

Settlers of Token: How to Draft Settlement Agreements When the Payment Is in Cryptocurrency

Entering into a settlement agreement where one party makes a payment denominated in cryptocurrency raises a host of questions that a careful lawyer must evaluate.

By Michael Mix

Disputes relating to digital assets are already common, and will only increase in frequency as the popularity of this exciting new sector continues to grow. Many such disputes are settled before or during the pendency of formal litigation, and a crucial element of a typical settlement agreement in most disputes is the payment of a negotiated amount from one party to another. Because many digital assets industry participants are comfortable transacting in cryptocurrency, they may request that a settlement agreement provide for the settlement payment to be made in cryptocurrency rather than fiat currency. Since legal practitioners may not be used to such a request, this article provides a non-exhaustive roadmap of topics to consider when settling a dispute for a cryptocurrency payment.

Make Sure the Wallet Address Is Correct. While this advice may seem obvious, a simple internet search will reveal numerous stories and requests for advice by individuals who mistakenly provided the wrong wallet address for a cryptocurrency transaction. Because blockchain transactions are irreversible, recourse for that mistake is extremely limited. Misdirected payments can be accidentally sent to someone else's wallet, or even to a "burn address" where the value is permanently destroyed.

Lawyers representing parties receiving funds in cryptocurrency should ask their clients to double and triple check the wallet address contained in the settlement agreement. Lawyers representing the payor should consider including a provision in the settlement that the payee represents and warrants the accuracy of the wallet address and affirms that the release contained in the settlement still applies (and the payor has no further payment obligation) even if the payee's wallet address contains an error. The settlement agreement should also provide for a "test" transaction of some nominal amount of the token in question, with confirmation of receipt from the payee, before the payor makes the actual full settlement payment.

Account for Changes in Price. The settlement agreement must account for the volatile nature of the price of cryptocurrency assets, and the prolonged nature of settlement negotiations. When negotiating a settlement, typically the most important items (like the settlement amount) are negotiated first. Then, the lawyers usually negotiate and draft the terms of a written settlement agreement; that process can take days (or more) depending on the complexity of the settlement and the responsiveness of the counterparties. Even after the settlement agreement is fully signed, most settlement agreements provide for a window of at least a few business days (if not a week or two) for the payment to be made. Accordingly, there might be a significant time lapse between negotiation of the settlement price and the actual payment.

If the settlement amount is valued in a specific number of cryptocurrency tokens (e.g., the settlement amount is one BTC, no matter what the price of BTC is at the time of the transfer), then the client should be made aware that there is a risk that the price of BTC could change significantly between the time the agreement is negotiated and the date of transfer, potentially throwing the settlement amount off-kilter.

The parties might alternatively decide to settle for some dollar equivalent of cryptocurrency (e.g., the payor will pay the payee \$1 million worth of BTC). In such case, the parties must ensure that the settlement precisely enumerates the process to ascertain the conversion rate, including what website (such as CoinMarketCap or CoinGecko) to use. Moreover, the settlement agreement should describe when the parties will ascertain the price of the cryptocurrency in question—using my example, will the parties determine precisely how much BTC equals \$1 million on the date of the execution of the settlement agreement, or some earlier or later date?

Additionally, there is a risk that the price of the token could fluctuate between the initial agreement of the settlement amount and the ultimate transfer after the settlement agreement has been fully executed, to the benefit or detriment of each party. That risk is even more acute if the transaction is denominated in a token with less liquidity or activity, which may be more volatile day to day. The parties should consider whether they want to account for such risk in the agreement, whether by explicitly disclaiming any responsibility for such change in the conversion rate or providing for some sort of recalculation if the price fluctuates by a certain amount.

Be Aware That a Settlement May Not Be Confidential. Parties to a settlement agreement frequently include a confidentiality clause keeping the terms of the settlement confidential. Confidentiality and privacy are also paramount values in the digital assets space. However, because transactions on public blockchains are, as the name suggests, public, if the settlement payment is being made from or to a known wallet address (for example, a wallet belonging to a project where numerous stakeholders know the wallet address), then the parties' expectations of confidentiality will be undermined. If confidentiality is a paramount concern, and the parties do not want to revert to fiat currency, parties may wish to create new wallets so that the paying and receiving wallets are immediately known outside the parties to the settlement—although ultimately, blockchain tracing will undermine even that measure as well.

Be Aware That Enforcing the Settlement Agreement May Be More Difficult Procedurally. If the paying party breaches a settlement agreement and declines to pay, there are certain procedural avenues that, given the uncertainty in the law, may be foreclosed to the payee if the settlement amount is denominated in cryptocurrency.

For example, in New York, if one party breaches an "instrument for the payment of money only," there is a procedural mechanism under CPLR 3213 whereby the non-breaching party can file a motion for summary judgment in lieu of complaint and skip the time-consuming and costly process of filing a traditional summons and complaint and engaging in discovery. New York courts typically hold that a settlement agreement is an "instrument for the payment of money only" under CPLR 3213. See, e.g., *Tongkook Am. v. Bates*, 295 A.D.2d 202 (1st Dep't 2002); *Alessina v. El Gauchito II*, 220 A.D.3d 645, 647 (2d Dep't 2023).

But there is uncertainty and a dearth of case law as to whether a court would find that a settlement agreement providing for the payment of cryptocurrency, rather than fiat currency, is an instrument for the payment of money under CPLR 3213. Without such certainty, the payee party to a settlement agreement should be aware that by agreeing to receive payment in cryptocurrency rather than fiat currency, there is risk that the payee could be giving up this unique procedure under New York law. For more information about this topic, see Michael Mix and Vani Upadhyaya, "[No Complaints with Cryptocurrency: The Applicability of CPLR 3213's Summary Judgment in Lieu of Complaint to Obligations in Cryptocurrency](#)," Legaltech News (Nov. 16, 2022), also available [here](#).

An interesting wrinkle to the application of CPLR 3213 to settlements denominated in cryptocurrency is that New York's First Department recently found that the parties to a contract could contractually waive any right to assert that the contract was not an instrument for the payment of money only. See *Marjan Int'l v. Lillian August Designs*, 225 A.D.3d 408, 408 (1st Dep't 2024). It remains to be seen whether such doctrine would be upheld if it is ever heard by the New York Court of Appeals, or if a court would permit such a waiver in a contract for a payment denominated

in cryptocurrency. Regardless, I would strongly recommend that the payee party to a settlement agreement under New York law insist on an identical provision to the clause upheld in *Marjan*.

Another tool occasionally used as part of a settlement—especially when one party has significantly more bargaining power than the other—is a confession of judgment, whereby the payor confesses judgment against them for a sum certain that can be filed with the court by the payee in the event of the payor’s nonpayment. Certain states permit this procedure, with limitations. See, e.g., CPLR 3218 (New York); 10 Del. C. Section 2306 (Delaware). However, there is uncertainty about whether a court clerk would accept a confession of judgment denominated in cryptocurrency and whether the clerk would convert the judgment into fiat currency (and if so, at what exchange rate). For more information about this topic, see Michael Mix and Jason Gottlieb, “[Crypto Judgment Day: Issuing Judgments in Cryptocurrency in New York](#),” *New York Law Journal* (Oct. 5, 2022), also available [here](#).

In sum, entering into a settlement agreement where one party makes a payment denominated in cryptocurrency raises a host of questions that a careful lawyer must evaluate and answer before finalizing the contract. By thinking critically about the above issues (and any other issues specific to the client and the dispute), lawyers can best protect their clients from potentially detrimental consequences.

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