

Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 31 December 2021



Global, EU, UK and US Regulatory Developments

EU	
<p>Anti-money laundering: Council of the EU agrees its negotiating mandate on transparency of crypto-asset transfers</p>	<p>On 1 December 2021, the Council of the European Union, agreed on a mandate to negotiate with the European Parliament on the proposed Regulation on information accompanying transfers of funds and certain crypto-assets. This proposal is part of a package of legislative proposals to strengthen the EU's anti-money laundering and countering terrorism financing rules, presented by the Commission on 20 July 2021.</p> <p>Published 1 December 2021.</p>
<p>Klaas Knot speech "On payment trends - opportunities and risks"</p>	<p>On 9 December 2021, Klaas Knot, President of De Nederlandsche Bank (the Dutch Central Bank), gave a speech titled 'On payment trends - opportunities and risks' at the 13th Conference on Payments and Market Infrastructure.</p> <p>In his speech, Knot provides a brief overview of the digitisation of the payments sector in the Netherlands. Knot also goes on to discuss key topics related to this digitalisation which are at the fore of regulators' minds, including:</p> <ul style="list-style-type: none"> • an increase in cyber-crime; • the development of cryptos (including stablecoins); and • the increasing use by financial institutions of big data and artificial intelligence. <p>Published 13 December 2021.</p>
<p>The Banque de France has successfully completed the first tranche of its experimentation programme in Central Bank Digital Currency</p>	<p>On 16 December 2021, the Banque de France published a press release reporting that it has successfully completed the last experiment of its programme for interbank settlements in Central Bank Digital Currency (CBDC), launched in March 2020.</p> <p>The experiment successfully tested an end-to-end transactional lifecycle of digital assets, through issuance, subscription by several actors, and coupon payment involving a conversion into another currency.</p> <p>Nathalie Aufauvre, Director General of Financial Stability and Operations at the Banque de France had the following to say:</p> <p>"Interoperability across platforms is a key element to maximize the benefits of the distributed ledger technology applied to financial markets. By achieving the transfer of data and assets, as well as the exchange of assets across different blockchains in an atomic way, the Banque de France ... have demonstrated the possibility of such interoperability, essential to ensure that the multiple environments, on which the efficient functioning of markets rely, can coexist"</p> <p>Published 16 December 2021.</p>

UK	
<p>UK Government asks for the public's views on how to deal with AI and IP rights</p>	<p>Following its call for views on AI and the IP framework in early 2021, the UK Government has released another consultation on AI and IP rights. Led by the IPO, the consultation is available here, and is open until 7 January 2022.</p> <p>This consultation is more focused than the call for views. It asks for preferred positions on a small number of scenarios regarding the future treatment of three specific areas:</p> <ul style="list-style-type: none">• copyright protection for computer-generated works without a human author;• licensing or exceptions to copyright for text and data mining; and• patent protection for AI-devised inventions. <p>The reference to such specific scenarios suggests that AI legislative reform may finally be on the horizon.</p> <p>While some of the scenarios included in the consultation contemplate solutions that have already been adopted (or at least committed to) by other countries such as Singapore (which you can read about in our blog post, New Singapore copyright exception will propel AI revolution), others are entirely novel. The fact that each proposed solution carries some degree of weight shows just how vexed the various considerations are, and so it worth exploring in this blog post how certain rights may be impacted by whichever route the UK Government takes.</p> <p>Click here to read more on our Inside Tech Law blog.</p> <p>Published 29 October 2021.</p>
<p>PSR Policy Statement 'Regulatory framework for the New Payments Architecture central infrastructure services'</p>	<p>On 9 December 2021, the Payment Systems Regulator (PSR) published Policy Statement 21/3 'Regulatory framework for the New Payments Architecture central infrastructure services' (PS21/3).</p> <p>In PS21/3 the PSR sets out the regulatory framework it will implement to address risks to competition and innovation arising from the behaviour of a provider of central infrastructure services (CIS) for the New Payments Architecture (NPA). The NPA is the payment industry's proposed way of organising the clearing and settlement of most interbank payments in the future, including those that currently use Bacs and Faster Payments. Pay.UK, the operator of Bacs and Faster Payments, is responsible for delivering the NPA. This includes procuring a provider of NPA CIS. Pay.UK is also responsible for the design of the NPA. In PS21/3 the PSR sets out the requirements on Pay.UK and the CIS provider.</p>

