NIJI ONI & CO
Legal Practitioners

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JURISDICTIONAL ISSUES ON CRYPTOCURRENCY TRANSACTIONS

Due to the recent explosion of interest in cryptocurrency and all its implications for both new and traditional businesses, there is a growing need for clarity regarding the legal implications of these new technologies and currencies. As governments around the world, regulatory agencies, central banks, and other financial institutions are working to understand the nature and meaning of digital currencies, individual investors/traders can make a great deal of money investing in this new space. On the other hand, investors assume certain legal risks when they trade in cryptocurrencies. Much of the murkiness of the legal standing of cryptocurrency is because the space has only recently become popular as compared with more traditional currency and payment systems. Considering this, certain questions become quintessential in demystifying the potential bottlenecks investors/traders would encounter while transacting.

Where does trading occur in cryptocurrency transactions?

The blockchain technology that underpins cryptocurrencies is that which involves no way to pinpoint a ledger's actual location, offering greater privacy to transactions than traditional platforms which makes it unavoidably difficult to determine where trading occurs. First, the nodes which in the world of digital currency, is a computer that connects to a cryptocurrency network in a cryptocurrency transaction, are in different jurisdictions and copies of transactions stored in a blockchain ledger that does not have a single physical location and cannot be tied to any particular jurisdiction. Trading in cryptocurrency can hardly be tied to any jurisdiction due to the very nature of the transaction that thrives on anonymity, obscurity, and concealment, courtesy the technology used in cryptocurrency.

Are cryptocurrency transactions jurisdictional or multi-jurisdictional?

In addressing this, flowing from a natural understanding of how the blockchain technology works, it helps paint a clear picture and provides an answer to the question. Blockchain technology is a continuously growing electronic ledger that is distributed and decentralized across many different nodes that cannot be altered or tampered with and allows for direct peer-to-peer transactions between two parties in a verifiable and permanent way. Blockchain technology underpins cryptocurrency transactions and hence by nature, crypto transactions are multi-jurisdictional in most cases, owing to the lack of a physical ledger that can be pinpointed to a particular jurisdiction due to the decentralisation of nodes.

How is liability established, and who is to be held responsible when a transaction goes awry?

Privacy is a default attribute and advantage of cryptocurrency transactions and in the same vein poses an intricate jurisdictional challenge revolving around liability and enforcement concerns. If something goes awry such as, code errors, data errors and just plain glitches, it can proved to be a real headache for the courts to establish liability as nodes of a crypto transaction are decentralized and may be subject to conflicting legal frameworks. Furthermore, the residence country for cryptocurrency software is difficult to determine due to the ledger's lack of a physical location. Also, the blockchain's transnational nature makes determining applicable laws and selecting the correct jurisdiction for blockchain disputes very difficult which in turn makes establishing liability a gruesome exercise. The issue of liability claims arising from jurisdiction raises two questions:

- Whether you can claim against a company hosting the platform for cryptocurrency trading?.
- Whether a claim can be attached on the main blockchain technology that underpins cryptocurrency transactions platform?.

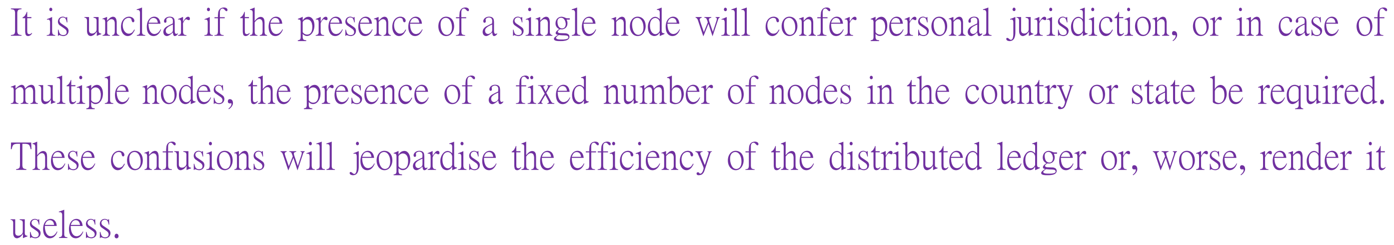
Whether you can claim against the company hosting the platform for the cryptocurrency trading?

The extent of this would typically depend and is limited to issues arising from the use of the platform; of which duties and rights are dependent on the user agreements and terms and conditions made available between parties. Thus, such agreements would typically describe the capacity in which the platform is acting, extent of indemnity and nature of duties amongst other things. It would have been simpler if this agreement to an extent states the choice of law to govern such disputes which should be one of a State which recognises blockchain transactions.

In an instance where this is not stated, then the appropriate law should be the *Lex fori*, which is the law of the forum where the cryptocurrencies produce effects. This is more appropriate in the light of the absence of a uniform international law rules for cryptocurrency and difficulty in pinning a particular jurisdiction if *Lex loci situs* or *Lex loci delicti* is used as we are dealing with virtual currency which makes it difficult.

Whether claim can attach on the main blockchain technology cryptocurrency platform?

