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Digitalization in Business: A Legal Comparison of Digital Transactions between Hong Kong and Lebanon

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The digitization of financial transactions is reshaping the global economy. In the middle of this digital revolution, many governments across the globe are taking different approaches to regulating and adjusting to the emerging space of digital assets, especially cryptocurrencies. The purpose of this study is to investigate the disparate digitization strategies used in the financial environments of Lebanon and Hong Kong.

As one of the world's leading financial centers, Hong Kong has made significant progress in adopting digital currencies. Notably, cryptocurrencies were acknowledged as property in the historic "Gatecoin" court case, opening the door for their incorporation into the legal and financial environments. On the other hand, Lebanon faces unique difficulties characterized by the absence of comprehensive legal frameworks that regulate digital assets. However, new guidelines issued by the central bank indicate a significant change as the government begins to control digital wallets. This small step is significant to utilize virtual currencies in the future of the Lebanese financial system.

This study compares legislative frameworks, regulatory measures, and societal attitudes regarding digital transactions to explore the complex aspects of digitalization in Hong Kong and Lebanon.

I. Cryptocurrency Recognized as Property in an Unprecedented Court Judgment in Hong Kong.

Cryptocurrency has been the object of many legal battles over the last few years.

Even if many countries decide to take precautions regarding these new types of digital assets, many are taking serious steps to regulate them. For instance, recent regulatory battles in the United States involve the SEC and many crypto providers, such as Ripple and Binance. In Europe, the European Parliament recently approved the MiCA proposition as a step to regulate cryptoassets.

As such, the Court of First Instance of Hong Kong determined for the first time on March 31, 2023, in the case of "Re Gatecoin Limited (In Liquidation) [2023] HKCFI 914" ("Gatecoin Case"), that cryptocurrencies are considered "property" under Hong Kong law. This decision aligns with the Hong Kong Government's policy position that, although cryptocurrencies have distinctive characteristics that differ from traditional assets, it is possible to introduce a statutory definition of cryptocurrencies as property to enhance investor protection. The Gatecoin Case's decision that cryptocurrencies are "property" brings Hong Kong's legal system in line with other significant common law nations. Intriguingly, the judicial position on the legal status of Bitcoin in Mainland China is still broad, with an inclination to a general prohibition on cryptocurrency trade.

We will analyze the Gatecoin case that led to the inclusion of cryptocurrency in the definition of property. We will also discuss its implications and compare it with other jurisdictions.

1. The Gatecoin case[1].

The case involves Gatecoin, a cryptocurrency exchange headquartered in Hong Kong that experienced a cyberattack in 2016 and lost almost $2 million in digital assets. As a result, the business declared in March 2019

[1] Gatecoin, 2023). Retrieved from https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=151622

that a Hong Kong court had issued a mandatory liquidation order.[2] Gatecoin has run a Bitcoin exchange platform since January 2015. A user had to open an account with Gatecoin, register, and fund it with cryptocurrency and fiat money (such as US dollars and British pounds), which could then be used for trading or withdrawals to access and use the site. Gatecoin also carried out its own cryptocurrency trading, including trading with its clients. On March 13, 2019, the court dissolved the corporation, and on March 14, joint and multiple liquidators were chosen. The exchange's cryptocurrency market capitalization exceeded HK$140 million on October 31, 2022.

Under Section 200(3) of the Companies (Winding-Up and Miscellaneous Provisions) Ordinance (Cap. 32) (CWUMPO), the joint and several liquidators of Gatecoin requested guidance on how to classify the cryptocurrencies held by the company and how to distribute currencies, including fiat currencies, to its customers.

The term "property" is not defined under Hong Kong's insolvency laws, although it is broadly defined in the Interpretation and General Clauses Ordinance. Therefore, in determining whether cryptocurrency qualifies as property, the Hong Kong Court, like the courts in many other common law jurisdictions, relied on the common law definition of "property" established in National Provincial Bank v. Ainsworth [1965] AC 1175 ("Ainsworth Case").

