

Digital Assets in 2022-23: Key Developments & Trend Spotting in the UK, Switzerland, the Middle East & Hong Kong

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Introduction

On any basis, 2022 was a significant year for digital assets.

In May, the collapse in value of the TerraUSD stablecoin undermined confidence in the whole stablecoin concept. The decrease in the value of many cryptocurrencies (which coincided with a wider market uncertainty and economic downturn) throughout the summer led to the period being referred to as a “crypto winter”. That, in turn, preceded the seismic tremors that began to reverberate around the world in November when FTX filed for bankruptcy in the US.

Against that backdrop, legislators, industry leaders and investors alike have been sounding the clarion call for greater regulation in order to restore market confidence, facilitate innovation and stimulate growth in order to enable this still nascent sector to reach its considerable potential. In fact, 2022 has seen significant developments in multiple key jurisdictions with new regulations being published and new regulatory bodies being empowered to oversee compliance. Similarly, an increasing number of cases passing through the courts in the leading jurisdictions has provided helpful guidance as to how the existing laws apply to digital assets and highlighted where reforms may be beneficial. Proposals for those reforms are under active consideration, with several jurisdictions issuing public consultations and calls for evidence, which are open to contributions from all sectors.

Here, we take a look at these developments in four regions that are focussing on the digital assets sector from the point of view of our specialists working in our offices in London, Geneva, Zurich, Dubai and Hong Kong.

What were the key legislative developments of 2022?

England and Wales

The absence of any newly minted digital assets statute in 2022 does not mean that England and Wales has not been giving considerable thought to the challenges of ensuring a robust legal framework for Digital Assets in the jurisdiction. In July, the Law Commission Report into Digital Assets ([the LCDA Report](#)^[1 p.13]) was published, setting out the key points that need addressing when considering digital asset legislation.

One of the key points contained in the LCDA Report was that, whilst we may like (and want) to think of digital assets as “property”, crypto-tokens do not really fall under either of the traditional definitions of kinds of property in that they are not properly “things” (or “choses”) in possession (i.e. tangible, physical things) or things in action (i.e., rights enforceable by legal action such as rights to sue for breach of contract, debts, or company shares). So, the report puts forward a third type of personal property: the data object. The data object is (i) composed of data in an electronic medium, (ii) exists independently of both people and of the legal system and (iii) rivalrous (i.e., if I have it, you cannot).

The LCDA Report also analyses whether:

- “control” (as opposed to “possession”) best describes the relationship between data objects and persons;
- a new set of rules to govern the transfer of title in relation to digital assets would be beneficial;
- the special defence of being good faith purchaser for value without notice should apply to crypto-token transactions; and
- there is an arguable case for law reform to provide courts with the discretion to award a remedy denominated in certain crypto-tokens in appropriate cases (as opposed to fiat currency).

A final report with recommendations is due in 2023.

In addition, 2022 saw an amendment to the Civil Procedure Rules designed to assist victims of crypto-fraud in investigating what has happened to their misappropriated digital assets. This is contained in Practice Direction 6B paragraph 3.1, which contains various “gateways” for obtaining permission from the court to serve out of England and Wales. The new gateway is where a claim or application is made for disclosure in order to obtain information regarding the true identity of the wrongdoer and/or what has become of the victim’s property. It has already been utilized by a victim of crypto-fraud in the recent case of *LMN v Bitflyer Holdings Inc and others* [2022] EWHC 2954 (Comm) where disclosure orders were granted against six overseas cryptocurrency exchanges, highlighting the welcome addition to the rules and its effectiveness.

Switzerland

2022 saw Switzerland getting to grips with the provisions of the Federal Act on the Adaptation of Federal Law to Development in Distributed Ledger Technology (the DLT Act), which was adopted by the Swiss parliament in 2020, but with certain provisions only coming into effect on 1 August 2021. The DLT Act introduced a new category of “DLT Rights” that can be created with registration on a distributed ledger and that are available for securities issued on a blockchain, as well as a new licence category for trading of DLT Rights, and provided legal certainty regarding how digital assets can be set aside in scenarios where wallet providers become insolvent.

In 2022, the Swiss Federal Tax Administration issued new guidelines on the tax treatment of crypto assets. This includes updates with regard to salary and/or ancillary benefits paid to employees. Importantly, crypto assets paid as salary or which form benefits ancillary to employment are now deemed taxable income and are therefore reportable on salary certificates. Furthermore, the purchase and sale of payment tokens is treated the same as a transaction with traditional means of payment (i.e., fiat currency). Accordingly, the resulting profits or losses constitute non-taxable capital gains or non deductible capital losses for the purposes of calculating the tax position of the private assets of natural persons.

