

DIGITAL ASSET RISK TRANSFER (DART) TEAM

# Blockchain Risk and Regulation: Are You Prepared?

Novel technology, a dynamic and borderless market, and an uncertain regulatory environment create an increasingly complex environment for companies operating with blockchain technology and digital assets. Rapid growth is bringing increased scrutiny from policymakers, investors, critics, and traditional industry, and many governments appear poised to establish safeguards and standards related to investor protections and market integrity. Each of these brings new potential exposures to your reputation and bottom line.

Marsh's Digital Asset Risk Transfer (DART) team offers specialized risk transfer solutions tailored to the needs of companies operating in the blockchain technology, cryptocurrency, and digital asset arena. We can help you determine which forms of insurance coverage you need and build effective programs that will respond when needed, enabling you to capitalize on new digital asset opportunities and stay ahead of your competitors.

## Unique and Evolving Risks

The complex operating environment for blockchain technology companies presents unique risks for this nascent but fast-growing industry. These include:

- **Regulatory Oversight and Compliance Requirements:** As governments look to encourage innovation while protecting investors and the broader market, regulation continues to develop. The extent of regulatory scrutiny may vary depending on the nature of an individual business. For example, some organizations engaged in initial coin offerings (ICOs) have faced inquiries and investigations into whether their offerings qualify as securities and must be registered as such. Regulators have also sought to ensure that certain infrastructure providers are properly licensed and registered and have strong internal policies governing insider trading, security, and compliance with anti-money laundering and know your customer regulations. Even companies that have not been the focus of overt regulatory oversight — for example, those that are simply looking to benefit from blockchain technology and the appreciation of digital currencies — may be required to disclose certain inherent risks to investors and regulators. Failure to properly do so could lead to regulatory action.
- **Security:** Security of digital assets is one of the principal concerns of those holding digital currency. It is estimated that millions in digital assets have been lost, and well-

publicized hacks have resulted in significant financial losses for investors and businesses. Risks for companies using digital assets include third-party and employee theft; cyber-crime and social engineering schemes, including fraudulent payment instructions; loss of assets or physical damage to assets; and actual and threatened digital ransoms. Individuals who either hold the private keys or information that controls access to valuable digital assets could also be at risk of potential kidnap, ransom, or extortion.

- **Service/Infrastructure Providers:** Digital currency infrastructure providers can face a number of traditional and emerging exposures. In addition to security risks, these companies face potential system failures, outages, and breaches that can result in market failure. They also face potential allegations arising out of purported errors associated with valuation, reporting, and administration of funds, diligence risk and discretionary investing, and trade execution/fat finger/algorithm performance. Those providing services to others for a fee could also be exposed to professional duty/liability claims.
- **Securities Claims:** Companies operating with digital currency could face potential liability arising from the purchase or sale of their own offerings, access they provide to other companies' offerings, and the dependence of shareholders and debtholders on their financial health.

- **Technology Risks:** Algorithm performance is one of the most crucial aspects of the performance of digital currency and blockchain technology. Should a digital currency or smart contract not behave as promised, a technology or software developer could face significant liability — and the number of such claims has increased in recent years as technology investments have accelerated.

## Blockchain Insurance Coverage Solutions

Marsh places many lines of financial and professional insurance coverage that can be tailored to your firm's unique risk profile. Key forms of coverage include:

- **Directors and officers (D&O) liability insurance**, which covers claims brought by investors, shareholders, limited partners, and regulators against directors, officers, and employees associated with securities violations, breach of duties, and regulatory investigations or proceedings. Effective D&O coverage can help organizations protect their balance sheets and attract top directors and officers, whose personal assets can also be protected by D&O policies.



