ANDERSON KILL
POLICYHOLDER ADVISOR
The Policyholder Law Firm

Bitcoin, Blockchain and Insurance: New Tech, Old Rules

By Stephen D. Palley

Bitcoin is a kind of digital cash. Transactions are much faster than traditional banking, and can take place globally — sometimes in a matter of minutes. No bank? No problem. Bitcoin is "peer-to-peer": no middlemen are needed to process payments. Transactions are recorded publicly on the "blockchain," which is like a distributed electronic ledger.

Bitcoin use required technical expertise at first. This is changing. More than $7 billion in bitcoin is currently in circulation. Big banks and corporate investors have made eight and nine figure investments into blockchain-based systems for non-bitcoin uses. One new blockchain-based value transfer system, Ethereum, has a market capitalization of more than $1 billion. Even the U.S. Postal Service has gotten into the act, and issued its own blockchain whitepaper.

While most businesses at present may regard electronic currencies as ethereal, the potential benefits in a wide variety of industries are not hard to envision. Nor are the risks. Regulatory risk management and effective risk transfer via insurance should be core concerns for any business beginning to consider how it might use, or adapt to, the blockchain.

Regulatory risk management is hard where new regulations are still being written but old ones remain in force (and where not all countries share the same rules). Know your customer (KYC), anti-money laundering (AML) and tax and accounting obligations are some areas of focus for legitimate businesses that want to benefit from the technology but remain above board.

Is it possible to couple new and disruptive technology with an existing legal system? It seems so, as bitcoin can now be bought with cash transferred directly from U.S. bank accounts to intermediaries who purchase the bitcoin for account holders. These intermediaries have to satisfy their banking counterparties that they comply with U.S. KYC and AML requirements, and will take steps to validating identity and residence before letting users engage in certain transactions (this adds some cost to the transaction, and reduces or removes user anonymity).

What about insurance? While the asset class may be new, insurance policy language will be interpreted and applied using existing insurance rules and risk management frameworks.

A business that keeps or maintains bitcoin should consider whether its current insurance program will cover bitcoin or blockchain assets and the attendant first- and third-party losses. Some policies may include explicit bitcoin exclusions. Others may include electronic

---

Stephen D. Palley is of counsel in the Washington D.C. office of Anderson Kill. Mr. Palley focuses his practice on litigation, trial practice and insurance coverage.
202-416-6552 | spalley@andersonkill.com