



Blockchain & Cryptocurrency Regulation

2020

Second Edition

Contributing Editor
Josias N. Dewey



CONTENTS

Preface	Josias N. Dewey, <i>Holland & Knight LLP</i>	
Foreword	Aaron Wright, <i>Enterprise Ethereum Alliance</i>	
Glossary	The Editor shares key concepts and definitions of blockchain	
Industry	<i>Promoting innovation through education: The blockchain industry, law enforcement and regulators work towards a common goal</i> Jason Weinstein & Alan Cohn, <i>The Blockchain Alliance</i>	1
	<i>The loan market, blockchain, and smart contracts: The potential for transformative change</i> Bridget Marsh, <i>LSTA</i> & Josias N. Dewey, <i>Holland & Knight LLP</i>	5
	<i>A year of progress – the Wall Street Blockchain Alliance and the ongoing evolution of blockchain and cryptoassets</i> Ron Quaranta, <i>Wall Street Blockchain Alliance</i>	14
General chapters	<i>Blockchain and intellectual property: A case study</i> Joshua Krumholz, Ieuan G. Mahony & Brian J. Colandreo <i>Holland & Knight LLP</i>	18
	<i>The custody of digital assets – 2020</i> Jay G. Baris, <i>Shearman & Sterling LLP</i>	35
	<i>Cryptocurrency and other digital assets for asset managers</i> Gregory S. Rowland & Trevor I. Kiviat, <i>Davis Polk & Wardwell LLP</i>	52
	<i>The yellow brick road for consumer tokens: The path to SEC and CFTC compliance. An update</i> David L. Concannon, Yvette D. Valdez & Stephen P. Wink, <i>Latham & Watkins LLP</i>	64
	<i>Custody and transfer of digital assets: Key U.S. legal considerations</i> Michael H. Krimminger, Colin Lloyd & Sandra Rocks, <i>Cleary Gottlieb Steen & Hamilton LLP</i>	88
	<i>An introduction to virtual currency money transmission regulation</i> Michelle Ann Gitlitz & Michael J. Barry, <i>Blank Rome LLP</i>	101
	<i>Cryptocurrency compliance and risks: A European KYC/AML perspective</i> Fedor Poskriakov, Maria Chiriaeva & Christophe Cavin, <i>Lenz & Staehelin</i>	119
	<i>The potential legal implications of securing proof of stake-based networks</i> Angela Angelovska-Wilson, <i>DLx Law &</i> Evan Weiss, <i>Proof of Stake Alliance</i>	133
	<i>Legal issues surrounding the use of smart contracts</i> Stuart Levi, Alex Lipton & Cristina Vasile, <i>Skadden, Arps, Slate, Meagher & Flom LLP</i>	155
	<i>U.S. Federal Income Tax implications of issuing, investing and trading in cryptocurrency</i> Mary F. Voce & Pallav Raghuvanshi, <i>Greenberg Traurig, LLP</i>	171
	<i>Stablecoins: A global overview of regulatory requirements in Asia Pacific, Europe, the UAE and the USA</i> David Adams & Jesse Overall, <i>Clifford Chance LLP</i> Jason Rozovsky, <i>R3</i>	182
	<i>Blockchain and the GDPR: Co-existing in contradiction?</i> John Timmons & Tim Hickman, <i>White & Case LLP</i>	202

