



# **Fifteen legal issues for cryptocurrency**

**February 2022**

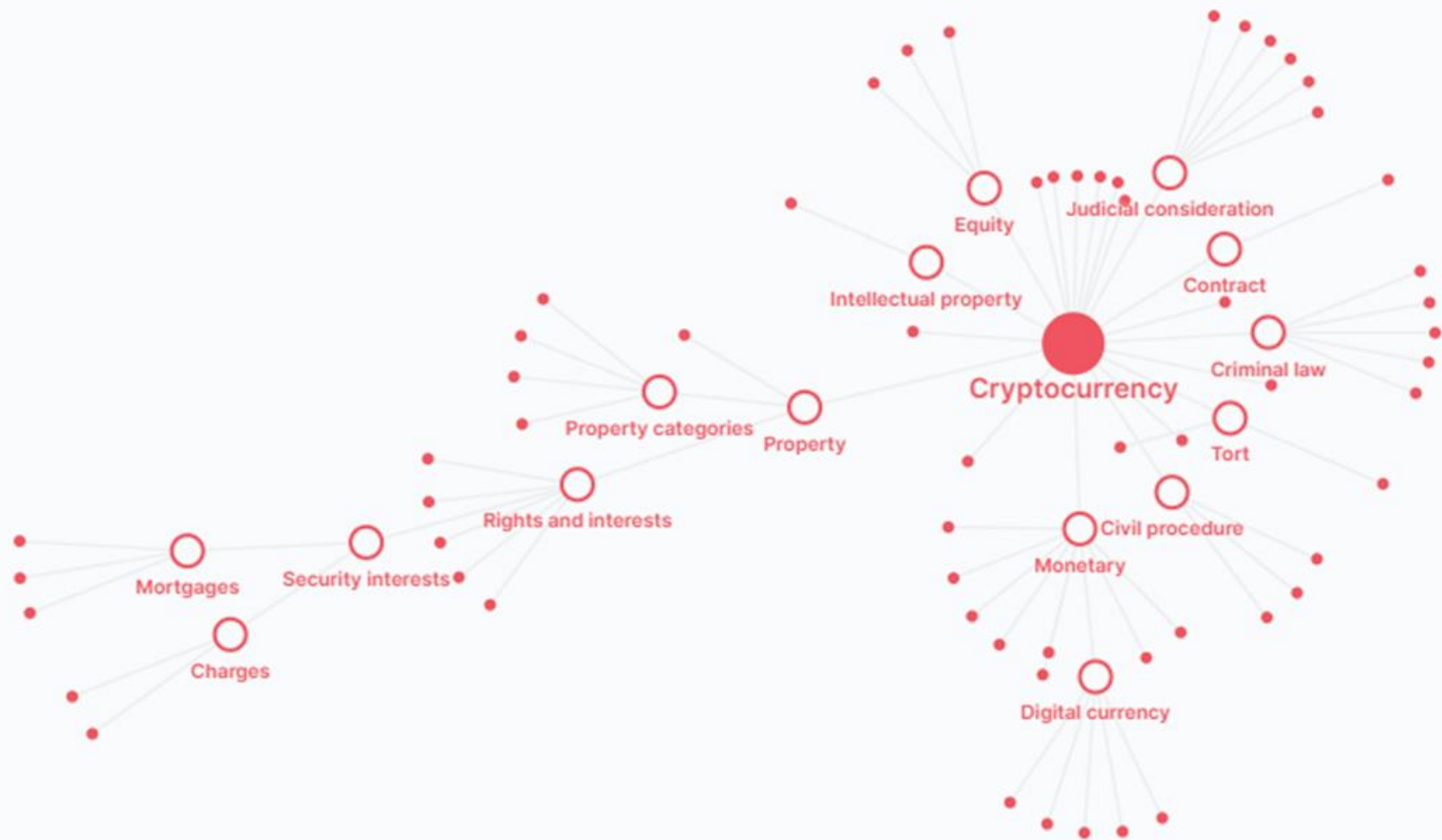
### **About the Asian Business Law Institute**

The Asian Business Law Institute (“ABLI”) is a think tank based in Singapore that initiates, conducts and facilitates research and produces authoritative texts with a view to providing practical guidance in the field of Asian legal development and promoting the convergence of Asian business laws.