Depending on the type, scope and financing of these transactions, certain transactions will not fall under the classification of private asset management but rather as independent “gainful activity”. In this case, capital gains from the disposal of payment tokens are deemed to be realised in a professional capacity and are therefore subject to income tax.

Middle East

The highest profile development in digital assets in the Middle East in 2022 occurred on 9 March 2022, with the passing into law of Dubai Law No. 4/2022 Concerning the Regulation of Virtual Assets. Dubai Law No. 4/2022 establishes the virtual assets regulatory framework for Dubai and sets out which regulated activities will require a licence from the newly established Dubai Virtual Asset Regulatory Authority (VARA). VARA is the first regulator to operate in the Metaverse. Anyone providing any of the following services will require a licence from VARA:

- virtual asset platform operation and management services;
- services for the exchange between virtual assets and national or foreign currencies;
- services for the exchange between one or more forms of virtual assets;
- virtual asset transfer services;
- virtual asset safekeeping, management, or control services;
- services related to virtual asset wallets; and
- services related to offering, and trading in, virtual tokens.

VARA's remit is very broad, and encompasses a wide range of responsibilities including:

- regulating the issuance and release of virtual assets and NFTs;
- regulating and licensing virtual assets service providers;
- protecting personal data of users and beneficiaries;
- regulating and monitoring the platforms offering cryptocurrencies and digital wallets;
- monitoring digital transactions; and
- preventing the manipulation or modification of prices of virtual assets.

In the Dubai International Financial Centre (DIFC) (a financial free zone within Dubai that applies common law based DIFC law rather than UAE Federal law), the financial regulator, the Dubai Financial Services Authority (DFSA), launched [Consultation Paper No. 143 on the Regulation of Crypto Tokens](#)^[2 p.13]. The consultation covers a broad range of services for entities operating in the DIFC and includes:

- dealing in investments as principal and agent;
- arranging deals in investments, managing assets and advising on financial products;
- operating an exchange, clearing house or alternative trading system; and
- providing and arranging custody.

In the Abu Dhabi Global Market (ADGM) (a financial free zone within Abu Dhabi that applies English and common law based ADGM law rather than UAE Federal law), the financial regulator, the Financial Services Regulatory Authority (FRSA), published its [Guiding Principles for the FRSA's approach to Virtual Asset Regulation and Supervision](#)^[3 p.13] as part of its move to its “Virtual Assets Framework 2.0”. The guiding principles cover the FRSA's expectations and risk appetite for the sector through the pillars of regulation; authorisation; preventing financial crimes; supervision; enforcement; and international cooperation.

Hong Kong

In 2022, Hong Kong welcomed the long-awaited amendment of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO). The amendment introduces a new licensing scheme for virtual asset service providers (VASPs) which offer to sell or purchase virtual assets for cash or in exchange for other virtual assets from customers (either directly or indirectly).

Of particular importance to the wider world is that, under the new regime, both locally incorporated companies (with a permanent place of business in Hong Kong) and non-Hong Kong companies registered in Hong Kong are now eligible to apply for a VASP license for the first time. This marks a significant relaxation of the Hong Kong digital assets legislation and should be welcome news for those looking to invest in the region's digital asset economy, both from within and outside Hong Kong.

The amendment to the AMLO has, at its heart, the objective of safeguarding investors. Accordingly, once a VASP has been granted a licence, it will need to comply with the requirement to possess sufficient resources to meet its liabilities, maintain risk management policies, fulfil customer due diligence, record-keeping and disclosure requirements (as per paragraph 23 of Legislative Council's Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022), as well as [submitting financial information to the regulatory body \(the Securities and Futures Commission\) regularly](#)^[4 p.13]. All licensed VASPs must also have at least two fit-and-proper responsible officers and licensed representatives to oversee their operations.

As an additional layer of protection, the VASPs can only provide virtual asset services to professional investors (PIs) at the initial stage, as per paragraphs 26 and 27 of Legislative Council's Report of the Bills Committee on Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Bill 2022.

What were the key case law developments of 2022?

England and Wales

We want to mention two important cases that came before the English courts in 2022.

The first is the decision of HHJ Pelling QC (as he then was) in [Lavinia Deborah Osbourne v Persons Unknown & Anor \[2022 EWHC 1021 Comm\]](#)^[5 p.13]. The Judge concluded there was an arguable case that NFTs are to be treated as property for the purposes of English law (or, more specifically, for the purposes of granting proprietary injunctions. In a subsequent [judgment of 13 January 2023 in the same matter](#)^[6 p.13], Mr. Justice Lavender essentially agreed, finding “no reason to depart” from HHJ Pelling’s decision. These decisions are significant because the status of NFTs under English law is slightly uncertain. The rulings help build on previous decisions, including [AA v Persons Unknown \[2020\] 4 WLR 35](#)^[7 p.13], in which it was found that crypto currencies are indeed property, and therefore the law applicable to real and other forms of property apply equally to digital assets. They highlight that such assets should equally benefit from the protection that may be offered through the courts in the form of injunctive relief, which in turn has implications for cryptocurrency exchanges which may find themselves held to be constructive trustees when used as a vehicle for crypto-fraud.