General chapters	<i>Smart contracts in the derivatives space</i> Jonathan Gilmour & Vanessa Kalijnikoff Battaglia, <i>Travers Smith LLP</i>	220
	<i>Distributed ledger technology as a tool for streamlining transactions</i> Douglas Landy, James Kong & Jonathan Edwards, <i>Milbank LLP</i>	232
Country chapters		
Argentina	Juan M. Diehl Moreno & Santiago Eraso Lomaquiz, <i>Marval, O'Farrell & Mairal</i>	245
Australia	Peter Reeves, <i>Gilbert + Tobin</i>	251
Austria	Ursula Rath & Thomas Kulnigg, <i>Schoenherr Attorneys at Law</i>	263
Bermuda	Mary V. Ward & Adam Bathgate, <i>Carey Olsen Bermuda Limited</i>	271
Brazil	Martim Machado & Julia Fontes Abramof, <i>CGM Advogados</i>	282
British Virgin Islands	Clinton Hempel & Mark Harbison, <i>Carey Olsen</i>	288
Canada	Simon Grant, Kwang Lim & Matthew Peters, <i>Bennett Jones LLP</i>	294
Cayman Islands	Alistair Russell & Dylan Wiltermuth, <i>Carey Olsen</i>	308
China	Jacob Blacklock & Shi Lei, <i>Lehman, Lee & Xu</i>	316
Cyprus	Karolina Argyridou, Prodromos Epifaniou & Akis Papakyriacou, <i>Verita Legal K. Argyridou & Associates LLC</i>	326
Estonia	Priit Lätt, <i>PwC Legal Estonia</i>	332
France	Christophe Perchet, Juliette Loget & Stéphane Daniel, <i>Davis Polk and Wardwell LLP</i>	344
Germany	Dr Stefan Henkelmann & Lennart J. Dahmen, <i>Allen & Overy LLP</i>	355
Gibraltar	Joey Garcia & Jonathan Garcia, <i>ISOLAS LLP</i>	367
Guernsey	David Crosland & Felicity Wai, <i>Carey Olsen (Guernsey) LLP</i>	376
Hong Kong	Yu Pui Hang (Henry Yu), <i>L&Y Law Office / Henry Yu & Associates</i>	387
India	Anu Tiwari & Rachana Rautray, <i>AZB & Partners</i>	401
Ireland	Maura McLaughlin, Pearse Ryan & Caroline Devlin, <i>Arthur Cox</i>	407
Japan	Taro Awataguchi & Takeshi Nagase, <i>Anderson Mōri & Tomotsune</i>	414
Jersey	Christopher Griffin, Emma German & Holly Brown, <i>Carey Olsen Jersey LLP</i>	424
Korea	Jung Min Lee, Samuel Yim & Joon Young Kim, <i>Kim & Chang</i>	433
Liechtenstein	Dr Ralph Wanger, <i>BATLINER WANGER BATLINER Attorneys at Law Ltd.</i>	440
Malta	Malcolm Falzon & Alexia Valenzia, <i>Camilleri Preziosi Advocates</i>	445
Mexico	Miguel Ángel Peralta García, Pedro Said Nader & Patrick Seaver Stockdale Carrillo, <i>Basham, Ringe y Correa, S.C.</i>	455
Montenegro	Marija Vljaković & Luka Veljović, <i>Moravčević Vojnović i Partneri</i> <i>AOD Beograd in cooperation with Schoenherr</i>	463
Netherlands	Björn Schep, Willem Röell & Christian Godlieb, <i>De Brauw Blackstone Westbroek</i>	466
Portugal	Filipe Lowndes Marques, Mariana Albuquerque & João Lima da Silva <i>Morais Leitão, Galvão Teles, Soares da Silva & Associados</i> <i>[Morais Leitão]</i>	476
Russia	Vasilisa Strizh, Dmitry Dmitriev & Anastasia Kiseleva, <i>Morgan, Lewis & Bockius LLP</i>	486

Serbia	Bojan Rajić & Mina Mihaljčić, <i>Moravčević Vojnović i Partneri AOD Beograd in cooperation with Schoenherr</i>	494
Singapore	Franca Ciambella & En-Lai Chong, <i>Consilium Law Corporation</i>	500
South Africa	Angela Itzikowitz & Ina Meiring, <i>ENSAfrica</i>	512
Spain	Alfonso López-Ibor, Pablo Stöger & Olivia López-Ibor, <i>Ventura Garcés López-Ibor</i>	519
Switzerland	Daniel Haeberli, Stefan Oesterhelt & Alexander Wherlock, <i>Homburger AG</i>	524
Taiwan	Robin Chang & Eddie Hsiung, <i>Lee and Li, Attorneys-at-Law</i>	536
United Arab Emirates	Abdulla Yousef Al Nasser, Flora Ghali & Nooshin Rahmannejadi, <i>Araa Group Advocates and Legal Consultants</i>	543
United Kingdom	Stuart Davis, Sam Maxson & Andrew Moyle, <i>Latham & Watkins LLP</i>	554
USA	Josias N. Dewey, <i>Holland & Knight</i>	565
Venezuela	Luisa Lepervanche, <i>Mendoza, Palacios, Acedo, Borjas, Páez Pumar & Cía. (Menpa)</i>	575

Montenegro

Marija Vlajković & Luka Veljović
Moravčević Vojnović i Partneri AOD Beograd in cooperation with
Schoenherr

Government attitude and definition

Cryptocurrencies are not regarded as an official means of payment in Montenegro, although their use is not prohibited. In a recent informal statement published on its website, the Central Bank of Montenegro restated that as virtual currencies are not a legal means of payment in Montenegro, any transaction facilitated through virtual currencies is performed at one's own risk. The Central Bank also confirmed that they do not have information on how many individuals and companies are issuing and managing these currencies, including conversion services to conventional currency and *vice versa*.

Given the country's strong desire to join the European Union, the Central Bank of Montenegro and other competent state authorities tend to align their official positions with the current European position and legislation concerning cryptocurrencies, which still remain reserved and to a certain extent doubtful, mostly due to the anonymity surrounding cryptocurrencies, which may lead to potential money laundering, terrorist financing and tax evasion.

Cryptocurrency regulation

There is no relevant legislation regarding cryptocurrency in Montenegro. However, there have been several proposals to regulate particular aspects of cryptocurrency, in particular those relating to money transmission and anti-money laundering. For more details please see under "Money transmission laws and anti-money laundering requirements" below.

Sales regulation

There is no legislation regarding the sale of bitcoins or other tokens in Montenegro.

Taxation

Cryptocurrency is not subject to special tax law procedures in Montenegro. Accordingly, Montenegrin tax rules do not include any special tax rules for income, profits or gains arising from transactions involving cryptocurrencies. In fact, all transactions performed in Montenegro using cryptocurrencies have had their values expressed in euros as well.

