

Legal Status of Cryptocurrency Circulation in Iraq: Lessons from the United Arab Emirates and the United States

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Abstract: The philosophical emergence of cryptocurrencies is a consequence of the desire to get rid of the authorities' control of the monetary system, which encouraged people to deal with it for investment or to facilitate the fulfilment of their financial obligations. The research problem is represented through the lack of legislation that regulates dealing with cryptocurrencies in Iraq. There are many technical, legal, and security risks for the use and circulation of cryptocurrency, which must be legally addressed and suitable solutions found. Therefore, this article aims to examine and analyse the legal status of cryptocurrencies in selected jurisdictions through multiple stages, from prohibition to licensing and regulation. This article adopted a qualitative approach to analyse the legal status of cryptocurrency in the selected jurisdictions. The study finding shows that the Iraqi authorities do not have the technical or legal means to prevent the illegal use of cryptocurrencies. In addition, there is a large legislative gap with the developed countries, and lawmakers need to regulate cryptocurrencies by enacting laws to protect people from falling victim to fraud.

Keywords: Cryptocurrencies; Digital Assets; Crypto Assets; Virtual Assets; Legal Status

1. Introduction

Recent developments in cryptocurrencies and blockchains have dramatically revolutionised the system of payments in online financial transactions and trading, including how contracting parties can fulfil their commitments. The global community may be experiencing the same confusion that Marco Polo had around seven centuries ago when he saw the Chinese use stamped strips of paper for payments instead of metal coins.¹ In 2008, Satoshi Nakamoto published his white paper, which presented the first cryptocurrency to the world, Bitcoin. By 2011 it had spread as groups within the programmers' community used it, and it had increased in value from pennies to around \$1. In 2021 Bitcoin hit an all-time high value of \$69,000.

Nowadays, several big companies worldwide (e.g. Tesla, Coca-Cola, and Microsoft) have begun accepting Bitcoin and other cryptocurrencies through various transactions as

¹ Kaido Künnapas. "From Bitcoin to Smart Contracts: Legal Revolution or Evolution from the Perspective of de lege ferenda?" In *The Future of Law and eTechnologies*, eds. Tanel Kerikmae and Addi Rull (Springer, Cham, 2016), 114.

payment for the purchase of their products.² The system of cryptocurrency conversion works without depending on the presence of trust between the contracting parties, but is based on smart contracts that rely on digital signatures.³ As a result, this increased the circulation of cryptocurrencies until the total value of the cryptocurrency market in 2021 exceeded "\$2 trillion USD",⁴ which made cryptocurrencies a significant asset with more than 106 million users around the world.⁵ All of this indicates a promising future in electronic commerce or payment. The researcher has chosen a US jurisdiction in this paper because the most significant market and companies dealing with cryptocurrencies exist and work in the US, such as Tesla, MicroStrategy,⁶ and Coinbase, which is considered the largest cryptocurrency exchange company in the world.⁷ Also, the researcher has chosen the UAE because the UAE plans to be the capital of cryptocurrency for the world by enacting the first law governing cryptocurrencies.⁸ The reason for choosing the Iraqi jurisdiction pertains to the increased use of cryptocurrencies.

The researcher sees that many regulators and governments have taken steps to protect people's interests and prevent any financial fraud activity, but for Iraqi jurisdiction still there is prohibition of any kind of dealing with cryptocurrencies. This is especially important with the growing use of various transactions or contracts utilising cryptocurrencies in Iraq. There is an increasing prevalence of scam cryptocurrencies, such as the HZM coin, which was directed to the Iraqi community. As a result of the inability of the Iraqi legal system to protect cryptocurrency users as well as a lack of legislation that can rule this innovative technology, the Central Bank of Iraq issued a warning to cryptocurrency users or dealers in 2021, stating that it does not guarantee or provide legal protection for those who deal with cryptocurrencies.⁹ This has recently created a large legal controversy in Iraq, partly due to the diversity of the categories of its users between ordinary users, speculators and investors, and the diversity of the purposes of its use between benefiting from its advantages and others related to criminal ends. In addition, the philosophy of its emergence resulted from the desire to get rid of the control of governmental authorities or banks with money, which constitutes a motive for researching its legal regulation according to what exists and is effective from the current laws. For this reason, the researcher has chosen Iraq to take a lesson from the experience of the USA and the UAE. Therefore, this article discusses the concepts, advantages,

² Raynor de Best. "Cryptocurrency Adoption among Businesses - Statistics & Facts." Published 29 March 2021. https://www.statista.com/topics/7712/cryptocurrency-adoption-among-businesses/#topicHeader__wrapper

³ William J Luther, "Bitcoin and the future of digital payments," *The Independent Review* 20, no. 3 (2016):398.

⁴ Vildana Hajric and Olga Kharif. "Cryptocurrencies Bitcoin's Volatility Resumes after \$40,000 Topped for First Time." Updated 8 January 2021. <https://www.bloomberg.com/news/articles/2021-01-07/crypto-market-value-tops-1-trillion-as-bitcoin-breaches-37-000>

⁵ Josh Howarth. "How Many People Own Bitcoin? 95 Blockchain Statistics (2022)." Published 12 July 2022. <https://explodingtopics.com/blog/blockchain-stats>

⁶ Francisco Rodrigues. "Hodlers and Whales: Who Owns the Most Bitcoin in 2022?" Published 4 July 2022. <https://cointelegraph.com/news/hodlers-and-whales-who-owns-the-most-bitcoin-in-2022>

⁷ Scott D Hughes, "Cryptocurrency Regulations and Enforcement in the US," *W. St. UL Rev.* 45 (2017):10.

⁸ Aakanksha Chaturvedi. "Dubai Looks to Become the Crypto Capital of the World." Updated 29 March 2022. <https://www.businesstoday.in/crypto/story/dubai-looks-to-become-the-crypto-capital-of-the-world-327792-2022-03-29#:~:text=Dubai%20is%20ramping%20up%20to,headquarters%20from%20Singapore%20to%20Dubai.>

⁹ Iraqi Central Bank issued a statement prohibiting the use of cryptocurrencies, in 2021. <https://cbi.iq/news/view/1866#:~:text=>

disadvantages, and legal status of cryptocurrencies in the selected jurisdictions in the following sections.

