

Article Information

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Blockchain Bites: ATO drops crypto GST guidance, FTX reports new details of collapse and sets bar date for claims, Singapore proposes common standards for digital money, State of Crypto Report: the institutions keep coming, AI-generated news sparks false rumours of SEC Chair

Michael Bacina, Steven Pettigrove, Jake Huang, Luke Misthos, Luke Higgins and Kelly Kim of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

ATO drops GST guidance for crypto

The Australian Taxation Office (ATO) has released [new public guidance](#) addressing the application of goods and services tax (GST) on certain 'digital currency' interactions.

The release contains four sub-sections addressing the GST implications for:

1. [digital currency in general](#);
2. [digital currency trading](#);
3. [digital currency exchange \(DCE\) interactions](#); and
4. [digital currency as a form of payment](#).

GST and digital currency

Despite the lack of a formal definition of 'digital currency' in Australian taxation legislation, the ATO has defined 'digital currency' in the guidance as a form of [crypto asset](#) "that uses cryptography and distributed ledger technology to secure and record transactions" and is a digital unit of value that can be provided as a payment. Examples provided in the guidance are BTC, ETH, and LTC.

Conversely, the ATO has carved out certain crypto assets that are *not* digital currency, including:

- loyalty points that can be redeemed for goods;
- in-game tokens that cannot be used outside of the particular game's digital environment;
- non-fungible tokens (NFTs);
- stablecoins; and
- coins from initial coin offerings that are securities, shares, interests in managed investment schemes, derivatives, or otherwise give a right or entitlement to goods and services.

The exclusion of 'stablecoins' from the ATO's definition of 'digital currency' is curious as stablecoins are usually thought of as being a type of crypto asset most akin to regular 'currency'.

GST and digital currency trading

The guidance outlines that if you trade digital currency in exchange for money or other digital currency with an Australian resident, the 'supply' of digital currency will be an input-taxed financial supply and therefore you don't have to pay GST.

Example: selling digital currency to a resident located in Australia

Adnan is buying and selling digital currency through an enterprise he carries on in Australia and is registered for GST.

Adnan sells CostyCoin (a digital currency) for Australian dollars to CoinWallet Pty Ltd, a digital currency exchange.

CoinWallet is an Australian resident company that is located in Australia and is registered for GST. Adnan's supply of CostyCoin is an input taxed financial supply and he will not have to report and pay any GST for this supply.

Also included in this subsection of the guidance is an example pertaining to the sale of digital currency to a non-resident for Australian tax purposes, an outline of the requirements for GST registration, and an outline of the process to claim GST credits.

GST and digital currency exchanges

The guidance confirms that DCEs in Australia must report and pay GST on the taxable supplies they make when facilitating trades of crypto assets to Australian residents located in Australia. Conversely, the supply of facilitating trades of crypto assets to non-residents who are not located in Australia will be GST free.

The publication also references [specific GST guidance relating to NFTs](#) and NFT marketplaces which the ATO considers may qualify as [electronic distribution platforms](#).

GST and digital currency as payment

Finally, the guidance outlines that if a taxpayer makes a taxable supply (i.e. a supply that ordinarily attracts GST) and receives digital currency as a payment for that supply, the amount included in the taxpayer's business activity statement must be in Australian dollars (as opposed to denominated in the particular digital currency received).

The AUD value of the digital currency received as payment for the taxable supply is calculated at a different point in time (the 'conversion day') depending on whether the taxpayer accounts for GST on a cash or non-cash basis. For taxpayers accounting on a cash basis, the conversion day is the date they convert the digital currency payment into Australia dollars. For taxpayers accounting on a non-cash basis, the conversion day is the earliest of:

1. the day they receive *any* of the digital currency payment relating to the transaction; or
2. the transaction date or the invoice date.

Conclusion

Although the guidance is relatively non-contentious and is reflective of existing industry positions and practices, it is a welcome clarification of the guidance regarding cryptocurrency interactions. The ATO is expected to [release additional public guidance by December 2023](#) that will address the tax treatment of crypto assets.

FTX reports new details of collapse, sets bar date for claims

Last week, the bankruptcy advisors to the [collapsed](#) crypto-exchange FTX filed a [second interim report](#) detailing their investigations into the commingling and misuse of customer assets at FTX.com. On a more positive note, the report also confirms that the Chapter 11 debtors have recovered approximately \$7 billion in liquid assets and anticipate more recoveries, raising the prospect of a significant dividend to creditors in the coming years.

