

Article Information

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Service: Blockchain

Sector: IT & Telecommunications

Blockchain Bites: Mango Market's bitter taste for attacker, Digital Surge rescue delivered, Chinese takeaways in NFT decision, and UK serving ahead of Australia in crypto-regulation race.

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

A bitter taste for Eisenberg as SEC and Mango Markets file lawsuits

On 20 January 2023, the Securities and Exchange Commission (**SEC**) charged Avraham Eisenberg with orchestrating an attack on Mango Markets, a crypto asset trading platform. The SEC [alleges](#) that Eisenberg manipulated the MNGO token, which the SEC alleges is a security under US law. The token is styled as a governance token which permits holders to vote on various aspects of the Mango Markets project.

Eisenberg, a United States citizen, was arrested and detained in Puerto Rico in December 2023 and is awaiting transfer to the Southern District of New York.

The Department of Justice and the Commodities Futures Trading Commission (**CFTC**) has brought parallel criminal and civil charges against Eisenberg. David Hirsch, Chief of the Crypto Assets and Cyber Unit, [said](#) that:

As we allege, Eisenberg engaged in a manipulative and deceptive scheme to artificially inflate the price of the MNGO token, which was purchased and sold as a crypto asset security, in order to borrow and then withdraw nearly all available assets from Mango Markets, which left the platform at a deficit when the security price returned to its pre-manipulation level.

In October 2022, [according](#) to the SEC, Eisenberg engaged in a scheme to steal around \$116 million worth of crypto-assets from the Mango Markets platform. The SEC alleges that Eisenberg carried out the scheme while being based in Puerto Rico, whereby he used an account that he controlled Mango Markets to sell perpetual futures for MNGO tokens and used another account on Mango Markets to acquire those same perpetual futures.

Following this, Eisenberg engaged in a series of purchases of the MNGO token for the purpose of artificially raising the price of the MNGO token relative to the crypto-asset USD Coin. This increased the value of Eisenberg's collateral on the Mango Market exchange and allowed him to withdraw the equivalent of [US\\$110m](#) in various tokens, including USDC, SOL, mSOL, wBTC, SRM and a large amount of MNGO tokens. Or as Mango Markets put it:

by temporarily purchasing approximately 488 million MNGO tokens (of approximately 500 million tokens in circulation), taking out significant loans against the inflated collateral, and then cashing out once the currency's value inflated threefold...This drained Mango Markets' depositor smart contract and significant user assets.

He later entered into an settlement agreement with Mango Markets under which users losses were returned and Avrahams retained USD\$47M of value.

In December 2022, Eisenberg [sought](#) to adopt a “code is law” defence, asserting that his trading involved “legal open market actions” and that the Mango Market’s protocol had merely operated as designed. What makes this case high profile is that Eisenberg publicly defended his actions on [Twitter](#) following the exploit, saying he engaged in a “highly profitable trading strategy”. Eisenberg then [appeared on Laura Shin’s popular Unchained Podcast](#) further asserting that his actions were correct and permitted by the code and therefore were legitimate. The “code is law” defence is unlikely to gain traction in the courts on the market manipulation charge, but it [may assist](#) on the fraud claims due to the high burden of proof regarding intent.

In addition to the FBI, CFTC and SEC lawsuits, Mango Markets themselves have now [commenced an action against Eisenberg](#), asserting that the attack was “malicious” and that the settlement agreement was entered into under “duress”. Mango Markets are seeking USD\$47M in damages from Eisenberg plus interest.

Digital Surge rescue package voted through by creditors

The creditors of Brisbane-based cryptocurrency exchange Digital Surge have voted to pass the proposed Deed of Company Arrangement (**DOCA**), less than two months after the company entered into voluntary administration.

Digital Surge went into administration in December 2022, [following the collapse of FTX](#). It was announced that the company transferred \$33 million worth of assets into FTX just two weeks earlier.

The directors of Digital Surge immediately declared an intention to propose a DOCA to pay back all creditors over time, with payments coming from the future profits of the company, the directors also proposed contributing AUD\$1.25 million of their own funds.

KordaMentha, the administrators of Digital Surge, presented the package to creditors of Digital Surge to be voted on at the Second Meeting of Creditors on 24 January. That meeting took 4 hours, with the DOCA passed overwhelmingly.

Successful rescues in insolvency are rare, with over 90% of administrations leading to liquidations, and this appears to be the first time that a digital currency exchange has achieved a successful rescue package in an insolvency event.

Chinese Court recognises NFT as property in China

In recent years, non-fungible tokens (**NFTs**) have garnered huge popularity in China. However, its legal status has remained largely in the grey zone due to China’s blanket-ban on traditional cryptocurrency.

Things seem to be changing thanks to a recent judgement handed down by a court in China. Last November, the Hangzhou Internet Court of the Zhejiang Province made a significant stride toward legal recognition of NFT as property.

