

# IPBA Journal

September 2022

No **107**

NEWS & LEGAL UPDATE

Metaverse  
and the Law



INTER-PACIFIC  
BAR ASSOCIATION



# One World: Law & the Environment Beyond Covid

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# IPBA Journal

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**Editorial** Kiri Cowie  
Julie Yao

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## Advertising Sales

Jennifer Luk

E: jennifer@ninehillsmedia.com

Frank Paul

E: frank@ninehillsmedia.com

T: +852 3796 3060

**ninehills  
media**

### Ninehills Media Limited

Level 12, Infinitus Plaza,  
199 Des Voeux Road,  
Sheung Wan, Hong Kong  
Tel: +852 3796 3060  
Fax: +852 3020 7442

Email: enquiries@ninehillsmedia.com

Internet: www.ninehillsmedia.com

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# The President's Message

**Richard Briggs**  
President



Dear Colleagues, Members, Friends,

On to my second message as President of the IPBA. As summer turns to autumn, things feel as if they are quickly changing now, as (most of) the world re-opens and the legal conference scene regains its lost momentum.

My term as President now also feels properly underway. At the time of writing, I am attending the AIJA Conference in Singapore (22-26 August), soon to be followed by the IPBA Arbitration Day (31 August), the IPBA Mid-Year Council Meeting in Seoul (24-25 September) and the IPBA East Asia Forum (following the Mid-Year Council Meeting in Seoul) on 26 September.

The theme at AIJA was 'The future of the legal profession: reunite and embrace the change'. 'Reunite' is an appropriate word, and captures not just the current position of AIJA, but that of the IPBA and most other legal organisations. All of us share the same concerns, namely: to re-establish interest in our organisations; develop ways to recapture the drive of previous leadership; and to find ways to clearly secure each association's relevance to the current landscape and therefore the future.

In these post-Covid times, the IPBA could be said to be at a crucial stage in its development (or re-development). I am pleased to report that our membership numbers are now on the rise, no doubt as a consequence of the now face-to-face event calendar, and particularly the upcoming Annual Meeting and Conference in Dubai, which will soon be upon us from 7-10 March 2023.

It's time now for all of us to capture the enthusiasm of the 2022-2023 conference season, the joy of reuniting and of sharing experience, and also of course navigating the challenges of the future. The legal profession is beset with challenges, from the ongoing increase in use of and dependence on technology, through lifestyle

and environmental concerns, and to ever-increasing compliance and bureaucracy tying the hands of the profession and those who practice in it. Time is, and has always been, a finite resource.

As one generation quietly hands over to the next, legal organisations, as well as educational establishments, regulators and law firms, have a duty to prepare the next generation for the legal world as it may be in the future, at a time when technology alone changes the profession at breakneck speed.

The IPBA is, and I think will always be, an organisation with a keen eye for the future, which spots technological and drives innovative change early, which educates and informs, and gives insight into the possible challenges ahead. Professor Richard Suskind warns of a profession changed beyond our imagination by 2030 and, whether we like it or not, we can only be as prepared as we possibly can.

My personal caveat to this, and may it turn out to be correct, is my hope that the unity (or re-unity) of the legal profession post-Covid will allow us to retain our professionalism, integrity and humour in an era of extreme technological and working change.

As time presses on towards March 2023 and the Annual Conference in Dubai, I would urge all members to diarise to join us in Dubai, to experience our hospitality, and heartily take part in the growth of our organisation, the IPBA. Our theme for March 2023, for those who don't already know, is 'One World: Law & the Environment Beyond Covid'. The future of the environment is in my view a theme which will arguably impact on all our future business and laws in one way or another.

Yours sincerely,

**Richard Briggs**  
President



## The Secretary-General's Message

**Yong-Jae Chang**  
Secretary-General



Dear IPBA Members,

From June to August 2022, persistent heatwaves affected parts of Europe (in particular, Spain, France and the United Kingdom), accompanied by drought, wildfires and stress on healthcare systems. Extreme tornadoes in the US caused billions in damage, while parts of eastern coastal Australia and certain cities in South Korea were submerged by floods. Unfortunately, extreme heat, drought, floods and wildfires are increasing in many regions around the world.

Natural disasters for the first half of 2022 were dominated by weather-related catastrophes and, according to the World Meteorological Organization, such heatwaves are going to be normal in the future and will happen more frequently because of climate change (as the connection between such natural disasters and climate change has been clearly demonstrated by the Intergovernmental Panel on Climate Change).

The IPBA Officers have recently received a proposal from a member in Peru to establish a new committee called 'Environment, Social & Governance Committee' (or ESG Committee) in the near future. A draft of The Official Mission Statement for the proposed ESG Committee has been prepared and will be presented to the Council for a vote at the upcoming Mid-Year Council Meeting in Seoul on 24 and 25 September. Coincidentally, there will be a session on ESG at the East Asia Forum on 26 September (which will be also held in Seoul immediately after the Mid-Year Council Meeting). I am very grateful for the support from our Committee Coordinators and other Committee Chairs (past and present) as well as IPBA members in Korea for the preparation of the East Asia Forum in Seoul.

Together with IPBA President Richard Briggs, who clearly showed his exemplary vision and leadership, it goes without saying that IPBA will continue to include important topics such as ESG, climate change, diversity and inclusion in its agenda and strive to raise awareness among our members as well as everyone involved in the legal profession.

Moreover, our next Annual Meeting and Conference in Dubai on 7–10 March 2023 with the main theme of 'One World: Law & the Environment Beyond Covid' will be very timely and I sincerely hope that this event will become a great success for the IPBA. This is a long-awaited event for the Association and we will be able to meet in person for the first time since the pandemic. Registration is now open at the conference web site [www.ipba2023.org/](http://www.ipba2023.org/) and I encourage you to register as soon as you can and look forward to seeing all of you in Dubai in March 2023!

I hope you will enjoy reading this September edition of the IPBA Journal and please continue to stay healthy and safe.

**Yong-Jae Chang**  
Secretary-General



## Message to the Reader



Dear Reader,

Welcome to the September issue of the IPBA Journal. As 2022 moves forward, we have witnessed a gradual removal of restrictions and reopening of our international borders in many parts around the world as we continue our journey towards endemic COVID-19. We hope that friends around the globe are all well and healthy, and look forward to reconnecting with you all in person in the near future.

The theme for this month's issue of the Journal is 'Metaverse and the Law'. In recent years, virtual interactions have become an increasingly important part of our lives accelerated by the COVID-19 pandemic, with both consumers and businesses gravitating towards video-conferencing and other forms of virtual interactions. In particular, we have noticed a growing interest in the topic of 'Metaverse' with major companies, among them Facebook, announcing Metaverse initiatives—going as far as incorporating the term into its new name, Meta.

At its core, the Metaverse is the next generation of the internet, promising immersive, three-dimensional experiences with vibrant digital marketplaces and a strong social component. In these marketplaces, businesses and consumers typically transact using cryptocurrencies (a digital currency, which is an alternative form of payment created using encryption algorithm) and non-fungible tokens (NFTs), which are unique digital properties that are created from real-world objects or creations, such as art and music, in exchange for cryptocurrency or other NFTs. Despite the widespread discussion of the Metaverse, the Metaverse is currently not much more than a rapidly evolving idea. Discussing the Metaverse in 2022 is somewhat similar to discussing the internet in the 1960s.

Nonetheless, it is likely that Metaverse will bring content in ways never before imagined and, with it, legal issues and challenges never before contemplated. As with all new foundational technology, the Metaverse remains confusing and unknown to many, including us lawyers. What precisely is the Metaverse? What are NFTs? What laws will apply to the Metaverse? Who regulates the Metaverse? In this issue, we explore these and other questions in more detail.

In this issue, we are again very fortunate to have received an overwhelming amount of support and interest from our IPBA members. This issue consists of eight articles from our members across seven jurisdictions with topics arranging from tax, anti-money laundering, intellectual property, cybersecurity, contract law, property law, and other regulatory framework concerning its legal implications on the Metaverse.

As always, our Vice-Chair, Olivia Kung and myself are very grateful for the continued proactive responses and support from our members. We hope that you will enjoy reading the September issue of the Journal.

Yours sincerely,

**James Jung**  
Chair, Publications Committee

## IPBA Upcoming Events

Event	Location	Date
<b>IPBA Annual Meeting and Conferences</b>		
31st Annual Meeting and Conference	Dubai, UAE	March 7-10, 2023
32nd Annual Meeting and Conference	Tokyo, Japan	1st Quarter 2024
<b>IPBA Mid-Year Council Meeting and Regional Conference</b>		
Meetings of the IPBA Council	Seoul, Korea	24-25 September 2022
IPBA East Asia Forum	Seoul, Korea	26 September 2022

More details can be found on our web site: <https://ipba.org>  
The above schedule is subject to change.

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# Introduction to the Metaverse

The Metaverse has been promised to revolutionise the way we interact with one another and our surroundings, from the way we connect with friends and family to the way we work and how we play. The amount of change the Metaverse threatens to bring to our lives can be overwhelming (especially given how many feel about social media). The purpose of this article is therefore to introduce and demystify the Metaverse for a non-technical audience and to preview some of the common legal and regulatory questions that will arise as the Metaverse becomes more mainstream.



## Introduction

While the term 'Metaverse' was thrust upon us in October 2021 when Mark Zuckerberg announced that Facebook, a social networking company, would change its name to Meta and pivot towards becoming a 'metaverse company',<sup>1</sup> the concept of a Metaverse has long been percolating in the minds of futurists for decades. The Metaverse (as we know it today) can be seen as representing the convergence of a variety of trends including:<sup>2</sup>

- the widespread expansion and adoption of a digital social life;
- the advancements in technology and computing power, and the overarching transition from 'web 2.0' to 'web 3.0';

- the emergence of a decentralised digital economy; and
- record levels of commercial investment and institutional and consumer interest.

## What is the 'Metaverse'?

Despite the concept of a Metaverse being decades old, there is still no singular definition of the Metaverse (or at the very least a singular definition that would be useful). A complicating factor in trying to define the Metaverse in 2022 is that we cannot predict neither how the underlying technologies powering the Metaverse will develop nor how the Metaverse will be adopted and integrated into our societies. Just like those involved in the development of the ARPANET (a precursor to the Internet) in the 1960s and 1970s could not have been expected to predict how the Internet would revolutionise our societies today, it is impossible to accurately predict with any specificity how the Metaverse will develop over the course of the next few decades.

Therefore, for the purposes of this article, it will be sufficient to think of the Metaverse as a virtual world comprising of four key components:<sup>3</sup>

- **Realism:** the virtual world should be sufficiently realistic to immerse the user both psychologically and emotionally.
- **Ubiquity:** the virtual world should be accessible using any digital device from desktop computers, mobile devices to VR and AR devices.
- **Interoperability:** the virtual world is constructed in a way that users can seamlessly move between locations and platforms without any interruption to their data, content and assets.
- **Scalability:** the architecture behind the virtual world should be sufficient to support massive numbers of users without any impact to the user experience and the efficiency of the world.

A common example used to illustrate the potential of a fully functioning Metaverse is the 'Oasis', as depicted in Ernest Cline's 2011 novel *Ready Player One*. The Oasis is a massively multiplayer online role-playing game which developed into a virtual community and where users



had the ability to 'do anything [and] go anywhere'. In the real world, companies have been developing Metaverse-like virtual worlds for many years from *Second Life* in 2003 to *Minecraft* in 2011 and *Horizon Worlds* in 2021. However, in all of these cases there is still a long way to go (on all four components listed above) before any of these virtual worlds could be considered a Metaverse.

While gaming and media/entertainment are the most obvious sectors that will make use of the Metaverse in the near-to-medium term, the ultimate vision of the Metaverse is the development of a new way of interacting with one another and a complete reimagining of our societies into the virtual world. This means that all sectors of our society, including financial services, education, healthcare (to name just a few), must brace for disruption.

The ultimate vision of the Metaverse is the development of a new way of interacting with one another and a complete reimagining of our societies into the virtual world.

## The Metaverse and the Law Analysis

Given all of the new possibilities that the Metaverse promises to bring to our lives and the speed at which it has captured the public's imagination and corporate interest, it is prudent to analyse both our:

- current regulatory frameworks as they apply to internet and technology companies to see how policymakers and regulators may approach the regulation of the Metaverse; and
- current legal frameworks to try and identify where our laws are sufficiently robust to address the legal questions that will be raised by the Metaverse and where laws will need further development and refinement.

## Regulating the Metaverse

It is yet to be seen what path policymakers and regulators will take in regulating the Metaverse and, of particular relevance at this stage, what regulations they will place on companies and stakeholders involved in its development. However, it would be a safe assumption that policymakers and regulators will take their learnings and approaches in regulating technology companies (and social media platforms in particular) as a starting

point in formulating their position towards regulating the Metaverse. Therefore, it is instructive to analyse the key areas that policymakers and regulators worldwide are currently focusing on, and these areas include:

- **Content and conduct moderation:** with the rise in disinformation on the Internet (including state-sponsored disinformation), harmful messages, cyber-abuse and illegal content distribution (to name just a few), many governments around the world have introduced or are looking to introduce laws and regulations to make the Internet a safer place (in particular for children). Many of these new laws aim to regulate content and speech online by placing greater obligations on social media companies to regulate user content, and also empower authorities to require the removal of content. An example is the Australian Online Safety Act 2021,<sup>4</sup> which came into force in January 2022. This Act obliges social media companies to comply with the Basic Online Safety Expectations, which include taking reasonable steps to proactively minimise unlawful and/or harmful materials available on their websites and complying with removal notices issued by the eSafety Commissioner.<sup>5</sup>
- **Privacy and data security:** given the incredible amount of personal data that companies now collect on their users, the sensitivity of that information and the lack of practical control a person has over their own personal information once collected, privacy and data security laws and regulations have been reformed in many jurisdictions. Common themes that have emerged include giving people more rights and control over their personal information, placing greater obligations on companies that collect, handle and use personal information, and imposing greater penalties on companies that fail to comply to meet these obligations. The EU's General Data Protection Regulation (or the 'GDPR') is perhaps one of the most well-known examples.<sup>6</sup>
- **Competition and antitrust:** competition law and antitrust is another area, particularly in relation to technology companies, where policies have been shifting in recent years. For example, the United

States House Judiciary Committee found evidence of monopolisation and the exercise of monopoly power by big technology companies such as Facebook, and was highly critical of the lack of regulatory scrutiny applied to acquisitions in the sector, including 'killer acquisitions'.<sup>7</sup> This has led to the introduction of the American Innovation and Choice Online Act which aims to, among other things, curb a variety of anti-competitive behaviour and introduce new fines and penalties.<sup>8</sup>

In reviewing the above, the trend towards greater regulation and empowering of consumers is clear. However, despite this push, some commentators have raised concerns that the harms posed by the Metaverse could be significantly worse than what regulators have faced in dealing with big technology companies and social media.<sup>9</sup> For example:

- There are emerging reports of abuse on virtual reality platforms (including sexual assault)<sup>10</sup> and questions are yet to be answered as to how to safeguard these virtual spaces. The issue is of particular importance because the harm caused in the Metaverse could be more severe due to the greater psychological and emotional immersion when compared to ordinary internet use.
- While significant progress has been made worldwide on the protections and safeguards placed on a user's personal information, Metaverse platforms will have the capabilities to track, likely in real time, significantly more data points (and more sensitive personal information) than traditional web tracking. Suggestions such as the restriction of collecting and/or analysing certain data points have been raised, however, how policy will address this issue is yet to be seen.<sup>11</sup>
- Given the harm that has been caused by anticompetitive and monopolistic behaviour, it is possible that policymakers and regulators will take a two-pronged approach in:
  - o scrutinising mergers and acquisitions involving Metaverse companies; and
  - o developing and prescribing regulations around uniform standards in an attempt to foster interoperability between Metaverse platforms,

both in an attempt to prevent the formation of monopolies over Metaverse platforms.

All of the above suggests that policymakers and regulators will take a more proactive (and potentially a more heavy-handed) approach to regulating the Metaverse and its development. Metaverse companies and stakeholders should not expect the light-handed approach afforded to the early-stage internet companies of the early 2000s and 2010s.

## Legal Issues Brought on by the Metaverse

### (a) Overview

Aside from the regulatory issues, the Metaverse will also inevitably bring challenges to existing laws. Similar to the existing regulatory framework that has been developed over the past few decades in response to the Internet, the legal system has also had to adapt to the changing digital landscape. An analysis of how existing laws have grappled with cases brought on by the Internet and, in more recent times, digital assets such as cryptocurrencies and non-fungible tokens ('NFTs'), can be useful in highlighting where existing laws are sufficient and where further work will be required to tackle the challenges the Metaverse will bring. A small sample of the various areas of law where the Metaverse will likely raise novel questions of law are reviewed below.

### (b) Property and Ownership Issues With Digital Assets

As a key step before a truly open and interoperable Metaverse can exist, and to unlock the full economic potential of the Metaverse, there must be a way for users to have ownership over, and create proprietary interests in, their digital assets which are independent from the Metaverse platform. This is because 'property is a gateway to many standard forms of transactions'<sup>12</sup> and property rights have important implications both at law and in commerce, such as:

- the ability to enjoy the asset at your discretion and enforce your rights against the world;
- the ability to sell, purchase, lease or bail an asset;
- to grant a mortgage or a security interest over an asset;
- how the asset is to be handled on the death of an individual;

- giving priority or preference in insolvency claims;
- the availability of remedies in cases of fraud, theft and breach of trust.

While it is becoming increasingly clear that digital assets can be considered property in the legal sense of the word, the answer was not always so clear. In the New Zealand context,<sup>13</sup> this issue was first addressed in 2020 when the Court in *Ruscoe v Cryptopia Ltd (in liq)*<sup>14</sup> held that digital assets (in this case cryptocurrencies) are capable of being property and also property capable of forming the subject of a trust.<sup>15</sup> In arriving at this conclusion, the Court was alert to the importance of recognising that digital assets as property as 'a finding that cryptocurrencies are not property would have profound and unsatisfactory implications for New Zealand's law, including insolvency law, succession law, law of restitution and commercial law more generally'.<sup>16</sup> For completeness, the Court held that cryptocurrencies met the four characteristics required to be considered property, being:

- definable subject matter;
- identifiable by third parties;
- capable of assumption by third parties; and
- degree of permanence or stability.

Notwithstanding the above, a key problem to be resolved going forward is the interplay between the terms and conditions of private Metaverse platforms and a user's property rights in a digital asset. Specifically that, even if digital assets such as NFTs are capable of being property and being owned, all interactions in private virtual worlds are currently governed by contract law (via the terms and conditions). Often the terms and conditions will separate the NFT with the visual and functional aspects of the digital asset (which are built on proprietary code and held on private servers and owned by the platform).<sup>17</sup> Solutions to this problem can range from laws to prevent misleading representations on the ownership of digital assets on Metaverse platforms to regulations prescribing what rights must attach to digital assets. The answer, if one can be arrived at, will have to strike the balance between providing users with sufficient rights in digital assets without stifling innovation in the platforms and companies at create them.

### (c) Enforceability of Smart Legal Contracts

A 'smart contract' is a term used to describe computer code that automatically executes, in whole or in part, an agreement which is stored on a blockchain. Smart contracts often follow conditional logic such as 'if X, then Y'. Smart contracts are slated to play a prominent role in a decentralised Metaverse as they will facilitate trade and transactions across the Metaverse.

However, a perhaps lesser known term is that of 'smart legal contracts' which are legal contracts where 'some or all of the contractual terms are defined in and/or performed automatically by a computer program'.<sup>18</sup> Consideration has been given, particularly in the UK, as to whether or not smart legal contracts can create a legally binding contract between parties. The UK Law Commission concluded that, broadly speaking, the formation of smart legal contracts are not problematic under English law,<sup>19</sup> under which you require the following elements to be met to create a contract:<sup>20</sup>

- an offer and agreement (to be bound by the terms of the offer);
- consideration;
- sufficient certainty and completeness;
- intention to create legal relations; and
- formalities.

