

# HMT publishes plans to regulate cryptoassets

## AT A GLANCE

February 2023

### What's new?

- HMT published new proposals on the future regulatory regime for cryptoassets on 1 February 2023. The [consultation paper](#) (CP) builds on previous proposals, which focussed on stablecoins and the financial promotion of cryptoassets.
- The CP covers a broad range of activities, including trading, issuance and custody, and sets out key features of the future regime such as prudential requirements, data reporting, consumer protection, location policy and operational resilience. All financial entities undertaking these proposed newly regulated cryptoasset activities will be impacted by the requirements.
- HMT also [updated](#) its proposed approach to the financial promotion of cryptoassets, introducing an exemption enabling AML-registered cryptoasset firms to communicate their own qualifying cryptoasset promotions.

### What does this mean?

- The proposed regulatory framework is based on the 'same risk, same regulatory outcome' principle. It will be primarily delivered by amendments to existing legislation, including the Financial Services and Markets Act (FSMA) and the Designated Activities Regime (DAR) being legislated for in the Financial Services and Markets Bill (FSMB).

### Scope of the regime

- HMT seeks to capture all types of cryptoassets. The new requirements applied to a firm will be determined by the activities they undertake (e.g. custody, exchange etc).
- Fiat-backed stablecoins will be covered in a different regime using the FSMB as the legislative basis. HMT and the Bank of England will publish a separate consultation on central bank digital currency (CBDC).
- HMT proposes to capture cryptoasset activities provided in or to the UK. Entities based overseas would be required to comply with the new regime if they provide services to customers in the UK.

- HMT notes firms operating cryptoasset trading venues will likely require subsidiarisation in the UK.

### Activities to be regulated

- The new regime is broad, capturing: issuance, custody, exchange, investment and risk management, leverage, safeguarding and administration. It also includes lending and borrowing activities, going further than other jurisdictions' approaches. In a future phase, post-trade, advising and managing (to the extent not already covered), validation and governance activities (including mining) may also be included.

### New measures and requirements

- HMT proposes to introduce an authorisation regime under FSMA for firms who are carrying out certain activities involving cryptoassets.
- The CP also includes design features for operating cryptoassets trading venues, as well cryptoassets issuance and disclosures.

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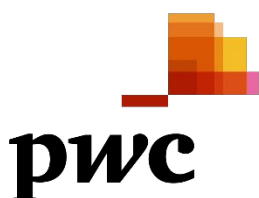
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- For the admission of cryptoassets to trading venues, HMT proposes to adapt the Multilateral Trading Facility model from the intended reform of the UK prospectus regime.
- Under the proposals, firms carrying on certain activities such as custody, intermediation and operating cryptoasset trading venues will have to comply with a broad range of new requirements including: minimum standards for operational resilience, prudential and location requirements as well as consumer protection measures.

## Areas to be explored

- HMT also seeks industry input on the best way to regulate decentralised finance (DeFi), investment advice and portfolio management as well as the environmental impact of cryptoassets.

## What do firms need to do?

- Firms should evaluate the potential impact of the proposed regime on their current operations as well as current and future strategy.
- Firms that already carry out cryptoasset activities, which will be regulated as part of the new regime, need to understand the new requirements and start preparing for them. This will include mapping out current activities against the proposed regime, assessing business model implications and implementing new processes and arrangements to ensure compliance with the new regime.
- Some firms will need to apply for an authorisation under FSMA as part of the new regime. Firms should note

that authorisation under the current AML/CTF regime has been challenging and that only 15% of applications have been approved by the FCA.

- Firms which are already FSMA authorised and intend to undertake some newly regulated activities will generally need to apply for a variation of permission from the FCA (and the PRA for dual-regulated firms). Regulatory permissions will not be automatically granted for firms which are already authorised.
- Under the proposals firms will need to comply with financial crime rules in FSMA. These are broader than the rules that cryptoasset businesses already need to comply with.
- Firms will also need to comply with a new market abuse regime based on elements of the regime for financial instruments.
- Overseas firms will need to comply with the regime if they provide services to customers based in the UK. HMT has indicated that it intends to pursue equivalence type arrangements with third countries, however there is considerable uncertainty on how this model will develop. Firms operating cryptoasset trading venues would be likely to require subsidiarisation in the UK as they play a critical role in the cryptoasset value chain.
- Firms need to understand how the UK regime will compare to other frameworks developed in other jurisdictions including the EU.

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## Next steps

The consultation will close on 30 April 2023, after which, the government will consider feedback and set out its response. Once legislation is laid, the regulators will consult on the detailed rules for the sector.

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