The Ainsworth Case established a four-prong test that provides that, for a subject matter to qualify as "property," it must be "[1] definable, [2] identifiable by third parties, [3] capable in its nature of assumption by third parties, and [4] have some degree of permanence or stability".[6]

CRITERION IN THE AINSWORTH TEST	EXPLANATION OF CRITERION	APPLICATION TO CRYPTOCURRENCY
Definable	Being definable requires that the right or interest in question must be capable of being defined with sufficient specificity and isolated from other assets.	The public key (akin to a bank account number) of a cryptocurrency wallet is readily identifiable and capable of being allocated uniquely to individual accountholders. Also, the public key is uniquely specific because data allocated to one public key will not be confused with another due to its specificity.
Identifiable by third parties	Being identifiable by third parties requires the right or interest in question to be capable of being identified by third parties as belonging to the owner, to the exclusion of all others.	The private key (effectively, a PIN) gives the holder exclusive access and transfer rights in respect of cryptocurrencies in the cryptocurrency wallet.
Capable of assumption by third parties	Being capable of assumption by third parties means third parties must generally respect the ownership right in the subject matter, and normally (but not always) the subject matter is potentially desirable to third parties such that they would want themselves to obtain ownership of it.	Cryptocurrencies are traded on active markets where ownership rights are generally respected, and others in the market generally desire to become owners of cryptocurrencies.
Some degree of permanence or stability	The right or interest in question must have some degree of permanence or stability. Having said this, short use life of the right or interest (eg one-time tickets) should not prevent it from being regarded as property.	The entire life history of a cryptocurrency is recorded on the blockchain, which demonstrates that cryptocurrency has some degree of permanence or stability.

Picture 1: Explaining the four pillars of the Ainsworth test on "property" and its application to cryptocurrency.[3]
As such, the Hong Kong court included "cryptocurrency" as property.

[2] Regurra, E. (2023). Hong kong court rules cryptocurrencies as property. Retrieved from https://cointelegraph.com/news/hong-kong-court-rules-cryptocurrencies-as-property

[3] Minny Siu , Andrew Fei , Yu Leimin and Violet Wong. (2023). Cryptocurrency is “property” under hong kong law: Part 1 – what are the key implications and what is the judicial position in mainland china? Retrieved from https://www.kwm.com/hk/en/insights/latest-thinking/cryptocurrency-is-property-under-Hong-Kong-law.html

2. Implications and comparisons.

Hong Kong is another country supporting the UK's classification of digital assets as property. This is in contrast to the US, which still views crypto-assets and digital assets as securities rather than commodities or property for specific regulations. The court also followed the "Cryptopia" case of New Zealand and the reasoning of the UK Jurisdictional Taskforce's Legal Statement on Cryptoassets and Smart Contracts ("Legal Statement"). It is also notable that the English court supported the UK Jurisdictional Taskforce's legal examination of cryptoassets as property in "AA v. Persons Unknown and Others, Re. Bitcoin."

In the AA ruling, an English insurance company (the "Insurer") paid hackers who broke into the IT systems of one of its insured customers a ransom in Bitcoin for a value of US$950,000. The insurer hired a company to look into crypto assets to recover the Bitcoins that it had paid the hackers. As such, they found that the majority of the funds had been moved to a wallet connected to the "Bitfinex" cryptocurrency exchange, which 2 BVI firms run. After determining that Bitcoin's nature met the criteria for being considered property under English law, the court issued an injunction to recover the ransom money.[4]

Moreover, Canada also introduced crypto as property in the Quadriga bankruptcy proceedings. Indeed, to prevent thefts, Cotton, the company's CEO, was the only person with the cold wallet key. His death resulted in the loss of 135 million dollars in crypto. The company ultimately filed for bankruptcy. In this case, the Supreme Court of Nova Scotia appointed three counsels to represent three different groups of users of the cryptocurrency application in the insolvency action. After that, the matter was moved in September 2019 to the Commercial List of the Ontario Superior Court of Justice. By including cryptocurrencies under the concept of "property" in a groundbreaking decision, the court opened the door for bankruptcy.[5]

In conclusion, even if most countries still do not have a comprehensive legal framework to regulate cryptocurrencies, most courts are trying to categorize these new digital assets. As such, Hong Kong's new classification will impact future decisions and is an important precedent, aligning with many other common law countries' views on the matter.

II. Lebanon's view on digital currencies and digital transactions.

As Lebanon is still facing the consequences of its economic crisis, the FinTech sector is slowly progressing in the country.

