in value than the monetary value issued, e-money funds shall not be treated as deposits, and are accepted as a means of payment by persons other than the issuers. The CBTT issued a regulatory framework for EMIs 2020 (legal notice No. 284), which requires EMIs to obtain a license from the CBTT, comply with regulations on capital adequacy, safeguarding of customer funds, consumer protection, and anti-money laundering and counter-terrorism financing (AML/CFT) requirements.

7. EMIs are required to comply with specific safeguarding requirements for the e-float (i.e., the monetary value stored electronically) held on behalf of their customers. The regulatory framework determines that EMIs must keep customer funds operationally and legally in a segregated (custodian) account from its own funds. The segregated account must be held with a financial institution that is licensed by the CBTT. The regulations require EMIs to maintain accurate records of all transactions related to the e-float and to conduct regular reconciliations of the e-float balance with the balance in the segregated account.

8. Additionally, EMIs must ensure that the e-float is safeguarded against loss or theft. They must have appropriate security measures in place to protect the e-float, including measures to prevent unauthorized access, and they must have a disaster recovery plan in place to ensure the continuity of services in the event of a business interruption or other emergency.

9. For transparency, and to further protect customers, EMIs are required to provide consumers with clear and concise information about terms and conditions of their services, including fees, charges, and limitations on the use of the service, and they must have effective and transparent mechanisms in place to resolve disputes with consumers, including a complaints procedure, and access to alternative dispute resolution services.

10. AML/CFT regulations require EMIs to conduct customer due diligence and report suspicious transactions to the FIUTT. In addition, the wallets are also subject to transaction and balance limits. These measures help to prevent money laundering and terrorist financing activities that could harm consumers and the wider society.

11. The legal framework also contains governance requirements, regulates the use of agents, and imposes some business limitations. EMIs are not allowed to provide credit, deal in foreign exchange, issue joint accounts, pay interest, and are only allowed to issue e-money in Trinidad and Tobago dollars.

B. Institutional Arrangements for Fintech Regulation (CBTT & TTSEC)

12. The use of fintech in financial services is a priority for the government of Trinidad and Tobago. To achieve this, the government has created the TTIFC, a fintech incubator, to foster the growth of fintech in Trinidad and Tobago by convening key stakeholders and providing an incubating environment for innovative entities to grow their business.

13. At the same time, regulatory authorities are taking steps to ensure they can effectively regulate and monitor fintech driven business models. Recently, authorities have developed regulatory frameworks for e-money and PSPs and are considering ways in which they can gain broader oversight over new business models that might not fit neatly within existing regulatory frameworks.

14. While resources are constrained, regulatory authorities are working to understand the impact of fintech on financial markets. Authorities have created a JFSC and a TC to guide the regulatory response to fintech across the CBTT, TTSEC, and FIUTT. Authorities have also developed a JIH and are working to develop a RS. However, given resource constraints, there are few staff dedicated fintech staff members in either CBTT or TTSEC.

15. The JFSC plays a key role in the response to fintech. It consists of representatives from the three organizations composed of a chairperson, deputy chairperson, IT specialist, and other competent persons. The SC makes the final decisions on applications, approval, waivers—and for the sandbox, key performance indicators, graduation, as well as any suspensions or cancellations of tests. The SC is supported by the TC, comprised of staff from various departments across the regulatory authorities, which assesses the documentation in both the IH and RS, monitors entities, reports on the outcomes of testing, and submits recommendations for approval of entry, graduation, and extension of sandbox tests.

Joint Innovation Hub

16. In October 2020, regulatory authorities in Trinidad and Tobago launched a JIH. The IH is run and administered by three domestic regulatory authorities, the CBTT, TTSEC, and the FIUTT. It acts as a central point of contact for firms to engage with all three regulatory authorities.

17. The JIH offers support to a range of firms across a several services. The IH is available to both regulated entities and those entities seeking authorization and aims to help both authorities better understand the impact of new technologies on financial markets, as well as helping innovative firms better understand their regulatory obligations. The IH is also used to determine whether existing regulatory frameworks can accommodate the delivery of financial activities through new delivery mechanisms, or whether further testing of the product or service is needed.

18. The JIH assesses applications against set eligibility criteria that is publicly available on authorities' websites. Authorities request that applicants demonstrate an innovative product or service that results in a new way of offering or delivering the service or product to the public, provide a detailed business plan, demonstrate a potential to improve efficiency and is beneficial to the consumer or economy, and does not negatively impact financial stability.

19. Firms have three main methods of applying to the IH. Entities can request information related to authorization, general fintech driven products or services, or request meetings with the regulatory authority by completing “Form A”. Entities that meet the eligibility criteria can also seek authorization directly through the IH by completing “Form B”. In this scenario a firm must be in a position to go live with their product and have submitted all the relevant documents required to meet existing regulatory frameworks. Finally, firms requiring authorization for e-money services can use the “EMI Form” if they have an e-money service ready to go live and have submitted all the relevant documents required to meet existing regulatory frameworks.

20. A workflow exists to standardize the way in which authorities engage with applicant firms. After receiving an application, an acknowledgement email is sent to the firm by the relevant team; Payments and Financial Market Infrastructure Department (PFMID) at the CBTT, Fintech Team at TTSEC. All three authorities receive the submission through a shared inbox and have 48 hours to review and determine which authority will respond based on their mandate. Where there is possible overlap, one authority is designated as the lead, with a desired response time of one week, although more complex cases are determined on a case-by-case basis. The final response is filtered through the CBTT.

21. The IH has had engagement with 61 firms since launching to March 2023. Most participants are either EMIs or PSPs with 29 submissions, crypto asset focused firms constitute 18 submissions, and the remainder involve broader fintech driven firms. Fifty engagements are general queries, while eleven engagements have been applications for authorizations.

22. Currently, the IH operates more like a fintech touchpoint. Unlike IHs, the existing approach provides for limited outcomes given resource constraints and operates more as a mechanism to set up meetings with relevant teams and some query responses. This can lead to a disconnect between what firms expect and what authorities are able to provide. Fintech touchpoints are often known as office hours or regulatory surgeries and provide a dedicated point of contact for firms to request support for innovative business models and can operate effectively out of existing supervisory structures. The provision of support is usually limited to signposting to relevant rules and regulations, as well as feeding intelligence back into the organization.

23. Additionally, the IH is used as an entry point to license EMIs. Currently, applications for EMIs must go through the IH, creating potential bottlenecks for both the licensing processes, as well as allowing for the IH to deliver other core services. Given that EMI models are not considered innovative within the jurisdiction given the prevalence of EMIs, it is not immediately clear how they would meet the existing eligibility criteria to enter through the IH to get licensed.

24. There is no IH team at either CBTT or TTSEC. The CBTT runs its IH within the PFMID and is staffed by one full time staff member, supported by others from around the department who work on the IH in addition to their other full-time roles. At TTSEC, the Fintech Team is composed of staff members from various departments who carry out IH related work as part of their broader remit.

Regulatory Sandbox

25. In May 2021, the three authorities proposed a joint RS in Trinidad and Tobago. The aim is to encourage the safe introduction of fintech driven business models into local markets while allowing authorities to improve their understanding of innovative business models, and firms to better understand the regulatory frameworks that will be subject to. The RS is to be launched in two phases. The first phase is to be focused on EMIs. The second phase, to be launched at a later date, allows for applications from a broader set of fintech innovation.

26. The first phase of the RS is a provisional registration regime rather than a testing platform. The E-Money Order allows EMIs to be provisionally registered for a period of up to six months and benefit from waivers to one or more of the registration requirements. Unlike a RS, which provides a controlled environment for firms to test their innovative propositions with real consumers, the first phase of the RS in Trinidad and Tobago is more akin to a waiver program. Waivers or variations include the level of capital, specific risk management requirements, regulatory oversight and reporting, board and management experience, and relative size, as provided under the E-Money Order. There is little in common with global RSSs, and some of the key components of sandboxes, such as testing frameworks do not exist.

27. When fully launched, the RS will be open to broader products and services, and applications are to be assessed against publicly available eligibility criteria. The second phase of the sandbox will be open to broader business models including crypto, crowdfunding, robo-advice, and other innovative products and services. Applications are to be assessed against eligibility criteria, including submitting the relevant documentation, having an approved testing plan, demonstrated innovation, availability of resources, and fitness and propriety of its senior management team. Firms are expected to first apply and be accepted to support from the IH before applying to the RS. Testing firms must fall within regulatory frameworks, and sandbox tests are restricted in duration, initially to 6 months, with no extension beyond 12 months.

