Regulation and Digital Assets Market

Separating private law and regulation is helpful to define the scope of international standards but may be misleading:

- Regulations on digital assets are often enacted to instill confidence and support the industry SME financing.

- Drafting private law rules assuming that regulatory standards can be applied separately may lead to

    i. Misinterpreting current market practices and

    ii. Designing private law frameworks with limited or no applicability

- Clarity in private law rules, instead, can support alignment with international and/or domestic regulatory regimes.

Regulatory Focus

Digital assets and activities that are not subjected to existing regulatory regimes

Crypto-assets Classification
→ Non-referenced crypto-assets (e.g. Bitcoin or utility tokens).
→ Referenced crypto-assets, i.e. representing rights/claims on other assets (e.g. stablecoins)

Crypto-assets related activities
→ Issuance, custody, trading
→ **Lending against crypto-assets**

The Regulatory Landscape for Digital Assets

Main Initiatives

Financial Stability Board
- Crypto-Asset Activities and Markets (2023)
- Global Stablecoins (2023)

IOSCO
- Crypto and Digital Asset Markets (2023)
- Decentralized Finance (DeFi) (2023)

Basel Committee
- Cryptoasset Exposures (2022-2026)

Financial Action Task Force
- Recommendation 15, Virtual Assets (2018)

Emerging Framework

Scope
- G20 initiatives with global reach

Key Principle
- Same *function,* same *risk,* same *rule*

Approach
- Comprehensive regulatory framework
- Focus on *activities* and *entities* related to ***crypto-asset***

Impact on Transactions & Markets

Market Overview

Centralized Exchanges (CEXs)

- CEXs are primary venues for crypto trading.
- Preferred for investors and large scale trade due to:
  (i) institutional-grade liquidity,
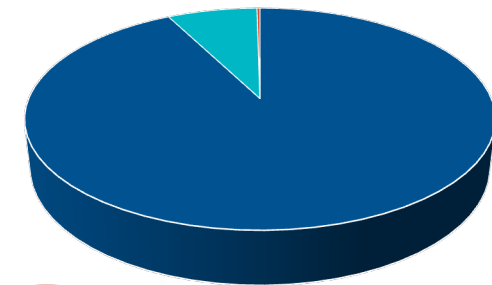 (ii) regulatory compliance (e.g., KYC/AML frameworks), and
  (iii) fiat onboarding.

Decentralized Exchanges (DEXs)

- DEXs: 10-15% of total crypto trading volume.
- Preferred for:
  (i) pseudonymous trading,
  (ii) access to speculative tokens, and
  (iii) self-custody preferences for retail in regions with restrictive banking or crypto policies
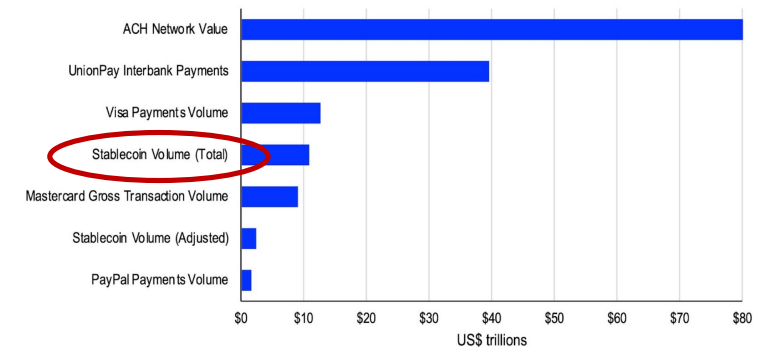
Key Dynamics

- Reliance on **regulatory compliant CEX and assets**.
- Expansion of trusted and **regulated stablecoins**.
- Integration of crypto-assets with **traditional finance/entities**.

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2024 Total Transaction Volume (USD)

■ CEXs (18.83 tn)   ■ DEXs (1.5 tn)   ■ Illicit (51 bn)

Payment System Transactions Volume 2023

	US$ trillions
ACH Network Value	
UnionPay Interbank Payments	
Visa Payments Volume	
Stablecoin Volume (Total)	
Mastercard Gross Transaction Volume	
Stablecoin Volume (Adjusted)	
PayPal Payments Volume	

$0 $10 $20 $30 $40 $50 $60 $70 $80

Based on the full year 2023, not fiscal year. Adjusted stablecoin volumes remove "inorganic" activity. Sources: Allium, Mastercard, Nacha, PayPal, People's Bank of China, Visa and Coinbase.

Private Law and Regulation: Two Examples

	Rights on		Anonymity
	A. Digital Assets	**B. Referenced Assets** *(fiat-backed stablecoin)*	

Private Law	• <u>UNIDROIT/UCC-Common Law</u>: Digital assets can be items of property and encumbered.
	• <u>Civil Law Jurisdictions</u>: depends:
	  • Japan: Art 85 Civil Code (tangibles).
	  • China: Court interpretation of the Civil Code indicated that property rights on crypto-assets can be established even if trading is banned.
		• <u>UNIDROIT</u>: rights on "linked assets" governed by other laws.
		• <u>Current debates</u>: stablecoins with rights on redeemable reserves possibly treated as negotiable documents.
			<u>International Private Law</u>
			• Significant attention has been devoted on the anonymity feature of crypto-assets transactions impeding to determine the location of the transferor.

