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Article Information

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Blockchain Bites: UK High Court makes landmark decision on digital assets, Japan considers a CBDC, IOSCO releases report on regulating crypto-asset trading platforms, US Department of Justice arrest man running a Bitcoin tumbler system

The UK High Court endorses reasoning that digital assets should be regarded as property at common law, Kozo Yamamoto urges Japan to create its own yen digital currency, The International Organization of Securities Commissions (IOSCO) releases a report evaluating the issues and risks relating to crypto-trading platforms, and a man running bitcoin tumbler system Helix, is arrested by the US Department of Justice. Michael Bacina, Tom Skevington and Petros Xenos of the Piper Alderman Blockchain Group bring you the latest legal, regulatory and project updates in Blockchain and Digital Law.

UK High Court recognizes digital assets as property at common law

The United Kingdom has been a leader in the legal recognition of digital assets, with the recent UK Joint Taskforce on LawTech publishing a statement (**UKJT Statement**) which reasoned that digital assets had the indicia of, and should be recognised at law as, property. In a recent decision, the High Court of the UK has given consideration to the point at a level not previously seen, and has endorsed the UKJT Statement as correct, finding that digital assets are property at common law, at least for the purposes of granting urgent interlocutory relief.

Although any decision involving interlocutory proceedings carries less weight than a full hearing where both sides have made submissions (another High Court decision addressing crypto assets did not consider the matter in detail), this decision represents the most detailed consideration yet of the position of crypto-assets at UK common law, and as such will be likely cited in future disputes where the question of whether crypto-assets are property at law is debated further. We consider this in more detail here.

Blockchain Australia Suspends ACX Exchange's membership

There has been reports that since January that customers of digital currency exchange ACX have been unable to withdraw crypto-assets or fiat currency from ACX. Micky.com.au recently ran the headline "Aussie exchange freezes '$1m+' of users funds in mystery audit".

The exchange has also had a message on their site to the effect that withdrawals were suspended while an audit of the hot and cold wallets used to store digital assets took place. That message is no longer present. Blockchain Australia has since permanently revoked ACX's membership in response to these complaints after ACX failed to respond to a show cause notice issued by Blockchain Australia.

The common advice provided is for those trading digital assets not to leave their assets or funds with any exchange to manage counter-party risk, an adage known as *"your keys, your assets, not your keys, not your assets"*.

IOSCO reports on regulating crypto-asset trading platforms

The International Organization of Securities Commissions (**IOSCO**) has released a report titled 'Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms'.

The report was prepared to assist IOSCO members in evaluating the issues and risks relating to trading platforms that facilitate the secondary trading of crypto-assets (Crypto-asset Trading Platforms or CTPs). The report adopts a broad definition of crypto-assets, defining them as, "a type of private asset that depends primarily on cryptography and [Distributed Ledger Technology] DLT or similar technology, as part of its perceived, or inherent value."

At a high level, the report finds that *"many of the issues and risks associated with trading on CTPs are similar to the issues and risks associated with trading traditional securities or other financial instruments"* and that accordingly, the IOSCO's ordinary core objectives and principles for securities regulation are relevant to CTP providers.

IOSCO identifies the key supporting principles as effective price discovery, appropriate transparency, market integrity and fair access, principles which could be mistaken as descriptors for many well-known crypto-asset projects.

Japan jolts towards development of digital yen to combat Chinese digital yuan

Kozo Yamamoto, Head of the Research Commission on the Finance and Banking Systems at the Japanese Liberal Democratic Party (LDP), has urged Japan to create its own yen digital currency "*within two to three years*", and include such plan in the government's mid-year key policy guidelines.

Yamamoto said (on the proposed digital yen), "*the sooner the better. We'll draft proposals to be included in the government's policy guidelines, and hopefully make it happen in two-to-three years*." His comment was followed by a similar proposal led by former economy minister Akira Amari, who reinforced the significance in issuing a digital yen to counter China's accelerated progress towards issuing its own digital currency.

Yamamoto is widely known in Japan as an architect of Prime Minister Shinzo Abe's "Abenomics" stimulus policy, and stated that he would work together with Amari to encourage the government to consider and adopt their proposals. This is a clear indication of central banks across the world quickening the pace at which they are looking at issuing a central bank digital currency, as China have not only emerged as clear front runners, but are extending the gap as the months go by.

US Federal Reserve Chairman shows support for private crypto transactions

Chairman of the US Federal Reserve, Jerome Powell has come out in favor of private cryptocurrency transactions in his recent comments to the House of Representatives Committee on Financial Services. He has told the Committee that the Federal Reserve are currently "*working hard*" on embracing efforts involving digital currencies and even went as far to reinforce that the end goal is to digitize the US dollar someday.

This is a clear volte-face from the Trump administration's dismissive, and disdainful rhetoric towards the anonymity of cryptocurrency transactions, with the U.S. Treasury Secretary Steven Mnuchin saying in a statement in July, "*cryptocurrencies like Bitcoin have been exploited to support billions of dollars of illicit activity like cyber crime, tax evasion, extortion, ransomware, illicit drugs, and human trafficking*."

Following this comment and President Trump's disparaging twitter thread in July 2019, many had assumed that anonymous cryptocurrency transactions would soon face a significant crackdown from the US government. However, Powell's comments and that of other representatives of the Federal Reserve seem to hint at the potential for more facilitative policy reform.

German bank bonds with Bitbond to bring about blockchain-based solutions

The Bankhaus von der Heydt, a German-based private bank, has partnered with Bitbond to incorporate blockchain in its asset structuring as well as asset servicing. Bitbond is a global marketplace lending platform for small business loans, and specializes in providing blockchain-based solutions for financial markets. They also provide online lending and tokenization services.

Bankhaus von der Heydt also offer securitization services, and according to the bank's website, the services offer "modern solutions to make a wide variety of assets liquid." Bitbond says the bank also plans to issue security tokens and develop its own Euro-backed stablecoin.

In December 2019, the German parliament passed the 'Law Implementing the Amending Directive to the Fourth EU Money Laundering Directive', allowing banks to buy, sell, and store digital assets. It is interesting to see the Bankhaus von der Heydt (with the assistance of Bitbond) being the first to capitalize on this novel opportunity in Germany.

Bitcoin Tumbler operator indicted by Department of Justice

The US Department of Justice have announced that they have arrested Larry Harmon, an Ohio resident, who was involved in running a Bitcoin tumbler system called Helix. A tumbler is the name given to a system which can make bitcoin transactions more private than the normal pseudononymous system which applies to normal transactions.

The unsealed indictment alleges that Mr Harmon not only operated Helix, which the Department of Justice says is an unlicensed money transmission system with knowledge that the source of funds Helix was mixing was criminal, and also that Mr Harmon operated at least one illegal darknet market which used Helix to pay vendors, a drug market known as Grams.

The indictment does lead with the actual criminal activity which Mr Harmon is alleged to have been involved in, so it is unlikely to lead to any meaningful guidance for those involved in privacy-enabling projects.   What is sure is that old transactions on the Bitcoin network continue to be a source of evidence for law enforcement against criminals and these kinds of prosecutions may help dispel the myth that public blockchains and cryptocurrencies are a useful method of money laundering and illegal transactions.