

Article Information

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Blockchain Bites: Federal Court's decision flips Qoin but clarifies the regulatory perimeter, FTX to make customers whole under new reorganisation plan, Government drops first ScamWatch report, Mt Gox: Alexander Vinnik pleads guilty, Roger Ver faces tax reckoning

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

Federal Court's decision flips Qoin but clarifies the regulatory perimeter

After first commencing a civil action against BPS Financial Pty Ltd (**BPS**) in October 2022, [ASIC has won a key liability hearing in the Federal Court of Australia](#) after Justice Downes [found that BPS engaged in unlicensed conduct when offering the "Qoin Wallet" to consumers](#), however the Court made an important rejection of ASIC's attempts to have an entire blockchain found to be part of a "financial product" under Australian law. Only the centralised wallet, called Qoin Wallet, was found to be a financial product, with the balance of a (not very) decentralised blockchain which processed transactions left out of the definition.

In delivering judgment, Her Honour found that BPS had contravened the Corporations Act as it did not hold an Australian Financial Services Licence (**AFSL**), nor was BPS authorised by an existing AFSL holder under a Corporate Authorised Representative (**CAR**) Agreement, to issue or provide financial advice regarding the Qoin Wallet.

The win is a first for the regulator, which has faced mixed outcomes in similar enforcement actions against [Finder.com](#) (where ASIC lost their attempt to have a centralised yield product labelled a debenture, but the matter is on appeal) and [Block Earner](#) (where ASIC lost in relation to a decentralised yield pass-through product but won against a centralised yield product) in recent times.

A key component of this case involved a detailed analysis to identify what the actual financial product in question comprised. Her Honour identified [at 47] that:

The Qoin Wallet component of the Qoin Wallet App has the function of both viewing the balance of Qoin for a wallet address recorded on the blockchain, and the payment facility (the function to send and receive Qoin and for the transaction to be recorded).

The Court noted that the Qoin blockchain only had 7 nodes (at [51]), several of which were owned and operated by entities associated with the Qoin project (nodes being electronic devices which host a copy of the entire Qoin blockchain and are responsible for validating transactions and propagating them across the network).

ASIC argued [at 106] that the Qoin Tokens, together with the Qoin Blockchain and the Qoin Wallet and a means of acquiring Qoin Tokens:

constituted a single scheme... for a substantial purpose of enabling consumers who choose to participate in it to make payments for goods and services otherwise than by the physical delivery of cash.

The regulator leaned into the definition of “facility” under the *Corporations Act* as including the word “arrangement”, with ASIC submitting that it is “not the mechanism of payment that is a facility, but rather the arrangement under which a (non-cash) payment may be made”.

The Court, however, disagreed, saying that:

- simply because a product requires integration with another product, facility or thing does not mean the other thing is or forms part of the financial product [at 108];
- the system by which a facility operates “is not itself a financial product capable of being “issued” or “acquired” such that “dealing” in it may occur [at 109];
- the identification of the financial product should focus upon the point at which a person makes a financial investment, manages a financial risk or makes non-cash payments [at 109]; and
- from there the question to be asked is “what is the direct mechanism or thing which is allowing the person to perform this function?” [at 109].

From this the Court found the relevant financial product was in fact the Qoin Wallet itself, rather than the entire Qoin Facility (which comprised the Qoin Wallet App, the Qoin Wallet, the Qoin Blockchain, and the smart contracts necessary for the facility to function). This was despite the relatively centralised nature of the Qoin Facility with the entire Qoin Blockchain consisting of only seven nodes, many of which were operated by parties linked to the operators of the Qoin product.

Her Honour stated that the relevant “financial product” in the case was the arrangement between BPS and each consumer that allowed the consumers to make non-cash payments with the Qoin Wallet. Contrary to ASIC’s submissions, the Court found that the Qoin Blockchain itself was not the mechanism which allowed the users to make a non-cash payment.

While not mentioned in the decision, that is consistent with the submission of ASIC to the Australian Senate’s 2015 Digital Currency inquiry where [ASIC submitted that](#):

A digital currency, in and of itself, is not a financial product.

