

# Blockchain and cryptocurrencies

2022



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We began looking at the legal aspects of blockchain and cryptocurrencies several years ago, when prospective use cases were theoretical at best. In the intervening period, we have engaged with our clients and with other market participants to follow emerging developments and to contribute our perspectives on how existing and emerging legal and regulatory frameworks might be applied to new business models built on distributed ledger technology. We are now seeing our clients move from proof of concept to live applications of the technology, and our experience of this area of technology has grown as the market has matured.

There are a number of reasons why we are particularly well placed to advise our clients on all aspects of their blockchain and cryptocurrency projects and these include:

- our global footprint, which allows our cross-border team to efficiently monitor, share and learn from regulatory and commercial approaches across the globe;
- our strong track record in financial services and, specifically, financial services regulation, which is a key part of many (though by no means all) DLT applications; and

- our strong relationships with regulators and other opinion-forming groups active in this market.

We are pleased to be in the forefront of a number of industry 'firsts', particularly in the field of tokenised securities issuance.

“They’re one of the **frontrunners** in terms of their understanding of technology, blockchain and how it impacts a market. They were **creative in looking forward**, as any regulation in this space has not often been done before.”

Chambers 2020 Fintech Guide: UK-wide

# How we can help

We offer strategic advice at every stage of the product lifecycle, whether that is fundraising for and developing new products, ensuring existing products continue to comply with fast-paced regulatory change or where potential regulatory breaches require remediation and/or engagement with the regulator and other key stakeholders. We also advise on commercial and corporate transactions required to bring parties together on projects, including consortia and joint ventures. We are frequently called to advise on legal issues regarding the characterisation and nature of cryptoassets. For example, understanding the ability to enforce a claim to a cryptoasset is essential for a scaled business proposition.

From a regulatory standpoint, we regularly advise on the application of the existing complex matrix of requirements to the issuance, custody, settlement and secondary market trading of crypto assets. We are pleased to be involved in a series of transactions that set industry precedents and where we successfully marry our outstanding capital markets and regulatory knowledge and expertise with our understanding of the technology and the commercial landscape.

## Industry engagement

In a fast-paced industry, it is important to be plugged into the ecosystem. Our team members are leading voices in the blockchain industry, regularly speaking at conferences, participating in industry bodies and commenting in the press on blockchain and related topics.

We host our own commentary on blockchain on a dedicated microsite: [www.allenoverly.com/blockchain](http://www.allenoverly.com/blockchain). We invest our time in participating in the market so that we can stay ahead of developments and give our clients the benefit of these insights, combined with our wider understanding of the commercial, regulatory and market landscape.

- We are a member of the R3 Legal Centre of Excellence.
- We are a founding member of the GLML (General Purpose Legal Mark-up Language) Consortium.
- We are a member of the FMLC FinTech Scoping Forum.

- We have assisted the UK Jurisdiction Taskforce (UKJT) in the development of its legal statement on the status of cryptoassets and smart contracts under the law of England and Wales, by responding to its May 2019 consultation paper. The UKJT is one of the six taskforces of the LawTech Delivery Panel, an industry-led group commissioned to support the digital transformation of the UK legal services sector.
- We have assisted AFME in formulating their response to the recent European Commission consultation entitled 'Consultation Document on an EU framework for markets in crypto-assets'. Specifically, we held the pen on the response to the post-trade questions and fed into the MiFID-related discussions.
- We are a member of the European Women in Payments Network and have provided training on FinTech and related matters.



# Global reach

We have one of the broadest footprints of any legal practice. Our expanding network of over 40 offices around the world, and our Global Experts and Markets programme means we are equipped to work seamlessly with clients wherever they are doing business. The team includes market-leading specialists in payments, e-money, banking and financial crime regulation, who work closely with our technology experts to provide a unique, commercial blend of technical and sector-focused knowledge and advice.

## Getting “hands on” with the technology

Fuse, our tech innovation space, gives us a unique opportunity to engage with technology and explore how its day-to-day application is changing our clients’ businesses. It also allows us to develop relationships with selected companies that we think are likely to deliver the greatest impact for our lawyers and our clients.

