

Digital Assets in Digital Finance

Regulatory Standards and Law Reform Implications

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UNCITRAL Colloquium: Navigating the New Era
of Digital Finance

20-21 February 2025

United Nations Headquarters, New York

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.

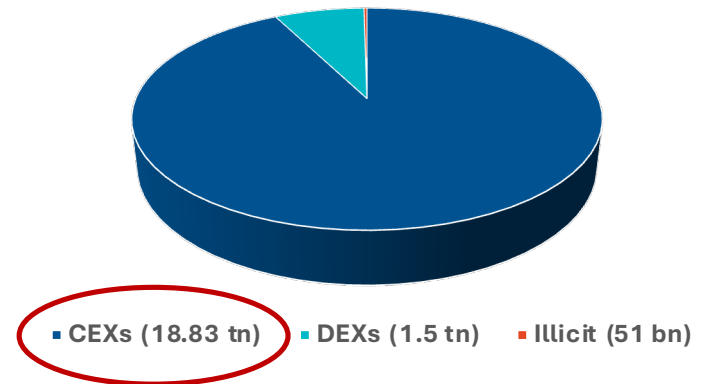
Decentralized Exchanges (DEXs)

- 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

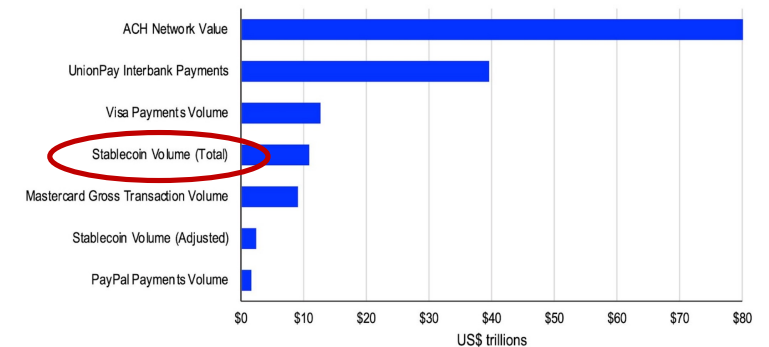
Key Dynamics

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

2024 Total Transaction Volume (USD)



Payment System Transactions Volume 2023



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	<ul style="list-style-type: none"> • <u>UNIDROIT/UCC-Common Law</u>: Digital assets can be items of property and encumbered. • <u>Civil Law Jurisdictions</u>: depends: <ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • <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> <ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> • 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> <ul style="list-style-type: none"> • 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

Rights on		Anonymity
A. Digital Assets	B. Referenced Assets (fiat-backed stablecoin)	
Effects	Rights on <i>crypto-asset</i> of <i>service providers’ clients</i> are protected regardless of property law categories and contractual arrangements. Accounts with regulated crypto-assets are equated to accounts with regulated financial institutions.	<ul style="list-style-type: none">• 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.
	<div><div>Growing <u>convergence</u> between<ul style="list-style-type: none">• regulatory classifications and• market uses of “digital assets.”</div><div></div><div>Fiat-backed stablecoins with a promise of redeemable reserve:<ul style="list-style-type: none">• Treated similar to <u>bank accounts</u> or <u>debt claims</u>,• Issuers treated as <u>regulated credit providers</u>.</div></div>	
For whom should private law standards be designed?		

Possible Way Forward

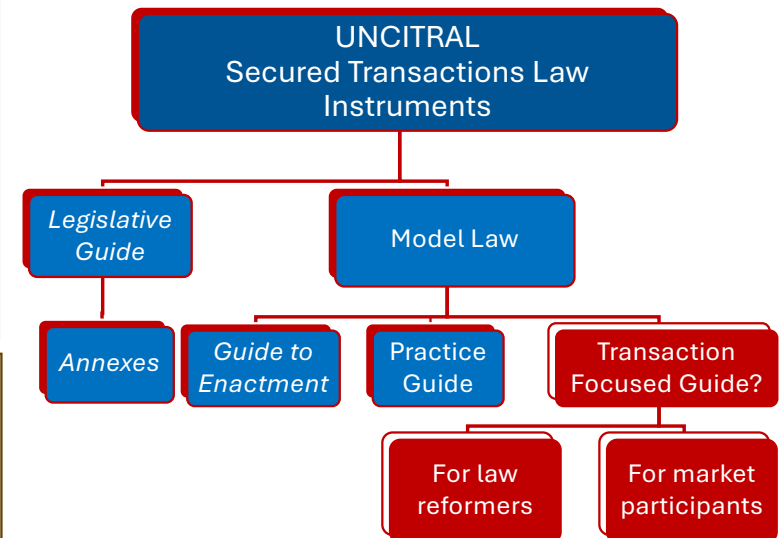
Need

- UNCITRAL MLST offers a comprehensive framework.
- UNIDROIT Digital Assets and Private Law Principles (DAPL) provide a blueprint for “digital assets.”
- Guidance is needed 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?



Thank you!