The Court found that one could not “deal” in the Qoin Blockchain (or other aspects of the Qoin Facility), which could be contrasted against the ability for BPS to “issue” Qoin Wallets. Her Honour found that this conclusion flowed naturally from the examples given of the actions that constitute making non-cash payments as identified in section 763D of the *Corporations Act*.

Accordingly, Her Honour concluded that since January 2020 (other than a 10 month period), BPS had carried on a financial services business in issuing the Qoin Wallet as a financial product and that it had provided financial product advice in relation to that product without an AFSL, breaching sections 911A(1) and 911A(5B) of the *Corporations Act*.

The Court also found that BPS had made false, misleading or deceptive representations in relation to the Qoin crypto-asset token and the Qoin Wallet to approximately 80,000 customers. In particular, BPS had stated that:

- the Qoin token could be used to purchase goods and services from an increasing number of service providers and merchants when that was not actually the case; and
- the Qoin token had received official government approval as an Australian financial product despite not complying with such laws.

An unfortunate insult to injury following its comprehensive loss, [Qoin still also has a class-action lawsuit pending against it led by the consumers and businesses who allege they were misled by Qoin](#).



The Federal Court's decision helps to reveal the shape of the Australian regulatory perimeter and in particular assist in reinforcing when a public blockchain could itself be a regulated object, and the sophistication in distinguishing the Qoin Wallet as the focal financial product from the underlying blockchain shows that the Australian Courts are adept at understanding the nuances of technology in applying existing laws.

Written by Michael Bacina and Luke Higgins

FTX to make customers whole under new reorganisation plan

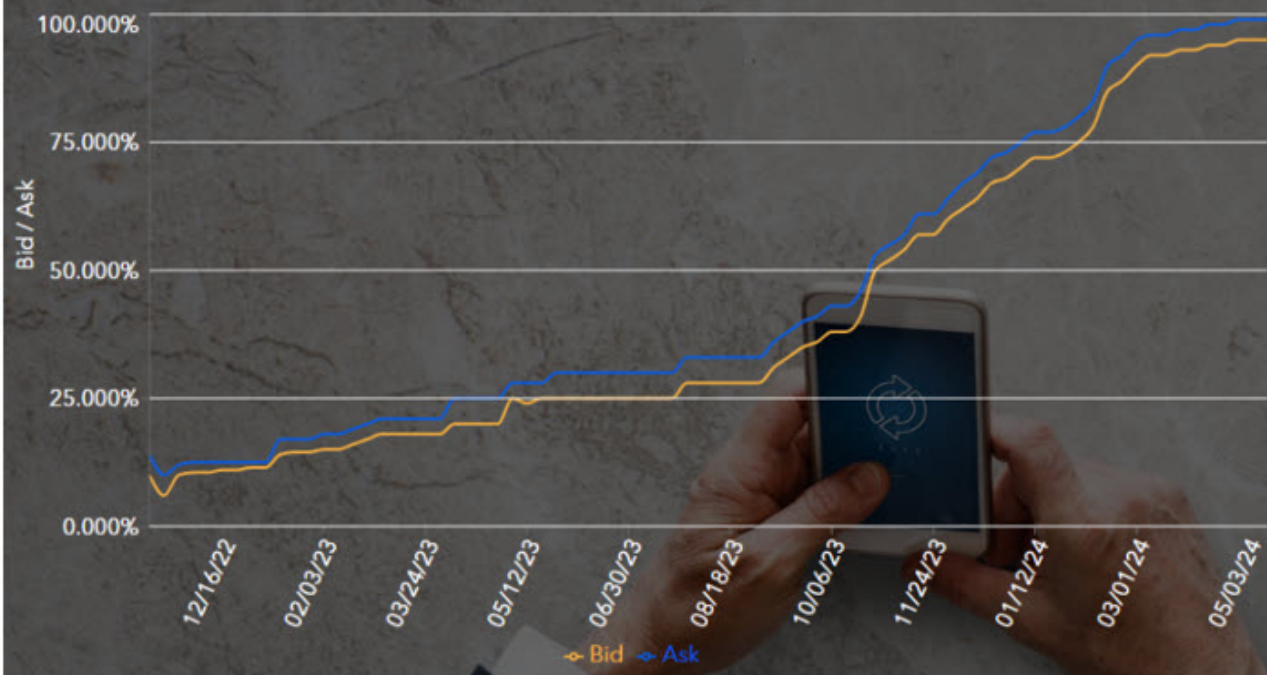
The creditors of defunct crypto exchange FTX will be (somewhat) buoyed by news that their claims will be paid out in full, along with some added compensation. Under FTX's most recent amended Plan of Reorganisation, 98% of creditors are expected to receive at least 118% of their claim, as calculated on 11 November 2022 plus interest, in cash.

