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Norway

BLOCKCHAIN

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This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Norway.

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NORWAY
BLOCKCHAIN

1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

As of 2021, blockchain technology is still not very widespread in Norway, but has developed somewhat within the last year. Recent key applications of blockchain and other distributed ledger technologies in business sectors in Norway include:

Cryptocurrency trading.

- Centralized cryptocurrency trading and broker platforms like Norwegian Block Exchange AS, Kaupang Krypto AS and Firi AS (formally known as MiraiEx) are regulated by the Financial Supervisory Authority of Norway (FSA).
- Decentralized exchanges (DEXs), including Uniswap, Sushiswap, dYdX and Raydium, which are smart contract protocols that enable users to trade cryptocurrency peer-to-peer, are accessible to Norwegian citizens. However, due to their decentralized architecture, DEXs are not actively regulated by any governmental authority in Norway.

Secure information storage.

- DNV, an international accredited registrar and classification society, and Deloitte have entered into a partnership which has led to a live blockchain solution for storing certificates.
- Norwegian start-up Diwala has created a platform that enables educational institutions and organizations to safely and digitally issue and verify credentials, backed by blockchain technology.

Supply chain tracing.

- The Norwegian Seafood Trust is a national seafood tracking network launched in 2020 by the Norwegian Seafood Association and the Nordic IT infrastructure company Atea. The network utilises IBM blockchain technology to share supply chain data throughout Norway's seafood industry. As of 2021, Nova Sea and BioMar have joined the network.
- The Norwegian industrial company Hydro has also announced that it is piloting the DNV blockchain-powered "Tag. Trace. Trust." service to provide evidence of its sustainability claims for the aluminium it produces (see question 3 for more details).

Key applications in the public sector include:

Public registries.

- The Norwegian Registry of Business Enterprises is building a solution for shareholder registers on the blockchain together with Symfoni (formerly known as Blockchangers). Symfoni has announced that it will launch "Symfoni" by the end of 2021 – a unified software collection for the development of interconnected services on the blockchain.
- Symfoni has also signed an agreement with the Norwegian Intellectual Property Office for the development of a license register and has developed a prototype for a property registry for OBOS BBL (the largest housing developer in Norway) which records real estate and ownership transactions using blockchain technology.

Oil, gas and energy trading.

- The public sector has a strong interest in Norway's oil and gas production and the Norwegian state is the main shareholder in publicly traded Equinor ASA. Equinor has tested GumboNet, Data Gumbo's proprietary blockchain platform, which encodes an

immutable record of the operations at Equinor's oilfield to confirm transactions and pay suppliers.

2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

The use of digital tokens and virtual assets is still not very widespread in Norway, however Norwegian residents have demonstrated an increased interest in these assets within the last year (see Question 14).

With respect to non-fungible tokens (NFTs), artists and businesses in Norway have begun to utilize the benefits of "minting" digital works as ERC-721 tokens on the Ethereum blockchain in an effort to monetize their work or explore unique methods for customer marketing. Recent success stories regarding the implementation of NFTs in Norway include:

- Kjetil Golid's "Archetype" series, an acclaimed set of digital artworks algorithmically generated using computer script written by Golid (a process known as "generative art"), was minted as separate NFTs and sold to the general public in auction format on the popular generative art website Art Blocks for record sums.
- Kaupang Krypto recently partnered with Sparebank 1 Gruppen and Haltenbanken to create an NFT project called "Svalbard Money". The project commemorates the 100-year anniversary of the Svalbard treaty and the early coal economy in Svalbard. Users earn "coal" for reading articles and listening to podcasts, which can be used to mint NFTs of bank notes that early miners used to barter for coal in Svalbard.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

In June 2021, the Norwegian Transparency Act was passed to support fundamental human rights and decent working conditions in connection with the production of goods and services. The preparatory works emphasize that blockchain is playing an increasingly prominent role in supply chain management and traceability. Examples of intersections between blockchain technology and ESG objectives in Norway include:

- Norsk Hydro ASA, one of the largest industrials and energy production companies in Norway, and DNV have partnered to implement the blockchain-powered "Tag. Trace. Trust." service, which enables companies and customers to check the validity of a product's environmental profile. Hydro and DNV will pilot the program with sustainable furniture maker, Vestre, whereby customers will be able to trace the source and the CO2 emissions of the materials used.
- Miris AS is a Norwegian SaaS company that uses blockchain to provide clients with a platform for fundraising, progress tracking and supply chain management for its projects. The platform, known as MIRIS X, enables Miris' clients to set a carbon budget so that their project stays within their sustainability objectives.
- Data Gumbo AS has introduced GumboNet ESG, an automated smart contract powered and secured by the company's proprietary blockchain for sustainability measurement. It utilizes a client's quantifiable operational data and deploys the information on a smart contract to produce ESG reports.
- Energy technology company, Becour, is using blockchain technology to document the use of renewable energy via its DINGO project, which stands for "Digitalized Node trading for renewable energy with Guarantee of Origin".