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# Monetary

What is the status of cryptocurrency as "money", "currency", "legal tender" and so on? How are these things currently regulated?

## Money

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- How is "money" defined by the law?
  - How does the definition of "money" differ from the definition of "currency" or "legal tender"?
- Are there different types of money?
  - e.g., commodity money, fiat money/currency, commercial bank money (aka "demand deposits"), electronic/digital money
- How is money (e.g., its issuance, transfer and destruction) regulated?
- Who regulates money (e.g., its issuance, transfer and destruction)?
- Is money "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is money?
  - who holds "rights" or "interests" in money as a type of "property"?
  - what rights and interests are held in money as a type of property?
  - against whom are those rights and interests exercisable?

## Digital or e-money

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- How is "digital" (aka "electronic money" or "e-money") defined (if at all) by the law?
  - How does the definition of digital money differ from the definition of "money"?
- Are there different types of digital money?
- How is digital money regulated?
  - Is digital money regulated differently or separately from the regulation of "money"?
- Who regulates digital money?
- Is digital money "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is digital money?
  - who holds "rights" or "interests" in digital money as a type of "property"?
  - what rights and interests are held in digital money as a type of property?
  - against whom are those rights and interests exercisable?

## Currency

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- How is "currency" defined by the law?
  - How does the definition of "currency" differ (if at all) from the definition of "money" or "legal tender"?
- Are there different types of currency?
- What is the official currency?
- How is currency (including its issuance) regulated?
- Who regulates currency?

- Are foreign currencies used? (That is, does "currency substitution" occur?) If so:
  - how is currency substitution regulated?
  - are there restrictions on currency substitution? If so, what are those restrictions?
  - who regulates currency substitution?
- Is currency "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is currency?
  - who holds "rights" or "interests" in currency as a type of "property"?
  - what rights and interests are held in currency as a type of property?
  - against whom are those rights and interests exercisable?

## Legal tender

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- How is "legal tender" defined (if at all) by the law?
  - How does the definition of "legal tender" differ from the definition of "money" or "currency"?
- Are there different types of legal tender?
- How is legal tender regulated?
- Who regulates legal tender?
- Is legal tender a type of "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is legal tender?
  - who holds "rights" or "interests" in legal tender as a type of "property"?
  - what rights and interests are held in legal tender as a type of property?
  - against whom are those rights and interests exercisable?

## Demand deposits

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- How are "demand deposits" (or "commercial bank money") defined by the law?
  - How does the definition of "demand deposits" differ from the definitions of "money", "currency", and "legal tender"?
- How are demand deposits regulated?
- Who regulates demand deposits?
- Are demand deposits "property"?
  - If so:
    - what type of "property" are demand deposits?
    - who holds "rights" or "interests" in demand deposits as a type of "property"?
    - what rights and interests are held in demand deposits as a type of property?
    - against whom are those rights and interests exercisable?
- Can demand deposits be jointly "owned"? If so:
  - who can jointly own demand deposits?
  - what rights and interests does each joint owners have?; and
  - against whom are those rights and interests exercisable?

## Electronic funds transfers

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- How are "electronic funds transfers" (**EFT**) defined by the law?
- Are there different types of EFTs? For example:
  - wire transfers;
  - bank transfers;
  - telegraphic transfers.
- How are EFTs regulated?
- Who regulates EFTs?
- Are the funds subject to an EFT "property" (or does the transferor/transferee have rights equivalent to property rights)? If so:
  - what type of "property" are funds subject to an EFT?
  - who holds "rights" or "interests" in funds subject to an EFT as a type of "property"?
  - what are the rights and interests held in funds subject to an EFT as a type of property?;
  - against whom are those rights and interests exercisable?

