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## Cryptocurrencies and Law No. 14,478/2022: Advances, Limits, and Perspectives on Regulation in Brazil

*Cryptocurrencies and Law no. 14.478/2022: Advances, Limits, and Perspectives of Regulation in Brazil*

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### Summary

This scientific article analyzes Law No. 14,478/2022, the "Cryptocurrency Legal Framework" in Brazil. Using a legal-dogmatic approach, the study maps regulatory advances, such as the creation of an initial normative framework, the classification of crimes, and the formalization of consumer protection. Conversely, it explores the limits and gaps in the legislation, emphasizing the omission of asset segregation and the challenges posed by the decentralized nature of Decentralized Finance (DeFi) and tax uncertainties. A comparative analysis with the European Union's MiCA Regulation contextualizes Brazil's choice of a principle-based model. It concludes that the effectiveness of the law will depend on sub-legal regulation and the capacity of the legal system to adapt to the dynamism of the market.

**Keywords:** Cryptocurrencies; Law 14.478/2022; Regulation; Digital Law.

### Abstract

This scientific article analyzes Law No. 14,478/2022, the "Legal Framework for Cryptocurrencies" in Brazil. Adopting a legal-dogmatic approach, the study maps the regulatory advances, such as the creation of an initial normative framework, the criminalization of certain conducts, and the formalization of consumer protection. Conversely, it explores the law's limits and gaps, notably the omission of asset segregation and the challenges posed by the decentralized nature of Decentralized Finance (DeFi) and tax uncertainties. A comparative analysis with the European Union's MiCA Regulation contextualizes Brazil's choice for a principles-based model. The study concludes that the law's effectiveness will depend on infra-legal regulation and the legal system's ability to adapt to the market's dynamism.

**Keywords:** Cryptocurrencies; Law No. 14,478/2022; regulation; DigitalLaw.

### 1. Introduction: The Context of the Emergence of Law 14.478/2022

Before the enactment of Law No. 14,478, of December 21, 2022, the cryptocurrency market in Brazil was operating in a scenario of considerable legal uncertainty. The absence of a framework The lack of specific regulations created a legal vacuum, which facilitated the proliferation of fraudulent schemes and the use of these assets for the commission of crimes, raising a "clear concern about the "scenario of intensified crime" (IBCCRIM, 2023). This uncertainty had an impact on both investors, who found themselves unprotected, as well as the financial system itself, which was vulnerable to illicit conduct such as money laundering (CHAIM, 2023).

Law No. 14,478/2022 emerges as a direct response to this context. The law is the result of a legislative process that began in 2015 with Bill 2,303, by Representative Áureo.



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Ribeiro (CHAIM, 2023). The primary intention of the legislator, according to the statement of reasons for The project aimed to fill a "legal gap" and strengthen mechanisms to combat money laundering, money and the financing of illicit activities (CHAIM, 2023).

The urgency of this regulation was reinforced by global crises, such as the bankruptcy of The FTX exchange in 2022 exposed a lack of protection for users' assets (MY LEGAL WEBSITE, 2022). The confusion between client funds and the brokerage's own assets was evident. It has convincingly demonstrated the risks inherent in the absence of robust regulation. catalyzing the need for legislative action.

## **2. The Structure of the Legal Framework: Concepts and Competencies**

Law No. 14,478/2022, nicknamed the "Regulatory Framework for the Cryptoeconomy" (IPLD, 2022), This establishes the guidelines for the provision of virtual asset services in Brazil. Article 1 states that... the guidelines to be followed in the provision of virtual asset services and in the regulation of its providers, formalizing the first legal definition of "virtual asset" in the country (BRAZIL, 2022; IPLD, 2022).

### **2.1. The Legal Concept of Virtual Assets**

The legislation defines "virtual asset" in Article 3 as "the digital representation of value that can to be negotiated or transferred by electronic means and used for making payments or with "investment purpose" (BRAZIL, 2022; SENATE, 2022; JUSTEN, 2023). This definition is crucial for defining the scope of the rule. The law, however, expressly excludes from its concept the national currency and foreign currencies, electronic money (regulated by Law No. 12.865/2013), and instruments for accessing products or benefits, such as points programs (BRAZIL, 2022).

Fundamentally, the law also does not apply to assets that are classified as securities, while preserving the regulatory authority of the Securities and Exchange Commission. (CVM) on these (BRASIL, 2022; BARBOSA; BESSONE, 2023).