- **Crime insurance**, which reimburses direct financial loss due to theft, disappearance, or destruction of covered property that is owned by an insured company or held on behalf of a third party. Crime insurance policies can respond to losses as a result of acts committed by employees or third parties and apply to said losses of covered property in cold, warm, and hot storage wallets.
- **Cold storage insurance**, which provides coverage for loss of digital assets from internal and external theft, damage, or destruction of private keys. Depositories use secure vaults to store the private keys; for decades, the specie market has insured these vaults, which store gold, diamonds, cash, and other valuable items which require significant insurance capacity. While the market can provide up to \$3 billion in capacity for traditional specie risks, capacity for cold storage risks is evolving and growing as the specie market continues to expand its expertise in digital assets to enable businesses to transfer risk in the most effective manner.
- **Errors and omissions (E&O) and professional liability insurance**, which covers negligent acts or omissions in connection with services provided to an insured's client for a fee. Specific coverages include:
  - General technology E&O coverage for providers of technology services or products.
  - Investment advisor coverage for providers of professional investment advice and other investment services.
  - Other forms of tailored coverage, including for general partner liability and investment banking.
- **Cyber insurance**, which provides coverage for first-party losses (including business interruption and breach notification costs), third-party liability, and regulatory liability associated with network security, data privacy, and system failure events.
- **Employment practices liability insurance**, which covers allegations of wrongful employment conduct, such as discrimination, workplace harassment (sexual or otherwise), wrongful termination, and retaliation.
- **Kidnap and ransom (K&R) insurance**, which provides first-party coverage and access to threat response and corporate and personal security experts in the event of a "ransom," "kidnap," or other triggering event.
- **Employed lawyers insurance**, which covers liability arising out of professional services provided by in-house attorneys and can help attract experienced outside counsel candidates.
- **Representations and warranties insurance**, which reimburses buyers or sellers for financial loss if misrepresentations or inaccuracies are contained within the representations or warranties of a purchase and sale agreement.

**Marsh provides tailored insurance solutions  
to a variety of organizations using blockchain technology:**





## Why Marsh?

Marsh's DART team is a dedicated group of US-based colleagues (including senior advisors, product leaders, claims specialists, and former attorneys) who can provide trusted advice, thought leadership, and innovative solutions to protect blockchain and digital asset companies' critical assets. We have deep experience in all forms of financial and professional insurance coverage and a proven track record of placing such coverage for blockchain and digital asset clients, including cryptocurrency exchanges and trading platforms, merchant banks, financial services advisors, technology incubators, custodians, and more. Our claims

advocacy teams can zealously advocate on your behalf and excel at maximizing insurance recoveries for clients while protecting their relationship with insurers. Working with Marsh colleagues around the world — including London, Bermuda, Canada, and Asia — and others within Marsh & McLennan Companies, we can ensure global coordination and consistency and deliver innovative alternative risk transfer solutions. And, as a global leader in insurance brokering, we are focusing on educating insurers about blockchain technologies and industry-specific risks, helping them stay informed about and confident in insuring your critical risks.

### For more information, contact your Marsh representative or:

SARAH D. DOWNEY  
DART Team Co-Leader  
Marsh FINPRO  
+1 212 345 3122  
[sarah.d.downey@marsh.com](mailto:sarah.d.downey@marsh.com)

JACK FLUG  
DART Team Co-Leader  
Marsh FINPRO  
+1 212 345 6493  
[jack.flug@marsh.com](mailto:jack.flug@marsh.com)

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

This document and any recommendations, analysis, or advice provided by Marsh (collectively, the "Marsh Analysis") are not intended to be taken as advice regarding any individual situation and should not be relied upon as such. The information contained herein is based on sources we believe reliable, but we make no representation or warranty as to its accuracy. Marsh shall have no obligation to update the Marsh Analysis and shall have no liability to you or any other party arising out of this publication or any matter contained herein. Any statements concerning actuarial, tax, accounting, or legal matters are based solely on our experience as insurance brokers and risk consultants and are not to be relied upon as actuarial, tax, accounting, or legal advice, for which you should consult your own professional advisors. Any modeling, analytics, or projections are subject to inherent uncertainty, and the Marsh Analysis could be materially affected if any underlying assumptions, conditions, information, or factors are inaccurate or incomplete or should change. Marsh makes no representation or warranty concerning the application of policy wording or the financial condition or solvency of insurers or reinsurers. Marsh makes no assurances regarding the availability, cost, or terms of insurance coverage. Although Marsh may provide advice and recommendations, all decisions regarding the amount, type or terms of coverage are the ultimate responsibility of the insurance purchaser, who must decide on the specific coverage that is appropriate to its particular circumstances and financial position.

Copyright © 2019 Marsh LLC. All rights reserved. MA19-15701 322570846