

Executive Report

**Crypto Law: Making Panama
Compatible with the Digital Economy,
Blockchain, Cryptoassets and the
Internet**

**Presented by Legislator
Gabriel Silva**

**National Assembly of the
Republic of Panama
6 September 2021**

Where is the world heading?


The world of international trade and finance is moving in the direction of blockchain and cryptoassets as an integral technological phenomenon.

Blockchain is a decentralized database technology that allows every transaction or interaction to be recorded and no person or entity has the unilateral power to erase or manipulate it.

Why is blockchain incorruptible?

The base of blockchain is that the information is decentralized, so every time a user generates a transaction, such as sending money, the computers running the software, called nodes, verify the transaction to validate the information and update the record on all other nodes. In this way, they all inspect and validate the information almost immediately without an intermediary to potentially compromise the information or the transaction. If a node fails, there is no information loss due to a copy of it being registered in the other nodes.

Blockchain has multiple uses, in both the public and private sectors.



Uses of Blockchain

Blockchain in the public sector.

In the public sector, it is used by governments as well as international organizations such as the United Nations in programs developed to improve processes of document authentication, signature validity, identity verification, and public registry.

It is also recommended in the public sector as a mechanism to fight corruption, as it makes it increasingly difficult to hide or erase information.



Blockchain in the Private Sector

In the private sector, Blockchain is used as a digital platform to carry out transactions with cryptoassets.

It is also used internally in companies to eliminate bureaucratic processes, to lower software maintenance costs, and to optimize exchange of information between software within a production chain.





Cryptoasset Revolution

The Revolution

Digital currencies will be massively adopted and will become the most common means of payment worldwide. Also, investors are flocking to cryptoassets due to the possibility of fast returns.

The cryptoasset revolution has just begun, with growing popularity due to the development of reliable digital platforms that accelerate the adoption of its use. This has forced financial institutions and international entities to take strong steps to integrate cryptoassets with their operations.

The Value of Cryptoassets

The market cap of cryptoassets passed the trillion dollar mark in 2021. By 2025, it is estimated to up to 3 trillion.

Who uses cryptoassets?

Countries such as the United States, Canada, Switzerland, Japan, the United Kingdom, Germany, and the Netherlands have enacted regulation on the matter. Corporations such as Visa, MasterCard, PayPal, Amazon, and Microsoft, among other corporate giants, as well as local Panamanian retailers such as Dolt Center and Multimax are also using cryptoassets.

Leading international players recommend regulation of blockchain and cryptoassets

The World Economic Forum, The Interamerican Development Bank, and The Financial Action Task Force (FATF) recommend regulating blockchain and cryptoassets with standards that guarantee the use of these technologies legally and properly.





Key Terms

Blockchain

Blockchain is a decentralized database technology that records every transaction or interaction and no person or entity has the unilateral power to erase or manipulate it.

What are Cryptoassets?

Cryptoassets are digital notations that can be used as stores of value, investments, or even to pay for everyday goods and services.

They are also used as protection against inflation and to protect people's long-term purchasing power.

How do Blockchain and Cryptoassets work?

1. Transaction order is issued
2. The order is sent to the members of the network
3. The members validate the information, creating a block
4. The block is added to the public record, which is also transparent and incorruptible
5. Final step: effective transaction.



Why do we need this?

From retailers selling electronic goods and services, to restaurants, hotels, travel agencies, airlines, pharmacies, clothing stores, and even hospitals, more and more businesses in Panama are adapting to changes and to technological innovation by accepting payment with cryptoassets. Unfortunately, these businesses have been forced to undergo complex processes, such as opening bank accounts abroad, because there is currently no legal certainty in Panama for the use of cryptoassets.

PANAMA AT THE FOREFRONT OF TECHNOLOGICAL INNOVATION


IT IS ESSENTIAL THAT PANAMA ADAPTS ITS LEGISLATION TO THE USE OF BLOCKCHAIN AND CRYPTOASSETS SO WE DON'T LAG BEHIND. TO FORBID ITS USE WOULD BE THE EQUIVALENT OF CLOSING THE DOOR TO THE INTERNET IN 1995. TO NOT ACCEPT CRYPTOASSETS IS TO CLOSE THE DOOR FOR THE COUNTRY AND FOR THOUSANDS OF PANAMANIAN TO ADOPT A TECHNOLOGY THAT WILL CHANGE THE BASES OF HOW WE OPERATE SOCIALLY AND ECONOMICALLY.

Better for Panama

If there is a country that should be at the forefront, it is Panama.

1. It is an expression of our long-standing tradition of monetary freedom.
2. It benefits the population that does not have access to traditional banking services, encouraging the participation of everyone in the modern economy.
3. A system based on rules, with certainty and transparency in its emissions.
4. Adapts us to the world's new technological and financial tendencies.

Better for the People

1. New businesses bring more job opportunities and income sources.
 2. It allows you to have self-custody of your assets.
 3. They are the transactions of the future: fast and with no intermediaries.
 4. It can be a refuge from inflation.
 5. Having new service providers will help lower prices.
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The 5 Pillars of our Proposal

After extensive consultation, we concluded that this proposal for regulating blockchain and cryptoassets must be supported by the following 5 pillars:

1. Legal Certainty.

Provide legal, regulatory and fiscal certainty for cryptoassets:

- a. Provides the option of using cryptoassets as a means of payment (this will not be mandatory as it goes against the Constitution).
- b. Protect users of cryptoassets from financial crime.
- c. Provide users legal tools for the resolution of conflict involving cryptoassets.
- d. Allow the use of cryptoassets as a method of paying taxes and State fees. (This is optional)

2. Encourage Investment.

Provide a legal framework that will attract and encourage companies that use cryptoassets and other types of financial innovation to establish their businesses in Panama.

- a. More options are given to citizens as to where to keep their savings, where to invest, and how to pay for goods and services.
- b. Allows for interoperability between existing and future financial systems. Banks can also participate.

3. Citizen participation.

Any further regulation of this law, must be discussed with the public.

4. International standards against money laundering and other illegal activity such as terrorist financing and proliferation of weapons of mass destruction.

5. Promotes the use of blockchain in the public sector for more efficient and transparent processes. Make Panama compatible with new forms of trust establishment between people and businesses such as smart contracts and new forms of organization such as decentralized autonomous organizations (DAOs).



BENEFITS OF OUR PROPOSAL

The Project seeks to make Panama compatible with the Digital Economy, Blockchain, Cryptoassets and the Internet.

Digitalization of the State

1. Access to digital identity.
2. Efficiency of public service.
3. Transparency of public processes.

Certainty for the use of Crypto

1. Voluntary use of cryptoassets.
2. Non-discriminatory tax treatment.

Certainty For Innovative Platforms

1. Attractive and safe regulation for digital economy and cryptoassets.
2. Risk mitigation following international regulatory standards, including those of the FATF.
3. Access for platforms that could not operate locally under current legislation.
4. Creation of employment opportunities.

Compatibility of traditional banking with the digital economy and cryptoassets

1. Strengthen Panama's role as an innovative financial center.
2. Enact regulation that allows interconnection between innovative platforms and traditional financial institutions.
3. Greater competition in the payment services market.
4. Options of higher quality for financial consumers.

Universal Access to the Internet

1. Mandate to provide universal access to the internet.
2. Connection for all the population with the new digital economy.
3. Equal access to opportunities.

All this will be carried out within a framework of citizen participation and global benchmarking, which will be mandatory for any amendments made to regulation.



**Crypto Law: Making the Republic of Panama
Compatible with the Digital Economy, Blockchain,
Cryptoassets and the Internet**

Presented by Legislator Gabriel Silva

**National Assembly of the Republic of Panama
6 September 2021**



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Panamá, 6 September 2021

Honorable Legislator
CRISPIANO ADAMES
President
National Assembly

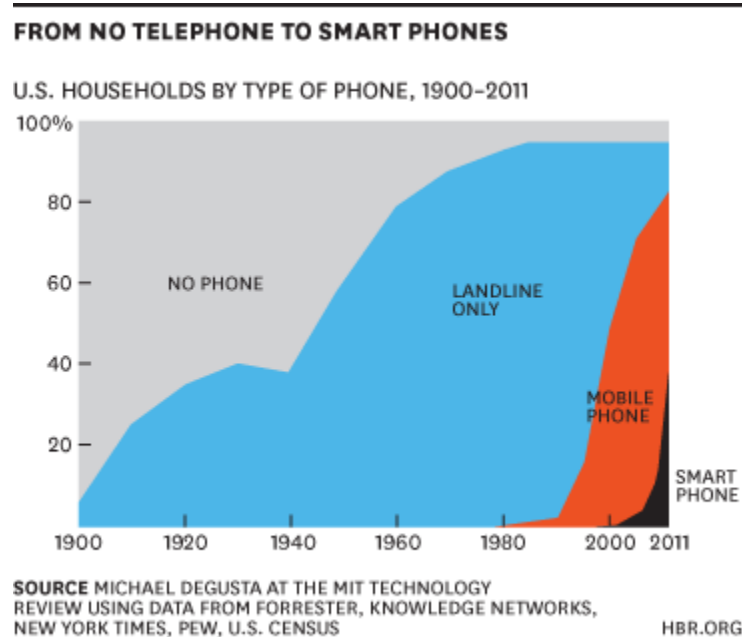
Respected President:

Making use of the legislative initiative conferred to me by Article 108 of the Internal Regulations of the National Assembly, and acting in my capacity as Legislator of the Republic of Panama, I present to the plenary of the National Assembly the Law Proposal titled: **“CRYPTO LAW: MAKING PANAMA COMPATIBLE WITH THE DIGITAL ECONOMY, BLOCKCHAIN, CRYPTOASSETS, AND THE INTERNET”**, which merits the following:

EXPLANATORY MEMORANDUM

I. The Internet is the invention with the fastest exponential growth in human history and cryptoassets are its most recent materialization.