The latest report follows a [first interim report](#) released in April which [detailed alleged management and control failures](#) at the FTX group, and included scathing criticism of Sam Bankman-Fried (**SBF**) and other FTX senior executives. In the second report, John Ray III, the veteran restructuring advisor who now acts as CEO of FTX, said:

From the inception of the FTX.com exchange, FTX Group commingled customer deposits and corporate funds, and misused them with abandon.

The report was filed in the US Bankruptcy Court for the District of Delaware and details the following findings with respect to the misappropriation of customer funds by the FTX Group:

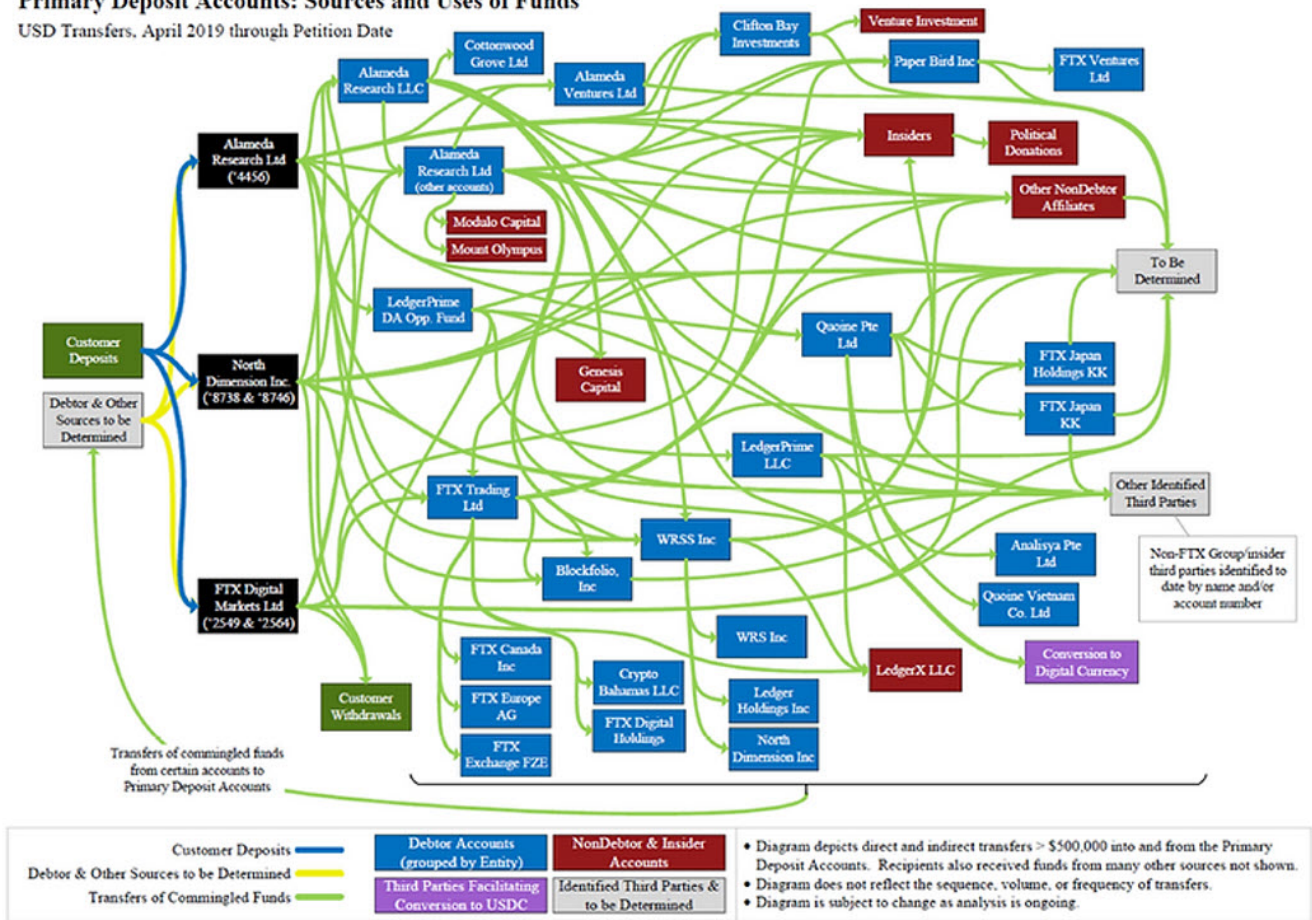
1. FTX Senior Executives (which includes [SBE](#), Gary Wang and Nishad Singh) and others at their direction, used commingled customer and corporate funds for speculative trading, venture investments and the purchase of luxury properties, as well as political and other donations.