28. Application forms are located on website of the CBTT, with linking pages on the websites of TTSEC and FIUTT. Firms can apply to the sandbox using the websites of all three agencies, although the application forms are located on the website of CBTT (with links on webpages of TTSEC and FIUTT). Firms applying to the sandbox are likely to be subject to a fee if they are e-money firms requesting licensing.

29. Testing firms would need to submit regular reports throughout the testing period, with a final report within 30 days of completion of the sandbox test. Testing firms are expected to report regularly through the testing period covering the volume and values of

transactions, customer complaints, cyber security incidents, fraud or any other operational issues that arise. The final report must contain outcomes of the test against key performance indicators, and details on the deployment strategy.

30. There are also obligations on the regulator in relation to final reports. The regulatory authority is mandated to review the final report within 30 days to determine whether there were any regulatory concerns or issues, whether the test met the goals of the testing framework, and if the product or service falls within existing regulatory frameworks. Authorities will publish a list of successful tests within 50 days of completing of the test.

31. Firms will exit the sandbox at the completion of testing, or where approval has been cancelled. Where a firm has completed a test as set out in the testing framework, or the end of the testing period, the firm will exit the sandbox, complete their final report, and apply for a full license or registration. However, in the event of a suspension or cancellation of a test, a pre-agreed exit strategy must be implemented to pause or stop the test, while communicating with customers and providing any redress if necessary.

32. Authorities have taken steps to manage the risks of the IH and RS ‘picking winners’. Any engagement with the IH or the RS must be kept confidential unless explicit permission is provided by the regulatory authority. This includes mentioning support as a way of attracting investors or funding or claiming any regulatory engagement through Innovation Facilitators is a regulatory endorsement.

33. The Authorities have drafted a Request for Proposal (RFP) to automate and fully digitize the application process for support and testing. The aim is to allow access to a direct web portal for applications that is open 24/7 and allows applicants to track and follow their application through the various stages of review and decision making. The aim is to also allow applicants to be able to provide supporting documents, and other attachments that might be too large to be sent over e-mail. For authorities, this platform will allow the three authorities to simultaneously review applications, while managing access levels, improving security of the applications, and generating reports to allow authorities to respond to queries more quickly. A Proof-of-Concept exercise was completed with two prospective vendors and a draft RFP was completed. However, the RFP was not published as alternative solutions are being considered.

34. Feedback to both the IH and the RS has been challenging. Industry participants have spoken about a disconnect between expectations and reality. The RS is in practice a provisional registration regime rather than a testing platform, and this is not made clear to participants. While the IH does serve a genuine and real purpose, its focus on licensing EMIs is unsuitable for the current structure.

C. Legislative Review of Crypto Assets (TTSEC)

35. Trinidad and Tobago's securities legal regime is modern and comprehensive. The Securities Act, enacted in 2012 and successively amended, embodies an appropriate approach to the regulation of securities, including legal provisions and secondary legislation for markets and intermediaries.

36. However, investment activities, particularly in the fintech area, are evolving at a faster pace than the legislative design. There are actual and projected business activities in Trinidad and Tobago that raise complex questions on the applicability of securities laws. Although the securities regulation regime in Trinidad and Tobago is recent and has been regularly updated, increasing business activity around crypto assets risks resulting in the emergence of a whole economic sector that receives the investment of the public and is completely unregulated. The new business models incorporate cutting-edge technologies, such as distributed ledger technology (DLT), and mirror developments in other countries, where the debate on the regulation of crypto assets is ongoing (see Table 2 below, and Annex 1).

37. New business models revolve around crypto assets. Several of the business activities that are being conducted, or that are planned for execution in Trinidad and Tobago, refer to crypto assets, and in particular, unbacked crypto assets such as Bitcoin or Ether. These crypto assets can be described as “digital representations of value”.³ They do not necessarily fall under the concept of “security” (see *below*) but are being used for speculative investment. The business models described below have crypto assets at their core: crypto exchanges, crypto brokers, crypto kiosks, and decentralized crowdfunding. There have been no discussions on backed crypto assets, such as stablecoins.

38. Crypto exchanges allow users to buy and sell crypto assets. Some of these exchanges appear to be operational in Trinidad and Tobago or accessible from Trinidad and Tobago (for instance, Coinbase, Binance, and Kraken). Exchanges allow users to sell their crypto assets, such as Bitcoin, for Trinidadian dollars, or for other supported fiat currencies, as well as buying Bitcoin and other crypto assets with Trinidadian dollars. Exchanges can act as market makers, advertising process for acquisition and sales, and charging transfer fees to users. Exchanges, however, can also act as a platform where users transact directly with each other (peer-to-peer trading platforms, for instance, LocalBitcoins and Paxful).

39. Crypto brokers offer users a range of services related to crypto assets. Crypto brokers have a similar approach to the provision of services to their customers as brokers in traditional investment activities. In particular, brokers can provide advice on acquisition and sales of crypto assets, and act on their clients' instructions, according to the specific needs and

³ The question of “value” in crypto assets of the kind described in the text is also controversial. Some of these crypto assets, such as Bitcoin, lack any intrinsic value and are inefficient as means of exchange for goods or services. Their only value comes from the “consensus” of market participants. This accentuates the risk in crypto assets as an investment.

interests of clients. There is interest among private sector participants in providing crypto broker services in Trinidad and Tobago.

40. Some specific activities refer to the operation of “crypto kiosks” or “crypto ATMs.” A Bitcoin ATM (Automated Teller Machine) is a kiosk that allows a person to purchase Bitcoin by using cash or a debit card. These ATMs and other crypto kiosks are present in many jurisdictions. The most advanced Bitcoin ATMs offer dual functionality enabling both the purchase and the sale of Bitcoin for cash. Bitcoin ATM operators require users to have an existing account to transact on the machine. These kiosks are connected through the Internet to a crypto exchange and allow for cash or card payment in exchange for Bitcoins. Some manufacturers in the United States and Europe specialize in producing these special ATMs, which require sophisticated hardware and software. The operator of the kiosk controls the software and runs the server on which the kiosk operates. There appears to be interest by private firms in installing crypto ATMs in Trinidad and Tobago.

41. Crowdfunding is an emerging business activity that may benefit from innovative technologies. Particularly, in the fintech context, this can be structured as a platform that connects entrepreneurs in need of financing with investors. The platforms can select high potential- entrepreneurial projects and allow them access to the participating investors. The platform can allow investors to use cash or crypto assets to acquire any kind of investment instruments, including bonds and shares, issued by the companies running the selected business projects. As platforms and investors tend to be associated with the digital economy, these platforms tend to concentrate their interest in innovative business ventures. These may often make use of tokenization to promote their goods and services. In the end, it is quite possible that companies issue tokens (which may represent shares or may also represent “utility tokens”) in exchange for crypto assets or fiat money. The platforms allow investors to acquire tokens issued by businesses and offer investors liquidity, as they can also use the platforms to sell their tokens. Use of DLT for payment, clearing and settlement has purported benefits that include savings in time and costs. A firm has expressed interest in developing such a platform in Trinidad and Tobago.

42. The developments of new business models are common to many countries. Similar technological and economic conditions across the world, and the fact that these activities can be easily conducted internationally thanks to the Internet, imply that the challenges experienced are also comparable. However, the approaches followed by various countries are in contrast: some countries have adopted outright bans of all activities associated with crypto; other countries have opted for regulation of some or all these activities; and yet other countries are actively promoting, through regulation, the expansion of the crypto assets industry (see Table 2).

Table 2. Overview of crypto regulation around the world

Jurisdiction	Regulatory Framework	AML/CFT
Australia	P	✓
Austria	✓	✓
Bahamas	✓	✓
Bahrain	✓	✓
Bermuda	✓	✓
Canada	P	✓
Cayman Islands	✓	✓
China (Mainland)	X	X
Denmark	✓	✓
Estonia	✓	✓
France	✓	✓
Germany	✓	✓
Gibraltar	✓	✓
Hong Kong	✓	✓
Hungary	✓	✓
India	?	P
Italy	✓	✓
Japan	✓	✓
Jordan	? X	✓
Kuwait	?	?
Luxembourg	✓	✓
Malaysia	✓	✓
Mauritius	✓	✓
New Zealand	P	P
Oman	?	?
Panama	?	?
Qatar	X	X
Saudi Arabia	X	X
Singapore	✓	✓
South Africa	P	✓
Switzerland	✓	✓
Taiwan	?	✓
Turkey	? X	✓
United Arab Emirates	✓	✓
United Kingdom	P	✓
United States	P	✓

Legend: ✓: regulation in place; P: projected regulation; X: legal prohibition; ?: Unknown status.

