

Article Information

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Blockchain Bites: Ripple effects on Capitol Hill following XRP judgment, Ripple to tokenise real estate in HK CBDC pilot, EU adopts Web 4.0 strategy, UK Law Commission releases final recommendations on Digital Assets, Feds bring the heat as ex-Celsius CEO arrested

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

Ripple effects on Capitol Hill following XRP judgment

Last week, a US District Court in Manhattan granted [summary judgment in Ripple Labs' \(Ripple\) long running battle with the US Securities and Exchange Commission \(SEC\) holding the XRP token 'is not in and of itself' a 'contract, transaction\[,\] or scheme'](#) that meets the Howey requirements of an investment contract. It was thus held that the sale of XRP tokens by Ripple to institutional investors in blind auctions via cryptocurrency exchanges did not constitute an investment contract, due to the circumstances of the offering. Importantly, the decision illuminated the court's approach in classifying digital asset tokens, with the court favouring the view that while tokens may be offered as a security (the equivalent of a financial product in the Australian context) depending on the circumstances, a token is not inherently a security or a financial product.

Following the Court's decision, Representative [Ritchie Torres wrote a letter](#) to the SEC Chair, Gary Gensler, commenting:

Regulating digital assets through enforcement only had a dreadful day in court last week...[the SEC] must reassess its continued assault on the crypto industry.

The letter emphasized the need for the SEC to transition away from regulation by enforcement that was 'often politically timed' and consider the Ripple judgment. The letter reinforced that the SEC must communicate and regulate by clear rule and guidance to redirect:

enforcement energies [to] where it belongs: on the bonafide bad actors who perpetrate serious transgressions like fraud, market manipulation, and the misappropriation of customer funds.

In an April hearing before the House Financial Services Committee, [Committee members criticised Chair Gensler's lack of a definitive answer](#) to the question of whether ETH was a security or commodity. Gensler has on numerous occasions [asserted that 'most crypto tokens are securities'](#) and, therefore, most 'crypto intermediaries' require registration with the SEC. This issue was further addressed in Torres' letter, where he stated that the SEC 'indiscriminately declaring all crypto assets, except Bitcoin, to be securities' lacks legal basis and is filled with contradiction:

When pressed about the status of ether as a security, Chair Gensler has been all over the place: yes, no, maybe so.

The latest developments follow [Coinbase's rulemaking petition](#) in respect of crypto-asset securities filed with the SEC, in respect of which the SEC had been ordered to respond. The 2022 petition which was previously met with silence by the regulator sought clarity regarding the SEC's approach to regulating crypto assets and interpretation of US securities laws. With increasing pressure on the SEC from market participants and members of Congress, the SEC's response is highly

anticipated. Meanwhile, many in the industry continue to look to Congress to take action to establish a regulatory regime for crypto-assets that will comprehensively address the issues raised in the Ripple case.

Representatives Patrick McHenry and Glenn Thompson, two of the leading supporters of a [new crypto bill circulating on Capital Hill, issued a joint statement following the decision](#) promising to advance their bill out of committee to the full house this month. In respect of the Ripple decision, they lamented the Court's apparent failure to ensure protections for retail investors while noting that the Court's decision endorsed aspects of their proposed bill:

Outcomes like this are what happens when regulators force courts to make policy instead of Congress. Our comprehensive market structure legislation will give all investors, customers, and market participants the same longstanding protections found in traditional financial markets,

Read our full summary of the SEC v Ripple Labs, Inc. judgment [here](#).

Ripple to tokenise real estate in HK CBDC pilot

Ripple Labs [recently announced its participation](#) in the Hong Kong government's e-HKD CBDC pilot by deploying a real estate tokenisation solution. Ripple Labs is the developer of the XRP Ledger (XRPL) blockchain, best known for its cryptocurrency, XRP. The firm received something of a boost last week after [a US Court, at first instance, determined that the XRP token is not in and of itself a security](#).

Ripple's participation in the [Hong Kong CBDC pilot](#) forms part of its broader plans to help revolutionise the real estate industry, using tokenisation to streamline transactions, improve transparency, liquidity and accessibility to the global real estate market, which is projected to reach over \$5 trillion in value by 2027. The Hong Kong pilot involves [15 other firms trialling further CBDC use cases](#).

In a tweet on July 7, [Anthony Welfare, Ripple's CBDC Advisor announced:](#)

Tokenization is the future of real estate. The pilot combines the Hypothetical e-HKD, tokenized real estate and finance lending protocols. [It] allows users to tokenize real estate as collateral for loans.

