

laws. The territorial scope of the TCC is determined in such a way that it applies to any crimes which are partly or fully committed in Turkey. Accordingly, so long as any results of a crime occur in Turkey, it would be considered that the crime is committed in Turkey, which would lead to the jurisdiction of Turkish public prosecutors and judiciary. It would indeed be arguable whether or not MASAK would be able to enforce its powers outside Turkey. Let alone, if the requirements under the respective regulations are violated, criminal sanctions would be triggered and MASAK and Turkish prosecutors would have the authority and jurisdiction in Turkey. Besides, even if MASAK or the Turkish prosecutors have no extraterritorial reach, the authority they hold may suffice to halt the operations of any non-complying crypto asset trader by way of eliminating internet access to the relevant platform and even blocking the transfer of funds by Turkish banks to its accounts.

At this stage, there is no indication or precedent as to how MASAK will approach these new powers, specifically as concerns crypto asset traders located abroad, which makes our assessments very conservative.

Poland: BitMarket and Coinroom

The Polish Act on Counteracting Money Laundering and Terrorist Financing, which recently entered into force,¹ defines virtual currency as a digital representation of value which (i) is convertible in economic transactions into legal tender and accepted as a medium of exchange; (ii) may be stored or transferred by electronic means or the subject of electronic trading; and (iii) is not:

- 1) legal tender issued by the National Bank of Poland, foreign central banks, or other public authorities;
- 2) an international unit of account established by an international organisation and accepted by individual countries belonging to, or cooperating with, that organisation;
- 3) electronic money;

- 4) a financial instrument; or
- 5) a bill of exchange or cheque.

Regarding the insolvency law aspects of cryptocurrencies, it is important to recall the increasing number of cryptocurrency exchanges which have gone bankrupt. Such entities may go bankrupt for a number of reasons, including the loss of funds or liquidity, hacking, their owners engaging in “exit scams”, poor regulation or lax governance and management. The number of reasons is as numerous as the ever-growing number of cryptocurrency exchanges which collapse. Focusing on the Polish market, there have been two major exchange collapses: BitMarket and Coinroom.

BitMarket, one of the oldest Polish cryptocurrency exchanges and established in 2014, unexpectedly ceased all activities on 8 July 2019.

More than two thousand investors lost the immense funds deposited on the exchange and it remains uncertain whether any of them will be compensated at all. Although the public prosecutor’s investigation into this case is still ongoing, one of BitMarket’s co-owners has been charged with acting to the detriment of clients in the amount of at least BTC 23,000 (or approx. PLN 100 million), for which he faces up to 10 years’ imprisonment. According to Polish cryptocurrency expert Professor Krzysztof Piech: “A principle which the whole cryptocurrency community has promoted for years comes to mind: do not keep your money on exchanges, but only enough funds to make the current transaction. This is because they are the weakest link in the whole digital currency system.”²

The other important example is the bankruptcy of Coinroom, which, on 2 April 2019, terminated the contracts of all users overnight, giving them **1 day** in which to withdraw their funds. Notwithstanding the short notice, many customers reported problems with recovering their deposited funds and it remains difficult to determine how many of them were successful in their withdrawals. Coinroom eventually informed its users that it had begun liquidating the company. On 5 August 2019, it filed a

bankruptcy petition, which includes the option for the liquidation of its estate and covers all of its creditors, i.e., including those customers who have yet to receive their funds held on the exchange. For such customers (i.e., those who have yet to receive their funds), it is significant that the company’s list of creditors includes all Coinroom users who are owed funds by the exchange. While this, of course, does not mean that all of the funds are guaranteed to be recovered, it is an important step in the process.

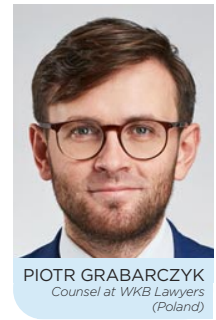
Unfortunately, many of the exchange’s participants have still not been reimbursed their funds and are faced with the prospect of long civil and criminal proceedings that will likely drag on for many years.