## Digital currency

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- How is "digital currency" defined (if at all) by the law?
  - How does the definition of "digital currency" differ from the definition of "money", "currency", "digital money" or "legal tender"?
- Are there different types of digital currency recognised?
- How is digital currency regulated?
- Who regulates digital currency?
- Is digital currency "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is digital currency?
  - who holds "rights" or "interests" in digital currency as a type of "property"?
  - what are the rights and interests held in digital currency as a type of property?;
  - against whom are those rights and interests exercisable?

## Virtual currency

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- How is "virtual currency" defined (if at all) by the law?
  - How does the definition of "virtual currency" differ from the definition of "digital currency", "money", "currency", "digital money" or "legal tender"?
- Are there different types of virtual currency recognised?
- How is virtual currency regulated?
- Who regulates virtual currency?



- Is virtual currency "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is virtual currency?
  - who holds "rights" or "interests" in virtual currency as a type of "property"?
  - what are the rights and interests held in virtual currency as a type of property?;
  - against whom are those rights and interests exercisable?

## Central Bank Digital Currency

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- How is a "central bank digital currency" (**CBDC**) defined (if at all) by the law?
  - How does the definition of an CBDC differ from the definition of "money", "currency", "digital money", "virtual currency", "digital currency" or "legal tender"?
- Are there different types of CBDCs recognised? For example:
  - retail CBDCs;
  - wholesale CBDCs.
- How is (or will) CBDC (be) regulated?
- Who regulates (or will regulate) CBDCs (including its issuance)? For example:
  - from what document or instrument does the issuer's power to issue CBDC derive (e.g., the constitution of your jurisdiction)?
- Are CBDCs "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" is an CBDC?
  - who holds "rights" or "interests" in CBDCs as a type of "property"?
  - what are the rights and interests held in CBDCs as a type of property?;
  - against whom are those rights and interests exercisable?

# Property

Is cryptocurrency “property”? For what purposes is it “property”? What rights does the holder of cryptocurrency have and against whom are those rights exercisable? Can the holder give rights or interests in their cryptocurrency to others?

## Property

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- How is "property" defined by the law?
- What types or categories of "property" are recognised under the law? For example, does the law recognise or make distinctions between:
  - "moveable" and "immovable" property?
  - "tangible" and "intangible" property?
  - "personal" and "real" property?

## Rights in property

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- What rights does the "owner" (whether in possession or not) of property have in the property and who are those rights exercisable against?
- What rights does the "possessor" (whether the owner or not) of property have in the property and who are those rights exercisable against?

## Security interests

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- What security interests in property are recognised by the law? For example:
  - charges; and
  - mortgages.
- For each interest:
  - what is its definition?
  - what is its purpose?
  - what are the requirements for validity (including any writing or registration requirements)?; and
  - against whom is the right exercisable (i.e., whether the right is *in rem* or *in personam*)?

## Abandonment

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- Can property (specifically, intangible property) be abandoned? If so, what are the requirements for abandonment to be established?

# Commodities

Is cryptocurrency a “commodity”? If so, is trading in cryptocurrency subject to regulations governing trading in commodities?

## Commodities

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- How is a "commodity" defined by the law?
- What types or categories of "commodities" are recognised under the law?

## Regulation

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- How are commodities (including the trading thereof) regulated? For example, trading:
  - in futures;
  - in forwards;
  - on margin;
  - in differences;
  - on spot.
- What law regulates the trading in commodities?
- Who (if anyone) regulates the trading of commodities?

## Commodities as property

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- Are commodities "property" (or does the holder have rights equivalent to property rights)? If so:
  - what type of "property" are commodities?
  - who holds "rights" or "interests" in commodities as a type of "property"?
  - what rights and interests are held in commodities as a type of property?; and
  - against whom are those rights and interests exercisable?

# Goods

Is cryptocurrency a “good”? If so, is the sale or transfer of cryptocurrency subject to regulations governing the sale or transfer of goods?

## Goods

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- How is a "good" defined by the law?
- What types or categories of "goods" are recognised under the law?

