Blockchain and Cryptocurrency: State Law Roundup

July 9, 2018

In the absence of new federal legislation governing blockchain technology and cryptocurrencies,[1] state governments are taking a variety of actions -- from legislation, administrative actions and government-funded studies -- that affect the operation of blockchain and cryptocurrency businesses.

This increase in state activity is both a blessing and a curse. The blockchain and cryptocurrency sector welcomes most enabling legislation and business development efforts, but the resulting patchwork of often conflicting definitions, laws and regulations creates a minefield for industry participants to maneuver, significantly increasing compliance costs.

State action has taken several different forms - some proactive, others defensive.[2] Their actions include (1) business development initiatives promoting blockchain and cryptocurrencies; (2) new laws and regulations enabling blockchain technology in various applications, so that smart contracts, signatures and public data recorded on a blockchain are legally valid; (3) employing blockchain technology to make state government more efficient in managing tax records, business licenses, Medicaid rosters, food stamps and other programs; and (4) warning citizens about the dangers of initial coin offerings and unregistered cryptocurrency exchanges.

Here is a sampling of state legislative and administrative activity relating to blockchain technology and cryptocurrencies:

To address the patchwork created by the states, the newly-created Digital Assets Trade Association has a mission to promote self-governance, standardized definitions and laws and industry "best practices." It is seeking a regulatory climate that strikes the balance between innovation and consumer protection for all 50 states and US territories, and carry that message to international bodies as well. Until the various state, federal and industry interests coelesce, however, blockchain and cryptocurrency businesses must remain cognizant of the many regulations and regulators that affect them.

About Our Practice

Blockchain is the next precedent-setting technology disruptor of our time. This distributed and immutable digital platform of transactions and records has the potential to revolutionize countless industries over the next decade. Our ranks include not only experienced practitioners, but industry thought leaders, frequent speakers, and authors on emerging and transformative technologies. As a nationwide full-service law firm, we draw upon the expertise of attorneys from a wide host of practice areas to ensure our clients are well-supported and advised in all aspects of their business.

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[1] Several federal agencies are stepping up their efforts to oversee and regulate the evolving blockchain landscape: (1) The Securities and Exchange Commission has taken an evolving stance concerning the use of initial coin offerings to raise capital and the use of unlicensed cryptocurrency exchanges. *See* Lathrop Gage LLP Alert *Cryptocurrency 101* dated April 9, 2018. (2) The Internal Revenue Service has declared that cryptocurrencies are property (not currencies), and thus perhaps subject to taxation when transferred. *See* Lathrop Gage LLP Alert *Cryptocurrency Taxation* dated March 26, 2018. (3) The Treasury Department (through its Financial Crimes Enforcement Network, or FinCen is applying the Bank Secrecy Act and other anti-money laundering statutes and regulations to ICO issuers. (4) The Commodities Futures Trading Commission has determined that cryptocurrencies are commodities, subjecting exchanges and clearinghouses engaged in cryptocurrency transactions to CFTC oversight.

[2] A recent Brookings Institute report entitled "Blockchain and US State Governments: An Initial Assessment," April 17, 2018, divided the states into seven categories according to their relative focus on blockchain issues: Unaware, Reactionary, Appreciative, Organized, Actively Engaged and Recognizing Innovation Potential.