

Article Information

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Blockchain Bites: FTX Failure: Reorganisation plan to forge a fresh future? Judge Rakoff rejects Ripple ruling in Luna litigation, Singapore mints new stablecoin framework, PayPal partners with Ledger to simplify crypto purchases

Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, 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.

FTX Failure: Reorganisation plan to forge a fresh future (except for FTT holders)?

On 31 July 2023, FTX, the global crypto exchange that is now collapsed and going through a US [Chapter 11 bankruptcy](#) procedure, issued a [draft plan of reorganization](#) in an attempt to facilitate creditor feedback and to seek consensual resolution of key issues in the bankruptcy.

The FTX Debtors emphasised that the reorganization plan, which contains a draft term sheet summarising key restructuring terms, is merely a draft to be commented on. This draft is not the formal plan for creditors to vote on.

FTX Debtors said they have decided to:

file the draft Plan publicly at a relatively early stage – before the expiration of customer bar dates, the completion of pending investigations, the resolution of important negotiations

Some of the key terms from the plan include:

- Global settlement will cancel most FTX intercompany claims;
- All customers of FTX.com constitute a single class (except NFT holders), with claim amount equal to the liquidated USD value of their customer entitlements at the petition time of the Chapter 11 proceeding;
- Fair market value of crypto assets will be determined on the Valuation Matrix filed by the Debtors, which was informed by independent experts;
- There will be an “anti double dip” arrangement requiring that each holder will receive the same recovery as another holder in a similar situation. The plan will require any holder of a claim to submit satisfactory evidence that such holder has not requested or received compensation for the same losses underlying such claim in connection with any other insolvency proceeding (such as the separate insolvency proceeding which FTX Australia and FTX DM are going through); and
- FTT token holders will [likely receive nothing](#) under the plan.

Importantly, this plan discussed a potential reboot of an offshore FTX exchange to increase creditor recoveries:

the Debtors may decide to establish in collaboration with third party investors a new company in a jurisdiction outside of the United States to operate a “rebooted” offshore platform not available to U.S. investors (an “Offshore Exchange Company”) or enter into a merger or similar transaction

However, on the same day this plan was released, the Official Committee of Unsecured Creditors voiced their strong opposition:-

[The Plan] was unilaterally proposed and largely ignores the Committee's suggestions that were raised (but not negotiated)

The Committee also accused the Debtors of filing their plan to meet a deadline the Debtors had previously committed to in order to show an "appearance of progress" imply that none had taken place. The Committee asserts that any successful reorganization plan must:

1. place control of the post-reorganization entities in the hands of "qualified parties" with "relevant experience" in the cryptocurrency markets, and who are selected by the Committee (as the representative of the creditors) and not the Debtors;
2. creating a regulatory-compliant recovery token (or tokens) and facilitating a re-started FTX exchange to enhance creditor recoveries; and
3. properly allocating value to the creditors most injured by the collapse.

If followed, such suggestions would be quite expensive and appear to place the Committee in a powerful position which would be unusual under a reorganisation.

Filing of the draft plan follows the [second interim report released late June 2023](#) which revealed that the US debtors have recovered nearly USD\$7 billion in liquid assets with prospect of more recoveries and the value of the assets increasing if crypto-markets rise.

Judge Rakoff rejects Ripple ruling in Luna litigation

On 31 July 2023, Justice Rakoff (**Rakoff J**) of the United States District Court (Southern District of New York), [rejected Terraform Labs' \(Terraform\) summary motion to dismiss a complaint brought by the Securities and Exchange Commission \(SEC\)](#). The SEC alleges that the company and its infamous founder and CEO, Do Kwon:

orchestrated a multi-billion-dollar fraud involving the development, marketing, and sale of various cryptocurrencies

and:

used false and materially misleading statements to entice U.S. investors to purchase and hold on to defendants' products...[which] were unregistered investment-contract securities

In their defence, Terraform and Kwon argue, among others:

- the SEC lacked jurisdiction to bring the claim against the Singapore based group;
- the SEC lack Congressional authority to regulate crypto-assets relying on the "major questions" theory as a matter of constitutional law;
- the SEC had failed to give sufficient notice or guidance on its treatment of crypto-assets as securities as a matter of due process; and
- the TerraUSD stablecoin and other crypto-assets issued by Terraform including Luna, wLuna, MIR and so-called mAssets were not unregistered securities under US securities laws.

Rakoff J rejected the defendant's motion to dismiss and accepted that the SEC's case is properly pleaded.