1. Cryptocurrencies:

Many Lebanese citizens are turning to cryptocurrency investments as they search for other ways to make ends meet. According to a CoinGecko analysis, Lebanon currently leads the world in terms of AI cryptocurrency curiosity. Opponents may argue that given Lebanon's growing fiscal imbalance, collapse in public service delivery, and unsolved banking crisis, the nation has the greatest population interested in artificial intelligence

[4] AA v persons unknown and others, re bitcoin , 2019). Retrieved from http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Comm/2019/3556.html

[5] El Hajjar, O. (2022). Cases of non-fungible tokens (NFTs): Trademark infringements, fashion, asset losses and bankruptcy. *Amak,* Retrieved from https://lebanon.saderlex.com/category/%D8%AF%D8%B1%D8%A7%D8%B3%D8%A7%D8%AA-%D9%88-%D8%A2%D8%B1%D8%A7%D8%A1/41656/cases-of-non-fungible-tokens-(nfts)-trademark-infringements,-fashion,-asset-losses-and-bankruptcy

(AI) cryptocurrency. Early in 2023, the central bank of Lebanon devalued the country's currency by 90%. Based on the 21.6% share of searches for AI crypto, it appears that more and more Lebanese citizens are trying to make up for this by trading on trends like the rising values of AI tokens.[6]

Moreover, a rising amount of youth are resorting to crypto mining as a source of income. In reality, Bitcoin mining in Lebanon is identified as one of the cheapest in the world. Based on the cost for a household to mine one Bitcoin, Lebanon has been found to be the most affordable country to mine, according to a tweet sent by the account World of Statistics. The amount is projected to be $0.26k.[7]

However, unlike Hong Kong, crypto trading and crypto mining in Lebanon are still under a grey legal area, thus, our focus in this part of the study will be on "digital wallets ", that are seeing an unprecedented rise in financial transactions.

2. The Legal Status of "Digital Wallets " in Lebanon according to the Lebanese Central Bank (Banque du Liban – BDL).

The digital wallet business in Lebanon has undergone a minor revolution since mid-May as the initial steps towards collaboration among the industry's diverse participants start to emerge.

The son of Lebanon's acting prime minister, Maher Mikati, is the CEO of Areeba, an online payment processing service provider that owns "over 14,000 payment POS (point of sale) terminals in Lebanon, more than 50% of those present." Areeba recently introduced a new feature that allows e-wallet users to pay their bills by scanning a QR code produced by their POS machines. This implies that three of the five platforms now listed, Zaky (powered by Areeba), WeePay (powered by CashUnited), and Whish (powered by Whish) wallets, can now be used by over half of all businesses that take card payments. The other two, Click2Pay (powered by BoB Finance) and Purpl, are getting ready to start the service with their own partners and may later extend it to the Areeba network.

This frenzy is perhaps somewhat related to the most recent modifications made by BDL through Intermediate Circular 667, which was released on April 13, 2023, and aims to increase transactional transparency. BDL has made it possible for customers to register, store information, and authenticate their accounts online without having to visit a physical branch by approving this procedure.[8]

The two most prominent intermediate circulars for digital payments are circulars 667 of 2023 amending Basic Decision 7548 and Basic Decision 13548 with its Intermediate Circular 669 of 2023.

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[6] Lebanon and UAE lead global curiosity in AI cryptocurrencies. (2023). Retrieved from https://www.consultancy-me.com/news/6490/lebanon-and-uae-lead-global-curiosity-in-ai-cryptocurrencies

[7] Mansour, L. (2023, -08-23T10:12:41+00:00). Lebanon reported as cheapest country to mine bitcoin, who's going to tell them? Retrieved from https://www.beirut.com/en/680864/lebanon-reported-as-cheapest-country-to-mine-bitcoin-whos-going-to-tell-them

[8] Bourdenet, O., & Gemayel, F. (2023). Digital wallets, a new way to bypass banks in lebanon? *L'Orient-Le Jour,* Retrieved from https://today.lorientlejour.com/article/1339336/digital-wallets-a-new-way-to-bypass-banks-in-lebanon.html

- Intermediate Circular 667[9] of 2023 amending Basic Decision 7548 of 2000.

Intermediate Circular 667 addresses several legal points regarding electronic banking and financial operations, particularly cross-border payments and the legal status of digital wallets. Here are the key legal points outlined in the circular:

i. *Threshold for Financial Operations via Mobile Devices and Minimum Capital Requirement:*

Financial or monetary operations exceeding a value of 10,000 USD conducted through mobile electronic devices between different customers are subject to regulation.

Non-bank institutions involved in electronic financial operations must maintain a minimum capital (50 billion Lebanese lira), with provisions for capital reconstitution in case of losses.

ii. *KYC and Approval for Financial Operations via Electronic Programs and E-wallet services:*

Prior approval from the Central Bank of Lebanon (BDL) is required to use electronic programs or applications for financial operations involving bank cards and/or customer accounts. Providers of financial or monetary services via electronic devices or programs must obtain approval from BDL for electronic wallet services, ensuring compliance with specified conditions, including minimum capital requirements and customer verification procedures. Institutions must obtain approval from the Central Bank of Lebanon for electronic means of identifying new customers (e-KYC) to open accounts, ensuring compliance with anti-money laundering and terrorism financing regulations.

iii. *Operational Requirements for Electronic Wallets:*

Electronic wallets must adhere to various operational conditions, including limits on available funds, transaction values, and compliance with anti-money laundering regulations.