2. Method

This paper uses the qualitative method to examine and analyse the legal status of cryptocurrencies in the USA, UAE and Iraq through multiple stages, from prohibition to licensing and regulation.

3. Cryptocurrencies

The Innovative idea of cryptocurrency was first suggested in the late 1980s by American cryptographer David Chaum. He invented Digicash, which as a cryptocurrency, had the purpose of being sent anonymously without the utilisation of centralised authorities such as banks.¹⁰ However, the problem involving the double-spending of cryptocurrencies without a central authority's involvement was not solved until more than a decade later when Satoshi Nakamoto issued Bitcoin, which became the first cryptocurrency that overcame the problem of double spending cryptocurrency.

In addition, Satoshi Nakamoto also put forward the concept of a "peer-to-peer" network that can prove a general history of transactions to avoid double spending on the cryptocurrency network.¹¹

In late 2013, the Russian-Canadian programmer Vitalik Buterin published an article introducing a new kind of blockchain-based and smart contract-focused platform (Ethereum), which was launched two years later. Ethereum is equipped with the ability to form more complex smart contracts utilising an "if-then algorithm". Ethereum was the second blockchain platform with the same cryptocurrency name. It provided programmers with the ability to generate hypothetically unlimited possible applications, including but not limited to creating markets, promises, or registries of debts that operate according to instructions, without the need for a middleman.¹²

Therefore, nowadays online retailers and various companies around the world have begun to accept payment transactions for the purchase of their products using cryptocurrencies.¹³ Many types of cryptocurrencies are intended for payments, transmitting value running across a decentralized network of users, such as Bitcoin. However, XRP supports cross-cryptocurrency transactions, where all merchants accepting Bitcoin, or any crypto determined by the user, could accept payments by XRP.¹⁴

¹⁰ Evan Jones. "A Brief History of Cryptocurrency." Published 21 September 2022. <https://www.cryptovantage.com/guides/a-brief-history-of-cryptocurrency/>

¹¹ Satoshi Nakamoto. "Bitcoin: A peer-to-peer electronic cash system." Accessed 3 October 2022. <https://bitcoin.org/bitcoin.pdf>

¹² E Bayramoğlu, "Online Dispute Resolution and Direct Enforcement in the Age of Smart Contracts" (Thesis Master., Tilburg University, 2018), 19.

¹³ William J Luther, "Bitcoin and the future of digital payments," *The Independent Review* 20, no. 3 (2016):398.

¹⁴ Pedro Moreno-Sanchez, Tim Ruffing, and Aniket Kate. "PathShuffle: Credit Mixing and Anonymous Payments for Ripple," *Proc. Priv. Enhancing Technol* 2017, no. 3 (2017): 107.

Cardano can also be used as a payment option where "(Flexa)"¹⁵ will permit over 40,000 traders to accept ADA in the U.S.¹⁶ Binance Coin, (BNB) Tether (USDT),¹⁷ and many other cryptos have been accepted in many companies. On the other hand, these cryptocurrencies are not without risks, as users are exposed to many frauds when investing in cryptocurrencies through companies from various industries. Some companies raise funds to develop their product through the idea of initial coin offerings (ICOs) as the manner for crowdfunding start-ups and entrepreneurs to raise funds via the internet, outside of traditional financing channels. However, in 2017 80% of the ICOs of cryptocurrency ad tokens identified were classified as scam projects.¹⁸ This is another reason that must motivate lawmakers to do something about these transactions to protect customers and enact statutes that can regulate these new types of investments.

According to the Coin Market Cap website, the cryptocurrency revolution has given rise to approximately 19,557 types of cryptocurrencies until the date of writing this paper. Cryptocurrencies are considered one of the leading cores supporting the freedom of online trading transactions since they provide advanced features compared with vis-a-vis fiat money, particularly in developing countries like Iraq. For example, cryptocurrencies are not subject to hyperinflation. This is because a particular coin's supply can be set as finite, thus avoiding the possible problems when a government starts to print a substantial quantity of cash. It can likewise prevent the issues of fake currency.¹⁹ Therefore, many people have admired the advantages of cryptocurrencies and began using them for investments or as a means of payment.

4. Advantages and Disadvantages of Cryptocurrencies

4.1. Advantages

- a. **Decentralisation (No Central Authority):** This money would be available on a variety of computers and devices. There is no government, individual, bank, or group in charge of cryptocurrency transactions.
- b. **Permanent Transactions:** The immutable and irreversible properties of cryptocurrencies make it hard for anybody other than the owner of a private key to transfer cryptocurrencies or data, and once a transaction has been recorded on the blockchain, it cannot be reversed or altered.
- c. **Limited Supply and Scarcity:** Central banks can issue and print a limitless amount of fiat currency. Central banks frequently change the value of their countries'

¹⁵ Flexa is considered an app, that allows anyone can instantly spend their cryptocurrencies in physical stores, without conversion fees. Spalding, Tyler. "Flexa: The Pure-Digital Payments Network."

¹⁶ Olivia Brooke. "Cardano Payments Now Available at over 40,000 Locations across the U.S." Published 20 December 2021. <https://zycrypto.com/cardano-payments-now-available-at-over-40000-locations-across-the-u-s/>

¹⁷ Adam Hayes. "10 Important Cryptocurrencies Other Than Bitcoin." Updated 26 September 2022. <https://www.investopedia.com/tech/most-important-cryptocurrencies-other-than-bitcoin/#:~:text=1.,interference%20from%20a%20third%20party.>

¹⁸ Bedil Karimov and Piotr Wójcik. "Identification of scams in Initial Coin Offerings with machine learning." *Frontiers in Artificial Intelligence* 4 no. 718450 (2021):3-4.