The Internet has been the most rapidly adopted human invention in history. Today, it connects more than 3.4 billion people, over half of the global adult population. The main tool for access are definitely smartphones.

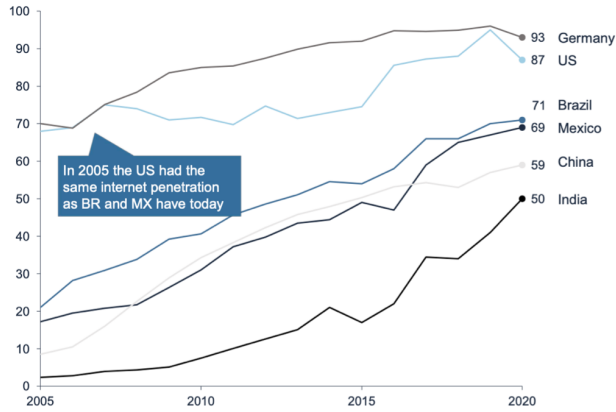


This adoption speed has impacted the world, but it has particularly impacted Latin America. Internet penetration in our region’s population is approaching that of developed countries.¹

¹ Atlantico VC. Report of digital transformation in Latin America 2020. Available at: <https://www.atlantico.vc/latin-america-digital-transformation-report>

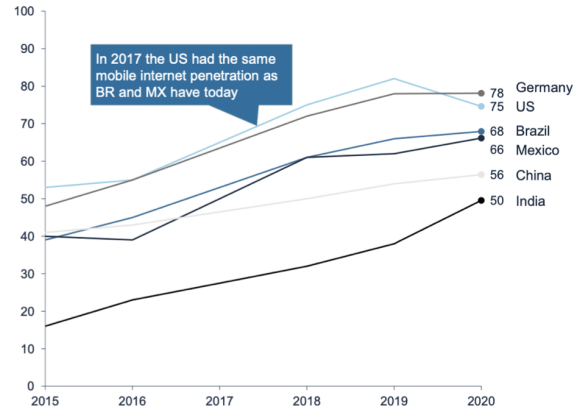
Internet Penetration

Number of internet users divided by total population¹



Mobile Internet Penetration

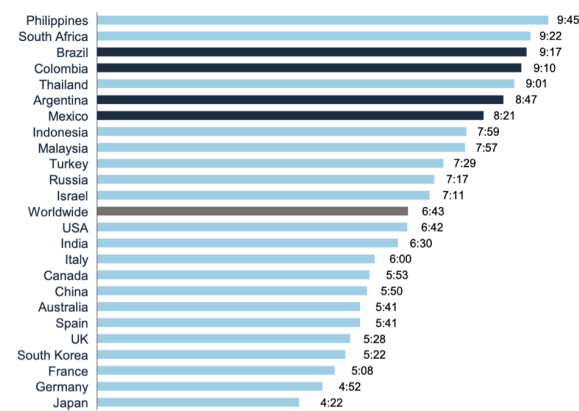
Number of mobile internet users divided by total population²



Daily Internet usage in our region is among the highest in the world.²

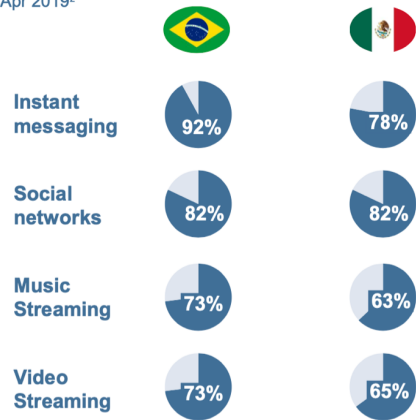
Time per day using the Internet in hours

Any device, internet users aged 16-64, Jan 2020¹

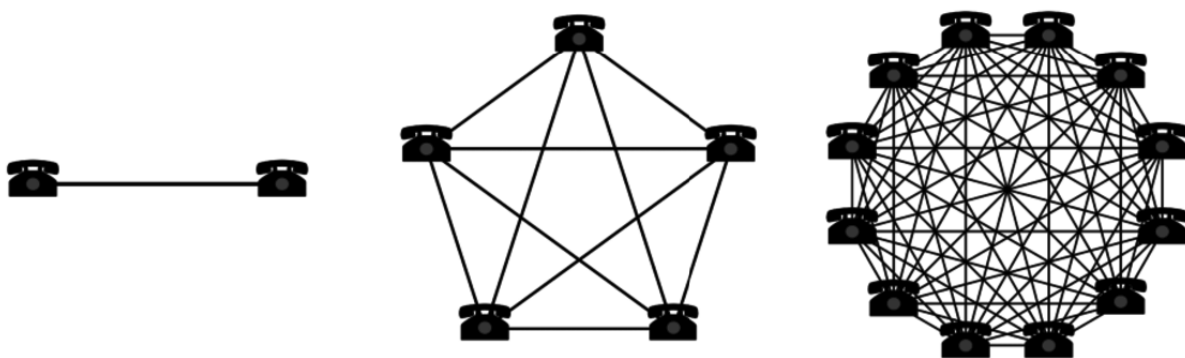


Percentage of Internet users that use each service

Apr 2019²



Constant connectivity causes what is known as the “network effect”, where the amount of possible interactions between members of a network increases exponentially with each new connection. The following picture illustrates how this works. The more nodes there are in a network, the possibilities for cooperation, collaboration, interaction, and value creation increase.



This is not limited to the exchange of information, but extends to the digital economy. The sale and purchase of services over the internet has also grown exponentially. This has allowed not only the emergence of companies with unprecedented technology such as Facebook, Amazon, and AirBnB which have managed to leverage connectivity to create value without even needing to own the assets.

² Id.

However, in the developing world we are living the “second smartphone revolution”³ where more solutions are emerging to solve basic problems in education, security, health, and infrastructure as more of us are connecting to the Internet.

II. Blockchain-based cryptoassets and distributed ledger technology as the new internet-native medium of value transfer.

Blockchain, in simple terms, is a decentralized database where every transaction or interaction is recorded. In it, no person or entity has the power to delete or manipulate the information unilaterally. This makes the information secure, accurate, and transparent. Currently, we rely on centralized third parties to act as intermediaries in our exchanges in order to validate their veracity and protect our information. However, this centralization means that we rely on their own standards of efficiency and security to validate and protect our transactions. If the intermediary’s system fails, our transaction and our security are both at risk.

Due to this, technology has been developed to mitigate such risks. The base of blockchain is that the information is decentralized, so every time a user generates a transaction, such as sending money, the computers running the software, called nodes, verify the transaction to validate the information and update the record on all other nodes. In this way, they all inspect and validate the information almost immediately without an intermediary to potentially compromise the information or the transaction. If a node fails, there is no information loss due to a copy of it being registered in the other nodes. Examples of databases that can be managed by blockchain are the document authentication and signature validation in public faith and public registry.

Based on blockchain technology, we have cryptoassets. These are digital assets that can be used as stores of value, investments, or even to pay for everyday goods and services. Cryptoassets are within an ecosystem where blockchain is used as a public record of all transactions and records how much belongs to each address. Cryptoassets are also increasingly becoming an efficient, global alternative payment method that can quickly and inexpensively allow settlement of a transaction regardless of the physical distance between two parties or the volume of said transaction.

Cryptoassets, such as Bitcoin, have begun serving as potential long-term investments and protection against inflation. Cryptoassets are also divisible into many more units than traditional assets are. In the case of Bitcoin, it can be subdivided into 100 million Satoshis, for example. Systems such as Ethereum and Cardano have similar divisibility properties.

There is a misconception that cryptoassets are at a high risk of being used for illicit activities such as money laundering. However, in reality, this risk is quite low. In 2019, criminal activity

³ AVC, The Second Smartphone Revolution. Available at: <https://avc.com/2016/03/the-second-smartphone-revolution/>

using cryptocurrencies only accounted for 2.1% of all cryptocurrency transaction volume, and in 2020 illicit activity using cryptocurrencies dropped to 0.34%, according to statistics published by Chainanalysis.⁴ When we compare this to the use of traditional means of payment, the United Nations Office on Drugs and Crime estimates that between 2% and 5% of the world's gross domestic product (between \$800 billion and \$2 trillion) is laundered every year.⁵ This annual figure exceeds the total capitalization of cryptoassets in their entire history. Not only are they used considerably less frequently than other currencies for illicit activity, but the fact that the information in a cryptocurrency transaction is on blockchain makes criminal activity impossible to hide and can also aid authorities with criminal investigations. Similar traceability is nearly impossible with illicit activity carried out using cash. As an example, in 2020, the FBI managed to identify the hackers responsible for the Colonial Pipeline cyberattack in the western United States by tracing Bitcoin used to pay the ransom. Because Bitcoin transaction information is public, the FBI used a blockchain scanner (software that searches every single transaction and its corresponding amount) to follow the trail and eventually identify the culprits.⁶ This shows that the fact that transactions on blockchain are transparent and publicly accessible already allows authorities to track illegal activity using cryptocurrency. Given the lack of a decentralized database in the traditional financial system, such an analysis would not have been possible.

Like any technology, cryptoassets have risks, but in the same way the internet was used for niche or insignificant purposes in its beginnings, cryptoassets began as a technological curiosity that now represents a trillion dollar industry. As cryptoassets are means of payment native to the Internet, not making Panama compatible with their use would imply that the Internet will not grow in that direction; it means excluding our population from the global digital economy while renouncing our long-standing tradition of serving the entire world. Today, over 100 million people own cryptocurrency or cryptoassets. This represents over 25 times the Republic of Panama's population.