Moreover, the licensing is under the condition of a daily transaction limit. For example, the total amount sent by each customer through a single application should not exceed 15,000,000 LBP daily and 150,000,000 LBP monthly for operations conducted in Lebanese pounds, and 300 USD daily and 3,000 USD monthly or equivalent in other foreign currencies approved by the clearinghouse at the Central Bank of Lebanon for operations conducted in US dollars or any of these approved foreign currencies, according to article 2 of this circular. Some other limits have also been set to regulate digital wallet activities.

iv. *Legal Framework for Electronic Signatures:*

Electronic signatures must adhere to specified conditions to ensure validity and security, with provisions for informing clients of transaction details and their status.

v. *Data Protection Measures:*

Institutions are required to implement measures to protect customers' personal data and ensure its legitimate use, particularly when engaging third parties for data processing.

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9 **تعميم وسيط رقم ٦٦٧, (2023).** Retrieved from https://www.bdl.gov.lb/CB%20Com/Laws%20And%20Regulations/Intermediate%20Circulars/Decision_13547_AR%C2%A77210_1.pdf

These legal points aim to regulate electronic banking and financial operations, including cross-border payments and digital wallet services, to ensure transparency, security, and compliance with relevant laws and regulations in Lebanon.

- Basic Decision 13548, put in place by Circular 165[10], with its Intermediate Circular 669[11] of 2023.

The Intermediate Circular 669, issued in conjunction with Basic Decision 13548 and Circular 165, imposes stringent regulatory measures on banks and financial institutions in Lebanon regarding the handling of "cash funds." The circular defines "cash funds" as foreign currency banknotes received after November 17, 2019, and deposited funds meeting specific criteria. It mandates compliance with specified assets and rules within the National Payment System (NPS-BDL). It requires settlement operations for "cash funds" to occur exclusively through new accounts opened at the Central Bank of Lebanon. Non-compliance with the circular's obligations carries administrative penalties, and banks are prohibited from issuing certain types of checks for "cash funds." Technical requirements for check clearing and commission determinations are also outlined, emphasizing meticulous adherence to regulatory protocols in financial transactions involving "cash funds" in Lebanon.

III. Conclusion: Comparative Analysis: Contrasting Approaches to Digitalization

While both Hong Kong and Lebanon are navigating the complexities of digitalization in their financial sectors, their approaches differ significantly. Here's a table summarizing the key differences and similarities:

Feature	**Hong Kong**	**Lebanon**
Focus	Cryptocurrencies	Digital Wallets
Legal Framework	Court decision recognizing cryptocurrencies as property (Gatecoin case)	Emerging regulatory framework: Central Bank circulars (667, 669) define and regulate digital wallets
Regulatory Approach	Proactive and progressive, seeking to integrate digital assets into the existing financial system	Reactive, addressing challenges in the traditional financial system through digital wallets
Level of Detail	Comprehensive definition of property, that includes cryptocurrencies.	Less comprehensive, focusing primarily on operational requirements and limitations for digital wallets
Similarities	Both jurisdictions recognize the need for regulations to ensure transparency, security, and compliance with AML/CFT regulations	Both aim to facilitate digital financial transactions

[10] **تعميم أساسي للمصارف رقم ١٦٥, (2023).**Retrieved from https://www.bdl.gov.lb/CB%20Com/Laws%20And%20Regulations/Basic%20Circulars/Decision_13548_AR%C2%A77254_1.pdf

[11] **تعميم وسيط رقم 669, (2023).**Retrieved from https://www.bdl.gov.lb/CB%20Com/Laws%20And%20Regulations/Intermediate%20Circulars/Decision_13555_AR%C2%A77612_1.pdf

In conclusion, Lebanon and Hong Kong show divergence in regulatory strategies for the digitization of financial activities. While the legal system in Hong Kong has focused on the regulations related to cryptocurrencies—as demonstrated by the historic court case that recognized cryptocurrencies as property—Lebanon's legal system has prioritized the regulation of digital wallets, as evidenced by recent central bank directives. This discrepancy highlights the diverse strategies that regulatory authorities have implemented under discrete legislative frameworks, illustrating the complicated opportunities and problems that come with negotiating the intricacies of digital finance. Understanding these different regulatory policies provides important insights into the various tactics taken to maximize the potential of digital assets within both countries as they continue to navigate the changing world of digital transactions.