COLLAS CRILL

Virtual asset succession

JUNE 2023

What is the state of current cryptocurrency regulation and what are the implications for families who hold cryptocurrencies as part of their wealth?

Virtual Assets have gained widespread popularity in recent years as a new asset class that promises to revolutionise the financial industry. As with any new technology or financial product, the regulatory landscape around virtual assets - specifically cryptocurrency - is constantly evolving. This is especially true when it comes to cryptocurrency regulation and the impact thereon on family wealth.

Cryptocurrency regulation: A global overview

From a global perspective the regulation of cryptocurrencies varies widely. Some countries have adopted a permissive approach, while others have taken a more cautious approach. In the United States for example, the regulatory framework for cryptocurrencies is still being developed. The Securities and Exchange Commission ("**SEC**") has taken the position that some cryptocurrencies are securities and thus subject to securities regulations. The Commodity Futures Trading Commission ("**CFTC**") has also asserted its regulatory authority over certain cryptocurrencies.[1]

In the European Union (**"EU")**, the regulation of cryptocurrencies is more uniform. In 2020, the EU adopted the Fifth Anti-Money Laundering Directive ("**5AMLD"**), which established a legal framework for the prevention of money laundering and terrorist financing. The directive requires cryptocurrency exchanges and wallet providers to be registered with local authorities and to comply with certain 'know your customer' ("**KYC**") and anti-money laundering ("**AML**") requirements. In April 2023, the European Parliament endorsed the first EU rules to trace crypto-asset transfers, prevent money laundering and set out common rules on supervision and customer protection.[2] This endorsement paves the way for the Markets in Crypto Assets ("**MiCA**") to become law in 2024.

In Asia, some countries have taken a more restrictive approach to cryptocurrencies. For example, China has banned initial coin offerings ("**ICOs**") and cryptocurrency exchanges. Japan, on the other hand, has legalised cryptocurrencies and established a regulatory framework for their trading.

Implications for Family Wealth

The regulation of Virtual Assets is particularly relevant when considering family wealth. Virtual Assets can be a valuable asset class for diversifying a family's investment portfolio, but they also carry significant risks. Cryptocurrencies are highly volatile and their value can fluctuate dramatically in a short period of time. Moreover, cryptocurrencies are still subject to cyberattacks, hacks, and other types of fraud, which can result in significant losses for investors.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

From a family wealth perspective, it is important to consider the regulatory environment in the jurisdictions where the family resides and where they plan to invest in cryptocurrencies. In some jurisdictions, the regulatory framework for cryptocurrencies may be more developed, providing greater protection for investors. In other jurisdictions, the regulatory environment may be more permissive, but also carry greater risks.

Tax considerations

It is important to consider the tax implications of investing in cryptocurrencies. In some jurisdictions, cryptocurrencies may be subject to capital gains taxes, which can reduce the overall returns on the investment. For families who hold cryptocurrencies as part of their wealth, the regulatory landscape can be complex and uncertain. One of the biggest challenges is determining how to comply with tax regulations when it comes to cryptocurrency transactions. Another one of these issues are Exchange Controls. In some jurisdictions where exchange controls are in place, people who have made use of their offshore allowances to purchase cryptocurrencies and then sell them domestically (also called arbitrage) may also face some challenges if they have not made the necessary declarations to inform their domestic Central Banks about the sale.

Estate Planning

Another consideration for families is how to handle cryptocurrencies in estate planning. Given the volatile nature of cryptocurrencies and the potential for loss or theft, it is important to have a plan in place for how to transfer these assets to heirs. One option is to include instructions in a will or trust for how to transfer cryptocurrencies to beneficiaries. However, this may not be sufficient, as it can be difficult to access cryptocurrencies without the private keys that are needed to transfer them. As such, families may want to consider working with an estate planning attorney who is familiar with the unique challenges posed by cryptocurrencies.

Tips to assist with virtual succession planning

Virtual asset succession planning refers to the process of planning for the transfer and management of digital assets and online accounts after an individual's incapacity or death. Here are some tips for virtual asset succession planning:

1. ***Take stock of your digital assets***: Begin by creating a comprehensive list of all your digital assets. This will not only include cryptocurrencies, but also login details of social media accounts and email accounts. Digital files such as photos, videos, and documents can also be included in the list.

2. ***Secure your digital assets***: Protect your digital assets by implementing strong security measures. This includes using strong, unique passwords, enabling two-factor authentication, and regularly updating your security settings. Consider using a password manager to securely store and manage your login credentials.

3. ***Create a digital asset management plan***: Develop a plan that outlines how you want your digital assets to be managed, transferred, or deleted at death. Specify who should have access to your accounts and assets and provide instructions on how to handle each type of asset. This plan should be reviewed and updated regularly to account for any changes in your digital asset portfolio. Familiarise yourself with the terms and conditions of each online platform or

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

service that you use as some platforms have specific policies and procedures for handling accounts after the owner's death.

4. ***Appoint a 'digital executor'***: Appoint a person who will be responsible for managing and distributing your digital assets according to your wishes. This person could be a family member, friend, or a professional executor/trustee. Clearly communicate your intentions and provide them with the necessary information and instructions to access and handle your digital assets.

5. ***Seek professional advice***: Virtual asset succession planning can be complex, especially when dealing with cryptocurrencies and other unique digital assets. It may be beneficial to transfer long-term virtual asset portfolios into a trust structure where it is protected and actively managed. Consider consulting with an estate planning attorney or other professionals who specialize in digital asset management to ensure your plan is legally sound and aligned with your overall estate planning goals.

Conclusion

The regulation of cryptocurrencies is still evolving and varies widely from one jurisdiction to another. From a family wealth perspective, it is important to consider the regulatory environment and tax implications when investing in cryptocurrencies. Cryptocurrencies can be a valuable asset class for diversifying a family's investment portfolio, but they also carry significant risks. Therefore, it is crucial to carefully weigh the potential benefits and risks before investing in cryptocurrencies.

When it comes to virtual asset succession, remember to regularly review and update your virtual asset succession plan as your digital asset portfolio evolves and your wishes or circumstances change. By proactively planning for the management and transfer of your digital assets, you can help ensure that your digital legacy is preserved and handled according to your wishes.

By working with knowledgeable advisors, including attorneys and accountants, families can navigate the challenges of cryptocurrency regulation and ensure that their wealth is protected for future generations.

For advice on managing virtual assets in a trust reach out to our team, who are ready to guide you through the process.

References:

[1] https://www.forbes.com/advisor/investing/sec-crypto-regulation/#:~:text=If%20crypto%20is%20deemed%20a,if%20cryptocurrencies%20are%20deemed%20currencies.

[2] https://www.europarl.europa.eu/news/en/press-room/20230414IPR80133/crypto-assets-green-light-to-new-rules-for-tracing-transfers-in-the-eu

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:

Sonia Bourgaize

Operations Director | Guernsey

t: +44 (0) 1481 734255 | **e:** sonia.bourgaize@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.