Creditor's being made whole was originally considered inconceivable following the infamous [FTX collapse in November 2022](#) with Mr John J Ray III declaring the exchange a 'dumpster fire'. Users were left with their accounts blocked, [FTX websites went dark](#) and a great deal of uncertainty settled. The road to recovery become longer still after the US Internal Revenue Service decided to [allege that a USD\\$44 billion tax bill](#) was due.

The road to recovery was grim, but during the 17 month process, the crypto industry began showing signs of life and it rapidly became apparent that FTX's assets vastly exceeded the claims made. Liquidations of investments followed, [most recently with the FTX Europe arm selling for \\$33 million](#). Meanwhile the prices for FTX claims on the secondary market have tracked the increasing likelihood of a positive return, being near 100c in the dollar at the time of writing.

FTX Claims Pricing

Cherokee Acquisition is providing liquidity on FTX claims. Please note that the below prices are for claims over \$1m. Actual prices may be higher or lower, depending on claim size and quality. Kindly, contact us for the most up to date pricing.



claims-market.com

Around the same time the cryptocurrencies held by FTX (or Alameda Research) at the time of the collapse (as well as profitable investments made by FTX's [recently sentenced former-CEO](#) Sam Bankman-Fried using customer's assets) have become [significantly more valuable than at the time of collapse](#).

[With the new Plan of Reorganisation](#) predicting the total value of FTX property collected and converted to cash will be between **USD\$14.5 and \$16.3B**, there is ample recourse for all creditors to be paid in full, per FTX CEO, John J. Ray III:

We are pleased to be in a position to propose a chapter 11 plan that contemplates the return of 100% of bankruptcy claim amounts plus interest for non-governmental creditors.

The Plan of Reorganisation creates a special "convenience class" for creditors who are holding claims of \$50,000 or less. 98% of creditors fall into the convenience class, and will receive ~118% of the value of their claim as at the date of appointment, a payout very rarely seen in bankruptcy proceedings at all, let alone proceedings of this magnitude and complexity. Other claims are on track to receive an even higher percentage of their original claim, up to ~140% in some instances.

The proposed plan will be pending approval by the US Bankruptcy Court, which must determine whether the plan is in the best interests of the creditors. If approved, creditors will begin receiving their funds with the convenience class receiving their payments within **60 days of the effective date of the plan**, meaning a high prospect of payments being finalised for almost all creditors by the end of this year.

The FTX collapse, which rocked the cryptocurrency industry and was touted as one of the worst due to the devastating impact on creditors, the market and the industry, is now shaping up as an extremely lucky result for creditors, many of whom would naturally prefer their crypto back given price rises but in any collapsed company situation getting back 100c in the dollar is exceedingly rare, and in a collapse of this size and magnitude (with attendant sizes of fees) is even rarer still.

Written by Michael Bacina, Steven Pettigrove and Luke Misthos

Government drops first ScamWatch report

[The first annual report on scams by the National Anti-Scam Centre](#) revealed that in 2023, Australians lodged over 601,000 scam reports, seeing an increase of 18.5% from 2022. Despite the volume of reports increasing, overall financial loss decreased by 13%, reflecting a positive trend, according to data from Scamwatch, ReportCyber, the Australian Financial Crimes Exchange (AFCX) and the Australian Securities and Investments Commission (ASIC).

