

Legal framework of Cryptoassets in United Kingdom & Malta (December 2019)

United Kingdom: Guidance on Cryptoassets¹. Kinds of Unregulated tokens: those tokens that do not provide rights or obligations akin to specified investments (like shares, debt securities and e-money):

Name:	Exchange tokens	Utility Tokens	Security Tokens
Definition	<p>Those types of cryptoasset that are usually decentralised and primarily used as a means of exchange. These tokens are sometimes known as 'cryptocurrencies', 'crypto-coins' or 'payment tokens'.</p> <p>These tokens are designed to provide limited or no rights for tokens holders, and there is usually not a single issuer to enforce rights against.</p>	<p>Those tokens that provide consumers with access to a current or prospective product or service and often grant rights similar to pre-payment vouchers.</p>	<p>Those tokens that provide rights and obligations akin to specified investments as set out in the RAO, including those that are financial instruments under MiFID II. For example, these tokens have characteristics which mean they are the same as or akin to traditional instruments like shares, debentures or units in a collective investment scheme.</p> <p>i.e. those tokens which are specified investments, excluding e-money tokens are within the FSMA perimeter. E-money tokens are within the FSMA perimeter if issued by a credit institution, a credit union or a municipal bank, and are also regulated under the EMRs.</p>
Financial services regulation	<p>Exchange tokens currently fall outside the regulatory perimeter. This means that the transferring, buying and selling of these tokens, including the commercial operation of cryptoasset exchanges for exchange tokens, are activities not currently regulated by the FCA</p>	<p>As utility tokens do not exhibit features that would make them the same as security tokens, they won't be captured in the regulatory regime.</p> <p>Warning: Tokens might be backed by financial assets, physical assets, or other cryptoassets.</p> <p>These tokens may in certain circumstances be security tokens or e-money tokens, depending on among other things, the rights granted by such tokens, the nature of the underlying assets and other relevant arrangements. For example, while gold itself is not a specified investment, a token that gives token holders a right or interest to gold held by a token issuer, or rights to payments from profit or income generated from the holding, buying or selling of gold may in certain circumstances be a specified investment. For example this could be a unit in a collective investment scheme or a debt security.</p>	<p>Security tokens are the type of cryptoasset which falls within the regulatory perimeter. However, the details depend on the type of specified investment.</p>

¹ Guidance on Cryptoassets
<https://www.fca.org.uk/publication/policy/ps19-22.pdf>

AML regulation	<p>Firms should note that 5AMLD will be transposed into UK law by 10 January 2020 to introduce AML requirements to certain cryptoasset activities:</p> <ul style="list-style-type: none"> • exchange services between one cryptoasset and another, or services allowing value transactions within one cryptoasset exchange or peer-to-peer exchange service provider • cryptoasset Automated Teller Machines • transfer of cryptoassets (In this context of cryptoassets, transfer means to conduct a transaction on behalf of another natural or legal person that moves a cryptoasset from one cryptoasset address or account to another) • issuance of new cryptoassets, for example through ICOs • the publication of open-source software (which includes, but is not limited to, noncustodian wallet software and other types of cryptoasset related software)
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MALTA: Classes of Distributed ledger technologies (DLT) Assets according to VIRTUAL FINANCIAL ASSETS ACT²

Name:	Virtual/Utility tokens	Financial instruments	Electronic Money	Virtual Financial Asset (VFA)
Definition	<p>A form of digital medium recordation whose utility, value or application is restricted solely to the acquisition of goods or services, either solely within the DLT platform on or in relation to which it was issued or within a limited network of DLT platforms</p> <p>Provided that the term "DLT platform" referred to in this definition shall exclude DLT exchanges</p> <p>Provided further that a virtual token which is or may be converted into another DLT asset type shall be treated as the DLT asset type into which it is or may be converted</p>	<p>Instruments under the Second Schedule to the Investment Services Act³ (Transferable Securities, Money Market Instruments, nits in collective investment schemes....)</p>	<p>Electronically, including magnetically, stored monetary value as represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions and that is accepted by a person other than the financial institutions that issued the electronic money⁴</p>	<p>Any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not -(a) electronic money;(b) a financial instrument; or (c) a virtual token;</p>

² VIRTUAL FINANCIAL ASSETS ACT

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12872&l=1>

³ INVESTMENT SERVICES ACT

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8839&l=1>

⁴ FINANCIAL INSTITUTIONS ACT

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8843&l=1>