	<p>In terms of the requirements on Pay.UK these can be summarised as:</p> <ul style="list-style-type: none">• Be the primary interface and decision-maker for CIS provision.• Set CIS user prices, and do so using a methodology that has regard to certain pricing principles and is subject to the PSR's non-objection.• Set the rules and standards for NPA CIS, and ensure that these facilitate competition and innovation.• Ensure that CIS facilitate innovation and competition.• Ensure that a CIS provider does not use or disclose to any other party, including its affiliates, information and data for anything other than CIS provision.• In a timely manner, make available to the market, information and data concerning the provision of CIS that would help facilitate competition or innovation. <p>The PSR plans to give directions to implement its regulatory framework before the NPA goes live using its powers under the Financial Services (Banking Reform) Act 2013.</p> <p>Published 9 December 2021.</p>
<p>PRA statement on the 2022 cyber stress test: Retail payment system</p>	<p>On 13 December 2021, the PRA issued a statement announcing that it will invite a number of firms to participate in a voluntary cyber stress test. The stress test will focus on a severe data integrity incident as the disruption scenario and will test firms' ability to meet the impact tolerance for payments in a severe but plausible scenario.</p> <p>In March 2021, the FPC set an impact tolerance for payments and agreed that the next cyber stress test would focus on a retail payment system. The FPC also confirmed that the 2022 test should target the most systemic firms contributing in the end-to-end payments chain, as in the event of disruption, their ability to resume services in a timely manner was particularly important for UK financial stability.</p> <p>The Prudential Regulation Committee in addition has agreed to invite a limited number of firms with a smaller presence in the retail payment system to take part in the cyber stress test.</p> <p>The PRA will contact the firms selected for invitation, and they will receive more information about the test in due course.</p> <p>Published 13 December 2021.</p>

USA	
<p>US House Committee on Financial Services hold hearing on “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.”</p>	<p>On 8 December 2021, the US House Committee on Financial Services (the Committee) held a hearing on “Digital Assets and the Future of Finance: Understanding the Challenges and Benefits of Financial Innovation in the United States.”</p> <p>In her opening statement, Congresswoman Maxine Waters (Chairwoman of the House Committee on Financial Services) said that the hearing had the aim of helping the Committee ‘<i>consider how to support responsible innovation that protects consumers and investors, safeguards our financial system from systemic risks, promotes financial inclusion, addresses environmental concerns, as well as to consider a potential Central Bank Digital Currency</i>’.</p> <p>You can watch a recording of the hearing here, and read the Committee Memorandum here.</p> <p>Published 8 December 2021.</p>

Australia	
Josh Frydenberg MP announces proposals for the reform of crypto and BNPL regulation, and the introduction of a CBDC	<p>On 8 December 2021, Josh Frydenberg MP (Federal Treasurer) announced the Australian Government's intention to create a framework to license crypto-currency exchanges, and to modernise the regulation of the payments system to accommodate new and emerging payments systems such as 'Buy-Now Pay-Later' (BNPL). In addition, he announced that the Australian Government will consult on the feasibility of a retail CBDC.</p> <p>In a speech to the Australia-Israel Chamber of Commerce, Josh Frydenberg announced the following guidelines on timings for the regulatory reforms:</p> <p>In relation to payments, by mid-2022 the Australian Government will have:</p> <ul style="list-style-type: none">• set out a strategic longer-term plan for the payments system, developed with industry and reviewed annually;• settled the details of additional powers for the Treasurer to set payment system policy; and• determined the changes necessary to modernise payments system legislation to accommodate new and emerging payment systems, including consideration of BNPL and digital wallets. <p>In relation to crypto, by mid-2022 the Australian Government will have:</p> <ul style="list-style-type: none">• completed consultation on the establishment of a licencing framework for Digital Currency Exchanges to provide greater confidence in the trading of crypto assets;• finalised consultation on a custody or depository regime for businesses that hold crypto assets on behalf of consumers so that investors have greater confidence in the safe keeping of these assets; and• received advice from the Council of Financial Regulators, working with other relevant agencies, on the underlying causes and policy responses to the complex issue of de-banking. <p>Importantly, by end-2022 the Australian Government will have:</p> <ul style="list-style-type: none">• settled the framework to replace the current one-size-fits-all payment licensing arrangements with a functionally based framework adopting graduated, risk-based regulatory requirements;• received a report from the Board of Taxation on an appropriate framework for the taxation of digital transactions and assets;• undertaken a mapping exercise of existing crypto currencies and tokens to better inform consumers and others of the risks and benefits that arise;and• examined the potential of so-called Decentralised Autonomous Organisations (DAOs) and how they can be incorporated into Australia's legal and financial regulatory frameworks. <p>The Australian Government will commence a consultation on the feasibility of a retail CBDC in Australia, with advice to be provided by the end of 2022.</p> <p>For further information on the background to these reforms, see NRF's coverage of the Select Committee on Australia as a Technology and Financial Centre report into digital assets markets and regulation.</p> <p>Published 8 December 2021.</p>

