



# Blockchain and Digital Assets News and Trends

[Achieving Digital Transformation and Securing Digital Assets](#)

## BLOCKCHAIN AND DIGITAL ASSETS NEWS AND TRENDS

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To remain competitive, companies find themselves increasing their efforts to digitally transform their businesses by developing new offerings based on emerging technologies and integrating these technologies into existing product and service offerings.

This is our first monthly bulletin for 2020, aiming to help companies identify important and significant legal developments governing the use and acceptance of blockchain technology, smart contracts and digital assets. In this issue, we also feature a spotlight on Asia Pacific developments.

While the use cases for blockchain technology are vast, from copyright protection to voting, most of the current adoption is in the financial services section and the focus of this bulletin will be primarily on the use of blockchain and or smart contracts in that sector. With respect to digital assets, we have organized our approach to this topic by discussing it in terms of traditional asset type or function (although the types and functions may overlap), that is, digital assets as:

- Securities
- Virtual currencies
- Commodities

- Deposits, accounts, intangibles
- Negotiable instruments
- Electronic chattel paper
- Digitized assets

Digital assets can themselves be assets or instead can reflect the ownership of an underlying asset. For example, electronic records that are the equivalents of negotiable instruments and electronic chattel paper would be digital assets, as would an electronic recording of a security interest in the underlying asset, such as recording title to real or personal property and the use of tokens to represent revenue streams from otherwise illiquid assets such as patents and commercial real estate (sometimes referred to as a "tokenized" or digitized asset).

In addition to reporting on the law and regulation governing blockchain, smart contracts and digital assets, this bulletin will also report on the legal developments to support the infrastructure and ecosystems enabling the use and acceptance of these new technologies.

Each issue will feature in-depth insight on a timely and important current topic. In this issue, we look at some of the tax issues arising around cryptocurrency: in the US, reporting of charitable donations of cryptocurrency assets, and in the UK, new guidance from HMRC.

For related information regarding digital transformation, please see our monthly bulletin, *eSignature and ePayment News and Trends*.

## INSIGHT

### Taxation of cryptocurrency: reporting charitable contributions in the US, and new developments in the UK

By Thomas Geraghty

In recent years, owners of appreciated cryptocurrency assets have donated cryptocurrency to the relatively small number of charities that currently accept such donations. Apart from convenience, a significant driver behind these donations is that donors of cryptocurrency do not have to pay US income tax on any appreciation in the donated cryptocurrency and generally can take a deduction equal to the full value of the donated cryptocurrency. Charities that accept (or want to accept) donations of cryptocurrency face a number of administrative challenges. This update addresses one such challenge – US income tax reporting – and outlines recent IRS guidance on the topic. Additionally, we review new taxation guidance issued in the United Kingdom. Read more.

#### **FEDERAL DEVELOPMENTS**

##### ***Digital assets***

**SEC 2020 exams to focus on fintech, information security, and digital assets.** On January 7, the SEC's Office of Compliance Inspections and Examinations (OCIE) announced its 2020 Examination Priorities. Published annually, OCIE's priorities release is designed to provide securities industry participants with insight into OCIE's risk-based approach to examinations and the areas it currently believes present potential risks to investors and the US capital markets. Among this year's areas of focus are Information Security, Fintech and Innovation, Digital Assets and Electronic Investment Advice (*ie*, robo-advisers). For more detail see our client alert.

##### **Cryptocurrency bill introduced in Congress.**

Last month, US Representative Paul Gosar (R-AZ) introduced a discussion draft entitled the Crypto-Currency Act of 2020 for consideration. The bill defines three types of digital assets and assigns each to a sole authoritative regulatory agency. "Crypto-commodities" are to be regulated by the CFTC; "crypto-currencies" are to be regulated by FinCEN; and "crypto-securities" are to be regulated by the SEC. Each "Federal Digital Asset Regulator" must maintain a public record of all licenses, certifications, and/or registrations that it requires to create, issue, or trade digital assets. The bill's stated purpose is to attribute regulatory clarity regarding which federal agencies are responsible for the different types of digital assets.

##### ***Securities***

**SEC cautions investors about initial exchange offerings.** The SEC's Office of Investor Education and Advocacy issued an alert urging investors to use caution before investing in so-called "initial exchange offerings" (IEOs) through online trading platforms. The January 14 alert states, "Claims of new technologies and financial products, such as those associated with digital asset offerings, and claims that IEOs are vetted by trading platforms, can be used improperly to entice investors with the false promise of high returns in a new investment space." The alert also details an array of concerns arising from such offerings.

