

Article Information

Authors: Michael Bacina, Steven Pettigrove, Tim Masters, Jake Huang, Luke Higgins, Luke Misthos, Kelly Kim

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Blockchain Bites: Binance strikes US settlement and CZ steps down, Gone but not forgotten: Crypto dropped from ASIC's 2024 enforcement priorities, SEC hunts the Kraken but draws fire on regulation by enforcement, New e-signature law for stat decs takes effect

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

Binance strikes US settlement, CZ steps down

In a significant development, Binance, the [world's largest cryptocurrency exchange](#), and its (now former) CEO Changpeng Zhao (AKA "CZ"), have pleaded guilty to criminal charges related to anti-money laundering and US sanctions violations. The US Justice Department, in collaboration with the Treasury Department and the Commodity Futures Trading Commission, [have agreed a plea deal that will see Binance pay a AUD\\$6.6B \(USD\\$4.3B\) in penalties](#).

The charges against Binance include money laundering violations, conspiracy to conduct an unlicensed money transmitting business, and US sanctions violations.

The penalties comprise a USD\$1.8B criminal fine and a USD\$2.5B forfeiture. The funds will be distributed amongst the Department of Justice, the Commodity Futures Trading Commission, and other agencies, with a significant portion allocated to the Treasury Department for sanctions violations.

The company's former CEO, CZ, has agreed to step down and pay a substantial fine as part of the settlement. This outcome resolves a number of aspects of a [long running investigation](#) into Binance's operations by US authorities.

CZ has been seen by many as an industry pioneer shaping the future of finance. The man himself appeared sanguine about the outcome with both himself and Binance looking to the future under the leadership of Richard Teng, a well known markets professional and former regulator:



Notably, the Securities and Exchange Commission's (SEC) was not a party to the settlement and it remains to be seen whether Binance will face further regulatory action in the United States or elsewhere. The SEC has recently doubled down on its "regulation by enforcement" approach to the crypto industry taking fresh enforcement action this week against [Kraken](#) for alleged securities violations.

The new CEO, Richard Teng, has [endorsed](#) suggestions that Binance will simply pay the massive fine in cash due to the businesses assets, noting the company was debt-free and highly profitable.

Richard Teng @RichardTeng

The fundamentals of our business are VERY strong.

Binance continues to operate the world's largest crypto exchange by volume, our capital structure is debt-free, expenses are modest, and, despite the low fees we charge our users, we have robust revenues and profits.

Conor @jconorgrogan · Nov 22

I backed out Binance Corporate's crypto holdings from their Proof of Reserves: \$6.35B total assets, \$3.19B in stablecoins

