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Taiwan
Blockchain

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This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Taiwan.

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Taiwan: Blockchain

1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted?

Blockchain technology and its related applications have been hotly discussed in recent years in Taiwan. Due to its features such as "immutable", "decentralized" and "distributed", blockchain technology has been applied in many areas, such as agriculture, copyright, smart city, internet of things, preservation of evidence etc., while the most commonly seen applications are cryptocurrencies, NFTs and related activities.

2. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Please see the responses under Questions 5 and 6.

3. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

Please see the responses under Questions 5 and 6.

4. Is there a central bank digital currency ('CBDC') project in your jurisdiction? If so, what is the status of the project?

According to publicly available information from the Central Bank of the Republic of China (Taiwan) ("Central Bank"), the Central Bank has set up a special task force on the study of central bank digital currency ("CBDC"), which is generally considered to be digital New Taiwan Dollar (NTD). According to news reports, the CBDC task force has already completed two exploratory projects on the feasibility of issuing of (i) "wholesale CBDC" (i.e., the CBDC used by financial institutions); and (ii) "retail CBDC" (i.e., the CBDC for use by the general public). Please note that, after the completion of the above project (i), the Central Bank has the preliminary observation that a platform built with distributed ledger technology does not necessarily perform better than a platform with a centralised system. It is worth following the Central Bank's further developments of CBDC.

5. What is the current approach in your jurisdiction to the treatment of cryptoassets and decentralised finance ('DeFi') for the purposes of financial regulation?

Bitcoin and other types of cryptocurrencies

In December 2013, both the Central Bank of the Republic of China (Taiwan) (the "Central Bank") and the FSC first expressed the government's position towards Bitcoin by issuing a joint press release (the "2013 Release"). According to the 2013 Release, the two authorities held that bitcoin cannot be considered "legal tender", "currency" or a "generally accepted medium of exchange", but instead is a highly speculative digital virtual commodity. In another FSC press release in 2014, the FSC expressly prohibited local banks from accepting Bitcoin or providing any services related to Bitcoin. Further, the FSC issued another press release on 4 March 2022 to indicate that cryptoassets, including bitcoin, are not currencies under the current regulatory regime in Taiwan; instead, a cryptoasset is deemed to be a digital virtual commodity. Initial coin offerings ("ICOs"), token offerings and security token offerings ("STOs")

In response to the rising number of ICOs and other investment activities relating to virtual currencies or cryptocurrencies, the FSC issued a press release in December 2017 (the "2017 Release") expressing its view on ICOs. According to the 2017 Release, an ICO refers to the issue and sale of virtual commodities (such as digital interests, digital assets or digital virtual currencies) to investors. The classification of an ICO should be determined on a case-by-case basis. For example, if an ICO involves the offer and issue of securities, it should be subject to Taiwan's Securities and Exchange Act (the "SEA"). The issue of whether tokens in an ICO would be deemed securities under the SEA would depend on the facts of each individual case.

Given the above, in an ICO (or other types of token

offering), the core issue in this regard is whether an ICO would be considered as issuing securities under Taiwan's securities regulations. Under current Taiwan law, the offer and sale of securities in Taiwan, whether through public offering or private placement, are regulated activities and shall be governed in accordance with the SEA, its related regulations and relevant rulings issued by the FSC.

On 3 July 2019, the FSC, by issuing a ruling, officially designated cryptocurrencies with the nature of securities (i.e., so-called "security tokens") under the SEA (the "2019 Ruling"). According to the 2019 Ruling, security tokens refer to those that: (1) utilize cryptography, distributed ledger technology or other similar technologies to represent their value that can be stored, exchanged or transferred through digital mechanisms; (2) are transferable; and (3) encompass the following attributes of an investment: (a) funding provided by investors; (b) funding provided for a common enterprise or project; (c) investors expecting to receive profits; and; (d) profits generated primarily on the efforts of the issuer or third parties.

In addition to the 2019 Ruling, the FSC issued a press release on 27 June 2019 to illustrate the key points of its policy on STOs. Since then, the FSC and the Taipei Exchange (the "TPEx") have set out the regulations governing STOs (the "STO Rules"), which were finalized in January 2020. Specifically, the FSC differentiates the regulation of STOs with the threshold of NT$30 million. For an STO of NT$30 million or less, the STO may be conducted in compliance with the STO Rules; an STO above NT$30 million must first apply to be tested in the "financial regulatory sandbox" pursuant to the Financial Technology Development and Innovation and Experiment Act and, if the experiment has a positive outcome, should be conducted pursuant to the SEA.