Source: PwC Global Crypto Regulation Report 2023 and IMF staff.

43. The Caribbean is one of the most dynamic regions in crypto activities, and there are several models for the regulation of such activities. There are ample legislative and regulatory activities in the Caribbean in the fintech area. Despite being impacted by some recent failures, such as the FTX bankruptcy with its connections to the Bahamas, the Caribbean is still perceived as one of the most attractive areas for developers of crypto businesses.

44. To assess the ability of the legal regime to regulate the new business models, it is useful to have a comparative overview of legal developments in the region (see Annex 1). There has been recent legal activity in several jurisdictions in the Caribbean, with the objective of providing a legal framework for activities in crypto assets. The regimes developed in the Bahamas, Bermuda, and the Cayman Islands are based on bespoke legislation built around the concept of “digital assets” (the Bahamas and Bermuda) or “virtual assets” (Cayman Islands). These regimes are similar in structure and requirements to the regimes for existing regulated financial activities, and the competences for regulation and supervision are assigned to existing authorities (the Bahamas SEC, the Bermuda Monetary Authority, and the Cayman Islands Monetary authority).

45. The legislative regime of Trinidad and Tobago does not cover crypto asset activities. As opposed to some of the other jurisdictions in the Caribbean that have developed specific legal regimes for crypto assets, in Trinidad and Tobago there is no special consideration of crypto asset activities by way of special legislation, special regulation, or amendments in the general regime that target this type of businesses.

46. The authorities of Trinidad and Tobago have warned investors of the risks associated with crypto assets. The regulatory authorities issued a joint statement on January 25, 2019, informing the public that providers of crypto assets are neither regulated nor supervised by the authorities, and that there are no legislative provisions under their purview that provide protection to consumers for losses arising from the use of virtual currencies. In addition, unregulated virtual currency companies may lack appropriate internal controls and, as a result, be more susceptible to fraud and theft than regulated financial institutions.

47. There is interest in developing business activities related to crypto assets. As described above, there are economic actors interested in the development of business models that are based on crypto assets. These include crypto kiosks, crypto brokers and platforms, and digital platforms for financing of enterprises that issue tokens and may receive financing in crypto assets or in fiat money. Although there is interest in these activities, there is no data about actual transactions in the market. So far, the TTSEC has not received any investor complaint, and the TTSEC has not taken any enforcement action for unauthorized activities. The TTSEC is not aware of any ongoing litigation regarding crypto asset services in Trinidad and Tobago.

48. Activities in crypto assets do not seem significant at this stage. There is limited information about the usage of crypto assets. Although private sector actors are interested in the development of new business models connected to crypto assets and innovative technologies,

they referred to legal and regulatory uncertainty as one of the main factors inhibiting these business models. There are also other limiting factors, such as the technological infrastructure and the scarcity of specialized workers. It is unclear whether interest in crypto assets in part of the population is motivated by mere speculative purposes or because of their use as indirect technique to acquire US dollars. Banks do not generally allow clients to use credit cards for the acquisition of crypto assets.

49. In this context, the key question is how to provide safe regulation and adequate user protection for these crypto asset activities. A sound legal framework supports trust and reliability in financial products and services ([Bali Fintech agenda](#)). Legal certainty is a pre-requisite for the development of a legal and regulatory framework for innovative fintech activities, including for crypto assets. The first step requires assessing whether new activities are included in the existing legal framework. The analysis of this complex question requires an examination of the legal underpinnings of the securities regime in Trinidad and Tobago. At the same time, it is important to emphasize that crypto assets can perform multiple functions and not all crypto assets can be regulated through securities laws, even if they are revised to have an expanded scope.

50. The Securities Act 2012 is based on the concept of security. This is common to all securities laws. The act defines a security in section 4(1) to include “any document, instrument or writing evidencing ownership of, or any interest in, the capital, debt, property, profits, earnings or royalties of any person”. Directly or indirectly, most of the provisions of the act operate based on this concept. In the Trinidad and Tobago legislation, the concept of security is extremely broad, and encompasses all the instruments that are typically negotiated in financial markets (bonds, shares, derivatives). In addition, and following U.S. precedent, the legislation has incorporated the concept of investment contract (s.4(1)). Investment contracts fall under an expanded concept of security, and the act has even incorporated a definition that codifies the elements of an investment contract, as defined in U.S. case law (the so-called “Howey test”).⁴ The act defines “investment contract” as any contract, transaction, plan, scheme, instrument or writing, whereby a person invests money or other property in a common enterprise with the expectation of profit or gain based on the expertise, management or effort of others, and such money or other property is subject to the risks of the common enterprise.

51. The definition of “investment contract” in the Securities Act extends considerably its scope. The definition incorporates the four limbs of the so-called “Howey test” whereby the contract should consist of an investment of money (this may include also other liquid assets), in a common enterprise, with the expectation of gain, and such gain is based on the effort of others. These elements have been painstakingly analyzed in abundant case law, and there is considerable controversy as to how this test should be applied to the new business models involving crypto assets. However, it is not clear that the test can be a solution to all problems raised by crypto

⁴ See SEC v. W.J. Howey Co. 328 U.S. 293 (1946). The test has been replicated by the Canadian Supreme Court: Pacific Coast Coin Exchange v. Ontario Securities Commission [1978] 2 SCR 112.

activities. It is certainly true that the modalities of promotion and growth of business models based on crypto assets may include the use of investment contracts, but it is important to distinguish the *contracts* from the *crypto assets*. It is possible to envisage situations in which a party invests in a venture with the expectation that the business will succeed thanks to the efforts of the management team, and the specific business may involve crypto assets. But this classification as an investment contract does not extend to the crypto assets themselves as securities. Using the facts of the Howey case, it is apt to recall that the investment contracts related to the sale of land and the provision of agricultural services tender to orange groves. The contracts were deemed investment contracts and fell under the scope of U.S. securities laws. But the orange groves were not deemed securities, and crypto assets may be in the same situation when an investment contract analysis is conducted.

52. Certain crypto assets may fall under the definition of securities in the applicable legislation. The critical element is the contents of the rights that the crypto asset provides to its holder. If a crypto asset is a digital token that affords its holders the right to receive principal payments and interest, it will be classified as a bond, even if the format of the security is purely digital. The same analysis can result in crypto assets being classified as shares, as regulated derivatives, or as any other regulated instruments. Crypto assets can perform the same functions and have the same qualities as all existing categories of securities, and the use of digital technology should not exclude them from the scope of securities law. Investment contracts may also bring some contracts related to crypto assets within the scope of securities law. Sometimes, a sale of crypto assets is connected to the development of a platform by a management team, or the continued efforts of founders for the promotion of the business. This may mean that those who buy the crypto assets are relying on the effort of others and therefore the elements of the test are present (investment of money, common enterprise, expectation of profit, and effort of others). The test can also be met if the developers support the price of the crypto assets by controlling their supply. There are numerous special situations to which the investment contract analysis may apply, and this is unrelated to the legal nature of the crypto assets.

53. If certain crypto assets are classified as securities, this implies the full web of securities law and regulation. Investors are entitled to the same level of protection, irrespective of the technology used by issuers. This means that, absent enabling rules that foresee the issuance of securities in digital format, the issuance of tokens that can be classified as securities would represent an unauthorized action. This may result in criminal and civil liability of the issuers and the regulator and investors may adopt legal action against the issuer. Likewise, transactions associated with crypto assets that can be classified as investment contracts would be caught by the lack of registration or authorization and would result in the liability of the crypto promoters.

54. Because of the consequences outlined above, the strategy of extending the scope of the concept of security may backfire. Interpretations of the definition of security that seek to cover as many crypto assets as possible may result in an unpredictable extension of the

sanctioning regime that supports securities law. In the absence of enabling provisions, a broad interpretation could put all participants of the crypto market in technical violation of the law.

55. Defining crypto assets as commodities may also have unexpected consequences.

Another approach used in some countries in North America (United States and Canada) consists of the expansion of the concept of commodity with the goal of including crypto assets within the scope of the definition. The main goal of defining crypto assets as commodities is to ensure that derivatives over crypto assets fall under the scope of regulation. However, crypto assets, and especially unbacked crypto assets, do not exhibit any of the features of commodities, and, most importantly, by classifying crypto assets as commodities, the spot markets are left unregulated and without the possibility that financial regulators address their issues.