In connection with the numerous collapses of cryptocurrency exchanges and a desire to protect small investors, on 12 January 2021, the Polish Financial Supervision Authority (the “KNF”) issued a KNF Warning on the risks associated with the acquisition and trade of cryptocurrencies (including virtual currencies and cryptocurrencies). In its publication, the KNF notes that entities active in the cryptocurrency market or otherwise engaged in crypto-related activities, which are not subject to a legal duty to comply with certain regulatory requirements, often do not provide mechanisms to safeguard investors’ interests.³

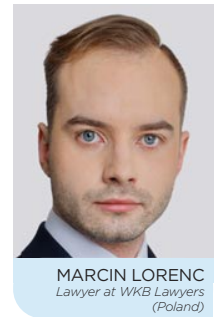
It should be emphasised that one should not be afraid of investing in the cryptocurrency market, but rather that one should be extremely cautious when making such investment, only depositing the funds necessary for a given transaction on one’s wallet, since there are few mechanisms available in the Polish legal order, as it currently exists, which can protect against the loss of all or some of the secured funds. ■

Footnotes:

- 1 Act of 1 March 2018 on counteracting money laundering and terrorist financing, Journal of Laws of 2018, item 723, as amended.
- 2 See <<https://biznes.radiozet.pl/News/BitMarket-Upadla-polska-giela-kryptowalut-Klienci-mogli-stracic-60-mln-zl>>
- 3 See <https://www.knf.gov.pl/knf/pl/komponenty/ing/Ostrzezenie_UKNF_o_ryzykach_zwiazanych_z_nabywaniem_oraz_z_obrotem_kryptoaktywami_72241.pdf>



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Back to the future 2: The Dublin experience

Paul Omar and Myriam Maily report from our return to live events in Dublin for the Annual Congress which attracted over 360 delegates over the four-day event



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Profound and unpredictable substantive forces have led to the dramatically changing economic climate



With introductions by facilitator **David Rubin (Begbies Traynor UK)** and opening notes of welcome from **Frank Tschentscher (President, INSOL Europe; Deloitte DE), Marcel Groenewegen (Immediate Past President, INSOL Europe; CMS NL), Barry Cahir (Deputy President, INSOL Europe; Beauchamps IE) and Giorgio Corno (Co-Chair, Dublin Organising Committee; Studio Corno Avvocati IT)**, proceedings began with the introduction of **Austin Hughes (Chief Economist, KBC Bank IE)**, the keynote speaker.

Keynote: How to make sense of change?

Profound and unpredictable substantive forces have led to the

dramatically changing economic climate recently seen with great impact on the business health. How to make sense of the economic, health and political changes in the last few years? Perhaps there will be no more predictable economic cycles, although things are unlikely to be apocalyptic. Underlying economic structures are more robust than expected; impressive turnaround is starting to happen; quick adaptations and moves are being seen. The rebound seems uneven. In particular, consumer spending is down, though a return back to the 1970s boom-bust cycle is not envisaged. Significant drivers for the future? More insolvencies undoubtedly, as pandemic support is withdrawn. More creative destruction will also happen, with added pressures from climate change and political unpredictability.

Cross-border schemes and plans

Connecting to the Autumn discussion at “Back to the Future 1”. Chris Laughton (Mercer & Hole UK) introduced the speakers: Michael Murphy (McCann Fitzgerald IE), offering an appreciation of Irish examinership; Kathy Stones (LexisNexis UK), talking of the recent introduction of UK Part 26A, Marcel Groenewegen (CMS NL), recounting the introduction of the WHOA, and Riz Janjua (White & Case DE), explaining the impact of the StaruG. A comparable table was produced and populated with answers to key issues through a question and answer session involving the panel. An overall assessment suggests that there is strong Directive-alignment in EU states, the advantage being a strong recognition and enforcement