Doesn't include off-chain cash balances or funds held in wallets not in PoR

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Cryptocurrency	Customer Net B	Binance Net B	Corporate Net B	\$ Value of Customer Balances	\$ Value of Binance Balances	\$ Value of Corporate Net Balances
BTC	584659.077	609310.54	24651.463	\$21,608,245,275.71	\$22,519,331,547.80	\$911,086,272.09
ETH	3916289.491	4119859.852	203570.161	\$7,805,634,910.30	\$8,211,374,689.59	\$405,739,759.29
BNB	31216990.45	34790090.96	3563100.529	\$8,253,147,934.91	\$9,195,160,452.76	\$942,012,517.85
USDT	15270122379	18146029534	2875907155	\$15,270,122,379.33	\$18,146,029,533.89	\$2,875,907,154.56
BUSD	835359336.4	1116058373	280699036.3	\$835,359,336.35	\$1,116,058,372.66	\$280,699,036.30
USDC	918194516.3	952207696.9	34013180.63	\$918,102,696.85	\$952,112,476.16	\$34,009,779.31
LTC	5569377.819	5649004.963	79627.144	\$387,962,858.87	\$393,509,685.72	\$5,546,826.85
XRP	2659549228	2770726176	111176948.6	\$1,607,431,553.24	\$1,674,626,901.00	\$67,195,347.76
SOL	26642841	27245703.87	602862.87	\$1,490,686,954.12	\$1,524,397,131.69	\$33,730,177.58
LINK	52451368.99	54590278.57	2138909.575	\$749,005,549.18	\$779,549,177.91	\$30,543,628.73
1INCH	123138527	125222064.6	2083537.536	\$43,098,484.46	\$43,827,722.59	\$729,238.14
APT	15943609.39	16359352.92	415743.525	\$115,112,859.81	\$118,114,528.06	\$3,001,668.25
ARB	296535468.8	298495551.6	1960082.844	\$302,466,178.14	\$304,465,462.64	\$1,999,284.50
CHZ	3538282737	4267001591	728718853.9	\$247,679,791.59	\$298,690,111.36	\$51,010,319.77
CRV	93281529.84	9578969.34	2508168.507	\$52,237,656.71	\$53,642,231.07	\$1,404,574.36
DOGE	12274520955	12326319767	51798811.76	\$935,318,496.76	\$939,265,566.22	\$3,947,069.46
DOT	101614992.5	113837637.6	12222645.09	\$524,333,361.53	\$587,402,210.18	\$63,068,848.65
ENJ	160750327	168612109.5	7861782.481	\$43,900,914.31	\$46,047,967.11	\$2,147,052.80
FDUSD	444471938.4	556924230.5	112452292.1	\$444,471,938.42	\$556,924,230.49	\$112,452,292.06
GRT	773995507.9	794187503.5	20191995.6	\$108,359,371.11	\$111,186,250.50	\$2,826,879.38
HFT	82960813.39	85452497.32	2491683.923	\$13,654,520,276.19	\$14,064,626,533.08	\$410,106,256.89
MATIC	906003112.2	1026683236	120680124.2	\$697,622,396.42	\$790,546,092.04	\$92,923,695.62
SHIB	7519693317218	7748059056004	2283657387861	\$618,870,760.01	\$637,665,260.31	\$18,794,500.30
UNI	29972841.95	30574466.92	601624.975	\$151,662,580.25	\$154,706,802.62	\$3,044,222.37
				\$76,865,334,514.57	\$83,219,260,917.45	\$6,353,926,402.88
						\$3,190,615,970.17

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The latest US action against Binance is likely to form just the latest salvo in the US authorities enforcement drive against the crypto industry. It also underlines the United States very broad approach to its jurisdiction, particularly in the area of anti-money laundering and financial sanctions. In this regard, Binance joins a long list of institutions which have felt the brunt of US enforcement action over allegations of systemic breaches of AML/CTF laws and financial sanctions.

Written by Luke Higgins, Steven Pettigrove and Michael Bacina

Gone but not forgotten: Crypto dropped from ASIC's 2024 enforcement priorities

Ministers, regulators, policy makers and a wide cross section of the financial services industry met in Melbourne this week for the ASIC Annual Forum. This year's theme was "Navigating Disruption" and provided an opportunity to re-cap ASIC's work over the last year, and discuss some of the major topics currently vexing regulators.

The event coincided with the release of [ASIC's enforcement priorities for 2024](#). The enforcement priorities help shape ASIC's internal budgets and prioritize resources across the various markets within ASIC's jurisdiction.

Crypto-assets [entered ASIC's list of strategic priorities in 2022](#) following the explosive growth of cryptocurrency and decentralised finance during the pandemic. Crypto-assets again featured in [ASIC's strategic priorities](#) for 2023 with ASIC adopting a dual focus on supporting the development of an effective regulatory framework and taking enforcement action to protect consumers from harms associated with crypto-assets. Crypto-assets also entered [ASIC's separate list of enforcement priorities](#) in November 2022.

ASIC's prioritization of crypto related products has seen a wave of crypto-related enforcement actions, particularly targeting products which ASIC believes mimic traditional financial products and fall within the financial services licensing framework established by the Corporations Act. ASIC has also taken action against crypto-related products under its powers in relation to design and distribution obligations under the Corporations Act. These actions have included:

- [Holon Investments – stop orders relating to the distribution of crypto funds](#);
- Qoin – alleged unlicensed financial services/misleading statements;
- [Block Earner – alleged unlicensed financial services/operating an unregistered managed investment scheme](#);
- [Finder Wallet – alleged unlicensed financial services/inadequate risk disclosure](#);
- Binance – derivatives license cancelled;
- [Kraken – alleged unlicensed margin lending product/failure to comply with design and distribution obligations](#) including the requirement to issue a Target Market Determination.

A number of these actions are being actively defended and remain pending before the Courts.