<p>Reserve Bank of Australia releases report on the potential use and implications of a wholesale form of CBDC using DLT</p>	<p>On 8 December 2021, The Reserve Bank of Australia, Commonwealth Bank, National Australia Bank, and industry partners, jointly released a report to mark the successful conclusion of Project Atom.</p> <p>Project Atom was a collaborative research project undertaken during the past year that examined the potential use and implications of a wholesale form of CBDC using distributed ledger technology (DLT). The project involved the development of a proof-of-concept (POC) for the issuance of a tokenised form of CBDC that could be used by wholesale market participants for the funding, settlement and repayment of a tokenised syndicated loan on an Ethereum-based DLT platform. The project explored a number of issues, including:</p> <ul style="list-style-type: none">• how access to a CBDC could be extended to a wide range of wholesale market participants, including those that would not ordinarily have access to accounts at the Reserve Bank;• the potential benefits of integrating a wholesale CBDC with tokenised assets on interoperable DLT platforms; and• whether an enterprise-grade DLT platform could be a viable technology for a wholesale CBDC. <p>The POC demonstrated that the digitisation of syndicated loans on a DLT platform could provide efficiency gains and reduce operational risk by replacing highly manual and paper-based processes. Integrating a wholesale CBDC on the same DLT platform enabled ‘atomic’ delivery-versus-payment settlement of the drawdown, novation and repayment of the tokenised syndicated loan, and could potentially allow for other forms of programmability that could improve efficiency and reduce risk in transactions. The POC also demonstrated that an enterprise-grade DLT platform with appropriate controls on access and security could address many of the potential requirements for a wholesale CBDC system and tokenised assets platform.</p> <p>Assistant Governor (Financial System) Michele Bullock said, ‘Project Atom demonstrated the potential for a wholesale CBDC and asset tokenisation to improve efficiency, risk management and innovation in wholesale financial market transactions. The project also demonstrated the benefits of collaboration in advancing our knowledge in this area. The Bank will continue its research on CBDCs as part of its strategic focus area on supporting the evolution of payments.’</p> <p>Published 8 December 2021.</p>
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<p>Philip Lowe speech “Payments - the future?”</p>	<p>On 9 December 2021, Philip Lowe, Governor of the Reserve Bank of Australia (RBA), gave a speech at the Australian Payments Network Summit 2021 titled ‘Payments - the future?’.</p> <p>In the speech, Lowe highlights and discusses five trends in the payments system he expects to continue:</p> <ul style="list-style-type: none">• the declining use of banknotes and the increasing use of electronic forms of payment;• the greater use of digital wallets;• the growing involvement of the ‘big techs’ in payments;• the increasing specialisation within the payments value chain and the emergence of new business models; and• the growing community and political interest in the security, reliability and cost of payments. <p>Alongside these trends, Lowe highlights four issues which policymakers will need to address as a result of the changing payments landscape:</p> <ol style="list-style-type: none">1. How to ensure that banknotes remain widely available for those who want to use them. As part of this, the RBA is currently undertaking a public consultation on banknote distribution arrangements.2. How to keep downward pressure on the cost of electronic payments, particularly for small merchants. As more payments are made electronically, the focus on the cost of these payments will increase.3. How to address competition issues that arise with the increased involvement of big techs in payments. One important issue here is the access arrangements for the devices and the digital wallets they offer.4. How to ensure that the electronic payments system is secure and available when people want to use it. Our economy is increasingly dependent on our digital infrastructure, so we need to make sure it is resilient to cyber threats as well as other operational risks. <p>Lowe also goes into detail about areas he deems need to be addressed in the payments landscape; the potential for digital tokens and new forms of money (including stablecoins and CBDCs); and the regulatory environment in Australia.</p> <p>Published 12 December 2021.</p>
<p>Quarterly Statement by the Council of Financial Regulators</p>	<p>On 13 December 2021, the Council of Financial Regulators (the Council) held its quarterly meeting. The Council discussed developments with technology and financial regulation, including the payments and crypto-asset reforms announced by the Government on 8 December (see above).</p> <p>The Council endorsed the Terms of Reference for the Working Group on the Regulation of the Crypto-Ecosystem, which the Council reports will help to progress some of the crypto-asset reforms. A separate working group will focus on de-banking in the FinTech, crypto-asset and remittance sectors, and the Government’s request for advice on the underlying causes and policy responses.</p> <p>Published 16 December 2021.</p>