**SEC postpones decision on bitcoin ETF.** On December 20, 2019, the SEC announced that it will continue to evaluate the proposal of NYSE Arca's proposed rule change to list and trade share US Bitcoin and Treasure Investment Trust of Wilshire Phoenix Funds. February 26 was set as the new decision date. No bitcoin ETF proposal has been granted by the SEC, and the only proposal still pending is the NYSE Arca proposal – reported in our July issue.

**NASAA announces top investor threats for 2020.** On December 23, 2019, the North American Securities Administrators Association (NASAA) announced Ponzi schemes and cryptocurrency-related investments as two of the top five products or schemes likely to trap unwary investors in 2020.

**SEC seeks public comment on proposed rule change for securities token trading platform.**

On January 3, the SEC published a notice of filing of a proposed rule change by Box Exchange LLC in connection with the proposed commencement of operations of Boston Security Token Exchange LLC, an operator of a securities token trading platform, to trade digital securities tokens. Feedback on the proposed rule must be submitted by January 24 to [rule-comments@sec.gov](mailto:rule-comments@sec.gov).

**Virtual currency**

**Congressional members request IRS to further clarify October guidance.** A group of representatives, including members of the Congressional Blockchain Caucus, sent a letter to the IRS Commissioner on December 20, 2019 requesting that the IRS clarify its tax policy on reporting of cryptocurrency forks and airdrops issued in October (previously reported in our October issue). The letter poses the following questions for clarification:

1. "Does the IRS intend to clarify its airdrop and fork hypotheticals to better match the actual nature of these events within the cryptocurrency ecosystem? When does the IRS anticipate issuing that clarification?"
2. "Does the IRS intend to clarify its standard for finding dominion and control over forked assets wherein some level of knowledge and actual affirmative steps taken are necessary to find that the taxpayer has dominion and control?"
3. "Does the IRS intend to apply the current guidance or any future guidance retroactively, or will the IRS issue proposed guidance that is subject to notice and comment?"

**FinTech**

**OCC appeals right to grant fintech charters to non-banks.** On December 19, 2019, the Office of the Comptroller of the Currency filed an appeal with the Second Circuit of the ruling of the Southern District of New York court in *Lacewell v. OCC*, Case 1:18-cv-08377-VM (SDNY)(ECF No. 45), which held that the OCC lacks the authority to grant National Bank Act charters to nondepository institutions. We reviewed the *Lacewell* judgment in our November issue.

**STATE DEVELOPMENTS**

**Cryptocurrency**

**Texas State Securities Board announces 2020 top investor threats. On January 14, the TSSB** published a list of the top threats facing investors in 2020. The list features cryptocurrency offerings and alternative investments for self-directed IRAs (such as virtual currencies).

**Blockchain**

**State legislatures consider blockchain legislation.** The following states have bills pending on blockchain issues for evaluation by their legislatures in 2020:

- Connecticut (SB1032 – issue an RFP for blockchain use in state government, SB 1033 – non-compete agreements in

blockchain industry, HB 7310 – authorizing smart contracts in state commerce)

- Iowa (SB 137 – amend UETA for blockchain)
- Kentucky (BR 947 – establish blockchain working group)
- New Jersey (AB 5240 / SB 4208 – blockchain digital payment platform)
- New York (AB 1351 – blockchain use by board of elections, AB 1371 – establish a blockchain taskforce, AB 1398 – amend economic development law for blockchain, AB 1683 / SB 4142 – amends state technology law for blockchain and smart contracts)
- Ohio (HB 220 – allows state government to use distributed ledger technology)
- South Carolina (HB 4351 / SB 738 – establish state as incubator) and
- West Virginia (SB 583 – create fintech sandbox program).

## ENFORCEMENT ACTIONS

### FEDERAL

#### Securities

**SEC charges digital asset issuer in fraudulent ICO.** On December 11, 2019, the SEC announced it has charged United Delta, Inc. DBA Shopin and its founder, Eran Eyal, with defrauding investors in an ICO that raised more than \$42 million selling “Shopin Tokens.” Shopin intended to use the funds raised to create universal shopper profiles maintained on the blockchain to track purchase histories across online retailers. The SEC also alleges that Eyal misappropriated at least \$500,000 of investor funds for his personal use. The SEC’s complaint seeks permanent injunctions, disgorgement with interest, and civil penalties, as well as an officer-and-director bar against Eyal and a bar against Eyal and Shopin prohibiting them from participating in any future offering of digital-asset securities.