Further, the UK Jurisdiction Taskforce (the 'UKJT') arrived at similar conclusions that smart legal contracts did not, at least at a fundamental level, pose novel questions of law.<sup>21</sup> As another example, the issue of interpreting solely code contracts where the code was ambiguous was said to be something 'judges do on a regular basis', and while the interpretation of code would be a new exercise, the legal principles of interpreting a contract based on<sup>22</sup> what the code, as recorded and agreed, says and the objective intention of the parties, is not a new concept.

Despite the conclusions drawn by the UK Law Commission, that fundamentally English law is well equipped to deal with the rise of smart legal contracts, there are still plenty of novel legal and practical issues that courts, lawyers and legislatures will have to consider (and for which there is no right or wrong answer). These include:

- whether new legal principles are required in ascertaining whether an agreement is reached on a smart legal contract that is formed without engaging in any natural language negotiations or communications;<sup>23</sup>
- in the absence of specific agreement between the parties, determining the location of particular actions, such as the place of performance or the place of breach, when those actions ‘take place’ on a distributed ledger;<sup>24</sup>
- how rectification of a smart legal contract could be achieved in instances where the code has been deployed on a permissionless distributed ledger where no one single entity has the power to amend the code;<sup>25</sup>

## Conclusion

Despite all the hype, the Metaverse is still in its infancy. It is therefore impossible to predict how the Metaverse will develop and even more so to predict what role the Metaverse will place in our lives in the future (if it will play a role at all). However, what we can assume is that the Metaverse is coming and that this is no longer a concept confined to the realms of science fiction.

Much like the Metaverse promises to impact all aspects of our lives, this will mean that all legal practices, in some shape or form, will be impacted by it too. Whether it be contract law, data privacy, intellectual property, competition and antitrust, criminal law and financial services, just to name a few. The Metaverse will likely bring with it a large number of unique and novel questions of law and practical challenges that will have to be addressed by policymakers, regulators and the courts. However, as has been illustrated above, this does not necessarily mean that our systems are ill-equipped to meet these challenges.

## Notes

- <sup>1</sup> Mark Zuckerberg 'Founder's Letter, 2021' (28 October 2021) Facebook, [www.about.fb.com/news/2021/10/founders-letter](http://www.about.fb.com/news/2021/10/founders-letter).
- <sup>2</sup> Council of the European Union Analysis and Research Team Metaverse – Virtual World, Real Challenges (European Council, 9 March 2022) at p 4.
- <sup>3</sup> JDN Dionisio, WG Burns III and R Gilbert, '3D Virtual Worlds and the Metaverse: Current Status and Future Possibilities' (2013) ACM Computing Surveys 45, 3, Article 34 at 1.2.
- <sup>4</sup> Other examples include the UK's Online Safety Bill, the EU's Digital Services Act and Singapore's proposed Code of Practice for Online Safety and Content Code for Social Media Services.
- <sup>5</sup> Online Safety Act 2021 (Cth), ss 45 and 46.
- <sup>6</sup> Other examples include the New Zealand Privacy Act 2020, the State of

California's Consumer Privacy Act 2018 and the 2020 amendments to the South Korean Personal Information Protection Act.

<sup>7</sup> United States House of Representatives Investigation of Competition in Digital Markets (July 2022) at p 6.

<sup>8</sup> Examples of other jurisdictions include the EU's Digital Markets Act, China's 2022 amendment to the Antimonopoly Law and the Australian Competition and Consumer Commission's call for significant reforms to its merger control regime.

<sup>9</sup> Louis Rosenberg 'Regulation of the Metaverse: A Roadmap' (International Conference on Virtual and Augmented Reality Simulations, Brisbane, Australia, March 2022).

<sup>10</sup> BBC 'Female Avatar Sexually Assaulted in Meta VR Platform, Campaigners Say' (25 May 2022) BBC, [www.bbc.com/news/technology-61573661](http://www.bbc.com/news/technology-61573661).

<sup>11</sup> Louis Rosenberg 'Regulation of the Metaverse: A Roadmap' (International Conference on Virtual and Augmented Reality Simulations, Brisbane, Australia, March 2022).

<sup>12</sup> Sarah Green 'Cryptocurrencies in the Common Law of Property' in David Fox and Sarah Green (eds), *Cryptocurrencies in Public and Private Law* (Oxford University Press, Oxford, 2019) at 141.

<sup>13</sup> It should be noted that courts across the common law jurisdictions have arrived at similar outcomes. See for example the cases of *In re HashFast Techs. LLC*, Ch. 11 No. 14-30725 (Bankr. N.D. Cal. 2014); *B2C2 Ltd v Quoine Pte Ltd* [2019] SGHC(I) 3, [2019] 4 SLR 17 [B2C2 (SGHC)] and *Osbourne v Persons Unknown & Ozone* [2022] EWHC 1021 (Comm), in the United States, Singapore and the UK, respectively.

<sup>14</sup> *Ruscoe v Cryptopia Ltd (in liq)* [2020] NZHC 728.

<sup>15</sup> *Ibid* at [133].

<sup>16</sup> *Ibid* at [66].

<sup>17</sup> Similar issues have arisen in the intellectual property space where often the NFT or digital asset may not bring with it the underlying copyright rights.

<sup>18</sup> Page vii. The UK Law Commission also categorises smart legal contracts into three separate subsets: natural language contract with automated performance, hybrid contracts and solely code contracts.

<sup>19</sup> It would be reasonable to expect that other common law jurisdictions would arrive at similar conclusions.

<sup>20</sup> UK Law Commission Smart Legal Contracts (November 2021) at 3.2.

<sup>21</sup> UK Jurisdiction Taskforce Legal Statement on Cryptoassets and Smart Contracts (November 2019).

<sup>22</sup> *Ibid* at 142.

<sup>23</sup> UK Law Commission Smart Legal Contracts (November 2021) at 3.7.

<sup>24</sup> *Ibid* at 7.144(2).

<sup>25</sup> *Ibid* at 5.14 and 5.15.

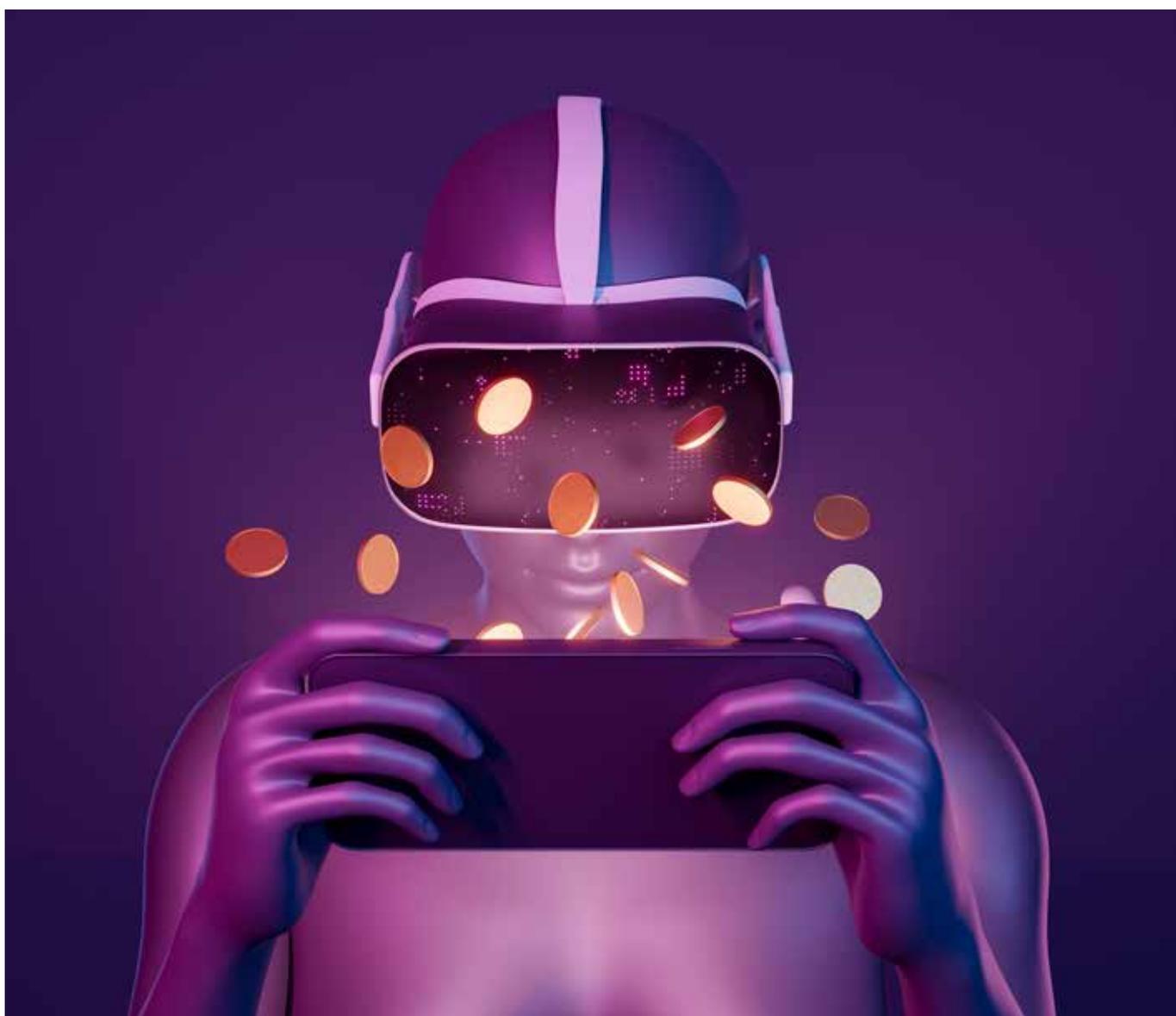


**Kyeong Jun Kim**  
Solicitor, Chapman Tripp, Auckland

Kyeong Jun is a solicitor at Chapman Tripp, a leading commercial law firm in New Zealand supporting clients to succeed across industry, commerce and government. Jun provides practical and expert advice across the full range of financial services regulation, including assisting clients with the establishment, restructuring and compliance of investment products, and advising on acquisitions and restructurings of financial services businesses. Jun is a graduate of the University of Pennsylvania (LL.M) and University of Auckland (LL.B(Hons)) and is admitted to practise in New York and New Zealand. The statements expressed in this article are Jun's own views, and independent of his firm.

# The Metaverse and the Law— Some observations on Tax, FATCA, CRS and Anti-Money Laundering

The Metaverse—or multiple Metaverses, depending on one’s point of view—will continue to develop as an entirely new ecosystem to create fantastic new discoveries, experiences and potential financial wealth.



## Introduction

Mark Zuckerberg, CEO of Meta (formerly Facebook), has said that Meta made an operating loss of US\$2.8 billion on its Metaverse division, in the last quarter alone. Meta sees its objective as getting a billion people into the Metaverse, spending a hundred dollars apiece, by the end of this decade.

Meta must be onto something: A Meta-funded study by Lau Christensen and Alex Robinson, both of the economic consulting firm Analysis Group, estimated that the Metaverse will contribute US\$3 trillion to the global economy by 2031.

Apple is also pursuing a leading place in the Metaverse. Time will tell how Apple's vision differs philosophically, and functionally, from Meta's. Nike and Microsoft are also diving in.

Many lawyers are speculating about some of the 'cooler' legal issues created by this exciting new borderless, non-territorial and virtual space: If we have art in the form of an NFT in the Metaverse, how is ownership evidenced and transferred? What is the nature of the legal rights associated with that NFT? What about 'real' property created in the Metaverse? Is virtual land even a thing? Can one create a mortgage over virtual real estate?

## Tax, FATCA, CRS and AML/CFT

This article discusses four of the more geeky, but nonetheless significant, regimes that also impact on the development of the Metaverse and the various participants in it: tax, FATCA, CRS (Common Reporting Standard) and AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism). These regimes are incredibly important to governments, revenue authorities and to civil society generally, because they all relate in different ways to the collection of tax.

These regimes are discussed from the perspective of a humble New Zealand lawyer—but given the ubiquitous nature of tax regimes globally, aided by the Organisation for Economic Co-operation and Development ('OECD') and its work developing Global Anti-Base Erosion Rules ('GloBE') to address the challenges of a globalised and digitalised economy and the global reach of FATCA, the CRS and AML/CFT regimes, the views should resonate with lawyers practising in other jurisdictions.

It has always been the case that the law has shown itself capable of flexibility and evolution, to cope with new developments in technology. Sometimes the law is slow to catch up, and legislative change is needed—and sometimes it can cope just fine.

## What is the Metaverse?

The 'Metaverse' seems to be one of those buzzwords which is used a lot and which can mean different things to different audiences. For the purposes of this article, the Metaverse can be viewed as a form of cyberspace. Like the Internet, it is a world—or reality, even—beyond our physical world on Earth. It follows that there could be (and are) multiple Metaverses for education, entertainment and business.

The Metaverse is an environment made possible by the convergence of innovative developments in multiple areas, including the Internet (Web3.0<sup>1</sup>), blockchain technology (NFTs<sup>2</sup> and cryptocurrencies<sup>3</sup>) and technical advancements in both hardware and software. One participates in, and interacts with, that world as avatars in its environment, usually through augmented reality ('AR') or virtual reality ('VR'), which people are and will increasingly be able to access using tools like VR goggles.

The Metaverse may also be susceptible to hosting a virtual marketplace. Where (if anywhere) is that marketplace? Under the laws of which jurisdiction? How is income reported, and tax collected? How is such a marketplace monitored and regulated?

## The Building Block: Blockchain Technology

The blockchain is a digital ledger used to record transactions. It is the technology used by cryptocurrencies and NFTs. Despite a recent market crash, crypto markets are growing and maturing, and many small businesses are now accepting cryptocurrencies as a form of payment. A key concept to understand is about cryptocurrencies is that they are not reliant on a central authority—like a government or bank—to uphold or maintain them.

## Taxes

Fundamental to the operation of most tax systems are the three concepts of location (also called residence), source, and value. Most major tax systems (with the notable exception of the USA) tax their residents on their worldwide income, tax all persons worldwide

on income having a source in the country (subject to treaty relief) and require a conversion of value to the currency of the jurisdiction in order to pay tax in the fiat currency of that jurisdiction. It follows that non-residents are not taxed on income not sourced in that country. The global network of double tax agreements typically 'trade away' their source-taxing rights to the jurisdiction of the tax residence of the taxpayer.

What about the Metaverse? New Zealand's Inland Revenue Department has published guidance in relation to taxing cryptoasset activity, summarised as follows:

- A taxpayer needs to file a tax return when you have taxable income from your cryptoasset activity.
- All cryptoassets are considered to be held on revenue account, although (helpfully) the taxing point only arises when the cryptoasset is disposed of, but (unhelpfully) a disposition for another cryptoasset could still give rise to a tax obligation, without the fiat currency to pay it.
- Before a taxpayer includes cryptoasset net income (or loss) in its tax return, it needs to:
  - o calculate the New Zealand dollar value of its cryptoasset transactions; and
  - o work out its cryptoasset income and expenses.
- If a taxpayer held cryptoassets that were stolen, it may be able to claim a deduction for the loss.
- It's important to keep good records for all transactions with cryptoassets.

The New Zealand government also recognised that its policy settings were inadequate in relation to GST (the equivalent of VAT). As a matter of policy design, GST is a comprehensive tax, and at a high level it applies to all supplies of goods and services, except money. Without a law change, transactions involving the exchange of fiat currency for certain cryptoassets could create an asymmetrical consequence for the exchange of conceptually and functionally similar representations of value, intended to facilitate trade. Accordingly, the supply of a cryptocurrency was also excluded from the ambit of the Goods and Services Tax Act 1985. The definitions are intended to be at least partially future proof:

**cryptoasset** means a digital representation of value that exists in:

- a. a database that is secured cryptographically and contains ledgers, recording transactions and contracts involving digital representations of value, that are maintained in decentralised form and shared across different locations and persons; or
  - b. another application of the same technology performing an equivalent function
- cryptocurrency** means a cryptoasset that is not a non-fungible token.

### OECD–Pillar 1 and Pillar 2

The Organisation for Economic Co-operation and Development ('OECD') has been working on a Two-Pillar Solution to address the tax challenges arising from the digitalisation of the global economy for some time. The Two-Pillar Solution was agreed by 137 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS and endorsed by the G20 Finance Ministers and Leaders in October. They were developed by delegates from all Inclusive Framework member jurisdictions and agreed and approved by consensus.

The Pillar One Model Rules seek to impose a tax on large multinational enterprises, to be allocated to market jurisdictions.

The Pillar Two Model Rules (also referred to as the 'Anti Global Base Erosion' or 'GloBE' Rules), released on 20 December 2021, are designed to ensure large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate. They are drafted as model rules that provide a template that jurisdictions can translate into domestic law, which should assist them in implementing Pillar Two within the agreed timeframe and in a co-ordinated manner.

If implemented, this should place the taxation of transactions occurring in the Metaverse on a more level basis than is currently the case.

### FATCA and the CRS

#### Overview

'FATCA' is a reference to a subpart of the United States legislation—the Hiring Incentives to Restore Employment

(HIRE) Act, enacted in 2010—which creates (as a matter of United States law) registration and reporting obligations for certain non-exempt financial institutions, including New Zealand financial institutions, to register with the United States Internal Revenue Service ('IRS') and to report on details of certain financial accounts.<sup>4</sup> FATCA includes a requirement for a 30 per cent withholding on the amount of certain payments by US persons relating to any United States-based investment of certain persons, including a non-complying financial institution.

When enacted in the United States, FATCA raised a number of issues for New Zealand financial institutions, including concerns in relation to sovereignty, privacy and confidentiality. In order to implement FATCA in New Zealand in a manner which overcame those concerns, New Zealand and the United States entered into an Intergovernmental Agreement ('IGA') on 12 June 2014, under which New Zealand financial institutions are required to provide specified identity and financial information to Inland Revenue (with a first date for reporting balances as of 30 June 2014), to be provided to the United States under the 1982 double-taxation agreement between New Zealand and the United States.<sup>5</sup> The IGA has subsequently been modified by a memorandum of understanding, an additional terms update and two competent authority arrangements.<sup>6</sup> The IGA is one of two common standard approaches taken globally to allow for the exchange of information between jurisdictions.

Part 11B of the Tax Administration Act 1994 contains provisions which oblige certain financial institutions to register with the IRS and which specifically authorise relevant financial institutions to obtain and to provide to Inland Revenue for onward disclosure to the IRS, the information that New Zealand is obliged to provide under the IGA.

Every 'entity' has a status for FATCA purposes. An 'entity' is broadly defined in the IGA as 'a legal person or legal arrangement such as a trust'. Every entity in New Zealand is therefore either a 'Foreign Financial Institution' ('FFI') or a 'Non-Financial Foreign Entity' ('NFFE') for FATCA purposes.<sup>7</sup>

References to the CRS regime (and the related automatic exchange of information, or 'AEOI', regime) are references to the global framework for the collection, reporting, and exchange of financial information about people investing outside the jurisdiction of their tax residence. The CRS is a multilateral initiative of the OECD.<sup>8</sup> In New Zealand, the CRS was modified and implemented by Part 11B and schedule 2 of the Tax Administration Act 1994.<sup>9</sup> Reporting entities are required to report certain information on an annual basis to Inland Revenue, for onward dissemination to other AEOI participating jurisdictions.<sup>10</sup> CRS commenced in New Zealand from 1 July 2017.<sup>11</sup>

As a matter of policy design, GST is a comprehensive tax, and at a high level it applies to all supplies of goods and services, except money.