The *Osbourne* decisions leave open one issue. Mr. Justice Lavender’s judgment highlights that the *lex situs* of crypto assets may change as a result of misappropriation. For such assets, the *lex situs* has been determined by the English courts as the place where the owner is domiciled. If ownership is understood to be the party in fact exercising control over the asset, this is likely to change when the asset is misappropriated. This in turn can have implications for satisfying the courts that they can take jurisdiction over a dispute – a question that Mr. Justice Lavender said would require determination in a subsequent case.

The second case is [Tulip Trading Limited v Bitcoin Associated for BSV and Ors \[2022 EWHC 141 \(Ch\)\]](#)^[8 p.13] which concerned Dr. Craig Wright who claims to be Satoshi Nakamoto, the inventor of Bitcoin. In that case, the Claimant – a company beneficially owned by Dr. Wright – wanted to provide security for costs in the form of cryptocurrency. Master Clark denied the request, finding that allowing the request would not be fair on the Defendants and “*would expose them to a risk to which they would not be exposed with the usual forms of security: namely of a fall in value of Bitcoin, which could result in their security being effectively valueless*”. The subsequent fall in the value of Bitcoin proved Master Clark’s concerns to be valid.

Tulip Trading covers a number of other interesting questions concerning crypto assets, including whether blockchain developers owe fiduciary duties and a duty of care to their ultimate users. The case will now proceed to a full trial following the [Court of Appeal’s decision](#)^[9 p.13] to overturn the High Court’s judgment which summarily dismissed the claim.

Switzerland

In 2022, Swiss criminal prosecuting authorities confronted the first cases of crypto asset criminal seizures and the issues associated with protecting the position of the victim in circumstances where the value of digital assets can be notoriously volatile.

In considering how best to protect victims, in a landmark decision (DTF 148 IV 74), the Federal Tribunal found that it is permissible to realise crypto assets with a view to their confiscation and, because of their high volatility, the realisation can happen immediately on seizure, and that the proceeds of sale must be returned to the claimants or confiscated. The Federal Tribunal also found that there are several obligations on the prosecutor’s office in this context, including the obligation:

- to obtain the highest possible value for seized assets at realisation (having regard to the wider circumstances of the case and the prevailing market conditions);
- to carry out early realisation of the assets in an appropriate, professional and careful manner; and
- to appoint an expert in circumstances where the Swiss criminal prosecuting authorities lack the necessary knowledge relating to the assets.

Middle East

There are two cases that merit a mention. The first is the case of DIFC Case No. TCD 001/2020 (1) Gate MENA DMCC (2) Huobi MENA FZE v (1) Tabarak Investment Capital Ltd (2) Christian Thurner (in which we acted for the Claimants) in the DIFC Court. It is recognised as one of the first cryptocurrency litigation disputes in the region and one of the few reported cases anywhere in the world. The case addresses issues such as the safe transfer of cryptocurrency between buyer and seller and the obligations owed by a custodian of cryptocurrency. The case gave rise to various other interesting questions such as the nature of Bitcoins, i.e., whether cryptocurrencies are considered commodities, currencies, properties, or something entirely different, and the appropriate time to value Bitcoins. Judgment was handed down in favour of the Defendants in December 2022 but permission to appeal has been granted on four separate grounds by the trial judge.

The second is the case before the Dubai Primary Court in which the court ordered the payment of damages in cryptocurrency (as opposed to fiat currency), believed to be one of the first courts in the region (and possibly the world) to do so. The key facts are that the plaintiff purchased 6000 Dash (a type of cryptocurrency) from the defendant for the amount of USD 540,000, on the promise that the defendant would invest the cryptocurrency for a return of 3% per week. The defendant failed to pay the plaintiff the investment return, or the principal investment, despite multiple demands by the plaintiff. The plaintiff sued

before the Dubai Primary Court for USD 1,009,800 being the value of the Dash coins at the time plus the agreed upon returns of 3% per week. The Court ruled in favour of the plaintiff awarding the 6000 Dash instead of the amount of USD 1,009,800 claimed by the plaintiff. Although the transaction agreement was evidenced and established, the Court did not award a monetary value in fiat currency on the basis that the plaintiff did not evidence the true market value of the Dash that was being claimed.