## Regulation

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- How are goods regulated? For example:
  - sale of goods;
  - transfer of goods (or transfer of "property" in goods);
  - hire of goods;
  - hire-purchase of goods.
- What law regulates goods?
- Who (if anyone) regulates goods?

## Goods as property

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- Are goods "property" (or does the holder have rights equivalent to property rights)?  
If so:
  - what type of "property" are goods?
  - who holds "rights" or "interests" in goods as a type of "property"?
  - what rights and interests are held in goods as a type of property?; and
  - against whom are those rights and interests exercisable?

# Crime

What crimes is cryptocurrency subject to?  
Do those crimes turn on cryptocurrency's  
status as "property"?



## Property crimes

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- What types of crimes involve "intangible property" under the law? For example:
  - theft of property;
  - dishonest misappropriation of property;
  - receipt of stolen property;
  - dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
- For each crime:
  - what is its definition?
  - what is its purpose?
  - what are its elements?
  - what penalties are imposed for its commission?
  - does the "wronged" party have a civil claim in addition to or in substitution for the criminal offence? If so:
    - what is the definition of that civil claim?
    - what is the purpose of that civil claim?
    - what are the elements to establish the civil claim?; and
    - what remedies are available to the wronged party if the civil claim is proved?

## Money crimes

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- What types of crimes involve "money" under the law? For example:
  - theft of money;
  - receipt of criminal proceeds.
- For each crime:
  - what is its definition?
  - what is its purpose?
  - what are its elements?
  - what penalties are imposed for its commission?
  - does the "wronged" party have a civil claim in addition to or in substitution for the criminal offence? If so:
    - what is the definition of that civil claim?
    - what is the purpose of that civil claim?
    - what are the elements to establish the civil claim? and
    - what remedies are available to the wronged party if the civil claim is proved?

## Electricity theft

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- Is theft of electricity or the tampering of electricity metres a crime under the law? If so:
  - what type of "crime" is it (for example, is it a "property" crime)?
  - what is its definition?
  - what is its purpose?
  - what are its elements?
  - what penalties are imposed for its commission?
  - does the "wronged" party have a civil claim in addition to or in substitution for the criminal offence? If so:
    - what is the definition of that civil claim?
    - what is the purpose of that civil claim?
    - what are the elements to establish the civil claim?; and
    - what remedies are available to the wronged party if the civil claim is proved?

# Civil claims

If someone "interferes" with (e.g., by stealing) another's cryptocurrency, what remedies does the holder have against that person and any proceeds derived from the interference?

## Interference with property

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- Does a person have a civil claim against another person who "interferes" with their "property" under the law (e.g., where a person takes, sells or fails to return the property of another)? If so:
  - what is the claim's name (e.g., "tort of conversion" or "trespass to chattels")?
  - what is the purpose of the claim?
  - what are the elements of the claim?; and
  - what remedies are available to the "wronged party" if the claim is proved?

## Proceeds of interference with property

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- Where a person's property has been "interfered" with by another and that other party (the defendant) derives "proceeds" or "benefits" from the interference (e.g., the property is stolen and is sold or is used to purchase other property from third parties), does the "wronged" party have any rights or interests in the "proceeds" or "benefits" (particularly if the proceeds or benefits are of a greater value than the property with which the "wrongful" party interfered—that is, the "wrongful" party "profited" from the interference) derived? If so:
  - what requirements must be proved for those rights or interests to arise (e.g., requirements for "tracing")?
  - what rights or interests does the wronged party have in the proceeds or benefits (e.g., proprietary rights in the proceeds or benefits)?
  - against whom are those rights or interests exercisable?; and
  - how can the "wronged" party execute those rights or interests? That is, what remedies are available to the "wronged" party in respect of the proceeds or benefits (e.g., a "charge" over the proceeds or benefits or an "account for profits" in respect of any profits derived from the interference)?

## Mixing of property

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- If the property of one person is mixed with the property of another person and those items of property are indistinguishable from each other, what rights and interests do each party have in the resultant mass?