Hong Kong	
Yi Gang speech “Hong Kong's positioning and prospect as an international financial centre”	<p>On 9 December 2021, Yi Gang, Governor of the People's Bank of China (PBOC), gave a speech titled 'Hong Kong's positioning and prospect as an international financial centre' at The People's Bank of China and Hong Kong Monetary Authority (HKMA) Joint Seminar "Hong Kong's positioning and prospect as an international financial centre"</p> <p>The speech, among other topics, discusses the opportunity for Hong Kong to become an international leader in the fields of FinTech and green finance.</p> <p>Yi Gang discusses the BIS Innovation Hub Centre in Hong Kong, and how it is helping the PBOC, the HKMA, the Bank of Thailand, and the Central Bank of the UAE in building the m-CBDC Bridge Project (a BIS project- see here for more details); the Memorandum of Understanding on FinTech Innovation and Regulation in the Greater Bay Area signed by the PBOC and HKMA; and potential cooperation going forward in CBDC and Regtech.</p> <p>Published 16 December 2021.</p>

International Developments

International Monetary Fund (IMF)	
IMF blog- “Global Crypto Regulation Should be Comprehensive, Consistent, and Coordinated”	<p>On 9 December 2021, the IMF posted a blog article titled ‘Global Crypto Regulation Should be Comprehensive, Consistent, and Coordinated’. The article highlights that policymakers have struggled to monitor the risks from the evolving sector that has come out of the growth in crypto assets (and associated products and services).</p> <p>The article highlights that the IMF thinks that financial stability risks from this sector could soon become systemic in some countries.</p> <p>The IMF calls for a global regulatory framework which it believes should have the following three elements:</p> <ol style="list-style-type: none">1. Crypto-asset service providers that deliver critical functions should be licensed or authorized.2. Requirements should be tailored to the main use cases of crypto assets and stablecoins.3. Authorities should provide clear requirements on regulated financial institutions concerning their exposure to and engagement with crypto. <p>The IMF discusses the risks to some emerging markets of currency substitution through crypto assets.</p> <p>The IMF calls for cross-border collaboration and cooperation to address the technological, legal, regulatory, and supervisory challenges in order that countries can maintain financial stability while benefiting from the underlying technological innovations.</p> <p>Published 9 December 2021.</p>
Bank for International Settlements (BIS)	
BIS paper- DeFi risks and the decentralisation illusion	<p>On 6 December 2021, the BIS released a paper titled ‘DeFi risks and the decentralisation illusion’.</p> <p>Key takeaways from the paper include that:</p> <ul style="list-style-type: none">• decentralised finance (DeFi) aims to provide financial services without intermediaries, using automated protocols on blockchains and stablecoins to facilitate fund transfers;• there is a "decentralisation illusion" in DeFi due to the inescapable need for centralised governance and the tendency of blockchain consensus mechanisms to concentrate power. DeFi's inherent governance structures are the natural entry points for public policy; and• DeFi's vulnerabilities are severe because of high leverage, liquidity mismatches, built-in interconnectedness and the lack of shock-absorbing capacity. <p>Also published on 6 December 2021 was a paper titled ‘Trading in the DeFi era: automated market-maker’. This may also be of interest.</p> <p>Published 6 December 2021.</p>