¹⁹ Carol Goforth. "The Lawyer's Cryptionary: a resource for talking to clients about crypto-transactions." *Campbell L. Rev.* 41 (2019): 83.

currency as part of their economic plans. Thus, fiat currencies have a tendency toward inflation. Because of this, the money's value could diminish over time. As for cryptocurrencies, a pre-set number embedded into their underlying algorithm is present when they are created, thus limiting their creation. Thus, Bitcoin, XRP, and Dash have a limited supply, making them deflationary. Any rise in demand for cryptocurrency will result in a proportional price increase.²⁰

- d. **Lower Exchange and Transfer Fees than Fiat Money:** The peer-to-peer network would be the foundation for cryptocurrency. The transactions will be carried out securely thanks to this network. This decentralised network will prevent fraud and third-party involvement, such as from banks. It facilitates transactions by making them rapid, secure, and cost-effective. This network enables users to send Bitcoins or other cryptocurrencies straight to another user.²¹

4.2. Disadvantages

- a. **Legal Uncertainty:** Even though the cryptocurrency business is rapidly expanding, the lack of recognition and laws for cryptocurrencies is a huge disadvantage. Governments throughout the globe have differing perspectives, classifications, and legal responses to cryptocurrencies.
- b. **Anonymity:** Cryptocurrency can be employed for illegal transactions. Individuals and organisations may now conduct internet transactions without being required to provide their names to any third party or the government in compliance with the Know Your Customer (KYC) anti-money laundering legislation. Tracing or monitoring any user based on wallet address is now difficult for the authorities. Cryptocurrencies have been utilised to transfer money in various criminal transactions, which include purchasing drugs and channelling international terrorist funding.
- c. **Strong Volatility:** Cryptocurrencies are characterised by high volatility, and the values of cryptocurrencies change daily.²² Every event or comment has a huge impact on the market demand for cryptocurrencies, which might have a negative impact on their value in the future.
- d. **The Possibility of Losing Cryptocurrencies:** Because there is no central authority that can assist in money recovery, preserving cryptocurrency wallets is exclusively the responsibility of each user. Public and private keys are handed only to the wallet's owner to make every wallet secure. The cryptocurrencies in that wallet will be lost forever if this private key is lost.²³

²⁰ AsianMarketCap Official. "Key Characteristics of Cryptocurrency and Why Do They Matter to You." Published 24 August 2020. <https://medium.com/the-capital/key-characteristics-of-cryptocurrency-and-why-do-they-matter-to-you-5f33e483a40f>

²¹ Brent Dixon. "What Are the Key Features of Cryptocurrency and Its Working?" Accessed 3 October 2022. <https://e-cryptonews.com/what-are-the-key-features-cryptocurrency-and-its-working/>

²² Fernando García-Monleón, Ignacio Danvila-del-Valle, and Francisco J. Lara. "Intrinsic value in crypto currencies." *Technological Forecasting and Social Change* 162 (2021): 3.

²³ Omar Farouk Al Mashhour and Ahmad Shamsul Abd Aziz. "The Era of Cryptocurrencies: A Study About the Advantages and Disadvantages" (The proceeding of the 1st SOIS conference on arts and humanities, Universiti Utara Malaysia, 18-19 December 2019).

- e. **Susceptible to Hacks:** While cryptocurrencies may be very safe, the same could not be said about currency exchanges. Most exchanges retain the users' wallet details, which can be used by hackers to access many accounts and quickly move cryptocurrencies. In the past few years, a few exchanges, such as Mt Gox, Bitfinex, and Binance, have been hacked with cryptocurrencies worth millions of dollars stolen.²⁴
- f. **No Refund Mechanism for Cryptocurrency Payments:** If the owner of a cryptocurrency account mistakenly pays someone, the transaction is final. It is almost impossible to undo a transaction after it has been validated and uploaded to the blockchain, where it will be kept in perpetuity. In the banking industry, however, transaction reversals are feasible in several instances.²⁵

5. Legal Status of Cryptocurrencies by International Community

As a result of the novelty of the cryptocurrency phenomenon, many countries still do not have a clear vision of the legal status of cryptocurrencies in general. Whereas many states in Europe have stated that their position is to watch and see what will happen to cryptocurrencies and, based on that, they will decide whether and how to regulate them.²⁶ Despite that, cryptocurrencies are still unregulated in most international communities, but some countries allow their citizens to trade or invest in cryptocurrencies. Therefore, in the following table, this article will present the legal status of cryptocurrencies according to the vision of some international communities.

Table 1. International community vision of cryptocurrencies status

Rank	Friendly jurisdiction	What cryptocurrencies status	Unfriendly jurisdictions	What cryptocurrencies status
1	USA	Convertible cryptocurrencies are under study for ETF admission. ²⁷ (CFTC) classified Bitcoin as a commodity. ²⁸ The (SEC) had considered Bitcoin and Ethereum as commodities, but classified other cryptocurrencies as a security. ²⁹	China	Ban all trading exchanges for cryptocurrencies. ³⁰

²⁴ Geeksforgeeks. "Advantages and Disadvantages of Cryptocurrency in 2020." Last Updated 30 September 2022. <https://www.geeksforgeeks.org/advantages-and-disadvantages-of-cryptocurrency-in-2020/>

²⁵ Omar Farouk Al Mashhour and Ahmad Shamsul Abd Aziz. "The Era of Cryptocurrencies: A Study About the Advantages and Disadvantages" (The proceeding of the 1st SOIS conference on arts and humanities, Universiti Utara Malaysia, 18-19 December 2019).

²⁶ Kaido Künnapas. "From Bitcoin to Smart Contracts: Legal Revolution or Evolution from the Perspective of de lege ferenda?." In *The Future of Law and eTechnologies*, eds. Tanel Kerikmae and Addi Rull (Springer, Cham, 2016), 114.

²⁷ Fernando García-Monleón, Ignacio Danvila-del-Valle, and Francisco J. Lara. "Intrinsic value in crypto currencies." *Technological Forecasting and Social Change* 162 (2021):4.