Hong Kong

The High Court of Hong Kong in the decision of *Nico Constantijn Antonius Samara v. Stive Jean-Paul Dan* [2022] HKCFI 1254 has recognised Bitcoins as property in the legal setting. Reading together with the previous decisions on interlocutory proceedings of the same case, crypto traders can breathe a sigh of relief that the legal principles of trust, tracing of assets, Mareva and proprietary injunctions equally apply to cryptocurrency.

In this case, the Defendant was held to be the fraudulent sales agent of the Plaintiff in relation to the Plaintiff's Bitcoins. By his failure to account for the Plaintiff's Bitcoins and the proceeds of sales, the Defendant breached his fiduciary duties owed to his principal. All the remaining unsold Bitcoins, as well as the proceeds, were found to be held on trust for the Plaintiff.

The confirmation that proprietary remedies are available in the Hong Kong courts is important as a victim is able to seek recovery of the virtual assets or the proceeds of sale thereof, and not merely the damages that is only later assessed by the court. This position is also largely in line with other common law jurisdictions.

What was the key moment in your jurisdiction for 2022?

England and Wales

The LCDA Report and some important case law developments all merit a mention in this context. The key development for us, however, was the ability of the government to action its plans for reform in this area, with the vocal support of leading members of the judiciary.

Notably, Sir Geoffrey Vos, the Master of the Rolls, is a major supporter of the value of crypto assets, blockchain and distributed ledger technology (DLT). In a speech given at the Bank of England on 25 July 2022, he spoke about how he believed that blockchain and DLT were likely to become ubiquitous in the main industrial and financial sectors. Sir Geoffrey sees an opportunity for English law to position the UK as a venue of choice for the legal foundation of DLT and crypto assets internationally. Such positioning can be of huge economic significance for the UK. He underlined that when it comes to DLT and crypto assets, common law systems, such as the UK's, have an advantage over codified systems, stating that, "the common law is best at developing the law incrementally on a case by case basis to deal effectively, predictably and with certainty with new commercial concepts, instruments or situations on the basis of its long-established and well-known principles".

While there is plenty of work still to be done, the UK is, he thinks, moving in the right direction when it comes to capturing the "big economic prize" of becoming the law of choice in this area. 2022 may well be the catalyst for key regulatory reform in the jurisdiction. Although other common law jurisdictions have forged ahead with their own rules and regulations, there is no doubt that they will monitor the outcome of the LCDA Report and other consultations with interest.

Switzerland

The DLT Act has been the instrumental driving force for bringing Switzerland in line with other jurisdictions who are competing to be at the forefront of this growing area. Specifically, Swiss financial institutions and intermediaries (which are already globally renowned) have benefitted from introductions under the DLT framework enabling the expansion of custody services in crypto and digital assets, as well as trading and support services to clients with digital interests. The result is a suitably regulated wider offering of services to new and existing clients in the Swiss market, and new business opportunities for financial institutions and intermediaries in the context of digital assets. Switzerland is thus now seen among the international pioneers in the modern regulation of innovative financial market technologies. Indeed, the [pwc Crypto Trading Report 2022](#)^[10 p.13] records that the Switzerland seems to lead the way in terms of institutional investors being licensed and active in the crypto landscape.

Middle East

Such is the enthusiasm and excitement that is driving growth and development in the digital assets sector in this region it can feel like there is another important development happening every week, and so it is hard to identify one that is "key".

The coming into force of the Virtual Asset Law and the creation of VARA certainly generated considerable attention and will have a significant impact on the way that digital assets are regulated in the region, not least because VARA will need to co-ordinate with the UAE Central Bank and the Securities and Commodities Authority (SCA) as it develops its policies and procedures to enable it to carry out its broad remit.

Within the DIFC, the launch of world's first new and specialist Digital Economy Court, with its own court rules, is an exciting point of difference that could have far-reaching implications. Set up in order to oversee sophisticated national and transnational disputes related to current and emerging technologies across areas ranging from big data, blockchain, AI, fintech, and cloud services, to disputes also involving unmanned aerial vehicles (UAVs), 3D printing, and robotics, it could prove to be a valuable knowledge repository for the judiciary and practitioners alike, giving confidence to industry that the legal system in the UAE is sophisticated and informed when it comes to dealing with the challenges that are unique to digital asset disputes.

In Abu Dhabi, the ADGM Arbitration Centre has launched the world's first "[mediation in the metaverse](#)" service^[11 p.13] to revolutionise the delivery of mediation across the globe, whilst the ADGM Courts have developed a unique solution that publishes judgments to the blockchain, enabling enforcing commercial courts from around the world to independently and instantly verify the authenticity of judgments. The DIFC Courts [initiated publication of judgments](#)^[12 p.13] to the blockchain in 2017.

