

Probable future scope of regulation in our jurisdictions of interest



CRYPTOCURRENCY REGULATOR

FUNCTION OF CRYPTO

CURRENCY

- Federal Reserve (The Fed)
- Bank of England (BoE)
- Central Bank of Kenya (CBK)

SECURITY

- Securities & Exchange Commission (SEC)
- Financial Conduct Authority (FCA)
- Capital Markets Authority (CMA)

UTILITY (COMMODITY)

- Commodity Futures Trading Commission (CFTC)
- Financial Conduct Authority (FCA)
- Capital Markets Authority (CMA)

USA


UK


Kenya



Notes

- ▶ Currency (coin or token): a currency or coin serves as a medium of exchange or payment. It has its own native blockchain. A payment token has a similar function but is built on an already existing blockchain outside of itself.
- ▶ Security (token). Typically a token (and not a coin), a security token represents a claim on its issuer. It provides rights such as ownership, repayment of a specific sum of money or entitlement to a share in future profits to the buyer. It is also known as an asset token or an investment token. These are usually offered for sale in a Security Token Offering or STO. (see *Howey Test**)
- ▶ Utility/ Commodity (coin or token): Either a coin or token which can be purchased to allow access to a specific product or service that is provided on a blockchain platform.
- ▶ A coin is typically built on its own blockchain while a token will require an existing blockchain platform to operate on.

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- *In *Securities and Exchange Commission v. W. J. Howey Co.*, 328 U.S. 293 (1946) the Supreme Court formulated the criteria underlying an “investment contract” as follows:
 - 'An investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise. The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. If that test be satisfied, it is immaterial whether the enterprise is speculative or non-speculative or whether there is a sale of property with or without intrinsic value'.
 - Accordingly, the Howey four-prong test to be used in determining whether an “investment contract” exists is: (1) an investment of money, (2) in a common enterprise, (3) with the expectation of profit and (4) to be derived from the efforts of others.
 - If the cryptocurrency meets the *Howey test* of an “investment contract”, then it is a “security” and subject to regulation by the SEC as such.

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- For more on the regulation of cryptocurrency, see our report titled '**Regulation of cryptocurrency in key jurisdictions**' at: <https://www.blockchainandcryptoassetk.com/our-thinking>