2. As of the petition date, the FTX.com exchange owed customers approximately \$8.7 billion. The \$8.7 billion in customer-deposited assets was misappropriated from the FTX.com exchange, the vast majority of which – over \$6.4 billion was in cash and stablecoins.
3. FTX misled Congress, federal agencies, and other third parties by claiming that it “regularly reconcile[d] customers’ trading balances” against funds held by the exchanges. In fact, there is no evidence that the FTX group performed any meaningful reconciliation of customer assets .
4. While the FTX group claimed publicly that it protected and separated customer deposits, FTX Trading made no such representation in its Terms of Service with customers. In fact, the Terms of Service were silent on what FTX Trading would do with customers’ fiat currency, and made no claim that the company would segregate, custody, secure or otherwise protect it.
5. The FTX exchanges did not distinguish or differentiate between cash and stablecoin held in customer accounts, but treated them collectively as “e-money.” As a result of this lack of recordkeeping, the Chapter 11 Debtors are unable to provide a breakdown of the cash and stablecoin in customers’ accounts.
6. It is extremely challenging to trace the substantial assets of the Debtors to any particular source of funding, or to differentiate between the FTX group’s operating funds and deposits made by its customers. This is caused by:
 - FTX Senior Executives and the FTX group funnelling customer deposits and withdrawals in fiat currency through bank accounts of Alameda Research Ltd (**Alameda**) and other affiliates, and misrepresenting to banks the purpose for which it was using the accounts.
 - The FTX group made no meaningful distinction between customer funds and Alameda funds.
 - The FTX group incorporated North Dimension Inc to open bank accounts through which it could operate the FTX.com exchange.
 - After FTX Digital Markets (**FTX DM**) was set up in July 2021 and opened US bank accounts in December 2021, the FTX group used the FTX DM accounts, like other accounts, on a commingled basis for many purposes, including the cycling of money to and from customers to meet withdrawal requests when necessary and various investments, donations and expenditures. The FTX group appears to have used the FTX DM accounts in part as a pass-through vehicle to funnel at least \$5.4 billion in customer deposits to FTX Trading.

The report also contains the following chart which shows the significant complexity and difficulty in tracing the sources and use of customer funds by the FTX Group:

Figure 1
Primary Deposit Accounts: Sources and Uses of Funds

USD Transfers, April 2019 through Petition Date



As more details have been revealed by the Chapter 11 advisors of the FTX group’s alleged management failures and mishandling of customer funds, it increasingly appears that the spectacular collapse of FTX was largely due to these failures rather than crypto specific business risks. However, more stringent licensing and custody rules and regulatory supervision may have helped prevent the misappropriation of customer assets, such as the stringent cold-wallet custody requirements introduced by Japan following the [Mt. Gox collapse](#) and which are now being implemented in various jurisdictions around Asia. To that end, the report is a further reminder of the need to establish fit-for-purpose regulation for digital assets businesses to better protect consumers.

In a further important development last week, the Delaware court also [set a deadline](#) for FTX customers to file claims in the Chapter 11 proceedings of 29 September 2023.

Singapore proposes common standards for digital money

On 20 June 2023, the Monetary Authority of Singapore (MAS) [published a whitepaper](#) proposing common conditions and standards for the use of digital money including stablecoins, central bank digital currencies (CBDCs) and tokenised bank deposits. The paper is a joint effort with the International Monetary Fund, Banca d’Italia, Bank of Korea, and a number of financial institutions and FinTech companies. The paper was released alongside the launch of software prototypes for so-called Purpose Bound Money (PBM), designed to allow senders to:

specify conditions, such as validity period and types of shops, when making transfers in digital money across different systems.

The Paper proposes PBM as a common standard for interacting with different distributed ledger technology and forms of money. It covers technical specifications as well as business and operating models to provide an understanding of how the PBM lifecycle works from issuance to redemption and how transactions can be planned through the protocol.

The paper notes that the standards will enable service providers to select the supporting ledger type that ‘best suits their business model and intended use cases’. It will also provide flexibility to users, by granting them access to digital money with their chosen wallet provider. [The MAS reported:](#)

With a common protocol, the same infrastructure can be used across multiple use cases. Stakeholders using different wallet providers can transfer digital assets to one another without the need for customisation.