CRS was modelled on FATCA, (and both regimes reference Financial Action Task Force Recommendations<sup>12</sup>) but there are significant differences between the two regimes in a number of aspects, including the manner in which they were brought into effect in New Zealand, the ambit of each regime, the entities defined as having registration and reporting obligations, and the lack of a withholding regime in relation to CRS.<sup>13</sup>

In New Zealand, Inland Revenue acts as the intermediary between non-exempt New Zealand financial institutions and the IRS (in relation to FATCA) and between New Zealand reporting financial institutions (in relation to CRS and the AEOI), under Part 11B of the Tax Administration. As noted above, Part 11B also explicitly authorises and obliges financial institutions to obtain and to provide to Inland Revenue the information that New Zealand is obliged to provide under FATCA and the CRS.

## Is a Person Dealing Only in Cryptoassets in the Metaverse a 'Financial Institution' for the Purposes of FATCA?

### (a) General

Whether or not an entity is a Reporting New Zealand Financial Institution (as that term is defined in the IGA) depends on whether it is a 'Financial Institution' under the IGA. Under the IGA, the term 'Financial Institution' means a Custodial Institution, a Depository Institution, an Investment Entity or a Specified Insurance Company (as each of those terms are defined in the IGA). Of those

categories, a person dealing in cryptoassets<sup>14</sup> could be a 'Financial Institution' if it is a Custodial Institution or an Investment Entity.<sup>15</sup>

**(b) 'Investment Entity'**

The IGA provides that the term 'Investment Entity' means:

... any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

1. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
2. individual and collective portfolio management; or
3. otherwise investing, administering, or managing funds or money on behalf of other persons.

...

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of 'financial institution' in the Financial Action Task Force Recommendations.

The Commissioner has stated as follows in relation to the definition of 'investment entity' in the IGA:<sup>16</sup>

An investment entity is defined in Article 1(1)(j) of the IGA as meaning any entity that conducts as a business (or is managed by an entity that conducts such a business) one or more of the following activities or operations for or on behalf of a customer:

- i. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
- ii. individual and collective portfolio management; or

- iii. otherwise investing, administering, or managing funds or money on behalf of other persons.

This definition should be interpreted in a manner consistent with similar language in the definition of financial institution in the FATF Recommendations (see Appendix 1).

This definition would include:

- Pooled funds managed in certain unit trusts (collective portfolio management), private equity funds and hedge funds. This would include managed investment schemes as defined in the Financial Markets Conduct Act 2013.
- Entities that carry on a business that include the provision of discretionary investment management services (DIMS services) for customers. [However, as explained below, such entities may (depending on the circumstances) be Non-Reporting NZFIs]; and
- Entities that carry on a business of facilitating transactions for other persons and, in the process of doing so, engage in portfolio management or otherwise invest, administer, or manage funds or money on behalf of other persons.

...

Appendix 1: The Financial Action Task Force Recommendations (2012) definition of 'financial institution':

... any natural or legal person who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

1. Acceptance of deposits and other repayable funds from the public.
2. Lending.
3. Financial leasing.
4. Money or value transfer services.

5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).
6. Financial guarantees and commitments.
7. Trading in:
  - a. money market instruments (cheques, bills, certificates of deposit, derivatives, etc.);
  - b. foreign exchange;
  - c. exchange, interest rate and index instruments;
  - d. transferable securities;
  - e. commodity futures trading.
8. Participation in securities issues and the provision of financial services related to such issues.
9. Individual and collective portfolio management.
10. Safekeeping and administration of cash or liquid securities on behalf of other persons.
11. Otherwise investing, administering or managing funds or money on behalf of other persons.
12. Underwriting and placement of life insurance and other investment related insurance.
13. Money and currency changing.

Given the nature of cryptocurrency (assets that are not fiat currency which although they may have value and be exchanged as money's worth, are not necessarily a form of currency at all and which may be broadly described as cryptographically secured digital representations of value that can be transferred, stored or traded electronically) as discussed above, it seems likely that dealings in cryptoassets in general (and cryptocurrencies in particular) do not fall within the definition of 'Investment Entity' for the purposes of the IGA because a person dealing only in cryptoassets

cannot be described as carrying out any of the activities or operations listed in Article 1(1)(j) of the IGA as those of an Investment Entity, which relate to fiat currency and more 'traditional' asset classes.

**(c) 'Custodial Institution'**

The IGA provides that the term 'Custodial Institution' means:

... any Entity that holds, as a substantial portion of its business, *financial assets* for the account of others. An entity holds *financial assets* for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of *financial assets* and related financial services equals or exceeds 20 percent of the entity's gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence. [Emphasis added]

The IGA contains no definition of the term 'financial assets'. Article 1(2) of the IGA provides:

Any term not otherwise defined in this Agreement shall, unless the context otherwise requires or the Competent Authorities<sup>17</sup> agree to a common meaning (as permitted by domestic law), have the meaning that it has at that time under the law of the Party applying this Agreement, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that party.

Based on the publicly available documents which appear on the IRD website (including the two agreements between Competent Authority Arrangements entered into<sup>18</sup>) there is no agreed 'common meaning' of the term 'financial assets' as between the Competent Authorities of the United States and New Zealand for FATCA purposes. Although beyond the scope of this article, after descending into the rabbit hole of the detailed provisions of the IGA, domestic legislation and accounting standards and the U.S. Treasury Regulations, we have concluded that in at least one case cryptoassets are not 'financial assets' for this purpose. It seems unlikely that, without amendment,

FATCA applies to require reporting transactions not involving fiat currency occurring in the Metaverse.

### **Is a Person Dealing Only in Cryptoassets in the Metaverse a 'Financial Institution' for the Purposes of the CRS?**

As mentioned above, the concept of the CRS and AEOI as a 'Global FATCA' grew out of the development of the IGA model used in relation to FATCA. The model for FATCA compliance on which the IGA was based grew out of domestic legal concerns and efforts led by France, Germany, Italy, Spain and the United Kingdom to enable the legitimate and efficient application of FATCA to their own financial institutions.<sup>19</sup> The OECD adopted FATCA as a model and took a similar approach to due diligence and reporting to create the AEOI as a single global standard, using the CRS to specify the reporting and due diligence requirements to which the financial institutions in each jurisdiction were subject.

In general, the AEOI/CRS therefore adopts a similar approach to FATCA, albeit on a multilateral basis. However, there is no withholding element to the AEOI/CRS. In New Zealand, the regime is enforced domestically by the regime established in established by Part 11B of the Tax Administration Act 1994 and administered by Inland Revenue and the associated penalty and prosecution regimes in that Act.

As with FATCA and the IGA, each entity (which does not have to be a legal entity, but which can be a 'legal arrangement' such as a trust) has a status for the purposes of the CRS which they need to establish, in order to determine their registration and reporting requirements or (as the case may be) to declare to financial institutions upon request.

Entities will be financial institutions if they are one or more of the following:

- Custodial Institutions;
- Depository Institutions;
- Investment Entities; or
- Specified Insurance Companies.

For the present purposes, the definitions of each are similar to the definitions used in the IGA, and each entity

will be a New Zealand Financial Institution ('NZFI') if it is a New Zealand resident or has a New Zealand branch.

The key issue in relation to a person dealing in cryptoassets in the Metaverse is whether the definitions of Custodial Institution or Investment Entity apply. In relation to both definitions, the issue is (as with FATCA) whether such person is dealing with 'Financial Assets'. Unlike the IGA, for the purposes of the CRS, the term 'Financial Asset' is defined as follows:<sup>20</sup>

The term 'Financial Asset' includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term 'Financial Asset' does not include a non-debt, direct interest in real property.

This definition is recognised as not including cryptoassets. The OECD released its public consultation document 'Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard' ('CARF Proposal') in March 2022. In the CARF Proposal, the OECD makes the following observations:<sup>21 22</sup>

4. The Crypto-Asset market, including both the Crypto-Assets offered, as well as the intermediaries involved, poses a significant risk that recent gains in global tax transparency will be gradually eroded. In particular, the Crypto-Asset market is characterised by a shift away from traditional financial intermediaries, the typical information providers in third-party tax reporting regimes, such as the Common Reporting Standard (CRS), to a new set of intermediaries which only recently became subject to financial regulation and are frequently not subject to tax reporting requirements with respect to their clients. Furthermore, the ability of individuals to hold Crypto-Assets in wallets unaffiliated with any service provider and transfer such Crypto-

Assets across jurisdictions, poses a risk that Crypto-Assets will be used for illicit activities or to evade tax obligations. Overall, the characteristics of the Crypto-Asset sector have reduced tax administrations' visibility on tax-relevant activities carried out within the sector, increasing the difficulty of verifying whether associated tax liabilities are appropriately reported and assessed.

5. The CRS, published by the OECD in 2014, is a key tool in ensuring transparency on cross-border financial investments and in fighting offshore tax evasion. The CRS has improved international tax transparency by requiring jurisdictions to obtain information on offshore assets held with financial institutions and automatically exchange that information with the jurisdictions of residence of taxpayers on an annual basis. However, Crypto-Assets will in most instances not fall within the scope of the CRS, which applies to traditional financial assets and fiat currencies. Even where Crypto-Assets do fall within the definition of financial assets, they can be owned either directly by individuals in cold wallets or via Crypto-Asset exchanges that do not have reporting obligations under the CRS, and are therefore unlikely to be reported to tax authorities in a reliable manner.
6. Therefore, the current scope of assets, as well as the scope of obliged entities, covered by the CRS do not provide tax administrations with adequate visibility on when taxpayers engage in tax-relevant transactions in, or hold, Crypto-Assets.

The proposed amendments to the CRS would make a number of changes to the definitions, intended to bring cryptoassets within its scope. If implemented, that would potentially require CRS reporting and the exchange of information in relation to transactions occurring in the Metaverse involving cryptoassets.

### Anti-Money Laundering/Countering the Financing of Terrorism

While the blockchain is visible and one can have copies of transactions, the identities of the persons

behind those transactions are not visible. There is no way to tell if the source of the currency is legitimate, meaning the Metaverse appears to be able to facilitate tax evasion and criminal activity.

However, the New Zealand AML/CFT legislation (based on the OECD/FATF framework) takes a more functional, risk-based approach compared to, say, FATCA and the CRS. It does not differentiate between fiat

currency and other forms of assets, including cryptoassets. Accordingly, persons operating in the Metaverse to whom the AML/CFT rules apply should expect to be reporting entities and to be required to carry out customer due diligence, be subject to audit and reporting obligations.

In New Zealand, a recent case<sup>23</sup> involving the liquidation of Cryptopia, a cryptocurrency exchange operator, has made this clear and the liquidators have told the High Court that they are liaising with the New Zealand Police and Department of Internal Affairs. In that case, more than 44,000 early customers holding US\$23 million were not verified and had no trading limits. Internet location addresses showed most of Cryptopia's 2.2 million customers were based in the United States, Russia, Britain, India and the Netherlands, as well as Germany, Japan, Canada, Brazil and South Korea. Just 9,475 were based in New Zealand. Thousands of accounts holding more than US\$3 million were traced back to uninhabited tropical islands near Australia or could not be traced back to any location.

It should also be noted that New Zealand's AML/CFT legislation also contains specific provisions requiring enhanced due diligence if a reporting entity establishes a business relationship with a customer that involves new or developing technologies, or new and developing products, that might favour anonymity. This requirement may prove to be a useful part of the regulatory response to the challenges pose by the Metaverse, as it grows and evolves.

### Concluding Comments

It seems that the law still has some way to go to cope in a comprehensive manner with the challenges thrown up by the Metaverse. Tried and tested income tax principles

**The key issue in relation to a person dealing in cryptoassets in the Metaverse is whether the definitions of Custodial Institution or Investment Entity apply.**

seem capable of being adapted, or repurposed, to cope with the creation and disposition of value in the Metaverse. Other regimes, such as indirect tax regimes (GST and VAT) seem to need legislative amendment to cope with new functional currencies which are not money. Prescriptive regimes (such as FATCA and CRS) seem not to respond adequately to the Metaverse. Principles-based regimes, such as AML/CFT, seem to be capable of operating satisfactorily if the participants in the Metaverse, and the transactions to which those participants are party, are visible to reporting entities.

Perhaps the single most important conclusion is that the rule of law is capable of responding to this new environment. The Metaverse is capable of being everywhere and nowhere, and ultimately the individuals and entities involved will exist in the 'real world'. For so long as the 'real world' offers inadequate treatment of the Metaverse, distortions and inconsistencies will be exploited. A concerted and coordinated approach to create a principled and consistent 'level playing field' across all jurisdictions is warranted, and lawyers and the law can help with that.

## Notes

<sup>1</sup> Web3.0 is a decentralised, trustless and permissionless token-based economy on the blockchain.

<sup>2</sup> An NFT is a unique digital asset: it could be an image, a piece of music, a video, a 3D object or another type of creative work.

<sup>3</sup> Digital currencies are used as a medium of exchange through a computer network.

<sup>4</sup> See [www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions](http://www.irs.gov/businesses/corporations/summary-of-key-fatca-provisions).

<sup>5</sup> See [www.legislation.govt.nz/regulation/public/1983/0196/latest/DLM89839.html](http://www.legislation.govt.nz/regulation/public/1983/0196/latest/DLM89839.html).

<sup>6</sup> See [www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents](http://www.ird.govt.nz/international-tax/exchange-of-information/fatca/important-documents).

<sup>7</sup> MacAvoy & Russ, FATCA-Implications for Law Firms and Clients, NZLS CLE Ltd, May 2015.

<sup>8</sup> See [www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm](http://www.oecd.org/tax/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-in-tax-matters-second-edition-9789264267992-en.htm).

<sup>9</sup> The Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017 was given the Royal assent on 21 February 2017. It is accessible on the New Zealand legislation website at [www.legislation.govt.nz/act/public/2017/0003/latest/DLM6912415.html](http://www.legislation.govt.nz/act/public/2017/0003/latest/DLM6912415.html).

<sup>10</sup> Tax Administration Act 1994, s 185N(5).

<sup>11</sup> Ibid, Sch 2, Pt 1 and the Taxation (Annual Rates for 2019–20, GST Offshore Supplier Registration, and Remedial Matters) Bill (114-2), clauses 73 and 74(1).

<sup>12</sup> See [www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html](http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html).

<sup>13</sup> See [www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm](http://www.oecd.org/ctp/exchange-of-tax-information/implementation-handbook-standard-for-automatic-exchange-of-financial-account-information-in-tax-matters.htm), Brandts-Giesen and Russ, AEOL – Common Reporting Standards, NZLS CLE Ltd, July 2017.

<sup>14</sup> See [www.ird.govt.nz/cryptoassets/about](http://www.ird.govt.nz/cryptoassets/about).

<sup>15</sup> Note that there could be a different outcome if the person accepts deposits in the ordinary course of a banking business or is an insurance

company, in terms of the definitions of 'Depository Institution' and 'Specified Insurance Company'.

<sup>16</sup> IR 1081 Foreign Account Tax Compliance Act (FATCA) Registration guidance notes, October 2017 at [30]–[32] and Appendix 1.

<sup>17</sup> Being, in the case of the United States, the Secretary of the Treasury or a delegate of the Secretary and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner, pursuant to the IGA, Article 1(1)(1)(f).

<sup>18</sup> See [www.ird.govt.nz/-/media/project/ir/home/documents/international/fatca-documents/competent-authority-arrangement-usa-nz.pdf?modified=20200910060454&modified=20200910060454](http://www.ird.govt.nz/-/media/project/ir/home/documents/international/fatca-documents/competent-authority-arrangement-usa-nz.pdf?modified=20200910060454&modified=20200910060454) and [www.ird.govt.nz/-/media/project/ir/home/documents/international/fatca-documents/competent-authority-arrangement-trusts-usa-nz.pdf?modified=20200910060243&modified=20200910060243](http://www.ird.govt.nz/-/media/project/ir/home/documents/international/fatca-documents/competent-authority-arrangement-trusts-usa-nz.pdf?modified=20200910060243&modified=20200910060243).

<sup>19</sup> Brandts-Giesen and Russ, AEOL – Common Reporting Standards, NZLS CLE Ltd, July 2017.

<sup>20</sup> See [www.ird.govt.nz/-/media/project/ir/home/documents/international/common-standard-reporting/common-standard-on-reporting-and-due-diligence-for-financial-account-information.pdf](http://www.ird.govt.nz/-/media/project/ir/home/documents/international/common-standard-reporting/common-standard-on-reporting-and-due-diligence-for-financial-account-information.pdf).

<sup>21</sup> Ibid, pp 4 and 5.

<sup>22</sup> See s VIII(D)(7) and s VIII (D)(90 and in particular s VIII(D)(9)(f) of The New Zealand CRS Applied Standard, [www.ird.govt.nz/-/media/project/ir/home/documents/international/common-standard-reporting/common-standard-on-reporting-and-due-diligence-for-financial-account-information.pdf?modified=20200910054715&modified=20200910054715](http://www.ird.govt.nz/-/media/project/ir/home/documents/international/common-standard-reporting/common-standard-on-reporting-and-due-diligence-for-financial-account-information.pdf?modified=20200910054715&modified=20200910054715).

<sup>23</sup> *Ruscoe v Cryptopia Ltd (In Liquidation)* [2020] NZHC 728 (8 April 2020).



**Neil Russ**  
Director, Russ + Associates,  
Auckland

Neil specialises in corporate and international income tax issues, as well as structured transactions. Neil also has extensive experience in relation to GST matters. In addition to his tax expertise, Neil has a multi-jurisdictional background in banking, capital markets, structured finance, venture capital and private equity transactions. Neil is Convenor of the New Zealand Law Society's Tax Law Committee, and he is also heavily involved in AML/CFT advice. He is a NZLS member of the AML/CFT Industry Advisory Group.

# Law and the Metaverse: Adapting Fundamental Principles

The Metaverse will bring profound changes in socio-economic relations. Those in legal practice must be aware of these changes in order to adapt, always seeking to preserve fundamental principles, as well as the protection of human rights. In a hyper-connected society, the need to adapt to the new paradigms is what makes the role of the lawyer even more important.



## Introduction

The term 'Metaverse' first appeared in the science fiction work 'Snow Crash' (1992).<sup>1</sup> In the book, Neal Stephenson describes human-looking avatars that found themselves in a digital world that offered an ultra-realistic virtual reality experience. Currently, the Metaverse is understood to be a virtual world that simulates human, commercial and business interactions in reality. Today, the Metaverse has the potential not only to complement real-world experiences, but also to substantially supplant them.<sup>2</sup> In this sense, the law, seeking to keep up with the new changes that arise in society, also updates itself in the face of changes brought about by the Metaverse, which in turn has Web 3.0 as the central point of its development, a catalyst for technologies such as Blockchain, non-fungible tokens ('NFTs'), games and the construction of phygital environments.

During an increasingly transnational world scenario where communicative flows are presented as an increasingly dynamic phenomena, new technologies associated with the Metaverse emerge to better manage a huge process of information exchange in a hyper-connected society. In this sense, Web 2.0, previously associated only with a social internet that allowed collaboration between users, evolves to facilitate user interaction in a virtual universe linked to decentralised applications and artificial intelligence.<sup>3</sup> This new internet paradigm witnessed today is so called Web 3.0, which allows the exploration of a new range of applications and systems operated through the logic of decentralisation, among them, Decentralized Finance ('DeFi'), Decentralized Application ('dApp') and Decentralized Autonomous Organization ('DAO'), which, in turn, allows Web 3.0 to organise social structures, such as companies, NGOs and even governments.

The decentralisation process brought by Web 3.0 greatly innovated commercial relationships in the Metaverse due to the Blockchain system, which is engendered by a diffuse network of computers—called 'nodes'—in order to facilitate the process of recording transactions and asset tracking in an enterprise network as well.<sup>4</sup> It is worth mentioning the central role of the Blockchain system in the trading of cryptoassets through the public ledger (or accounting book) that records a virtual currency transaction, facilitating the exposure of data regarding its profitability and, thus, contributing to greater transparency of this business. In fact, greater reliability in data referring to digital trades by users

opens the door to greater investment in new ways of trading in the Metaverse.

