

Australian Government Moves to Regulate Digital Currency Exchanges - Is Canada Next?

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On Thursday, August 17, 2017, the Australian government proposed a set of reforms aimed at regulating the purchase and sale of digital currencies on online exchanges, in an attempt to deter individuals from using these currencies for illicit purposes such as money laundering and the financing of terror-related activities.

The new legislation, if passed, will bring digital currency exchanges under the purview of the Australian Transactions and Reporting Analysis Centre (AUSTRAC). AUSTRAC serves as Australia's financial intelligence agency, with regulatory responsibility for anti-money laundering and counter-terrorism financing.¹

Under the new legislation, a digital currency would be defined as:

“a digital representation of value that: (i) functions as a medium of exchange, a store of economic value, or a unit of account; and (ii) is not issued by or under the authority of a government body; and (iii) is interchangeable with money (including through crediting of an account) and may be used as consideration for the supply of goods or services; and (iv) is generally available to members of the public without any restriction on its use as consideration.”²

The Australian government believes that bringing digital currencies under the same laws as other fiat currencies is a necessary step in preventing financial crimes, with Justice Minister Michal Keenan noting: “The threat of serious financial crime is constantly evolving, as new technologies emerge and criminals seek to nefariously exploit them. These measures ensure there is nowhere for criminals to hide.”³

While many lament the regulation of digital currencies, recent similar decisions of the governments of China and Japan, respectively, have resulted in further security for market participants, and have even bolstered the growth of Bitcoin, arguably the most popular digital to date.⁴ In China, the People's Bank of China announced that it would be initiating an investigation of Bitcoin and met with a number of digital currency exchanges, warning them that they would be shut down if they violated anti-money laundering regulations.

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This prompted several exchanges to improve their systems in order to ensure that they remained compliant. Taking a different approach, the Japanese government declared Bitcoin to be a legal currency, and therefore required exchanges facilitating the trading of Bitcoin to comply with regulatory requirements. While imposing regulatory restrictions, this decision actually led to a surge in demand for the currency as retailers began accepting it as payment for goods and services.⁵

In Canada, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, certain reporting entities are required to register with and make reports to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). FINTRAC's mandate is to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control. Among those parties required to report to FINTRAC are entities known as money services businesses (MSBs). An individual or entity is an MSB if it is in business in Canada to offer any of the following services to the public:

- Foreign exchange dealing (conducting transactions where one can exchange one type of currency for another currency);
- Remitting or transmitting funds by any means or through any person, entity or electronic funds transfer network; or
- Issuing or redeeming money orders, traveller's cheques or other similar negotiable instruments (except for cheques payable to a named person or entity).

The Government of Canada has made statutory changes to what services make an individual or an entity an MSB in Canada to include virtual currency services. These changes, however, are not yet in force as regulations are being developed to define what a virtual currency service is. The scope of such regulations and how cryptocurrency exchanges will be impacted remains to be seen, but at the very least it will mean that anonymity will likely be eliminated for covered exchanges and other covered entities.

Given the recent [decision](#) of the Securities Exchange Commission and the [first order](#) from a Canadian securities regulator with respect to an initial coin offering, as well as the actions of the Australian, Chinese, and Japanese governments, Canadian regulators can be expected to accelerate their work to understand cryptocurrencies and their relationship and resemblance to both fiat currencies and securities, and to regulate where appropriate.

For further information regarding this matter, please contact Greg Hogan, David Gardos or any other member of the Securities Group.

¹ <http://www.austrac.gov.au/about-us/austrac>

² <https://www.legislation.gov.au/Details/C2017B00166>

³ https://www.theregister.co.uk/2017/08/18/australia_to_regulate_digital_currency/

⁴ <https://coinmarketcap.com/currencies/volume/monthly/>

⁵ <https://www.cnn.com/2017/08/17/bitcoin-faces-regulations-crackdown-by-asia-pacific-country.html>

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