Financial institutions and FinTech firms (including the likes of Amazon and Grab) have already begun trialling PBM for different use cases including ecommerce deliveries (e.g. payment escrow) and programmable rewards. The Paper also suggests other potential applications including pre-paid packages, contractual agreements, commercial lease, trade finance, donations and cross-border payments. Although it is currently at a trial stage, once implemented, PBMs are intended to enhance transparency and accountability of transactions by ensuring payments are made only when requisite conditions are satisfied.

Furthering its efforts to unlock the benefits of blockchain technology, the [MAS announced on 26 June that it will also expand the industry pilots under the Project Guardian](#) initiative adding more asset classes. In particular, 'asset and wealth management, fixed income and foreign exchange' were named as the three new areas. A new Project Guardian Industry Group was established to lead the proposed pilots, with over 11 participating financial institutions. In the asset and wealth management sector, the planned pilots vary from digital structured products to tokenised investment products. Under fixed income and foreign exchange, pilots concern tokenised bonds, bank liabilities and asset-backed securities. The Japan Financial Services Agency has joined the initiative, making it the first foreign regulator to participate in the project.

[This announcement follows MAS' first industry pilot in November 2022](#) under Project Guardian, which was launched with intent to explore the economic potential and value of public blockchains to facilitate digital asset trading and tokenisation.

The PBM concept and extension of Project Guardian are indicative of Singapore's ambition to continue to be a leader in payments and financial markets innovation by establishing common standards and piloting the use of blockchain technologies.

State of Crypto Report: The institutions keep coming

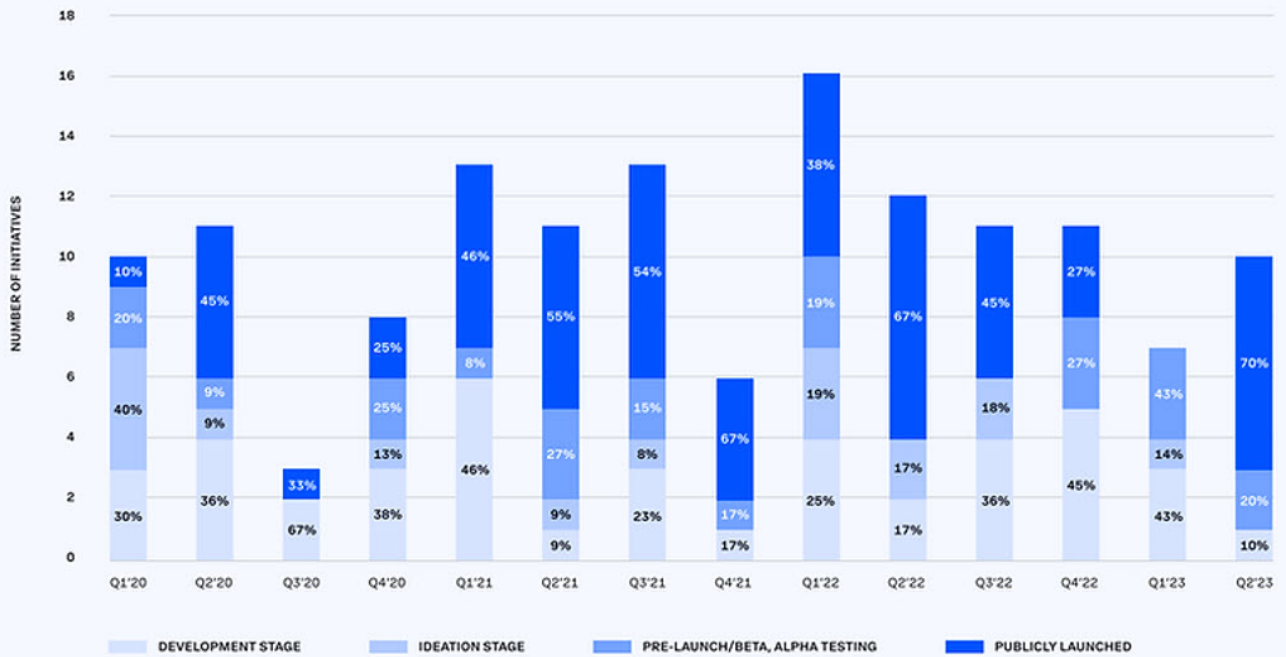
52% of Fortune 100 companies have pursued crypto, blockchain or web3 initiatives since the start of 2020, according to [research](#) conducted by Coinbase in partnership with [The Block](#), a web3 media outlet.

According to the research, about 60% of Fortune 100 initiatives reported since the start of 2022 are either in the pre-launch stage or already launched.