Still, regarding the trade of assets in the Metaverse, it is worth noting the exponential growth of NFTs, which can act as certificates of exclusivity for digital goods (works of art, audios, photos, etc.). More than that, NFT technology grants a true immersion experience in the Metaverse by enabling the purchase of land, virtual real estate, clothes and other goods.

The discussion about expanding the limits of the Metaverse brings up the concept of a phygital environment (physical plus digital). This integration certainly affects a wide range of markets. Indeed, the retail market, for instance, is increasingly competitive, forcing those working in this sector to bet on innovative initiatives.<sup>5</sup> In this scenario, stores in the phygital model are trying to innovate by providing the same garment physically and virtually (for the customer avatar in the Metaverse). Another trend is that some stores provide augmented reality ('AR') technology for the customers to try on the garment without going to the store in person. Combining the convenience of doing business at a distance with the maintenance of a good customer experience is what phygital environments are looking for to implement in the Metaverse buying experience.

In light of the impact brought about by the Metaverse on virtual relationships, this article proposes a more detailed analysis of how the law can or should be adapted to deal with the new paradigms resulting from the Metaverse.

## Metaweb: Reinventing Law in the Metaverse Environment

### Is Change Required?

Even though the Metaverse will likely change social interactions, it is worth noting that the law does not necessarily need to change completely or unfold itself to predict every possible situation in this new environment. In many cases, it should be quite the opposite: the law might only adapt itself, which means interpretations of laws and jurisprudence will start to include this new universe. In other cases, some new laws will arise only to regulate specific situations. At the same pace, society will adapt to the Metaverse and will establish clear limits for this new place. That will also help legal enforcers in determining what is worth changing and what is not.

## The New Frontiers of Jurisdiction and Sovereignty of Governments

Shortly, the Metaverse will not just be a shopping or entertainment environment, but an extension of real life. In other words, it will be a virtual world in which probably most people will need to participate in order to be developed into the socio-economic order.

That means the physical borders of each country and culture may be reduced. Each individual can interact with people located anywhere in the world through a decentralised means of communication. Nationality and sovereignty may become secondary aspects of interactions. It will also become more difficult to delimit jurisdictions. After all, which government should act in that particular Metaverse? Will governments even have room to enforce the law in the Metaverse?

This new scenario certainly implies less government control and less centralisation of power. Local laws will still exist; however, there is a chance that the private corporations in the Metaverse will also create binding standards for their users. That raises another debate: can governments control how big corporations in the Metaverse create legal standards?

The situation is quite emblematic because in this new digital environment we will need, more than ever, to ensure the observance of human rights, data privacy, Anti-Money Laundering ('AML'), Know Your Client ('KYC'), Combating the Financing of Terrorism ('CFT'), among other fundamental rights. Ensuring legal security within the digital environment will be one of the great challenges of the coming years.

Alongside the discussion of law enforcement, there is a debate regarding how governments should treat personal data. On one hand, personal data is essential for the government to guarantee security; for example, data has become a crucial element to fight terrorism—after the 'terrorist attacks of September 11, 2001, the impetus for the government to gather personal information has greatly increased'.<sup>6</sup>

During the Covid-19 crisis, data was also proven essential in health policy. The Covid-19 Mobility Data Network

('CMDN'), a global network of experts, was created at the start of the pandemic by academics from the Harvard T.H. Chan School of Public Health. The platform aims to act as intermediaries in the data pipeline between big technology companies, who can collect this data, and public health decision makers, who can apply this information to develop effective policies.<sup>7</sup>

Moreover, it is noted that this public-private collaboration in data provision is important to understand the dynamics of dependency between government and big techs. After all, who is truly in control? How can governments assure their sovereignty, not only over other countries but also over providing companies?

All the questions listed in this topic have no easy answers, but they certainly point out that the only way for the government to assure their sovereignty in such a decentralised place like the Metaverse is by genuinely adapting to this environment.

That means diving into the typical structures of this place, such as DAOs or Decentralized Autonomous Organizations.

Nowadays, most countries offer e-services for their citizens, such as tax payments, e-documents, voting, etc. Although the user experience usually is better than in-person services, most of these e-services are centralised and rely heavily on human control. According to Coin Telegraph, 'the highly centralized IT infrastructure is extremely vulnerable to external assaults due to its lack of decentralization'. Another disadvantage of centralisation and human control is that it opens space for corruption or unnecessary bureaucracy. Therefore, implementing a blockchain-based e-Gov DAO could overcome some of these problems while saving public money on IT infrastructure.<sup>8</sup>

## DAOs and Smart Contracts: Effective Changes in the Corporate and Contractual Fields of Law

Decentralized autonomous organizations ('DAOs') are a new type of governing body legal structure. They aim to replace large companies in the creation and maintenance of Metaverse 'worlds'. It is like a technology service provider, but the main

The discussion about expanding the limits of the Metaverse brings up the concept of a phigital environment (physical plus digital).

difference is that they operate solely on decentralised technologies (Blockchains), which means that they are not constituted as a company in one or more jurisdictions.

Every member of a DAO often works towards a common objective and tries to behave in the entity's best interests in the absence of a central governing body. DAOs are used to make choices in a bottom-up management style and have gained popularity among bitcoin enthusiasts and Blockchain technology.<sup>9</sup>

Since DAOs are established in the Blockchain system, each member owns tokens. In the absence of a centralised decision maker, each tokenholder engages in the management and decision process of the DAO. The distribution of power through different agents changes the classic governance structure, which usually foresees different levels of hierarchy.

Another outstanding characteristic of DAOs is transparency—through Blockchain technology, all tokenholders have unrestricted access to every activity practiced in the DAO's environment.

Security is also a key point inside a DAO since there is no central authority for complaints; users must completely rely upon the structure, otherwise, they will leave it. In this sense, ensuring the security of this place should be one of the main concerns of a DAO.

After this initial contextualisation, we can identify several characteristics of a DAO, including decentralisation of power, transparency, publicity of the decision-making process and the creation of a community which encourages inclusive participation of different individuals.

Mostly because of its transparency, adapting DAOs to governments is under analysis. This structure could reduce corruption and bureaucracy since: (1) DAOs rules are stated in smart contracts—which means everyone needs permission to modify anything; and (2) DAOs are decentralised—which implies more surveillance by its members.

Smart contracts, in their turn, enable the parties to agree on a certain negotiation with the speed brought by the Metaverse relationships and, at the same time, create new grounds for contractual law.

Aiming at the versatility of contractual relationships, smart contracts allow their users to exchange money, property, information or any other item by combining the technologies arising from Blockchain.

In fact, because they are self-executing, smart contracts seek, in the first place, to use technology to guarantee the fulfilment of the agreement. In order to accomplish that, they use the Blockchain system to assure the execution of an agreement through the establishment of intelligent programming codes, setting out specific obligations and penalties in case of non-compliance with the terms of the agreement.

In the Metaverse, it seems to be no space for a different form of contract than a smart contract. Agreements between parties need to be formalised inside the Metaverse—that means they must be dynamical, Blockchain-based and self-executing. Given the high number of operations, it probably is not possible to allocate intermediaries to validate every operation performed in the Metaverse environment.

This fact raises the following question: considering smart contracts as self-executing contracts that do not require the intervention of third parties, does that imply a reduction in the demand for lawyers? Would unemployment in the legal market be a result of the popularisation of smart contracts?

The answer certainly is negative. As stated before, the arrival of the Metaverse brought a series of changes in the daily lives of companies, individuals and society. In the case of smart contracts, the need for skilled labour to manage digital relationships regarding data, security and programming will replace the absence of intermediaries in the execution of smart contracts.

In a world where only smart contracts exist, lawyers will be needed because auto execution not only decreases, but eliminates the room for any error. As the contract runs without any external intermediation, the terms of the agreement must be extremely specific to avoid any mistaken execution. Concerning that, lawyers may need to be much more specialised and meticulous.

It is worth noting that among the areas of the market likely to benefit from the arrival of smart contracts are, for example, insurance contracts. Because they

require a solid basis of information that attests to the likelihood of risks, it is necessary for lawyers with specific knowledge to manage the content of smart contracts, always checking for compliance with local law and respect for individual rights.

Lawyers will also be indispensable in online consumerism relationships. Even due to the large volume of negotiations in this area, it is essential to ensure customer safety in purchases made over the Internet, as well as in drafting contracts whose clauses respect consumer rights. Whether if—and which—current consumer protection laws are applicable to transactions performed in the Metaverse is still an ongoing discussion.

### Insights Regarding Courts, Data Protection and Intellectual Property in the Metaverse

Additionally, smart contracts and DAOs imply lesser involvement of centralising authorities, such as courts. This raises questions about who will enforce legal authority in the Metaverse environment. After all, will the current courts be able to impose their power within a digital and decentralised environment? Moreover, how to determine which court—in which country—should protect a certain right in the Metaverse?

That is not a simple question and demands studies of what has already been done in this field. In Brazil, for the first time ever in the Metaverse, the Ministry of Justice and Public Safety carried out a search and seizure warrant 'in' the Metaverse. The action was carried out as part of efforts against digital piracy and data leakage, aiming to personal data and dissemination of copyrighted content. The operation, which investigated crimes that generated a loss of almost US\$70 million per year, resulted in the arrest of eleven people.<sup>10</sup> Even though the operation happened in the Metaverse, the punishment was very real, showing that justice can indeed enter the Metaverse with its current structures. This reinforces the premise that law must, and can, be adapted to the Metaverse and should not be totally modified to occupy this space.

In relation to which country's court should act, in this Brazilian case, although the process is not yet

public, there are indications that Brazilian Justice acted because the pursued crimes generated consequences in the country. However, the jurisdictional question of the courts is extremely relevant, especially considering that criminal operations are also becoming more and more decentralised and globalised.

This case in Brazil also draws attention to the importance of data protection and intellectual property in the Metaverse. Decentralisation and the rapid flow of information are placing these rights in check as well. After all, with Web 3.0, the absence of borders boosted the number of user interactions per second to an unimaginable extent.

Each NFT, with its unique digital certificate, needs intellectual property protection.

As for data protection, it can be argued that the greatest difficulty is to ensure the data subject has control over his or her data, in other words, informational self-determination in the Metaverse. As an immersive and three-dimensional environment, the Metaverse platforms, besides having data provided by the users, also can observe and archive data about their behaviour. This data can reveal, for example, consumption trends and user desires, being extremely valuable for companies. Furthermore, users can observe and collect data from each other.

Indeed, the new data paradigm is unique: in 2020, each individual created about 1.7 MB of data every second.<sup>11</sup> That certainly means courts may have to establish new standards for understanding data policy and what is or is not a violation. With the huge volume of data being processed, the scenario is extremely delicate.

We have similar debate regarding intellectual property rights in the Metaverse, specifically in aspects about NFTs. Each NFT, with its unique digital certificate, needs intellectual property protection. With this growing number of NFTs copyrights, it becomes increasingly difficult for the law to enforce this right. For that matter, likewise, the Metaverse will require new ways to guarantee the protection of intellectual property.

There is also another debate when it comes to reproducing real goods into virtual objects, whether



it is an NFT or not. Recently, many luxury brands launched initiatives and products in the Metaverse—but how about independent developers that are inspired by the look of real products when they deploy their completely virtual counterpart? This question goes through an intellectual property perspective—there are still discussions if any IP protection can be enforced considering virtual reproductions of copyrighted real products.

Those points of view show that there are more than just general legal challenges regarding the Metaverse. Some specific legal matters like criminal, data protection, consumer law and intellectual property, for instance, also will need to be revisited and, if necessary, adapted, for this new (and virtual) reality.

## Conclusion

With the rise of the Metaverse, the law will face several challenges. The scenario will be one of radical change, but never of the destruction of fundamental principles of justice. From this perspective, forcing old structures into this new environment will not work, but destroying them is not the solution either. The path of adaptation to the Metaverse includes always looking at the humanity of each individual and striving to promote the general welfare.

Finally, the adoption of any technology certainly does not limit the lawyer's work. On the contrary, understanding that the Metaverse has not come to introduce a one-time change in the labour market, but to inaugurate a new universe with a huge range of opportunities and career ventures is of paramount importance in building the future.

Being able to adapt to the new scenarios and paradigms brought by the Metaverse is what makes the lawyer's role increasingly necessary in a hyper-connected world. Showing, once again, that the Metaverse is indeed an unexplored environment, but one full of opportunities.

## Notes

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<sup>7</sup> Amy Roeder, The Power of Data in a Crisis, Harvard T.H.Chan School of Public Health (2021), available at [www.hsph.harvard.edu/news/features/the-power-of-data-in-a-crisis/](http://www.hsph.harvard.edu/news/features/the-power-of-data-in-a-crisis/) (accessed 20 July 2022).

<sup>8</sup> eGov-DAO: A Step Towards Better Government Using a Blockchain-based Decentralized Autonomous Organization, Coin Telegraph, available at <https://cointelegraph.com/decentralized-automated-organizations-daos-guide-for-beginners/egov-dao-a-step-towards-better-government-using-a-blockchain-based-decentralized-autonomous-organization> (accessed 20 July 2022).

<sup>9</sup> Nathan Reiff, Decentralized Autonomous Organization (DAO), Investopedia (2022), available at [www.investopedia.com/tech/what-dao/](http://www.investopedia.com/tech/what-dao/) (accessed 22 July 2022).

<sup>10</sup> Cointelegraph Brasil, Pela primeira vez, Justiça brasileira cumpre mandado de busca e apreensão no metaverso, Revista Exame (2022), available at <https://exame.com/future-of-money/pela-primeira-vez-justica-brasileira-cumpre-mandado-de-busca-e-apreensao-no-metaverso/> (accessed 25 July 2022).

<sup>11</sup> Jacquelyn Bullao, How Much Data is Created Every Day in 2022?, Techjury (2022), available at <https://techjury.net/blog/how-much-data-is-created-every-day/#gref> (accessed 28 July 2022).



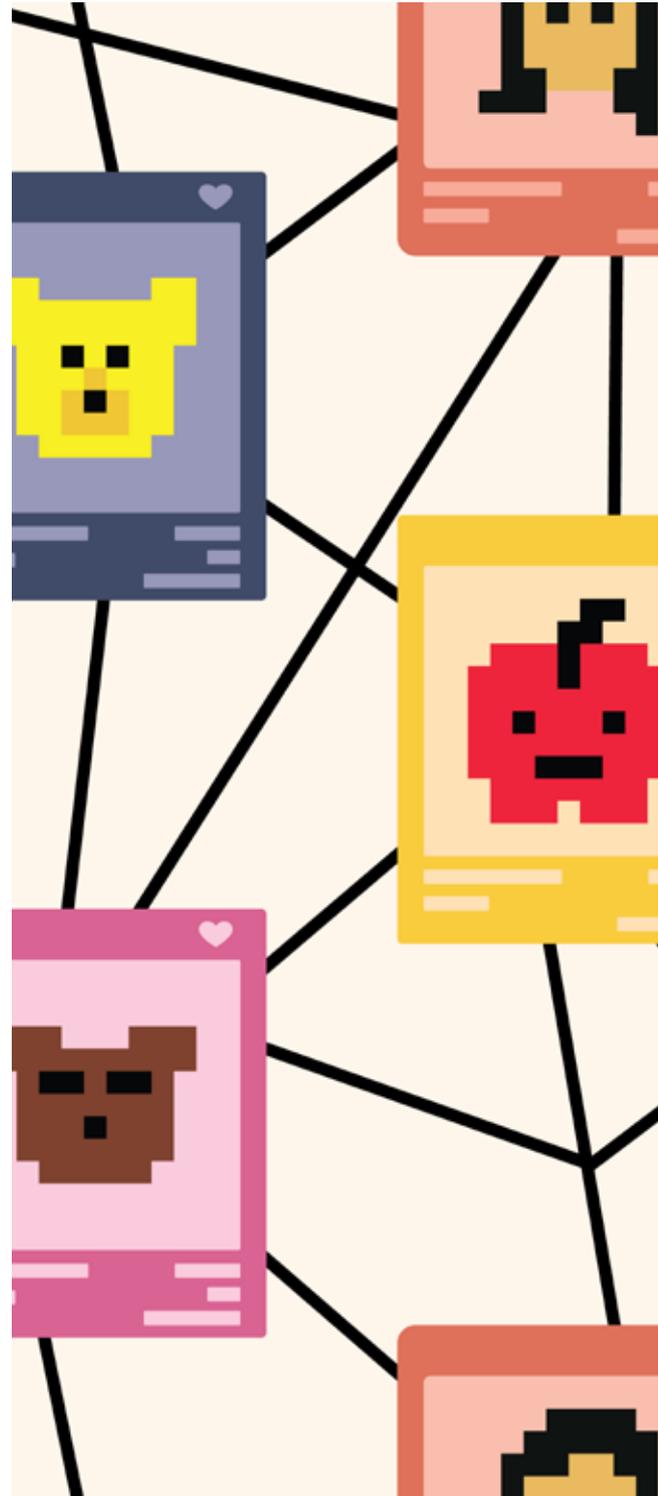
**Shin Jae Kim**  
Partner, TozziniFreire Advogados,  
São Paulo

Shin is the Head of Compliance Practice of TozziniFreire Advogados. Respected for her leading practice and more than 30 years of experience in corporate law and M&A transactions, she counsels investors from several different countries on their inbound and outbound investments. She is a former Officer and Programme Coordinator of the IPBA.

*The author was assisted by Patricia Helena Marta Martins, Carla do Couto Hellu Battilana, Sofia Kilmar and Victor Cabral Fonseca.*

# Metaverse and Legal Framework in Vietnam

As technology develops, along with non-fungible tokens ('NFTs'), the digital universe 'Metaverse' has been one of the most explored new technology trends for more than a year. The Metaverse will mimic the real world and we will be able to do anything that we can already do in real life and much more. While we don't yet know if the Metaverse will be as successful as hoped, the development of the Metaverse, NFTs or the crypto economy poses a lot of new legal problems for every legislator in the world, including Vietnam. As it is a huge concept—a virtual universe—the Metaverse also contains many complex legal issues that are superior to other technology concepts. This is understandable because essential elements that form the Metaverse, like NFTs or cryptocurrency, have contained many legal problems and challenges for both legislators and legal consulting firms. The legal challenges for Vietnam will be discussed in this article.



## Introduction

Although now exploding in popularity, the concept of the Metaverse is not new. The word was originally coined in 1992 by author Neal Stephenson, by joining the words 'meta' and 'universe' in his science fiction novel 'Snow Crash', which is about dystopian science avatars who interact with each other and software-based agents. In addition, according to the Oxford Languages dictionary, a Metaverse is a virtual-reality space in which users can interact with a computer-generated environment and other users. However, there is no universally accepted definition for the term 'Metaverse' and, for many, it is simply an amorphous term used to refer to an as-yet-undeveloped future of the Internet. Mark Zuckerberg in his October 2021 letter to Meta Platforms shareholders provided a helpful description of the Metaverse as an 'embodied internet where you're in the experience, not just looking at it'. The Metaverse aims to be a physical representation of the Internet, where users can experience digital worlds immersively. Almost all conceptualisations of the Metaverse include the use of virtual reality ('VR'), augmented reality ('AR') and avatars, connected by a massive network.

The Metaverse can be divided into two distinct platform groups. The first group revolves around building a virtual world based on blockchain, through NFTs and cryptocurrency to use features inside the game. Games like Decentraland and The Sandbox let users buy virtual parcels of land and build their own spaces. The second group uses the Metaverse to refer to the virtual world more generally, where users can meet for work or entertainment. The term also became popular when Facebook CEO Mark Zuckerberg mentioned turning the company's social networking platform into a separate virtual universe. He thinks that the Metaverse will be the successor of the mobile internet.