III. FINDINGS AND RECOMMENDATIONS

A. E-money

56. While overall the requirements for e-money aim to protect customers' funds and ensure the integrity and stability, there appears to be room for further enhancements.

Since issuing the regulatory framework for EMIs, the authorities have made significant progress on further developing the framework and reviewing and working towards the approval of EMI licenses. At the same time, they have remained focused on maintaining financial stability of the system and the safety and soundness of new providers entering the market. There is, however, room for improvement. Areas for enhancement can be found in adopting an entity based regulatory approach, developing clearer expectations for the orderly winddown of weak or failing EMIs, clearer detailing the regulatory perimeter, balancing risk and market development considerations, and working toward a framework for interoperability.

57. Unlike the prevailing international practice, authorities have not adopted an entity-based approach for e-money regulation and supervision. The current approach is activity based and allows for example technology service providers and mobile network operators to undertake e-money services on their own balance sheet. EMIs in most jurisdictions are required to conduct e-money activities in a legal entity separate, for example, from a mobile network operator or a technology service provider that may be the parent. A separate legal entity facilitates (1) the segregation of the activities from other activities and financial flows (potentially limiting the risk of the EMI failing owing to losses in other business activities), and (2) the regulation and prudential supervision of the EMI on a standalone basis.⁵

58. The requirements, and the authorities in their supervision, could usefully elaborate more on their expectations with regard to the orderly winddown of weak or failing EMIs. While the safeguarding requirements for entrusted client funds significantly reduce the risk for e-money holders, losses to clients are still possible as a result of a failure of the bank in which

⁵ See [IMF, E-Money: Prudential Supervision, Oversight, and User Protection \(December 2021\)](#).

the funds are deposited or as result of fraud by the EMI (e.g., issuing more e-money than is kept in the pool of liquid assets). This clearly raises the importance of effective supervision of the quality of the implemented controls for issuing and withdrawing issued e-money and the reconciliation of the e-float with the pool of liquid assets.⁶ The authorities could usefully also give more consideration to well considered wind-down arrangements that could be used for failing EMIs; to ensure that the payment system is not affected, and clients keep largely uninterrupted access to their e-money funds.⁷ In the absence of deposit insurance for e-money, to limit the financial stability risks of large EMIs (whose failure would have a macroeconomic impact) the authorities could consider requiring EMIs to deposit client funds in the Central Bank (required in several jurisdiction, for example in China and in the Dominican Republic).

59. The regulatory perimeter could be defined more sharply, and the authorities might benefit in this regard from experiences from other jurisdictions and/or focused TA. From the discussions during the mission, it appeared that to a certain extent there are still questions regarding the extent to which certain payment activities should legally be exempted from licensing, or actually included. One such issue relates for example to the definition of “closed loop” PSPs. Several authorities have dealt with such issues by sharper detailing the activities that need licensing (e.g., in the Euro Area with PSD2), but also by providing defined exemptions.⁸ In some instances the service provider would have to ask the regulatory authority for approval of using the regulatory exemption, which allows the regulatory authority to maintain a fairly complete view on the activities that are being delivered in the market. While the current TA focused more on the prudential side, an exchange of views with more experienced EMI regulators and/or follow up TA with a focus on payments oversight might be beneficial.

60. The licensing processes appear to be protracted and result at first only in a six-month provisional license, possibly with additional conditions/requirements that may not have been clear to the applicants upfront. Streamlining the licensing process, by working towards a non-provisional licensing process combined with close monitoring of the newly licensed EMIs (e.g., continue ensuring that client funds are adequately safeguarded), could be helpful for further market development.

61. The imposed regulatory transaction and balance limits appear more stringent than those for bank accounts and may have impact the uptake of e-money. These regulatory limits (defined in Schedule 2 of legal notice No. 284) could of course be useful to limit the risk of money laundering, financing of terrorism, and of unexpectedly high clients losses in case of failure

⁶ Instead of quarterly monitoring the reconciliation of the e-float with the segregated pool of liquid assets, authorities could also consider having more frequent reporting or even to have more direct (off-site) viewing right in the EMIs system that would allow the authority to monitor the regular reconciliation and the outcomes of the process.

⁷ See [IMF, E-Money: Prudential Supervision, Oversight, and User Protection \(December 2021\)](#).

⁸ For example [Guidelines on the limited network exclusion under PSD2 | European Banking Authority](#).

of an EMI or the bank to which the EMI has entrusted the segregated pool of liquid assets.⁹ However, in setting the levels also consideration should be given to the desired market use cases and careful distinction between retail and business/government limits.

62. The prohibition for EMIs to pay interest to clients on the e-money balance held in their wallet could be reconsidered in due course. Not allowing the payment of interest is an approach often taken in the initial development of the EMI sector to avoid the risk of disintermediation in the financial system. However, with growing experience several jurisdictions have started to take a different approach that could be considered by the authorities in the future.¹⁰

63. At the moment, there are no interoperability requirements, nor an agreed industry standard that promotes interoperability. The ability for different e-money systems to interoperate with each other would enhance the convenience and accessibility of e-money services for consumers. To facilitate interoperability, the CBTT could consider establishing common standards and protocols for e-money transactions (and the PSPs more generally) that would enable different e-money systems to communicate and transact with each other.¹¹

B. Operation of the Regulatory Sandbox and Innovation Hub

64. Authorities should ensure they take a balanced approach to monitoring and responding to fintech developments. The impact of fintech in Trinidad and Tobago is largely concentrated in the payments sector – a sector that is regulated and understood by regulatory authorities. While there is some development of a crowdfunding, robo-advice, and crypto assets sector, these remain relatively small. Authorities should ensure that they take a balanced approach to fintech regulation and supervision, utilizing resource that reflects the size and risks of fintech driven products and services on their mandates. Authorities should particularly focus on delivering first order objectives, but should strike a balanced approach to fintech innovation, including by engaging with industry, trade bodies, and TTIFC to better understand firms' regulatory concerns or obstacles. A clear vision or fintech strategy is necessary and while we are beginning to see a strategy take shape through the government, greater clarity should be provided at an authority level to determine how they can deliver the strategy within their mandates.

65. The JIH has the potential to monitor new developments and provide support where necessary but would require structural change. The IH has provided support to 61 firms since launching and is a sensible way of monitoring new developments, providing high-level support,

⁹ From a risk management perspective, EMIs should consider setting limits for different type of clients (and the supervisor should review the appropriateness and effectiveness), but maybe with the option for clients to ask for an increase of the limit for a specific day if they aim to undertake a specific transaction. A practice which is also not uncommon internationally for many commercial banks.

¹⁰ See CGAP, [Regulatory Approaches to Interest on E-Money Accounts](#) (May 2021).

¹¹ In the region, the Dominican Republic also is requiring interoperability and closely following up with payment service providers on this issue.

while ensuring a joined-up approach between the authorities to the impact of technology driven innovation in financial services. However, current market feedback is challenging and unless the IH makes structural changes, it could generate reputational risks and poor outcomes.

66. An IH only makes sense if it involves key regulatory authorities. The largest benefit of a JIH is an opportunity for regulatory authorities to improve domestic collaboration, minimize duplication, and avoid gaps in policy or oversight of new business models that could develop where it is not clear where new fintech innovation resides. It can allow authorities to pool resources to minimize resource constraints while working closely to upskill each other on new fintech innovations in the domestic market. Separate IHs would not be recommended given resource constraints and the relatively small impact of fintech on financial services in domestic markets.

67. Authorities should carry out a feasibility study with an aim of improving the JIH. A feasibility study, with key stakeholder input, should be carried out to identify need and design considerations. As an IH already exists and has some traction within the market, authorities might consider improving this existing institutional arrangement rather than scrapping or creating new ones. The JIH also has the potential for pooling resources and improving collaboration on fintech regulation for authorities and is likely to deliver positive outcomes and serve a genuine market need while helping authorities achieve their mandates.

68. The TC is well placed to operate as a JIH. The TC currently supports the JFSC but should be repurposed as a JIH. Staffing levels for the JIH should be considerably smaller acting as the hub, supplemented by the larger group of the current TC as the spokes. These members would require training and upskilling, and should take part in fintech training courses where available, including TA and regional training courses from the IMF and World Bank, as well as other training programs where feasible.

69. These members should meet weekly to monitor developments. These meetings should be used to discuss any application, exchange information on trends and developments, and conduct horizon scanning exercises based on market observation, outreach, and engagement. This can be through themed events, demonstration days, or engagement with fintech incubators such as TTIFC. They should be able to quickly call on additional resource if required from the relevant organizations and initially this should be the existing larger TC members.