Hong Kong

Although Hong Kong is still shrouded in the shadow of FTX' collapse with another shut down of its locally based virtual asset exchange, Atom Asset Exchange (ATX), the city's financial secretary, Paul Chen, remains committed to pushing ahead with the development of the Web 3.0 industry, aiming at becoming the Asia-Pacific hub. Chen stresses the importance of utilising the nightmarelike wake-up calls of FTX to push for a more comprehensive regulatory framework to form the solid pillars for the development.

In terms of the amendment to the AMLO, the success of the amendment will depend on the clarity of the guidelines that govern risk management, minimum capital and reserve requirements in order to drive market and consumer confidence.

Government officials are also taking the initiative to review the proprietary nature and rights of the virtual assets. In addition, the government is prioritising its review of the legality of the usage of smart contracts. Hong Kong's thriving financial services sector expects smart contracts to be a significant growth area and proper regulation will enable the jurisdiction to stay ahead of the game as the use of smart contracts becomes more commonplace within existing financial products and opens up new use cases.

What are the key developments and trends expected in 2023?

England and Wales

There are three main areas of new regulation in the digital assets sector anticipated during 2023. Firstly, given their potential as a means of exchange, the UK Government intends to bring stablecoins into the regulatory perimeter through the Financial Services and Markets Bill ([FSM Bill](#)^[13 p.13]), which began the Committee Stage in the House of Lords on 25 January 2023. If passed, the FSM Bill will enable the development of experimental "digital sandboxes" in the UK to support and encourage innovation in the digital assets space.

In addition to the FSM Bill, the Economic Crime and Corporate Transparency Bill (ECCT Bill) seeks to add references to crypto assets in criminal and civil asset recovery powers. The ECCT Bill reached the Report Stage in January 2023 and is expected to be passed later this year.

Third, the Law Commission's final report on digital assets, with recommendations, is also due at some stage during 2023 and will be a hugely significant publication. It will set the tone for the legislative reform which, in turn, will impact those common law jurisdictions which are still informed by English jurisprudence.

Simultaneously, HM Treasury is consulting on a new financial services regulatory regime for crypto assets with material progress expected on that as well this year (potentially in tandem with the Law Commission Report). This consultation and the resulting regime should bring greater clarity on the regulation of crypto assets and further help establish the UK as a global crypto asset hub.

From a case law perspective, all eyes will be on the progress of the *Tulip Trading* case (albeit that may not be resolved this year).

Finally, although not a legal development particular to the UK, we will be keeping an eye on the planned Surge on the Ethereum network, which – if all goes well – will begin this year. This will implement sharding technology which should work in tandem with what are called "rollups" to significantly boost transaction speeds and efficiencies on the network and reduce costs.

Switzerland

During the COVID-19 pandemic, the top 50 Swiss providers of financial services in the field of crypto assets, most of which are based in the so-called 'Crypto Valley' in the Lake Zug region, were able to increase their market value by 680% or almost CHF 230 billion.

In the future, some experts believe that all assets - not just money, but also real estate, cars and watches (for example) - will be represented digitally by tokens. If that is correct, one benefit would be that it would allow private banks and investors to have access to their entire portfolio at any time. These investments could be supplemented with real-time relevant information (for example, valuations) or comparable transaction values and thus offer a much better overview of the true value position of all the assets within a given portfolio.

Due to the large number of new investment opportunities, we anticipate that asset management will be tailored to the client in a more precise manner. Traditional investment fund products are set to disappear and will be replaced by 'smart contracts' that will automatically build and manage individual client portfolios. For transactions, hard paper contracts and signatures will no longer be necessary, purchases and sales will be indicated digitally via smart contracts in a secure and decentralised way using blockchain technology.

Middle East

2023 has started as 2022 proceeded, with a flurry of important developments.

On 14 January 2023, Cabinet Decision No. 111/2022 on the Regulation of Virtual Assets and Their Service Providers came into force, and provided some helpful clarification on the scope of which assets are subject to the regulation of the UAE Central Bank and how the remit of VARA will interact with the SCA.

On 7 February 2023, following hot on the heels of the Federal legislation, VARA published its Virtual Assets and Related Activities Regulations 2023. The Regulations set out the regulatory framework governing Virtual Assets and all related activities in Dubai (excluding DIFC), including the general and specific supervision and enforcement powers of VARA and so will be poured over in great detail by practitioners and industry insiders alike.