## What is the World's and Vietnam's Interest in the Metaverse?

Due to the potential of the Metaverse, Western technology giants in various fields, such as Microsoft (specialising in computer support software and services), Facebook (the new social networking company renamed Meta), Nvidia (specialising in graphics and chipsets), Epic Games and Roblox (specialising in game studios), Match Group (specialising in online dating service) and many other companies are pouring their research into realising the Metaverse. Microsoft is also starting to enter the Metaverse, but is still tied mainly

to its traditional business customers. In November 2021, Microsoft announced a platform called Mesh as an integration inside the Teams online work application. Mesh launched in the first half of this year in limited free preview with the ability to create avatars, create virtual meeting rooms for employees and share text files using Microsoft Office. Dynamics 365 Connected Spaces is another Metaverse product that has also been introduced, allowing users to move and interact within retail and factory spaces. Names of game companies that have been successful in this field that can be mentioned include GTA V Online developed by Rockstar North, Fortnite developed by Epic Games or the blockchain game Decentraland. Also 'big' in games is China's Tencent, which in September 2021 registered the copyright for two trademarks, Timi Metaverse and Kings Metaverse. Although it has not announced specific plans, this shows that Tencent wants to integrate the Metaverse into its vast ecosystem of games, virtual offices and mobile payments.

Not being left out of this trend, many technology companies in Vietnam have conducted research and development of Metaverse applications, mainly in the field of NFT game development. Axie Infinity, a game developed by a group of Vietnamese people, currently has a total market capitalisation of over US\$8 billion. In addition, it is impossible to miss the outstanding development plan of Viettel Group—the largest telecommunications group in Vietnam. It has taken its initial steps, through its affiliate, towards developing a Metaverse platform by analysing the available 5G platform, business models and technology trends. VinFast, the global electric vehicle brand owned by Vingroup and Vietnam's largest private conglomerate, launched a collection of NFTs (VinFirst NFTs) as part of the EV reservation. On 15 June 2022, an outstanding event took place in Da Nang City of Vietnam, namely, the launch event of Metaverse Village, the first village in Vietnam built to research and develop virtual reality technology, with the desire to connect Vietnam's technology with the world and access to the latest technology platforms, catch up with global technology trends and create new values in the field of virtual reality technology in Vietnam.

It can be acknowledged that exploiting and developing a new Metaverse application is in its infancy, focusing heavily on the entertainment sector. The research and development of Metaverse applications in other fields

have not been deepened. The interest in developing the Metaverse in particular and blockchain applications in general in Vietnam also raises questions about solving problems arising in online electronic transactions, ensuring safety and conformity through international standards and effectively promoting the digital transformation process in Vietnam.

## Legal Challenges for the Metaverse in Vietnam

### Overview

Currently, the Metaverse is being diffused and developed in Vietnam and it initially gave users interesting experiences. The first and most recognisable is the spread of the Metaverse in shopping centres where devices are located to allow users to experience sensations as well as perform activities in the virtual world. It is undeniable that these activities attract quite a lot of attention from users and some enterprises have used the Metaverse to collect the information of users for the purpose of understanding and capturing people's tastes and preferences to develop the product. Besides games, applications are created in the world of the Metaverse and users participate in games and have interactive activities right in the virtual world, but with real information. This poses many challenges for regulators in creating a legal framework for the Metaverse because when the Metaverse was developed in Vietnam, a series of legal issues were raised that the legislators, legal consulting firms or the government themselves are also confused about handling. Indeed, there are no legal documents to regulate the Metaverse field, which implies many potential risks. Some of these can be highlighted as follows:

### Whose Laws Apply?

As with the Internet, Metaverse platforms cross country boundaries in their operations. Developers of Metaverse applications and platforms have their own policies, procedures regulation and conduct from inappropriate speech to how data can be accessed, which will be based on the laws of the countries in which they operate. Laws in the Metaverse will initially draw upon the laws of the countries in which the relevant platforms operate, in a similar way to social media platforms or search engines today. In fully immersive digital worlds, Metaverse platforms will need to implement internal

compliance policies and procedures (effectively private laws) to regulate all aspects of behaviour that are regulated by laws in nation states. Besides this, the internal regulations of these platforms will interact and overlap with nation-state laws in a much broader array of areas than currently is the case for internet platforms.

When there is a dispute between a user and a service/product provider on the Metaverse, the biggest problem may be that of cross-border transactions and how to choose the applicable law to handle the disputes. For example, in the case that rights of users in Vietnam are violated by United States companies or by users based in the United States, how do our authorities protect people? When will there be a coordination mechanism between countries? The above questions show that it is very urgent to establish an official mechanism as to the Metaverse, so that users can really feel secure when participating in this virtual space.

As with the Internet,  
Metaverse platforms  
cross country boundaries  
in their operations.

### Data Security and Privacy

To provide users with a rich interactive experience, aiming to accurately simulate real people in the virtual world, the technology used in the Metaverse can collect information about eye movements, user's brain waves, facial muscles, behaviour, gestures, attitudes, fingerprints, voice, etc. Artificial intelligence applications will rely on this information to store, track and analyse data to gain a deeper and more accurate understanding of users. However, if this information is not strictly managed and controlled, then Metaverse users will not simply be exposed to the disclosure of their identities, but also the use of their extremely sensitive and personal information in real life, that is likely to lead to dire consequences. Therefore, digital security and privacy will be among the most significant legal issues facing platform owners. These concerns are not new to tech companies, which face increasing scrutiny from regulators and users. This developing technology will stress-test existing laws and put even greater pressure on lawmakers to match the sophistication of the technology.

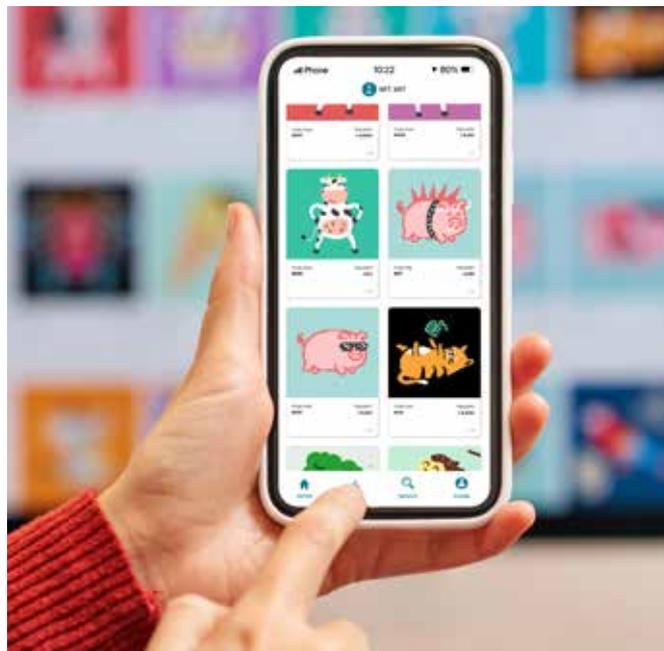
In Vietnam, legal regulations on personal data protection have been generally developed. Accordingly, Article 21 of the Constitution of Vietnam stipulates that everyone's information about private life, personal and

family secrets is inviolable and is guaranteed by law. However, this provision only recognises it in general and does not limit where the information is stored in the actual world or the virtual world on the Internet. So, it can still be understood that this provision will also be applied to protect personal data in the virtual world. In addition, the Law on Cyber Information Security 2015 can be mentioned, but these regulations only generally recognise the responsibility of users themselves to protect their own information online and the responsibility of agencies, organisations and individuals for processing personal information to ensure network information security for the information they process.

However, Vietnam's regulations and law on personal information security have thus far only skimmed on the surface. More precisely, they have not fully secured the rights of individuals with personal information as there is no regulation on violations of user data in the Metaverse and any relevant sanction. In addition, Vietnam's case law system has not recorded any judgments related to disputes in the Metaverse. Because the definition of the Metaverse and related regulations has not been recognized in any laws of Vietnam, it leads to confusion for individuals and organizations when approaching this concept. Many questions are raised, such as: what data of users are third parties allowed to collect; what rights and obligations do users have with respect to their own data in the Metaverse?

### Intellectual Property

Questions of intellectual property are also highly relevant. For example, determining the identity of the creators of a given work in the Metaverse may be more difficult when the work results from a decentralised collaborative process performed by users anonymised behind avatars. According to the fundamental legal principle of intellectual property law, the author is the person who created the original and first version of the work and this person owns the copyright, unless he agrees to transfer the rights to someone else. The author has the exclusive right to copy, distribute, modify, publish or assign the relevant property rights of the work. However, it is not clear whether use and exploitation of previously licensed or acquired intellectual property rights covers the extent of use in the Metaverse. The Metaverse may pose a risk to copyright holders as it is not practical to control piracy of works in the Metaverse. In addition, content creators face risks:



for instance, if they are relying on existing licences in the underlying works to create digital content for the Metaverse, they must ensure that such existing licences include the use of copyrighted work in the Metaverse.

Courts in the United States can invalidate patents related to 'abstract' software and which are not eligible for patents under 35 United States Code 101 and a case law of the Supreme Court (*Alice Corp v CLS Bank International*, 573 U.S. 208 (2014)). In 2020, the eligibility of 27 software patents went up for review before the US Court of Appeals for Patents. Of the 27 patents, the court found that only four were partially or fully eligible under section 101. This poses a risk of cancellation for patented AR/VR inventions.

Despite being a developed country, the US law related to this issue has not been complete to match the development trend of the Metaverse. Other developing countries with relatively 'simple' legal systems like Vietnam may take a lot of time to research and adjust to harmonise and catch up with this trend.

### Fintech

Legal issues related to fintech will arise increasingly in the Metaverse, especially as more companies offer digital assets and services for sale. Sales of virtual goods are already being made using cryptocurrencies and other digital assets and they may ultimately be

supported by the same blockchain technologies that allow for the Metaverse's essential interoperability functions. Legal questions will surely arise regarding the proper verification of ownership, potential infringement, or conversion of authentic and verified purchases. If cryptocurrency is treated like a financial instrument or security, which seems increasingly likely in certain jurisdictions, then consumers will experience hurdles using cryptocurrency as a currency for the purchase of digital goods.

Cryptocurrency is not currently recognised by Vietnamese law, so there is no basis to guarantee the interests of the parties when performing transactions in the virtual world. Currently, the State Bank of Vietnam still studies the issue of cryptocurrencies, developing a roadmap as well as piloting the use of cryptocurrencies on blockchain technology in the period from 2021 to 2023. Thus, according to the results of the State Bank, the Government of Vietnam will consider whether and to what extent cryptocurrencies will be involved in transactions on the Metaverse's platform.

### Protecting the Interests of Consumers

The Metaverse creates an ecosystem that exists in parallel to the real market. Indeed, in the Metaverse, there exists fundamental parties such as Metaverse ecosystem providers, companies that provide services/sell products and consumers. However, the problem is that the law governing the relationship of the parties such as the Commercial Law and the Civil Code have not recorded transactions arising on the Metaverse. Similarly, following the Law on Protection of Consumer Rights, owners have not recorded any mechanism to protect the interests of users as consumers when participating in the Metaverse. When the parties have begun to gradually participate in transactions on the Metaverse, but the regulatory framework has not been formed, including national laws and international treaties, this leads to a lack of legal grounds for settlement of issues. When the parties have a dispute, the interests of consumers are not guaranteed. Moreover, even if relevant legal documents are developed, which country's laws or treaties will be applied to solve it is also an issue

that makes the Government of Vietnam and other countries ponder, because most are cross-border transactions.

Thus, if the rights of a user located in Vietnam is infringed by a French company when participating in the Metaverse platform provided by a party based in the United States, the question arises as to which country's laws are applied to protect the consumers' rights and which legal documents prevail under the coordination mechanism between countries for such disputes that arise.

### Legal Framework for the Metaverse

The Metaverse is bringing many changes in modern people's lives, facilitating the connection between people in different geographical distances, which brings people together to interact in the virtual world in different ways. For example, people can shop or do business. Legislators of many countries around the world are trying to build and complete the legal system so that they can create a favourable, safe and protective environment for individuals and organisations when engaging in the Metaverse.

Legal issues related to fintech will arise increasingly in the Metaverse, especially as more companies offer digital assets and services for sale.

In the United States, in 2013 the US Department of the Treasury defined Bitcoin (cryptocurrency) as a convertible currency with an equivalent value for real money or as a functional alternative to real money. Any entity that conducts the management or transaction of Bitcoin is identified as a money services business, is subject to the Bank Secrecy Act and is required to register with the US Department of the Treasury and must file reports on transactions over US\$10,000 purchased with cryptocurrency. In the European Union ('EU'), Bitcoin and other cryptocurrencies are recognised as cryptoassets. In 2020, the European Commission completed a proposal on cryptoassets regulation with the aim of keeping financial regulatory frameworks undivided and ensuring a fair financial playing field across the EU. In Canada and Australia, cryptocurrency transactions are considered money services businesses and are governed by the laws of these countries. Notably, Dubai's Virtual Assets Regulatory Authority ('VARA') has become the world's first regulator, aiming

to provide a framework for financial entities to operate in the Metaverse, including, among other things, banking and state services. The fact that Dubai's state regulator is the first to come up with such an initiative is notable, as the Emirate is currently one of the world's largest IT entrepreneur hubs.

Many countries in Asia are experiencing strong incentives for the initial exploitation of the Metaverse. For example, investments in Thailand relating to the Metaverse are seen both in the public and private sectors. These investments involve many traditional companies, such as the telecom giant Advanced Infor Services or Thailand's leading shoemaker Nanyang and governmental policies such as the recently announced plan in Phuket by the Minister of Tourism and Sports and Minister of Digital Economy and Society.

Thus, not keeping out of this trend, Vietnam is also pushing for developments in policy changes and businesses. Notably, in recent years the Vietnamese Government has been hard at work pushing for comprehensive digital transformation for the country. Strong initiatives have laid out key milestones, such as Decision No 411/QĐ-TTg, dated 31 March 2022, on the Approval for the national strategy for the development of the digital economy and digital society by 2025 and orientation towards 2030.

Especially in May 2022, the Vietnam Blockchain Association, the country's first entity in the crypto space, launched in Hanoi to allow blockchain experts to collaborate in promoting the development of Vietnam's digital economy. Not long after its inception, the Association announced cooperation with Binance—the world's leading corporation in blockchain development technology—on blockchain research or its application in Vietnam.

Several legal instruments were amended and supplemented to match the development of virtual technology. On 4 May 2022, the MIC released the Draft Law on E-Transactions ('Draft Law') for public comment, which caught a lot of attention from tech businesses. The Draft Law proposes new regulations and requirements for digital signatures, digital identities and other topics. As transactions in the Metaverse, like online purchases, are made by cryptocurrency or by connecting a digital wallet to a bank account, it is necessary to have advanced digital payment confirmation such

as digital signatures, digital identities, e-contracts, etc. Several pieces of legislation regarding technology as well as various aspects of the Metaverse's digital and virtual worlds, such as data privacy, cyber security, consumer protection and intellectual property, are also on the way. These upcoming regulations include the Draft Law amending the Law on Telecommunication; the Draft Law on Digital Technology Industry and the Draft Revised Law on Radio Frequency. All of which are expected to be considered and approved in 2023; the Draft Decree detailing the Law on Cybersecurity; the Draft Decree on Personal Data Protection; the Draft Decree amending Decree No 72/2013/ND-CP on the Management, Provision and Use of Internet Services and Online Information; the Draft Amendment of Law on Consumers' Rights Protection.

## Conclusion

The Metaverse presents an incredible array of possibilities and poses a variety of novel legal issues that will need to be addressed. Metaverse platforms remain in their infancy and the legal issues that will eventually need to be addressed have thus far only been skimmed on the surface. It is expected that as these platforms mature and user adoption increases, these issues will become more relevant. With multiple legislation underway, lawmakers, businesses and lawyers will be remarkably busy catching up with such a tight legislative agenda. Such prompt and comprehensive developments would bring a promising future for the Metaverse in Vietnam.



**Bui Cong Thanh (James Bui)**  
Managing Partner, PLF Law Firm,  
Ho Chi Minh City

Mr Bui Cong Thanh is the Managing Partner of PLF Law Firm. He is also a member of the Vietnam Business Lawyers Club, Ho Chi Minh City Bar Association and the Vietnam Bar Federation. He specialises in real estate and M&A deals related to enterprises operating in various sectors, such as services, retailing, manufacturing, technology and F&B.

# Metaverse Property Protection From the Perspective of China

In recent years, with the rise of the Metaverse concept, related legal issues have emerged along with it, and the protection of the rights of virtual assets is undoubtedly one of the core issues. Given that users often need to pay real-world monetary consideration for acquiring property in the virtual world, it's worthwhile to study and share how to use existing laws and regulations to realize the protection of virtual assets as soon as possible. This article provides a view about the protection of Metaverse property from a legal practice perspective in China.



## Introduction

The famous American science fiction master Neil Stephenson wrote in his novel 'Snow Crash': 'Put on headphones and eyepieces, find the connection terminal, and you can enter a virtual space simulated by a computer and parallel to the real world in the form of a virtual avatar.' This is the first mention of the Metaverse. On 10 March 2021, Roblox, the 'first stock of the Metaverse', landed on the New York Stock Exchange and its market value on the first day of listing exceeded US\$40 billion, which is considered a milestone in the Metaverse. The Metaverse is a virtual world that is linked and created by technological means and is mapped and interacted with the real world. The new visual scene generated by the Metaverse will make more people immersed in the virtual world. The coming of the Metaverse is not only an innovative revolution in technological concepts, but also brings with it many pending legal issues. The first and foremost is how to fully protect the rights of the virtual property of every participant in the Metaverse that fully interacts with real society but is completely different.

## Definition of the 'Metaverse'

Chinese domestic scholars define the Metaverse in different ways: Professor Chen Gang and Dr Dong Haoyu of Peking University define the Metaverse in this way:

The Metaverse is a virtual world that is linked and created by scientific and technological means, maps and interacts with the real world, and a digital living space that has a new type of society.

Professor Shen Yang from the School of Journalism, Tsinghua University defines the Metaverse as follows:

The Metaverse is a new internet application and social form that integrates a variety of new technologies and integrates virtual and reality. It provides immersive experience based on extended reality technology and digital twin technology to generate reality. The mirror image of the world, builds an economic system through blockchain technology, closely integrates the virtual world and the real world in the economic system, social system, and identity system, and allows each user to produce and edit content.

... Metaverse is still an ever-evolving, evolving concept, with different players enriching its meaning in their own way.

More scholars have cross-defined the Metaverse from the four aspects of space-time, authenticity, independence and connectivity. From the perspective of space-time, the Metaverse is a digital world that is virtual in the spatial dimension and real in the time dimension; from the perspective of authenticity, there are both digital replicas of the real world and creations of the virtual world in the Metaverse; from the perspective of independence, the Metaverse is a parallel space that is closely connected with the external real world and is highly independent; from the perspective of connectivity, the Metaverse is a sustainable and wide virtual reality system that includes the network, hardware terminals and users.

So, in this new word, the Metaverse is composed of two words 'meta' and 'verse', where meta means 'transcendence' and verse means 'universe', which together is the concept of a 'transcendent universe': a parallel artificial space that operates in the real world and is the next stage of the Internet, a virtual reality network world supported by AR, VR, 3D and other technologies, and which has sufficient interaction with the real world. Metaverse properties are all kinds of virtual properties with real value attributes that exist in this virtual world.

## Metaverse Property Protection in China Legal Characterisation of Metaverse Property With Different Opinions

Metaverse assets can be divided into two parts: one is the UGC (User Original Content) mainly produced by users; the other is equipment, services, technologies, etc., provided by operators or those developed by operators. There is no doubt that the rights to the content produced by operators as the entity belong to the operators.

However, the ownership of UGC rights produced by users is still controversial. If digital assets (such as account numbers and virtual items) belong to the account owner, the problem of users' transfer and carrying of virtual assets will be derived, which will also bring great challenges to the user platform. At present, the development of the Metaverse is almost monopolised by technology giants. In order to protect the interests of the company, the platforms are isolated from each other. Therefore, there are still problems in the current situation when accounts are transferred from one operator to another. From the perspective of creation by the user, because users continue to produce content

and create, attract new users to continue to enter and create profits, the digital assets of the Metaverse should belong to the creators.

