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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? What are the key applications of these technologies in your jurisdiction?

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. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

As advised in our responses to Question 1 above, so far the most commonly seen blockchain applications are cryptocurrencies, NFTs and related activities.

NFTs have become more and more popular since 2021. In Taiwan, examples of “underlying assets” of local NFTs include, among others, digital artworks, music works, collectibles, basketball cards, photo albums and even local food such as “Taiwanese salted crispy chicken”.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

According to our understanding, due to the rise of ESG, Taiwan government hopes to see certain applications of fintech/technology to ESG, while we have not seen any application of blockchain technology to ESG so far.

4. 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 Question 9.

5. 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 Question 9.

However, please also note that in July 2019, the National Development Council established the Taiwan Blockchain Alliance, with members including market participants in the blockchain industry, academic institutions and non-profit organisations. The main role of this group is to act as an intermediary between the public and private sectors so that market participants can convey their thoughts, advice and suggestions to the regulators.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

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.

As to regulatory sandbox, Taiwan's law for the fintech regulatory sandbox, the FinTech Development and Innovation and Experiment Act (the "Sandbox Act"), was promulgated and took effect in 2018. At the time of writing, the following applications approved by the FSC to enter into the sandbox involve blockchain technology: (1) to use blockchain technology for the transmission of fund transfer information between financial institutions; (2) to provide the "fund exchange" service by means of blockchain technology; and (3) to provide a group buying platform for investing in bonds on the blockchain.

7. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

Please see the responses under Question 9.

8. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

No, but please note the responses under Question 9.

9. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

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.

Anti-money laundering

The latest amendment to the Money Laundering Control Act (the "MLCA"), which took effect in November 2018, 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).

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.

Proposed establishment of the industry association of VASPs

Following the announcement of the VASP Guidelines, according to relevant news reports, as requested by the FSC, certain local VASPs have formed a working group in preparation for the establishment of an industry association (or self-regulatory organization) for VASP. It is generally expected that such association will be formally established by the end of 2023.

10. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

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 9 above.

11. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

Please see the response under Question 9 above.

12. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

Please see the response under Question 9 above.

13. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

Yes, cryptocurrency trading is common in Taiwan.

As to the attitude of mainstream Taiwanese financial institutions to cryptocurrency trading in Taiwan — in an FSC press release issued in 2014, the FSC ordered that local banks must not accept Bitcoin or provide any services related to Bitcoin (such as the exchange of Bitcoins for fiat currency). Since then, local banks have been taking rather conservative attitude toward bank account opening application of crypto-related business operators. After the Crypto AML Regulations took effect, it is the FSC's policy that a bank may open a bank account for a crypto-related business operator only if such operator has completed its filing with the FSC of a statement of compliance with the AML regulations.

Please also note that, in July 2022, the FSC issued a letter to expressly prohibit local acquiring banks from allowing local credit cards as a means of payment for "virtual assets" and accordingly local acquiring banks should not accept "virtual assets service providers" as contracted merchants for the purpose of credit card transactions.

14. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

None, other than those discussed under Question 9. Please note that in Taiwan, there have been discussions as to (i) whether NFT-related business operators should be subject to the Crypto AML Regulations (discussed under Question 9), and (ii) whether the prohibition of using local credit cards as a means of payment for "virtual assets" should include NFTs.

15. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

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).

16. 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.

17. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

Smart contracts are commonly used for crypto-related activities, such as decentralised finance ("DeFi") projects. Although the government does not seem to have revealed any official view on the rise of DeFi activities, 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".

18. 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.

19. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

To our knowledge, there have been no Taiwan court decisions specifically addressing the legal implication of blockchain or smart contracting except in the context of cryptocurrency or its related investment activities.

20. Are there any other generally-applicable laws 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.

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

No.

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