The pilot was initiated in May, together with Ripple's partner Fubon Bank, one of the largest commercial banks in Taiwan. Ripple Labs demonstrated their innovative real estate tokenisation solution, combining the e-HKD CBDC, tokenised real estate and lending protocols on their decentralized, public blockchain XRPL. The project aims to enable Hong Kong citizens to release home equity more efficiently and allow commercial banks to benefit from flexible payments and loans.

In relation to the Hong Kong pilot, James Wallis, Ripple Labs' Vice President of Central Bank Engagements & CBDCs commented:

It's a huge honor for Ripple to be one of the select few organizations participating in the HKMA's e-HKD Pilot Programme. We now have the opportunity to demonstrate how real estate asset tokenization could be brought to the citizens of Hong Kong, and are confident that our fully integrated solution will be an industry-first use case demonstrating the power of leveraging a CBDC for real estate equity asset release.

Tokenisation of real-world assets such as real estate, intellectual property and commodities offers [various practical benefits](#), with real world asset tokenisation anticipated to be a multi-trillion-dollar industry by 2030. By representing ownership rights as digital tokens and recording this on a blockchain, the process can reduce transaction costs by eliminating intermediaries while increasing liquidity, accessibility and transparency. As the tokens are tradable, it further enables convenient acquisition and disposal of assets without traditional brokers or time constraints.

While the concept of tokenisation is not new, tokenised real estate is an area of increasing interest for financial institutions and real estate developers. The tokenisation of property title offers the promise of significant efficiencies for all parties.

The HKMA aims to share the key learnings from its CBDC pilot project with the public at Hong Kong FinTech Week in November this year.

EU adopts Web 4.0 strategy

On July 11, 2023, the European Commission adopted a new strategy on Web 4.0 in an attempt to 'steer the next technological transition'. [In a press release](#), the Commission affirmed its commitment to:

Ensure an open, secure, trustworthy, fair and inclusive digital environment for EU citizens, businesses and public administrations.

Comparing Web 3.0 with Web 4.0

The Commission describes the main features of Web 3.0 as ‘openness, decentralisation and user full empowerment’. The third generation of the web is currently in development and leverages the power of emerging technologies like artificial intelligence, blockchain and machine learning. This saw the creation of new organisational structures like decentralised autonomous organisations (DAOs) and the rise of digital assets like non-fungible tokens (NFTs), as well as decentralised applications and finance. Cryptocurrency underpins most Web 3.0 services and applications and is being increasingly accepted as an alternate means of payment to fiat currency.

Web 4.0 takes these innovations one step further, with the the Commission envisioning an ‘integration between digital and real objects and environments’, with ‘enhanced interactions between humans and machines’. As the inventions and applications of Web 3.0 become more advanced and socially integrated, the EU expects a ‘truly intuitive, immersive’ experience that ‘seamlessly’ blends physical and digital worlds. This concept of digitalisation is anticipated as a ‘key driver’ of web development, with the global virtual worlds market projected to skyrocket from approximately AUD\$44.5B in 2022 to well over AUD\$1.3T by 2030. In particular, the [EU has noted five sectors which will benefit from Web 4.0](#):

- Health – realistic training for emergencies and surgery simulation
- Green transition – realistic simulations of global warming to enhance understanding
- Industry – increased efficiency
- Art and design – new ways to create
- Education – a more experiential learning environment

EU’s strategy

The key pillars of the Web 4.0 strategy were developed in line with the EU’s Digital Decade policy programme and include skills, business, public services and infrastructures:

1. Individuals: empowering people and reinforcing skills
2. Business: supporting a European Web 4.0 industrial ecosystem
3. Government: supporting social progress and virtual public services
4. Infrastructures: shaping global standards for open and interoperable Web 4.0

By announcing a Web 4.0 strategy, the Commission has declared a ‘head start in the next technological transition’. The Commission is planning for the transition to occur in line with EU values, principles and fundamental rights. The strategy offers a forward thinking precedent for other jurisdictions to follow as the world navigates the rapid evolution of the internet.

UK Law Commission releases final recommendations on Digital Assets

On 28 June 2023, the UK Law Commission [published its final report](#) on Digital Assets (the “Report”) after an extensive and detailed consultation on private law matters relating to digital assets under English law.

At a high level, the Report concludes that the existing common law in England and Wales has demonstrated enough resilience and adaptability to acknowledge digital assets as objects that can be subject to personal property rights. As a result, the UK Law Commission has made only a handful of recommendations for legal reform to address remaining uncertainties. A condensed overview of the Final Report can be found [here](#).

The ‘big ticket’ conclusion of the Report is that a third category of property should be recognised for digital assets that are neither things in possession nor things in action. This third category is so-called “digital objects”.