As early as April 2021, a domestic internet giant 'A' sued a third-party game trading platform for infringing on its right to disseminate information about its works. Mobile Game 'B' sued this internet giant because of unfair competition. In these two cases, A claimed that the account number and the ownership of virtual items in the user's hands belong to A and the user only had the right to use it. This caused dissatisfaction among many users. Users could not accept that accounts were obtained by recharging and spending a lot of time, but they could not control the accounts at will.

In the relevant game service agreement, it is seen that the operator clearly stipulated in the agreement that the ownership of the game account belonged to the developer and the user only had the right to use it. It can be seen from this that, at present, domestic game operators do not recognise that users have ownership of the virtual property of the game and only recognise the user's right to use the virtual property through the contract and the right to use is often limited by a certain time.

The Civil Code of the People's Republic of China does not clearly attribute virtual property to the general provisions on property rights in Article 115, but stipulates in Article 127 that 'where the protection of data and network virtual property is stipulated by law, such stipulations shall prevail'. It can be seen that the Chinese characterisation of Metaverse property is still under discussion and research and there is still no clear agreement on the legal attributes of virtual property, so it has not been clarified in the Civil Code. In fact, it is indeed inappropriate to simply identify virtual property as a property right. The domination of property rights is the actual control of things by people to maintain the order of possession of things in the real world, while virtual property has a strong dependence. Users can only operate electronically through computers and the Internet and follow established procedures. The electromagnetic record of space no longer has the value of independent existence without the virtual world. People have weak control over it. Moreover, due to the

characteristics of copying, deleting, etc., or by writing code, virtual property is likely to increase, decrease or disappear out of thin air, resulting in an uncertain state of disorderly change, which directly violates the certainty of the object.

Second, regarding virtual property as intellectual property, this view advocates that virtual property is an intellectual creative achievement obtained through human-computer interaction and should be protected as intellectual property, but intellectual property is statutory, which means that its connotation and type should be protected as intellectual property. It is clearly stipulated by the law that the parties are not allowed to create new types of intellectual property by themselves, which will greatly increase the cost of legislation.

**There are cases in Chinese judicial practice that virtual property is classified as the right to use rather than simply identified as a property right.**

However, it should be noted that Metaverse users would reach a network service contract with the Metaverse network operator before enjoying the relevant rights of virtual property through the network. The operator provides the Metaverse world service to the user according to the agreement. Therefore, virtual property conforms to the basic characteristics of debt. Moreover, there are cases in Chinese judicial practice that virtual property is classified as the right to use rather than simply identified as a property right. The author believes that virtual property rights are more suitable to be adjusted according to the relationship of creditor's rights. On the one hand, Metaverse users pay actual consideration in accordance with the service agreement, so that operators are obliged to perform services, provide accounts, equipment, etc., and form a creditor-debtor relationship. If the operator obstructs the user from obtaining and using such assets or provides such assets in violation of the promises made at the time of sale, the operator infringes the legitimate rights and interests of the user and this constitutes a breach of contract and the user has the right to require the operator to perform as agreed and to compensation for actual losses. On the other hand, if a third party infringes the user's right to use virtual assets by illegal means, since the user's account assets, as a credit certificate entitling the user to enjoy the operator's services and having real property value, therefore such certificates will be damaged, or there will be loss or departure

from the user's control. Such illegal infringement of other people's property can be punished and regulated by the relevant provisions of the Criminal Law. This is discussed further below.

## **Virtual Property Should be Protected by Means of Criminal Law in Different Categories**

### **(a) General**

As mentioned above, given the ambiguity and complexity of the characterisation of virtual property, a generalisation approach is not realistic. At present, on the basis of the theory of creditor's rights, it is feasible to classify and regulate various virtual assets by means of the criminal law. For virtual property containing real-world information, criminal law weapons can be used directly on the basis of protecting real-world information; for property that exists completely in the virtual world, although it does not directly reflect real-world information, it has property attributes and is also subject to criminal law adjustment.

### **(b) The infringement of virtual property containing real-world information can be regulated by criminal charges such as the crime of illegally obtaining computer information system data**

Generally speaking, such property directly includes personal information, business information, etc., in the real world of users. Article 285 of the Criminal Law of the People's Republic of China specifies the crime of illegally obtaining computer information system data and illegally controlling a computer information system, which stipulates that intrusion into a computer information system or the use of other technical means to obtain data stored in the computer information system, whoever processes or transmits data or illegally controls the computer information system, if the circumstances are serious, shall be sentenced to a fixed term of imprisonment of not more than three years or criminal detention and shall also or only be fined. If the circumstances are especially serious, the sentence shall be a fixed term of imprisonment of not less than three years but not more than seven years and a fine.

In 2011, the Supreme People's Court and the Supreme People's Procuratorate promulgated the Interpretation on Several Issues Concerning the Application of Law in Handling Criminal Cases of Endangering the Security of Computer Information Systems, Article one of which states that illegal

acquisition of computer information system data or illegal control of computer information systems, in any of the following circumstances, it shall be determined to fall under 'serious circumstances' as stipulated in Paragraph 2 of Article 285 of the Criminal Law:

1. ten groups of identity authentication information for obtaining payment and settlement, securities trading, futures trading and other online financial services; and
2. obtaining more than 500 sets of identity authentication information other than item (1) above.
3. The infringement information is clearly defined as identity information, which highlights the key punishment for infringing virtual assets and thus damaging information security in the real world.

In addition, if infringing on business secrets and citizens' personal information by illegally obtaining and damaging the virtual assets of Metaverse users, this also involves violations of Article 219 of the Crimes of Infringement of Commercial Secrets and Article 253 of the Crimes of Infringing on Citizens' Personal Information and will also be directly regulated by the Criminal Law.

### **(c) Infringement of pure virtual assets with real property attributes can be regulated by crimes of infringing property**

As mentioned above, even if the claims are taken, the assets of Metaverse users in the virtual world are by no means worthless. On the contrary, since virtual assets such as account information are used as creditor's rights certificates, they are obtained based on the monetary consideration paid by the user in the real world and have the function of the user enjoying the services provided by the Metaverse operators, which obviously has a monetary value in the real sense. Therefore, no matter in what way the user's right to control such property is infringed, it is suspected of violating the crime of infringing property rights in the Criminal Law. For example, those who deceive users and take virtual assets for themselves under the pretext of borrowing accounts and operating on their behalf are suspected of committing the crime of fraud, Another example is directly invading users' accounts and stealing their virtual assets by hacking

means are suspected of constituting the crime of theft. We believe that the debate on the current legal ownership of virtual property should not hinder the first confirmation that virtual property has real value attributes and should be based on this as the basis to protect the legitimate rights and interests of users as soon as possible.

### **Future Prospects of Metaverse Property Protection**

At present, Chinese law academics are still in the stage of intense debate on whether virtual property in the Metaverse world belongs to real rights, creditor's rights or intellectual property. We believe that simply classifying property rights in the Metaverse as one of the existing traditional legal rights may encounter difficulties. The reason for this difficulty is that the agreement between users and the Metaverse operator on the acquisition, possession, use and transaction of virtual assets is ever-changing. Some rules allow users to enjoy the ownership of virtual assets as if they own real assets; some rules not only allow users to use but not own virtual assets, but also state that such use is limited to a certain period of time; even more, in some virtual games in the world, players will permanently lose their bound game equipment and other property after 'death', and need to wait for 'character resurrection' and 'start from scratch'. For disputes arising from various rules, at this stage, we can only rely on the court to conduct a case-by-case study and judgment based on the facts of the case and specifically define the nature of the virtual asset in the case and the user rights based on it.

Of course, this does not mean that the protection of property rights in the Metaverse can only follow the evolution of business rules and 'go with the flow'. On the contrary, we should consider accelerating the promotion of special legislation on virtual assets and data security and guide the operation logic of Metaverse assets with clear provisions, so as to promote their orderly development on the basis of conforming to the existing legal system and basic rights framework. In particular, we should focus on exploring how to uniformly supervise and review the rules of the many virtual worlds that make up the Metaverse, so as to prevent the chaos during growth in the Metaverse world and give full play to its function of feeding back real social and economic activities.



**Jack Li (Li Zhiqiang)**  
**Founding Partner of Jin Mao Partners and 30th President of IPBA, Shanghai**

Jack Li is the Founding Partner of Jin Mao Partners, the 30th President of Inter-Pacific Bar Association and is an Arbitrator of 32 international and domestic Arbitration Commissions. He has served as a legal consultant for more than 300 Chinese and foreign enterprises for restructuring and mergers and acquisitions, financing, IPO and for the Office Building project of the Shanghai Government.



**Li Jian (Scott Li)**  
**Partner of Jin Mao Partners, Shanghai**

Scott Li graduated from the Law School of Lanzhou University with a Master's degree, have studied civil and commercial law, environmental law and international law. He has handled a number of major litigation and arbitration cases, many of which were disputes over the repurchase of pledged shares of listed companies. His professional works published in the first batch of Class A academic journals in China, include the eighth issue of Financial Market Research in 2018. He also participated in the compilation of professional books, such as on Chinese Enterprises Investing and Financing Legal Research in the Philippines, Vietnam and South Korea and the translation of Legal Research on Investment and Financing for Chinese Enterprises in Japan and Malaysia and Legal Research on Investment and Financing for Chinese Enterprises in Overseas Markets and other.

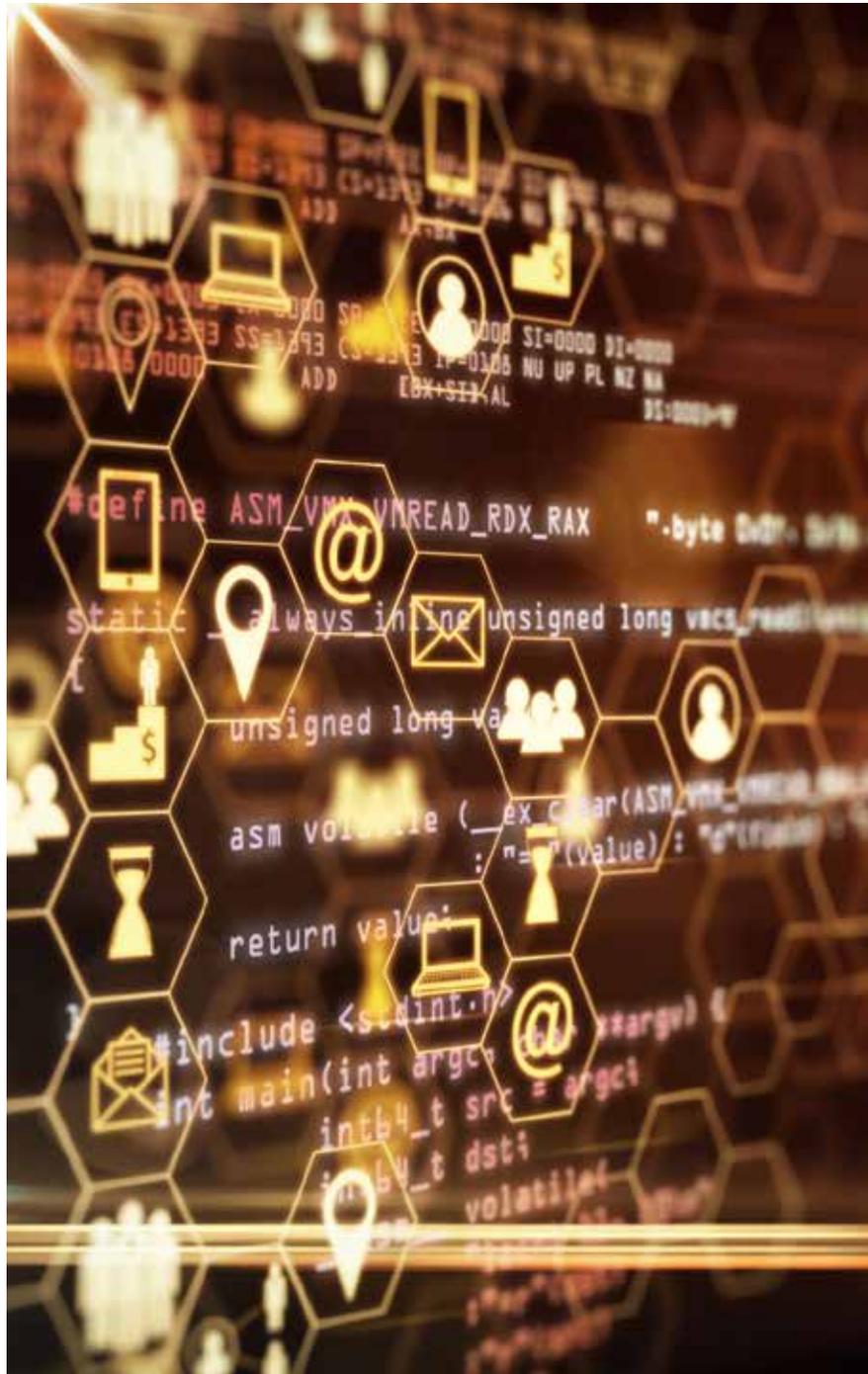


**James Yang (Yang Zian)**  
**Lawyer of Jin Mao Partners, Shanghai**

James Yang has comprehensive experience in legal practice including IPO, bond issuance, commercial disputes and company consultation. James also assists in translation and analysis of various foreign law rules, transaction documents and articles.

# Regulatory Trends Concerning the Metaverse in Russia

Metaverses have limited visibility in the Russian regulatory agenda; nevertheless, some attempts to assess the potential impact of XR-technologies are already emerging in public discussion, mostly on the part of large banks and financial supervisory authorities. This article provides a brief overview of existing regulatory trends in Russia that may affect Metaverses if they continue to develop in the near future.



## Introduction

The events of 2020–2022 have shown that we are a society that is undergoing extreme changes in our economic, political and social environment and that we have created a globalised world that is facing various threats due to the spread of COVID-19. During this period, society was forced to intensify its virtual interaction and continue communicating in this manner: video calls, online meetings in different formats and electronic document management are all a routine part of today's business and personal communication, which makes offline interaction for certain industries and states the exception rather than the rule. This accelerated development is driving the changes in our perceptions and is likely to bring online interaction to a 'Metaverse' point: this phenomenon can be seen as an opportunity to preserve a unified and integrated civil society that facilitates open communication and moves away from dependence on external circumstances.

To start a conversation about Metaverses and law, we need to answer the main question, which to date does not have a clear-cut answer even from a technical point of view: what is a Metaverse? Do we need to analyse this matter right now as it is being launched by many different subjects or do we need to go further and focus on what it is supposed to look like in the future? In any case, we cannot speak about possible regulations without understanding the exact nature and parties to the relations within the Metaverse that will fall within the scope of potential regulations. At present, there is a broad range of definitions and we see that 'Metaverse' can be defined as:

- A virtual world where humans represented by virtual avatars (one or many) interact with each other in a three-dimensional space that mimics reality (Cambridge Dictionary).<sup>1</sup>
- A collective virtual shared space, created by the convergence of virtually enhanced physical reality and physically persistent virtual space, including the sum of all virtual worlds, augmented reality and the Internet (Gartner).<sup>2</sup>
- A time when basically immersive digital worlds become the primary way that we live our lives and spend our time (Mark Zuckerberg in his presentation of Meta).

Metaverses are based on the idea of XR (extended reality) technologies combining VR (virtual reality), MR (mixed reality) and AR (augmented reality). In particular, in his presentation of the Meta concept, Mark Zuckerberg underscored that the key idea of Metaverse is to 'design technology around people'. The concept here is not only to build a parallel virtual reality, but to remove borders between the real and virtual world, where the virtual one should be even more replete and multifaceted than the real one. Given that the intention behind Metaverse is to be a legitimate substitute or an alternative to the real world, we cannot just apply the logic of a 'magic circle', which is usually used in discussions about the regulations of multi-user computer games, where the existence of the virtual world can be fully administered by a game creator and administrator. Metaverses will still have to deal with the real world and its regulation.

The relevance of this issue and the need for immediate attention from regulators significantly depends on the technological and social advancement of a specific state as well as the popularity of virtual concepts among its citizens. In Russia, the debate about Metaverses has not yet gained sufficient visibility, but we can already see that some attention is being paid to the issue:

- In December 2021, metaworlds were one of the questions raised during the Finopolis-21 panel discussion, where the head of the Central Bank ('CBR'), the Russian regulator in the sphere of financial markets and the CEOs of major Russian banks expressed their views on the potential for the development of metaworlds. The general conclusion was that a metaworld is a trend that is being watched, but as of yet no one has technically managed to make the transition and such a transition as well as its potential regulation are not likely to be considered a challenge of the current times.
- In February 2022, the Scientific Technical Centre GRCS, a branch of the Federal Service for Supervision of Communications, Information Technology and Mass Media ('Roskomnadzor'), published a report 'Metaworld: Opportunities and Risks of the New Reality'. The authors of the report stressed that it is still not clear how legislative initiatives in the meta universe and legal jurisdiction will be implemented due to the lack of physical boundaries. As a consequence, there is no accountability for actions. However, the digital nature of actions in the meta

universe is being transformed into personal, biometric, financial and even emotional data, which in turn is subject to rather strict local regulations.

- In February 2022, the director of the CBR's department for combatting unfair practices expressed concern about the spread of fraudulent schemes in Metaverses. He said that the CBR will pay attention to metaspaces if they are the source of such risks.

This article seeks to explore the potential for regulatory development by considering existing legal trends in the regulation of computer games, cryptocurrencies and data exchange, as well as their possible extension to the issue of Metaverses. For this purpose, the question of the legal regulation of Metaverses can be split into three spheres of relations depending on the subjects involved, which implies certain rules: interaction between users, between the user and administrator, as well as public policy issues that are applicable to Metaverses.

### User-to-User Relations

**Virtual objects.** The Metaverse is another form of an intermediary for human interaction but does this mediator have such a unique nature that the relations it mediates require new rules? At first glance, relations in the Metaverse most likely will look strikingly similar to the ones that we are accustomed to: you can buy tickets to a concert by your favourite artist, rent an office space and buy furniture for your own digital home and clothes for your virtual avatar. However, we cannot rely on the regulations being the same as well.

From the perspective of Russian law, relations in the Metaverse and the objects of these relations will have to be classified within the system of objects of civil rights. In practice, this situation is similar to the problem of classifying virtual objects, a concept which already exists in the context of discussions on in-game objects in computer games. There is currently no legal definition of a 'virtual object' in Russian law since the Russian Civil Code generally classifies objects of civil rights in the following categories:

- tangible property (including cash and documentary securities)

- other property, including property rights (including non-cash money, non-documentary securities and digital rights)
- results of work and the rendering of services
- protected results of intellectual activity and similar means of individualisation (intellectual property)
- intangible values

In most cases, the turnover of virtual objects is subject to user agreements, which classify such objects as an object of intellectual rights that a participant uses on a non-exclusive licensed basis: the user acts as a licensee and the company owning the rights to the game code serves as a licensor. Agreements involving the transfer of such objects are concluded as agreements for the assignment of rights from a licence agreement. However, the terms of these agreements are usually very general and do not resolve practical issues arising from the creation of new objects, the transfer of such objects within virtual reality or possible disputes regarding the identification of the object and its owner, among other things.

In addition, there is an important existing risk here that arises from Article 1062 of the Russian Civil Code, which states that claims by citizens and legal entities concerning the organisation of or participation in games and betting are not subject to judicial protection. In turn, this results in law enforcement bodies and courts refusing to decide on issues that arise from the protection of users' rights.

NFTs (non-fungible tokens) are one of the technology trends recognised by the Russian regulators that has the potential to be used within Metaverses to solve certain disputes related to the ownership of virtual objects. In May 2022, a bill was introduced in the State Duma in an attempt to define the position of NFTs in the civil rights system. The Bill classified an NFT as protected intellectual property and defined it as 'the non-fungible token of a unique digital asset (image, video or other digital content or asset) in the form of non-fungible data stored in a distributed ledger system (blockchain system)'.