Meanwhile, 83% of surveyed Fortune 500 executives who are familiar with cryptocurrency or blockchain say their companies have either current initiatives or are planning them.

See table below for quarterly breakdown of initiatives by stage:

Fortune 100 Companies: A Quarterly Breakdown of Initiatives by Stage



Source: The Block Pro Research, 2023

According to the report:

These companies are innovating and investing in these technologies because they know that the century-old global financial system needs updating, that blockchain can be a foundational solution, and that not keeping pace will mean losing ground in this global economy to competitors around the world, among other possible reasons.

It also mentions that 64% of surveyed Fortune 500 executives who are familiar with cryptocurrency or blockchain agree that:

investing in these technologies is important for staying ahead of their competition.

The research summarises a list of key findings, including:

- tech, financial services and retail account for 75% of the initiatives undertaken by Fortune 100 companies since Q12020;
- Fortune 100 companies have made 109 private venture capital investments across 80 crypto blockchain startups since 2017, participating in rounds totalling more than \$8 billion;
- Data collection/management (for both customer and internal data) is a top current use case and also the focus of most planned initiatives among the Fortune 500;
- 77% of the surveyed executives agreed that blockchain could help make the financial system work better for everyone; and
- Among Fortune 100 tech brands, web3 initiatives have focused mainly on infrastructure, followed by supply chain management and data collection/management.

The research goes on to list a few high-profile initiatives:

- [JPMorgan](#) completes its first on-chain pilot of government bond transfer in November 2022;
- [ExxonMobil](#) pilots the use of excess natural gas energy to mine bitcoin in March 2022;
- Goldman Sachs, Microsoft, Deloitte and other tech companies team up with Digital Asset to launch a [new](#)

- [blockchain network](#) in May 2023;
- [Nike](#) partners with EA Sports to [integrate apparel NFTs](#) in video games.

Ironically, corporate America's embrace of crypto, blockchain and web3 technologies stands in stark contrast with the absence of a clear US regulatory framework, and the apparent policy of regulation by enforcement by the Securities and Exchange Commission (SEC). Coinbase itself is facing [charges](#) by the SEC, which it is [actively](#) contesting.

As the research points out, a lack of clear rules for crypto, blockchain and web3 tech is not only a top barrier to investment and adoption, but a perceived challenge to US leadership of the global financial system - 87% of the surveyed Fortune 500 executives say clear rules are important to sustain it; another nine in 10 (92%) agree that policymakers should develop new rules for these new technologies, instead of enforcing existing rules developed for older technologies.

This report comes at an interesting time for crypto with [mainstream adoption](#) increasing, and the SEC doubling down on enforcement of existing laws. It appears that institutional interest in Web3 remains strong despite the absence of regulatory clarity in the US.

AI-generated news sparks false rumours of SEC Chair's resignation

Fake news surrounding the resignation of Gary Gensler, chair of the SEC, has once again been making waves on social media. This time, however, artificial intelligence generated fake news appears to be the source of the rumours.

On 1 July 2023, an article surfaced on the website "[thecryptoalert.com](#)", stating that an anonymous official from the SEC had confirmed Gensler's resignation. The article alleges that Gensler resigned after being subjected to an internal investigation and review within the SEC after purported 'misconduct'.

Noting the lack of official press around this would-be-bombshell announcement, Cointelegraph conducted [an analysis](#) of the article using third-party AI detector ZeroGPT to reveal that the article exhibited a score of 96.8%, signalling a very high degree of AI text generation.

However, this did not stop several big name Twitter and YouTube accounts from reposting the content. Altcoin Daily, a cryptocurrency YouTube channel with 1.3M subscribers at the time of writing this article, [posted a video spreading the rumours](#):



False rumours of Gensler's resignation from the SEC [have circulated before](#). Although many members of the cryptocurrency community [may prefer a different Commissioner to Mr Gensler \(one that prefers constructive rule-making and fit for purpose regulation over regulation by enforcement\)](#), the latest rumours are a prime example of why readers and consumers of news must remain vigilant. In an era where information spreads like wildfire and artificial intelligence is becoming more and more powerful, consumers of news must continue to question the sources of information and scrutinise claims, especially those as significant as a purported resignation of a key regulatory official.

Those creating and disseminating false information, including AI generated content, should also be mindful of the potential legal consequences. Persons seeking to profit from spreading misinformation (for example, over a key government resignation or policy change) may open themselves to allegations of fraud or market manipulation.