

As Real Estate Embraces Bitcoin, Legal Issues Loom

By Kaitlin Ugolik

Law360, New York (January 03, 2014, 6:18 PM ET) -- Manhattan real estate brokerage Bond New York became the first company of its kind to accept Bitcoin as payment last week, representing the market's growing comfort with the digital currency while also raising questions about how the volatile "coins" will be classified by regulators and judges.

Bitcoin is a relatively new currency and peer-to-peer transaction platform that has been embraced by a number of small companies, as well as some major online retailers, such as Overstock.com. It is a Web currency based on algorithms, and its value is determined by its users, without government input.

"I think what we are seeing is that the Bitcoin world is maturing. Over the last four or five months it seems to have gone more mainstream, and it's hard to get more mainstream than real estate," said Marcus Asner, a partner with Arnold & Porter LLP who previously handled cyberissues as chief of the major crimes unit at the Manhattan U.S. attorney's office.

The Bitcoin platform saves time and money, particularly for sellers of goods and services, since processing fees are all but eliminated. But it remains to be seen whether regulators will classify those that conduct bitcoin transactions as money transfer brokers, subjecting them to a multitude of rules and licensing requirements.

Regulators are also concerned about taxes that may be circumvented when bitcoin is acquired and immediately transferred into dollars. And the currency has attracted such a large following of speculators that value can be hard to pin down.

Still, the desire to test it out in major transactions continues to spread.

Cybercurrencies were purportedly created with the political motive of separating monetary transactions from governmental control. But in recent months, the use of Bitcoin and its competitors, such as Litecoin, has caught on among retailers, Web consultants and even rapper Kanye West, who created his own currency last week.

With its Thursday announcement, Bond New York emphasized the benefits Bitcoin will provide to buyer, seller and broker alike, including extremely low transaction fees, security through cryptography, fast international payments and identity protection.

In addition to accepting bitcoin, Bond agents may actually be paid in bitcoin, according to the company — something that experts say could open up an opportunity for trouble.

Since values can swing wildly in the course of a day, holding onto the virtual coins for any period of time could increase risk significantly. One way to get around this, according to Asner, is to use one of several existing services to transfer received bitcoin immediately into cash, so it keeps its value. This is the strategy Bond New York has adopted, according to founder Noah Freedman.

Property owners can also set the value of a bitcoin for a particular sale, as the real estate development arm of Chinese information technology company Shanda Group did in October in the first reported sale of real estate using Bitcoin.

The company sold out of its 300-apartment Shanghai offering in minutes, according to published reports, though the developer admitted the use of Bitcoin was more of a publicity stunt than an endorsement of the cybercurrency.

Shanda smoothed the waters by setting the exchange rate for bitcoin used in the transactions at 1,000 yuan, reserving the right to adjust the rate if the value fell before closing.

In Bond New York's case, the rate of exchange will be set by Coinbase, a so-called digital wallet that allows users to buy, use and accept Bitcoin securely.

Volatility is one of the biggest hurdles for property owners wishing to accept bitcoin — which is treated as a commodity on several exchanges and has become a hot target for speculators — in real estate transactions.

In one stark example, the value of one bitcoin plummeted from \$760 to \$422 in two days last month. The huge drop was reportedly connected to an announcement from the Chinese Bitcoin exchange, BTC China, that it would stop accepting deposits for the time being, after the government placed new restrictions on the currency.

Events like these have convinced some experts that Bitcoin is not "market-ready."

"It was not created to solve a relevant business problem but to make a political statement," said risk management expert and former Federal Reserve Bank examiner Mark Williams, who teaches finance at Boston University. "Bitcoin is a theoretical, math-based pseudo-currency that can't be applied in a market-based finance world."

Many real estate companies that choose to follow Bond's lead may opt to act more like "go-betweens," facilitating the use of the Bitcoin peer-to-peer platform rather than directly accepting the currency, said William Norton of Baker Donelson Bearman Caldwell & Berkowitz PC.

"As long as they can quickly and efficiently accept payments and exchange them back for dollars, [companies] are willing to do it. But for folks like real estate brokerages ... facilitating the purchase makes a lot more sense. It's a way for them to reduce their transaction cost," Norton said.

But this type of activity may open brokers up to regulations under state money transfer business laws and even under the Patriot Act, which requires banks to keep tabs on how who their customers are and how money is moved. The anonymity feature of Bitcoin could prove a hurdle to complying with such laws.

"The anonymity aspect of Bitcoin really is going to evaporate or disappear any time you start touching the real system, which is paying taxes and wiring money around to banks," which happens more in a real estate deal than in many other types of transactions, said James Jalil, a partner with Thompson Hine who specializes in cybercurrency and securities matters.

In New York, the state Department of Financial Services is **conducting an inquiry** into whether new rules are necessary to regulate virtual currencies. And while lawmakers seemed determined to allow the currency during November hearings in Washington, they began the process of finding a way to regulate it.

"The theory is, you can't have it both ways. The Bitcoin community can't say it's money and should be accepted as currency, and at the same time say it's not money when it comes to money transfer situations," Jalil said.

--Editing by Kat Laskowski and Katherine Rautenberg.

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