4. Has COVID-19 provoked any novel applications of blockchain technologies in your jurisdiction?

It has been suggested that the closure of galleries and art exhibits as a result of the COVID-19 pandemic was one of the factors that led artists to switch to digital mediums and blockchain technology to distribute and sell their works (see Question 2). In addition, it has been suggested that Norwegian consumers have sought new savings and investments alternatives during the COVID-19 pandemic, including through investment in cryptocurrency.

5. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there

any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

Currently, there is no legislation or regulatory framework in Norway specifically relating to blockchain technologies. However, there are a number of laws that apply to activities and services based on blockchain technology.

The Norwegian Personal Data Act (2018), incorporating the GDPR (General Data Protection Regulation), applies to blockchains containing personal data. Key issues related to blockchain technologies and the GDPR include the identification of controllers and processors, international transfers of personal data, giving effect to individuals' rights in respect of personal data processes in the context of the blockchain, and the need to undertake a data protection impact assessment prior to the use of a blockchain.

If one uses blockchains for value transfers (e.g. currency and financial instruments), the various blockchain concepts may, depending on its characteristics, be subject to regulations on money laundering and terrorist financing (the Anti-Money Laundering Act (2009)), taxes and levies (see Question 10 for further details on the regulations related to cryptocurrencies).

The advisory and supervisory authorities for the above-mentioned legislation are the Norwegian Data Protection Authority, the FSA, Norges Bank and the Norwegian Tax Administration.

Separately, the EU is considering a proposal for a Regulation on a Pilot Regime for Market Infrastructures Based on Distributed Ledger Technology (DLT Pilot Program). If adopted, the pilot regime would likely apply in Norway (see Question 7).

The FSA has noted that there is a need for a legal framework and investor protection rules if cryptocurrency is to become a suitable investment for consumers, however, it is unlikely that Norway will create additional legislation around cryptocurrency until the EU passes its flagship cryptocurrency legislation known as the "Regulation on Markets in Crypto-Assets" (MiCA) (see Question 10).

6. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

Together with all EU members states and Liechtenstein, Norway has joined the European Blockchain Partnership. The partnership has committed to working towards realising the potential of blockchain-based services for the benefit of citizens, society and the economy. The partnership is building a European Blockchain Services Infrastructure (EBSI). Their vision is to leverage blockchain technology in the creation of cross-border services for public administrations to verify information and ensure trustworthy services. Since 2020, EBSI has deployed a network of distributed blockchain nodes across Europe, supporting applications focused on selected use-cases (e.g., for citizens to manage their own identity, educational credentials and register documents).

Although regulators in Norway have yet to establish a definitive stance on blockchain technology, the FSA has emphasized the risks associated with trading cryptocurrencies and the need for a strong legal framework if cryptocurrency is to become a suitable form of investment for consumers.

7. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?

The FSA has set up a regulatory sandbox in order to boost fintech innovation notwithstanding the otherwise strict regulatory environment in Norway. One of the participants selected to participate in the regulatory sandbox was Abendum, a company developing a solution for storing and publishing audit evidence based on blockchain technology. Additional companies will have the opportunity to apply in October 2021.

Further, if the EU adopts the DLT Pilot Program, the regulatory sandbox for blockchain-based distribution and trade of traditional securities (e.g., equities, bonds, exchange-traded funds, etc.) would presumably be implemented in Norway. Norway is committed to implementing the relevant EU legislation for the finance industry through its participation in the EEA Agreement.

