DIGITAL CURRENCY

OVERVIEW

As the use of digital currency and the adoption of blockchain technology has proliferated, creating a highly efficient alternative for global commerce, it has been simultaneously complicated by a lack of regulatory certainty. The debate over the long-term potential of digital currencies and blockchain technology has been influenced in part by the regulatory scrutiny of regulators in the United States and Europe including, the Commodity Futures Trading Commission (CFTC), the Federal Bureau of Investigations (FBI), the U.S. Department of Justice, the U.S. Department of the Treasury through the Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service (IRS), the U.S. Securities and Exchange Commission (SEC), and the state of New York through the Department of Business Oversight.

Bryan Cave Leighton Paisner has assembled a cross-functional team that counsels clients on the regulatory issues presented by the development of digital currencies and the application of blockchain technology. The Digital Currency Team includes members of the following practices:

- FinTech and Payments
- Broker-Dealer Litigation, Arbitration, and Regulatory Practice
- Fund Formation Team
- Intellectual Property
- Prepaid and Emerging Payments Team
- Public Policy and Government Affairs
- Securities Litigation and Enforcement
- White Collar Defense and Investigations

In addition, we work closely with our extensive network of international offices on cross-border matters.

This team focuses on the regulatory aspects of digital currencies and blockchain technology in light of existing regulations and in light of past prosecutions by the Department of Justice against leading digital currency platforms, FinCEN regulatory actions against money services businesses...
and money transmitters, SEC enforcement actions against collective investment vehicles and mining operations that focus on digital currencies, and congressional focus on emerging digital currency businesses. The Digital Currency Team also counsels clients on the potential regulations that will be applied to digital currencies by the CFTC, FinCEN, the SEC and state regulators.

**AREAS OF FOCUS**

Digital currency businesses may be subject to a range of state and federal laws, including:

- CFTC Registration
- Criminal prosecution by the Department of Justice
- Federal Bank Secrecy Act (BSA) and anti-money laundering (AML) laws
- Formation and registration of digital currency funds with the SEC
- State and federal regulations governing money service businesses and money transmitters

Any client planning to develop, launch or expand a digital currency business faces significant regulatory challenges. BCLP can effectively advise digital currency businesses in the following areas:

- Federal Bank Secrecy Act and AML compliance policies, procedures, and controls
- Product launches, including design, fees, terms and conditions, and product terminations, including dispute resolution, termination and wind-down procedures
- State and federal licensing requirements and exemptions

The Digital Currency Team maintains updated 50 state surveys in all areas of state law affecting digital currency businesses. In addition to counseling on the regulatory issues, Bryan Cave Leighton Paisner also defends clients against government investigation and complex commercial matters related to digital currencies.

**CLIENT STORIES**

**Getting clients from A to B**

**Apto payments**

BCLP advised Apto Payments, a San Francisco based fintech company, on its launch of the UK’s first cryptocurrency debit card. BCLP’s solution helped Apto navigate the complex regulatory requirements challenging the launch.
MEET THE TEAM

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RELATED PRACTICE AREAS

- Fintech
- Payment Systems
- Data Privacy & Security

RELATED INSIGHTS

Insights
Feb 21, 2023
Catch me if you can: How the English Courts are adapting to remain an effective jurisdiction to combat crypto fraud

The English courts have sought to lead the way in adjudicating crypto-related disputes and other technological matters in an international context. Recent decisions have demonstrated the English courts’ willingness to assist victims of crypto theft, and the ability of the English legal system to adapt in order to remain an effective jurisdiction for cases involving crypto fraud. In particular, recent decisions have established that: Software developers may owe a fiduciary duty to owners of crypto; New jurisdictional gateways are effective to expand the English courts’ jurisdiction to allow claimants to secure information orders against non-parties based overseas; and Service out of the jurisdiction may be permitted where there is a theft of crypto assets originally located in England but subsequently transferred abroad.

Insights
19 December 2022
Web 3 - The End Of The Beginning

With clarity comes conviction. How are crypto-tokens to be treated as property?

On 28 July 2022, the Law Commission published a consultation paper on digital assets. The outcomes of the consultation will inform the programme for law reform in England and Wales and may therefore result in the tabling of legislation designed to implement the Law Commission’s proposals for adapting the law to better suit this asset class.[i] The consultation is designed to provide greater clarity and certainty around the question of the status of digital assets as property but, by the Law Commission’s own reasoning, the common law of England and Wales has already shown itself to be ‘sufficiently resilient, flexible and iterative to accommodate digital assets’. This is borne out by successive judgments, in which the status of digital assets as property has already been considered and established.[ii] This consultation will, however, potentially inform the development of the common law, whether or not primary legislati...

Events
Mar 18, 2022
Partner Presents at the Future of Crypto Regulation Summit