### **2.2. Regulation of Virtual Asset Service Providers (VASPs) and the Assignment of Competencies**

The central focus of Law No. 14,478/2022 does not lie in the assets themselves, but rather in the entities that... They provide services related to them. The standard defines "virtual asset service provider". (VASPs) as the legal entity that performs services on behalf of third parties, such as the exchange of crypto assets in national currency, the transfer, custody and administration of these assets (CHAIM, 2023; BRAZIL, 2022). Article 2 of the law establishes that these providers can only operate in Brazil after "prior authorization from a body or entity of the federal Public Administration" (CHAIM, 2023; BRAZIL, 2022).

Law No. 14,478/2022 adopted a "principled" approach, establishing the guidelines.



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general regulations and delegating to a technical authority the responsibility of detailing the regulations.

(BARBOSA; BESSONE, 2023). Decree No. 11,563/2023 designated the Central Bank of Brazil

(BACEN) as the competent authority to regulate, authorize and supervise the market of

cryptoassets (CHAIM, 2023; CENTRAL BANK OF BRAZIL, 2024; IDP, 2024). This choice for

A law that establishes guidelines and delegates regulation to a technical body aims to ensure...

Flexibility and agility needed to keep up with market dynamics. The division of

competencies between the Central Bank of Brazil (for virtual asset services) and the Securities and Exchange Commission of Brazil (for assets that are...)

(which are configured as securities) is a crucial step forward, aimed at avoiding jurisdictional conflicts.

observed in other countries, such as in the United States between the SEC and the CFTC (MAIA, 2023;

BARBOSA; BESSONE, 2023).

### **3. Advances of Law 14.478/2022: Security and Order in the Market**

Law No. 14,478/2022 represents a fundamental step towards legal certainty and...

Ensuring the integrity of the cryptocurrency market in Brazil, providing clarity and tools to combat illegal activities.

#### **3.1. The Criminal Protection of Cryptoeconomics**

One of the most significant advances in legislation is the inclusion of provisions of a penal nature.

(BARBOSA, 2023). The law amended the Penal Code to add Article 171-A, which criminalizes "fraud

with the use of virtual assets, securities or financial assets" (BRAZIL, 2022; CHAMBER OF DEPUTIES, 2022).

Furthermore, the Money Laundering Law (Law No. 9,613/98) was amended to include

virtual asset service providers are among those required to follow the mechanisms of

anti-money laundering control (IPLD, 2022). The law also establishes an increase in

A penalty of 1/3 to 2/3 is imposed when money laundering is repeatedly carried out through virtual assets (Chamber of Deputies, 2022). This explicit inclusion formalizes the concern.

with the use of crypto-economics for criminal purposes, giving rise to economic criminal law.

New tools for prosecuting crimes that, until now, operated in a gray area.

#### **3.2. Consolidating Consumer Protection**

Another key point is the establishment of "consumer protection and defense and

users" as one of the guidelines to be observed in the regulation of the sector (CHAIM, 2023;

(ANDRADE, 2023; BRAZIL, 2022). This principle reinforces an understanding that had already been...

consolidated by Brazilian jurisprudence. Before the law, courts such as the Superior Court of Justice

The Superior Court of Justice (STJ) and the Court of Justice of São Paulo (TJSP) were already applying the rules of the Consumer Protection Code.

Consumer (CDC) to cases involving exchanges (MACHADO MEYER ADVOGADOS, 2022;

VERNALHA PEREIRA ADVOGADOS, 2023).

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Case law, in equating brokerage firms with financial institutions for the purposes of

In civil liability, the strict liability regime provided for in Article 14 of the Consumer Protection Code applies.

Summary 479 of the Superior Court of Justice (VERNALHA PEREIRA ADVOGADOS, 2023). The recognition that Cyberattacks and fraud in platform infrastructure constitute "internal risk" – a

inherent risk of the activity (VERNALHA PEREIRA ADVOGADOS, 2023) – demonstrates that the law

It strengthens consumer protection by providing a solid regulatory basis for understanding.

existing judicial process.

The following table consolidates the main advances brought about by Law No. 14,478/2022, illustrating

How the standard fills gaps and establishes a new level of security and transparency.