III. Benchmarking, public consultation and digital public consultation procedure for regulatory quality assurance.

To elaborate our proposal, we joined forces with different stakeholders ranging across several disciplines. From top-tier lawyers specializing in different branches of law, to software engineers, specialists in the prevention of financial crime, financial consultants, and crypto enthusiasts, we used all the tools available to develop this idea. We considered the different contributions of over 500 people via digital tools; we listened to over 50 different individuals and

⁴ Forbes, The false narrative of Bitcoin's role in illicit activity. Available at: <https://www.forbes.com/sites/haileylennon/2021/01/19/the-false-narrative-of-bitcoins-role-in-illicit-activity/>

⁵ United Nations Office on Drugs and Crime, quantification of money laundering at a global level. Available at: <https://www.unodc.org/unodc/en/money-laundering/overview.html>

⁶ FBI used hackers's bitcoin password to recover Colonial Pipeline ransom. Available at: <https://www.businessinsider.com/fbi-used-hackers-bitcoin-password-to-recover-colonial-pipeline-ransom-2021-6?op=1>

organizations in in-person as well as virtual meetings; we analyzed dozens of emails from Panama and abroad with a wide range of opinions as to how Panama should deal with this technology. It is important for an initiative such as this, in pro of humanity, to be built hand-in-hand with it.

We conducted a comparative study of the legislation in place in over 50 jurisdictions⁷. Countries such as the United States, Canada, Mexico, Switzerland, Japan, the United Kingdom, Australia, Estonia, Germany, the Netherlands, and Israel are just a few examples of the increasing trend towards legislative clarity in the use of cryptoassets and to encourage the use of distributed ledgers and blockchain, while setting the ground for users to do so responsibly and with the necessary information.

To ensure regulation is always held to the highest possible standard of quality, we have proposed a novel Procedure for Digital Citizen Participation and Regulatory Quality Assurance⁸. Any regulation issued from this proposal must follow an open, transparent, informed and well-founded consultation process to make the discussion of the new proposed regulation as inclusive and transparent as possible in order to promote the adoption of competitive regulation.

IV. Elements of an ambitious, futuristic, and comprehensive proposal for making Panama compatible with the digital economy, cryptoassets and the Internet.

The analysis mentioned in the previous section allowed us to conclude that in order for Panama and its citizens to be fully compatible with the digital economy, cryptoassets and the Internet, three objectives must be achieved:

- a. Radically digitalize the function of the bodies and entities of the State by making them compatible with blockchain and distributed ledger technology, digitalizing identity, making public information transparent, and requiring universal internet access to every citizen.
- b. Provide regulatory certainty to innovation in the digital economy and the use of cryptoassets in the Republic of Panama to keep and attract the most talented minds globally to build the future in or from the Republic of Panama and so they can live here and contribute to its development.
- c. Consolidate principles of banking interoperability so that traditional financial systems are compatible with the emerging ones, to promote greater financial inclusion and greater competition among financial services providers for the benefit of the user and the competitiveness of the Republic of Panama's financial services center.

⁷ Some of the sources may be found in the following comparative studies:

<https://www.loc.gov/item/2018298388/>; <https://www.loc.gov/item/2018298388>, and https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1489775_1.pdf.

⁸ See Title VI, Chapter I of our proposal

A. Mandate for the radical digitalization of the bodies and entities of the Republic of Panama to give the population and the rest of the world the most digital experience possible in their day-to-day life.

Considering the importance of blockchain and distributed ledger use to their fullest potential in order for the operation of governmental entities with increased transparency to improve the experience of all citizens, our proposal assigns the Governmental Innovation Authority the responsibility to reform the country's Digital Agenda so that it explores and implements these types of technologies in various public processes, with emphasis on the digitization of the identity of natural persons and legal entities.⁹

In addition to the aforementioned benefits, this will allow the Republic of Panama to become compatible with the new trust establishment mechanisms such as smart contracts and decentralized autonomous organizations - DAOs). The Republic of Panama has the potential to be a digital identity provider for the rest of the world as Estonia has done with its Digital Residency program¹⁰. These emerging technologies are the means to make this a reality.

B. Certainty for innovators and innovation in the digital economy and cryptoassets in the Republic of Panama.

There are two parts to give certainty to innovation: the removal of uncertainty and the adoption of clear and competitive rules that are not unreasonable or arbitrary thresholds to innovate.

Firstly, our proposal clarifies that the use of cryptoassets is in accordance with the principle of contractual freedom by the habitants of the Republic of Panama, and is also guaranteed by the principle of monetary freedom contemplated in Article 262 of our Constitution, which also prohibits the establishment of any forced currency.¹¹

Secondly, the Panamanian tax regime is made compatible with the use of cryptoassets, respecting the principle of territoriality and it will not discriminate against the use of this particular technology in relation to others.¹²

Thirdly, the activity of issuing digital value will be regulated, which will allow citizens and those who use their services from the rest of the world to have certainty of the rights and obligations of intermediaries they place their trust in. This regulation will also mitigate the risks of money laundering.¹³ The Ministry of Commerce through its Directorate of Financial Companies will be the supervisor and regulator of redeemable value entities and the Superintendency of Banks would be the supervisor in matters related to the prevention of money laundering and other risks

⁹ See Title II of our proposal.

¹⁰ Estonia e-Residency. Available at the official website: <https://e-resident.gov.ee>

¹¹ See Title III of our proposal.

¹² Id.

¹³ See Title IV of our proposal.

based on Law 23 of 2015. Such supervision must apply the guidelines of the Financial Action Task Force both in the risks related to cryptoassets (referred to by the entity as “virtual assets”) and in the appropriate balancing of the promotion of financial inclusion and preventive measures against money laundering and other associated risks¹⁴.

The obligations for redeemable digital value issuers and redeemable digital value entities have been proposed following a comparative analysis of similar entities in jurisdictions around the world¹⁵. Our conclusion was that Anglo-Saxon and European jurisdictions are the most competitive¹⁶, so we adapted the best of these regulations to our local context and to the size and development of our market.

When cryptoassets are used as part of crowdfunding or stock market activity, the Superintendency of the Securities Market would be called upon to provide regulatory clarity to ensure the protection of the investing public as well as the competitiveness of the Panamanian financial center.

Finally, an express mandate is given to the National Bank of Panama to promote the bancarization of redeemable digital value entities in order to clear the complexities banking entities tend to impose on innovative players when they try to open accounts, complexities that are placed partly due to the pressure foreign correspondent banks place on local ones.

C. Promotion of banking interoperability to ensure the compatibility of the traditional world with emerging players, promote greater financial inclusion, and promote competition among service providers for the benefit of users.

Certainty to innovate does not automatically translate into the emergence of an ecosystem. Other essential elements are the compatibility and interoperability with the existing infrastructure to

¹⁴ FATF, Virtual Currencies: Key Definitions and Potential AML/CFT Risks. Disponible en: <https://www.fatf-gafi.org/documents/documents/virtual-currency-definitions-aml-cft-risk.html>

¹⁵ We studied in the region the cases of equivalent entities in Mexico (Available here: https://www.dof.gob.mx/nota_detalle.php?codigo=5610487&fecha=28/01/2021), and Colombia (see applicable regulation here: <https://www.superfinanciera.gov.co/inicio/informes-y-cifras/cifras/sociedades-especializadas-en-depositos-y-pagos-electronicos-sedpe-10101317>)

¹⁶ United Kingdom’s Financial Conduct Authority’s regulation on emissions of electronic currency, available at: <https://www.legislation.gov.uk/ukxi/2011/99/contents/made>; European Union, Directive 2009/110/CE available at: <https://eur-lex.europa.eu/legal-content/ES/ALL/?uri=CELEX%3A32009L0110>; Hong Kong Monetary Authority regulation, available at: <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/stored-value-facilities-and-retail-payment-systems/regulatory-regime-for-stored-value-facilities/>; Singapore Monetary Authority regulation, available at: https://www.mas.gov.sg/-/media/MAS/resource/publications/consult_papers/2006/Consultation-Paper-on-Stored-Value-Facility-Guidelines-final.pdf; Australian Prudential Regulation Authority regulation, available at: https://www.apra.gov.au/sites/default/files/ADI_GL_Providers_of_Purchased_Payment_Facilities_0.pdf

allow for greater financial inclusion, greater competition in digital economy services and cryptoassets, and greater decision-making power for end users.

As is evident in other industries with networked service provision, such as telecommunications, without adequate interoperability there is no effective competition. Without effective competition, there is no full inclusion for the population. In Panama, shamefully, only 46.5% of the population has bank accounts, according to the World Bank's 2017 study on financial inclusion. This is below the regional average of 54.4%, and well below the global average of 68%. Our use of digital payment mechanisms is even lower, with only 35% of the population able to access the service, compared to 45% on average in the region¹⁷.

In order to close this great inclusion gap, interoperability is essential. Since there is no central bank, Panama has another unmet need for a regulatory entity for payment systems with the responsibility to promote such interoperability. There is no standardization of bank account numbers. There are no real-time payment services between final financial consumers. All this is detrimental to the end user of financial services and hinders the emergence of new products and services.

In addition to payment interoperability, the world's most competitive financial centers have adopted strong positions in favor of recognizing that the financial products of the future require open infrastructure. Measures such as open banking¹⁸ and bank account portability¹⁹ are initiatives that should be explored to ensure that the competition among service providers is effective and that whoever captures the most customers is the one who provides the best services and not the one who benefits from the network effects inherent to a closed payment system²⁰.

For this reason, in our proposal we included principles to ensure that payment systems in Panama are open, interoperable and non-discriminatory, assigning clear responsibilities to the Superintendency of Banks as a regulator and supervisor of payment systems.

