

**C L I F F O R D**  
**C H A N C E**

**JVI WEBINAR: LEGAL ASPECTS OF DIGITAL ASSETS AND SERVICES  
PRACTICAL CONSIDERATIONS**

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**MONICA SAH**

1 Digital Asset  
Classification

2 Digital asset  
service provision

3 CBDCs

# DIGITAL ASSET CLASSIFICATION

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

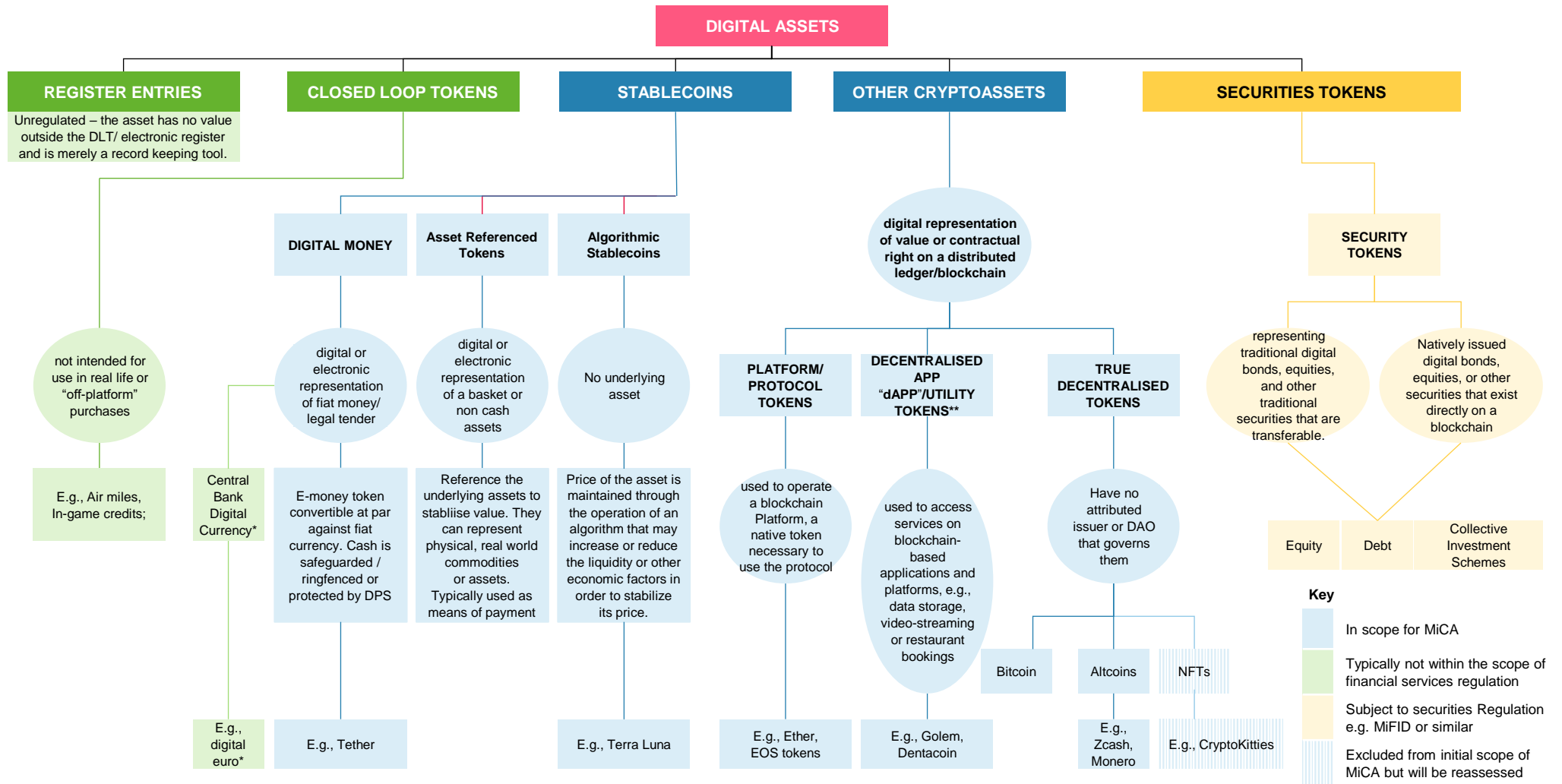
Practical classification examples:

Crypto exchange

Bitcoin ETN

# CLASSIFICATION POST-MICA

This taxonomy is not exhaustive, but an example of how cryptoassets could be classified



**Key**

- In scope for MiCA
- Typically not within the scope of financial services regulation
- Subject to securities Regulation e.g. MiFID or similar
- Excluded from initial scope of MiCA but will be reassessed

# 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.

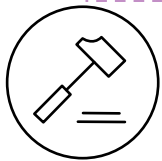
- ✓ Issuance activities
- ✓ Operation of a trading platform
- ✓ Exchanging cryptoassets for fiat, other assets or cryptoassets
- ✓ Dealing and arranging cryptoasset deals
- ✓ Custody of cryptoassets
- ✓ Transfer of cryptoassets (inclusion of limited payment activities)
- ❖ Operating a cryptoasset lending 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



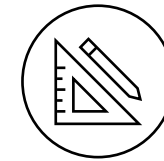
### 1. Legal characteristics of CBDC

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



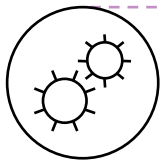
### 2. Issuance and CBDC features

- 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

## LEGAL SOLUTIONS



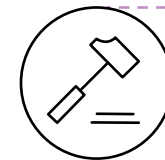
### 1. Which (key) laws to change

- 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



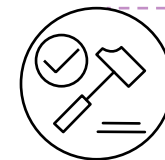
### 4. System Rules

- 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

# CONTACT



**MONICA SAH**

PARTNER, GLOBAL CO-HEAD FINANCIAL  
REGULATION

**T** +44 20 7006 1103

**M** +44 7747 627820

**E** monica.sah  
@cliffordchance.com



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