Namely, there have been several transactions concerning the purchase and sale of immovable property in Montenegro using cryptocurrencies as a means of payment (in particular, bitcoins). However, all such contracts contained a price in euros in parallel. The Tax Authority of Montenegro applied taxes only on the corresponding value of the property expressed in euros, and not in bitcoins. Concerning these several cases, the Tax Authority

explained that the trade of real estate, goods and services in Montenegro can be performed using virtual currencies, but that the corresponding value needs to be stated not only in bitcoins but in the official currency as well in order to enable the calculation and collection of the value added tax or real estate transfer tax.

Money transmission laws and anti-money laundering requirements

Currently, there is no money transmission and anti-money laundering regulation concerning cryptocurrencies in Montenegro. The currently applicable Prevention of Money Laundering and Financing of Terrorism Act does not specifically regulate cryptocurrencies, though by wider interpretation it could be concluded that cryptocurrencies should also be included under the term ‘assets’ and should therefore come within the scope of this act.

However, in 2018 the Government proposed the Amendments to the Prevention of Money Laundering and Financing of Terrorism Act (*Prijedlog izmjena i dopuna Zakona o sprječavanju pranja novca i finansiranju terorizma*), which, among others, provide that all legal and natural persons shall report transactions with cryptocurrencies exceeding the equivalent value of EUR 15,000. However, these amendments have not yet been adopted.

Promotion and testing

At the moment we are not aware of any “sandbox” or other programmes intended to promote research and investment in cryptocurrency in Montenegro.

Ownership and licensing requirements

In Montenegro, there are no restrictions on investment managers owning cryptocurrencies for investment purposes, nor are there any licensing requirements imposed on someone who holds cryptocurrency as an investment advisor or fund manager.

Mining

The mining of bitcoins and other cryptocurrencies is also not regulated in Montenegro. Having that in mind, it should not be considered as prohibited. However, there is a complete lack of regulatory framework and supervision over mining activities in Montenegro.

Border restrictions and declaration

There are no border restrictions nor obligations to declare cryptocurrency holdings.

Reporting requirements

Please see under “Money transmission laws and anti-money laundering requirements” above.

Estate planning and testamentary succession

There is no legislation, nor case law, confirming and explaining the use of cryptocurrencies for the purposes of estate planning and testamentary succession in Montenegro.

**Marija Vlajković****Tel: +381 11 3202 600 / Email: m.vlajkovic@schoenherr.rs**

Ms Vlajković is a partner with a strong track record in employment and corporate/commercial law in Serbia and the wider region. She enjoys many long-standing relationships with clients who she advises on a daily basis, including United Group, CBRE, Sitel, Mastercard, OMV and Cooper Standard. Her assignments also include representing clients in labour disputes. Marija also manages Schoenherr's office in Montenegro. In addition, Marija is a data protection expert and heads Schoenherr's data protection practice in Serbia, Bosnia and Herzegovina, North Macedonia and Montenegro. Marija gives advice on data protection matters to clients like Nepi, Sitel, ImmoFinanze, Mastercard, Ingram Micro and Ball Corporation. She has held numerous conferences and training on data protection, especially concerning GDPR and its extended application to Serbia, and as well on the newly adopted Data Protection Act.

**Luka Veljović****Tel: +382 20 228 137 / Email: l.veljovic@schoenherr.me**

Luka Veljović is an associate in Moravčević Vojnović and Partners in cooperation with Schoenherr. Based in the Montenegro office, he is a member of the corporate/commercial practice group, with a track record in real estate and construction, energy and regulatory law in Montenegro and Serbia. He is engaged in corporate and regulatory matters in construction, energy and financial services industries, and some of the clients that he has advised include Shanghai Electric Power, Enemalta plc, Rakita Exploration, EPCG, Ludwig Pfeiffer, United Group and Adient Automotive. Luka graduated from the University of Montenegro, Faculty of Law, while spending a part of his studies at the University of Maribor (Slovenia), the University of Zagreb (Croatia) and the University of Nice (France). He speaks Montenegrin natively, and is fluent in English, French and Spanish.

Moravčević Vojnović i Partneri AOD Beograd in cooperation with Schoenherr

Bulevar Džordža Vašingtona 98, Atlas Capital Plaza, II Floor, ME-81000 Podgorica, Montenegro
Tel: +382 20 228 137 / Fax: +382 20 226 055 / URL: www.schoenherr.eu

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

- **Alternative Real Estate Investments**
- **AI, Machine Learning & Big Data**
- **Banking Regulation**
- **Bribery & Corruption**
- **Cartels**
- **Commercial Real Estate**
- **Corporate Tax**
- **Employment & Labour Law**
- **Energy**
- **Fintech**
- **Fund Finance**
- **Initial Public Offerings**
- **International Arbitration**
- **Litigation & Dispute Resolution**
- **Merger Control**
- **Mergers & Acquisitions**
- **Pricing & Reimbursement**

Strategic partner:

