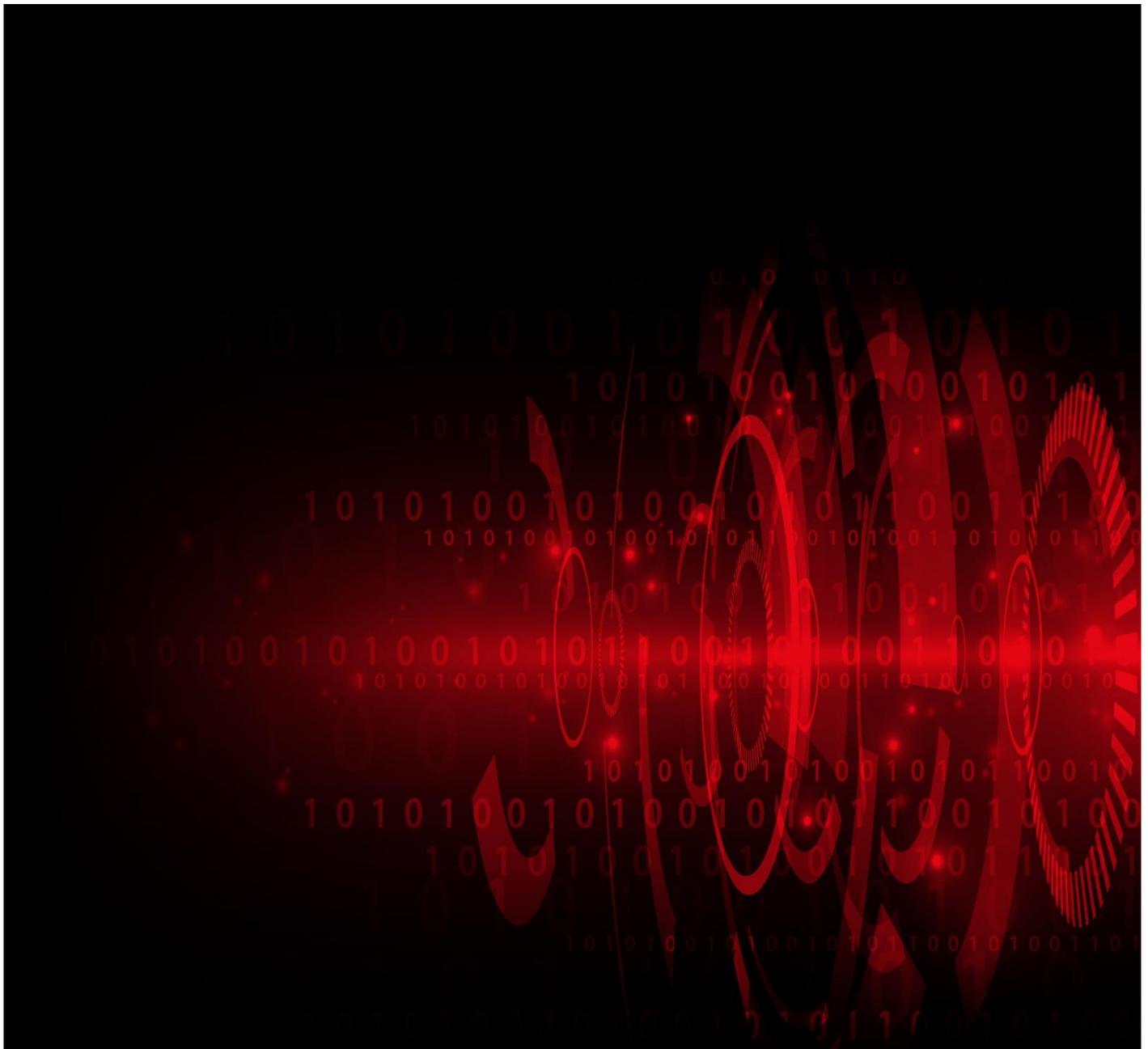


Global Blockchain Business Council

Monthly FinTech Updater

Norton Rose Fulbright LLP – 30 June 2022



Global, EU, UK and US Regulatory Developments

EU	
<p>Basel Committee finalises principals on climate-related financial risks and progresses work on specifying crypto-assets' prudential treatment</p>	<p>On 27 May 2022, the Basel Committee (the Committee) met and, among other items, progressed work on specifying crypto-asset prudential treatment and issuing a second consultation paper. Following an initial consultation last year, recent developments have further highlighted the importance of having a global minimum prudential framework to mitigate risks from crypto-assets. As such, building on feedback received by external stakeholders, the Committee plans to publish another consultation paper over the coming month, with a view to finalising the prudential treatment of crypto-assets around the end of the year.</p> <p>Published 6 June 2022</p>
<p>EU Distributed Ledger Technology (DLT) pilot regime published</p>	<p>The Regulation on a pilot regime for market infrastructures based on distributed ledger technology (DLT) has been published in the Official Journal of the EU. The pilot regime will permit certain DLT market infrastructures to operate with exemptions from some EU financial services legislation, which may otherwise inhibit the trading and settlement of crypto-assets. The regime is intended to promote legal certainty, support innovation, preserve market integrity and ensure financial stability for the use of DLT in crypto-asset and e-money token markets.</p> <p>The regime is targeted at DLT multilateral trading facilities (DLT MTFs), DLT settlement systems (DLT SSs) and DLT trading and settlement systems (DLT TSSs). Key aspects of the regime include:</p> <ul style="list-style-type: none"> ● requirements for operating as a DLT MTF, DLT SS or DLT TSS; ● exemptions from existing financial services legislation, e.g., for DLT MTFs, from the obligation of intermediation under the revised EU Markets in Financial Instruments Directive (MiFID II) (meaning retail investors could obtain direct access to DLT market infrastructures) and from transaction reporting requirements under the Markets in Financial Instruments Regulation. For central securities depositories operating DLT SSs, exemptions may be available from the rules on recording of securities, integrity of issue, segregation of accounts and book-entry form; and ● restrictions on the types and value of financial instruments that may be admitted to trading on DLT market infrastructures, specifically shares, bonds and units in collective investment undertakings (provided, in the latter case, that they benefit from the execution-only exemption under MiFID II).