70. Transparent eligibility criteria are needed to provide clarity for applicants. While eligibility criteria exist, they are largely not adhered to, and firms are not assessed against the criteria. All assessments should be made against this eligibility criteria to provide transparency, certainty, and confidence to market participants. Eligibility criteria should help authorities achieve their mandates and aims to protect markets, consumers, and financial stability and so may include requirements for applicants to show genuine innovation, benefits for markets or consumers, a clear need for support, and an explanation of how it falls within the scope of regulatory authorities. Final decisions on the application should be by the JFSC.

71. Authorities will need to be clearer on the support that they are able to provide. To manage expectations, initially support should be limited to signposting to relevant rules and regulations, assisting in document review for firms looking to be licensed, and providing generalized guidance with no legal underpinning—provided applicants meet the eligibility criteria. As authorities build up experience and expertise, more tailored guidance could be offered, but such support can open authorities to legal liabilities.

72. One application form can help streamline processes. Currently the IH requires applicants to choose one of three forms depending on the nature of their engagements. Going forward, the JIH should offer one application form where firms should set out how they meet the eligibility criteria with a clear explanation of the support they would like to receive.

73. To improve communication with firms, a dedicated case officer should be provided. Industry feedback suggests that communication is a particular challenge when engaging with the current IH. Communication can be improved by providing applicants with a dedicated case officer throughout the period of support – from initial response to final support. A dedicated case officer will provide greater accountability, while ensuring applicants are able to interact with someone who is familiar with their case.

74. Timelines for support should be transparent and pragmatic. Currently, support from the IH can take several months. The aim of IHs is to provide light touch support (such as regulatory guidance, signposting, document review, etc.) very quickly and so support a large number of firms. The implementation of weekly meetings should help authorities quickly review applications and provide feedback on whether support is available or not—ideally this should happen within 14 working days. Given initial support will be limited to document review, general regulatory guidance, and regulatory signposting, ideally most support should last less than 30 days. If an extension is necessary, a clear reason should be provided as well as an indication of the length of delay.

75. While initially the JFSC should be limited to decision making, in the future it could have a strategic mandate. Initially, the JFSC should act as the decision-making function for final approvals on firms to be supported within the JIH. As the JIH begins to bring insights into the respective authorities, the JFSC can use this information to play a more active role in setting fintech strategy, including, for example, “thematic” focuses, such as welcoming applications or demonstrations from firms operating in areas of specific interest or concern.

76. Regulatory Authorities should publish evaluation reports often. Once a JIH is operationalized, authorities should aim to publish evaluation or lessons learned reports often, and at least annually. These reports should cover key statistics on the use of the JIH, as well as the nature of support provided to firms. Reports should not disclose commercially sensitive information, but should aim to share the nature of the support provided to ensure competition is not distorted, and the support provided by the JIH has the broadest possible impact.

77. Alternatively, existing supervisory structures should be better utilized to provide support. The lack of dedicated resource availability, and the relatively small impact of fintech in Trinidad and Tobago means that using existing supervisory structures is likely to deliver best value for money and better outcomes. As authorities are keen to provide support to innovator businesses, operating office hours / regulatory surgeries using their small dedicated fintech expertise is likely to be more effective than a full IH. These office hours should be coordinated between the three regulatory authorities under the guidance of the JFSC. Authorities should complement office hours by using demonstration days, where firms are invited to demonstrate their innovative business models to existing departments and supervisory structures. This can ensure authorities are better able to monitor trends and developments in the market.

78. The development of a RS should not be a regulatory priority. Sandboxes are best utilized in jurisdictions where the impact of fintech is growing rapidly and presenting novel challenges to authorities in terms of business models, products, and services. E-money services are well established in Trinidad and Tobago and further afield. These developments provide opportunities for regulatory authorities to understand e-money services either directly through the authorization and supervision process, or through engaging with peer regulators. The use of other technologies and business models remain nascent, with opportunities to learn lessons from authorities where these business models have been deployed at scale. The JIH can help authorities better understand these business models through light touch engagement, but sandbox tests are less likely to deliver new information that is not already available from peer regulators, or global regulatory bodies.

79. The launch of a RS should be contingent on several factors. A RS should only be considered if the impact of fintech innovation on domestic markets grows substantially and based on the outcomes of an impact assessment or feasibility study. It is likely that competing priorities, particularly delivering first order objectives, should warrant focus and regulatory resource. In most instances, fintech innovation is unlikely to be substantially novel and so authorities may be better placed to learn lessons on fintech innovation through outcomes of experimentation or regulation in peer jurisdictions. For example, if a firm is testing their algorithm-based credit scoring product in a peer jurisdiction, it may not be necessary for authorities in Trinidad and Tobago to replicate that test, but rather work closely to share information and study lessons learned. A RS could also be considered where a product or service is likely to impact markets in Trinidad and Tobago substantially differently than peer jurisdictions, either due to cultural differences, or different regulatory approaches. Finally, before launching a RS, authorities should be sufficiently sure they have the resources and capacity for its ongoing operation. Most authorities significantly underestimate the cost and resource implications of RS.

80. If a RS is launched, application to the JIH should not be a prerequisite for testing. Given resource constraints and the need to make substantial structural changes, a RS is unlikely to deliver good value for money. However, if authorities move toward a full launch, some changes will need to be made. Currently, authorities will require all sandbox applicants to first

apply to the IH for support. This has the potential to create bottlenecks in the application process for both structures, slowing down support for firms, while stretching the capacity of the IH. The type of support offered by the IH is—and should be—very different from the type of support provided in a potential sandbox. If regulatory authorities decide to launch a RS, it might be more efficient to keep applications separate for both the IH and RS. An alternative approach could be to create a triaging point where staff can best determine whether an application is better suited for the IH or the RS, but with resource constraints, this may need deliver good value for money.

81. To improve their supervisory monitoring and regulatory responses, authorities should continue building international cooperation with peer regulators and global bodies.

Authorities are engaging with international peer regulators on fintech regulation but there is scope for improvements. Currently, the CBTT is part of the Center for Latin American Monetary Studies Fintech Forum and Group CARICOM FinTech Work Group. TTSEC participates in the Caribbean Group of Securities Regulators Fintech Team. Authorities might further improve international cooperation by joining regional outreaches of standard setting bodies where this is feasible and cost efficient. They may also consider working more closely with peer regulators in other regions through the world through a commitment to closer working and information sharing with Fintech Cooperation Agreements, although these would only be as successful as the effort put forward by signature parties.

C. Legislative Review – Crypto Asset Activities

82. The decision on the strategy to regulate crypto assets activities should be based on the results of an impact assessment. The authorities should conduct an impact assessment, measuring the costs and benefits of the regulation of the crypto asset sector. An impact assessment can be conducted using available information and in a straightforward fashion, without becoming a resource-intensive task.

83. The impact assessment provides a logical framework to assess legislative options.

The typical components of an impact assessment include the following: a) defining the problem (crypto assets activities being conducted in the absence of regulation), including its risks; b) policy options (always including the option of doing nothing); and c) costs and benefits of the distinct options.¹² The analysis should be based on assumptions, available evidence and data, and risks, and should also consider wider effects, such as effects on retail investors and Small and Medium Enterprises (SME). The cost and benefit analysis can be done by analyzing the financial implications of the policy options, their resource requirements, potential savings, and anticipated benefits, thereby arriving at a net impact. Although quantitative approaches are preferred, it is also possible to use qualitative factors in the impact assessment. Once the assessment is

¹² On cost-benefit analysis, see OECD, 2005, Regulatory Impact Analysis in OECD Countries. Challenges for developing countries, at <https://www.oecd.org/gov/regulatory-policy/35258511.pdf>.

complete, its results should be communicated to the public, and stakeholders should have the opportunity of providing feedback.

84. Modern regulatory regimes use impact assessments extensively. There is ample practice with impact assessments in all legislative domains,¹³ but their use in connection with new legal regime for crypto assets has been limited so far. In the area of crypto assets, perhaps the most pertinent example is the [impact assessment](#) prepared for the MiCA regulation in the European Union, which also incorporates a useful [summary](#). The United Kingdom is working towards a new regulatory regime for crypto assets and has so far published a [Parliamentary report](#) and conducted a [public consultation](#). These regulatory exercises can provide useful guidance for the preparation of an impact assessment.

85. The impact assessment should include several options. If the assessment concludes that there are positive effects in regulating the sector—as it is generally recommended—it should also consider the distinct options to establish a solid legal and regulatory framework for the sector. The impact assessment should also take into account the need to regulate the sector for AML/CFT purposes. Regulations that affect Virtual Asset Providers, in compliance with Financial Action Task Force (FATF) recommendations, can provide the foundation for the development of a regulatory regime for actors in crypto asset activities¹⁴.