**SEC settles charges against blockchain technology company.** The SEC announced on December 18, 2019, that it settled charges against Blockchain of Things Inc. (BCOT) for conducting an unregistered initial coin offering of digital tokens. BCOT raised nearly \$13 million for building a development platform for digital assets and message transmission. The SEC’s order found that BCOT did not register its ICO pursuant to the federal securities laws, nor did it qualify for an exemption from the registration requirements. The order requires BCOT to cease and desist from violations of the registration provisions of the federal securities laws, imposes a \$250,000 penalty, and requires BCOT to return all invested funds. BCOT will also register its tokens as securities.

### STATE

#### Virtual currency

**Four men arrested in bitcoin Ponzi scheme.** On December 10, 2019, the US Attorney’s Office of the District of New Jersey announced that three men were arrested in connection with a cryptocurrency mining scheme that defrauded investors of \$722 million and a fourth man was later arrested in Germany. An additional man remains at large. The men were charged with conspiracy to commit wire fraud and conspiracy to offer and sell unregistered securities as a result of a Ponzi scheme luring thousands of victims with promises of large returns on their investments in a bitcoin mining pool called BitClub Network. The combined charges carry a maximum potential penalty of 25 years in prison, and a fine of up to \$500,000.

**Oregon arrests Canadian men for stealing bitcoin.** On December 16, 2019, the US Attorney’s Office in the District of Oregon announced the arrest of two Canadian men who were operating a bitcoin theft ring. The men used a Twitter account to cause victims to believe they were communicating with a customer service representative of an online platform for exchanging virtual currency. The men obtained victims’ email and login credentials for their digital wallets and misappropriated more than \$160,000 in bitcoin. The men agreed to pay restitution in full.

**Pennsylvania man indicted for SIM swapping and cryptocurrency theft.** On December 11, 2019, the US Attorney’s Office for the District of California announced the indictment of Anthony Francis Faulk, a Pennsylvania man, for conspiracy to commit wire fraud and extortion in a scheme to obtain cryptocurrencies and other money and property. The indictment alleged that Faulk targeted assets owned and controlled by executives of cryptocurrency-related companies and cryptocurrency investors, causing cellphone providers to transfer the victims’ cellphone numbers to Faulk’s devices. Faulk then used the victims’ cellphone numbers to access their email, electronic storage and cryptocurrency accounts. If convicted, Faulk faces a maximum statutory sentence of 22 years in prison, a \$500,000 fine, and potential forfeiture or

restitution.

**New York man indicted for SIM swapping, and identity and cryptocurrency theft.** The Manhattan District Attorney's office announced on December 18 the indictment of Yousef Selassie for stealing the identities of at least 75 victims from 20 different US states, using SIM swapping to steal more than \$1 million in cryptocurrency. Among the charges on the indictment are identity theft, grand larceny, computer trespass, and scheme to defraud. Selassie used his mobile phone and a computer to access the victims' cryptocurrency accounts and other online accounts.

## ASIA PACIFIC SPOTLIGHT

### *Digital assets*

#### *Hong Kong*

**New regulation on security token exchanges.** Exchanges that offer trading of at least one security token on their platform are now subject to licensing and supervisory regime of the Securities and Futures Commission of Hong Kong (SFC), based on a new position paper issued in November 2019. Such exchanges are also now required to comply with SFC-prescribed operational standards (eg, due diligence on all virtual assets before including them for trading, KYC, AML/CFT, risk disclosure etc.). The grant of the first batch of security token exchange licenses is imminent.

**New regulation on crypto fund managers.** The SFC also issued a series of requirements with which virtual asset fund managers must comply in terms of management and operations, liquid capital, cybersecurity, compliance, custody and counterparty risks. The requirements also apply to entities overseeing funds that allocate more than 10 percent of their portfolios in virtual assets.

**Hong Kong may have its own new digital currency.** The Hong Kong Monetary Authority (HKMA), Hong Kong's de facto central bank, revealed that it has been conducting research for the application of a central bank digital currency and will release a report in Q1 2020. The use of digital currency is focused on the institutional side, particularly in domestic interbank payments, corporate payments at the wholesale level, and the delivery-versus-payment of debt securities settlement. However, HKMA has no plans to issue digital currency to individual users.

Furthermore, the HKMA announced joint research with Bank of Thailand to study the application of central bank digital currency to cross-border payments, with a view of facilitating Hong Kong dollar – Thai baht payment-versus-payment among banks in Hong Kong and Thailand. A joint report is scheduled to be released in Q1 2020.