Permissions will be granted by Member State regulators to DLT market infrastructures to operate within the pilot regime for a period of up to six years from the date the permission is granted. The European Securities and Markets Authority (**ESMA**) will be entitled to issue non-binding opinions on requested exemptions, to which Member State regulators must give due consideration and notify ESMA if they make any significant deviations from ESMA's opinion.

The Regulation will come into force on June 22, 2022 and will for the most part apply from March 23, 2023.

Published 15 June 2022

**KryptoFAV:
Germany introduces
crypto fund units as
part of
dematerialisation of
securities law**

On 18 June 2022, the German Regulation on Crypto Fund Units (*Verordnung über Krypto-fondsanteile* – KryptoFAV; [link](#)) entered into force. The KryptoFAV introduces the possibility to issue units in common funds (*Sondervermögen*) via decentralised crypto securities registers which are typically based on distributed ledger technology (DLT).

Background: Fundamental reform of German securities law

In 2021, the German Electronic Securities Act (*Gesetz über elektronische Wert-papiere* – eWpG; [link](#)) fundamentally reformed German securities law. The eWpG made it possible to issue bearer bonds in the form of uncertificated electronic securities via a register. Such bonds in bearer form include, for example, covered bonds (*Pfandbriefe*), convertible bonds or structured bonds. The eWpG currently does not cover, however, registered bonds or any other types of securities such as shares.

Under traditional German civil law, instruments deemed securities have to be securitised by a physical certificate. Based on the eWpG, issuers now have the right to decide whether they wish to issue bearer bonds in a certificated form or in an electronic form.

Distinction between central registers and crypto securities registers

The eWpG provides for two types of electronic securities registers (and, accordingly, for two types of electronic securities): (i) Central registers (*zentrale Register*) and (ii) crypto securities registers (*Kryptowertpapierregister*). Central registers must be kept by the central depository for securities (*Wertpapiersammelbank*) or, if expressly authorised by the issuer, by a custodian (*Verwahrer*). Pursuant to the eWpG, the physical global certificate is replaced by the entry of the issue in the central register. Only securities entered into a central register may be eligible for trading on trading venues under the European Central Securities Depositories Regulation (CSDR).