86. There are several options for the design of a strategy to support the development of crypto asset activities under a proper regulatory environment. These options include the following: a) a comprehensive legal reform; b) targeted legal amendments followed by regulations; c) regulations issued without legal changes; or d) the use of exemptions. The recommended approach is the adoption of targeted legal amendments, complemented by regulations. A comprehensive legal framework may absorb too much time and resources. Conversely, an approach based solely on regulations could be faster and more flexible, but legal analysis needs to confirm that there is sufficient authority to issue regulations over crypto assets under the Act. The least desirable option could be based, theoretically, on exemption techniques, since it is practically impossible to address all legal and regulatory concerns through exemptions.

87. A broad legal reform would be similar to those enacted in other Caribbean jurisdictions. The examples included in Annex I show how bespoke legislation can cover aspects of licensing, supervision, regulation, and sanctioning of entities carrying out crypto asset businesses.

88. However, a comprehensive legal reform could be cumbersome and time-consuming. For this reason, it should be possible to make minimal, surgical changes in the law to introduce

¹³ See OECD, 1997, *Regulatory Impact Analysis Best Practices in OECD Countries*.

¹⁴ See FATF, 2021, [Updated Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers \(fatt-gafi.org\)](#)

only the basic concepts, and then develop regulations that would establish a detailed framework for crypto activities.

89. The recommended approach would be based on targeted amendments to the Securities Act, followed by regulations. This approach requires a combination of amendments to the law, which can be drafted and adopted

90. The best approach would be based on the adoption of a legal definition of crypto assets. The laws described in Annex 1 (the Bahamas, Bermuda, and the Cayman Islands) include workable examples of definitions for this concept. Ideally, the concept should include a digital representation of value, and it should also exclude Central Bank Digital Currencies (CBDC), utility tokens, and all tokens that have the features of securities, since the latter would fall anyway under the purview of securities law. With this concept included in the Securities Act, the TTSEC would have the competence to regulate activities related to crypto assets, particularly the new crypto business models.

91. The legal reform could also include requirements and legal provisions for crypto service providers, markets, and issuers. The provisions to be included in the Act would be just sufficient to provide a legal basis for regulations that would include all necessary details for the proper functioning of these activities. This approach also has the advantage of being modular (i.e., it would be possible to phase the development of regulations and tackle crypto activities sequentially). This would put Trinidad and Tobago on equal footing with the jurisdictions that are taking an enabling approach to crypto activities, while also protecting the interests of investors, market integrity and financial stability.

92. A second-best approach would be to issue regulations within the current legal framework. In order to do this, it would be necessary to analyze the extent and contours of the legal authority of the to issue regulations. According to the Securities Act, Bye-laws are issued by the Minister, at the recommendation of the Commission (s. 148). Bye-laws are subject to negative resolution of the Parliament. The Commission can also issue guidelines, in consultation with the Minister (s. 146).

93. The scope of regulations and guidelines is generally understood as referring to matters that are included in legislation. The authority to issue Bye-laws and guidelines is broad. Section 148(2) of the Securities Act refers to the authority of the Minister, on the recommendation of the Commission, to make Bye-laws “*in respect of any other matter necessary for carrying out the purposes of this Act*”. This sets a broad scope, and since the Act has the primary goal of providing “protection to investors from unfair, improper or fraudulent practices”, this could be seen as sufficient authority to issue regulations that refer to crypto assets. In any event, this should require careful legal analysis and consultation with legal professionals in the jurisdiction. The authority to issue guidelines is also broad (s. 146), as the Commission may issue guidelines on any matter it considers necessary to give effect to the Act (s. 146.1.a) or “regulate the market conduct of market actors (s. 1461.d). As in the previous case,

it is necessary to conduct a careful analysis of legal authority in order to determine the validity of guidelines issued in this area.

94. Some matters related to crypto assets clearly fall within the scope of regulation.

Since the key concept of the act is that of security (which also includes investment contracts), it would be possible to enact regulations that cover crypto assets that fulfil the requirements of securities and for contracts used in connection with crypto assets that have the characteristics of investment contracts. There is no obstacle in adopting regulations in this area, and we note that this are necessary to enable certain business activities, such as crowdfunding platforms (since the efficiency of the platform requires that the bonds and shares issued by business would be in digital form). On the other hand, since it is highly questionable that unbacked crypto assets can be classified as securities (as they do not meet the elements of the definition of a security), it would be difficult to anchor the regulation of crypto asset activities to the Securities Act.

95. Finally, another approach could be based on the use of exemptions, but there are serious obstacles to its implementation. There has been some discussion in other countries, such as the United States and Canada, on the use of *safe harbors* for crypto asset sales (i.e., a provision in law or in a regulation setting a set of conditions that would exclude the liability of the economic actors involved in the sale and promotion of crypto assets).¹⁵ However, in the context of Trinidad and Tobago, there is no practice of establishing safe harbors in regulations, and this development would need to be carefully assessed. We also note that a safe harbor like the one proposed in the United States would only address the treatment of the sale of tokens by an issuer, but it would not provide solutions to the multiple issues that crypto assets raise, such as the sale of unbacked crypto assets and the regulation of the conduct of broker/dealers, custodians, and markets.

96. Exemptions can target specific rules that are not applicable to crypto asset activities. A granular analysis of securities laws and regulations can show that many rules are not necessarily applicable to new business models. For instance, pre-trade and post-trade reporting requirements that typically apply to regulated markets do not necessarily apply to the operation of platforms where crypto assets are bought and sold. Crypto asset brokers may not need to abide by the exact same set of rules that apply to securities intermediaries. By engaging in a careful analysis of potential obstacles and differences, it should be possible to tailor the regime better to the specifics of these economic activities. In U.S. practice, the SEC is able to issue “no-action letters”, i.e., letters by SEC staff in response to a query by person who is not certain whether a particular product, service, or action would constitute a violation of the securities law. The letter just recommends that, in the light of the specific facts and circumstances, the SEC does not take enforcement action against the persons engaging in the particular practice. The SEC is not bound

¹⁵ Commissioner Hester M. Peirce made the proposal of introducing a safe harbor for token sales: see <https://www.sec.gov/news/public-statement/peirce-statement-token-safe-harbor-proposal-2.0>. The safe harbor exempts tokens from registration for a 3-year period, and it also includes an exemption from the definition of regulated market. The exemption is supported by disclosure requirements and reporting. However, this proposal has not been formally adopted by the SEC.

by previous no-action letters and can always distinguish the facts when another person uses a previous no-action letter in its defense. In the law of Trinidad and Tobago, there is an express provision permitting the Commission to issue no-action letters. Nonetheless, it should be noted that the Commission has previously issued an Order providing that, under certain conditions, it will not take enforcement action, for a limited period, against registrants who fail to comply with specific provisions in the Act.¹⁶

97. Exemptions can be used to complement regulatory action, as the example of Canada shows. Exemptions have been used in some countries to provide accommodation for new crypto asset activities. Canada is an interesting example because of the similarities of its legislation with that of Trinidad and Tobago. The Canadian Securities Administrators (CSA) issued a staff notice in 2020 to provide guidance on the scope of securities legislation over crypto assets activities.¹⁷ The approach of the CSA was based on the analysis of the scope of securities legislation, which clearly would cover tokenized securities, as well as derivatives contracts for which crypto assets would be the underlying asset. This implies that platform facilitating trades in those assets would be subject to the supervision of the various Canadian securities regulators. The issue of certain crypto assets, such as unbacked crypto assets that cannot be classified as securities, was minimized by arguing that in many cases there is no actual delivery of the crypto asset, so that it could be interpreted that brokers and platforms are in reality selling derivatives or investment contracts. The consequence of the analysis is that a broad range of activities of crypto asset firms are subject to securities regulation. The approach taken, however, was based on a case-by-case analysis by securities regulators and the use of exemptions that could provide accommodation for the operation of crypto asset businesses. After recent crypto bankruptcies in the United States, however, the approach has evolved and recently (February 2023), securities regulators have given a deadline for unregistered platforms to commit to a “pre-registration undertaking,” which includes requirements for the segregation of customers’ assets and the prohibition of offering leverage to customers.¹⁸ This shows the limitations of an approach solely based on exemptions and illustrates the need for regulatory action.

