

## BOOK REVIEW

*The Virtual Currency Regulation Review*. Editors Michael Sackheim and Nathan A Howell. London, England: Law Business Research Ltd, 2018. ISBN 978-1-912228-77-5, Pp. 412, \$457.68.

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Just over 10 years ago, Bitcoin, the first virtual currency, was launched. It and other cryptocurrencies have since emerged from relative obscurity, overcome many obstacles to their development and have grown in prominence. *The Virtual Currency Regulation Review (The Review)* is an impressive work on this important, emerging area of the law. Legal practitioners, transactional and regulatory alike, scholars and students, policymakers and others will find this comprehensive, in-depth review to be most instructive.

*The Review* covers many countries, from Argentina and Australia to Switzerland, the United Arab Emirates, the United Kingdom and the United States, and many in between. The legal issues around cryptocurrencies are addressed for no less than 30 jurisdictions. As noted by the editors, “virtual currencies are essentially borderless,” and the borderless nature of the technology that enables virtual currencies was the inspiration for *The Review*. Lawyers in any given jurisdiction advising on a regulatory or on a transactional matter,

or having to provide a legal memorandum or opinion on any issue of concern in the area, would do well to understand how legal considerations are weighed in other major jurisdictions. When so many questions remain untested before tribunals, when laws, regulation and guidance are evolving, and when so many questions remain unaddressed, important insight can be found in the approaches adopted in other countries. The result is a multitude of legal issues and questions in many jurisdictions that should be considered; each is important in the decisions around transactions and the establishment of ventures in virtual currencies. Well-founded legal advice is essential to engaging in these businesses.

For the review of each country’s applicable laws, regulations and risks, the editors have proposed a uniform framework. This is consistent with the practical, business-focused analysis approach of *The Review*. The consistent framework enables readers to more easily compare in different jurisdictions approaches to a specific issue, such as enforcement. The country reviews are concise, yet detailed. Each chapter is dedicated to a specific jurisdiction and each covers a wide variety of topics. Generally, the current legal and regulatory framework is addressed, and securities and investment laws, banking and money transmission, anti-money laundering, criminal and civil fraud and enforcement

and tax are considered in many of the chapters. The regulation of important market participants is also addressed. Discussed for many jurisdictions are the considerations applicable to the regulation of exchanges as well as whether and, if so, how these regulations apply to virtual currency exchanges, and the regulation of miners and issuers and sponsors. Finally, potential changes and anticipated developments in jurisdictions are discussed under the heading “Looking Ahead” at the end of each chapter.

The consistent framework across the book highlights, often in sharp contrast, how widely divergent legal responses have been to the development of this new financial technology. Some jurisdictions have sought to adopt laws and regulations specific to cryptocurrencies, while many have sought to apply existing rules and legal frameworks, adapting them as needed to regulate their use and to oversee those transacting in them. Further still, we find interesting discussions around the evolution of the legal approaches over time within a single jurisdiction, which often finds its basis in policy changes. Some countries originally sought to stamp out their use. We learn that this was the case in Russia, for example, but this seems to have been liberalized in certain respects (or is perhaps on the path to a more liberal approach).

Many chapters in *The Review* address the legal considerations impacting virtual currencies by classifying the types of tokens involved. In the chapter on Germany, for example, we learn that a distinction can be made between three types of tokens and that making these distinctions assists in assessing the legal implications: cryptocurrency tokens, security tokens, and utility tokens. Other jurisdictions also add asset-backed tokens.

It is acknowledged, however, that this is merely a rough guide, or a general classification, which can be less useful in the case of a “hybrid token,” one that combines the different types of tokens. This classification exercise is relevant as there seems to be no specific regulatory framework for virtual currencies and other virtual assets in Germany. They are regulating under legacy legal frameworks, and, in this context, in Germany and other jurisdictions that have used existing frameworks, the legal classification matters. The authors of this chapter go on to explain that cryptocurrency tokens are regulated under banking law (and would not be considered securities), that security tokens will often be considered securities to which securities and investment laws will apply, and that the regulatory treatment of utility tokens is rather unclear. They suggest that German regulators will approach each circumstance differently and engage in a case-by-case assessment.