On 12 February 2023, the UAE Central Bank launched its Financial Infrastructure Transformation Programme to accelerate the digital transformation of the financial services sector. The Programme comprises nine key initiatives to enable the UAE's competitiveness to become the financial and digital payment hub and a centre of excellence for innovation and digital transformation. Most eye-catchingly, one of the nine key initiatives is the proposed launch of the Central Bank Digital Currency for both cross-border payments and domestic usage in order to address the problems and inefficiency of cross-border payments and help drive innovation for domestic payments respectively. Whilst many jurisdictions are exploring the possibilities of central bank digital currency, this would be another significant first for the region and the eyes of the world will be watching.

The outcome of the appeal in DIFC Case No. TCD 001/2020 will be important for all those watching to see how the questions of fiduciary duty, custody, classification of property and valuation of crypto assets in the DIFC will be resolved.

Finally, it is impossible to consider the future of the region without mentioning Saudi Arabia. Although the legal and regulatory framework for digital assets in Saudi Arabia is not as advanced as some other regions in the Middle East that does not mean that it is lagging behind. The Saudi Central Bank participated in Project Aber (which focused on the feasibility of digital currencies for cross-border payments with the UAE) and it is perfectly possible that it will again play a role as the UAE launches its digital currency. Some reports suggest that Saudi Arabia has invested USD1 billion in metaverse related projects already and last year the Saudi National Day celebrations took place in Decentraland with NFT traditional attire available to wear. It is clearly a jurisdiction with a clear understanding of the important role the digital economy will play as part of Vision 2030.

Hong Kong

The SFC is expected to issue a consultation paper this quarter to seek public opinion on restricting retail investors' access to only "highly liquid" digital asset products. This may be seen as a welcome sign to allow retail customers to invest in the digital asset market through licensed VASPs. But for some it is far from enough. As a significant market for cryptocurrency, particularly given its status as a global financial hub, many are of the opinion that it is only prudent for Hong Kong to absorb the lessons from other jurisdictions or else be left behind.

The Hong Kong Monetary Authority (HKMA) has also presented its plan for a regulatory framework for entities providing governance services, issuing tokens and providing cryptographic wallet for stablecoins (Regulated Services) by 2023-2024.

Through a mandatory licensing regime, an entity will be required to obtain a license from HKMA if it conducts a Regulated Activity in Hong Kong; actively markets the Regulated Services to the Hong Kong public; or conducts Regulated Activities relating to an HKD-linked stablecoin arrangements, as per page 3 of the Conclusion of Discussion Paper on Crypto-Assets and Stablecoins by HKMA. The licensed entities will be subject to the supervision, and potential enforcement by the HKMA if it fails to meet the stipulated requirements concerning its financial resources, risk management, user protection and scope of principal business.

While the new licensing regime is expected to improve the quality of services provided by the VASPs as the SFC will be responsible for monitoring them, danger still exists among retail non-PIs not being able to use the services of licensed VASPs. They may still be subject to risks when investing in digital assets through overseas unregulated VASPs.

Conclusion

The view from these different jurisdictions highlights why the digital assets sector is so compelling, and how those who operate on a multi-jurisdictional level benefit from advice that draws on the experience from all around the globe.

Whether it is the focus on protecting consumers in Hong Kong, the trailblazing enthusiasm that characterizes the Middle East, the complexities, nuance and focus on confidentiality and security that is incentivising institutional investors in Switzerland or the pragmatism and thoughtfulness that underpins the trust that consumers place in the English approach to digital assets reform, 2023 promises to be another fascinating year for digital assets.

If you have any questions about any of the points in this article, or about any issue relating to digital assets that is not covered, please do not hesitate to reach out to any of the contributors who would be only too happy to assist you, or to direct you to another member of Charles Russell Speechlys' global digital assets team.

This article is available in Arabic, Cantonese, French and Mandarin on request.

Authors



Nick White

Partner, Charles Russell Speechlys LLP (London, UK)

+44 (0)20 7438 2294

nick.white@crsblaw.com

Areas of expertise

Commercial; Dispute Resolution; Intellectual Property

Memberships

- Admitted in England and Wales

Biography

Nick is an intellectual property (IP) and digital specialist. He uses creative and long term thinking to help businesses identify, protect and maximise the value of their IP and data.

Nick's experience spans many areas including brand protection, e-commerce, broadcasting, esports, gaming, data protection and blockchain, crypto assets and NFTs. Alongside his expertise in sports, as one of the firm's key lifestyle lawyers, Nick works extensively across the entertainment, leisure, fashion and food and beverage industries.

Nick advises governing bodies like FIFA and the ATP and businesses such as Rapha and Honest Burgers. He also has a strong practice advising high profile individuals and has advised Sir Mo Farah, Timo Werner and Sir Clive Woodward.