In traditional databases, it is not difficult to identify its location, which in turn, determines the application of the appropriate laws and the regulatory authorities. However, this strategy cannot be applied to blockchain technology. In a permission less blockchain, the participant nodes are distributed across several countries or across different states within the same country. Each of the nation states would, therefore, seek to assert its jurisdiction over a potential blockchain dispute since the nodes are physically present within their territory. This will force the blockchain platform to comply with an unwieldy number of varying and perhaps conflicting regulatory regimes, and is likely to expose the creators, as well as the users of the blockchain, to lawsuits in multiple jurisdictions. It is also debatable as to how many nodes need to be present in a country's territory for its Court to claim personal jurisdiction over the database.



It is unclear if the presence of a single node will confer personal jurisdiction, or in case of multiple nodes, the presence of a fixed number of nodes in the country or state be required. These confusions will jeopardise the efficiency of the distributed ledger or, worse, render it useless.

In **Ion Science Ltd and Duncan Johns .v. Persons Unknown, Binance Holdings Limited and Payward Limited**, the court took a different approach in addressing the above espoused positions. The Applicants allege that, as part of a fraud, the first Respondent induced the applicants to invest £577,002 (equating to 64.35 Bitcoin) into various cryptocurrency investment opportunities. The first Respondent had stated that the investments had proven to be fruitful, but no initial investment sums or profits have since been returned to the applicants.

To begin the process of seeking to recover the alleged misappropriated sums invested, the applicants sought various forms of relief from the court on an urgent *ex parte* application, for the following:

1. A proprietary injunction, a worldwide freezing order and an ancillary disclosure order against the first respondent.

2. A disclosure order pursuant to the Bankers Trust jurisdiction and/or pursuant to CPR 25.1(g) against the second and third respondents.

3. Permission to serve out of the jurisdiction and by alternative means.

On 22 December 2020, Butcher J. granted the Applicants' application for (*inter alia*) a worldwide freezing order, a proprietary injunction and a disclosure order against the first Respondent, persons unknown, and disclosure orders against Binance Holdings Limited, and Payward Limited. This case is significant because it is the first Initial Coin Offering (ICO) fraud case heard before the Commercial Court. It is the Applicants' case that they have been the victims of a cryptocurrency ICO fraud.

An Initial Coin Offering (ICO), much like an Initial Public Offering (IPO), is a type of fundraising exercise using cryptocurrencies. An ICO is often used as seen in this case to raise money, to create and launch a new type of cryptocurrency. Unlike IPOs, which are strictly regulated, a general lack of regulation in the crypto field has led to ICOs becoming the vehicle of choice in many fraudulent schemes.

The Applicants were induced by persons unknown to transfer the £577,002 (64.35 Bitcoin) in the belief that they were making investments in real cryptocurrency products. As part of the alleged fraudulent scheme– and on the back of successful investments claimed to have been achieved for the applicants by persons unknown in Ethereum and Dimecoin- the applicants were persuaded to invest further in an ICO for a new cryptocurrency called Uvexo. A few months later, they were also convinced to invest in another, separate ICO for a new cryptocurrency called Oileum.

The supposed profits made in relation to each of the ICOs, however, has not been returned to the Applicants. The Applicants have embarked on an asset tracing and recovery exercise to recover the alleged misappropriated funds. As a result, this case is the very first case concerning an ICO fraud to reach the UK's Commercial Court, also this case is particularly noteworthy as the first case in which the court has granted permission to serve a freestanding Bankers Trust order out of the jurisdiction against cryptocurrency exchanges. Previous authority in **AA .v. Persons Unknown** was reluctant to do the same.

A Bankers Trust order is an order made to a third party (e.g., a bank) compelling it to disclose certain information to the Applicant. Typically, it is only made against a legal entity within the UK (although there is an exception). In **AA .v. Persons Unknown**, a third-party disclosure order was granted, but it was not on a Bankers Trust basis, instead it was an auxiliary order for a proprietary injunction. The facts of this case was deemed appropriate by the Court for there to be a Bankers Trust order in respect of the two exchanges outside the jurisdiction.

More significantly, it is the first time a court has considered the *lex situs* (location) of Bitcoin. In considering whether the court has jurisdiction over the first Respondent (not knowing their location) and with the Applicants seeking to serve out of the jurisdiction, part of the test to obtain leave to serve out involved considering whether England is the appropriate forum for the trial of the dispute. There is no decided case in relation to the *lex situs* for a crypto asset.

This judgement reflects that the *lex situs* of a crypto asset is the place where the relevant participant in the Bitcoin system (in this case the person or company who owned the Bitcoin) is domiciled. The facts of the case were judged to arise out of acts committed or events occurring within the jurisdiction (i.e., the fraud) and related to assets within the jurisdiction (i.e., the Bitcoin). The Bitcoin are, or were, in the UK, and so the *lex situs* is the UK. It is a decision that may prove to bring much-needed clarity to this issue.

It is a debatable matter whether blockchain technology that underpins cryptocurrency transactions is a villain or an anti-hero. However, what is certain is that currently, no international legal framework exists tailored especially for blockchain technologies and applications. Regulatory responses should be commensurate with the risks associated with cryptocurrency transactions without stifling innovation. Transnational laws do not imply the end of the role of national law, but only implies it must be re-thought in the broader context of globalisation of legal systems to meet new demands of innovations.

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NIJI ONI & CO
Legal Practitioners

Lagos:
21 Ajanaku Street off
Salvation Road, Opebi,
Ikeja, Lagos

Abuja:
28, 3rd Avenue, Gwarinpa
Estate, Abuja, FCT.

lawyers@nijioni.com

+234 1 453 6454

www.nijioni.com