BLOCKED BY CONGRESS: THE STATUS OF THE U.S. BLOCKCHAIN LAW

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Two years have passed since the price of Bitcoin suddenly jumped to $20,000 and three months later fell to only $6,000. Since that time, public interest in Bitcoin (the concept) and blockchain technology generally has been nearly as volatile as the cryptocurrency market. Although it may seem like a bear market on cryptocurrency exchanges, the industry is booming for developers and lawmakers.

What is Blockchain?

A blockchain is a digital database — a kind of public ledger — used to store, track, and process information. This public ledger accounts for every transaction that occurs on the blockchain, and the information is decentralized and distributed across a network of computers. Because the ledger exists on a network rather than on a single computer, there is no central point of vulnerability for the data. Recordkeeping, transparency, and decentralization are what make blockchain so attractive.

Blockchain technology is being used and developed for a wide range of applications, from gaming and sports betting to healthcare and identity management. For manufacturers, the technology will become increasingly vital to supply-chain management, commercial contracts, financial transactions, data sharing, and product tracking.

Not surprisingly, while companies and developers are rapidly exploring this new technology, the federal government has been slow to consider any type of regulatory scheme.

Facebook and Congress Face Off

Without regulatory certainty, Congress appears to be threatened by high-profile blockchain projects. One recent example is a cryptocurrency project called "Libra." In October 2019, Mark Zuckerberg appeared before Congress and explained that Libra began as Facebook's cryptocurrency initiative in June of 2019. Libra is no longer just Facebook's project, as the freestanding Libra Association, headquartered in Geneva, Switzerland, now leads the venture. Its purpose is to govern a blockchain network (called Libra) and its reserve. This reserve, backed by actual government-issued currencies, is intended to allow Libra to function as a "stablecoin" or reserve-backed cryptocurrency designed to minimize price volatility.

Members of Congress found some of Zuckerberg's testimony troubling. House members expressed concerns about Facebook's control over the rest of the Libra Association. Although the Libra Association currently includes 21 member organizations, the representatives raised questions concerning Facebook's immense global power and past privacy issues. They also wanted to know why the Libra Association was organized outside the United States.

Zuckerberg's six-hour testimony yielded several key takeaways. First, Zuckerberg was adamant that Facebook and the Libra Association are separate. Second, he stressed that Facebook will sever its ties with the Libra Association if Libra fails to comply with U.S. law. Third, he tasked Congress with taking action in a timely manner to prevent the United States from falling behind the rest of the world in the cryptocurrency space. The longer we wait for Congress to act, Zuckerberg predicted, the more likely the world and this technology will forge ahead without the U.S.

Laws Try to Catch Up with Technology

Zuckerberg's message appears to have been received by some members of Congress. A bipartisan bill was introduced in the House on November 21 called "Managed Stablecoins Are Securities Act of 2019." This new bill provides regulatory clarity for stablecoins by defining them as securities.

Meanwhile, federal agencies are developing their own blockchain regulations. So far, cryptocurrency regulations are the low-hanging fruit, but even this term has been defined differently by different agencies. For example, the Commodity Futures Trading Commission treats digital assets as commodities. The Securities and Exchange Commission treats them as securities. The Financial Crimes Enforcement Network treats accepting and transmitting digital assets as invoking money transmitter laws under the Bank Secrecy Act. Eventually, Congress will be pressured to take a more active role in developing a cohesive regulatory scheme.

In this environment, many state governments have taken aggressive legislative stands. Some have explored regulating not just cryptocurrencies, but also other aspects of blockchain technology. As early as 2015, several states introduced blockchain- and cryptocurrency-related bills and resolutions. As of 2019, 36 have passed laws relating to blockchain technology.

Many of the early state blockchain laws codified definitions for terms such as blockchain, node, network, smart contract, and cryptocurrency. Some later categorized these defined terms as securities or taxable transactions. States have begun enacting laws that govern money transmitter transactions, use of blockchain for maintaining business and public records, and admissibility of blockchain records as evidence. Now, several states are competing for the title of most blockchain-friendly state. The frontrunners appear to be California, New York, Wyoming, and Arizona. (Wyoming, home to fewer than 600,000 people, has enacted 13 different blockchain-related laws.) These states understand that blockchain technology goes beyond cryptocurrency, and they seek to provide a clear regulatory framework for companies that incorporate blockchain solutions.

While Congress holds hearings and conducts studies, the world of blockchain and cryptocurrency shows no signs of slowing. In 2020, look for Congress to grapple with balancing its interests in economic power and making the United States a global leader in innovation. ◆

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