To date, there is no prototype metaworld close to the actual idea of the Metaverse being a decentralised virtual world that is operated by numerous players.

Nevertheless, the Bill did not proceed any further due to a critical conclusion reached by the legal committee: the implementation of the proposed change would require the regulation of issues related to the term of the exclusive right to the token, the basis and procedure for the emergence of this right, as well as its prolongation, transfer, termination and so on. The Committee also pointed out that the legislation of the Russian Federation lacks a definition of such concepts as 'digital content', 'digital asset', 'non-fungible data' and 'blockchain'.

## User-to-Administrator Relations

### User Agreement

To date, there is no prototype metaworld close to the actual idea of the Metaverse being a decentralised virtual world that is operated by numerous players. All of the virtual worlds currently being considered as first steps embody only parts of this idea. The degree of regulatory complexity and administrator's responsibility to the user will depend on the level of technological integration into human life. Entering into one of the metaworlds itself and using the environment will be closest to online multiplayer games, to which access today is in most cases provided based on a user agreement with a licensing nature between the user and the game administrator.

It should be noted that user agreements have on several occasions been the subject of court disputes and analysis by Russian courts. Russian courts generally recognise the legal validity of user agreements and their legal consequences, as evidenced by court practice. One important conclusion reflected in the Supreme Court's 2021 Review of Practice concerning the jurisdiction of disputes arising from such agreements was that a social network user is entitled to file a claim against a foreign organisation—the operator of a social network—at the place where the user agreement is executed in the Russian Federation. The Court relied on Article 402(3) of the Russian Code of Civil Procedure, which states that courts in the Russian Federation can examine cases involving foreign persons in which the defendant distributes advertising on the Internet with the aim of attracting the attention of consumers located in the Russian Federation and/or the claim arises from an agreement under which the full or partial performance of obligations must take place or has taken place in the Russian Federation.

Such user agreements must be broad enough to cover the whole scope of inter-user and user-to-administrator interaction. For the first stage of development, they most

likely may be considered as an internal regulatory base for a particular Metaverse and only with the extended integration of the virtual and real world is there regulatory potential for an administrator as regards the management of such Metaverses.

### Personal Data Protection

The emergence of meta business and meta medicine has also been identified as areas for the potential use of the technology. These areas raise questions about data protection, both commercial and personal and may potentially lead to intricate issues related to obtaining, processing, sharing and using the personal data of subjects with a widely different applicable set of regulations and numerous associated challenges. For example, administrators of the meta universe will have to deal with the specifics of biometric data regulation in Russia, which has been heavily governmentalised for quite some time now.

The Personal Data Act defines biometric data as personal data resulting from special technical processing related to the physical, physiological or behavioural characteristics of an individual that contribute to the unique identification of a particular individual, such as facial images or fingerprint data. Such data can be used in meta villages to uniquely identify an avatar and link it to a specific user. In the event of the widespread development and integration of Metaverses, the Metaverses' administrators might be forced to use this type of data and will be subject to a heavily restrictive set of rules.

### Metaverses and Public Order Relevance

In his presentation, Mark Zuckerberg stated that one of the platform's objectives is to 'bring things from the real world into the meta world'. By moving much of human interaction to a new platform, we cannot pick and choose aspects of it that will also be moving together, so the matter of public order and its protection will remain relevant in the metaworlds. This is supported not only by the widely discussed case of sexual abuse on Meta's platforms, but also by the user experience potential. In our opinion, the following issues may be worth considering.

### Criminal and administrative liability of participants in the virtual space

- **Economic crimes.** The emergence of new objects actually represents the emergence of new forms of material values that may be stolen by other

participants through technical means. The Criminal Code establishes criminal liability for computer-related fraud, that is, the theft of another person's property or acquisition of a right to another person's property by entering, deleting, blocking or modifying computer information or otherwise interfering with the functioning of computer information storage, processing or transmission or information and telecommunications networks.

- **Crimes against life and health.** The issue here is the extent to which some form of harmful interaction in virtual reality between computer avatars may be penalised as if it occurred in the real world. The existence of virtual characters, at least in the first stage of their development, in the absence of full integration into the real world, cannot be regarded as homicide. Nevertheless, certain acts may pose a serious threat to a person's actual life. The Metaverse may, at some point, become a tool for inducing a person to commit or attempt to commit suicide by threatening, abusing or systematically violating the dignity of the victim.
- **Information restricted for release.** In Russian practice, there is also a special type of regulation that aims to prevent certain information from being disseminated. In 2012, the Federal Law on Information, Information Technology and Information Protection was supplemented by Article 15.1, which introduced a unified register of websites containing information whose dissemination is prohibited in Russia. Such information includes materials with pornographic images of minors, information about methods and techniques for the preparation, manufacture and use of psychotropic substances and their precursors, information about ways to commit suicide, information that aims to persuade or otherwise involve minors in the commission of unlawful acts and information about methods and techniques for the improvised manufacture of explosives and explosive devices. Due to certain specific enforcement practices, websites such as Facebook, Instagram and Twitter are currently included in this list.

It seems that the regulation of information dissemination in Metaverses would be subject to such general rules and could be affected by such tools since interaction in metaworlds still implies the use of the Internet.

## Payment currency and tools

In addition to the virtualisation of objects, money circulation is becoming an important issue in the existence of the Metaverse. So far, we can only guess what the metaworld will be like, as we try to follow our idea of a linear progression from multiplayer computer games. Whether the means of exchange will be governed by the internal rules of the individual virtual worlds and each of them will have its own currency that can be exchanged for another in some 'connecting' exchanges, or whether Central Bank Digital Currency ('CBDCs') will be integrated into the system, remains a question that will only be answered over time.

The main payment options that come to mind are as follows:

1. Payment via usual fiat money, which will require the involvement of traditional payment institutions.
2. Payment via CBDC (which will depend on the regulation of specific CBDCs and most likely will be very similar to the transfer of fiat money).
3. Payment via cryptocurrencies and similar instruments.

Cryptocurrencies are referred to in Russian legislation as *digital currencies* and their definition is set out in the Law on Digital Financial Assets<sup>3</sup>: cryptocurrencies are regarded as a set of electronic data (digital code or symbol) contained in an information system that is offered and/or may be accepted as a means of payment that is not a monetary unit of the Russian Federation, a foreign monetary unit and/or an international monetary or settlement unit, and/or as an investment for which no person is obliged to each holder of such electronic data, except for the operator and/or nodes of the information system that is only obliged to ensure that the procedure for issuing such electronic data and performing actions with it to make (change) records in such an information system complies with its rules.

According to our experience, rules for the issuance of virtual currencies, including in-game currencies, may vary significantly, and in each case the local regulator will have to determine whether or not they should be classified as digital currencies in Russia and regulated accordingly.

In July 2022, the media reported that the Russian Federal Financial Monitoring Service ('Rosfinmonitoring') intends to regulate the turnover of game currencies. The authority proposed dividing in-game currencies into two types:

- *Convertible*: users have the opportunity to exchange real fiat money for in-game currency and then back (Second Life, Entropia Universe and Roblox).
- *Non-convertible*: players can exchange real fiat money for in-game currency without the possibility of a reverse exchange (Fortnite, PUBG and Apex Legends).

The question of regulating in-game currencies along with cryptocurrency was discussed during a panel at the St Petersburg International Legal Forum.

Rosfinmonitoring State Secretary German Neglyad said that the international anti-money laundering group FATF recommends controlling not only cryptocurrencies, but virtual assets in general. While no specific measures have been introduced, we expect that the level of control and due diligence in this respect will increase.

### KYC Procedures and AML Issues

At this stage, where communication in Metaverses is more similar in nature to social networks and administrators of such Metaverses do not have special legal capacity and are not subject to special supervision by special authorities (such as the CBR or Roskomnadzor), no requirements to conduct KYC and AML have been imposed on such administrators.

If Metaverses become broadly used, it is quite likely that administrators will acquire a special legal status (for example, there are plans to introduce such a status for cryptocurrency exchanges).

As long as there are money transfers into Metaverses (including for the purchase of internal currency), they will have to be mediated by financial institutions and consequently such transfers will be subject to AML and KYC monitoring by the financial institutions. As noted, the CBR closely controls financial transactions, among other things, with the goal of preventing malpractices

in the meta village. In September 2021, the CBR issued Guideline 16-MR about certain transactions by individuals, including those related to settlements in the 'shadow' gambling business, as well as transactions involving 'cryptocurrency exchanges'. It should also be stressed that the CBR is rather sceptical about the integration of cryptocurrency settlements, and there is a risk that this sceptical approach might extend to settlements associated with the rise of Metaverses.

### Conclusion

As of now, we do not expect to see any large-scale regulation of Metaverses. In the event of their exponential growth and the emergence of a need for such regulation (for example, in case Metaverses become widely popular among the Russian population), some of its elements (such as in-game objects, user-to-administrator interaction, public safety and information turnover) will be fragmentally regulated with the existing rules that apply to other similar relations (multiplayer games, social networks and so on). It is also likely that the Russian regulators will adopt additional requirements for the administrators of these platforms, particularly if they target a Russian audience.

In addition to the virtualisation of objects, money circulation is becoming an important issue in the existence of the Metaverse.

### Notes

<sup>1</sup> Cambridge University Press. (n.d.). Metaverse. In Cambridge dictionary. Retrieved August 15, 2022 from <https://dictionary.cambridge.org/dictionary/english/metaverse>

<sup>2</sup> Ashutosh Gupta (2022, January 28). What is a metaverse? Gartner. Retrieved August 15, 2022, from <https://www.gartner.com/en/articles/what-is-a-metaverse>

<sup>3</sup> Federal Law N 259-FZ dated 31.07.2020 'On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation'



**Maxim Alekseyev**  
Senior Partner, Head of Asia-Pacific Desk, ALRUD Law Firm, Moscow

Maxim is the Co-founder, joint Senior Partner and Head of Asia-Pacific Desk at ALRUD Law Firm. Maxim specialises in advising clients on international trading matters, regulatory and economic developments, domestic and international tax planning, strategic M&A, risk management, good governance, contentious investigations and dispute resolution.

# Metaverse and the Law in Italy

The term ‘Metaverse’, coined from a combination of the words ‘meta’ and ‘universe’, was originally the name of a fictional virtual space service in the 1992 cyberpunk novel ‘Snow Crash’ by science fiction author Neil Stephenson. Today, the Metaverse has attracted a great deal of attention from around the world, not only in the entertainment field, but also as a new business opportunity. This article provides an overview of the issues surrounding it from a legal perspective.



## Introduction

Simply put, the Metaverse refers to a 3D virtual space or its services constructed within a computer or computer network, where people interact using an avatar to carry out a wide range of activities, such as leisure and gaming, commercial interaction, financial transactions, etc.

However, although various definitions of the Metaverse are currently proposed, there is still no unified interpretation. In this regard, Matthew Ball, in his essay, defines it as follows:<sup>1</sup>

The Metaverse is a massively scaled and interoperable network of real-time rendered 3D virtual worlds which can be experienced synchronously and persistently by an effectively unlimited number of users with an individual sense of presence, and with continuity of data, such as identity, history, entitlements, objects, communications, and payments.

Although the Metaverse has the potential to generate significant economic benefits and has become a major trend of the times, its creation and development has also affected the legal sector in a number of ways,

causing a number of risks and problems. The following discussion will describe the current situation in Italy and the EU in this area.

## Problems Relating to the Governing Body of the Metaverse

### Who governs the Metaverse?

The creation of this entirely new technological space that does not exist in the real world presupposes, by its very nature, the formation of a legal order regulating relations in that environment, hence the legal question arises as to who governs it.

As the current structure of the Internet, unfortunately, does not provide for complete governance of the Metaverse, technical infrastructure is required to guarantee this. It is envisaged that companies, users and states around the world will be involved in the creation of the Metaverse, each with different roles and responsibilities, and in the absence of a fully governing entity, there could be legal confusion and less certainty in terms of interpretation and legal jurisdiction in the event of a dispute.

### Applicable Laws and Regulations

#### (a) No Legislation Specifically Regulating the Metaverse

The legal system has not kept pace with this rapid technological development, and there is still no ad hoc legislation regulating the Metaverse, either at the European or national law level. In some cases, general legislation may be applied to the Metaverse, either by interpretation of the law or directly without interpretation of the laws.

#### (b) Data and Data Protection

As Italy is an EU Member State, in the real world the country's implementing legislation is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC (so-called 'GDPR') and the contractual provisions for the transfer of personal data to third countries under it apply.

However, unlike regulations such as the GDPR, which requires local sovereignty, the Metaverse has no borders: interoperability between different platforms is a potential issue in terms of data protection rights, as people will be able to access the Metaverse experience from anywhere in the world through any device.

In addition to appropriate privacy protection tailored to specific cases in the Metaverse, it will be essential to properly structure the discipline of consent to data processing so that data subjects themselves clearly understand in advance on which legal basis the data controller will process their personal data and how.

#### (c) Intellectual Property

Under Italian law, the intellectual works of a creative nature belonging to literature, music, figurative arts, architecture, theatre and cinematography, whatever their mode or form of expression, are protected by copyright, regardless of their method or form of expression (Article 1 of Italian Law 633 of 22 April 1941, so-called the 'Copyright Act'). Computer programming is also protected as long as it results from the author's intellectual creation (Article 2). It is therefore interpreted that many of the inherent elements of the Metaverse, such as the programming code and software used to create the Metaverse itself, etc., fall within the scope of copyright.

With regard to the protection of trademarks, problems may arise when they affect digital commerce, which is even more problematic as there is currently no specific reference law.

For companies seeking to enter the Metaverse effectively, it is crucial to implement a well-defined contractual strategy that addresses the possible effects of the digitalisation of their products and services in licence agreements and franchise agreements, etc. For this purpose, it is important to start with trademarks. It is also important to undertake registration.

In addition, licence agreements on intellectual property should pay attention to new technical provisions when defining territorial and virtual boundaries and be careful about further fully specifying the rights of the licensor and licensee in the virtual world.

#### (d) Fiscal and Criminal Issues Regarding NFTs (Non-Fungible Tokens)

NFTs are one of the digital assets and 'digital certificates' based on blockchain technology designed to be unique, irreplaceable and non-interchangeable.

As data comprising digital assets is, in general terms, an intangible asset and cannot be exclusively controlled, it is considered that the concept of property rights, which

contains exclusive control rights, cannot be established for data. At the moment, countries have moved without any absolute unity of purpose.

NFTs face multiple actors, such as the creator of the NFT, the owner of the intellectual property of the relevant goods, the exchange platform and the end-user, with the parties involved being in different countries and where laws may differ significantly. This makes it challenging to identify the applicable tax regime and to assess whether a transaction is subject to income tax and tax statement requirements.

In addition to the critical fiscal issues mentioned above, criminal activities related to the use of these NFTs are growing rapidly, and among all the offences, money laundering is emerging.

#### **(e) Ownership Rights on NFTs**

The legal and regulatory framework surrounding NFTs is still developing and there is still a great deal of debate as to the extent to which NFTs create ownership rights. Some have stressed that current ownership of Metaverse assets is governed by contract law rather than property law. Therefore, private Metaverse platforms may be given significant contractual control over some critical aspects of digital assets in the Metaverse environment.

#### **(f) Virtual real estate**

In the Metaverse, one may purchase a plot of land, construct a building and even open a shop. Italian civil law traditionally governs the transfer of tangible assets, but here it deals with the sale and purchase of digital property and virtual leases, which, unlike traditional transactions, are tokenised in the Metaverse, and which are not physical nor tangible assets.

In the Metaverse, virtual real estate and its volume constitute digital property. Therefore, the purchase agreement and/or lease should be a qualified licence agreement that grants the right to use the work, if agreed between or among the parties in the contract, via cryptocurrency, against payment of a fee in the form of royalties.

#### **(g) Crimes**

In Italian law there is no ad hoc virtual criminal law for the Metaverse. In view of the above, all offences based on physical contact between a victim and perpetrator are impossible. However, the following crimes may be committed, for example:

1. *virtual pornography* created with images of minors (Article 600 *quarter* paragraph 1 of the Italian Criminal Code);
2. *cyberbullying* (Articles 1, 2 and 3 of Italian Law No 71/2017);
3. *cyberstalking* (Article 612 *bis* of the Italian Criminal Code); and
4. *defamation* through the press or other public means (article 595 paragraph 3 of the Italian Criminal Code).

In this regard, crimes (2), (3) and (4) shall be directed at the person behind the avatar.

Identifying and locating criminals may be more complex than in the real world and there is a need to identify more sophisticated research methods adapted to identifying the risk of violations in the Metaverse and new approaches to quantifying the harm.

#### **(h) Advertising**

Advertising strategies in the Metaverse have started in immersive contexts. Although in Italy there is no ad hoc legislation on advertising in virtual worlds yet, the rules on consumer protection and advertising transparency established by Italian Legislative Decree No 206 of 2005 and Italian Legislative Decree No 145 of 2007, which are applicable to the Metaverse involving Italian users as consumers, shall certainly also apply to the world of the Metaverse involving Italian users as consumers. However, a debate should then arise as to whether the advertising nature of commercial communications must be revealed by adequate and appropriate means.

With regard to the risk of consumer manipulation, the impact of advertising techniques in the Metaverse on consumers is still unclear.

#### **(i) Competition**

The EU Parliament, in its documents, states that it is of the view that creating the Metaverse environment will give some companies unparalleled opportunities to dominate the digital market. Building the Metaverse requires the interconnection and interoperability of many devices and platforms in the digital ecosystem and large tech companies are rapidly scaling up, including through mergers and acquisitions, to form the building blocks of the Metaverse. The EU Parliament is concerned that

a small number of large companies may dominate, creating many competition issues.

In addition, the European Parliament is apprehensive that powerful high-tech companies that currently dominate the digital market could also overwhelm the Metaverse environment, with the potential for self-preference (favouring their own products), dark patterns (influencing the interface of websites and mobile applications to influence user behaviour and decision-making), with every incentive to perpetuate current anti-competitive practices.

In the Metaverse, competitors must ensure communication, cooperation and platform interoperability. This may lead to a series of antitrust challenges, for example, the sharing of confidential information, such as prices and contracts, between competitors.

Against this backdrop, on 5 July 2022, the European Parliament passed the Digital Markets Act (the so-called 'DMA'), which is part of the European Digital Strategy entitled 'Shaping Europe's Digital Future', together with the Digital Services Act (the so-called 'DSA') by a majority vote. Both will become law once formally adopted by the Council of the European Union. The Digital Markets Act is a new EU law to increase fairness and competitiveness in the digital sector: the DMA sets out narrowly defined objective criteria for the recognition of large online platforms as so-called 'gatekeepers' and the DMA comprehensively regulates the gatekeeping power of the most prominent digital companies.

### **(j) Cyber security**

The vast amount of data circulating in the Metaverse and how it is used poses significant risks to users and current cybersecurity challenges such as phishing and hacking are expected to extend to the devices and avatars that enable the Metaverse experience.

Protecting avatars' integrity is an issue of particular concern and may lead to new forms of cybercrime, such as the sale of fake NFTs, cryptocurrency misuse and so on. It may be necessary to build a Metaverse criminal justice system that prevents and limits illegal activities, to make it more difficult for hackers to hide behind encrypted and untraceable NFTs and to identify them and take legal action.<sup>2</sup>

In addition, the sensitive data required to make devices used in the Metaverse, such as voice manipulation and facial movements, may be recreated, leading to serious information leaks. According to the Briefing of the European Parliament, VR technology allows hackers to access the victim's mind as well as their body, and such profound security implications, as a hacker with access to the device would be able to manipulate what the victim sees and hears and would be able to see inside their workspace and/or their personal space.<sup>3</sup>

**In the Metaverse, competitors must ensure communication, cooperation and platform interoperability.**

### **Conclusion**

As discussed above, the expanding Metaverse poses a variety of potential problems. While there are calls for legislation to address the problems that have already started to arise, it is also true that it is difficult for legislators to regulate an advanced, complex and interdimensional technological field that is constantly evolving at breakneck speed, as there is no defined governing body, to begin with, and the responses from different countries vary.