## Unjust enrichment

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- If a person is unfairly or unjustly "enriched" or unfairly or unjustly benefits at the expense of another person, what remedies does that other person have against the enriched/benefited person?

## Remedies

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- Must orders for damages or compensation be expressed in fiat currency? If so, must the orders be expressed in the *domestic* fiat currency?

# Insolvency

What novel problems does cryptocurrency give rise to in bankruptcy and insolvency?

## Gathering evidence

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- What methods are available to an insolvency officeholder to compel the production of evidence to assist in the identification and realisation of assets of the insolvent estate?

## Clawback

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- Is it possible to "claw back" assets that have been transferred prior to or during insolvency? If so, what type of "assets" can be clawed back?

## Realising assets of insolvency estate

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- What duties or obligations are imposed on insolvency office holders when realising the assets of a bankrupt or insolvency company? For example:
  - what obligations are imposed on the officeholder to realise the assets at the highest price?
  - what rules are imposed on the officeholder to determine the price and time at which assets should be realised?
  - what rights do creditors have to challenge the officeholder's assessment of the best price and best time to realise assets?; and
  - what options are available to the officeholder to ameliorate the risk of challenge by creditors of their assessment of the best price and best time to realise assets (e.g., by obtain sanction by the courts)?

# Taxation

What "events" (e.g., sale) regarding cryptocurrency are taxable?

## Taxable events

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- What crypto activities can be taxed? For example:
  - mining;
  - sale; and
  - cryptocurrency splits?
- What taxes apply to those activities? For example:
  - direct taxes;
    - capital gains tax;
    - income tax;
  - indirect taxes;
    - goods and services / value-added taxes?



# Civil procedure

In civil proceedings, can a plaintiff's cryptocurrency holdings be provided as "security" for the defendant's legal costs if the defendant is successful in the proceedings? Can a plaintiff obtain an injunction against a defendant's cryptocurrency holdings? Can a judgment debtor's cryptocurrency holdings be seized and sold to satisfy a judgment debt?

## Injunctions

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- Where a plaintiff has a **civil claim** against a defendant, what methods or “remedies” are available to the plaintiff (or the court) to preserve the “assets” of a defendant so that those assets may be turned over to the plaintiff if it is successful in its claim against the defendant? For each “remedy”:
  - what is its name (e.g., a “proprietary injunction”)?
  - what is its purpose?
  - what requirements must be established for the “remedy” to be granted?
  - what types of “assets” can be preserved by the remedy?; and
  - what methods are available to the plaintiff (or the court) to determine the nature, extent and location of the defendant’s assets?
- Where a plaintiff has a **civil claim** against a defendant, what methods or “remedies” are available to the plaintiff (or the court) to prevent the defendant from dissipating its “assets” against which the plaintiff might **enforce a judgment** (should it be successful against the defendant)? For each “remedy”:
  - what is its name (e.g., a “freezing injunction”)?
  - what is its purpose?
  - what requirements must be established for the “remedy” to be granted?
  - what types of “assets” can be prevented from dissipation?; and
  - what methods are available to the plaintiff (or the court) to determine the nature, extent and location of the defendant’s assets?

## Enforcement of judgments

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- In legal proceedings, what methods are available to a judgment creditor to enforce a judgment debt against the “assets” of the judgment debtor?
- What are the requirements that must be satisfied before a judgment creditor can enforce the judgment debt against the assets of the judgment debtor?
- Against what types of “assets” (e.g., property or money) of the judgment debtor can the judgment debt be enforced?
- What methods are available to the judgment creditor (or the court) to determine the nature, extent and location of the judgment debtor’s assets?

## Security for costs

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- In legal proceedings, can the courts order that one party (i.e., the losing party) pay the lawyers’ fees of the other party (i.e., the winning party)? That is, is the jurisdiction a "costs" jurisdiction (such as the England and Wales) or a non-costs jurisdiction (like the USA)? If so:
  - can the court order that the plaintiff provide "security" for the defendant's costs if it appears that the plaintiff will be unable to pay the defendant's costs if the defendant is successful in the proceedings? If so, state:
    - the name or definition of the order or application (e.g., "application for order of security of costs");
    - the purpose of the order or application;
    - the requirements that must be satisfied for the order to be granted;
    - the types of “security” that may offered by the defendant.

