

# ETHEREUM MERGE

A NEW ERA BEGINS

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After a long wait the current Ethereum Mainnet is set to merge with the Beacon Chain on September 13 to 15, which presents Virtual Asset Service Providers with a new set of legal challenges.

Through the "merge" Ethereum will fully transition its consensus mechanism from energy-intensive Proof-of-Work (PoW) to Proof-of-Stake (PoS) by merging the beacon chain (called the consensus layer) with the layer running PoW (called the execution layer) (the "Merge").

As to information and news available now, the merge will most likely result in a hard fork, creating two separate (independent) Ethereum chains: On the one hand the "classic" Ethereum chain that still uses PoW as consensus mechanism, and Ethereum 2.0 on the other hand using PoS as consensus mechanism.

Such fork resulting in two (or more) chains being operated, will cause ETH holders that hold ETH at the point in time of the fork to receive duplicate units of hard-forked proof-of-work Ethereum tokens ("ETH") as well as proof-of-stake Ethereum tokens ("ETH 2.0"). Raising a multitude of legal questions, virtual asset service providers ("VASP") need to be aware of and need to act quickly in order to protect their own and their users' interests.

# Legal challenges

Many crypto asset exchange and trading platforms offer custody or storing solutions for users' assets. With ETH being one of the largest and most common crypto currencies worldwide, ETH will find its way into most crypto portfolios.

On many platforms users do not control their individual crypto-wallet, meaning the platform has – at least technical – power of disposition over users' assets.

Thus, with the Ethereum Merge amongst others the following questions arise:

- ▶ How can service providers position themselves in terms of supporting ETH and /or ETH 2.0?
- ▶ Are service providers obliged to pass on duplicate units to their users (e.g. is there a fork policy in place and, if so, does the fork policy also apply to the Merge)? Under which circumstances can users forfeit their potential claim over duplicates?
- ▶ If Ether units are not passed on what happens to them?
- ▶ What impact does the Merge have on Ethereum loan and derivative agreements?

## Our Support

With Merge preparations well underway and the last Pre-Merge upgrade “Bellatrix” proofing a success it is more important than ever to be advised by legal professionals and find legally sound solutions to handle the biggest shakeup in the crypto market during 2022. As a market-leading Digital-Law-Firm, we can guide you through the challenges thrown at service providers during the Ethereum Merge and provide you with comprehensive legal analyses.

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## Ways forward

Considering these legal challenges service providers need to be aware of necessary next steps and should act quickly to safely tackle the Merge *inter alia*:

- ▶ Careful review of user agreements in place (potentially also have a look at fork policies);
- ▶ Analyzing the legal risks and obligations associated with forked Ether tokens;
- ▶ Taking the right steps to properly inform users of future support and obtain sufficient consent regarding power-of-disposition;
- ▶ Determining options and timeframe to withdraw ETH if support should be foreclosed;
- ▶ Understanding how ETH loan and derivative offerings may have to be adapted;
- ▶ Analyzing potential tax implications (or advise customers to do so).

## Your Contact



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