98. However, there seem to be constraints to the use of exemptions as a regulatory tool in Trinidad and Tobago. According to section 151(1A) of the Securities Act, it is possible to grant exemptions on a case-by-case basis. General exemptions, however, seem inconsistent with the legal framework. The law refers to exemptions in by-laws that cover specific areas (s. 148, subsections g, h, q, t, and qq). Although section 149(4)(b) seems to assume, implicitly, the

¹⁶ See <https://www.ttsec.org.tt/wp-content/uploads/Covid-19-Order-23rd-June-2021-2.pdf>.

¹⁷ See CSA staff notice 21-327, available at <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/21-327/csa-staff-notice-21-327-guidance-application-securities-legislation-entities-facilitating-trading>. This staff notice builds on a previous paper issued in 2019: Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Consultation Paper 21-402 Proposed Framework for Crypto-Asset Trading Platforms, available at <https://www.osc.ca/en/securities-law/instruments-rules-policies/2/21-402/joint-canadian-securities-administratorsinvestment-industry-regulatory-organization-canada>

¹⁸ See <https://www.securities-administrators.ca/news/canadian-securities-regulators-strengthen-oversight-enhance-expectations-of-crypto-asset-trading-platforms-operating-in-canada/>

existence of a general power to grant exemptions or remove restrictions in by-laws, apparently there is no express general power of exempting legal requirements in regulations.

99. Any combination of the approaches discussed above should always target the same functional result: appropriate regulation of crypto asset activities. Ultimately, the same questions need to be addressed, namely, legal certainty for business operators, supporting economic growth and development, and adequate protection of investors, with the combined result of a framework that supports innovation and financial stability. As discussed before, this needs to be balanced with other competing priorities in the regulation and supervision of financial markets in Trinidad and Tobago.

100. In particular, there are certain matters that should be covered by law or regulations. Among these matters, the most important ones are the following:¹⁹

- Crypto asset service providers should be licensed, registered, or authorized. There should be rules establishing the requirements applicable to crypto asset service providers including prudential aspects, conduct of business and investor protection.
- Crypto asset custodians should be licensed and made subject to special requirements. Entities that provide functions such as storage, transfer, exchange, and custody of reserves and assets should be subject to rules similar to those applied to financial service providers, with additional requirements to reflect their new business models (such as combined exchanges and wallets). Segregation and safeguarding of customers' assets should be a priority.
- There is a need to ensure that AML/CFT rules apply to all entities providing crypto asset services, following FATF recommendations on Virtual Asset Providers (VASPs). In particular, crypto kiosks need to comply with know-your-client obligations and identification of suspect transactions, as well as all other crypto asset service providers.
- Platforms also need to be authorized, and their regime should be modelled after that of regulated markets, but also considering the significant differences in operation and technology. The International Organization of Securities Commissions (IOSCO) Guidance for the regulation of crypto asset trading platforms is extremely relevant in this regard.²⁰ It is imperative to ensure market integrity by prohibiting market abuse and addressing conflicts of interest, as well as any abusive and deceptive practices in connection with the operation of crypto platforms.

This is just an indicative list of matters that should be covered in the regulatory framework, provided that an impact assessment concludes that the sector should be regulated, and also taking

¹⁹ See Cuervo, Morozova and Sugimoto, 2019, *Regulation of Crypto Assets* (IMF Fintech Note 19/03); Bains, Ismail, Melo, and Sugimoto, 2022, *Regulating the Crypto Ecosystem: The Case of Unbacked Crypto Assets* (IMF Fintech Note 22/007).

²⁰ See IOSCO, 2020, *Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms*, available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD649.pdf>.

into consideration competing regulatory and supervisory priorities that may affect the timeline for implementation of the legal and regulatory plan. The regulations should be aligned with the standards, still in the making, proposed by international organizations such as IOSCO²¹ and the FSB.²²

IV. NEXT STEPS

101. Authorities have been receptive to this TA program but should also prioritize according to their needs. Throughout the engagement there has been considerable and proactive engagement at all levels of seniority by the CBTT and TTSEC. Both authorities have indicated a desire to implement findings from this TA report, and the IMF stands ready to provide further assistance if required. Authorities should consider this TA within the context of broader TA and ensure they prioritize the implementation of recommendations that address risks to financial stability, markets, and consumers.

²¹ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD734.pdf>

²² <https://www.fsb.org/2022/10/regulation-supervision-and-oversight-of-crypto-asset-activities-and-markets-consultative-report/>

ANNEX I: LEGISLATIVE REGIMES FOR CRYPTO ASSETS IN THE CARIBBEAN

The following paragraphs include general descriptions of legal regimes in the Caribbean dealing with crypto assets. These descriptions do not represent an assessment or endorsement of these legal regimes. The descriptions merely illustrate the breadth and complexity of reforms that seek to cover financial activities in crypto assets.

The Bahamas

102. The Bahamas introduced broad legislative reforms for crypto activities. The [Digital Assets and Registered Exchanges Act of 2020 \(DAREA-2020\)](#) includes a set of legal provisions that apply to new fintech activities. The legal model is based on the assignment of competences to the Securities Commission of Bahamas over the new sector, and the establishment of legal rules for products, entities, and markets.

103. The starting point of the Bahamian law is the concept of “digital assets”. The act defines digital asset as “*a digital representation of value distributed through a DLT Platform where value is embedded or in which there is a contractual right of use and includes without limitation digital tokens*” (s. 2). Several digital tokens are excluded from the scope of the law, namely security tokens, token loyalty points, gamers points,²³ NFTs (Non-Fungible Tokens)²⁴ and CBDCs²⁵ (s. 3).

104. The second foundational concept of the law is that of “digital asset business.” The law includes a list of activities that fall under its scope. These activities are: running a digital token exchange, providing services related to a digital token exchange, operating as a PSP business utilizing digital assets; operating as a digital asset service provider, including providing DLT platforms that facilitate the exchange between digital assets and fiat currencies the exchange between one or more forms of digital assets and the transfer of digital assets; participating in and providing financial services related to an issuer’s offer or sale of a digital asset; and any other activity which may be prescribed by regulations (s. 6).

105. The law includes specific rules addressed to various digital asset businesses. The law establishes basic rules for digital asset services providers and for digital token exchanges. Regarding the exchanges, it is worth highlighting that the law requires the existence of adequate control systems (s. 17); data security (s. 23); and professional conduct (s. 24), as well as

²³ Token loyalty points and gamers points do not raise issues from a financial point of view. These instruments also exist in traditional formats (i.e., without any use of crypto tokens or DLT) and have never been regulated by financial authorities.

²⁴ NFTs are “non-fungible digital tokens”. These tokens are unique and not replaceable by other tokens. They are often used as collectible items.

²⁵ CBDC stands for “central bank digital currency”. CBDC is money and legal tender and should be subject to the same or similar rules to those applying to money. Likewise, the Bahamian law excludes “security tokens”, in the understanding that tokens that fall under the definition of securities should be entirely subject to the provisions of the securities law.

compliance with AML/CFT regulations (s. 26). Regarding the issuance of tokens to investors, the law regulates “initial token offerings” (ITOs, s. 27 ff.). The rules of ITOs are modeled, to a certain extent, over those of IPOs (initial public offerings), but with their special characteristics (see s. 28 on the offering memorandum; and s. 38, which gives investors a 72-h window to exercise a right of withdrawal from the transaction.)

106. Another important feature of the Bahamian regime is that entities licensed under existing regimes (i.e., banking, securities) have the possibility of operating in digital asset businesses. Entities such as registered securities intermediaries or investment managers can decide to participate in the additional activities that are covered by the Digital Assets Act, with minimal requirements, such as business plan, and information on fees (s. 9).

107. The law is designed to have a territorial effect. One of the major problems in regulating crypto activities is that services are often provided across borders. Some laws may create conflicts by claiming worldwide or extraterritorial effects. The law of the Bahamas, in this regard, reaches a compromise by regulating digital asset business conducted “*in or from within*” the Bahamas (s. 5 and s. 7). The provision seeks to ensure that the regulator can not only protect Bahamian investors from both internal and external business operators, but also that it can prevent the Bahamas from being used as a launchpad for unregulated digital business activities.

Bermuda

108. Bermuda has also adopted bespoke legislation for crypto assets. The [Digital Assets Business Act of 2018](#) embodies this special legal regime, that is based on detailed definitions that capture the peculiarities of the new digital business activities. In addition, this act is complemented by the [Digital Asset Issuance Act of 2020](#), that refers to the issuance of crypto assets. From the institutional point of view, the regime adds new competences to those of the sole regulator of all financial activities (the Bermuda Monetary Authority).