Crypto securities registers, in contrast, are kept by a registrar agent (*registerführende Stelle*) typically on the basis of DLT. The issuer of crypto securities may designate such registrar agent; otherwise, the issuer itself is deemed to be the registrar agent. The activity of a registrar agent has been defined as a financial service requiring a license for crypto securities registry (*Kryptowertpapierregisterführung*) under the German Banking Act (*Kreditwesengesetz* – KWG).

Fund units in electronic form

In connection with the eWpG, the German Capital Investment Code (*Kapitalanlagegesetz-buch* – KAGB) was amended to enable the issuance of units in common funds in the form of electronic unit certificates (*elektronische Anteilscheine*) instead of physical unit certificates. For that purpose, the KAGB stipulates that certain provisions of the eWpG regarding central registers and central register securities shall apply *mutatis mutandis* to electronic unit certificates.

However, in contrast to central registers, the KAGB does not directly introduce crypto securities registers for fund units, but rather stipulates the competence of the German Federal Ministry of Finance and the German Federal Ministry of Justice and Consumer Protection to additionally apply the related provisions of the eWpG to fund units by way of a regulation.

Crypto fund units

With the KryptoFAV, the aforementioned Federal Ministries have now made use of their legislative competence and introduced crypto fund units in common investment funds that are issued via crypto securities registers.

	<p>The KryptoFAV stipulates that the basic provisions under the eWpG for crypto securities registers and for crypto securities shall apply <i>mutatis mutandis</i> to crypto fund units with the provisos that:</p> <ul style="list-style-type: none"> • references to crypto securities and bonds shall be references to crypto fund units, • references to the terms and conditions shall be references to the fund rules, • references to the beneficiary shall be references to the investor. <p>By way of derogation from the eWpG, only (i) the depositary (<i>Verwahrstelle</i>) of the investment fund or (ii) an undertaking instructed by the depositary that is authorised for crypto securities registry under the KWG may act as the registrar agent. When instructing such undertaking, the depositary must ensure that it is able to fulfil its statutory duties in its function as depositary of the investment fund.</p> <p>It should be noted that the KryptoFAV is limited to units in investment funds in contractual form and does not cover any shares in investment funds in corporate form.</p> <p>Published 20 June 2022</p>
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UK

