

Chapter 9

Navigating Cryptocurrency Regulation: Trailblazing Legal Strategies for a Borderless Future

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ABSTRACT

Cryptocurrency, based on block-chain technology is defined as a decentralized digital peer-to-peer currency. The emergence of cryptocurrency is a boon for future economy; it has been tagged along with innumerable practical and legal issues including risks associated with consumer's protection such as theft, misinformation, and unpredictability; complexity surrounding the legal characterization of cryptocurrencies, illegal activities driven through cryptocurrencies and lack of uniform comprehensive global legislation to address the issues and challenges associated with it. Though valiant efforts have been made by few countries like Canada, United Kingdom, Switzerland, El Salvador etc. to formulate broad range of rules and regulations for digital currency but other developed and developing economies has largely remained silent on the debate surrounding the regulation of cryptocurrencies. This chapter seeks to explore into risk posed by digital currency and provide a need for formulation of legal structure appropriate for regulating

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the cryptocurrencies.

1. INTRODUCTION

Cryptocurrency, a form of Fiat money is a digital/electronic currency without any physical existence but represents value (Thapaliya & Sharma, 2023). Whereas, blockchain technology is an electronic database that is distributed among the nodes of a peer-to-peer network, it assists in collection and storage of information when a cryptocurrency is bought, sold, or exchanged (Djenna et al., 2023) (Awajan, 2023). The current state of cryptocurrency is opaque and its swift evolution in the last decade has led to increased regulatory scrutiny by the international organisations and government of various jurisdictions worldwide to formulate a comprehensive legislation or regulation to address the risk and opportunities offers (Attaran & Deb, 2018) (Brotcke, 2022). Cryptocurrencies are digital “coins” or “tokens” secured through cryptography (Abebe et al., 2020) (Elluri et al., 2023). These assets exist entirely in digital form and utilize blockchain or other decentralized ledger technologies (DLTs) to operate on a decentralized network (Hagendorff, 2019) (Singh & Kaunert, 2024). This setup allows users to transact directly without the need for a central authority (Thapaliya & Sharma, 2023) (Dash et al., 2022).

Cryptocurrencies can be instantly transferred at a peer-to-peer (P2P) level without intermediaries like banks or central banks (Barocas et al., 2023) (Narayana & Sreedevi, 2023). In principle and barring additional cryptographic measures or security breaches, cryptocurrency transactions are fully traceable and immutable with users remaining pseudonymous unless their assets are linked to a validated know your customer (KYC) file through an exchange (Mhlanga, 2021) (Pocher et al., 2023). Regulators worldwide should develop frameworks to responsibly monitor and guide cryptocurrency activities within their jurisdictions (Chen et al., 2018) (Tyagi et al., 2020). These frameworks should ensure fair market conduct, competition, the application and enforcement of tax rules, and consumer protection, while also fostering the growth of a lucrative cryptocurrency-based economy (Cao et al., 2021). Given that cryptocurrencies are cross-jurisdictional, regulatory challenges extend beyond national borders (Alazab et al., 2023). Regulators should strive for cross-jurisdictional standards to create regulatory clarity, close loopholes and mitigate regulatory arbitrage, while ensuring inclusivity for all users (Zhang et al., 2022). Well-designed cryptocurrency regulations in various jurisdictions have already encouraged crypto-based innovations and efficiencies in finance and commerce, especially for cross-border transactions (Singh, 2023). Regulators should examine these examples to enhance their understanding of the essential parameters and variables in designing regulatory frameworks (Lee & Shin, 2020).

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