While crypto-assets [remain a strategic priorities in ASIC's 2023-2027 Corporate Plan](#), the omission of crypto-assets from ASIC's list of enforcement priorities is notable. New priorities have been added in relation to superannuation, car insurance and insurance claims handling, among others. The [full list can be accessed on ASIC's website](#).

Notwithstanding this change, [Sarah Court, ASIC's Deputy Chair was keen to highlight the regulator's robust enforcement record](#) and willingness to test the boundaries of its authority, which is something it has reiterated on several occasions in the context of actions involving crypto-related offerings. Reflecting on ASIC's record prior to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Ms Court commented:

Our enforcement approach of today, by contrast, is proactive, strategic and bold.

While ASIC will still consider a negotiated outcome in some cases, it has adopted a more aggressive litigation posture in recent years. Ms Court was also keen to reiterate that design and distribution obligations remain an area of focus and that ASIC has several other investigations underway on this topic.

The decision to omit crypto from ASIC's 2024 enforcement priorities is most likely a function of a number of new emerging areas of concern. These include the implications of artificial intelligence for markets which was a hot topic for discussion at this year's ASIC Forum. Moreover, ASIC already has a number of crypto-related actions underway. Indeed, just because something is no longer an ASIC enforcement priority, does not mean that it has fallen off ASIC's radar. ASIC will continue to devote a significant share of its enforcement resources to non-strategic areas.

While this development may signal that ASIC is waiting for [the Treasury consultation process on digital asset platforms](#) to play out, crypto-asset businesses should continue to focus on legal and compliance matters in 2024. At the ASIC Forum, ASIC's Head of Markets Supervision, Clarissa Alridge noted that ASIC is already starting to think about supervision of crypto markets and the implementation of a digital asset platforms licence. With a licensing regime for digital asset facilities under the existing AFSL regime now in the works, there are good reasons for crypto-asset businesses to explore licensing options and ensure they have robust legal and compliance frameworks in place in anticipation of needing to prepare a licensing application once legislation comes into effect.

Written by Steven Pettigrove and Michael Bacina

SEC hunts the Kraken but draws fire on regulation by enforcement

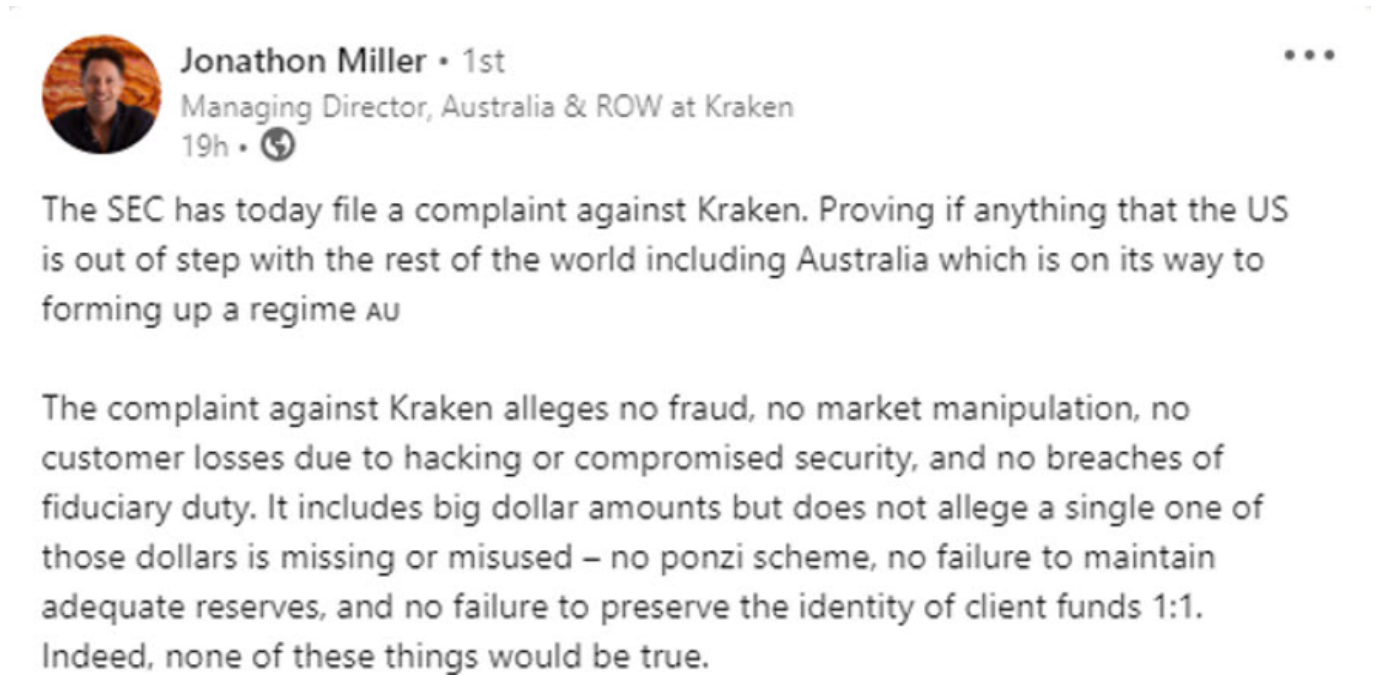
In its latest move against the crypto industry, the US Securities and Exchange Commission (SEC) has [filed charges against Kraken](#), alleging the operation of an unregistered securities exchange, clearing agency, and broker. This comes as part of the SEC's ongoing efforts to corral what it perceives as a wild west of crypto companies flouting securities laws.