V. A golden digital opportunity for the Republic of Panama.

The Republic of Panama has been, since its beginnings, a natural meeting point due to its geographical position, its political stability and its diversified services economy. Being a

¹⁷ World Bank, Global Findex, Panama Data. Available at:

<https://globalfindex.worldbank.org/sites/globalfindex/files/countrybook/Panama.pdf>

¹⁸ World Economic Forum. Open Banking Future of Finance. Available at:

<https://www.weforum.org/agenda/2021/04/open-banking-future-of-finance/>

¹⁹ FinExtra, Understanding Bank Account Number Portability. Available at:

<https://www.finextra.com/blogposting/16281/understanding-bank-account-number-portability---psd2>

²⁰ After an exhaustive analysis, we used as reference the payment system regulations of Mexico (available here: <http://www.diputados.gob.mx/LeyesBiblio/pdf/255.pdf>), Costa Rica (available here: : https://www.bccr.fi.cr/marco-legal/DocReglamento/Reglamento_Sistema_Pagos.pdf), the Regulations of the United Kingdom's Payment Systems Regulator (available here: : <https://www.psr.org.uk>), among others

privileged country in comparison with others in the region, it has attracted investment that has established us as a hub for world trade, passenger and cargo transportation, logistics, humanitarian aid, and financial services, to name a few. This has greatly benefited the country by attracting not only foreign direct investment but also job opportunities, business opportunities, and general development for Panamanians.

We are an interconnection point that gives us great potential to take on a new challenge: to become the regional hub for technological innovation. However, in order to undertake this challenge, we need to be at the forefront of technological advances and their regulation. There are many advances to be made in this regard, therefore, we are missing important opportunities by having outdated legislation that does not reflect the needs of the market or allow room for innovation. Proof of this is that in 2020 the International Innovation Index ranked Panama in the 73rd position out of 131 economies evaluated based on their innovation capacity. In Latin America and the Caribbean, we are in the 8th position out of 18 countries studied. Among the points evaluated, Panama is below the regional average in terms of business sophistication and human capital and research. When we compare the innovation capacity considering the Gross Domestic Product of the countries studied, Panama shows even greater deficiencies when compared to countries with similar economic growth.

Innovation, technology, the Internet, cryptocurrency, blockchain and everything mentioned in this proposal is important for Panamanians because they have the potential to bring job opportunities, to bring more investment in the country, to broaden the offer of products and services available, to protect savings from inflation, to support the development of new businesses, to bring knowledge, and much more. Due to the importance and the breadth of our initiative, we will have channels for citizen participation in person (forums, debates, commissions, sub-commissions, etc.) and virtually (lives, digital forums, email, website, etc) to receive as many contributions as possible, with the aim to improve this proposal. The initiative as presented is not written in stone.

Our proposal represents a potential starting point for us to move from the pro mundi beneficio that has characterized us towards the pro mundi futurismo: a Republic with clear interest in being part of the future of the internet and to serve its citizens, the rest of the world, and the future of mankind.

GABRIEL SILVA

Legislator of the Republic of Panama

CIRCUITO 8-7

ANTEPROYECTO DE LEY NO.

(del __ de __ de 2021)

“Ley de Cripto: Que hace a la República de Panamá compatible con la economía digital, el blockchain, los criptoactivos y el internet”

LA ASAMBLEA NACIONAL

DECRETA:

TITLE I

OBJECTIVES AND DEFINITIONS

CHAPTER I

OBJECTIVES

Article 1. General Objective. This Law aims to make the Republic of Panama compatible with the digital economy, blockchain, cryptoassets and the internet, for the benefit of its inhabitants and the rest of the world.

Article 2. Specific Objectives. This Law has the following specific objectives:

1. To expand the digitization of the State by promoting the use of distributed ledger technology and blockchain in the digitization of the identity of individuals and legal entities in or from the Republic of Panama and as a means to make the public services transparent;
2. Provide legal, regulatory, and fiscal certainty to the use, holding, and issuance of digital value and cryptoassets in the Republic of Panama, including the mitigation of risks of illicit use of such technologies;
3. Create a regulatory framework that promotes banking interoperability with a view to promote greater financial inclusion, the emergence of a robust innovative ecosystem in financial services, greater competition among financial service providers, and freedom of choice for the financial consumer;
4. Making the Republic of Panama compatible with new forms of trust-building between people and businesses such as smart contracts and new forms of organization, such as decentralized autonomous organizations (DAOs); and
5. Promote universal access to the Internet for the inhabitants of the Republic of Panama as a basic infrastructure for the participation of the population of the Republic of Panama in the new global digital economy.

CHAPTER II

DEFINITIONS

Article 3. Definitions. For the purposes of this Law, the following shall be understood as:

1. *Payment System Administrator*: Any person, corporation, entity or financial institution that operates a payment system, establishes its internal rules or, as the case may be, carries out in accordance with the regulations applicable to such payment system, the actions to coordinate the performance of the participants.
2. *Digital Public Consultation Announcement*: Announcement defined in Article 5 of this Law that initiates the Digital Citizen Participation and Regulatory Quality Assurance Procedure
3. *Authority*: Entity or body of the Republic of Panama that issues any rule or regulation of general application and that must comply with the Digital Citizen Participation and Regulatory Quality Assurance Procedure in accordance with the provisions of Chapter I of Title VI of this Law.
4. *Blockchain*: A type of distributed ledger technology that chains blocks of transactions by means of a decentralized cryptographic consensus mechanism including without limitation, proof-of-work and proof-of-stake.
5. *Clearing*: The substitution carried out in terms of the internal rules of a payment system, of the rights and obligations arising from transfer orders, by a single credit or by a single obligation, so that only such net credit or obligation is enforceable, without requiring the express consent of the participants.
6. *Cryptoasset*: Fungible or non-fungible digital notation in a distributed ledger, which may or may not be a blockchain, whose holding can be proven using cryptography and whose transfer can be made by means of digital signatures that make use of cryptography.
7. *Cryptoassets with underlying value*: Cryptoassets that represent assets economically invested in the Republic of Panama.
8. *Scriptural money*: Type of money manifested in the form of accounting entries that do not circulate as coins or banknotes, usually held in demand deposit accounts in entities with a banking license.
9. *Issuer of redeemable digital value*: Any of the following entities when issuing redeemable digital value:
 - i. Entities of redeemable digital security as defined in this Act and operating under the provisions of Title IV of this Law to issue redeemable digital security;
 - ii. Entities mentioned in Article 27 of this Law when issuing redeemable digital value.
10. *Redeemable digital value entity*: Person that has been authorized under the provisions of Title III of this Law to issue redeemable digital value.
11. *Comparative Law Study and Benchmarking Evaluation*: Study conducted as part of the Digital Citizen Participation and Regulatory Quality Assurance Procedure for the purpose of evaluating as exhaustively as possible the regulations enforced abroad and to have sufficient inputs to inform and compare the regulatory proposal under consideration for the Republic of Panama.
12. *Funds*: Banknotes and coins, scriptural money and redeemable digital value.

13. *Banking Law*: Sole Text of Law Decree No. 9 of February 26, 1998 and all its amendments.
14. *Securities Law*: Single Text Ordered by the National Assembly, comprising Law Decree 1 of 1999 and its amending laws and Title II of Law 67 of 2011.
15. *Settlement*: Credits and debits made in the accounts of the participants carried in the same payment system in accordance with internal rules, corresponding to debit or credit balances resulting in their charge or in their favor as a consequence of the processing of accepted transfer orders.
16. *Internal rules*: With respect to the same payment system, the internal rules of adhesion and operation, including manuals, procedures, and prevention mechanisms for the case of a default of a participant in that system, adopted in accordance with this Law.
17. *Transfer order*: There may be two:
 - i. The unconditional instruction given by a participant, through a payment system, to another participant in that same payment system, to make available to the beneficiary designated in such instruction, a specified amount of funds or cryptoassets, or
 - ii. The unconditional instruction or notice given by a participant, through a payment system, to another participant in the same payment system, to effect the alienation, settlement, assignment or delivery of securities.
18. *Accepted transfer order*: A transfer order that has passed all the risk controls established in accordance with the internal rules of a payment system and can therefore be settled in accordance with the internal rules of the payment system in question.
19. *Participant*: Any institution, company or entity that has been admitted to submit transfer orders in a payment system, in accordance with the internal rules applicable to that payment system.
20. *Payment System*: Agreements or procedures centralized or by consortium federated through any type of legal entity or contractual arrangement, whose purpose is the clearing of transfer orders or the settlement of accepted transfer orders, when at least three (3) entities with banking license or banking economic groups, or belonging to banking economic groups as defined in the Republic of Panama, intervene as participants, directly or indirectly.
21. *Holding of cryptoassets*: Possession of sufficient credentials or sufficient authority in a cryptoasset network to unilaterally execute, or indefinitely prevent, the transfer of the cryptoasset to another cryptoasset holder.
22. *Holding of funds*: physical holding of coins or bills; ownership over scriptural money; or ownership of redeemable digital value.
23. *Holder of redeemable digital value*: Any person who holds a credit or claim against an issuer of redeemable digital value, in accordance with this Law.
24. *Redeemable digital security*: A monetary value stored by digital, electronic or magnetic means that represents a credit on the issuer and that meets the following requirements:
 - i. That it is issued by the issuer after obtaining the holding of fungible funds or cryptoassets for the purpose of effecting payments

- ii. It is accepted by a natural or legal person other than the issuer of electronic money, and
- iii. That it is not included in the exclusions of Articles 18 and 19 of this Law.

25. *Average issued redeemable digital value*: For purposes of the calculation of capital requirements established in Article 36 of this Law, means the average total amount of financial liabilities related to the redeemable digital value issued and in circulation at the end of each calendar day during the previous six (6) calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.

