CRYPTOCURRENCY - FROM WONDROUS NEW INNOVATION TO RUINOUS DEVASTATION

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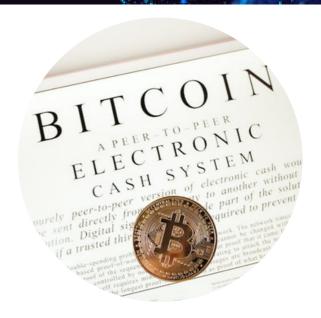
Cryptocurrency is now firmly part of the global financial landscape, having been hailed as a remarkable innovation that would transform the way finance was delivered by some and a dangerously volatile product that would lead to ruin by others. Nevertheless, cryptocurrency gained traction, its decentralised status and online presence was attractive to investors and the market grew exponentially.

However, one consequence is beyond doubt, many of the aspects that made crypto currency so attractive to investors, also made it a perfect vehicle for fraud; cryptocurrency opened the door to a new level of investment fraud that offered the victims little hope of recovery of misappropriated crypto assets; in part due to the immutable nature of the transactions across the blockchain and anonymity of the parties involved crypto fraud activity, this considerably assists the wrongdoers.

The lack of regulatory oversight with regard to cryptocurrency investment is another issue. Fiat currencies have authority from a government or financial authority but cryptocurrencies have different status in different jurisdictions. The International Monetary Fund (IMF) has suggested that the initial suggestion that crypto assets would be advantageous and have a transformative effect in the financial sector have fallen well and truly short. The new dawn for the financial sector is now mired in a shockingly high level of fraud. The IMF now considers the only way forward is that vigorous regulation is now called for.

The Financial Conduct Authority (FCA) has introduced regulatory obligations in the way crypto assets are marketed in an attempt to prevent novice investors being misled by crypto investment brokers. It also issues regular warnings.

The various European Supervisory Authorities (ESAs) the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and European Insurance and Occupational Pensions Authority (EIPOA) have advised investors on the appropriate actions that they should undertake before investing to ensure that they make informed decisions. All authorities warn that investors must be prepared to lose all their money.



Unfortunately, none of these good intentions actually assists the victims to recover their lost assets. The devastating consequences for some victims could not be more scandalous, particularly as often they receive little or no assistance from the financial institutions that inadvertently facilitated the situation. This is no doubt to the ruinous levels that crypto fraud has now reached globally.

The fall of FTX now followed by the largest crypto exchange Binance, coupled with the inextricable rise of cryptocurrency fraud has confirmed all the doomsayers ominous predictions. However, there has been some notable legal progress in the courts of England & Wales to enable the wronadoers to be brought to justice, inhibit the fraudsters and eventually recover the stolen cryptocurrency. Following the lead from the New York court, the case of D'Aloia -v-. (1) Persons Unknown (2) Binance Holdings Limited and others, when the courts permitted a worldwide freezing order to be minted as an NFT and served through the blockchain directly to the wrongdoers. This has been a turning point in the fight against crypto fraud and removes the protection of anonymity from the fraudsters and the same time as preventing the rapid disposal of their ill-gotten gains.

Together with the High Court of England & Wales granting the first default judgment in a claim relating to an alleged Bitcoin fraud perpetrated by fraudsters based abroad; the defendants are, an individual known as both Alan Bart and A. Philpott who is associated with FCA Automatic and Capital Usage and persons unknown involved with a crypto wallet at quogi.com related to Huobi Global Ltd., Capital Usage Ltd., Wade Press UK Ltd.

This demonstrates that the English courts will act to protect foreign victims of fraud where there is sufficient connection to England and Wales. This is a significant development and brings the possibility of the recovery of funds lost to fraudulent investment schemes perpetrated by fraudsters based abroad.

In a second initiative emanating from the UK a new law The Economic Crime and Corporate Transparency Act 2023 amends the Proceeds of Crime Act to incorporate cryptocurrency. The new Act provides the National Crime Agency in the UK with powers to allow law enforcement to target and seize the illegally acquired cryptocurrency and if deemed necessary, it can be exchanged into fiat money before a forfeiture hearing. This means that not only is the cryptocurrency less easily spirited away by the fraudsters but that crypto assets are now recognised. Therefore, the criminal, civil, and the supplementary investigatory powers, such as regulatory authorities, will now include crypto assets in the same way they already do with cash and listed assets during their investigations. The new duty that the Act places on businesses to report suspect activities should considerably assist the law enforcement agencies.

The crypto companies, the exchanges in particular, together with the wallet providers could find themselves being held liable when their platforms are suspected of moving or storing crypto related to a crypto fraud. Furthermore, there is a lesser burden of proof in a civil action. Europol and Eurojust, two European Union agencies for law enforcement now collaborate to investigate online investment fraud. The Financial Action Task Force (FATF) is a global watchdog relating to money laundering and terrorist financing and all other infringements, with a stated purpose of depriving criminals of illicit assets gained through the medium of fraud tirelessly attempts to target wrongdoers globally. It should be noted that 200 jurisdictions have are committed to executing the FATF standards and recommendations in relation to financial wrongdoing. The impact and level of losses is impossible to calculate, just one agency the Federal Trade Commission (FTC) alleges over one billion dollars were lost in the first five months of 2022, this only includes information provided by victims who are prepared to come forward, many do not.









In conclusion, all the law enforcement, civil agencies and regulatory authorities should attempt to act cohesively worldwide with concerted vigorous effort to bring down the levels of financial fraud. There is one encouraging aspect, in that the England & Wales courts clearly recognises that it is of vital importance to act decisively towards the perpetrators of crypto fraud.

Both game changing cases were dealt directly by Joanna.









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