Kraken joins [Coinbase](#) and [Binance](#), both of which have faced charges from the SEC, with the latter being slapped with a US\$4.3 billion dollar fine as well as a personal US\$50 million dollar fine and a subsequent resignation of its CEO, Changpeng Zhao.

In a response to the SEC action in its blog, [Kraken stated](#):

We disagree [with the SEC's complaint against Kraken], and intend to vigorously defend our position in court. [The news] has no impact on the products we offer and we will continue to provide services to our clients without interruption.

Jonathon Miller, the managing director of Kraken [said](#):



A critical point of contention lies in the SEC's demand for crypto exchanges to register, a requirement that exchanges say lacks legal backing and there is a question over whether tokens are or are not securities (a matter ruled on for one token against the SEC in the [Ripple case](#)). Kraken [asserts](#) registration is impossible and there is no path to compliance.

The SEC famously argues that digital asset trading platforms like Kraken can simply “come in and register” with the agency. As most securities law experts know, there is not a single law on the books supporting this position. The SEC has promulgated no rule describing how an order in a digital asset should be matched, no guidance on how a trade should be cleared, and articulated no standards for how to broker a digital asset transaction. The allegation is hollow; there is no such thing as an exchange, broker dealer, or clearing agency for investment contracts. The SEC is demanding compliance with a regime that doesn't exist.

The regulatory body's “regulation by enforcement” strategy [has drawn criticism](#) with Congressman McHenry saying to Chair of the SEC Gary Gensler earlier this year:

You have refused to provide clarity on whether digital assets offered as part of an investment contract are subject to securities laws. And, more importantly, how these firms should comply with those laws creating uncertainty rather than providing clear guidelines for industry participants.

Senator Cynthia Lummis also slammed the SEC [saying](#):



The SEC alleges that Kraken lists 16 tokens which are securities, echoing charges against Coinbase and Binance. Simultaneously, the agency accuses Kraken of poor internal controls and recordkeeping practices, claiming that the company commingles customer funds and crypto assets with its own, posing a “significant risk of loss” to customers.

This latest development follows Kraken’s settlement with the SEC earlier this year over its staking services, [where it agreed to a suspension and a USD\\$30 million civil penalty](#).

As the SEC intensifies its crackdown on crypto companies like Kraken and Binance, questions will continue to persist over a “regulation by enforcement” strategy. This approach, as seen in previous actions against blockchain industry players, is an inefficient way of guiding a growing industry into compliance and risks stifling blockchain innovation and also arguably causes unnecessary harm to consumers.

Where laws are clear, such as anti-money laundering, the industry has shown great progress in meeting compliance requirements (and where businesses have breached these laws they have suffered the consequences).

A continued regulation by enforcement may lead to the US pushing innovation away to jurisdictions where regulations and regulators are more welcoming. A constructive dialogue and providing clear guidelines will be essential to avoid hampering the transformative potential of blockchain technology and driving innovation beyond its regulatory grasp, but that goal seems increasingly out of reach, no matter how many appendages reach for it.