109. The central concept in the Digital Assets Business Act is that of “digital asset”. According to the act, a “digital asset” means anything that exists in binary format and comes with the right to use it and includes a digital representation of value that—is used as a medium of exchange, unit of account, or store of value and is not legal tender, whether or not denominated in legal tender (s. 2). As in the law of the Bahamas, the act excludes from its scope the tokens that correspond to rewards programs and the gamers’ tokens. However, in the Bermuda regime, digital assets also include assets that are intended to represent assets such as debt or equity in the promoter, and assets intended to provide access to an application or service or product by means of DLT.

110. The concept of “digital asset business” is also critical. “Digital asset business” means the business of providing any or all of a series of business activities to the general public (s. 2). The list of activities includes the following: issuing, selling or redeeming virtual coins, tokens or any other form of digital asset; operating as a PSP business utilizing digital assets which includes the provision of services for the transfer of funds; operating as a digital asset exchange; carrying

on digital asset trust services; providing custodial wallet services; operating as a digital asset derivative exchange provider; and, operating as a digital asset services vendor. The list of activities is detailed and relies on other definitions included in the act, such as the definition of “digital asset exchange” (a centralized or decentralized electronic marketplace used for digital asset issuances, distributions, conversions and trades, including primary and secondary distributions, with or without payment; provided that digital asset conversions and trades may also be entered into by the electronic marketplace as principal or agent – s.2) and the definition of “wallet” (a software program that stores private and public keys and interacts with DLT to enable users to send, receive and monitor their digital assets -s.2).

111. The law provides for specific rules that determine its territorial effect. According to the act, a person carries on digital asset business in Bermuda if it is incorporated or formed in Bermuda and carries on any digital asset activity included in the scope of the law; or if it is incorporated or formed outside of Bermuda and carries on any digital asset business activity include in the scope of the law *in or from within Bermuda*. The act recognizes the Minister of finance the possibility of issuing an order specifying the circumstances according to which a person may be considered as carrying on or not carrying on digital asset business in Bermuda.

112. The law requires licensing to conduct digital asset business activities. Carrying out digital asset businesses of the classes specified in the law, without a license, constitutes an offence (s. 10). However, it is possible to introduce exemptions to the licensing requirements (s. 11). The Authority may license undertakings to carry on one or more of the activities listed in the act. The act foresees three types of license: the *class F license*, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business; the *class M license*, under which a person shall be licensed to provide any or all of the digital asset business activities under the definition of digital asset business for a defined period determined by the Authority; and the *class T license*, under which a person shall be licensed to provide any digital asset business activity under the definition of digital asset business, for a defined period determined by the Authority and for the purpose of carrying out pilot or beta testing in relation to such activity (s. 12).

113. The substantive regime of the Digital Assets Business Act seeks to protect the interests of investors. The Authority may make rules prescribing prudential standards in relation to key aspects of business operations, such as disclosures to clients; risk management; custody of client assets; cybersecurity; financial statements; statutory returns; and accreditation of digital asset business (s. 7). The law establishes several key principles, such as the obligation to separate accounts holding client assets from any accounts kept in respect of any other business (s. 17). The law also establishes other rules to protect client assets. Entities engaged in digital assets business that involve holding of client assets must maintain surety bonds, trust accounts or indemnity insurance as specified by the Authority. Trust accounts need to be maintained with qualified custodians. Any entity acting as custodian of digital assets for one or more clients must maintain in its custody a sufficient amount of each type of digital asset in order to meet its obligations to clients (s. 18). The law covers many other aspects with the overall goal of

promoting the sound operation of digital assets businesses, such as compulsory auditing (s. 31 ff.).

114. The regulation of digital asset businesses is complemented with the legal regime for the issuance of digital assets. The Digital Asset Issuance Act covers public and private placements of digital assets (s.5). No digital assets can be issued without proper authorization (s. 11). The legal regime is modelled after the regime for the issuance of securities, with bespoke definitions and some specific rules. In particular, the documents supporting the authorization request are different from those required for securities. The supporting documents include, among others, a business plan setting out the nature and scale of the digital asset issuance which is to be carried on by the applicant; a copy of the issuance document to be made available to digital asset acquirers; and particulars of the applicant's arrangements for the management of the offering via the issuance (s. 12.2).

115. Some special rules are designed to strengthen the protection of investors in digital assets. In particular, the law foresees risk warnings to investors (s. 20) and cooling-off rights for acquirers of digital assets, which can be exercised within three business days. Issuance platforms must offer instructions and means to exercise the withdrawal rights.

116. The Bahamian regime has been put to the test with the bankruptcy of FTX. An assessment of the regime would be premature, given the ongoing judicial cases in the US and in the Bahamas and the associated investigations. In any event, the legal regime needs to be supported by adequate supervision arrangements, which are challenging in the case of complex group structures and cross-border activities. International cooperation will be essential to achieve significant levels of regulatory compliance.

Cayman Islands

117. The Cayman Islands represent the third example of a special legal regime for crypto assets in the Caribbean. The [Virtual Asset \(Service Providers\) Law of 2020](#) follows a similar approach to the other legislations described in this report. As the universal financial regulator of the country, the Cayman Islands Monetary Authority is competent to regulate crypto asset business activities, as established in the law.

118. In the Cayman Islands regime, the starting point is the concept of “virtual asset”. According to the law, “virtual asset” means a digital representation of value that can be digitally traded or transferred and can be used for payment or investment purposes but does not include a digital representation of fiat currencies (s. 2). As this concept is broad and could include a variety of token-based businesses without any financial implications, the law itself excludes from its scope the so-called “virtual service tokens”. This concept of virtual service token refers to a digital representation of value which is not transferrable or exchangeable with a third party at any time and includes digital tokens whose sole function is to provide access to an application or service or to provide a service or function directly to its owner separately. As such, the concept is similar to what is understood, in other countries, as “utility tokens.”

119. After defining virtual assets, the law lists the “virtual asset services’ that are subject to licensing. “Virtual asset service” means the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement: (a) exchange between virtual assets and fiat currencies; (b) exchange between one or more other forms of convertible virtual assets; (c) transfer of virtual assets; (d) virtual asset custody service; or (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset (s. 2). The law includes specific rules for the various activities, such as virtual asset issuance (s. 7) or virtual asset custody services²⁶ (s. 10).

120. In addition to services, the law also contemplates the regulation of platforms.

According to the act, “virtual asset trading platform” means a centralized or decentralized digital platform (a) which facilitates the exchange of virtual assets for fiat currency or other virtual assets on behalf of third parties for a fee, commission, spread or other benefit; and (b) which — (i) holds custody of or controls virtual assets on behalf of its clients to facilitate an exchange; or (ii) purchases virtual assets from a seller when transactions or bids and offers are matched in order to sell them to a buyer, and includes its owner or operator. The law includes a comprehensive list of requirements for virtual asset platforms (s. 11). If the platform operates without an obvious controller (which may be the case with decentralized platforms), the owner of the entity under which the platform operates (i.e., the infrastructure) will be deemed the owner for legal purposes (s. 2). The concept does not include a platform that only provides a forum where sellers and buyers may post bids and offers and a forum where the parties trade in a separate platform or in a peer-to-peer manner.

121. The provision of virtual asset services requires a license. The law applies to virtual asset businesses provided “in or from within the Islands” (s. 4) and these need to be registered or licensed in accordance with the law. Alternatively, entities licensed under a different regime (banking or securities regime) may be granted a waiver by the Authority (s. 14 and s. 16). The law also foresees the possibility of sandbox licenses (s. 4).

122. Virtual asset services are subject to a set of legal provisions. The applicable rules include general AML/CFT requirements, auditing, fit and proper requirements for directors and significant shareholders, and rules on personal data protection. VASPs cannot encumber client assets unless they have their clients’ special consent (s. 10). Requirements for custodians include mechanisms for segregation, and cyber security systems (s. 11).

Barbados and Jamaica

123. Other jurisdictions are allowing the conduct of certain crypto asset services without special legislative reforms. In Barbados, the stock exchange is seeking to integrate DLT

²⁶ The definition of “virtual asset custody service” refers to the business of safekeeping or administration of virtual assets or the instruments that enable the holder to exercise control over virtual assets. The latter part of the definition captures the administration of private keys or passwords for crypto assets.

solutions in its operations, allowing for the issuance and negotiation of tokenized securities. In Jamaica, the law includes a broad definition of the concept of “security,” and allows the Minister of Finance to issue orders designating other instruments as securities (s. 2 of the Securities Act).