TITLE II

BLOCKCHAIN TECHNOLOGY INCLUSION IN THE DIGITAL AGENDA OF THE REPUBLIC OF PANAMA

Article 4. Inclusion in the Digital Agenda. The Governmental Innovation Authority will include in the Digital Agenda of the Republic of Panama the following:

1. Digitize the identity of natural and legal entities in the Republic of Panama using a distributed ledger, or blockchain technology, including non-domiciled people in the Republic of Panama that wish to use these services;
2. Migrate public records to a distributed ledger using blockchain technology;
3. Digitize the legislation, its adoption and signatures, the emission of administrative acts and resolutions of any type, including judicial resolutions, utilizing digital signature and blockchain technology, as applicable;
4. Give practical validity, modify and propose regulations, y provide guides to the public, with the objective of enabling the reference to smart contracts or decentralized autonomous organizations in constitutive documents of organized legal entities in the Republic of Panama, and;
5. Guarantee universal internet access to every habitant of the Republic of Panama, prioritizing the use of mechanisms that promote competition between service providers, looking to reduce the cost of access provision for the Republic of Panama and for the beneficiary users, including, without limitation, downward auctions and expedited portability of the service.

Article 5. Subjection to the Digital Citizen Participation Procedure. The initial adoption as well as any modification to the Digital Agenda with respect to the objectives detailed in the present article, must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

Article 6. Term. The Governmental Authority of Innovation shall adopt the modifications of the Digital Agenda described in this article within a maximum period of six (6) months from the effective date of this Law.

TITLE III
CRYPTOASSETS USAGE

CHAPTER I
SCOPE OF APPLICATION

Artículo 7. Scope of Application The definition and legal consequences of the regulations established in this Title shall apply to any natural person located in the Republic of Panama or any legal entity organized in the Republic of Panama that uses cryptoassets in or from the Republic of Panama.

CHAPTER II
THE USE OF CRYPTOASSETS AS MEANS OF PAYMENT

Article 8. Use of cryptoassets as an expression of contractual freedom and monetary freedom in the Republic of Panama. Natural persons located in the Republic of Panama or legal entities organized in the Republic of Panama may freely agree to use cryptoassets, including without limitation Bitcoin and Ethereum, as means of payment for any civil or commercial operation not prohibited by the legal system of the Republic of Panama.

Said freedom is an expression of the fundamental right of contractual freedom and the Constitutional principle of monetary freedom established in Article 262 of the Constitution of the Republic of Panama, which establishes the prohibition of forced currency in the Republic of Panama.

Article 9. Possibility of payment of taxes, fees and other tax obligations with cryptoassets. The bodies and entities of the Republic of Panama may receive payments, directly or through payment processors or agents contracted for this purpose, for taxes, fees and other tax obligations in cryptoassets, including without limitation Bitcoin and Ethereum, according to the Regulation of Use of Cryptoassets for the Payment of Taxes issued by the General Directorate of Taxes of the Ministry of Economy and Finance, in coordination with the Government Innovation Authority, based on the following principles:

1. Protection, order, and transparency of public finances; and
2. Cybersecurity best practices to prevent financial losses.

Article 10. Subjection to the Digital Citizen Participation Procedure. The initial adoption as well as any modification to the Regulation on the Use of Cryptoassets for the Payment of Taxes must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

CHAPTER III
THE USE OF CRYPTOASSETS IN STOCK MARKET ACTIVITY
AND CROWDFUNDING

Article 11. Use of cryptoassets to represent securities. Nothing in this Law shall be understood as a prohibition for issuers of securities from the Republic of Panama to use distributed ledger technology, blockchain, or cryptoassets as a form of representing securities in full functional equivalent with any other form of issuance or representation of such securities.

Article 12. Exempt public offerings using cryptoassets or crowdfunding. The Board of Directors of the Superintendency of the Securities Market shall define, by agreement of a majority of its members, the conditions required for transactions with cryptoassets or crowdfunding transactions using cryptoassets or not, to be considered exempt offerings pursuant to Article 129 under Title V of the Securities Law, based on the following principles:

1. The protection and due information to the investing public; and
2. The promotion and competitiveness of the Panamanian financial center.

Article 13. Subjection to the Digital Citizen Participation Procedure. Any modification to said agreement must follow the Digital Citizen Participation and Regulatory Quality Procedure established in this Law.

Article 14. Term. The Board of Directors of the Superintendency of the Securities Market must adopt the resolution referred to in the Chapter within a maximum term of six (6) months from the date this Law enters into force.

CHAPTER IV

TAX TREATMENT OF CRYPTOASSETS

Article 15. Principle of reciprocity in the establishment and payment of tax obligations related to cryptoassets. State bodies or entities of the Republic of Panama may require the payment of tax obligations established in this Law, provided that they in turn allow the payment of tax obligations in general using cryptoassets, in accordance with what is established in the Regulations for the Use of Cryptoassets for the Payment of Taxes mentioned in this Law mentioned in Article 9 of this Law.

Article 16. Subjection to the Digital Citizen Participation Procedure. Any amendment to tax regulations related to the provisions of this Law must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

TITLE IV

THE EMISSION OF REDEEMABLE DIGITAL VALUE

CHAPTER I

SCOPE OF APPLICATION AND EXCLUSIONS

Article 17. Scope of Application. The following Title applies to all natural persons located in the Republic of Panama and legal entities organized in the Republic of Panama regularly engaged in the business of issuing redeemable digital value.

Article 18. Exclusions to the definition of holding of cryptoassets. For the purposes of this Law, the following activities will not be considered holding of cryptoassets:

1. The validation of cryptoasset transactions carried out by verifying nodes in cryptoasset networks, including without limitation the mining of Bitcoin and the mining or staking of Ethereum, through any mechanism of decentralized consensus, included but not limited to proof-of-work and proof-of-stake;
2. The development or sale of hardware or software that enables the direct holding of cryptoassets by persons; or
3. The development of cryptoassets, smart contracts, or their respective protocols for use by third parties.

Article 19. Exclusions to the definition of redeemable digital value. For the purposes of this Law, redeemable digital value does not include the monetary value stored electronically that meets any of the following criteria:

1. That enables the holder of the redeemable digital value to purchase goods and services solely from the issuer, including without limitation, loyalty programs or monetary value that does not represent a credit redeemable in expendable funds or cryptoassets by the issuer;
2. That allows the holder of the redeemable digital value to purchase goods and services only within a limited network of providers that have direct business arrangements with the issuer and that is not considered a payment system as defined in paragraph 20 of Article 3 of this Law; or
3. That it is a digital representation of value issued by or on behalf of a publisher and used solely within an online game, gaming platform or family of games sold by the same publisher or offered on the same gaming platform.

CHAPTER II

ISSUERS OF REDEEMABLE DIGITAL VALUE AS FINANCIAL REGULATED ENTITIES

Article 20. Designation as financial regulated entities. Issuers of redeemable digital value, including redeemable digital value entities, shall be considered regulated financial entities under Law 23 of 2015. As such, issuers of redeemable digital value must comply with due diligence measures and all other mechanisms for the prevention and control of money laundering, financing of terrorism and financing of the proliferation of weapon of mass destruction risks, as established in Law 23 of 2015.

Article 21. Supervising entity. The Superintendency of Banks, in its capacity as supervisor of financial regulated entities under Law 23 of 2015 shall ensure that the applicable regulation takes into account the criteria recommended by the Financial Action Task Force in relation to:

1. Money laundering, terrorism and weapons of mass destruction financing risks of digital currencies; and
2. The balance between financial inclusion and the prevention of use for illicit activities.

Article 22. Subjection to the Digital Citizen Participation Procedure. Any regulation in the subject matter of this Law enacted by the Superintendency of Banks must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

Article 23. Term. The Board of Directors of the Superintendency of Banks shall adopt the resolutions required to comply with this article within a maximum term of three (3) months counted from the adoption of the Regulations for Redeemable Digital Value Entities.

CHAPTER III

REGULATION AND VIGILANCE OF REDEEMABLE DIGITAL VALUE ENTITIES

Article 24. Regulator of redeemable digital value entities. The Ministry of Commerce and Industries, through its Directorate of Financial Entities will have the exclusive competence to regulate redeemable digital value entities.

Such regulation will be detailed in a Regulation of Redeemable Digital Value Entities adopted by Executive Decree, which may not include additional obligations to those established for such entities in this Law.

Article 25. Procedure. The adoption and subsequent amendments to the Regulations for Redeemable Digital Value Entities must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

Article 26. Term. The Ministry of Commerce and Industries must adopt the corresponding decree with the Regulations for Redeemable Digital Value Entities within a maximum term of one (1) year counted from the entry into force of this Law.

Article 27. Entities authorized to issue redeemable digital value without a license. The following entities may issue redeemable digital value without obtaining the license described in Article 30 of this Law, prior notification to the Directorate of Financial Entities of the Ministry of Commerce and Industries in accordance with the guidelines established for such notification in the Regulations for Redeemable Digital Value Entities:

1. Entities licensed as banks in accordance with the Banking Law;
2. The Postal and Telecommunications Service established by Law 34 of 1941;
3. State bodies and entities, when acting in their capacity as public authorities;

4. Savings and credit cooperatives, multiple or integral service cooperatives engaged in the business of savings and credits as well as any other cooperative organization engaged in financial intermediation, and
5. Securities firms licensed under the Securities Law.

The Directorate of Financial Entities of the Ministry of Commerce and Industry will coordinate with the other regulatory bodies for the uniform application of cybersecurity controls for the holding of crypto-assets.

Artículo 28. Oversight of redeemable digital value entities and interpretations for specific cases. The Ministry of Commerce and Industries, through its Directorate of Financial Entities, shall interpret for administrative purposes and in a particular manner, the precepts of this Law and the Regulations for Redeemable Digital Value Entities.

Such resolutions may not contravene the precepts of this Law. In addition, they must be published in the Official Gazette and digitally on the institution's website.

Article 29. Appeals. Resolutions of the Ministry of Commerce and Industries shall admit an appeal for reconsideration before the Minister of Commerce and Industries, for which the affected party shall have a term of five (5) working days, counted from the notification of the respective resolution or from the notification of the resolution deciding the appeal for reconsideration, as the case may be. The resolution deciding the appeal for reconsideration shall exhaust the administrative remedies.