This suggestion was foreshadowed by the UK Law Commission’s 500 plus page preliminary report issued in [July 2022](#) which invited views as to whether this would best be achieved through common law development or statutory reform. The Report concludes that consultees primarily believed that a dual approach (i.e. legislative reform affirming the position increasingly accepted at common law) was best.

The Report recommends statutory confirmation that a ‘thing’ will not be deprived of legal status as an object of personal property rights merely by reason of the fact that it is neither a thing in action nor a thing in possession. The Report suggests that ongoing common law development should define what falls into that category (i.e. things that do not fit neatly into either of the two already existing types of personal property). The characteristics of crypto tokens and the issues that arise when trying to fit the nascent asset class into the existing definitions of personal property are considered at length in the report.

The Report suggests that the Government also establish and appoint a diverse panel of industry-specific technical experts, legal practitioners, academics, and judges to provide non-binding guidance on the complex issues pertaining to digital assets, ensuring it includes individuals knowledgeable about crypto-token markets, rather than solely focusing on traditional finance or intermediated securities markets.

The Report also recommends statutory amendment to the *UK Financial Collateral Arrangements (No 2) Regulations* (the “FCARs”) to clarify rules and definitions pertaining to the custody of crypto-tokens, and the tokenisation of financial instruments or credit claims.

Finally, the Report recommends that, as a matter of priority, the Government set up a multi-disciplinary project to formulate and put in place a “bespoke statutory legal framework” that clearly facilitates the entering into, operation and enforcement of crypto-token collateral arrangements.

With the recent adoption of the [Financial Services and Markets Act 2023](#), the UK Law Commissions recommendations, if adopted, will further support its [push to become a global crypto-asset technology hub](#). Given the broad influence of the English common law, the recommendations also merit serious consideration as other jurisdictions grapple with complex legal questions raised by blockchain technology and crypto assets.

Feds bring the heat as ex-Celsius CEO arrested

Former Celsius CEO, Alex Mashinsky, was arrested on 13 July, following [charges laid by the US Department of Justice](#) including securities, commodities, and wire fraud for defrauding customers and misleading them about core aspects of the company he founded, including Celsius’s success, profitability, and the nature of the investments Celsius made using customer funds.

Celsius expanded rapidly following its launch in 2018, with its former CEO assuring customers and investors that the business was a safe alternative to traditional banks. The firm was also well-known for its sky-high interest rates of up to 17% per year. At its peak, Celsius had 1.7 million users globally and controlled nearly USD\$25B worth of crypto assets. This was until its collapse in mid 2022, which resulted in the company [filing for bankruptcy](#).

Mashinsky, along with the former CEO and chief revenue officer, Roni Cohen-Pavon, are further charged with conspiracy, securities fraud, market manipulation, and wire fraud for illicitly manipulating the price of CEL, Celsius’s proprietary crypto token, all while secretly selling their own CEL tokens at artificially inflated prices.

Mashinsky has denied all charges, with his legal counsel [reporting to the CNBC](#):

Alex vehemently denies the allegations brought today...he looks forward to vigorously defending himself in court against these baseless charges

The Securities and Exchange Commission (SEC) and the [Commodity Futures Trading Commission \(CFTC\)](#) also announced charges against the former CEO and Celsius, accusing them of scheming to defraud investors.

The [SEC alleges](#) that Celsius and Mashinsky, among others:

1. Raised billions of dollars from investors through unregistered and fraudulent offers and sales of crypto asset securities including its Earn Interest Program
2. Falsely promised investors a safe investment with high returns through its Earn Interest Program
3. Misled investors including CEL holders about the financial success of Celsius
4. Fraudulently manipulated the price of the CEL token

Celsius reportedly used phrases such as ‘Pour Yourself a Cup of Profits’ and ‘Profits in your Pocket’ to promote its sky-high interest rate to users while avoiding an explanation of how such rates were possible. Even when customers rushed to withdraw their funds, the company and its executives allegedly maintained that the business was financially healthy, claiming that it did not engage in risky practices despite having made uncollateralized loans.

The bankrupt Celsius group is cooperating with Federal authorities and [has also agreed to a USD\\$4.7B suspended settlement with the Federal Trade Commission \(FTC\)](#), the civil antitrust law and consumer protection regulator, which is also pursuing action against the firm’s co-founders. This marks one of the biggest FTC settlements ever. However, the settlement will not be paid until customer assets are returned.

Mashinsky has been released pending trial, with a USD\$40M bond secured by his personal property in Manhattan and a bank account. Mashinsky now faces a lengthy legal battle as regulators continue to target alleged fraud and misconduct during the last crypto bull run.