Regulation	<u>FSB, EU, Japan</u>: • Segregation and obligations to return assets • Rules "mimic" property rights protections for clients dealing with crypto-assets service providers.	<u>FSB, Basel, EU, Japan, Hong Kong</u>: • Obligation of 1:1 reserves held in a regulated credit institution • Reserves must be redeemable (FSB indicates "users" broader than holders). • Same level of protection as "commercial bank money." • EU: Defined as "e-money" possibly considered as financial collateral.	<u>FATF, IOSCO, EU, etc.</u>: • Uses of crypto-assets in commercial transactions likely fall into AML/KYC rules. • Issuers' identity disclosed. • Clients' identity, nationality, and residency must disclosed. • Identity is disclosed when crypto-assets are transferred to wallets ("travel rules").

Implications on Transactions and Markets

Effects	Rights on		Anonymity
	A. Digital Assets	**B. Referenced Assets** *(fiat-backed stablecoin)*	
Effects	Rights on *crypto-asset* of *service providers' clients* are protected regardless of property law categories and contractual arrangements. Accounts with regulated crypto-assets are equated to accounts with regulated financial institutions.		• Lending against crypto-asset is likely to trigger KYC/AML rules. • Institutional investors and commercial transactions rely on licensed and regulated regime. • Anonymity/Pseudonymity mostly is non-mainstream.
	Growing <u>convergence</u> between • regulatory classifications and • market uses of "digital assets."	Fiat-backed stablecoins with a promise of redeemable reserve: • Treated similar to <u>bank accounts</u> or <u>debt claims</u>, • Issuers treated as <u>regulated credit providers</u>.	

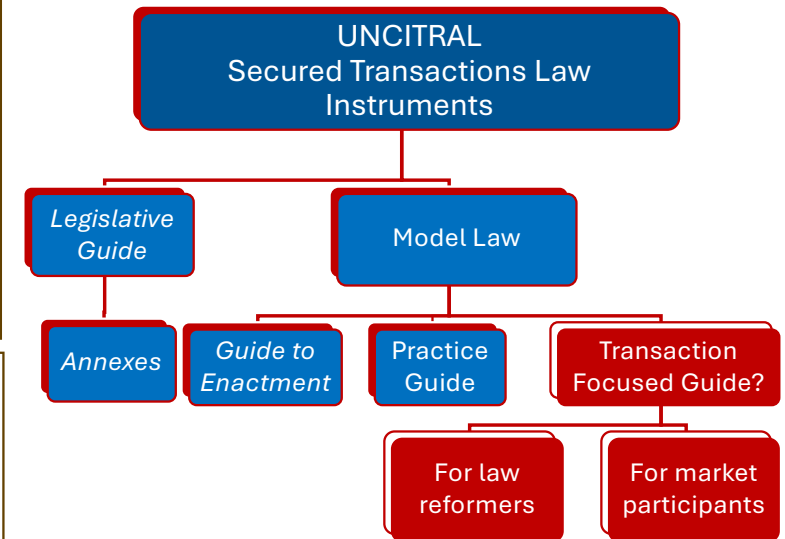### *For whom should private law standards be designed?*

Possible Way Forward

Need

- UNCITRAL MLST offers a comprehensive framework.
- UNIDROIT Digital Assets and Private Law Principles (DAPL) provide a blueprint for "digital assets."
- <u>Guidance is needed</u> to coordinate **UNCITRAL** and **UNIDROIT** instruments in emerging market practices shaped by **international regulatory standards**.
  - How do existing instruments apply to the main categories of crypto-assets (e.g., payment tokens, security tokens, stablecoins)? What perfection rules apply? Is the UNCITRAL MLST compatible with FSB/Basel/IOSCO/FATF recommendations?
  - Answers to these and other questions might not be obvious to law reformers and market participants.

Feasible Options

1. Applicability of the UNCITRAL MLST (coordinated with MLTER + UNIDROIT DAPL) to secured transactions involving specific types of digital assets.
2. Methods to implement the UNCITRAL MLST (coordinated with MLTER + UNIDROIT DAPL) to support international regulatory requirements (e.g., stablecoins).

Which approach should UNCITRAL follow to address these needs?

UNCITRAL Secured Transactions Law Instruments
- *Legislative Guide*
  - *Annexes*
  - *Guide to Enactment*
- Model Law
  - Practice Guide
  - Transaction Focused Guide?
    - For law reformers
    - For market participants

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Thank you!

Taxonomies & Classifications

Regulatory Taxonomies	Implication

1. **Crypto-assets:** digital representation of value or a right that can be transferred or stored electronically using *distributed ledger*. Key distinctions:
   - Focus on Crypto-assets that do **not** qualify as financial instruments

   → Key distinction based on underlying rights or claims (i) crypto-asset not representing any right/claim/asset (e.g., Bitcoin), and (ii) with a value referenced to or backed by other assets (e.g. stablecoins).

2. **Crypto-assets & Regulated Activities:** different transactions and activities that trigger licensing requirements and various obligations on the providers
   - They include (i) issuance of different types of crypto-assets, (ii) custody and administration of crypto-asset for clients, (iii) trading platforms and operations.

   → Lending against crypto asset in some jurisdictions may require a license. Regardless, it is likely to be subject to KYC rules for AML purposes