Nick co-wrote the UK chapter of the book "Sports Image Rights in Europe" and the chapter on social tokens in the Law Society's Blockchain: Legal & Regulatory Guidance (Second Edition). He is a former director of the British Association for Sport and the Law. Nick has been recommended by the Chambers and Partners, Legal500, World Trademark Review, IP Stars and Who's Who directories.



Matthew Blakebrough

Associate, Charles Russell Speechlys LLP (London, UK)

+44 (0)20 7427 2188

Matthew.blakebrough@crsblaw.com

Areas of expertise

Commercial

Memberships

- Admitted in England and Wales

Biography

Matthew advises clients on a wide range of commercial contracts, typically in the technology, fintech and payment sectors. Matthew has expertise in emerging technologies and has spent time in industry with a major international bank, a FTSE 100 company and a leading crypto business. He has experience drafting and negotiating a wide variety of commercial agreements including payment service provider (PSP) merchant agreements and software as a service (SaaS) agreements.

In his early career Matthew worked as a corporate M&A lawyer at a City law firm before spending time overseas at a top tier firm in the British Virgin Islands engaged in corporate M&A and investment funds work with a digital assets focus.



Pierre Bydzovsky
Partner, Charles Russell Speechlys LLP (Geneva, Switzerland)
pierre.bydzovsky@crsblaw.com

Areas of expertise

Dispute Resolution

Memberships

- Admitted in Switzerland

Biography

Pierre is a partner in the litigation group of Charles Russell Speechlys in Geneva, specialising in white-collar crime cases and mutual assistance proceedings, banking litigation, disputes relating to foundations and estates and insolvency. He has been named as Rising Star in the White Collar Crime category by LMG Expert Guides from 2017 to 2021. He is a graduate in criminal magistrature (CAS MAP) and holds an LL.M. degree in international trade law (Turin / IUSE).

Pierre also advises companies on labour law and in the implementation of good governance rules in the field of data protection, as well as in sports law where he advises the Swiss Basketball Federation on the organisation of competitions, players' statutes and disciplinary matters. Pierre is also a certified Data Protection Officer (University of Geneva – 2020).



Benoit Pasquier
Partner, Charles Russell Speechlys LLP (Zurich, Switzerland)
+41 (0)43 430 02 53
Benoit.Pasquier@crsblaw.com

Areas of expertise

Dispute Resolution

Memberships

- Admitted in Switzerland

Biography

Benoit is a partner in the sports group of Charles Russell Speechlys in Zurich, specialising in commercial sports law (sponsorship, media rights and merchandising agreements), disciplinary & ethics proceedings, good governance and sports integrity issues (competition and match manipulation, age cheating and anti-doping). He also has experience in sports politics since he played a key role in the electoral campaign of AFC President, Shaikh Salman Bin Ebrahim Al Khalifa, for the FIFA Presidential election in 2016.

He is also an arbitrator at the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, since 2019. His name appears on two Lists of Arbitrators (General and Football) and he is regularly appointed.

He has extensive experience in the legal environment in Europe and Asia. He regularly assists sports organisations, clubs, athletes and players, agents, investment funds, and governments among others.

Before joining Charles Russell Speechlys, Benoit founded his law firm BP Sports Law LLC in Zurich in May 2020. Prior to this, he served as general counsel and director of Legal Affairs of the Asian Football Confederation (AFC), in Kuala Lumpur, Malaysia, for nearly seven years. During his tenure at the AFC, he provided advice to the AFC Executive Committee on high level legal and strategic matters. Before joining the AFC in 2013, Benoit worked at the Fédération Internationale de Football Association (FIFA) as deputy secretary of the FIFA Disciplinary Committee and of the FIFA Ethics Committee. Having worked in many international environments across different continents such as South America (Rio de Janeiro, Brazil) and Asia (Kuala Lumpur, Malaysia) – Benoit developed a vast and extensive network and knowledge of the international sports

legal and business industry worldwide. Having travelled all around the world for business purposes, Benoît gained a privileged access to sports leaders and key decision-makers. In 2017, his achievements were recognized at the Leaders Under 40 Awards in London for the category "Legal & Governance". He is regularly invited as a keynote speaker at international sports law and sports business conferences and for many sports business and sports law university curriculums around the world.

He holds a Master in International Sports Law (LL.M.).

Benoît is a member of the Swiss Bar Association, Rex Sport, AIJA, Swiss Sports Law Association, International Association of Young Lawyers and the Editorial Board of Football Legal.

He is fluent in French, English, German and has a good understanding of Spanish and Portuguese.



George Bull

Associate, Charles Russell Speechlys LLP (Geneva, Switzerland)

+44 (0)20 7427 6697

George.Bull@crsblaw.com

Areas of expertise

Private Client

Memberships

- Admitted in England and Wales

Biography

George is an associate in Charles Russell Speechlys' Swiss private client team.

