



Cryptocurrency and Blockchain Practice

The increasing use of cryptocurrencies and other digital assets has given rise to complex legal issues relating to regulatory status (including requirements to register as broker-dealers, commodity pool operators, commodity trading advisors, investment advisers, investment companies, securities exchanges and money service businesses), compliance (including valuation, custody and reporting), corporate law (such as maintaining shareholder records), securities transactions (including initial coin offerings, private placement of digital assets and M&A transactions), fund formation, the launch of ETFs and derivatives, venture capital, taxation, anti-money laundering, litigation and regulatory enforcement.

Dechert offers sophisticated and knowledgeable legal counsel to clients navigating this rapidly evolving space. At the heart of Dechert's Cryptocurrency and Blockchain practice is a deep understanding of the technologies that drive blockchain and related developments in distributive computing networks. In addition, Dechert is distinctive among leading law firms in this area by bridging financial services regulation and new financial technology to find solutions for our clients.

Cryptocurrencies and Bankruptcy

Bankruptcy of a cryptocurrency trading entity and of an exchange would raise a variety of unsettled legal questions that Dechert is uniquely qualified to handle having both extensive cryptocurrency expertise and a sophisticated bankruptcy department. The key issues relate to the eligibility of exchanges to file for bankruptcy, whether cryptocurrency would be considered estate property, proper valuation methodologies, and nature of the crypto assets within existing legal regimes. Dechert's Financial Restructuring practice, and its Blockchain and Cryptocurrency practice have closely followed the development of these issues both inside and outside the United States.

Key issues:

- **Eligibility of crypto exchanges as debtors under the Bankruptcy Code.** At issue is whether a cryptocurrency exchange can qualify as a debtor under Section 109 of the Bankruptcy Code and be able to seek relief under Chapter 11 or Chapter 7. Section 109 excludes certain commodities brokers and banking institutions from eligibility.
- **Cryptocurrency as property of the exchange's bankruptcy estate.** Whether, in the event of the bankruptcy of a crypto exchange, the users' cryptocurrencies will be considered property of the crypto exchange's bankruptcy estate. If so, customer currency may be used to satisfy senior debt, and customers may not recover their assets in full. The existence of custodial or noncustodial wallets, the applicable terms and conditions of such wallets, and the existence of a constructive trust, may affect the ownership of these assets in the event of bankruptcy.
- **Nature and legal status of cryptocurrencies.** The determination of the nature of cryptocurrencies, whether as a security, commodity, currency, or a hybrid, can have significant consequences in the context of avoidance actions (either by seeking the return of the cryptocurrencies themselves or their value), distribution of claims, recoupment rights, and the application of the automatic stay, among other issues. It remains to be seen whether bankruptcy courts will adopt, for example, the reasoning of the U.S. District Court for the District of Massachusetts, which stated that bitcoin can be considered as a commodity under the Commodity Exchange Act and whether courts will adopt rulings under the Securities Laws largely finding them to qualify as securities.
- **Cryptocurrency as collateral.** In those cases where cryptocurrencies are used as collateral, the determination as to their nature could also present important implications, mainly related to the proper perfection methods, their use as "cash collateral" and the "adequate protection" that secured creditors may be entitled to.
- **Lack of uniform valuation methods and valuation date.** There is uncertainty as to how - and as of what date - cryptocurrency would be valued in a bankruptcy case.



Dechert's Cryptocurrency and Blockchain Resources Center

Providing the latest news, updates and analysis.

Since the launch of bitcoin in 2009, cryptocurrencies and the encrypted, decentralized blockchain protocols that underpin them have grown from abstract theories to a transformational force that is disrupting the way many industries will operate for decades to come.

Dechert's cryptocurrency and blockchain technology website brings together a selection of resources on this subject, including legal updates and event recordings.

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Recognized as a leading fintech law firm by *The Legal 500* (US), which noted that the firm is “particularly strong in cryptocurrencies and blockchain.”

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