By Michael Bacina, Luke Misthos, and Luke Higgins

New e-signature law for stat decs takes effect

A new law which makes permanent the use of electronic signatures and introduces a new digital execution option for Commonwealth statutory declarations received Royal Assent last week. According to the Attorney-General who introduced the bill, this marks a significant milestone that will “[save Australian time and money](#)”.

What changed?

The [Statutory Declarations Amendment Act 2023 \(Act\)](#) amends the *Statutory Declarations Act 1959* to expand the ways in which statutory declarations can be executed under Commonwealth law. These will include:

1. traditional paper-based execution, requiring wet-ink signatures and in person witnessing;
2. electronic execution, through the application of an electronic signature and witnessing via an audio-visual communication link; and
3. digital execution through the use of a prescribed online platform that verifies the identity of the declarant through a prescribed digital identity service provider.

The technical requirements and conditions regarding digital verification are not in the Act but are to be prescribed by regulation. Importantly, the new digital option *would not* require the declaration to be witnessed.

All three methods will be an equally valid and legally effective form of Commonwealth statutory declaration. The Act will enable people to digitally execute a statutory declaration using the online platform myGov and the myGov ID Digital ID upon the accompanying government regulations coming into effect. It is not yet known whether the Commonwealth will endorse the use of other private digital execution platforms like DocuSign.

The Act has been passed by both houses of the Parliament and became law upon Royal Assent on 17 November 2023. The accompanying regulations which will provide a framework for the digital execution option are yet to be finalised.

When introducing the bill in the Parliament, the Attorney-General [stated](#):

This bill will respond to how Australians want and expect to engage and communicate digitally with government by providing options to make Commonwealth statutory declarations facilitated by technology. This bill is an important milestone in driving the digitisation of government services.

The important role of Commonwealth statutory declarations

Commonwealth statutory declarations are an important and frequently-used tool by Australians – it is a legal document that contains a written statement about something that the declarant is asserting to be true.

These documents are used to create reliable statements and attest to a series of events for administrative, commercial, civil and private purposes. It is a criminal offence to intentionally make a false statement in a Commonwealth statutory declaration, carrying a maximum penalty of 4 years imprisonment.

Despite the importance of Commonwealth statutory declarations, the old rules under which these declarations must be made were certainly not perfect.

Issues with the old rules

Before the new law, execution of Commonwealth statutory declarations required three elements to be satisfied:

1. the use of the prescribed form;
2. the signing of the declaration by the declarant; and
3. the witnessing of the declarant's signature by a prescribed person.

Historically, these documents have been strictly paper-based, requiring them to be witnessed in person and signed in ink. This rule was temporarily relaxed during the Covid-19 pandemic, allowing a Commonwealth statutory declaration to be witnessed remotely via video link and signed electronically. Though the temporary relief was a welcome change, it was due to expire on 31 December 2023. The commencement of the Act is [intended to coincide](#) with this expiry.

The old rules were time and cost consuming. According to [modelling](#) undertaken for a 2021 Government consultation process, more than 3.8 million statutory declarations are completed each year by small and medium enterprises (SMEs) and consumers in Australia. It was estimated that SMEs and consumers spent around 9 million hours a year printing and collecting, travelling to authorised witnesses, discussing and filling out declarations with witnesses, making copies and submitting completed declaration.

The Attorney-General also provided important numbers around the time and costs that the Act will save:

Digital statutory declarations could save over \$156 million each year, hundreds of thousands of hours and be a productivity winner for the private sector.

Privacy and data protection

The Government recognises that any digital option must have strong safeguards that protect against fraud and misuse of personal information.

The Act includes a range of provisions to ensure transparency and accountability, and a requirement for approved online platforms and identity services to demonstrate that they comply with privacy laws and have robust fraud and security arrangements.

The Act also prohibits approved online platforms from retaining copies of statutory declarations, noting that they can hold particularly sensitive personal information. There is also an annual reporting requirement to the Parliament on the operation of the online execution platform.

Conclusion

The Attorney-General said the reform will benefit all Australians seeking a more convenient, and efficient, statutory declaration process – particularly those in rural, remote or regional parts of Australia. He also emphasised that the Act is

in line with the Data and Digital Government Strategy we are committed to embracing digital technologies to improve service delivery.

Each State and Territory has their own rules on statutory declarations, so the new Commonwealth Act will not directly apply to statutory declarations made under these rules. However, it is possible that States and Territories will follow the lead of the federal government and reform their own rules in due course.

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