On the jurisdictional aspects, the SEC alleged that the company's direct sale of crypto-products to US firms, involving the US banking system as well as the defendants' marketing efforts in the US showed "an intent to conduct business in the United States". Hence, Rakoff J found that the SEC had 'the better of the argument' and that the SEC had jurisdiction over the defendants.

The judge also rejected the application of the "major questions" doctrine as inapplicable to the case, noting the breadth of the SEC's jurisdiction to deal with novel investment schemes and the relative size of the crypto-asset industry. He also rejected a due process argument, finding that the SEC had given sufficient notice through previous enforcement actions of

its view that certain crypto assets may constitute securities depending on the facts and circumstances.

Significantly, Justice Rakoff rejected the approach taken by another Justice of the District Court for the Southern District of New York, [Justice Torres, in the recent summary judgment application in SEC v Ripple Labs Inc.](#) While Rakoff J agreed that tokens may not inherently be securities, just like orange groves in Florida in the original Howey case, he apparently rejected Justice Torres' finding that Ripple Labs sales of the XRP coin to retail investors did not evolve an investment contract. Justice Rakoff questioned the validity of the Ripple judgment in commenting that the Howey test "makes no such distinction" between institutional purchasers and purchasers in secondary transactions.

In any event, Rakoff J concluded in this case that the defendant had embarked on a public campaign to induce both retail and institutional investors to buy their crypto-assets by:

by touting the profitability of the crypto-assets and the managerial and technical skills that would allow the defendants to maximize returns on the investors' coins

His Honour also declined to dismiss SEC's claims concerning fraud and securities registration requirements and stated that the SEC had a "plausible" claim grounded on factual allegations that the relevant crypto-assets qualified as securities.

[Investigations of Terraform and its CEO Do Kwon](#) have been ongoing for some time, involving [collaboration between prosecutors in the US and South Korea](#). [Kwon has consistently denied allegations](#) of fraud, making this clear through his social media comments as well as in public interviews. Kwon was arrested in Montenegro earlier this year on charges of using a false passport and is facing extradition to the US and South Korea.

Motions to dismiss of this nature are extremely difficult for a defendant to succeed on. While this is a preliminary decision of a first instance judge, and certain of the judge's findings may be subject to debate in higher courts or depending on the facts and circumstances, the comments in the decision show the multiple ways that the courts can consider crypto assets. The [contrast with the recent Ripple decision](#) further underscores the urgent need for legislative action establishing clear regulation for the industry in the US and abroad.

Singapore mints new stablecoin framework

On 15 August 2023, the Monetary Authority of Singapore (**MAS**) released details of Singapore's proposed [new regulatory framework](#) for stablecoins. The regulatory framework takes into account feedback received in a October 2022 [public consultation](#).

MAS's framework narrowly defines stablecoins as:

digital payment tokens designed to maintain a constant value against one or more specified fiat currencies.

According to the MAS, well-regulated stablecoins that preserve value stability:

can serve as a trusted medium of exchange to support innovation, including the "on-chain" purchase and sale of digital assets.

MAS' stablecoin regulatory framework will apply to single-currency stablecoins (**SCS**) pegged to the Singapore Dollar or any G10 currency, that are issued in Singapore. Issuers of such SCS will have to fulfil key requirements relating to:

- **Value stability:** SCS reserve assets will be subject to requirements relating to their composition, valuation, custody and audit, to give a high degree of assurance of value stability (i.e. reserve assets must be at least 100% of the outstanding SCS in circulation).
- **Capital:** Issuers must maintain minimum base capital (i.e. higher than S\$1 million or half of annual operating expenses) and liquid assets to reduce the risk of insolvency and enable an orderly wind-down of business if necessary.
- **Redemption at Par:** Issuers must return the par value of SCS to holders within five business days from a redemption request.
- **Disclosure:** Issuers must provide appropriate disclosures to users, including information on the SCS' value stabilising mechanism, rights of SCS holders, as well as the audit results of reserve assets.

Only stablecoin issuers that fulfil all requirements under the framework can apply to MAS for their stablecoins to be recognised and labelled as “MAS-regulated stablecoins”. Non-SCS stablecoins will continue to be subject to the Payment Services Act 2019 which applies to Digital Payment Tokens.

MAS says this label will enable users to readily distinguish MAS-regulated stablecoins from other digital payment tokens (including “stablecoins” which falls outside of MAS’ stablecoin regulatory framework). Any person that misrepresents a token as an “MAS-regulated stablecoin”, may be subject to penalties (e.g. financial penalties or imprisonment) under MAS’ stablecoin regulatory framework, and placed on MAS’ Investor Alert List.