George has a broad range of experience in tax, trust and succession matters, working with individuals, trustees and executors both UK and internationally based. George's work primarily relates to Anglo-Swiss matters, but he also continues to work with our London office on UK domestic matters.

George is admitted to practice in England and Wales and is based in our Geneva office.



Max Davis

Legal Director, Charles Russell Speechlys LLP (Dubai, UAE)

+971 4246 1942

max.davis@crsblaw.com

Areas of expertise

Dispute Resolution

Memberships

- Admitted in England and Wales

Biography

Max specialises in high value, multi-jurisdictional disputes involving fraud, asset tracing and corruption in the financial services and banking sectors, often with an insolvency element. He has litigated in the High Court, Court of Appeal and Privy Council, and as far afield as in the Cayman Islands and Tanzania. He also has extensive experience of complex multi-party LCIA arbitration.

In tandem, Max has a burgeoning practice in Public and Administrative Law disputes, with a particular focus on Judicial Review and assisting colleagues in a wide variety of sectors including competition, environmental and planning, foreign governments, immigration, pensions and tax, and public inquiries and inquests. He is an active member of both the Young

Lawyers Committee of the Commonwealth Lawyers Association and the ACROSS Fraud Network. He is also a member of ALBA, the Constitutional and Administrative Law Bar Association.



Patrick Chan

Partner, Charles Russell Speechlys LLP (Hong Kong, China)

+852 2531 3430

Patrick.Chan@crsblaw.com

Areas of expertise

Dispute Resolution

Memberships

- Admitted in Hong Kong

Biography

Patrick covers a broad range of civil and commercial litigation, arbitration and mediation matters including shareholder and corporate governance disputes, personal and corporate insolvency, multi-jurisdictional fraud and asset tracing cases, claims for breach of contract and matters related to employment such as immigration issues, terminations, personal injuries and employees' compensation. He has considerable experience in acting for defendants in a wide range of white-collar crime cases such as HKMA, ICAC and SFC investigations.

In addition, Patrick also advises extensively on matrimonial law and related matters, including complex and high-net-worth divorce cases. He has been recommended for private client and family related matters by the Legal 500 Asia Pacific 2023.

Patrick also serves as legal counsel for Guangdong Province Law Society, Hong Kong Customs and Excise Customs Officer Grade Association, Association of Industries and Commerce of Yaumatei-Tsimshatsui-Mongkok, Hong Kong Cross-Straits Hakka Association, Young Innovative Entrepreneurs Association, Chinese Education, Culture and Economy Promotion Association (Hong Kong) Branch, Hong Kong Society for Travel Medicine, Alliance Forex Limited, Hong Kong Money Service Operators Association and Small and Medium Enterprises Association.

He is fluent in English, Putonghua and Cantonese.



Able Au

Associate, Charles Russell Speechlys LLP (Hong Kong, China)

+852 2531 3425

able.au@crsblaw.com

Areas of expertise

Dispute Resolution

Memberships

- Admitted in Hong Kong

Biography

Able has assisted clients in a broad range of civil and commercial litigation cases, including contractual disputes, shareholders' disputes, fraud and judicial review. In addition, she has experience in handling criminal, matrimonial and private client related matters.

She speaks fluent English, Cantonese and Mandarin.

Notes

1. ^{^ [p.3]} <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2022/07/Digital-Assets-Summary-Paper-Law-Commission-1.pdf>
2. ^{^ [p.4]} <https://dfs.aen.thomsonreuters.com/rulebook/consultation-paper-no-143-regulation-crypto-tokens>
3. ^{^ [p.4]} <https://www.adgm.com/documents/legal-framework/guidance-and-policy/fsra/fsra-guiding-principles-for-virtual-assets-regulation-and-supervision-ia-202209012.pdf>
4. ^{^ [p.4]} <https://www.info.gov.hk/gia/general/202212/07/P2022120700263.htm>
5. ^{^ [p.5]} <https://www.bailii.org/ew/cases/EWHC/Comm/2022/1021.html>
6. ^{^ [p.5]} <https://www.bailii.org/ew/cases/EWHC/KB/2023/39.html>
7. ^{^ [p.5]} <https://www.bailii.org/ew/cases/EWHC/Comm/2019/3556.html>
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9. ^{^ [p.5]} <https://www.bailii.org/ew/cases/EWCA/Civ/2023/83.html>
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11. ^{^ [p.6]} <https://www.adgm.com/media/announcements/abu-dhabi-global-market-launches-mediation-in-the-metaverse>
12. ^{^ [p.7]} <https://www.difcourts.ae/media-centre/newsroom/difc-courts-and-smart-dubai-launch-joint-taskforce-worlds-first-court-blockchain>
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