<p>HM Treasury consultation on managing the failure of systemic digital settlement asset firms</p>	<p>On 31 May 2022, HM Treasury published an open consultation seeking views on a regime to address the failure of a systemic digital settlement asset (DSA) firm.</p> <p>The government is taking a staged approach to cryptoasset regulation with the goal to create the conditions for issuers and service providers of stablecoins (used as a means of payment) to operate and grow safely in the UK, whilst mitigating the potential financial stability issues that may materialise should a firm, that has reached systematic scale, fail. In advance of any consideration on the need for a bespoke legal framework for systemic DSA firms, HM Treasury considers an amended FMI SAR to be the most appropriate vehicle through which to address the risks posed by the possible failure of systemic DSA firms which are not banks.</p> <p>The consultation seeks views on both the intention to appoint the FMI SAR as the primary legal framework through which to address the failure of a systemic DAS firm, as well as the necessary amendments that will be required to ensure the FMI SAR can operate effectively with regard to such a firm. Separately, HM Treasury will be consulting, in the coming months, on the regulatory perimeter for systemic payments firms at large.</p> <p>The consultation requests responses to the following questions:</p> <ul style="list-style-type: none"> • Do you have any comments on the intention to appoint the FMI SAR as the primary regime for systemic DSA firms (as defined at para 1.8) which aren't banks ? • Do you have any comments on the intention to establish an additional objective for the FMI SAR focused on the return or transfer of customer funds, similar to that found in the Payment and E-money Special Administration Regime (PESAR), to apply solely to systemic DSA firms? • Do you have any comments on the intention to establish an additional objective for the FMI SAR focused on the return or transfer of customer funds, similar to that found in the PESAR, to apply solely to systemic DSA firms? • Do you have any comments on the intention to provide the bank of England with the power to direct administrators, and to introduce further regulations in support of the FMI
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	<p>SAR to ensure the additional objective can be effectively managed, or what further regulation may be required ?</p> <ul style="list-style-type: none"> Do you have any comments on the intention to require the Bank of England to consult with the FCA prior to seeking an administration order or directing administrators where regulatory overlaps may occur? <p>The deadline for responding to the consultation is 2 August 2022.</p> <p>Following the closure of the consultation, HM Treasury will consider respondents' views and publish a consultation response.</p> <p>Published 1 June 2022</p>
<p>Inside Disputes – Luna / UST</p>	<p>The latest post from our firm's banking and commercial disputes blog, Inside Disputes, discusses causes of action that may arise from both algorithmic and traditional asset-backed stablecoins, and highlights the key litigation challenges in respect of blockchain technology.</p> <p>Published 1 June 2022</p>
<p>FCA evaluation report – Supporting innovation in ESG data and disclosures: the digital sandbox sustainability pilot</p>	<p>On 23 June 2022, the FCA published an evaluation report regarding the digital sandbox sustainability pilot. The report provides an overview of the digital sandbox sustainability cohort and discusses the key lessons learned. The FCA also covers its current thinking for the future of the sandbox.</p> <p>The FCA is committed to establishing a permanent operating model for a digital testing environment based on the principles, and improved by the experience and feedback, of the Digital Sandbox initiative. It is currently undertaking further research and industry engagement to ensure that this future service meets the needs of its end-users, and to understand the most relevant potential use cases that this initiative could support. The FCA is also exploring further benefits of the platform, including its ability to facilitate regulatory-to-regulatory collaboration in, for example, the development of SupTech (supervisory technology) solutions. It is also exploring methods to make the digital sandbox data assets openly accessible in a way that complies with data protection laws.</p> <p>Published 24 June 2022</p>

USA and Canada

Borders blur in the regulation of digital assets

Once a far-off concept, digital assets, including cryptocurrency, have grown dramatically, achieving over US\$3 trillion in value last November with no signs of slowing. Extraterritorial application of foreign laws is an emerging concern as cryptocurrency regulations take shape in other countries, notably the United States. While cryptocurrency regulations have yet to develop in Canada, Canadian trading entities need to consider the risks arising from foreign agencies enforcing their own rules extraterritorially.

The United States: broad jurisdiction and extraterritorial reach

In the United States, the regulatory regime that applies to cryptocurrency and other digital assets depends on several factors, including whether cryptocurrency is a security and the type of offering or activity at issue. Currently, oversight digital assets is fragmented, with regulators and other oversight bodies applying existing legal frameworks to the novel digital asset markets. Nevertheless, enforcers in the US have asserted broad jurisdiction over digital assets.

A US court has already acknowledged the broad jurisdiction of the US Securities Exchange Commission (US SEC) by issuing an injunction to stop the delivery of cryptocurrency to foreign investors. In 2019, the US SEC applied for an injunction to stop a company from delivering cryptocurrency to purchasers because the company failed to register before offering a security to the market. The company requested that the court limit the scope of the injunction to prohibit purchases by US persons only. The court dismissed the company's request on the basis there was a substantial risk the cryptocurrency would be resold to US persons by foreign investors.

The following year, in November 2020, in its publication entitled [Cryptocurrency: An Enforcement Framework](#), the US Department of Justice (US DOJ) set the stage for an aggressive approach to investigating and prosecuting cryptocurrency crime regardless of where alleged perpetrators are located. Of note, the US DOJ takes the position that the US has broad enough jurisdiction to prosecute and seize digital assets where a digital asset transaction merely interacts with financial, data storage or other computer systems within the US or where cryptocurrencies are used to source illegal goods or defraud US citizens.

Potential for international coordination and cooperation?

