

Article Information

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

ALRC pitches Corps Act 2.0

Last week, the Australian Law Reform Commission (**ALRC**) completed its review into the legislative framework for Corporations and Financial Services Regulation, and released a [Final Report](#) containing a whopping 58 recommendations to reform the existing regime.

The report, titled *Confronting Complexity: Reforming Corporations and Financial Services Legislation*, made 35 new recommendations and repeated 23 recommendations already included in previous ALRC interim reports. ALRC said their goal is

transforming corporations and financial services legislation from what one judge has described as 'porridge', to a more adaptive, efficient, and navigable legislative framework.

We have provided an overview of the key recommendations below.

Creating a new body of Financial Service Law

Currently, provisions in relation to financial services are scattered across the *Corporations Act 2001 (Cth)* (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001 (Cth)* (**ASIC Act**). Recommendation 41 and 42 suggest creating

a dedicated group of provisions known as the Financial Services Law

and that this Financial Services Law should be enacted as a schedule to the Corporations Act.

In addition, Recommendation 43 says this reformed Financial Services Law should implement a new legislative model, comprising

- primary legislation containing provisions appropriately enacted only by Parliament, including key obligations and prohibitions;
- a 'scoping order' (a single, consolidated legislative instrument) dealing with inclusions, exclusions, class exemptions, and other detail necessary for adjusting the scope of the primary legislation; and

- thematic ‘rulebooks’ (consolidated legislative instruments) containing rules giving effect to the primary legislation in different regulatory contexts as appropriate.

Unifying single, simplified definitions of ‘financial product’ and ‘financial services’

The definitions of “financial product” and “financial service” are fundamental to the scope of application of financial services regulations. However, these definitions are currently inconsistent between the Corporations Act and the ASIC Act (e.g. whether credit products are a type of financial product).

Recommendation 31 addresses this issue by suggesting a single, simplified definition of “financial product” and “financial service” in the Corporations Act, which should be referenced by other legislations.

The ALRC says their goal is to simplify the legislative framework by

enabling users to look in one place (*the Corporations Act*) to determine what each of those terms means.

Consolidating financial services and consumer protection provisions

Recommendations 33-40 recommend that the Corporations Act should be amended to “restructure and reframe” the following provisions that are currently scattered across the Corporations Act and/or the ASIC Act, among others:

- unconscionable conduct and misleading and deceptive conduct provisions;
- disclosure for financial products and financial services;
- financial advice; and
- general provisions related to financial services providers, and administrative or procedural matters concerning financial services licensees.

Grouping offence and penalty provisions

Recommendation 56 suggests that offence and penalty provisions in corporations and financial services legislation should be consolidated into a smaller number of provisions covering the same conduct.

This is intended to address the current:

multiplicity of offence and penalty provisions...having a large number of detailed, sometimes overlapping, offence and penalty provisions does not lead to better compliance or more effective enforcement.

What’s next?

The Final Report has been tabled to Parliament, but it will be up to the Parliament to decide whether to adopt any or all of the recommendations and the timeframe for doing so.

In any case, the Final Report sets out a detailed roadmap to simplify and reform the Corporations Act and the financial services law framework, which have long been derided for their complexity.

The Report complements a number of other ongoing reform objectives of the government, including:

- the ongoing [consultation to reform financial market infrastructure](#) ;
- the [consultation to regulate digital asset platforms as providers of financial services](#);
- the consultation to [regulate Buy Now, Pay Later](#).

By Steven Pettigrove and Jake Huang

From Baht to Blockchain: Thailand’s SEC embraces tokenisation

In a significant move, Thailand’s Securities and Exchange Commission (SEC) has [introduced new rules](#) to reshape the landscape for digital asset businesses and tokenisation in the country. The focus is on fostering investor participation while supporting national development goals.

Retail investors are now liberated to engage in initial coin offerings (ICOs) for real estate-backed tokens and those tied to real estate revenues, as the SEC lifted the previous 300,000 baht (USD \$8,415) restriction. Similar barriers for infrastructure ICOs have also been removed, paving a path towards broader investment accessibility.

The SEC's objective is clear: striking a balance between protecting investors and mobilising funds for national development. To ensure a prudent expansion of digital asset businesses, the SEC has outlined rules for obtaining approval before businesses can venture into these products. The criteria includes an assessment of whether the new activities will benefit the core business, help to avoid conflicts or otherwise not create additional conflicts of interest, and whether adequate risk assessment procedures are in place to protect consumers from these new activities.

Thailand's SEC is also tightening oversight on digital asset custody businesses within larger groups to prevent conflicts of interest arising from shared shareholders with digital asset businesses.

In a parallel development, the Thai government's [ambitious 500 billion baht \(USD \\$14 billion\) digital currency giveaway](#) is facing scrutiny. Critics argue against the necessity of such a move, [citing the absence of an economic reason that justifies the giveaway](#). Concerns also revolve around the fiscal implications and funding for loan repayments, leading to delays that could push the project beyond May 2024.

As Thailand navigates these advances, the SEC's progressive stance aims to cultivate a secure and inclusive digital investment environment, reflecting the current broader global trend toward embracing the future of finance with blockchain.

