JVI WEBINAR: LEGAL ASPECTS OF DIGITAL ASSETS AND SERVICES
PRACTICAL CONSIDERATIONS
FEBRUARY 2024
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1. Digital Asset Classification
2. Digital asset service provision
3. CBDCs
Classification of each digital asset is a threshold question determining which regulatory framework applies. Starting point for all digital asset product launches/initiatives.

Is the product:
(a) an in scope digital asset within the scope of a bespoke regulatory/AML regime and of what type or
(b) a type of financial instrument subject to the financial services regime or
(c) not classed as either and therefore not subject to regulation.

Practical classification examples:
Crypto exchange
Bitcoin ETN
This taxonomy is not exhaustive, but an example of how cryptoassets could be classified.
DIGITAL ASSET SERVICE PROVISION

Questions
• What activities are being carried out in relation to a regulated digital asset?
• Are the activities carried out “in the jurisdiction”

Proposed UK Regime
Similar to MiCA but some key differences.
✓ Issuance activities
✓ Operation of a trading platform
✓ Exchanging cryptoassets for fiat, other assets or cryptoassets
✓ Dealing and arranging cryptoasset deals
✓ Custody of cryptoassets
✓ Transfer of cryptoassets (inclusion of limited payment activities)
❖ Operating a cryptoasset lending platform - specifically regulated under the UK regime but not MiCA
 ✓ Providing cryptoasset advice – may be added in the future
 ✓ Providing cryptoasset portfolio management – may be added in the future
 ✓ DeFi – may be added in the future

Practical examples of service provision:
• Crypto exchange
• Bitcoin ETN
CBDC LEGAL CONSIDERATIONS

LEGAL QUESTIONS

1. Legal characteristics of CBDC
   - Does the asset have the legal characteristics of CBDC:
     - Native digital payment instrument;
     - Same status as legal tender;
     - Liability of central bank;
     - Denominated in the national unit of account?

2. Issuance and CBDC features
   - Who will have powers to issue CBDC, the central bank or the monetary authority?
   - Should CBDC:
     - Be interest bearing, and at what level?
     - Be Account-based (like securities settlement) or Token-based (like currency)?
     - Allow machine-to-machine micro-payments (fractionalization)?
     - Allow the issuer to control how it is used (programmability)?

3. Access
   - Should only financial institutions have direct access to the central bank or non-financial institutions as well?
   - Should there be retail access to CBDC?
   - Should the CBDC platform be based on intermediated / delegated model of banking, or only perform minimum AML functions?

4. AML / CDD
   - Will the central bank be responsible for consumer due diligence?
   - Will the central bank be responsible for anti-money laundering checks?
   - How would such a responsibility need to be reflected in the legal framework?

5. Privacy
   - How will the data generated by digital transactions be used / protected?
   - How will retail privacy issues be addressed at a policy level?
   - Will data privacy laws need to be amended?

6. Payments
   - Should there be intermediary participation in CBDC payment system? What type of intermediary?
   - Who would function as operator in such a payment system, and what would be included their powers?
   - How will CBDC approach cross-border payments? Will CBDC be interoperable with cross border payment systems?
   - What would be the rules concerning settlement finality?
CBDC PRACTICAL CONSIDERATIONS

1. Which (key) laws to change
   - Central bank laws
   - Payments laws
   - Banking laws
   - Consumer laws
   - Data laws

2. Legislative measures
   - Advising on the use of single or multiple legislative measure(s)
   - Determining levels of change e.g. legislation, regulation or by-laws
   - Determining method of change e.g. primary vs secondary legislation
   - Advising on scoping and policy documents

3. Implementing laws / regulations
   - Preparing implementing laws / regulations reflecting policy decisions
   - Working with central bank / monetary authority to review and finalise amendments / new laws
   - Working with prudential / fiscal / payment systems regulators to implement regulations

4. System Rules
   - Preparing rules for participants in CBDC payment system
   - Preparing regulations for CBDC payment system operators
   - Designing retail protections for retail users

5. Interoperability
   - Establishing rules for interoperability with other CBDCs
   - Establishing rules for interoperability with global payment systems
   - Preparing documentation and access to cross border payment systems

6. Legislative process
   - Working with legislative bodies to navigate legal changes through legislative process and adoptions
   - Overseeing consultations with industry bodies / other stakeholders
   - Advising on the drafting of legislation / regulation
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