Advance Regulatory	Provision in Law No. 14.478/2022	Meaning and Implications
Definition of an Asset Virtual	Art. 3º (BRAZIL, 2022; JUSTEN, 2023)	Creating a clear legal concept defines the scope of regulation and provides security for the market.
Criminal Classification Specific	Article 171-A of the Penal Code (BRAZIL, 2022)	It elevates the crypto economy to the status of a legally protected asset, providing tools to combat fraud and pyramid schemes.
Regulation of Service Providers Services	Articles 1 and 2 (BRAZIL, 2022)	It establishes the need for prior authorization and delegates detailed regulation to a technical body (Central Bank of Brazil), prioritizing the soundness and efficiency of the market.
Formalization of Protection of Consumer	Guideline of Article 4, IV (BRAZIL, 2022)	It endorses the application of strict liability and the Consumer Protection Code, already recognized by case law (ANDRADE, 2023; VERNALHA PEREIRA ADVOGADOS, 2023), guaranteeing greater protection for users.

#### 4. Gaps and Limitations in the Law: The Outstanding Challenges

Despite its undeniable advancements, Law No. 14,478/2022 is frequently criticized for its...

omissions and its limitations in dealing with the complexity of the crypto economy.

##### 4.1. Failure to Segregate Assets

The main gap in the legislation is the absence of an explicit requirement for asset segregation (MY LEGAL WEBSITE, 2022). This legal provision, which obliges exchanges to

keeping client funds separate from one's own capital is widely advocated as a

A crucial measure for investor protection. The bankruptcy of the FTX exchange, where the funds of

The fact that clients were improperly mixed with company assets serves as a global warning of the need for this safeguard (MY LEGAL WEBSITE, 2022).

The absence of such a provision in the legal text was a result of pressure from part of the sector, which

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This generated criticism from experts and even the president of the CVM (Brazilian Securities and Exchange Commission), who described the law as "timid in its approach." many aspects" (INFO MONEY, 2023). Currently, new bills, such as PL 1536/2023, Bills are being processed in Congress to fill this gap (SENATOR MARCOS DO VAL, 2023). The Central Bank of Brazil (BACEN), In turn, it also seeks to regulate the issue through secondary normative acts, which This indicates that the issue of segregation is being addressed reactively, rather than preventively. (DEMAREST ADVOGADOS, 2024).

#### 4.2. Persistent Tax Uncertainty

Law No. 14,478/2022 refrained from addressing tax issues (MY LEGAL WEBSITE, (2022). Thus, the taxation of crypto assets remains under the purview of tax regulations. Brazilian Federal Revenue Service (RFB), such as Normative Instruction RFB No. 1,888/2019 and consultation solutions (BRAZIL. FEDERAL REVENUE SERVICE, 2019; CHAMBER OF DEPUTIES, 2023).

The resulting regulatory fragmentation creates uncertainty for investors and for the tax authorities themselves. (SILVA; LECH, 2022). Complex issues, such as the taxation of barter, *airdrops* (distribution Free tokens) and *hard forks* (splitting a cryptocurrency into two) lack a framework. clear and detailed regulations in the law (SILVA; LECH, 2022).

#### 4.3. The Unavoidable Challenge of Decentralized Finance (DeFi)

The biggest challenge for the legal framework is its inadequacy in dealing with the phenomenon of Decentralized Finance (DeFi) (MIGALHAS, 2023; BRQ, 2023). Law No. 14,478/2022 was designed to regulate centralized entities, that is, the "service providers" that act as Intermediaries between the user and the market. In the DeFi ecosystem, transactions occur in a way that... direct, "peer-to-peer" interaction through smart contracts, without the involvement of a broker. intermediate (BRQ, 2023). This creates a regulatory void, as the prior authorization model and Supervision, central to the law, does not apply to decentralized protocols. The authorities will have to facing the challenge of ensuring tax compliance and crime prevention in an environment without a centralized control point to be regulated (MIGALHAS, 2023).

The table below summarizes the main gaps and limitations of Law No. 14.478/2022, highlighting areas that require additional regulation and continuous adaptation.

Limit of Law No. 14.478/2022	Problem Description	Consequences for the Market and Investors
<b>Omission of Segregation Assets</b>	It does not require the separation of client funds and brokerage assets (MY LEGAL WEBSITE, 2022; INFO MONEY, 2023).	Risk of loss of investors' capital in case of bankruptcy or insolvency of the exchange.
<b>Uncertainty Tax</b>	It does not address the taxation of crypto assets. (MY LEGAL WEBSITE, 2022), leaving the matter under consideration.	Legal uncertainty regarding complex operations such as barter transactions and <i>airdrop receipts</i> , generating

	RFB regulations and previous consultation solutions.	tax compliance challenges (SILVA; LECH, 2022).
<b>Inadequacy for DeFi</b>	Regulatory model focused on centralized intermediaries (VASPs) (BRQ, 2023), unable to encompass decentralized financial protocols.	It creates a regulatory vacuum for one of the most important innovations in the crypto economy, hindering supervision and the fight against illegal activities in <i>peer-to-peer</i> transactions (MIGALHAS, 2023).