Launched in September 2017, Fuse is a physical working space where we bring together technology companies (both early stage and mature), clients, A&O lawyers and technologists to explore, develop and test practical solutions to common challenges. Through Fuse, we aim to address issues relating to legaltech (legal operations), regtech (regulatory compliance) and dealtech (the ways in which companies and financial institutions transact and negotiate deals). Fuse builds on our established profile in the FinTech world.

For our clients, Fuse represents an opportunity to gain early sight of the most promising technologies. Fuse allows businesses to directly discuss possible applications with some of the brightest entrepreneurs and collaborate with A&O subject matter experts and technologists, ensuring the development of more practical solutions.

In addition to collaborating with A&O and our tech industry participants on specific solutions, Fuse is a learning lab where we organise events, seminars, demonstrations and trials, giving our clients the opportunity to stay abreast of market-wide challenges and developments.

An example of a recent successful partnership is our relationship with Nivaura, which has developed a platform to automate the primary issuance and administration of financial assets through a centralised system or a blockchain infrastructure. Nivaura was the first company invited to work in Fuse and has been included in every cohort since. As entrepreneurs-in-residence, Nivaura team members have helped to guide the other tech companies working in the space by sharing advice and experiences while continuing to develop their own business. In 2017, A&O took an equity investment in Nivaura and one of our partners joined its Board as a Non-Executive Director.



## A&O has collaborated with Nivaura in a number of ways, including to:



advise a European headquartered multinational financial services company on the first end-to-end blockchain bond, which is represented on and fully paid and settled on the public Ethereum blockchain, registered in a permissioned manner



develop bond document templates for use in the test of the Nivaura platform in the Financial Conduct Authority's regulatory sandbox environment. Nivaura successfully completed two fully automated issuances of bonds on its platform within the FCA sandbox as participants in both Cohort 1 and Cohort 2 of the programme, the only company to be involved in both cohorts



develop and enhance the capabilities of Nivaura's new technology, Aurora, which automates part of the new issue process for executions of private placements under debt issuance platforms such as Euro Medium Term Note Programmes. A&O, with its expert knowledge of bond issue processes, supported the development of Aurora through the use of Nivaura's General-purpose Legal Mark-up Language (GLML), with a view to enabling Aurora to generate final terms for issuances under these programmes. Throughout the development of Aurora and GLML, A&O has provided feedback designed to improve the potential of this new technology to drive efficiencies in the issuance process

# Our experience includes advising:

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## **A European headquartered multinational financial services company**

on the issuance of a bond on a blockchain with the registrations and all the obligations fully paid and settled on the blockchain.

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## **WORDPLAY**

on a broad range of cryptocurrency matters.

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## **China's largest digital payment and diversified fintech company**

on the development of the world's first blockchain cross-border remittance network in partnership with a group of financial institutions.

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## **OVO**

the leading Indonesian digital platform on its acquisition of a majority stake in Bareksa, a digital money market fund, and its integration of Bareksa's fund platform into OVO's payment and e-money application.

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## **Skrill**

on regulatory structuring, assisting on contractual negotiations with its cryptocurrency exchange partner and drafting customer documentation for the Skrill cryptocurrency trading service.

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## **A syndicate of investment banks**

on the issuance of a bond on a blockchain by a supranational organisation.

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## **An investment bank**

on the issuance of a bond on a blockchain by a large corporate client.

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## **A UK interdealer broker**

on the development of its cryptoasset trading platform, including the legal and regulatory framework in relation to its new offering.

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## **SAGA**

on the launch of its cryptocurrency.

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## **AirSwap**

on its development of a decentralized exchange for the trading of virtual currencies and related crypto-tokens.

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On the development of the pioneering blockchain-based, multijurisdictional commodity trade and finance platform known as Forcefield, which is being launched by a consortium including a **group of clients** and the **London Metal Exchange** among others.

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On a **variety of structures**, use cases and implementations on ICO projects, including initial advice and analysis concerning characterization under international and U.S. securities laws, virtual currency-specific regulations, and broker-dealer/securities exchange status issues, discussing with US and international regulators the use of DLT in payment and settlement systems.