By Luke Higgins and Michael Bacina

Congress presses Meta on crypto plans

The United States House Financial Services Committee (**Committee**) has pressed Meta (previously Facebook) to share details about its cryptocurrency and blockchain plans following the company's filing of a number of related trademark applications in 2022.

Committee member Maxine Waters [sent a letter](#) to Meta Chief Executive Officer, Mark Zuckerberg, and Chief Operating Chief, Javier Olivan, on 22 January 2024 expressing concerns about Meta's continued interest in the blockchain space.

Meta's application submissions as of January 22 appear to represent a continued intention to expand the company's involvement in the digital asset ecosystem.

The letter refers to five specific trademark/service mark application serial numbers:

1. [97320155](#) - relating to online social networking and dating services including financial trades and exchange of digital currencies.
2. [97320153](#) - relating to the design and development of computer hardware and software services relating to blockchain and cryptocurrency.
3. [97320146](#) - relating to digital currency services namely the trading of cryptocurrencies on blockchain networks.
4. [97320144](#) - relating to advertising services via electronic media and virtual or augmented reality networks and blockchain as a service.
5. [97320136](#) - relating to downloadable software for managing and validating digital currency and downloadable e-wallets.

Ms Waters states in the letter that Meta informed the Committee that there is no ongoing digital asset works.

Meta staff asserted on October 12, 2023, in communications with Democratic Financial Services Committee (Committee) staff that there is no ongoing digital assets work at Meta. Meta staff stated that the company is not currently conducting, nor planning any work on blockchain-based products or stablecoins.

Each of the above trademarks filed by Meta have received a Notice of Allowance (**NOA**) from the US Patent and Trademark Office which effectively means the application meets registration requirements. Meta now has six months to file a statement that it will use the trademarks, or request a six month extension.

Ms Water's letter raises questions over Meta's involvement in the digital asset space and requests further information relating to Meta's intent to pursue projects relating to Web3, the extent of Meta's research into stablecoins, whether it is

looking to adopt decentralised ledger technology, and how Meta's existing technology might allow crypto-related functions in its Metaverse.

the trademark applications described above seem to indicate that Meta has not ceased its activity in digital assets

In 2019, Facebook [sought to develop a cryptocurrency](#) (Libra) which it later sold to Silvergate Bank and had previously began works on a digital wallet, which was shut down. Meta has also attracted regulatory scrutiny in Australia, [losing an appeal in the Federal Court](#) relating to its conduct of business in Australia in 2022, and facing a class action in the Federal Court for an [alleged breach of competition laws](#) in 2020.

As one of the world's largest technology companies, industry insiders will be watching Meta's latest political skirmish for signals as to its future intentions in Web3. Despite Libra's failure, the latest trademark filings suggest that Meta continues to have big ambitions in Web3.

By Steven Pettigrove and Luke Misthos

Australia joins US sanctions targeting Hamas fundraising

This week, the US Department of the Treasury's Office of Foreign Assets Control (**OFAC**) announced [a fresh round of sanctions](#) on Hamas following the October 7 terrorist attack on Israel. [Australia](#) and the UK have also joined forces by placing sanctions on key Hamas officials and financial facilitators.

The latest US sanctions target networks of Hamas-affiliated financial exchanges in Gaza, their owners, and associates, and financial facilitators that have played key roles in funds transfers, including cryptocurrency transfers to Hamas.

These financial exchanges include a Gaza-based Herzallah Exchange, which allegedly worked with Hamas to facilitate transactions, including through the use of cryptocurrencies.

Hamas has sought to leverage a variety of financial transfer mechanisms, including the exploitation of cryptocurrency, to channel funds to support the group's terrorist activities

said Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E. Nelson,

Treasury, in close coordination with our allies and partners, will continue to leverage our authorities to target Hamas, its financiers, and its international financial infrastructure.

Concurrently, Australia has sanctioned Hamas leaders, financial facilitators, and persons who have provided training to terrorist operatives, as well as three entities that have facilitated the transfer of funds to Hamas.

Under Australian law, it is a criminal offence to use or deal with a sanctioned person or entity's assets, or to make assets available to them. This is punishable by up to 10 years' imprisonment and/or heavy fines.

A [Media Release](#) by the Hon Penny Wong, the Minister of Foreign Affairs said,

Australia continues to unequivocally condemn the attacks on Israel by Hamas as abhorrent acts of terror against innocent civilians.

Companies and individuals, whether transferring cryptocurrency or not, should exercise caution and carry out counterparty due diligence to avoid breaching sanction laws that may be applicable to them. Furthermore, [sanctions laws from different jurisdictions may apply separately or concurrently](#) depending on whether an activity or person has a nexus with the jurisdiction for sanctions purposes.

The [use of cryptocurrency in financing Hamas' operations has been the subject of significant political debate](#) in the US, with Senator Warren seizing on a Wall Street Journal (**WSJ**) report last year indicating significant donation flows in

cryptocurrency to terrorist groups. The WSJ's report was later corrected following further analysis from Chainalysis and Elliptic which indicated that the flows were significantly lower than previously reported. The incident nevertheless highlighted the power of blockchain analytics tools in tracking and tracing illicit money flows on chain.

By Jake Huang and Steven Pettigrove