Ho Hern Shin, Deputy Managing Director (Financial Supervision) of MAS, said:

MAS’ stablecoin regulatory framework aims to facilitate the use of stablecoins as a credible digital medium of exchange, and as a bridge between the fiat and digital asset ecosystems.

Ho further added:

We also encourage SCS issuers who would like their stablecoins recognised as “MAS regulated stablecoins” to make early preparations for compliance.

MAS’s full response to the consultation can be found [here](#). The MAS also published this helpful infographic setting out the key aspects of its proposed regime:



MAS Monetary Authority of Singapore

MAS Finalises Stablecoin Regulatory Framework

- Maintain high degree of **value stability of stablecoins**
- Focus on **single-currency* stablecoins (SCS) issued in Singapore**
*SGD or G10 currencies
- Issuers whose stablecoins fulfil all requirements labelled as **"MAS-regulated stablecoins"**

KEY REQUIREMENTS

- VALUE STABILITY**
 - Reserve assets must be
 - Held in low-risk, highly liquid assets
 - Valued at $\geq 100\%$ of SCS in circulation at all times
 - Held in segregated accounts with eligible custodians
- CAPITAL/PRUDENTIAL REQUIREMENTS**
 - Minimum base capital of S\$1 million
 - Minimum liquid assets to meet operating expenses
 - No non-issuance business allowed
- REDEMPTION**
 - Direct legal claim for redemption at par
 - Timely redemption at no later than 5 business days
 - Reasonable redemption conditions, disclosed upfront
- DISCLOSURE**
 - White paper published online, disclosing key information such as
 - Value stability mechanism of SCS
 - Rights of SCS holders

"MAS' stablecoin regulatory framework aims to facilitate the use of stablecoins as a credible digital medium of exchange, and as a bridge between the fiat and digital asset ecosystems. We encourage SCS issuers who would like their stablecoins recognised as "MAS-regulated stablecoins" to make early preparations for compliance."

- Ho Hern Shin,
MAS Deputy Managing Director (Financial Supervision)

MAS Response to Consultation Paper



The MAS paper represents MAS' finalised regulatory approach towards stablecoins in Singapore, as well as its response to the public consultation. The MAS will hold legislative consultations before Parliament passes legislation to bring the framework into force.

The MAS's proposed straightforward framework establishes a model for other jurisdictions to follow and which is likely to be easily understood by consumers. In some respects, it is narrower and simpler than the EU's MiCA framework for e-money and asset-referenced tokens, while still incorporating some of its key elements and protections.

A number of stablecoin developments have made headlines in recent weeks. Last month, the US House of Representatives passed a [stablecoin bill](#), raising hopes that the United States may establish a federal regime for stablecoins in the near future. Despite the absence of a current US framework, payments giant, [PayPal, launched its own USD stablecoin](#) earlier this month deepening its push into digital assets.

PayPal partners with Ledger to simplify crypto purchases

Payments giant, PayPal, has announced its [collaboration with crypto wallet provider Ledger](#), to allow users to purchase cryptocurrency more conveniently and securely. PayPal users in the US will be able to directly purchase major cryptocurrencies, BTC, ETH, BCH and LTC, through their linked PayPal accounts on the Ledger Live app.

Ledger Live has over 1.5 million active users and its partnership with PayPal is intended to promote the seamless and secure adoption of digital assets. Purchases via Ledger Live will be automatically sent to users' Ledger hardware wallets.

The Chairman and CEO of Ledger stated:

We're combining the uncompromising security of Ledger with PayPal's leadership in secure payments technology to help facilitate a secure and seamless platform for user crypto transactions.

The news follows PayPal's launch of the [PayPal USD stablecoin](#) and affirms the payment giant's ongoing commitment to integrate traditional finance with cryptocurrency. While both the PayPal stablecoin and crypto purchases through PayPal's Ledger Live integration are only available to US users at this stage, geographic coverage is expected to be increased in the future.

Separately, PayPal has announced a [temporary halt on UK cryptocurrency purchases](#) through PayPal commencing 1 October 2023. In an [email to their UK users](#), the company explained:

We're taking this measure in response to new rules enacted by the UK Financial Conduct Authority (FCA) that require crypto firms to implement additional steps before customers can purchase crypto.

The company highlighted their commitment to compliance obligations and assured users that the suspension period will give them time to satisfy stringent [new FCA requirements relating to crypto promotions](#) before services are resumed. During the suspension period, which is expected to end in early 2024, existing UK users can still hold and liquidate their digital assets at any time.