Following the completion of the third phase of a study of central bank digital currencies (CBDCs), Norges Bank announced in May 2021 that it will begin to test technical solutions for a CBDC over the next two years. One of the aims of technical testing is to determine a preferred solution if it becomes relevant to introduce a CBDC in Norway. Norges Bank has been exploring CBDCs since 2017 and last year the central bank issued a working group report which recommended a CBDC in the form of register-based token money. In the 2020 report, Norges Bank indicated that it preferred a CBDC linked to

a register and accessed via cryptographic codes not associated with an identity. In practice, the user interface could provide a simple and secure means of accessing funds. Nevertheless, Norges Bank has stressed that any introduction of a CBDC will still require prolonged consideration and research.

8. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

The Norwegian Ministry of Local Government and Modernisation engaged Deloitte to prepare a study on opportunities and challenges related to the use of blockchain technology in the public sector. Deloitte's report found that the conditions in Norway are already favourable for exchanging assets and information in a secure way via blockchain-based methods. The report also noted that blockchain technology introduces very real and profitable opportunities for the public sector, but that the absence of proof-of-concept remains one of the larger hindrances for further development.

In addition, the Norwegian Data Protection Authority together with the Norwegian Board of Technology published the report "Privacy – Trust and Sensibility 2018", which highlighted blockchain as a solution to security challenges. The report found evidence that blockchain can provide improved protection of privacy, especially regarding secure storage and exchange of information, as well as giving users more control over the use of their own data.

Other than the above, no government or regulatory reviews concerning blockchain technology in Norway have been published recently.

9. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

No.

10. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

As of today, cryptocurrency is not legally defined, assessed or dealt with from a purely regulatory perspective. However, it has been subject to assessments in other areas of law, mainly taxation.

The Norwegian Tax Administration has concluded that gains from bitcoin and other virtual assets are taxed similar to gains from fiat currency trading, and that the market value of such assets should be included in the calculation of wealth tax for Norwegian tax residents.

Providers of exchange services between virtual currencies and fiat currencies and custodian wallet providers are subject to AML requirements, including registration and supervision by the FSA. Providers who store private cryptographic keys with the purpose of transferring, storing or trading digital currency are also in scope of the AML requirements. Conversely, cryptocurrency exchanges which only quote different types of digital currencies for trading purposes are excluded from the AML requirements.

From a Norwegian perspective, it will most likely be of great significance whether the EU adopts MiCA, because the proposed legislation is the first comprehensive attempt to regulate the cryptocurrency sector and, if adopted, it would likely apply in Norway by virtue of the EEA Agreement (see question 7).

11. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

Cryptocurrency trading is not prohibited. However, providers engaged in exchange services between virtual currencies and fiat currencies and custodian wallet providers must register with the FSA and are subject to AML reporting requirements.

12. To what extent have initial coin offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

There are no official statistics on the number of cryptocurrency protocols that were funded through an ICO in Norway. However, e-krone, an ERC-20 token built on the Ethereum network and created in Norway, has recently publicized that it will have its ICO in the fall of 2021.

In line with the European Securities Market Authority

(ESMA), the FSA published a warning on 12 November 2017 to investors and firms involved in ICOs. The FSA pointed out that acquisition of cryptocurrency as part of ICOs represent a substantial risk for investors, and entails a danger of fraud and money laundering.

The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) also warns against ICO due to the risk related to investment fraud.

13. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

In principle, ICOs are unregulated and anyone can conduct an ICO provided that they have the knowledge of programming. There is no licensing requirement.

However, in its warning from 2017, the FSA stated that firms involved in ICOs must give careful consideration as to whether their activities constitute regulated activities. Depending on how they are structured, ICOs may fall outside of the scope of the existing rules and hence outside of the regulated space providing various forms of investor protection. Where the coins or tokens qualify as financial instruments it is likely that the firms involved in ICOs conduct regulated investment activities, such as placing, trading in or advising on financial instruments or managing or marketing collective investments schemes. Moreover, they may be involved in offering transferable securities to the public.

14. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

As of October 2021, there are 9 virtual asset providers registered with the FSA. In April 2021, the Norwegian Tax Administration released a report which estimated that between 190,000 and 235,000 people in Norway owned some form of cryptocurrency as of the end of 2019. The estimates for 2020 have yet to be released.

Generally, mainstream financial institutions in Norway have not been supportive of cryptocurrency trading, however their attitude may be evolving with increased public acceptance of cryptocurrency. In 2019, a Norwegian savings bank decided to on-board a cryptocurrency trader as a corporate customer for the first time. This particular customer had previously been refused an account at a competing bank and sued them as a result (see Question 19).