# Unfair business practices

Is the marketing and promotion of cryptocurrency subject to the regulation of, or prohibition against, multi-level marketing and pyramid schemes?

## Multi-level marketing

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- How is "multi-level marketing" (**MLM**) defined by the law?
- Is MLM regulated or prohibited? If so:
  - What types of things (e.g., products, goods, commodities or property), the subject of MLM, are regulated or prohibited?
- Who regulates MLM?

## Pyramid schemes

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- How are "pyramid schemes" defined by the law?
- Are pyramid schemes regulated or prohibited? If so:
  - What types of things (e.g., products, goods, commodities or property), the subject of a pyramid scheme, are regulated or prohibited?
- Who regulates pyramid schemes?

# Trusts

Can cryptocurrency be subject to a trust?

## Trusts

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- What is the definition of a "trust" under the law?
- What types of trusts are recognised under the law? For example:
  - express trusts;
  - constructive trusts;
  - fixed vs discretionary trusts;
  - resulting trusts; and
  - revocable vs irrevocable trusts.
- For each type of trust, what is its purpose? For example:
  - wills and estate planning;
  - taxation planning;
  - privacy;
  - investment vehicles; and
  - asset protection (i.e., protection from creditors, exchange controls, government authorities, etc...).
- For each type of trust, what are its requirements for validity?

## Regulation

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- For each type of trust, how is it regulated?
- For each type of trust, who regulates it?

# Estate planning

What issues arise for estate planning involving cryptocurrency holdings?



## Probate

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- What are the requirements for a valid will (including any registration requirements)?  
For example, can claims over what types of things (e.g., property) are "owned" by the deceased be "settled" by probate?
- Who regulates probate?

# Banking and prudential regulation

What capital or prudential requirements are holdings of cryptocurrency subject to?  
What services may banks offer in respect of cryptocurrencies?

## Capital adequacy

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- What capital requirements are banks subject to under the law?
- What institution (e.g., the central bank) regulates capital requirements for banks?
- What institution (e.g., the central bank) is a member of the Basel Committee on Banking Supervision. If no institution is a member:
  - does any institution hold "observer" status?; and
  - has the institution nevertheless proposed to impose the Basel III framework?

## Banking services

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- Are banks permitted to offer “custodian” or “safekeeping” services? If so, are banks permitted to offer custody of cryptocurrency services?
- Are banks permitted to facilitate customers’ purchases and sales of “assets” (such as shares)? If so, are banks permitted to facilitate customers’ purchases and sales of cryptocurrencies?
- What types of collaterals are banks permitted to accept when providing loans to their customers? Are banks permitted to provide loans collateralised by cryptocurrencies?
- What “assets” are banks permitted to hold on their balance sheet? Can banks hold cryptocurrencies on their balance sheet?
- Are banks permitted to issue and distribute cryptocurrencies (e.g., stablecoins)?

# Intellectual property

What intellectual property issues arise with cryptocurrency? Can cryptocurrencies be the subject of a patent or trademark?

## Patents

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- What are the requirements to register a patent under the law? For example, what types of “inventions” can be protected by a patent?

## Trademarks

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- What are the requirements to register a trademark under the law? For example, what types of things (e.g., products or services) can be identified or distinguished by a trademark?
- Who regulates the registration of trademarks?

# Cross-border

What cross-border issues arise with cryptocurrency? For example, can you enforce a cryptocurrency-related judgment in a jurisdiction in which that cryptocurrency-related activity is prohibited?

## Cross-border enforcement

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- Is illegality a ground for refusing to recognise or enforce a judgment given by a foreign court? Is illegality determined by reference to the law of the court-of-origin or the law of the court addressed?