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## **NXMH**

on its acquisition of Bitstamp Limited, one of the leading global cryptocurrency exchanges.

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## **A confidential client**

on the establishment of a blockchain-based matching and netting service, including advising on applicable regulation.

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## **LMX**

on the establishment of Liquidity Marketplace Inc. (LMX) as a wholly-owned subsidiary, including the regulatory aspects.

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## **The managers and the issuing vehicles**

on a series of crowdfunded real estate funds sold on a proprietary platform that conducts online securities offerings in compliance with Rule 506(c) of Regulation D, including advising the managers of these online crowdfunded vehicles on issues arising under the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934.

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## **One of the leading PRC FinTech companies**

with the development and roll-out of a blockchain-based cross-border payment.

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## **Deutsche Börse Group**

on its investment in Digital Asset Holdings, a venture-stage financial technology company developing blockchain technology to support recording and settling financial transactions.

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## **A start-up**

on its current collateral and settlement services, and its new FX structure and cryptocurrency-related services to be put in place post swap dealer registration.

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## **SPiCE Ventures Capital**

on its USD100m initial coin offering.

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## **A distributed database technology company**

on the development of its rulebook, and advice on other related regulatory issues.

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## **A German credit institution on**

preparing the German law licence application for running a Bitcoin MTF.

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## **A consortium of leading financial institutions**

in a USD107m capital investment in R3. This is the largest consortium of global financial institutions collaborating to develop a platform and commercial applications for distributed ledger technology (DLT).

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## **Liqwith**

on the set-up of its platform and on the set-up of a similar structure in Belgium and France. Liqwith's platform tokenizes shares into a cryptocurrency to raise capital in the market from private investors through a Security Token Offering (STO).

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### **A confidential client**

on the development of a new mortgage-linked product to be traded via a blockchain-based market, including on regulatory aspects.

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### **iForex**

an online trading platform, on providing investment services to their clients relating to Initial Coin Offerings (ICOs) and virtual currencies.

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### **AEGON**

asset management on the use of blockchain to provide a more efficient (time and cost) means of providing collateral substitution process in the REPO (Repurchase agreement) market.

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### **A private equity fund on**

an HKIAC arbitration under the UNCITRAL Rules arising from a failure to complete its investment in a cryptocurrency exchange. The dispute involved questions of whether a binding agreement to complete the transaction had been reached between the parties as well as whether the respondent had breached his obligation to negotiate exclusively with the client.

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### **CLS**

the market leading FX service provider, on the launch of two new products: its CLSNet product (a bilateral transaction netting solution) and its related CLSTradeMonitor product (an innovative post-trade monitoring and reporting tool). Our advice covered the entirety of the products' development and launch phases, and include advising on a range of issues relating to the distributed ledger technology platform on which the CLSNet product can operate.

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### **FRIJT Management**

on the structuring and set-up of a fund focussed on investing cryptocurrencies and on the regulatory aspects of cryptocurrencies.

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### **Annexum Invest**

on the establishment of a partnership with Bloqhouse, a fintech start-up focussing on blockchain, and on the joint launch of a (pilot) market place that allows private individuals to enter the secondary real estate investment market. Using blockchain, the platform allows private individuals to make investments of as little as EUR100 without the involvement of any intermediaries.

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### **NXTPort**

on the setting up of a data utility platform that will collect and pool data from various stages of the supply chain, in the Port of Antwerp, Europe's second-largest seaport, using blockchain technology. The project, supported by Proximus and HP, is aimed at increasing both safety and efficiency.

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### **Arbor Realty Trust, Inc.,**

advising the managers and the issuing vehicles on a series of crowdfunded real estate funds sold on a proprietary platform that conducts online securities offerings in compliance with Rule 506(c) of Regulation D, including advice to the managers of these online crowdfunded vehicles on issues arising under the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Act of 1933 and the Securities Exchange Act of 1934.

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### **Pokerstars Group**

in respect of the licensing to and development of a series of poker-based games on different platforms with different Chinese internet companies including Tencent. (This included the development of a token and virtual currency ecosystem and the regulatory issues related to such games.)

# Key contacts

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## GLOBAL PRESENCE

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