Norway's largest bank, DNB Bank ASA, has prepared their own internal cryptocurrency regulations, which includes the requirement that any customer who trades cryptocurrency must register with the FSA. Furthermore, in April 2021, DNB announced that it would not accept funds originated from cryptocurrency trading as equity for housing, citing applicable AML requirements. To our knowledge, only one bank has banned its employees from engaging in trading of cryptocurrencies.

15. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

In reality, tokens are ownership rights in digital code. Issuers can configure the tokens differently; hence, in practice they represent a wide variety of content or rights. In order to fully comply with any legal requirements, the market participants must carefully consider whether the token constitutes a security within the meaning of the Securities Trading Act or if it is an asset-backed token. This will determine which of the relevant capital market laws and regulations that apply. Further, the Marketing Act contains relevant requirements for the trading on secondary markets. The decisive factor is the nature of the rights associated with the respective token.

16. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

There is no legal framework regarding the transfer of title to or the granting of security over tokens and virtual assets specifically.

A security is any certificate to which a right is linked in such a way that it can neither be claimed nor transferred without the certificate. Since there is no physical certificate concerning a token or virtual asset, a transfer is only possible by assignment of the tokenised claim (a securitisation of the claim). Further, it must be ensured that there is a link between the claim and the certificate, i.e. that the claim is inseparably connected with the token.

With regards to tokens, it is only the bearer of the private key who can control it, similar to the bearer of a

classic security. However, the legal qualification of tokens remains uncertain.

17. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

There is no legal definition of a smart contract and its status in Norwegian law is uncertain. In principle, the Norwegian legal system is based on freedom of contract and the parties may freely decide on how they want to enter into a contract, including by means of a programming code, such as Solidity for the Ethereum blockchain (the most common smart contract platform). The question of whether a legal contract has been concluded will depend on the applicable legal provisions.

The fundamental characteristics of the blockchain technology are also often the root of enforceability issues specific to the operation of smart contracts. In a decentralised network it can be difficult to ascertain who the actors are, where they are located and what their actions have been. This imposes challenges as to assignment of responsibility and determination of jurisdiction in disputes. Further, it may prove difficult to perform basic legal and regulatory functions, such as ascertaining contractual capacity, possible liability, applicable law and regulatory monitoring. Nevertheless, much of the above would likely only apply to smart contracts deployed on a public blockchain, rather than within the context of a customizable private blockchain.

18. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

It remains difficult to assess the prevalence of smart contracts in Norway, however, many of the key applications of blockchain and other distributed ledger technologies outlined above represent possible or actual use cases for smart contracts (see Question 3).

For instance, SmartMed is developing a solution for secure and accountable sharing of medical records using smart contracts and blockchain technology in partnership with the University of Oslo and the Cancer Registry of Norway. However, there is limited public information available about the solution and it is uncertain whether it has been tested or has been offered for use.

Given that decentralized finance protocols are typically governed by decentralized autonomous organizations (DAOs) and, therefore, are not organized under the laws of a specific jurisdiction, it is difficult to determine whether any examples exist in Norway as of writing.

19. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

In August 2021, the FSA ordered the world's largest crypto exchange, Binance, to stop offering its services in the Norwegian market unless it registered with the FSA. Accordingly, Binance terminated its Norwegian operations and services.

Other than the above, there have not been any governmental or regulatory enforcement actions concerning blockchain.

20. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

In a ruling handed down 30 April 2018, the Oslo District Court (TOSLO-2017-173396) ruled that Nordea bank was entitled to close the bank account of one of Norway's largest bitcoin traders as the Court found it clear that the perceived risk of money laundering and terrorist financing constitutes an objective reason for the bank to deny customer relationships under a provision of the Norwegian Finance Contracts Act. The ruling is legally binding.

21. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

As there is no specific legislation or regulatory frameworks with regard to the use of blockchain, the legislation outlined in question 4 is generally applicable and must be given careful consideration.

22. Are there any other key issues concerning blockchain technology in your

jurisdiction that legal practitioners should be aware of?

Depending on the type of services and activities offered on the blockchain there are data localisation requirements contained in the Norwegian Archive Act, the Bookkeeping Act and the Security Act. Data localisation requirements include e.g. local storage or government approval to cross-border transfer of data, which may prove to be incompatible with blockchain technology. The requirements are more extensive for the banking and financing sector.

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