CHAPTER IV

OBLIGATIONS OF REDEEMABLE DIGITAL VALUE ENTITIES

Article 30. Issuer of Redeemable Digital Value License Requirement. Any natural person located in the Republic of Panama or legal entity organized in the Republic of Panama, that regularly issues redeemable digital value to third parties in or from the Republic of Panama, and that is not within the exclusions of articles 18 and 19 of this Law, must obtain a redeemable digital value entity license issued by the Directorate of Financial Entities of the Ministry of Commerce and Industries.

Article 31. Obligation of safeguarding of funds. Any redeemable digital value entity has the obligation to safeguard the received funds in exchange for the issued redeemable digital value following any combination of one or more of the safeguard alternatives presented in the following Articles.

Article 32. Safeguarding of funds in safe and liquid bank accounts or investments. Redeemable digital value entities will have to, as first alternative, comply with the obligation to safeguarding of funds by having to:

1. Maintain the funds in a bank account in one or more entities with a banking license in the Republic of Panama or in countries recognized by the Redeemable Digital Value Entities

Regulation complying with the procedures and audits established for this purpose in said regulation; or

2. Invest the received funds in low risk, safe, and liquid investments, as described by the Redeemable Digital Value Entities Regulation.

Article 33. Safeguarding of funds through insurance and deposits. Redeemable digital value entities will have to, as second alternative, comply with the obligation to safeguarding of funds by obtaining an insurance policy or bond issued by a Panamanian entity authorized by the Superintendency of Insurance and Reinsurance or in any of the countries recognized by the Redeemable Digital Value Entities Regulation that follow compliance procedures and audits established for this purpose in said regulation.

Article 34. Prohibition to use safeguarded funds as collateral and duty to accounting separation. In accordance with procedures established by the Redeemable Digital Value Entities Regulation:

1. No person, other than the redeemable digital value entity, may hold any right to the funds or beneficiary's insurance policy or bond, and
2. The accounting separation of these funds must always be maintained and reported to the Directorate of Financial Entities of the Ministry of Commerce and Industries.

Article 35. Duty to safeguard received fungible cryptoassets. Any redeemable digital value entity shall have the obligation to safeguard the received fungible cryptoassets in exchange for the equivalent redeemable digital value and shall be liable for any loss resulting from the technological breach related to the means of holding such cryptoassets.

The Redeemable Digital Value Entities Regulation will define a set of best practices, mandatory for any Redeemable Digital Value Entity that holds fungible cryptoassets.

Article 36. Capital requirements. Any redeemable digital value entity shall have the obligation to maintain at all times its own capital additional to the safeguarded fungible funds or cryptoassets corresponding to 2% of the average issued redeemable digital value as defined in Paragraph 25 of Article 3 of this Law.

The Directorate of the Financial Entities of the Ministry of Commerce will determine the following in the Redeemable Digital Value Entities Regulation:

1. How to calculate the average redeemable digital value with the goal of defining the initial capital requirement,
2. Any changes to the percentage value established in the previous paragraph,
3. Any authorization to alternative safeguarding methodologies,
4. The creation of general-application capital requirement thresholds (be it decreased or increased to:
 - a. Promote the experimentation of new technologies and business models (*regulatory sandbox*) by the redeemable digital value entities, designated as experimental by the Directorate of the Financial Entities of the Ministry of

Commerce, in where the operation risk is limited and disclosed to their end users;
and

- b. Control any risks created by Redeemable Digital Value Entities that are designated as systemically important by the Directorate of the Financial Entities of the Ministry of Commerce in accordance with the Redeemable Digital Value Entities Regulation.

Article 37. Appropriate management of operational risks. Any Redeemable Digital Value Entity shall have the obligation to adopt and maintain an appropriate operational risk management manual in accordance with what is established for this purpose in the Redeemable Digital Value Entities Regulation.

CHAPTER V

ADDITIONAL PROVISIONS REGARDING THE EMISSION OF REDEEMABLE DIGITAL VALUE

Article 38. Fiduciary holdings of fungible funds and cryptoassets. The holding of fungible funds and cryptoassets by redeemable digital value issuers, including redeemable digital value entities, shall be subject to the following regime:

1. Safeguarded fungible funds or cryptoassets shall be deemed to be held, in a fiduciary capacity, by the redeemable digital value issuer in the name and for the benefit of one or more of its clients;
2. Such fungible funds or cryptoassets shall not be deemed part of the redeemable digital value issuer's personal assets; and
3. Such fungible funds or cryptoassets may not be seized, encumbered, repossessed, or otherwise be subject to claims or the actions of the digital money issuer's creditors, nor shall they form part of the redeemable digital value issuer's collection of assets in a bankruptcy proceeding or other similar proceedings.

The fiduciary holding referred to in this article operates by this Law's mandate, not requiring a trust agreement between the issuer of a redeemable digital value and its client to be granted.

The provisions of Law 1 of 1984 shall not apply to this fiduciary holding. Redeemable digital value issuers will not require a fiduciary license and will not have any obligations other than those explicitly contemplated in this Law, in the Redeemable Digital Value Issuers Regulation if they were redeemable digital value entities, and in the contracts they enter into regarding this matter.

Article 39. Forbidden fundraising activities distinction. The redeemable digital value entities' activity that maintains a corresponding license in accordance with this Law shall not be considered:

1. A prohibited collection of resources from the public according to Article 2 of the Banking Law; or
2. Within the scope of the criminal prohibition of illicit collection of financial resources described by the Criminal Code.

Article 40. Banking and non-discrimination of Redeemable Digital Value Entities. The National Bank of Panama's board of directors, by agreement of most of its members, will issue guidelines regarding how accounts for Redeemable Digital Value Entities will be created in the National Bank of Panama.

The Superintendency of Banks' board of directors, by agreement of most of its members, will issue guidelines that promote the banking of the Redeemable Digital Value Custody Entities, considering the need for competition and interoperability in the Panamanian financial system and the limitations imposed on banks by their correspondent counterparts abroad.

Any agreement adopted by the National Bank or the Superintendency of Banks regarding this article must follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established by this Law.

The National Bank's board of directors and the Superintendency of Banks shall adopt the measures required by this article within a maximum period of three (3) months from the start of the Redeemable Digital Value Entities Regulation.

CHAPTER VI

SANCTIONS RELATED TO THE ISSUANCE OF REDEEMABLE DIGITAL VALUE

Article 41. Sanctioning procedure. The Redeemable Digital Value Entities Regulation will regulate the sanctioning procedure applicable to any redeemable digital value entities and third parties that are responsible for violations of the rules in this Law.

Any gaps present will be filled with the procedure rules established in Law 38 of 2000.

Article 42. Obligation violation sanctioning criteria regarding the issuance of redeemable digital value. To apply the sanctions provided in this article, the Ministry of Commerce and Industries shall consider the following assessment criteria:

1. The scale of the infringement.
2. The threat or harm caused.
3. Indications of intentionality.
4. The ability to pay and the administrative sanction's effect on the reparations regarding any damage caused to the affected customers of a redeemable digital value issuing entity; and
5. The duration of the activity.

The Redeemable Digital Value Entities Regulation may establish additional criteria regarding how sanctions are imposed in cases where it is considered appropriate. Any conduct from a natural or legal person that prevents or hinders the inspectors and auditors from the Ministry of Commerce and Industries from carrying out their inspection tasks and duties will be considered as aggravating.

Article 43. Sanctions due to violations by redeemable digital value entities.

Violations to the obligations established in this Chapter shall be sanctioned by the Ministry of Commerce and Industries through the Dirección de Empresas Financieras.

One or more of the following sanctions shall be imposed on the offender of any of the obligations established in Chapter IV of this Title IV:

1. Fine in an amount not less than the gross profit obtained as a consequence of the acts or omissions in which the very serious violation consists, nor more than twice the gross profit obtained or, in case this criterion is not applicable, up to the greater of the following amounts: 5% of the infringing person's own resources, 5% of the total funds, own or third party, used in the violation, or one million balboas (B/.1,000,000.00);
2. Suspension or limitation of the type or volume of operations or activities that the offender may carry out for a term not exceeding two (2) years;
3. Revocation or cancellation of the redeemable digital value issuer license.

TITLE V

BANKING INTEROPERABILITY AND PAYMENT SYSTEMS

CHAPTER I

SCOPE OF APPLICATION

Article 44. Scope of Application. The definitions and legal consequences of the regulations established in this Title shall be applicable to the payment systems, their administrators and participants that, being natural persons, are located in the Republic of Panama or, being legal entities, are established in the Republic of Panama, and that operate in or from the Republic of Panama.

The rights of the participants' clients shall be enforceable in the Republic of Panama regardless of the domicile of such clients.

CHAPTER II

REGULATION AND OVERSIGHT OF PAYMENT SYSTEMS

Article 45. Regulator of payment systems and interpretations of general scope. The Board of Directors of the Superintendency of Banks shall have the exclusive competence to regulate payment systems, through the adoption and maintenance of a Payment Systems Regulation, by agreement of a majority of its members. The rules of this chapter may be regulated and clarified

in said regulation in order to adjust it to take into account the operational and technological changes that arise, as long as the principles and requirements established in this Law are complied with..

The Board of Directors of the Superintendency of Banks may interpret by means of a general resolution of a majority of its members, for administrative purposes and in a general manner, the precepts of this Law and the Payment Systems Regulations. Said resolutions shall be published in the Official Gazette and digitally on the web page of the institution.

Article 46. Subjection to the Digital Citizen Participation Procedure. The adoption and any subsequent modification to said Payment Systems Regulations shall follow the Digital Citizen Participation and Regulatory Quality Assurance Procedure established in this Law.

Article 47. Term. The Board of Directors of the Superintendency of Banks shall adopt the Payment Systems Regulation required by this Article within a maximum term of six (6) months as of the effective date of this Law.