More recently, President Biden issued an [executive order](#), on March 9, 2022, laying out a national policy for digital assets. The executive order specifically instructs various federal and state government departments to coordinate in regulating digital assets. It also seeks to strengthen international law enforcement of digital asset crime, requiring the attorney general to submit a report to the president on how to strengthen international law enforcement for detecting, investigating, and prosecuting criminal activity related to digital assets.

At the same time, commentary suggests that the US regulatory framework will likely evolve to allow prosecutors to ask courts to seize the digital assets of foreign cryptocurrency exchanges immediately, circumventing the typical issuance of mutual legal assistance treaty requests to the home country. It remains unclear how such action will be received and tolerated by other countries, including Canada, how other countries will cooperate or adopt similar approaches, and how effective the enforcement will ultimately be.

	<p>Meanwhile, Canada's Budget 2022 seeks to prioritize enforcing financial crimes and developing a legislative framework for digital currency. In particular, the federal government plans to provide \$2 million in 2022-23 to Public Safety Canada to develop a new Canada Financial Crimes Agency, with further details to be announced in the 2022 fall economic and fiscal update. The federal government also proposes to launch a legislative review focused on the digitalization of money, with \$17.7 million to go to the Department of Finance over five years to lead the review of the digital currency sector, including whether a central bank digital currency is needed.</p> <p>Key Takeaways</p> <p>The digital world moves quickly, making it more difficult to use standard extraterritorial procedures to effectively enforce securities and other laws. Where Canadian trading entities have strong ties to the US, they could be the subject of US regulatory enforcement action, including the seizure of digital assets, as regulations are enforced extraterritorially by the US SEC, US DOJ or other agencies. While Canada develops its own regulatory framework for cryptocurrency, in the face of uncertainty surrounding the risk of extraterritorial enforcement, Canadian trading entities ought to consider the impact of the US regime on their businesses</p> <p>Published 7 June 2022</p>
<p>Senators propose industry-friendly cryptocurrency bill</p>	<p>A pair of US senators have unveiled proposed legislation that would create exceptions to federal law for some cryptocurrencies. The aim of the legislation is to not stifle the evolution of cryptocurrencies, while still retaining some regulatory oversight.</p> <p>It is widely regarded as crypto-friendly, proposing to delegate oversight of the most popular cryptocurrencies to the Commodity Futures Trading Commission and not the Securities and Exchange Commission.</p> <p>Published 7 June 2022</p>
<p>Asia</p>	
<p>Hong Kong extends regulatory rules to NTF-based collective investment schemes</p>	<p>Hong Kong's Securities and Futures Commission (SFC) has stated that some non-fungible tokens that constitute investment products have to be regulated, and warned investors of the risks involved with this type of investment.</p> <p>Parties that provide these types of tokens in Hong Kong or target Hong Kong investors will need to obtain a licence from the SFC and this may trigger certain authorisation requirements.</p> <p>Published 7 June 2022</p>
<p>UK-Singapore Digital Economy Agreement enters into force</p>	<p>The UK-Singapore Digital Economy Agreement has entered into force. The agreement covers the digitised trade in services and goods across both economies. It provides businesses with the opportunity for meaningful bilateral cooperation.</p> <p>The agreement comprises five bilateral agreements between the UK and Singapore covering the following areas:</p> <ul style="list-style-type: none"> • fintech; • digital customs; • cybersecurity; • digital identities; and