Losses

\$2.74 billion in losses

Total combined losses reported to Scamwatch, ReportCyber, IDCARE, Australian Financial Crimes Exchange (AFCX) and Australian Securities and Investments Commission (ASIC)

601,000+
scam reports
▲ **18.5%**

Combined losses over last 4 years



Top 5 scams by loss (combined data)



p4, Report of the National Anti-Scam Centre on scams activity 2023 (April 2024)

Bank transfers and cryptocurrency remained the most prominent payment methods employed by scammers, with bank transfers reported nearly four times higher than cryptocurrency. The recent report detailed that cryptocurrency loss amounted to USD\$171.1M in 2023. Similar trends were identified in the [2022 report](#) by the Australian Competition and Consumer Commission (ACCC), which noted that USD\$221.3M (or USD\$160.6M excluding significant loss outliers) were lost via cryptocurrency. However, the reports do not take into account unreported losses.

The National Anti-Scam Centre was established in July 2023 under the ACCC with 3 key functions, namely collaboration (technology and intelligence sharing), disruption of scam activities and raising awareness for public protection (including more efficient reporting and support services for victims). With the National Anti-Scam Centre developing technology to foster intelligence sharing as a matter of priority, the report estimates that more government bodies and businesses will be

exchanging data through the Centre by the second half of 2024. Separately, the Australian government is continuing its efforts to develop a [mandatory Scams Code Framework, with a consultation in late 2023](#).

The recent report optimistically affirms that a 'coordinated scams prevention, detention and response initiatives' involving:

the concerted efforts of government..., the private sector, law enforcement, and community organisations

will be able to combat the flow of funds to scammers and promote public protection.

Written by Steven Pettigrove and Kelly Kim

Mt Gox: Alexander Vinnik pleads guilty

The [long running saga of the Mt Gox collapse has taken another turn](#) with BTC-e operator Alexander Vinnik pleading guilty to charges of money-laundering. Vinnik was facing a slew of charges for his alleged involvement in laundering bitcoin through BTC-e between 2011 and 2017 as well as links to the infamous Mt Gox hack in 2014.

From 2011 to 2017 Vinnik operated BTC-e, a cryptocurrency exchange linked with nefarious actors over allegations of widespread money-laundering.

In 2014, 850,000 bitcoin were drained from Mt Gox (currently worth just over AUD\$81 billion in today's market). Interestingly, due to the transparent nature of blockchain technology, authorities and on chain sleuths could trace the bitcoin through addresses, some of which match those belonging to other hacks.

These soon became linked to the name "Alexander Vinnik", who was [arrested in Greece](#) at the request of US authorities in 2017. Vinnik faced a long extradition process, with Russia, US and French authorities vying for the ability to prosecute the 'criminal mastermind'.

Eventually, France secured the extradition and Vinnik was [charged in connection with the Mt Gox Hack](#), following which some of the missing bitcoins were found. French prosecutors fined Vinnik USD\$121,000 and [sentenced him to 5 years in prison](#). Vinnik was eventually sent back to Greece before being extradited to the US.

While creditors [did receive a boost in 2021](#), being able to claim up to 90% of their stolen bitcoin, Vinnik's criminal prosecution was still on foot. In their announcement, [the Department of Justice \(DOJ\) cited breaches of US law by Vinnik](#) resulting in USD\$121 million in losses.

BTC-e was one of the primary ways by which cyber criminals around the world transferred, laundered, and stored the criminal proceeds of their illegal activities. BTC-e received criminal proceeds of numerous computer intrusions and hacking incidents, ransomware attacks, identity theft schemes, corrupt public officials, and narcotics distribution rings.

Reports by [blockchain analytic firms like Chainalysis have repeatedly undercut assertions](#) of rampant money laundering using cryptocurrency. Indeed, blockchain's very transparency has been the undoing of criminal efforts to launder proceeds of crime using cryptocurrency. The blockchain has [armed authorities and on chain sleuths with the evidence to investigate and trace illicit transaction flows](#) in ways not possible in the traditional banking sector.

With regulators around the world imposing broader [AML/CTF laws on Virtual Asset Service Providers or VASPs](#), the noose is tightening on those who use of cryptocurrency to disguise criminal activity.

Written by Michael Bacina, Steven Pettigrove and Luke Misthos

Roger Ver faces tax reckoning

The United States [has charged Roger Ver, an early investor in bitcoin \(BTC\), with a string of alleged financial sins](#). Ver, who once received the moniker "Bitcoin Jesus" as an early evangelist for the cryptocurrency, was arrested in Spain, accused of mail fraud, tax evasion, and filing false tax returns. The US Department of Justice (DOJ) is now seeking his extradition for trial, turning his story into a modern-day parable of fiscal reckoning.