²⁸ Elie Bouri, Georges Azzi, and Anne Haubo Dyhrberg. "On the Return-Volatility Relationship in the Bitcoin Market around the Price Crash of 2013," *Economics* 11, no. 1 (2017):2.

²⁹ Seward, Z. 2021. Ripple Waiting for Sec Suit Resolution before Going Public, Says Ceo. <https://www.coindesk.com/>

³⁰ Conghui Chen and Lanlan Liu, "How effective is China's cryptocurrency trading ban?," *Finance Research Letters* 46 (2022):1.

Rank	Friendly jurisdiction	What cryptocurrencies status	Unfriendly jurisdictions	What cryptocurrencies status
2	UK	Considered cryptocurrencies as foreign currency and put them under study to be applied to the bank to improve its monetary system. ³¹	Nigeria	Banned all cryptocurrencies.
3	Japan	Deemed a payment method.	Bolivia	Banned treating with cryptocurrency, not issued via government.
5	Germany	Private currency. ³²	Colombia	Banned cryptocurrencies.
6	Australia	Considered cryptocurrencies as property, Australian citizens can use them for purchases in a shop as barter. ³³	Thailand	Banned cryptocurrencies. ³⁴
7	El Salvador	According to Article 7 of El Salvador's Bitcoin Law, which considered Bitcoin as legal tender, where all people must accept Bitcoin as a means of payment. ³⁵	Ecuador	Trading cryptocurrencies is not prohibited, but the government announced that it is not an authorised means of payment that can be utilised in Ecuador. ³⁶
8	Central African Republic	The legislators in the parliament had voted unanimously to pass a bill legalising the adoption of cryptocurrencies. ³⁷	Turkey	The Central Bank banned utilising Bitcoin and other cryptocurrencies to purchase goods or services. ³⁸

Despite the similarity of cryptocurrencies in many characteristics and methods of action, the local and international authorities differed in the statement of their legal status. Hence, this article explains the legal status and the authorities' concerns with their regulation in the selected jurisdictions.

5.1. Legal Status of Cryptocurrencies in the US

In the United States, there is an overlap in authority due to the presence of multiple authorities trying to regulate cryptocurrencies or digital assets. These authorities or bodies, that are responsible for regulating the transaction users of cryptocurrencies, are discussed in the following points:

³¹ George Cornel Dumitrescu, "Bitcoin—a brief analysis of the advantages and disadvantages," *Global Economic Observer* 5, no. 2 (2017): 2-3.

³² Fernando García-Monleón, Ignacio Danvila-del-Valle, and Francisco J. Lara. "Intrinsic value in crypto currencies." *Technological Forecasting and Social Change* 162 (2021): 4.

³³ Allen Scott. "These Are the World's Top 10 Bitcoin-Friendly Countries." Published 29 March 2016. <https://news.bitcoin.com/worlds-top-10-bitcoin-friendly-countries/>

³⁴ George Cornel Dumitrescu, "Bitcoin—a brief analysis of the advantages and disadvantages," *Global Economic Observer* 5, no. 2 (2017): 2-3.

³⁵ C Quirk, "El Salvador's Bitcoin Law: Contemporary Implications of Forced Tender Legislation," *Princeton Legal Journal*, (2021):1.

³⁶ Jason Scott. "Is Bitcoin Legal in Ecuador?" Last Updated 22 January 2022. <https://expatsecuador.com/money/is-bitcoin-legal-in-ecuador/>

³⁷ Ryan Browne. "Central African Republic Becomes Second Country to Adopt Bitcoin as Legal Tender." Last Modified 29 April 2022. <https://www.cnbc.com/2022/04/28/central-african-republic-adopts-bitcoin-as-legal-tender.html#:~:text=The%20Central%20African%20Republic%20has,a%20statement%20from%20the%20presidency.>

³⁸ Chloe Orji. "Bitcoin Ban: These Are the Countries Where Crypto Is Restricted or Illegal." Updated 25 August 2022. <https://www.euronews.com/next/2022/08/25/bitcoin-ban-these-are-the-countries-where-crypto-is-restricted-or-illegal2>

5.1.1 The Securities and Exchange Commission (SEC)

This US agency regulates cryptocurrency transactions regardless of whether they are traded or issued as securities or if they are made through a collective investment fund.³⁹ A few federal district courts have viewed those cryptocurrency transactions as involving securities, subject to the securities laws or being exempt. As a result, a security is, by definition, any “note, stock, treasury stock, security future, security-based swap, bond or investment contract.”

The SEC has provided an analytical framework for ascertaining whether a security can be considered an investment contract based on case laws and the U.S. Supreme Court’s Howey test. This test was created to determine whether transactions qualify as investment contracts,⁴⁰ as per the Supreme Court’s definition: “any contract, transaction or scheme involving: (i) an investment of money; (ii) in a common enterprise; and (iii) the expectation that profits will be derived from the efforts of the promoter or a third party. According to these three criteria, the SEC has filed a lawsuit against Ripple Labs Inc. The SEC required that any company that wants to make an initial offering coin must register their offers and sales. The SEC complaint contends that the defendants violated the registration demands of the federal securities laws by failing to register their offers and sales of XRP, and that they did not qualify for an exemption from registration. Until the date of writing this article, no final decision has been reached yet in this federal case.⁴¹ Moreover, the American court will be analysing and rendering a decision on whether cryptocurrencies are money or securities. The SEC defined money as “anything that functions as a medium of exchange, a unit of account or a store of value.” In 2018, SEC Director of Corporate Finance William Hinman said that Bitcoin and Ether would not be treated as securities. Jay Clayton, Chairman of the SEC, distinguished between digital tokens and cryptocurrencies, stating that cryptocurrencies as “replacements for sovereign currencies” (those that simply replace fiat currency) were not securities, whereas digital assets related to a business are frequently securities. In other words, the SEC saw Bitcoin and Ethereum as commodities, not securities.⁴²

5.1.2 Commodity Futures Trading Commission (CFTC)

This commission is regarded as the regulator of primary federal derivatives in the US, overseeing certain cryptocurrency transactions as commodities in the sense that a cryptocurrency is a 'commodity'.⁴³ Therefore, persons involved in such transactions are required to comply with the Commodity Exchange Act (CEA) and the regulations

³⁹ Michael S Sackheim & Et Al. 2020. The Virtual Currency Regulation Review. <https://thelawreviews.co.uk/edition/the-virtual-currency-regulation-review-edition-3/1230212/united-states>.