Distinctions are extremely important in understanding how a jurisdiction will regulate tokens. It is most interesting to see a return in the discussions in some of the civil law jurisdictions to basic principles of civilian classifications. Notions of persons and objects, movable and immovable and physical and non-physical are considered in situating this newcomer, virtual currencies, within centuries-old legal constructs. The results are illuminating and further complicated by the overlay of more modern capital market and banking laws. How civil and criminal enforcement are pursued are informed by these considerations and the various chapters provided useful insight.

The chapter addressing the legal issues implicated by virtual currencies in the United States is comprehensive. This chapter was prepared by the

editors of *The Review* in collaboration with others at from their law firm, Sidley Austin. In the portion of the review discussing securities and investment laws, the authors discuss the potential risks and advise market participants to consider, to the extent a virtual currency is a security, registration and related requirements under the Securities Exchange Act of 1934. Specifically, the reader is cautioned to be aware of the requirements applicable to a broker, dealer, exchange, alternative trading system, clearing agency, and transfer agent. Each of these is discussed in some detail in the context of virtual currencies. In addition, the US Securities and Exchange Commission's (SEC) Report of Investigation (The DOA Report) is reviewed. This report analyzed whether a digital asset, a token issued by The DOA, is a security under federal securities laws. The chapter provides background discussion on what the token represented and the considerations analyzed by the SEC in reaching their conclusion that The DOA token was an investment contract. Most interesting is the discussion of how blockchain market participants are focused on the distinguishing characteristics of other tokens to determine whether a similar conclusion would be reached where features differed. Beyond the application of federal securities laws, the authors note that "[The DOA Report] also served as an early illustration of the potential technical and legal issues that may arise from the use of smart contracts by blockchain companies." Considerations involving the US federal securities laws are addressed in other areas of the chapter as well; for example, in the portions on the regulation of miners, issuers and sponsors and in the discussion on enforcement.

In addition to the SEC, the regulatory oversight by the US Commodity Futures Trading Commis-

sion (CFTC) is examined. The authors explore the contours of the CFTC's jurisdiction in discussing the determination by this regulatory agency that all virtual currencies fall within the Commodity Exchange Act's definition of commodity, certain enforcement proceedings and its confirmation in a recent case before a federal district court judge. The portion of the chapter on banking and money transmission couples a comprehensive overview of the spectrum of approaches to oversight taken by banking regulators (the Fed, OCC, FDIC and CFPB) and state money transmission regulators with insight and detail where required. New York's "BitLicense" regulation is discussed, together with the potential for regulation by other states with the adoption of the Uniform Law Commission's proposed Uniform Regulation of Virtual Currency Business Act. The reader comes away from that discussion recognizing that the patchwork of approaches is a minefield of issues and potential legal developments that "promises to make this a dynamic area for the foreseeable future." The guidance in the chapter is most useful in identifying the issues and offers the context to place oneself ahead of developments in the area.

Finally, the chapter on US developments addresses anti-money laundering under the Bank Secrecy Act, and regulation and enforcement by FinCEN. Criminal and Civil Fraud and Enforcement is the heading of the portion of the chapter that provides a relatively detailed review of efforts by the SEC, the CFTC and the Department of Justice to address fraud, compliance and registration failures and other criminal and illegal activity involving virtual currencies. The chapter is completed by a discussion on the tax, UCC and bankruptcy issues that are implicated in this asset class. Some excerpts in the final note,

in the “Looking Ahead” portion of the chapter, are pointedly relevant and read as follows—“The US regulatory environment applicable to virtual currencies is highly complex” adding that “it does appear that virtual currencies are here to stay” and a “failure to understand the US regulatory regime, in all its complexity and uncertainty, may expose market participants to an unacceptable level of legal, regulatory and reputational risk.”

The practical, business-focused approach of *The Review* makes it accessible and very useful for any practitioner analyzing the legal issues of virtual currencies in their jurisdiction. It should serve as a go-to desktop guide for many in this developing area of the law. Its insights broaden

its appeal to those facing more considered legal concerns, where nuanced analysis is required. *The Review* provides detail and perspective. When further combined with the benefits of a multijurisdictional review on virtual currencies, which by their very nature are without borders, *The Review* distinguishes itself. It is clear that a significant amount of time and effort was required to produce *The Review*, and having the benefit available in one place, in a comprehensive format, make it easy to recommend as a most useful addition to a law library.

◆ **Editor’s Note:** Michael Sackheim, the co-editor of *The Virtual Currency Regulation Review*, is the managing editor of this journal.