	<ul style="list-style-type: none"> • electronic trade documents and electronic invoicing. <p>Published 14 June 2022</p>
<p>Thai SECT consults on digital asset advertising</p>	<p>The Securities and Exchange Commission, Thailand (SECT) has <u>launched</u> a public hearing on draft regulations on advertising digital assets. The SECT's proposed rules include:</p> <ul style="list-style-type: none"> • establishing clear rules around preparation, approval and supervision of advertisements; and • restricting cryptocurrency advertising to the business operators' official channels, while allowing advertising of services to be carried out as usual. <p>Feedback is requested by 29 June 2022.</p> <p>Published 15 Jun 2022</p>
<p>Hong Kong introduces Licensing Regime for Virtual Asset Services Providers</p>	<p>In May 2021, following a 3 month consultation, the Financial Services and the Treasury Bureau (FSTB) issued its consultation conclusions for a new licensing regime for virtual assets services providers (VASPs) in Hong Kong. Recently, further steps were taken to make the new licensing regime for VASPs a reality with the Hong Kong Government gazetting amendments to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO) to enhance Hong Kong's anti-money laundering and counter-terrorist financing regulatory regime. In addition, the Hong Kong Government has also issued a Legislative Council brief providing an overview of the amendments which follow the FSTB's consultation conclusions.</p> <p>Key changes being introduced by the amendments to the AMLO include the following:</p> <p>Definition of a virtual asset</p> <p>A virtual asset will be defined in the AMLO by reference to the key elements currently set out in the Financial Action Task Force's definition (a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes).</p> <p>Excluded from the definition of virtual asset are: (i) digital representations of fiat currencies (including digital currencies issued by central banks); (ii) financial assets already regulated under the Securities and Futures Ordinance; (iii) stored value facilities regulated under the Payment Systems and Stored Value Facilities Ordinance; and (iv) certain closed-loop, limited purpose items which are non-transferable, non-exchangeable and non-fungible in nature e.g. air miles, credit card rewards, customer loyalty programmes etc.</p> <p>Also, acknowledging that the virtual asset sector is developing rapidly, the Secretary for Financial Services and the Treasury will be empowered to prescribe by notice published in the Gazette whether a particular asset is to be considered a virtual asset under the AMLO.</p> <p>Operating a virtual asset exchange</p> <p>Operating a virtual asset exchange will entail providing services through means of electronic facilities where:</p> <ul style="list-style-type: none"> • offers to sell or purchase virtual assets are regularly made or accepted in a way that forms or results in a binding transaction; • persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of virtual assets in a way that forms or results in a binding transaction; and

	<ul style="list-style-type: none"> client money or client virtual assets comes into direct or indirect possession of the person providing such service. <p>At the initial stage VASPs will only be able to offer services to professional investors. This will most likely be included as a licence condition providing for some flexibility so that the SFC may offer some VASPs the ability to provide services to retail investors at a later date.</p> <p>Timing</p> <p>The VASP regime will come into effect on 1 March 2023.</p> <p>Penalties</p> <p>Operating a virtual asset exchange in Hong Kong without a licence, or actively marketing (whether in Hong Kong or elsewhere) to the public of Hong Kong the services of an overseas virtual asset exchange that is not licensed in Hong Kong, without a reasonable excuse, will be an offence punishable on conviction on indictment, to a fine of HK\$5 million and to imprisonment for seven years and, in the case of a continuing offence, to a further fine of HK\$100,000 for every day during which the offence continues. A summary conviction will see fines of HK\$500,000 and imprisonment of 2 years, and a further fine of HK\$10,000 for every day during which the offence continues.</p> <p>Published 24 June 2022</p>
Pacific Asia	
<p>ASIC Chair delivers reflections on challenges and focus areas</p>	<p>The Chair of the Australian Securities and Investments Commission (ASIC), Joseph Longo, delivered a speech at the Law Council of Australia Business Law Section Corporations Workshop. Changes in technology appeared as a key theme throughout Mr Longo's address, particularly the challenges this presents for ASIC's role in protecting end users of financial products and services. Key areas include critical infrastructure and cyber security and the regulation of digital assets.</p> <p>Published 17 June 2022.</p>

International Developments

Bank for International Settlements (BIS)	
<p>Pablo Hernández de Cos: Crypto-assets - a financial authority's view</p>	<p>In this speech, Pablo Hernández de Cos, Governor of the Bank of Spain and Chair of the Advisory Technical Committee of the European Systemic Risk Board, first described the defining characteristics of cryptoassets and recent developments, before turning to the specific risks to financial stability that they may pose. He ended the speech by highlighting some of the main elements shaping the current response of regulators and supervisors and the challenges that lie ahead.</p> <p>Published 31 May 2022</p>

Regulation Tomorrow podcast

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Our updater on crypto assets can be found on our Regulation Around the World webpage [here](#).

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