#### *China*

**China stepped up crackdown on cryptocurrency ICOs and trading.** The governments of top-tier Chinese cities, among them Beijing, Shanghai, and Shenzhen, reportedly issued risk alerts to the public in November 2019 warning of "illegal fundraising" through cryptocurrencies. The government shut down six onshore virtual currency trading platforms, 203 platforms linked to overseas servers, nearly 10,000 payment accounts, and about 300 WeChat marketing accounts. Reports indicate that this includes the shutdown of the Shanghai office of a major global crypto exchange business, which was raided by local police in the same month, and employees were forced to work remotely or relocate to Singapore.

**Development of the first state-backed digital currency underway by China's central bank.** The digital currency will be first distributed to commercial banks, and then to users or businesses who register digital wallets with these banks. The digital currency is expected to be freely exchangeable with the Chinese Yuan.

Reports reveal that the People's Bank of China (PBOC) has already completed the "top-level" design, standard formulation, functional research and development of the digital currency. The next steps would be to ensure stability and security of the digital currency. However, the digital currency will not use blockchain technology, as the decentralization element of blockchain technology will raise concerns from a control perspective.

The launch date is unknown at this time, but reports reveal that Shenzhen and Suzhou will be the first cities to pilot the new digital currency. The PBOC is also said to have partnered with seven state-owned commercial banks and telecoms enterprises to roll out the test.

#### *Singapore*

**Cryptocurrencies are “property” under Singapore law.** The Singapore International Commercial Court heard its first ever cryptocurrency trial in Singapore. In *B2C2 Ltd v Quoine* [2019] SGHC(I) 03, the court ruled that cryptocurrencies can be considered as property which are capable of being held in trust for third parties. However, the court did not consider the precise nature of the property right, which will be critical in matters of transfers, secured financing, insolvency, insurance, inheritance and taxation. Nevertheless, this issue has been a subject of academic debate, with further guidance expected to be issued in the near future.

### **Blockchain**

#### **Hong Kong**

**Tencent is building a blockchain-based virtual bank.** Fusion Bank, which is a joint venture between Tencent, ICBC, Hong Kong Exchanges and Clearing and Hillhouse Capital, will likely offer full-service banking in Hong Kong with a particular focus on low-value deposits and savings for consumers and SMEs. However, no expected launch date has been announced.

#### **China**

**Chinese President openly supports blockchain technology.** Xi Jinping, the Chinese President, openly recognized in an October 2019 speech the vital role that blockchain technology plays in development of innovative technologies and transformation of existing industries. This shortly follows the rollout of a state-backed research white paper on blockchain technology. In particular, Xi advocates for the use of distributed ledger technology in the digital economy, and encourages the use of blockchain solutions in the domestic market, including transportation, energy, employment, medical health, commodity anti-counterfeiting and food safety.

#### **Singapore**

**Singapore develops blockchain-based payment system.** The new prototype solution enables payments to be carried out in different currencies on the same network and is developed by the Monetary Authority of Singapore, JP Morgan and Temasek Holdings. The prototype is undergoing an industry testing phase to determine its ability to integrate with commercial blockchain applications. The new solution is part of the government-led initiative to explore the use of blockchain for clearing and settlement of payments and securities, and is expected to support use cases such as delivery-versus-payment settlement with private exchanges, conditional payments, escrow for trade, and payment commitments for trade finance.

## Trending

OCIE announces 2020 examination priorities

### More from DLA Piper

DLA Piper is pleased to announce the release of a special report, "Cryptocurrency and its impact on insolvency and restructuring," prepared on behalf of INSOL International. Among its findings: the rise in the use of cryptocurrencies has begun to create difficulties for the administration of bankruptcy cases.

### In case you missed it

DoD's new cybersecurity compliance program – what you need to know

The December 2019 issue of *eSignature and ePayment News and Trends*

### Read these next

Effective January 1, 2020, a game-changing privacy law will go into effect in California, the California Consumer Privacy Act of 2018. The CCPA will have profound implications for businesses that collect personal information about persons in California, even if the business is not based in the state. Find out more on our CCPA focus page.

DLA Piper discusses tokenization in real estate in the latest installment of our new series, *PropTech in the United States* –

*where we're heading.*

DLA Piper has released an analysis of the July 31 FCA policy statement PS19/22: Guidance on Cryptoassets, which sets out the FCA's final guidance on whether dealings involving cryptoassets require authorisation under FSMA.

## Contacts

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## IN THIS ISSUE

- Taxation of cryptocurrency: reporting charitable contributions in the US and new developments in the UK

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