

CRYPTO PAYMENTS PLAYBOOK



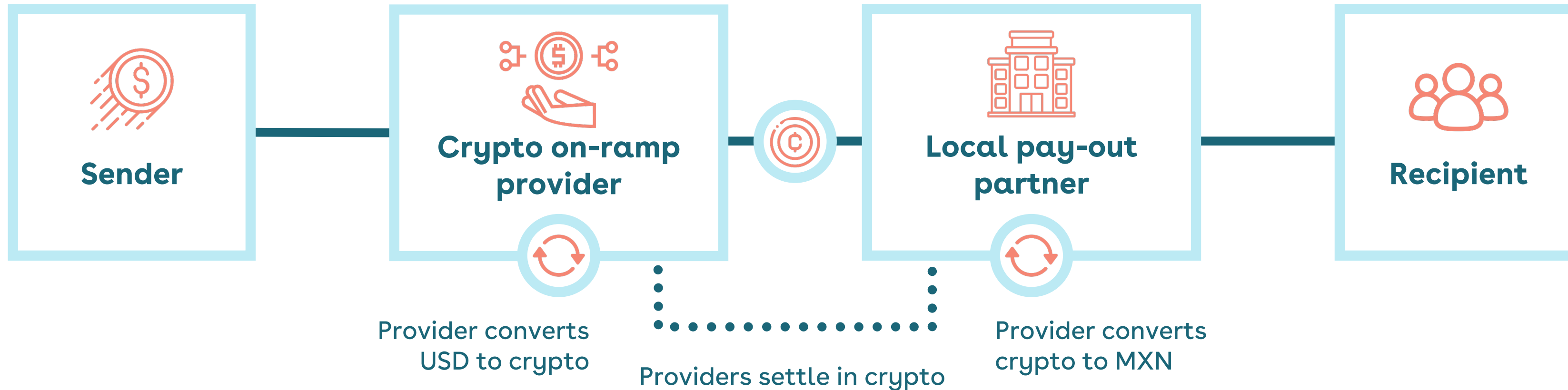
Payments
Playbook Series

Crypto's **global reach** and **speed** are driving the next evolution in **cross-border payments**.

Cross-border payments have long faced greater challenges of high costs, low speed, limited access, and low transparency, compared to domestic payments.

Against this backdrop, crypto assets are emerging as a **bridging asset** to facilitate currency conversion and settlement execution, which can help address some of these challenges. One model involves the **seamless orchestration** of conversions between fiat/crypto and traditional payment processing to support funding and last-mile payout in local currencies.

Anatomy of a crypto-based cross-border payment (USD to crypto to MXN)



Inherent in this model is an **interoperability** between crypto providers and traditional rails that can help reshape a range of cross-border payments use cases, including **remittances**, **trade finance**, and **supplier payments**—without the end-user sender and recipient themselves necessarily having any contact with crypto.

As traditional payment services and the crypto ecosystem **converge** . . .

A **multi-rail strategy** that enables choice gives traditional payment service providers and financial institutions a competitive edge. Crypto companies can leverage the **connectivity and scale** from partnering with traditional payment service providers or financial institutions to expand beyond a crypto-native user base and allow customers to move more easily between fiat and crypto.

This Crypto Payments Playbook helps navigate the regulatory and legal complexities by laying out the key considerations that are critical to success.

Funds Flow
Design

Regulatory
Strategy

Compliance &
Risk
Management
Controls

Commercial
Law
Framework

FINTECH AND
FINANCIAL SERVICES



FUNDS FLOW DESIGN

Among many design choices that will impact the viability of a crypto-based arrangement for cross-border payments, consider as a first step focusing on the following:

- The type of crypto asset used in the arrangement:
 - The crypto asset used in the arrangement is a critical feature, as it may impact users' and the industry's confidence in the arrangement and the arrangement's effectiveness for cross-border payments
 - This confidence and effectiveness derives not only from ease of use and depth of the market for conversion, but also from its perceived safety
 - Unique to stablecoins, this safety is strongly impacted by the quality and composition of the assets in the stablecoin's reserve, among other features
- The on- and off-ramps between the crypto asset and traditional payment services:
 - These on- and off-ramps are the entities that convert one fiat currency into crypto, which is transferred between them and converted into another fiat currency
 - The availability and functioning off these on- and off-ramps are critical to the viability of an arrangement for cross-border payments



REGULATORY STRATEGY

Consider the regulatory status of the arrangement and the regulatory requirements that apply to parties in the arrangement, including the following for the U.S. leg of the cross-border payment:

- Federal law, requires money services businesses (including administrators and exchangers of convertible virtual currencies) to register with the Financial Crimes Enforcement Network (FinCEN)
- The patchwork of state money transmission laws, which each have differing exemptions and interpretations, including with respect to crypto
 - A state's licensure requirements generally apply to persons engaged in the business of money transmission within that state, which typically involves the receipt of money from one party for the purpose of transmitting it to another or the sale or issuance of a payment instrument or stored value
 - Some states have addressed how their money transmission regulatory regime applies to crypto assets through formal statutory amendments or informal guidance or enforcement actions
- Comprehensive virtual currency regulatory regimes enacted in New York, Louisiana, and California, which have stand-alone licensure requirements
- Unique bank supervisory considerations if applicable, which may require giving prior notice to or obtaining supervisory non-objection from the appropriate federal banking agency
- The treatment of crypto under securities laws, which remains uncertain and continues to change



COMPLIANCE & RISK-MANAGEMENT CONTROLS

Ensure that the arrangement complies with applicable legal and regulatory requirements, including the following from a U.S. law standpoint:

- Economic and trade sanctions administered by the Office of Foreign Assets Control (OFAC), under which significant penalties can be imposed for violations on a strict-liability basis
- Anti-money laundering and countering of financing of terrorism compliance requirements if applicable, which include maintaining an AML program and reporting suspicious activity to FinCEN
- Consumer protection laws and regulations if applicable, which require vigilance with respect to disclosure requirements for remittances (including fees and conversion rates) and any misrepresentations, misleading statements to customers about products or services, or consumer losses arising from operational failures or unauthorized transactions
- For banks, safety and soundness considerations, which include ensuring appropriate risk management depending on their role in the arrangement, particularly with respect to operational, cybersecurity, and settlement risk and exposures to third parties in the arrangement.



COMMERCIAL LAW FRAMEWORK

Clarity and certainty around the legal rights and obligations of parties involved in the arrangement at each step of the end-to-end transfer are key, particularly for the following areas:

- Limitations around the transactions that may be processed through the arrangement, such as if they must be for the sender's own account or may be on behalf of the sender's customer
- Discretion to reject a transaction request and the ability to impose conditions that must be satisfied before a transaction will be processed
- Obligations with respect to inquiries and error resolution procedures
- The ability to cancel or amend a transaction in progress and related procedures
- Communication and clear recourse among parties about an exception (such as an error, an unauthorized transfer, or a rejection) that occurred with a transaction
- The potential applicability of new Article 12 to the Uniform Commercial Code on controllable electronic records to the arrangement, which was approved by the Uniform Law Commission (ULC) and the American Law Institute (ALI) in 2022 and is in the process of being enacted by states



HOW WE CAN HELP

FINTECH AND
FINANCIAL SERVICES

Wilson Sonsini's Fintech and Financial Services attorneys are market leaders in creatively and collaboratively partnering with clients at the forefront of payments innovation.

We are a **one-stop shop** for innovators in the payment space. We have deep experience crafting sophisticated legal frameworks, with a view to:

- minimizing regulatory risks
- incorporating industry best practices
- creatively problem-solving with our clients



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