DeFi

The government does not seem to have revealed any official view on the rise of DeFi activities, while from a local perspective, the classification of DeFi activities should be determined on a case-by-case basis, and there are currently no specific laws or regulations that regulate or provide a legal basis for the development of DeFi. Laws relating to banking, trusts and futures, among others, would require review to ensure compliance. Therefore, from a regulatory viewpoint, industry players should be very careful about the legal implication for their DeFi projects, especially if derivatives-related transactions are involved. The court might not accept defence such as "the project is decentralized" in the context of criminal liability if there is evidence to identify the actual "actor" or "initiator".

6. What is the current approach in your jurisdiction to the treatment of cryptoassets and DeFi for the purposes of anti-money laundering and sanctions?

Anti-money laundering

The Money Laundering Control Act (the "MLCA") has brought the "virtual currency platforms and trading business" into Taiwan's anti-money laundering ("AML") regulatory regime, under which enterprises falling within the designated scope are subject to the relevant rules applicable to financial institutions under the MLCA. In April 2021, Taiwan's Executive Yuan issued a ruling (the "AML Ruling"), interpreting the scope of enterprises of "virtual currency platforms and trading business" under the MLCA. The scope described under the AML Ruling covers those who engage in the following activities for others:

1. Exchange between virtual currency and New Taiwan Dollars or foreign currencies;
2. Exchange between virtual currencies;
3. Transfer of virtual currencies;
4. Custody and/or administration of virtual currency or providing instruments enabling control over virtual currencies;
5. Participation in and provision of financial services related to issuance or sale of virtual currencies.

After the AML Ruling was issued, the FSC further published the Regulations Governing Anti-Money Laundering and Countering the Financing of Terrorism for Enterprises of Virtual Currency Platforms and Trading Business (the "Crypto AML Regulations"). According to the Crypto-AML Regulations, operators providing the above-mentioned services are required to establish, among others, internal control and audit mechanism, reporting procedure of suspicious transactions and the know-your-customer procedure, etc. The Crypto AML Regulations took effect from July 2021 (other than the provision requiring the "transfer-out" of the virtual currency to be carried out on a real-name basis both for the transferor and transferee – the effective date of such provision would be further determined and announced by the FSC).

Please be aware that the MLCA was recently amended in July 2024. Under the amendment, crypto-related service providers (VASPs) must complete the "Anti-Money Laundering Registration" with the FSC before offering their services. As to offshore VASPs, they must establish a company or branch office in Taiwan and complete the aforementioned registration before providing services in

Taiwan. Violators of these provisions may face imprisonment for up to two years, detention, or a criminal fine of up to NT$5 million. Additionally, if a juristic person is the offender, they may also be subject to a criminal fine. In summary, VASPs providing services in Taiwan without completing the "Anti-Money Laundering Registration" with the FSC beforehand will be held criminally liable under the newly amended MLCA.

Virtual asset service providers (VASP) guidelines (the "VASP Guidelines") issued by the FSC

On September 26, 2023, the FSC announced a set of VASP Guidelines under the AML law. The VASP Guidelines cover, among others, (i) obligations of an issuer regarding issuance of any virtual assets, such as announcement of the "whitepaper" on the issuer's website, (ii) VASP's mechanism for reviewing the launching of virtual assets, (iii) custody and segregation of VASP's assets and customer assets, (iv) fairness and transparency of transactions, (v) management mechanism of operation, information security and cold and hot wallets, (vi) information disclosure, (vii) internal control and audits, and (viii) applicability of the guidelines to offshore VASPs.

Establishment of the industry association of VASPs

Following the announcement of the VASP Guidelines, certain local VASPs formed a working group in 2023 in preparation for the establishment of an industry association (or self-regulatory organization) for VASP, which was formally established in June 2024. According to relevant news reports, the association will establish its own self-disciplinary rules to regulate its members, and it is generally expected that the FSC's VASP Guidelines will be substantially incorporated into these self-regulations.

7. What is the current approach in your jurisdiction to the treatment of cryptoassets and DeFi for the purposes of taxation?

There are currently no specific laws or regulations in place for taxing cryptoasset trading, but the Ministry of Finance has indicated that tax reporting requirements may be imposed once cryptoasset platforms or exchanges implement real-name registration under the Crypto AML Regulations. As a result, it is likely that tax reporting requirements for crypto-related activities will be introduced soon.