⁴⁰ The "Howey Test" is a test created by the American Supreme Court in order to determine whether certain transactions are qualifying as "investment contracts." If so, then under the Securities Act of 1933 and the Securities Exchange Act of 1934, those transactions are deemed securities and hence subject to certain disclosure and registration requirements.

⁴¹ Securities and Exchange Commission. “SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering.” Published 22 December 2020. <https://www.sec.gov/news/press-release/2020-338>.

⁴² Cassels. “Sec Declares Bitcoin and Ether as Non-Securities.” Published 26 June 2018. <https://cassels.com/insights/sec-declares-bitcoin-and-ether-as-non-securities/>

⁴³ Michael S Sackheim & Et Al.

thereunder. Section 1a (9) of the CEA gives the following definition of a commodity: "all goods, rights, services, and interests in which contracts for future delivery are presently or in the future dealt in." Hence, the CFTC has exclusive authority over agreements, accounts, and transactions involving swaps or contracts for the sale of commodities for future delivery. Together with other federal agencies, the CFTC claims authority over cryptocurrencies.⁴⁴

Based on trading products, the CFTC enforces regulations on cryptocurrency exchanges. In cases where American retail investors utilise several sites that offer leveraged trading, considering that a few platforms offer futures contracts on cryptocurrencies, these websites may be considered as committing a breach of CFTC regulations. According to the CFTC, retail investors can buy margined or leveraged derivative products only on a regulated exchange and not outside such an exchange. This is because off-exchange margined trades would be considered illegal since the CFTC regulation applies to Bitcoin derivatives. The sole legal exceptions for American retail investors to invest in off-exchange derivative products would only be under two situations: first, if a bank registered with a regulatory body facilitates the trade; second, if a Retail Foreign Exchange Dealer (RFED) registered with the National Futures Association (NFA) facilitates the trade.⁴⁵

5.1.3 Financial Crimes Enforcement Network (FinCEN)

The FinCEN oversees the regulation of money services transmitters, and has issued interpretative guidance concerning cryptocurrency exchanges. Some states in the US also impose the requirement of licensing money transmitters, which includes those business entities that facilitate cryptocurrency transmission. Moreover, federal banking agencies have been closely monitoring cryptocurrency banking activities.⁴⁶ By definition, the FinCEN considers cryptocurrencies as a means of exchange which can operate as a real currency in particular situations but lacks the traditional currencies' characteristics, e.g., legal tender status in any authority. The FinCEN standards defined cryptocurrencies and omitted users from the scope of the transfer service, but included exchanges and administrators subject to their guidelines, as described below:

- (i) "user" refers to an individual who obtains a cryptocurrency only for the purpose of purchasing real or virtual goods or services. A "user" is not regarded as a Money Services Business (MSB) according to FinCEN's laws; therefore, the user is exempt from MSB recordkeeping regulations, registration, and reporting.
- (ii) "exchanger" is defined as an individual who exchanges cryptocurrencies for funds, fiat currency, or other cryptocurrencies.

⁴⁴ Bradford H Buck, "The Regulation of Virtual Currencies in the United States," *North East Journal of Legal Studies* 40 (2020): 28.

⁴⁵ Scott D Hughes, "Cryptocurrency Regulations and Enforcement in the US," *W. St. UL Rev.* 45 (2017):7-8.

⁴⁶ Michael S Sackheim & Et Al., *The Virtual Currency Regulation Review*, (2020). <https://thelawreviews.co.uk/edition/the-virtual-currency-regulation-review-edition-3/1230212/united-states>.

- (iii) "administrator" relates to the individual with the authority to refund cryptocurrency, if such person (A) accepts and transfers a convertible cryptocurrency, or (B) buys or sells convertible cryptocurrency or digital currency for whatever purpose.

The law requires exchangers and administrators to comply with FinCEN regulations. Additionally, miners for cryptocurrencies, whether corporations or people, will be considered users of cryptocurrency, even if the miners of cryptocurrencies convert it into fiat cash or another convertible cryptocurrency, unless conversion is for commercial purposes.⁴⁷

5.1.4 Office of Foreign Asset Control (OFAC)

Working under the United States Treasury Department and in coordination with federal banking regulators, the OFAC is a government institution responsible for enforcing economic punishments on foreign countries and groups of people, such as drug dealers and terrorists. Some individuals, entities, and countries subject to US sanctions resort to using these cryptocurrencies to bypass the global⁴⁸ financial system and evade sanctions, so there is an increase in regulators' interest in cryptocurrencies. Cryptocurrency can be used to evade sanctions because it is difficult to detect due to its decentralised nature, and is mostly owned by hidden identities. People could risk inadvertently doing business without knowing the person and assisting with prohibited activities that violate their obligations under the penal code. An example of this was when, in November 2018, the Office of Foreign Assets Control (OFAC) imposed sanctions on two people residing in Iran for exchanging Bitcoin for Iranian currencies on behalf of malicious cyber actors.⁴⁹ The US government is contributing to a ban on assisting or participating in illegal cryptocurrency transactions. Additionally, OFAC stated that these requirements apply to technological firms, administrators, exchangers, and users of cryptocurrency.

5.2. Legal Status of Cryptocurrencies in the UAE

In the UAE, there are just a small number of federal regulations, e.g., statutes on criminal and anti-money laundering (AML),⁵⁰ that influence the financial free zones since these zones have their own authority, courts, and laws. Consequently, the exact way cryptocurrencies are treated is dependent on their geographic location and their consideration or categorisation by the concerned government in that area. The subsequent sections discuss the decisions and regulations of the federal and local authorities and bodies regarding cryptocurrencies in the United Arab Emirates.

⁴⁷ Tara Mandjee, "Bitcoin, Its Legal Classification and Its Regulatory Framework," *Journal of Business & Securities Law* 15 no. 2 (2016): 183–184.

⁴⁸ U.S. DEPARTMENT OF THE TREASURY. <https://home.treasury.gov/policy-issues/financial-sanctions/frequently-asked-questions/ofac-consolidated-frequently-asked-questions>.

⁴⁹ Stephenson, P.L.S. September 10, 2019. Sanctions Law Implications for Virtual and Digital Currencies. <https://www.jdsupra.com/legalnews/sanctions-law-implications-for-virtual-18959>.

⁵⁰ Bench J.B.T. "Global Legal Insights Blockchain and Cryptocurrency Regulation." (2019) in Dewey (pnyt.). Arab Law Quarterly, (Global Legal Group Ltd, United Kingdom 2019), 460.

5.2.1 UAE Central Bank

According to Federal Law, No. 14 of 2018 regarding the UAE Central Bank, which is responsible to Organise the Financial Institutions and Activities, Article 55 section (1), the issuance of money is a privilege restricted to the state and is exercised by the Central Bank alone and no one else. Also, the same article states in section (2) that it is prohibited for any person to issue or put into circulation a banknote or coin or any bond as an instrument that is payable to its bearer upon demand and has the appearance of monetary form and can be traded as a currency.⁵¹

Despite that, UAE Central Bank Governor Mubarak Rashed Khamis Al Mansouri indicated in a statement to Gulf News that Bitcoin and other cryptocurrencies, currency exchanges, and the underlying technologies such as blockchain are not prohibited. The Central Bank is also evaluating cryptocurrencies, and he said new laws would be established as necessary.⁵²

In September 2020, the Central Bank promulgated the regulation about Stored Value Facilities (SVF). This statute clarifies previous doubts about crypto assets' legality in the UAE. This was a result of a change in the definition of "Stored Value Facility", specifically the inclusion of "crypto assets". The new SVF regulation specifically authorises cryptocurrencies to be utilised as a stored value. In the past, local banks had imposed inconsistent and variable limitations on sending funds to, or receiving payments from, cryptocurrency exchanges. These limits were based on the Know Your Customer (KYC) requirement for banks to comply with anti-money laundering (AML) laws.

However, there has been a substantial change in this situation. UAE banks are now vigorously looking into the exploration of blockchain technologies and their incorporation into banking businesses. Due to these developments, in February 2021, a report was published stating that Kiklabb, a state-owned firm supporting enterprises in free zone licences acquisition, was accepting Bitcoin, USDT, and Ethereum as payment. Another organisation that assists entrepreneurs in establishing businesses in the UAE, Virtuzone, has announced that it would take cryptocurrency as well. Real estate firms, as well as restaurants, have been spotted accepting crypto assets as payment.⁵³

5.2.2 The UAE Securities and Commodities Authority (SCA)

The UAE Central Bank, along with the SCA, has joint responsibility for the regulation of financial and capital markets in the country. Included in their authority are the non-financial free zones, e.g., the Dubai Multi Commodities Centre (DMCC) and the Dubai Silicon Oasis (DSO). Therefore, throughout the UAE, following the SEC regulation, all

⁵¹ Federal Law No 14, Article 55 section (1,2). Regarding the Central Bank and Organization of Financial Institutions and Activities.

⁵² Brian Meenagh. "The Legal Status of Bitcoin in the United Arab Emirates." Published 16 February 2017. <https://www.al-mirsal.com/2017/02/16/the-legal-status-of-bitcoin-in-the-united-arab-emirates/>

⁵³ Christopher Gunson and Silke Noa Elrifai. "A General Introduction to the Regulation of Virtual Currencies in United Arab Emirates." Published 7 September 2020. <https://www.lexology.com/library/detail.aspx?g=aaaf7533-abb4-4764-8b06-76465e9cac4b>.

commodities or securities markets or exchanges are required to be licensed by the SCA in its corporate form.⁵⁴

Consequently, the SCA released Decision No. 23 of 2020, also known as the Crypto Assets Activities Regulation (CAAR). This regulation specifically focuses on the regulation of crypto assets' issuance, offering, listing, trading, and related financial activities in the UAE. The CAAR defines a crypto asset as "a record within an electronic network or distribution database functioning as a medium for exchange, storage of value, unit of account, representation of ownership, economic rights, or right of access or utility of any kind, when capable of being transferred electronically from one holder to another through the operation of computer software or an algorithm governing its use".

The CAAR is aimed at regulating and licencing key aspects in crypto asset transactions, such as issuing and promoting. The regulation is not intended to include items that are controlled by the Central Bank, e.g., currencies, digital currencies, cryptocurrencies, stored-value units, payment unit(s), and payment tokens.⁵⁵

5.2.3 Government of Dubai and The Dubai International Financial Centre ("DIFC")

The Dubai Financial Services Authority ("DFSA") is regarded as the regulator of the DIFC,⁵⁶ and because it is a financial-free zone, it has issued instructions independent of the federal government concerning cryptocurrencies. Therefore, in 2021, the DFSA issued the first phase of the regulatory framework for investment cryptocurrencies and tokens. For some crypto asset-related operations to take place, the DFSA's permission is required. A few examples of these operations include tendering a public offer to acquire an investment token or making a request allowing the acceptance of a security token on the securities' official list.⁵⁷

Recently, Dubai promulgated Federal Law No. 4 of 2022 on the Regulations of Virtual Assets in the Emirate of Dubai (Dubai Virtual Assets Law or DVAL), supporting the Emirate of Dubai's endeavours to lead in the field of virtual assets in the Middle East and North Africa.⁵⁸ The establishment of the Dubai Virtual Assets Regulatory Authority (DVARA) will see it run as an independent regulator for crypto assets and non-fungible tokens (NFTs) in all free zones and special development areas in Dubai, with the exception of the "DIFC". With its own financial and administrative autonomy and legal personality, DVARA will also have an independent, juridical capacity for protecting and regulating the virtual asset services' stakeholders. The legal framework detailing the DVARA's authority and functions in regulating all crypto businesses will be set down by the DVAL in Dubai.

⁵⁴ Christopher Gunson and Silke Noa Elrifai. "A General Introduction to the Regulation of Virtual Currencies in United Arab Emirates."

⁵⁵ Catriona McDavid. "The Future of Crypto Assets Regulation in the UAE."

⁵⁶ Alejandro Carballo. "The law of the Dubai International Financial Centre: Common law oasis or mirage within the UAE?." *Arab Law Quarterly* 21, no. 1 (2007): 95.

⁵⁷ Catriona McDavid. "The Future of Crypto Assets Regulation in the UAE."

⁵⁸ Manish Narayan and Aqsa Adil. "Dubai's New Virtual Asset Law." Published 14 April 2022. <https://chambers.com/articles/dubais-new-virtual-asset-law>

In accordance with the new regulation, part of the DVARA's mandate will be to monitor activities concerning virtual asset trading to avoid manipulation of prices. The DVARA will also ensure the maintenance of high standards in personal data protection. Under the new regulation, in line with Article 15, the following are required for any person or legal entity providing virtual asset services: (1) a VARA licence, (2) must be Dubai-based, and (3) must possess a trade licence from the pertinent commercial body in Dubai.⁵⁹ In addition to that, "VARA" will be responsible for collaborating with other government authorities, such as the UAE Central Bank, to issue a code of ethics, general policy, and strategic plans. Article 20 empowers DVARA to impose fines and penalties on virtual asset service providers who violate the DVAL's rules. DVARA reserves the ability to suspend or restrict commercial operations if there is any threat to the public interest.⁶⁰

It is worth noting that, despite the UAE legislator not classifying cryptocurrencies as legal tender, the UAE is still regarded as among the most crypto-friendly nations in the middle east region, which is apparent from the fact that it has accepted and approved cryptocurrencies. Ripple runs its regional head office from DIFC. Moreover, the DeFi (decentralised finance) market ("DApps"⁶¹) has been allowed to run its operations by letting cryptocurrencies distributed in DIFC-based platforms be bartered on applications without permission, like Uniswap or other DEXs.⁶²

5.2.4 Abu Dhabi Global Market (ADGM)

The Abu Dhabi Global Market (ADGM) is a global financially open zone which has been set up in accordance with Federal Decree No. 15 of the year 2013.⁶³ The ADGM financially open zone was created as a separate region concerning the regulation of cryptocurrencies wherein the Financial Services Regulatory Authority (FSRA) functions as the regulating body. In the summer of 2018, the FSRA established an extensive framework for regulating the operation of what was then known as the 'crypto asset' businesses. This framework was last revised in February 2020.⁶⁴

The FSRA regards virtual assets as merchandise, not as special investments. Derivatives of these virtual assets are governed like those of the derivatives of commodities. Since cryptocurrencies are not considered specific investments, any custodian, middleman, or market operator dealing in cryptocurrencies must be authorised by the FSRA and hold financial service approval for this regulated activity.⁶⁵ Since the ADGM has approved this

⁵⁹ Hunton Andrews Kurth. "Dubai Issues Its First Crypto Law Regulating Virtual Assets." Published 7 April 2022. <https://www.natlawreview.com/article/dubai-issues-its-first-crypto-law-regulating-virtual-assets>

⁶⁰ Manish Narayan and Aqsa Adil. "Dubai's New Virtual Asset Law."

⁶¹ Decentralized applications (dApps) are digital applications or programs that exist and run on a blockchain or peer-to-peer (P2P) network of computers instead of a single computer. DApps (also called "dapps") are outside the purview and control of a single authority.

⁶² Elrifai, S.N. The Virtual Currency Regulation Review: United Arab Emirates (2021). <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/united-arab-emirates>

⁶³ Henry Quinlan, Adam Bradshaw and Charlotte Leith. "Abu Dhabi Global Market Courts: Framework, Procedures and First Judgment Summary." Law Stated as at 1 March 2018. [https://uk.practicallaw.thomsonreuters.com/w-013-7809?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-013-7809?transitionType=Default&contextData=(sc.Default)&firstPage=true).

⁶⁴ Manish Narayan and Aqsa Adil. "Dubai's New Virtual Asset Law."

⁶⁵ Elrifai, S.N. The Virtual Currency Regulation Review: United Arab Emirates (2021). <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/united-arab-emirates>

friendly crypto business policy, several platforms that facilitate the trading of cryptocurrencies have emerged. Platforms such as Bybit, Crypto.com, Kraken and Binance have obtained permission to operate as financial services, since they have fulfilled all conditions laid out by the regulations of FSRA. Moreover, Kraken claims that it is the pioneer crypto trading platform which has obtained a comprehensive financial ADGM license, enabling it to invest, trade, deposit, and withdraw Ethereum and Bitcoin directly using the local currency.⁶⁶

5.3. Legal Status of Cryptocurrencies in Iraq

Since there is no legislation in any of the Iraqi laws in force that can give a legal description of the status of cryptocurrencies, it is required to refer to the Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012, which was supposed to keep up with all contemporary developments in the field of electronic transactions, including online payments and electronic transactions. However, it did not include any provisions in this regard, but article 27 of the Iraqi Electronic Signature and Electronic Transactions Law gave the Central Bank the authority to regulate electronic money transfers, including the adoption of electronic payment methods and any other matters related to it. Therefore, according to Article 27,⁶⁷ any activity with cryptocurrencies will be subject to the instructions and decisions of the Central Bank of Iraq. In 2017, the Central Bank issued a warning regarding Bitcoin.

The warning described Bitcoin as “a virtual electronic currency that trades over the Internet only, without any physical existence.” It is utilised for online buying, and it may be changed to traditional currencies in some cases. Thus, it involves many risks that may be caused by its distribution, in particular risks such as electronic fraud and piracy. The decision of the Central Bank subjected cryptocurrency users to the provisions of the Anti-Money Laundering and Terrorist Financing Law No. 39 of 2015 and the relevant laws in this regard.⁶⁸ However, as the use and trading of cryptocurrencies grew in Iraq, some Iraqis and Arabs began to launch cryptocurrencies aimed at Iraqi and Arab societies, taking advantage of these societies' ignorance of this new technology. The most popular of such currencies was the HZM cryptocurrency launched by a Bahraini journalist of Iraqi origin, Muhammad Al-Arab. The owner of HZM focused on the al-Anbar governorate and the Abu Ghraib area in his advertising campaign through videos on Facebook, Telegram and Twitter, by which he attracted thousands of people.

He pretended that HZMcoin would be used for investment purposes as well as for online e-commerce payment options, e-transactions, and virtual platforms that would be launched later. It led to the spread of the HZM cryptocurrency, with thousands of Iraqis investing in the HZM cryptocurrency. Despite the cautions launched by the Central Bank and the mayor of Ramadi, Ibrahim al-Awsaj, the local authorities have been unable to stop people from cryptocurrency trading, since there is an absence of laws prohibiting or

⁶⁶ Shaurya Malwa. “Kraken Receives UAE License to Operate as a Regulated Crypto Exchange.” Published 25 April 2022. <https://www.yahoo.com/video/kraken-receives-uae-license-operate-093100324.html>

⁶⁷ Electronic Signature & Electronic Transactions Law No. 78, Article 27 (2012).

⁶⁸ Iraqi Central Bank issued a statement prohibiting the use of cryptocurrencies, (2017). <https://cbi.iq/news/view/512>.

criminalising cryptocurrency exchange in Iraq. As mentioned by the cryptocurrency field experts, the owner cheated the people by stating that those who invest a dollar in HZM currency will gain 1000 dollars at some point, therefore perpetrating one of the biggest frauds that affected Iraqis. When it was discovered that the owner of HZM sold large amounts of the coin, resulting in the dropping of its value against the US Dollar in the market, investors experienced substantial losses resulting from the steep drop in this cryptocurrency's value.⁶⁹

After these huge losses, Iraq's Central Bank issued a new warning on November 11, 2021, which applies to all cryptocurrencies. It was announced that the Central Bank will monitor the cryptocurrency markets due to the significant dangers involved with these cryptocurrencies, which are not subject to any legal, regulatory, or technical legislation in Iraq. To avoid any negative repercussions resulting from dealing with these cryptocurrencies, which have high volatility, the Central Bank warns against using them, does not guarantee such cryptocurrencies, does not provide legal protection for those who deal in them, and has not granted a license to any current cryptocurrencies.

It is clear from the foregoing that the Iraqi government will continue to prevent trading or dealing with cryptocurrency, and subject any dealing in it to the provisions of the Anti-Money Laundering Law No. (39) for the year 2015. However, this prohibition applies to the bank solely as an executive and not a legislative body. Dealing in cryptocurrency is permissible in other ways until the Iraqi parliament issues a law prohibiting dealing in it. This is because the money laundering law, when it defined "money" in Article 1 section 5, stated that the definition of money is inclusive of "all the assets or property obtained by any means, such as the national currency, foreign currency, current accounts, and financial investments, whatever their form, including electronic or digital funds, precious metals... and all things that have a financial value... whether they are inside or outside Iraq." According to this definition, it is permissible to deal or trade with cryptocurrencies, including Bitcoin, because they are funds that may be dealt with. These transactions are not considered money laundering because the crime of money laundering is determined in the text of Article 2, Sections 1, 2 and 3. Money laundering is stated to involve "transferring... concealing... or acquiring... money for the purpose of camouflage, and that he knows that it was obtained from a crime". This clearly means that whoever transfers or acquires cryptocurrencies is not considered to have perpetrated a money laundering crime if his purpose is something other than camouflage, as long as the source is unknown.

6. Conclusion

Although the US has one of the biggest cryptocurrency marketplaces in the world, there is still no clear vision of the legal status of the future of cryptocurrencies. Instead of that, many authorities in the US have the flexibility to adopt regulations that assure the legal use of cryptocurrencies. Similarly, with respect to the cryptocurrencies' legal status in the UAE, policymakers have been making great efforts, especially in the ADGM and Dubai

⁶⁹ Shafaq News Agency. "Hundreds of Iraqis fell victims to the HZM scheme." Published 17 November 2021. <https://shafaq.com/en/Report/hundreds-of-Iraqis-fell-victims-to-the-HZM-scheme#>

government, by setting up the “Dubai Virtual Assets Regulatory Authority”, an organisation that will be working as an independent regulator for “NFTs” and crypto assets. Both the authoritative organisations in the US and UAE make efforts to establish a secure environment for innovative technologies and promote the development of financial systems which are regarded as the centres for global trading.

In regards to Iraq, the issue of the legal status and legality of cryptocurrency is still vague, although the Central Bank of Iraq issued a statement clarifying the illegality of cryptocurrencies and that those dealing with them are subject to the Iraqi Anti-Money Laundering and Terrorist Financing Law. However, this statement, which included the prohibition on dealing with cryptocurrencies, applies to the central bank and local banks only because the bank is an executive authority, not a legislative body. Therefore, dealing with cryptocurrency is permissible between the contracting parties until the Iraqi parliament issues a law prohibiting dealing with it. Therefore, the researcher is of the view that any penalty imposed on cryptocurrency traders or those dealing with them in Iraq will be considered a violation of the Iraqi constitution, in accordance with article 19(2) of the Iraqi Constitution, which states “there is no crime or punishment except by law provision in force.”

Acknowledgments

The authors would like to thank the Universiti Kebangsaan Malaysia, Malaysia and the University of Fallujah, Iraq, for supporting this research.

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