Article 48. Oversight of payment systems and interpretations for particular cases. As established in the Payment Systems Regulation, a specialized directorate with exclusive dedication to this effect shall be created within the Superintendency of Banks with the sole purpose of overseeing compliance and sanctioning non-compliance with the Payment Systems Regulations and this Title.

The Superintendent of Banks may, through said specialized directorate, interpret, for administrative purposes and in a particular manner, the precepts of this Law and the Payment Systems Regulation.

Such resolutions may not contravene the provisions of this Law, nor the resolutions of general scope issued by the Board of Directors of the Superintendency of Banks. In addition, they must be published in the Official Gazette and digitally on the institution's website.

Article 49. Appeals. The resolutions of the Superintendent in his/her oversight of the payment system shall admit appeals for reconsideration before the Superintendent himself and for appeal before the Board of Directors, for which the affected party shall have a term of five (5) business days, counted as of the notification of the respective resolution or of the notification of the resolution deciding the appeal for reconsideration, as the case may be. The resolution deciding the appeal shall exhaust the administrative remedies.

The resolutions issued by the Board of Directors in the first instance shall only admit an appeal for reconsideration before the Board itself, for which the affected party shall have a term of five (5) business days from the date of notification. The resolution of the Board of Directors or the one that decides the appeal shall exhaust the administrative remedies.

CHAPTER III

OBLIGATIONS OF PAYMENT SYSTEMS ADMINISTRATORS AND

INTERNAL STANDARDS

Article 50. Declaration of existence of a payment system. The Superintendent of Banks, through the specialized directorate for the oversight of payment systems, shall, *ex officio* or at the request of any person, declare the existence or extinction of a payment system and its corresponding administrator in compliance with the definitions of this Law.

The Payment Systems Regulation shall regulate the legal consequences and deadlines for registration as a payment system administrator for the corresponding administrator.

When adopting the first version of the Payment Systems Regulation, the Board of Directors of the Superintendency of Banks may designate the existence of payment systems.

Article 51. Authorization of the internal rules of payment systems. The internal rules of any payment system and its modifications must be submitted for authorization to the Superintendency of Banks as established in the Payment Systems Regulations, and must comply with the requirements of general scope established by said regulations.

Article 52. Publicity of the internal rules of payment systems. The internal rules of any payment system and their modifications shall be kept updated and published digitally for free access by any person.

Article 53. Principles to be followed by the internal rules of any payment system. In all cases, the internal rules of any payment system shall promote:

1. The efficiency and security of the payment system,
2. The competitive development of the services rendered using the payment system,
3. The immediacy of payments between participants in the payment system,
4. The digital domiciliation, interoperability and standardization of bank accounts of the clients of the participants of the payment system, and
5. Open banking, portability of information and portability of bank accounts of customers of payment system participants.

The Board of Directors of the Superintendency of Banks shall develop said principles progressively, reviewing and modifying, if necessary, the Payment Systems Regulation at least twice a calendar year, with the specific purpose of promoting the greatest possible competition among the participants of the payment systems for the benefit of the participants' customers.

The Superintendent, through the specialized directorate dedicated to the oversight of payment systems, may require modifications or revocations to internal rules of any payment system that do not comply with this Law and the Payment Systems Regulations.

Article 54. Minimum requirements for internal rules of any payment system. In all cases, the internal rules of any payment system shall contain:

1. The moment at which the transfer orders sent to the payment system in question are considered as accepted transfer orders;
2. The criteria for determining who may participate in the respective payment system, always with the objective of achieving the greatest possible openness in terms of participants, especially non-bank participants, and for the benefit of end consumers;
3. The means available to the payment system for the control of risks arising from clearing or settlement, including fraud control, and chargeback rules;
4. The measures to be adopted in the event of non-compliance by any participant;
5. The security measures of the operating system and the corrective actions to be followed in case of failures of such system, including the respective contingency plans;
6. The commissions or any other charges that the participants in the payment system may charge each other, as well as those that the system administrator may charge to the participants, including interchange commissions when they exist, which shall not be discriminatory; and
7. That the assets, rights and securities that are granted as collateral for the fulfillment of both the transfer orders accepted, as well as the clearing and settlement resulting therefrom, shall at all times be free of any other encumbrance, except for the safeguard obligations for redeemable digital value entities established in this Law.

CHAPTER IV

ADDITIONAL PROVISIONS ON PAYMENT SYSTEMS

Article 55. Irrevocability and validity of accepted transfer orders and regulation of terms for effectiveness. Accepted transfer orders, their clearing and settlement, as well as any act that, in accordance with the terms of the internal rules of a payment system, must be performed to ensure their compliance, shall be firm, irrevocable, binding, and enforceable against third parties.

The Payment Systems Regulation will determine the terms and procedures for the effectiveness of judicial or administrative resolutions, including without limitation, seizure, attachment and other acts of execution, or any acts derived from the application of rules of a bankruptcy nature, taking of control or liquidation of a participant.

Article 56. Non-affectation of guarantees for payment and settlement of obligations of participants in payment systems. The guarantees and the resources coming from the accounts that the participants, in accordance with the internal rules of the corresponding payment system, have assigned to the fulfillment of the accepted transfer orders, as well as the clearing and settlement

resulting therefrom, shall be unattachable from the beginning of the daily operation of the payment system until the payment obligations derived from the settlement of such transfer orders accepted each day are fulfilled. Therefore, during the aforementioned period, no execution ordered by any administrative or judicial authority may be carried out on them.

Article 57. Priority in the execution of guarantees. In the event that the guarantees mentioned in the preceding article of this Law require to be executed, the proceeds of such execution shall be used, as appropriate, to pay the obligations derived from the accepted transfer orders, their clearing and settlement, in preference to any other obligation.

When the proceeds from the execution of the guarantees and, as the case may be, of any other act carried out in terms of the internal rules of the corresponding payment systems, are not sufficient to comply with the obligations referred to in the preceding paragraph, the respective creditors may enforce their rights in accordance with the applicable provisions.

In the event that the execution of such guarantees results in any remainder, such remainder must be placed at the disposal of the corresponding bankruptcy proceedings, the participant or whoever corresponds, in terms of the applicable provisions.

Article 58. The holding of guarantees or accounts resources in fiduciary form. The holding of resources by a payment system administrator to comply with accepted transfer orders, or for the clearing and settlement resulting therefrom, shall be subject to the following regime:

1. They shall be understood to be acquired in a fiduciary capacity by said administrator of a payment system on behalf and for the benefit of one or more participants to whom the administrator of the payment system has recognized rights relating to accepted transfer orders, their clearing and settlement;
2. It shall be understood that they are not part of the personal assets of the payment system administrator; and
3. They may not be seized, encumbered or attached, or otherwise be subject to claims or actions by creditors of the payment system administrator, nor shall they form part of the payment system administrator's estate in a bankruptcy proceeding or other similar proceeding.

The fiduciary holding referred to in this article operates by mandate of the law, without requiring the execution of a trust agreement between the payment system administrator and the participant in the payment system.

The provisions of Law 1 of 1984 shall not be applicable to this fiduciary holding. The administrators of payment systems shall not require a fiduciary license and shall not have any obligations other than those expressly contemplated in this Law, in the Payment Systems Regulation and in the contracts entered into on the matter.

CHAPTER V
SANCTIONS RELATING TO PAYMENT SYSTEMS

Article 59. Sanctioning procedure. The Payment Systems Regulation shall regulate the sanctioning procedure to be applied with respect to the administrators of payment systems and third parties who are responsible for the violation of the provisions of this Law.

The legal vacuums, if any, shall be filled with the rules of procedure established in Law 38 of 2000.

Article 60. Criteria for the imposition of sanctions for violations to the obligations of entities issuing redeemable digital value. In order to impose the sanctions provided for in this article, the Superintendency of Banks shall take into account the following assessment criteria:

1. The seriousness of the infraction;
2. The threat or damage caused;
3. Indications of intentionality;
4. The relative position of power among participants for cases in which participants are partial or total owners of the corresponding administrator of the payment system;
5. The ability to pay and the effect of the administrative sanction in repairing the damage to the directly harmed customers of the issuer of redeemable digital value; and
6. The duration of the conduct.

The Payment Systems Regulations may establish additional criteria for the imposition of sanctions. The conduct of the natural or legal person that prevents the inspectors and auditors of the Superintendency of Banks from carrying out their inspection work or directly or indirectly hinders such work shall be considered an aggravating circumstance.

Article 61. Sanctions for violations by redeemable digital value entities. The Superintendency of Banks shall impose one or more of the following sanctions on the infringer of any of the obligations set forth in Chapter III of this Title:

1. Fine in an amount not less than the gross profit obtained as a consequence of the acts or omissions in which the very serious violation consists, nor more than twice the gross profit obtained or, in case this criterion is not applicable, up to the greater of the following amounts: 5% of the infringing person's own resources, 5% of the total funds, own or third party, used in the violation, or one million balboas (B/.1,000,000.00);
2. Suspension or limitation of the type or volume of operations or activities that the offender may carry out for a term not exceeding two years;

3. The permanent dissociation of property by a participant of a payment system from the entity administering a payment system, in case discrimination of another participant in the same payment system is proven; and
4. The revocation or cancellation of the status as a payment system administrator.

TITLE VI

GENERAL PROVISIONS

CHAPTER I

DIGITAL CITIZEN PARTICIPATION AND REGULATORY QUALITY ASSURANCE PROCEDURE

Article 62. Scope of application. This Chapter will be applicable to all bodies and entities of the Republic of Panama that must issue regulations based on this Law. Failure to comply with this procedure shall imply the absolute nullity of the corresponding administrative act as established by Law 38 of 2000.