The indictment alleges that Ver, formerly of Santa Clara, California, owned two companies that sold computer and networking equipment. From 2011 onwards, he allegedly acquired some 131,000 BTC for himself and his companies. Given his prominent role in spreading the gospel of BTC, Ver's financial dealings came under scrutiny.

In 2014, Ver obtained citizenship in St. Kitts and Nevis and renounced his U.S. citizenship, triggering tax obligations. However, Ver is alleged to have provided misleading information understating his BTC holdings and evading taxes, with the DOJ claiming a loss of at least USD\$48 million to the IRS. The DOJ also claims Ver failed to follow a commandment to pay "exit tax" upon renouncing his citizenship of the US in a process called expatriation. This "exit tax" is similar to that of [Australia's capital gains tax \(CGT\) event which applies when a resident ceases being a tax resident of Australia](#): the departing person is deemed to have disposed of all of their CGT assets at that time.

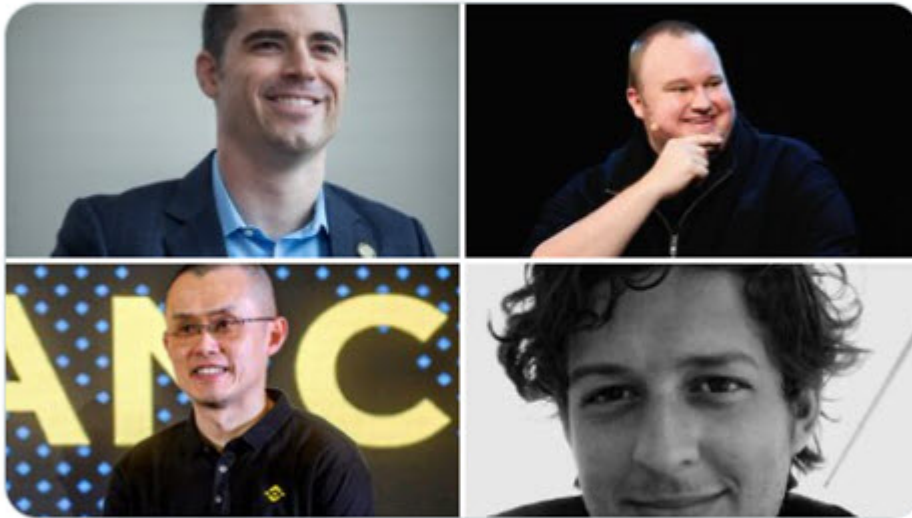
The DOJ further alleges that in 2017, Ver sold several thousand BTC yet did not inform the IRS about the gains he had made, despite the fact that the BTC was actually held by US-based corporations of his – Agilestar and MemoryDealers. The DOJ alleges that exchange info indicates Ver sold that portion of BTC for a biblical sum of USD\$240 million.

Acting Deputy Assistant Attorney General Stuart M. Goldberg and U.S. Attorney Martin Estrada announced the charges. The IRS Criminal Investigation's cybercrimes unit is leading the investigation.

Ver [earned the nickname "Bitcoin Jesus" many years ago by giving away cryptocurrency for free](#) to those that were interested in the space. Following his ostensible fall from grace, [many blockchain industry enthusiasts have been quick to call out the DOJ](#) for targeting Ver an entire decade *after* he left the US. DavidShares, a prominent BTC proponent on X, commented that Ver's arrest was part of a larger crypto targeting strategy by the US (a sentiment echoed by blockchain enthusiasts):

**DAVID** @DavidShares · [Follow](#)

The U.S. is aggressively coming after crypto. Just look at the recent targets. If you think you're not a target, think again. They will come after all of us at some point. We have to fight!



6:04 AM · May 1, 2024



187



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Once lauded (albeit as a meme) as a messiah, Ver now faces earthly reckoning for his alleged taxation missteps. His arrest in Spain signals that the US DOJ and IRS will aggressively pursue personal accountability in the cryptocurrency realm. As the DOJ seeks his extradition, Ver's tale serves as a cautionary reminder that only two things in life are certain ... death and taxes, with even Jesus not defeating both.

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