## 5. Comparative Overview: The Brazilian Model and the Global Approach

Brazil's regulatory approach, by opting for a principle-based law, contrasts with that of Other jurisdictions, such as the European Union, have sought a more detailed regulatory framework.

### 5.1. Brazil (Law 14.478/2022) vs. European Union (MiCA)

While Law No. 14,478/2022 establishes general guidelines and delegates regulation to the BACEN (IDP, 2024), the Markets in Cryptoassets Regulation (MiCA) of the European Union is an "autonomous legislation" that creates a detailed legal framework for the sector (NORTON ROSE) (FULBRIGHT, 2023). MiCA categorizes crypto assets into different classes, such as *tokens* referenced by assets (ARTs) and electronic money *tokens* (EMTs), and imposes requirements for Governance and investor protection in a direct and harmonized manner for all member countries. (IDP, 2024).

The European approach offers greater legal certainty from the outset, while the Brazilian approach... It prioritizes flexibility and adaptation through sub-legal regulation. This philosophical difference This approach has long-term implications for security and innovation in each market.

The following table provides a concise comparative analysis between the two models.

Criteria of Comparison	Brazil (Law No. 14.478/2022)	European Union (MiCA Regulation)
<b>Approach Regulates</b>	Based on principles, with powers delegated to a technical authority (Central Bank of Brazil). (BARBOSA; BESSONE, 2023; IDP, 2024).	Comprehensive and detailed, with a straightforward normative framework (NORTON ROSE FULBRIGHT, 2023).
<b>Categorization Assets</b>	Broad definition of "virtual asset" exclusions with (BRAZIL, 2022).	Explicit categorization into classes (ARTs, EMTs, etc.) with specific requirements for each one (IDP, 2024).
<b>Focus Regulatory</b>	Focused on the regulation of virtual asset service providers (VASPs) (BRAZIL, 2022; BARBOSA; BESSONE, 2023).	Focused on protecting investors, promoting transparency, and increasing control over companies that manage crypto assets (IDP, 2024).
<b>Standard Dependency</b>	The effectiveness of the law depends directly on its regulation.	It establishes clear and detailed rules, with less dependence on regulations.



<b>Secondary</b>	Sub-legal regulations of the Central Bank of Brazil (BANCO CENTRAL DO BRASIL, 2024).	complementary (IDP, 2024).
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## 6. Conclusions: Future Perspectives and the Path of Regulation in Brazil

Law No. 14,478/2022 is an undeniable step forward that removes Brazil from a state of anomie. Regulatory impact on the crypto-asset market. Its innovations, such as the first legal definition of assets, virtual systems and the inclusion of specific penal provisions mark a crucial step towards security and the integrity of the market (CHAIM, 2023; SENADO, 2022). The formalization of the protection of The consumer, in synergy with established case law, reinforces the framework of guarantees for the investor (ANDRADE, 2023).

However, the law is not an end point, but a starting point. Its main limitations They reside in the absence of a requirement for asset segregation and the omission of a clear tax framework for complex operations (MEU SITE JURÍDICO, 2022; INFO MONEY, 2023). Furthermore, its architecture, focused on centralized intermediaries, makes it structurally... inadequate for dealing with the growing phenomenon of Decentralized Finance (DeFi) (MIGALHAS, 2023).

The effectiveness of the legislation will depend, to a large extent, on the Bank's capacity and agility. The central focus is on publishing secondary regulations that will face the challenge of filling gaps in the law, such as the issue of asset segregation (CENTRAL BANK OF BRAZIL, 2024; DEMAREST LAWYERS, 2024). Law No. 14,478/2022, by opting for a principle-based model, reflects a A different path from that adopted by jurisdictions such as the European Union. The success of this strategy of Flexible regulation will depend on the ability of the Brazilian legal system to adapt to a market. A financial system that evolves at an exponential rate. The law is, therefore, the beginning of a process. Continuous adaptation of the law to one of the greatest innovations of the digital age.

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