In this judgement, the Court ruled that NFTs are a new type of virtual property. The Court also said NFTs not only possess attributes of traditional properties, but also have special characteristics as virtual assets.

The facts of the case are relatively straightforward. A summary is as follows:

- The seller was a tech company that specialised in the sales of digital artwork via e-commerce platforms;
- The seller released a limited-edition of *NFT Digital Collectible Package* (in China, NFTs are often referred to as Digital Collectibles) that were only sold on a first-come-first-serve basis. The defendant’s offer for sale required prospective purchasers to provide personal information such as phone and ID numbers, so as to ensure each purchaser could only purchase one package;
- The buyer made an order and a payment of Rmb 999 (around AUD 220) to purchase a *NFT Digital Collectible Package* from the seller. However, while making the order the buyer provided incorrect personal information;
- After noticing the incorrect information, the seller decided not to deliver the NFT. Ten days later, the seller made a full refund to the buyer.

The buyer was unhappy with the refund, therefore sued the seller in the Hangzhou Internet Court, seeking that the seller perform the contract, or compensate him 10 times of the purchase payment. The Hangzhou Internet Court was set up in 2017 to specialise in cases involving e-commerce and internet matters. It is located in Hangzhou, where the Chinese e-commerce giant Alibaba group is headquartered.

The legal reasoning of the judgment largely hinged on the contract of sale, which allowed the seller to cancel any order, if the buyer failed to provide accurate personal information. However, before it ruled on the validity of the contract, the Hangzhou Internet Court decided to determine whether the underlying good, being the *NFT Digital Collectible Package*, is a property duly recognised and protected by Chinese laws.

The Court found that NFTs, which it called Digital Collectibles, have attributes of traditional property, such as possessing

value and scarcity, and being subject to controlled and transaction. Meanwhile, the Court also ruled that NFTs are special, in the way that they are virtual and powered by technologies. The Court concluded that NFTs are property protected by Chinese laws, therefore the contract of sale was valid. Under that the contract, the seller was entitled to refuse a sale and refund the buyer when the latter provided inaccurate information.

The Court further commented that NFTs should be protected by Chinese law and subject to similar rules that apply to items sold on e-commerce sites.

This judgment is a major milestone in China's recognition and protection of NFTs as property. The approach is consistent with the Chinese government's pursuit to develop a [state-backed market place for NFTs](#) and to encourage adoption of NFTs in China. While the legal status of NFTs is being driven largely by cases being decided in many jurisdictions, last year the [Singapore High Court](#) also ruled that NFTs are property in a precedent-setting decision. We expect more and more jurisdictions to follow this path.

UK progressing plans for crypto hub

Last week, the United Kingdom (UK) House of Commons published a [briefing paper](#) on the regulation of cryptocurrency. Following on the heels of the [UK Law Commission's report on digital property](#), the paper again highlights the generally well informed and sophisticated level of debate in the UK on the regulation of digital assets.

The briefing paper [covers](#), among others:

1. The definition and characterisation of cryptocurrencies and crypto-assets; and
2. The regulation of crypto-assets with a focus on:
 - a. the government's vision for the future;
 - b. protecting consumers;
 - c. registering crypto-asset businesses;
 - d. regulating stablecoins;
 - e. current and recent Parliamentary consideration; and
 - f. potential future consultation.

While Australia has yet to kick off its token mapping consultation, the briefing paper reiterates the Government's view (which has been echoed by the FCA, its main financial services regulator) that:

Most types of cryptoassets fell outside the regulatory perimeter and would continue to do so.

The UK Government has highlighted the growing attractiveness of stablecoins as a means of payment while acknowledging the risk to consumers and financial stability if not appropriately regulated. In April 2022, the UK Government announced an intention to regulate stablecoins or 'digital settlement assets', as a means of payment.

The briefing paper reinforces the notion that:

The market is...likely to welcome some regulation of the riskier parts of the digital asset landscape to offer consumers protection, providing that it does not stifle innovation or seek to control the way in which blockchain and distributed ledgers work.

On 25 January 2023, a debate on the regulation of cryptocurrencies took place in the UK Parliament. The Financial Services Minister, Andrew Griffith, [pledged greater consultation](#) with the crypto industry as the UK plans its post-Brexit financial services regime. Griffith stated that the government is likely to release a policy paper on crypto regulation within weeks and added:

We'll bring forward timely, sensible and balanced regulation in order to allow the safe use of this technology.

Meanwhile, the former Chancellor of the Exchequer, Phillip Hammond, was this week [appointed](#) Chairman of Copper, a leading light of the UK's crypto industry.

Last April, the UK announced ambitious plans to become a crypto-asset technology hub under another Chancellor, now

Prime Minister, Rishi Sunak. Mr Griffith's latest comments indicate that the UK is still intending to take a progressive stance with respect to the regulation of cryptocurrency. Meanwhile, questions around Australia's progress remain unanswered. Can Australia catch up?