At the European Union level, it does not intend to propose immediate legislative measures, except in some areas, and the situation is one of wait-and-see, hoping for some economic benefit while at the same time trying not to impede the development of the Metaverse. Member States are awaiting the Commission's policy decisions, so it is likely to take more time for individual Members, including Italy, to respond.

### **Notes**

<sup>1</sup> Matthew BALL, *Framework for the Metaverse*, available at [www.matthewball.vc/all/forwardtothemetaverseprimer](http://www.matthewball.vc/all/forwardtothemetaverseprimer).

<sup>2</sup> European Parliament, *Metaverse, Opportunities, Risks and Policy Implications*, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733557/EPRS\\_BRI\(2022\)733557\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733557/EPRS_BRI(2022)733557_EN.pdf)

<sup>3</sup> *Ibid.*



**Naoko Konishi**  
Counsel, Pavia e Ansaldo Studio  
Legale, Milan

Naoko Konishi is a Foreign Counsel of Pavia e Ansaldo Law Firm and a member of the Japan Desk team in the Milan Office. She advises Italian and Japanese companies, primarily on matters falling within the scope of corporate law and commercial law.

# The Metaverse: Way Forward for the Indian Legal Landscape

This article attempts to analyse and discuss the issues and challenges that the Indian legal regime may potentially face in view of the exponential growth of the Metaverse. Specifically, the article will discuss issues and provide potential solutions to the following problems that run parallel to the growth of the Metaverse in India: (1) sanctity of commercial transactions undertaken in the Metaverse; (2) criminality of offences in the Metaverse; (3) data protection and right to be forgotten in the Metaverse; and (4) regulation of currency of the Metaverse.

## Introduction

The term 'Metaverse' indicates cyber space in a three-dimensional perspective. At first blush, it may sound simple but this term, which has recently gained a lot of traction, carries its own set of complexities, both legal and non-legal. Still, at its extremely nascent stages, along with the concept of Metaverse, comes the concept of 'avatar', which is a virtual version of an individual. It is the avatar which acts on part of the individual and represents him/her/they in the Metaverse. The avatar interacts, plays and socialises with other avatars who represent other individuals.

By way of illustration, the following legal issues may emerge in relation to the Metaverse: (1) what is the legal landscape governing the Metaverse; (2) are avatars to be given legal recognition, meaning thereby, does an avatar carry an independent legal personality like a company; (3) are transactions in the Metaverse valid and subject to laws; (4) how can one legally own things in the Metaverse; (5) what laws will govern Metaverse market places; (6) what laws will secure the privacy of individuals in the Metaverse; and (7) how will crime be dealt with in the Metaverse—will there be a parallel set of laws applicable to the Metaverse or will the existing criminal law regime also apply to the Metaverse?



One should not forget that the Metaverse, unlike the real world, is not static. While one may be exposed to an entirely new world with the advent of virtual and augmented reality technology, the Metaverse, being dynamic, will change over time, like the Internet. For example, the address of an avatar, like a web page, will never be constant and will be subject to change over time.

In this article, the author will be discussing the legal issues arising from the unprecedented rise and growth of the Metaverse, specifically in light of the Indian legal landscape. To date, the Indian government continues to contemplate and deliberate upon its proposed data protection law. Among other key issues/legal concerns, the present article will be discussing the applicable civil and criminal law regimes to the Metaverse (specifically in the Indian context) and it will further discuss how the proposed Indian data protection law can be tailored to face and solve the legal issues arising out of the Metaverse. Finally, the article will discuss regulation of currency in the Metaverse.

### **Entering Into Contracts in the Metaverse and Laws Providing Punishment for Offences Committed in the Metaverse**

As the Metaverse grows faster than ever expected, users (through their avatars) will explore, meet other avatars, socialise and engage in related group activities, which includes activities of a commercial nature like entering into contracts, trading virtual property and taking services virtually from one another.

Avatars will also be creating virtual goods and services and selling them for currency in the Metaverse. The said transactions and activities may also potentially give rise to further issues and concerns, including but not limited to, claims arising from breach of contracts. Further, income arising out of activities and transactions undertaken in the Metaverse may also be subject to tax according to the laws which may be held to be applicable. On the criminal side, proceedings may be filed for offences relating to harassment, negligence, theft, stalking and cheating by one avatar against other.

At this stage, to understand the scope and validity of contracts entered into in the Metaverse, it becomes necessary to take note of the provisions of the Indian Contract Act 1872 ('Contract Act'). While the Contract

Act does not expressly give sanctity to contracts and agreements entered into in the Metaverse and the electronic space, the Indian Information Technology Act 2000<sup>1</sup> expressly gives recognition to and validates electronic contracts. Therefore, in case of purported breach of contracts entered into in the Metaverse, the affected parties will be free to take recourse to legal remedies available under law and a contract will not be subject to challenge solely on the ground that it was entered into in the Metaverse. Even in the context of the Indian Sale of goods Act 1930, the Honourable Supreme Court<sup>2</sup> of India has interpreted that 'sale of goods'<sup>3</sup> also includes a transaction involving sale of intangible property, while holding that the sale of computer software falls under the ambit of sale of goods under the Sale of Goods Act 1930. The said decision paves the way for the sale of virtual items in the Metaverse.

For criminal offences relating to virtual property, the Supreme Court observed<sup>4</sup> that property should be construed widely with the main intent that it can be subject to acts covered within a particular section under the Indian Penal Code. Therefore, offences relating to property under the Indian Penal Code will be construed in a manner that the same can be equally applicable to virtual property, including property in the Metaverse as well.

Even for offences relating to stalking, sexual harassment and obscenity, there are provisions in both the Indian Information Technology Act and the Indian Penal Code which cover offences committed via the online modes.

In view of the above, it may not be wrong to state that there exist legal provisions in India which may cover a number of offences committed in the Metaverse. However, it is yet to be seen as to how the legal provisions will be enforced effectively. While the Indian enforcement authorities have taken steps like establishment of cyber crime cells to properly investigate and enforce provisions of the Indian Penal Code in relation to offences committed over the Internet, tracking and investigation of offences committed in the Metaverse necessitates establishment of a central authority which shall be responsible for, *inter alia*, keeping a track of day-to-day activities and enforcing legal provisions in the Metaverse.

In light of the advent of the concept of an avatar, this has also necessitated that laws/rules are enacted to

clarify as to how an avatar shall be treated vis-à-vis a person. Will the assets, liabilities, rights and duties of an avatar be given a separate legal recognition from the person or will they be treated alike. This will specially be required for providing clarification in relation to liabilities arising in connection with commercial transactions undertaken by the avatar in the Metaverse. In case a separate legal personality is provided to the avatar, it will further be necessary to clarify applicability of criminal liability on the person itself, otherwise, the object of the penal provisions will be rendered ineffective.

### **Data Protection and the Right to be Forgotten in the Metaverse**

The Indian government had introduced the Personal Data Protection Bill 2019 ('PDP Bill') in the Lok Sabha (lower house of the Indian Parliament) in December 2019. Subsequently, the PDP Bill was referred to a Joint Committee of both houses of the Indian Parliament. The joint committee tabled its report on the PDP Bill on 16 December 2021. The Committee had deliberated over the PDP Bill for quite some time and recommended a number of amendments to the same. Specific features of the PDP Bill include:

1. The PDP Bill categorises and differentiates between personal and non-personal data. Personal data has been further categorised into personal data, sensitive personal data and critical sensitive personal data. The provisions of the PDP Bill provide for storage, processing and transmitting data from both within and outside India.
2. While consent of an individual is the main criteria for storage and processing of an individual's personal data, the PDP Bill does have provisions which provide for scenarios/cases where personal data of an individual may be used without their consent.
3. The PDP Bill envisages the constitution of a Data Protection Authority which shall consist of a chairperson and not more than six full-time members. The said authority will be responsible, *inter alia*, for monitoring and enforcing provisions of the PDP Bill, monitoring cross-border transfer of personal data, receiving and inquiring complaints and classification of data fiduciaries.
4. Specially for the cross-border transfer of personal data, the PDP Bill emphasises the concept of

'data localisation' and, as such, the consent of an individual becomes quintessential before data is transferred across borders.

As stated above, the joint parliamentary committee recommended a number of suggestions in relation to the PDP Bill:

- a. The Joint Committee has recommended that the Data Protection Authority should oversee, monitor and regulate storage, transfer and processing of non-personal data as well.
- b. It has further been recommended that all data relating to Indian citizens should be kept within the territorial limits of the country.
- c. The PDP Bill should only apply to data collected, stored and processed in digital form only.
- d. It has also been recommended that the data protection officer should be a key managerial person in the company.
- e. In relation to the personal data of children, it has been recommended that consents from the guardians and from the children themselves be taken (three months before they turn 18 years old).
- f. The recommendations also include criminal penalties for breach of relevant provisions of the PDP Bill.

After submission of the recommendations from the Joint Parliamentary Committee, there have been uncertainties<sup>5</sup> regarding the final outcome of the PDP Bill and a concrete decision and enactment in this regard is awaited. In fact, on 3 August 2022, the Central Government has withdrawn the PDP Bill with the hope that the same will be replaced by a more comprehensive legal framework. That being said, the Indian Supreme Court has been proactive on the issue and, apart from holding that the right to privacy of an individual is a fundamental right under the Constitution of India, the apex court has recently passed an order wherein the personal identities and addresses of the petitioner and respondent have been directed to be masked in a case involving allegations of sexual offences.<sup>6</sup>

In the Metaverse, the right to privacy along with the right to be forgotten gains significantly more relevance. As a person/individual will be represented by an avatar

and one's avatar being nothing but a virtual extension themselves, the avatar of an individual will be susceptible to misuse and being copied. Therefore, the identity of a person in the Metaverse will itself be an electronic record which can be copied easily by others/deleted or altered by the individual and it is thus essential to put in place laws, regulations and rules which clearly provide for the prohibition of identity theft in the Metaverse and this necessitates that technological safeguards in the Metaverse are put in place by the key technology players to ensure that a person's avatar is completely secure and unaltered.

Further, the Metaverse will also be an ecosystem where personal data of all the avatars is being collected. To prevent invasion of one's privacy, it is essential that the personal data of an avatar is given a separate recognition vis-à-vis the personal data of an individual. That being said, it cannot be emphasised more that it will be a task on its own for an individual to ensure that his personal data and information is kept away and apart from the Metaverse. Given that the Metaverse will also constitute a mode for social interaction, in a similar yet enhanced manner like the current social media platforms, such segregation between a person's data and an avatar's data seems to be difficult.

While the PDP Bill is one of the first steps towards adequate security of one's personal data, to date, the PDP Bill is still under deliberation and there are limited provisions in the Indian Information Technology Act and the rules enacted thereunder which provide for a limited legislative framework governing security of personal data of an individual. Section 43-A of the Information Technology Act provides that any body corporate that possesses, deals or handles sensitive personal data of an individual should maintain reasonable security practices in relation to such data and in case it fails to do so, it shall be liable to compensate the affected individual. Section 72-A of the said Act further provides for punishment in case where personal information of an individual, which was provided to the offender in lawful course is disclosed to third parties. Further, the Indian legislature has also enacted the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011. The said Rules, *inter alia*, govern the processing of personal and sensitive personal data and it also prescribes security practices for the handling of personal data/information.

The applicability and effectiveness of the existing and proposed Indian laws providing for data protection and

privacy remains to be tested in the Metaverse; however, it is clear that the current legislative safeguards need a huge overhaul. The need of the hour is establishment of a central authority to monitor and regulate storage, processing and transfer of digital personal data including data of an avatar in the Metaverse. While deliberations in this regard are ongoing, the actual effectiveness of the proposed laws will only be evident after enactment of the PDP Bill.

### **Need for Regulation of Metaverse Currency**

Commercial transaction in the Metaverse are generally undertaken through cryptocurrencies or Non Fungible Tokens ('NFTs'). In relation to cryptocurrencies, the Indian central bank, that is, the Reserve Bank of India, first gave recognition to cryptocurrencies in 2013 and issued a press release<sup>7</sup> cautioning users of cryptocurrencies about the potential financial, legal, consumer protection and security related risks of cryptocurrencies, including bitcoin.

On 5 April 2018, the Reserve Bank of India issued a statement which prohibited banks from dealing in cryptocurrency and providing services in relation thereto.<sup>8</sup> The said statement was set aside by the Indian Supreme Court on 4 March 2020<sup>9</sup> as being violative of Article 19(1)(g) of the constitution of India. A new cryptocurrency bill<sup>10</sup> is expected to be tabled before the Parliament in the upcoming sessions.

There is no specific legislation in India which specifically governs NFTs. One set of stakeholders categorise NFTs as contracts as being governed by the Indian Contract Act 1872 and another set of stakeholders categorise it as securities and specifically a derivative under the Securities Contract Regulation Act ('SCRA') since an NFT is simply a digital copy or token of the original work it represents. In the event this latter interpretation is accepted, section 18A of the SCRA provides that derivative contracts are legal only if they are exchanged on a recognised stock exchange and consequently it would not be possible to trade NFTs virtually.

It is evident from the above that transactions in the Metaverse shall only be facilitated in the event cryptocurrencies and NFTs are given legal status. Further, merely providing legal recognition to cryptocurrencies and NFTs shall not be sufficient and there have to be elaborate legal regulations and mechanisms in place which specifically provide for regulation of NFTs and cryptocurrencies. To date, the Indian legal rules and

regulations are clearly not adequately armed to recognise and regulate transactions undertaken in the Metaverse.

In order to better explore and utilise the potential of the Metaverse, it is essential that the grey area surrounding cryptocurrency and NFTs is cleared so that avatars can freely and without any hesitation undertake transactions in the Metaverse. Certainty regarding the future of NFTs, cryptocurrencies and consequently the Metaverse will come to light after the proposed law regarding cryptocurrencies is crystallised in some form.

### Conclusion and Way Forward

It cannot be emphasised more that the Metaverse may become the general norm and, in the event that it does, it is quintessential that a central regulatory body oversees and implements laws in the Metaverse. Needless to state that such an authority should be armed with the necessary powers under the law to enforce the rule of law governing the Metaverse. The way forward should ideally be to use the lessons learned from the physical world and implement them effectively in the Metaverse.

In the event that the Metaverse is able to reach and achieve the potential it has, 'access to Metaverse' will be another facet to be looked into. The benefits and features of the Metaverse should be accessible to all without any discrimination. Electricity, internet access and elementary education will thus become the resultant necessities which will have to be provided in a non-discriminatory manner across the boundaries of age, sex, religion and geography to ensure that the capabilities of the Metaverse are realised to their true potential.

The Indian legal landscape has come a long way and is evolving to match the requirements that have arisen in view of the fast-paced growth of the Metaverse. A large number of the existing Indian legal laws will apply to the Metaverse by necessary implication. That being said, there are areas where certainty is required and legislative intervention is the need of the hour for matching the requirements portrayed by the ever-expanding Metaverse. Specific clarity is required on the requirements and compliances under the proposed data protection law and the regulation of cryptocurrencies and NFTs.

While the Indian courts have displayed a proactive approach in relation to privacy and data protection issues, until the time that legislative clarity is given, the Indian courts will have to judge and adjudicate each case on

its own merits only after taking note of and recognising that the Metaverse has the potential to revolutionise the world. That being said, a central authority established for overseeing transactions undertaken in the Metaverse will clearly expedite and ease the process of entering into contracts and buying and selling assets in the Metaverse. On the criminal side, the need of the hour is constitution of specialised enforcement authorities which are empowered to investigate and track offences committed in the Metaverse. Currency in the Metaverse also needs a regulatory overhaul by enactment of appropriate laws and regulations giving recognition to and regulating the exchange of cryptocurrency in the Metaverse.

The Metaverse does have the potential to entirely revolutionise the world. That being said, before it operates with its full force, critical assessment and examination is needed of the issues, solutions and potential drawbacks surrounding the idea and conception of the Metaverse. While there appear to be a number of potential lacunas which may crop up in the legal and regulatory space surrounding the Metaverse, a careful assessment, analysis and survey as a pre-emptive step further to implementation of the concept of the Metaverse will ensure that we are equipped properly before venturing into the whole idea of the Metaverse.

### Notes

- <sup>1</sup> Indian Information Technology Act 2000, s 10A.
- <sup>2</sup> *Tata Consultancy Services v State of A.P* (2005) 1 SCC 308.
- <sup>3</sup> Indian Sale of Goods Act 1930, s 4
- <sup>4</sup> *RK Dalmia v Delhi Admn.* AIR 1962 SC 1821.
- <sup>5</sup> 'Data Protection Bill: Fresh Legislation May Replace Data Protection Bill', *The Economic Times* (indiatimes.com), which can be accessed at: <https://economictimes.indiatimes.com/tech/technology/fresh-legislation-may-replace-data-protection-bill/articleshow/89624369.cms>
- <sup>6</sup> *xxxx v kancherla Durga Prasad Miscellaneous Application No. 875/2022* in SLP(Cri) No. 3211/2022
- <sup>7</sup> Press release dated 24 December 2013, which can be accessed at: [https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=30247](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=30247).
- <sup>8</sup> Press release dated 6 April 2018, which can be accessed at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?id=11243>.
- <sup>9</sup> *Internet and Mobile Association of India v RBI* 2018 SCC OnLine SC 3554.
- <sup>10</sup> Cryptocurrency and Regulation of Official Digital Currency Bill.



#### Ajay Bhargava Partner, Khaitan and Co, New Delhi

Ajay Bhargava is a Partner in the Dispute Resolution Group at Khaitan & Co. He specialises in Civil, Criminal and Corporate Litigation with 25 years of experience. Ajay practices across various fora in India and also international arbitration. He regularly advises Clients on data privacy and security issues.

# IPBA New Members June to August 2022

We are pleased to introduce our new IPBA members who joined our association from June to August 2022. Please welcome them to our organisation and kindly introduce yourself at the next IPBA conference.

<b>Australia</b> , Greg Laughton	<b>India</b> , Nitesh Jain <i>Trilegal</i>
<b>Australia</b> , Andy Naidu <i>Logans Barristers &amp; Solicitors</i>	<b>India</b> , Mukesh Kumar <i>KNM &amp; Partners, Law Offices</i>
<b>Bangladesh</b> , JSaiyeed Jakaria Baksh Imran <i>Baksh Maritime Law and Associates</i>	<b>India</b> , Manishi Pathak <i>Anhad Law</i>
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## Members' Notes

### Stephan Wilske, Germany



Stephan Wilske co-authored an article published in the 13th issue 2022 of the Korean Arbitration Review entitled 'The new ICSID Arbitration Rules—are they really new? What's the Catch?'.

### Publications Committee Guidelines for Publication of Articles in the IPBA Journal

We are pleased to accept articles on interesting legal topics and new legal developments that are happening in your jurisdiction. From time to time, issues of the Journal will be themed. Please send: (1) your article to both **James Jung** at [jjung@collaw.edu.au](mailto:jjung@collaw.edu.au) and **Olivia Kung** at [olivia.kung@wellingtonlegal.com.hk](mailto:olivia.kung@wellingtonlegal.com.hk); (2) a lead paragraph of approximately 50 or 60 words, giving a brief introduction to, or an overview of the article's main theme; (3) a photo with the following specifications (File Format: JPG or TIFF, Resolution: 300dpi and Dimensions: 4cm(w) x 5cm(h)); and (4) your biography of approximately 30 to 50 words.

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4. The article is concise (2500 to 3000 words) and, in any event, does not exceed 3000 words;
5. The article must be written in English (with British English spelling), and the author must ensure that it meets international business standards;
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