<p>BIS, Bank of France and Swiss National Bank conclude successful cross-border wholesale CBDC experiment</p>	<p>On 8 December 2021, the BIS published a press release titled 'BIS, Bank of France and Swiss National Bank conclude successful cross-border wholesale CBDC experiment'. This related to Project Jura, which explored settlement of tokenised euro commercial paper and foreign exchange transactions.</p> <p>The experiment explored the direct transfer of euro and Swiss franc wholesale CBDCs between French and Swiss commercial banks on a single distributed ledger technology platform operated by a third party. Tokenised assets and foreign exchange transactions were settled safely and efficiently using payment-versus-payment and delivery-versus-payment mechanisms.</p> <p>The experiment was conducted in a near-real setting, used real-value transactions and met current regulatory requirements.</p> <p>In addition, Project Jura studied a new approach for central banks to allow access to CBDCs for regulated non-resident financial institutions.</p> <p>For more information, you can listen to this BIS media briefing.</p> <p>Published 8 December 2021.</p>
<p>BIS paper- Interoperability between payment systems across borders</p>	<p>On 10 December 2021, the BIS released a paper titled 'Interoperability between payment systems across borders'.</p> <p>Key takeaways from the paper include:</p> <ul style="list-style-type: none"> • Interoperability among payment systems – as the foundation for enhancing cross-border payments – requires technical, semantic and business system compatibility so that end users can seamlessly transact with each other across systems. • Public and private sector options in pursuing cross-border payment system interoperability can be illustrated using four stylised models, ordered in increasing complexity and cost but also greater efficiency – a single access point, bilateral link, hub and spoke or a common platform. • The BIS Innovation Hub is putting theory into practice with several innovative projects to foster interoperability across the four stylised models. • An ambitious, multi-year G20 programme to enhance cross-border payments is under way. <p>Published 10 December 2021.</p>

International Swaps and Derivatives Association (ISDA)	
<p>ISDA paper - Contractual Standards for Digital Asset Derivatives</p>	<p>On 14 December 2021, the ISDA published a paper 'Contractual Standards for Digital Asset Derivatives'.</p> <p>The paper:</p> <ul style="list-style-type: none"> • identifies novel technology and market-driven events that could disrupt the operation of a digital asset derivatives transaction and provides a framework for dealing with these events; and • explores how digital assets (and the derivatives that reference them) can be valued and what happens when a valuation cannot be obtained. <p>Analyses how digital assets might interact with the existing ISDA documentation architecture, including the ISDA Master Agreement and industry standard collateral documentation.</p> <p>Published 14 December 2021.</p>
IOSCO	
<p>IOSCO consultation report – The use of innovation facilitators in growth and emerging markets</p>	<p>On 7 December 2021, the International Organization of Securities Commissions issued a consultation report, The use of innovation facilitators in growth and emerging markets. The consultation report covers three types of innovation facilitators: innovation hubs, regulatory sandboxes, and regulatory accelerators. The consultation report proposes four recommendations for emerging market member jurisdictions to consider when setting up innovation facilitators.</p> <p>The proposed recommendations cover four areas:</p> <ul style="list-style-type: none"> • Considerations prior to the establishment of innovation facilitators. • Definition and disclosure of objectives and functions of innovation facilitators. • Defined eligible entities and the criteria for application. • Mechanisms for cooperation and exchange of information with both local and foreign relevant authorities. <p>The deadline for comments on the consultation report is 6 February 2022.</p> <p>Published 7 December 2021.</p>
Transparency International UK	
<p>Transparency International UK – report on money laundering risks in EMIs</p>	<p>On 14 December 2021, Transparency International UK (a UK independent anti-corruption organisation) issued a report that explores certain money laundering risks associated with electronic money institutions (EMIs). The report also sets out certain recommendations including that the FCA should conduct a new thematic risk review of the sector. The report also recommends that the FCA's senior managers and certification regime be extended to all relevant persons working in the EMI industry.</p> <p>Published 14 December 2021.</p>

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