Article 63. Announcement of digital public consultation. Any Authority that must adopt, amend or repeal any rule or regulation of general scope based on this Law, or that seeks to recommend to the Executive Branch the adoption, amendment, or repeal of an Executive Decree that regulates this Law, must publish on its website a Digital Public Consultation Notice containing the following:

1. Description and explanation of the regulatory interest and its legal basis, written in Spanish and English;
2. Draft of the proposed regulation;
3. Comparative law study and benchmarking on the subject prepared by the Authority through the usual procurement procedures;
4. Request for digital and written comments in Spanish and English and deadline for the receipt of such comments, which shall not be less than fifteen (15) days from the publication of the Notice of Digital Public Consultation; and
5. Call for a digital public hearing to be broadcast live online in the event that the Authority deems it necessary to hold one.

Article 64. Opportunity to submit comments. Any interested person, whether or not established in the Republic of Panama, may submit to the Authority, in writing and in digital form, in Spanish or English, comments, memoranda and proposals on the action that the Authority contemplates taking and will have the right to be heard in Spanish or in English at a public hearing in the event that the Authority deems it necessary to hold one.

All public hearing oral participation and written comments described in the preceding paragraph must be published in full on the Authority's website indefinitely, for future reference of the public as part of the rulemaking process.

Article 65. Principle of due consideration of comments received. After the period for the submission of comments has expired and due consideration has been given to the comments received, the Authority may adopt the regulations contemplated with such modifications as it deems appropriate, provided that the action to be adopted is not significantly different or imposes more restrictions than those contemplated in the action submitted for public consultation.

In the event that the regulations are significantly different or impose more restrictions than originally proposed, the Authority shall resubmit the proposed regulations to the process contemplated in this chapter.

In any event, the Authority may issue a report summarizing the comments and justifying its final decision. Such a report, preferably published in Spanish and English, will be posted on the Authority's website indefinitely, for future reference of the public as part of the rulemaking process.

Article 66. Principle of regulatory competitiveness. In all cases, the Authority must detail in the preamble of the adopted regulations its findings in relation to comparative law and how the regulations meet the initial regulatory interest and maintain, to the extent possible, the competitiveness of the Republic of Panama at the international level.

CHAPTER II

CIVIL LIABILITY AND ACTS IN GOOD FAITH

Article 67. Civil liability. Without prejudice to the corresponding administrative and criminal consequences, whomever violates any provisions contained in this law or its regulations shall be civilly liable for the damages and losses caused by such violation.

If the act or omission in violation of this Law is attributable to two or more entities, they shall be jointly and severally liable for the damages caused. Among such entities, at the request of any one of them, the court may apportion liability in proportion to the fault of each of them.

Article 68. Acts in good faith based on regulations and opinions of the Authorities. No person shall be civilly liable or subject to sanction by the relevant Authority by reason of acts done or omitted to be done in good faith pursuant to an agreement, resolution, or opinion issued by the Authority, even if subsequent to such acts or omissions the agreement, resolution, or opinion is amended or repealed by the Authority or by laws or regulations issued by the Executive Branch or is declared unconstitutional, illegal, or incorrect by a decision of the courts of law.

TITLE VII

MODIFICATIONS

Article 69. Subsection e) of Article 696 of the Fiscal Code is amended and shall henceforth read as follows:

Article 696. Gross income is the total, without deduction of any sum, of the taxpayer's income in money, in kind, or in securities, including therefore in such total the amounts received in concept of:

(...)

e) Gains obtained on the disposal of movable and immovable property, **cryptoassets with underlying value**, bonds, shares, and other securities issued by legal entities, in accordance with Article 701.

Article 70. Subsection e) of Article 701 of the Fiscal Code is amended and shall henceforth read as follows:

Article 701.

For the purposes of computing income tax in the cases mentioned below, the following rules shall be followed:

(...)

e) With the exception of the provisions of paragraphs (1) and (3) of Article 269 of the Law Decree 1 of July 8, 1999, gains obtained from the transfer of bonds, shares, participation quotas, and other securities issued by legal entities, as well as those obtained from the transfer of other personal property, **including cryptoassets with underlying value**, are taxable.

In the cases of profits obtained from the transfer of securities, as a result of the acceptance of the public offer of purchase of shares, in accordance with the provisions of Law Decree 1 of July 8, 1999, which constitutes taxable income in the Republic of Panama, as well as from the transfer of shares, participation quotas, and other securities issued by legal entities, which constitute taxable income in the Republic of Panama, the taxpayer will be subject to the treatment of capital gains and consequently will calculate the taxable income in the Republic of Panama and in consequence will calculate Income Tax on the profits obtained at a fixed rate of ten percent (10%). The Executive Branch shall regulate this matter.

The buyer shall have the obligation to withhold from the seller a sum equivalent to five percent (5%) of the total value of the sale, as an advance payment of the Income Tax on the capital gain. The buyer shall have the obligation to remit to the Treasury the amount withheld within ten (10) days following the date on which the obligation to pay arose. If there is non-compliance, the entity issuing the security is jointly and severally liable for the unpaid tax. The Executive Branch shall regulate this matter.

The taxpayer may choose to consider the amount withheld by the purchaser as the final Income Tax payable as capital gain.

When the withheld advance of the tax exceeds the amount resulting from applying the ten percent (10%) rate on the capital gain obtained in the sale, the taxpayer may file a special affidavit evidencing the withholding made and claim the excess which, at the taxpayer's option, may be returned in cash or as a tax credit for the payment of taxes administered by the General Directorate of Revenue. This tax credit may not be assigned to other taxpayers. The amount of the profits obtained in the sale of securities shall not be cumulative to the taxable income of the taxpayer.

The Executive Branch, through the Ministry of Economy and Finance, shall regulate the procedure for the recognition of tax credits resulting from the transfer of securities under the capital gains regime established in this Article.

Without prejudice to the provisions of the legislation in force, the income produced by capital or securities economically invested in the national territory shall be considered as Panamanian source income, whether its alienation takes place inside or outside of the Republic.

For the purposes of calculating Income Tax in the case of the sale of personal property, the taxpayer shall be subject to capital gains treatment and, consequently, shall calculate Income Tax on the gains obtained at a flat rate of ten percent (10%).

For the purposes of calculating Income Tax in the case of the sale of cryptassets with underlying value, the taxpayer will be subject to capital gains treatment and, accordingly, will calculate Income Tax on the gains obtained at a flat rate of four percent (4%).

Article 71. Subsection d) of Article 1057-V of the Fiscal Code is amended and shall henceforth read as follows:

Article 1057-V

PARAGRAPH 7.

The following will not cause this tax:

(...)

- d) Transfers of negotiable documents and of securities, cryptassets, and securities in general.

Article 72. Article 2 of Executive Decree 170 of 1993 is hereby amended and shall henceforth read as follows:

Article 2. Description of gross income.

Gross income is the income derived from:

(...)

- i) the sale of movable and immovable property, securities (bonds, shares, profit sharing and similar), **cryptoassets with underlying value**, assignments of rights and leasing of movable and immovable property;

Article 73. The following Article 117-K of Executive Order 170 of 1993 is hereby added and shall henceforth read as follows:

Article 117-K.- Gain and loss regime on the sale or disposal for financial reward of cryptoassets with underlying value.

For Income Tax, Dividend Tax, and Complementary Tax purposes, profits obtained from the sale of cryptoassets with underlying value, which do not constitute ordinary line of business, will be considered taxable, as long as such cryptoassets represent underlying assets economically invested in the Republic of Panama.

The transfer of cryptoassets with underlying value is understood as the granting by the transferor to the acquirer of sufficient credentials or sufficient authority in a cryptoasset network to unilaterally execute, or indefinitely prevent the transfer of the cryptoasset to another cryptoasset holder by the transferor.

In this case, a capital gains treatment will be applied, calculating the amount of the final tax to be paid at a rate of four percent (4%) on the profits obtained.

Gains or losses obtained from the sale or transfer for financial reward of cryptoassets with underlying value will be calculated by subtracting the acquisition cost from the sale price.

For the purposes of this article, it shall not be understood as transfer of a cryptoasset when such cryptoasset is used as a means of payment for the acquisition of services or goods, with the exception of cryptoassets, bonds, shares and other securities issued by legal entities.

Article 74. Subsection g of Article 22 of Law 23 of 2015 is hereby amended and shall henceforth read as follows:

Article 22. Regulated financial entities. The following are regulated financial entities:

1. Supervised by the Superintendency of Banks of Panama for the prevention of money laundering, terrorism financing and financing of the proliferation of weapons of mass destruction:

g. Issuers of means of payment and issuers of redeemable digital value.

Article 75. The following paragraph 6 is added to Article 129 of the Securities Law, which shall henceforth read as follows:

Article 129. Exempt offerings. The following offers, sales, and transactions in securities are exempt from registration with the Superintendency:

(...)

6. **(crowdfunding and offerings using cryptoassets) within the parameters established by the Superintendency for the protection of the investing public, offerings considered investment-based crowdfunding and offerings using cryptoassets; and**

7. (other) any other offerings, sales or transactions in securities that the Superintendency may, by resolution, exempt from the registration requirement set forth in this Title, within the parameters dictated by the Superintendency for the protection of the investing public.

Article 76. Indicative Article. This Law amends Article 696 of the Tax Code, Article 701 of the Tax Code, Article 1057-V of the Tax Code, Article 2 of Executive Order 170 of 1993, Article 22 of law 23 of 2015, Article 129 of Law Decree 1 of 1999 and its amendatory laws, and Title II of Law 67 of 2011, and adds Article 117-K to Executive Order 170 of 1993.

Article 77. Entry into force. This Law shall enter into force on the day following its publication.

COMMUNICATE AND COMPLY

Proposed for the consideration of the National Assembly today, September 6, 2021 by Assembly Member Gabriel Silva.

GABRIEL SILVA

Legislator of the Republic of Panama

CIRCUIT 8-7