8. Are there any prohibitions on the use or trading of cryptoassets in your jurisdiction? If permitted, is cryptoasset trading common?

No, but use or trading of cryptocurrencies with the nature of securities (i.e., security tokens) would be subject to the STO Rules discussed under Question 5 above.

Cryptocurrency trading is common in Taiwan.

9. To what extent have initial coin offerings ('ICOs') taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs? If permissible, what are the key requirements that an entity would need to comply with when launching an ICO?

Please see the responses under Question 5.

10. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over cryptoassets?

There have been no specific laws or regulations promulgated or amended to address any issues concerning the transfer of title to or the granting of security over tokens and virtual assets. However, we think that as long as tokens or virtual assets can be purchased and sold from the perspective of Taiwan's Civil Code, there should not be significant hurdle with respect to transfer of title to or the granting of security over tokens and virtual asset; rather, the point of discussion from a purely legal viewpoint would be how the transfer or security should be categorized or classified under the current regime.

Please note that as to NFTs, there have been discussions regarding the ownership of NFT assets. Generally speaking, the ownership of NFT asset should really depend on the structure and the underlying asset. For example, after a transfer of an NFT representing a digital artwork to the purchaser, the purchaser as the NFT owner has access to the underlying asset, but this does not mean that the purchaser automatically obtains ownership of the content of the underlying digital artwork. Depending on the terms and conditions, the NFT purchaser might only be entitled to view the digital artwork and does not acquire its ownership in any form (e.g., any electronic files of the artwork).

11. How are smart contracts characterised within

your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

Currently there are no specific rules or restrictions regarding smart contracts or their characterization. However, we think that since smart contracts are generally intended to help people enforce relevant contractual obligations automatically, their enforceability should be determined, just like the common contracts in written form, based on the rules and legal principles under Taiwan's Civil Code on a case-by-case basis. Generally, if the contracting parties can convey their ideas to each other through the design of smart contracts and reach an agreement accordingly, the enforceability of these contracts should not be treated differently simply because of smart contract automation. However, please note that smart contracts might not be enforceable in circumstances where specific formality is mandatorily required, such as transfer of real estate, which would require registration with the regulator and thus may not be implemented solely using smart contract applications.

12. How are Decentralised Autonomous Organisations ('DAOs') treated in your jurisdiction?

Our understanding is that a DAO is created through the contribution of cryptoassets from its participants. In Taiwan, there are no specific regulations regarding the legal status of a DAO. From a legal standpoint, if the DAO is established as a distinct legal entity, it may own and possess assets. If the DAO is not established, registered, or incorporated as a separate legal entity, the assets should be considered as owned by the participants of the DAO on a pro rata basis. There are also no clear regulations regarding the legal responsibilities of a DAO participant in Taiwan, and we believe that the legal responsibilities of the participants in a DAO should be determined by the DAO and its participants.

13. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

Although crypto-related activities may, theoretically, involve regulated activities governed by the securities and financial regulations, to our knowledge, there have been no crypto or blockchain-related governmental or regulatory enforcement actions which are known or announced to the general public so far, except for those (i) involving traditional criminal fraud from the perspective of Taiwan's Criminal Code; and (ii) which are deemed as "illegal deposit-taking" from the viewpoint of the prosecutors or courts.

14. Are there any other generally-applicable laws, case law or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

In Taiwan, personal data is generally protected by the Personal Data Protection Act (PDPA). Under the PDPA, unless otherwise specified by law, a company is generally required to give notice to (notice requirement) and obtain consent from (consent requirement) an individual before collecting, processing or using any of this individual's personal information, subject to certain exemptions. The following two blockchain-related issues are commonly discussed in Taiwan from a PDPA viewpoint:

1. If a Taiwanese's personal data is on a blockchain (which is cross-border in nature), due to the feature of "distributed ledger technology" ("DLT"), conceptually such personal data would be transmitted from Taiwan to outside Taiwan. Given that, if the transmission is not carried out on the legal basis under the PDPA (such as the above-mentioned notice requirement and consent requirement, or the applicable exemption), the transmission would be deemed to violate the PDPA.
2. Pursuant to the PDPA, a data subject is entitled to the right to demand the cessation of the collection, processing or use of his/her personal data, as well as the right to have his/her personal data erased (which, according to our understanding, should be similar to the "right to be forgotten" under EU's GDPR). But with the feature of "immutability", conceptually, a data subject might not be able to successfully exercise the above-mentioned rights.

15. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

No.

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