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Crypto-currency: A Bubble waiting for a Burst?

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Abstract

Crypto-currency has made news headlines in recent times after Tesla's USD 1.5 billion investments in Bitcoin. It is the biggest disruption in fintech and has remained in controversies since its inception due to its opaque nature and cryptic private transfer between parties with private keys, which cannot be ruled out for illegal transactions, like money laundering, terror financing, human trafficking, usage of it in 'dark web' etc. Some countries like Japan, Switzerland though allowing legally their transactions, has made the regulatory affairs stringent, especially in line with their PMLA Act. In country like India, its trading is also happening by many entrepreneurs, though RBI has expressed its concern that allowing Crypto-currency trading might destabilize financial stability. This article has tried to unfold the mystery of Crypto-currency with elaborate discussions of its regulations and practices in different countries.

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I. Introduction

Crypto-currency has been termed as the biggest fintech disruption the world has seen to date. The decade when Crypto-currencies gained legitimacy was quite eventful, with achievements growing year after year. It is worthwhile to note that most of the gains have accumulated after the outbreak of the pandemic, and very recently fuelled by USD 1.5 billion investment by Tesla in Bitcoin.

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A Brief History of Crypto-currencies:

2009: Satoshi Nakamoto, Bitcoin founder, makes first peer-to-peer electronic cash transaction under a decentralized ledger maintained by anonymous consensus.

2010: First use of Bitcoin to buy two Papa John's pizzas for 10,000 BTC.¹

2011: Bitcoin gained popularity in the press, market develops competition begins as new currencies come on board.

2012: Crypto Exchange Coinbase was founded.²

2013: Bitcoin market capitalization crosses USD 1 billion, Ethereum Blockchain whitepaper released.³

2014: Microsoft allows crypto payments for their games, smart contracts etc.

2015: Ethereum Genesis block created, Linux's Hyperledger boosts blockchain development.

2016: Uber in Argentina and certain companies in Switzerland started accepting Crypto-currency payments.

2017: Japan and Norway have started recognizing the Bitcoin crypto market touching USD 500 billion, India also notices growth.

2018: RBI bans use in India, Samsung to design chips for mining, multiple price crashes happened.

2019: GoI panel submitted report⁴ Decentralised finance movement begins.

2020: Supreme Court (SC) strikes down on 4 March 2020 RBI ban.⁵ Paypal allows BTC in wallet, Mastercard disclosed crypto plans.

January 2021: RBI begins introduction of Central Bank Digital Currency (CBDC).

February 2021: Tesla buys BTC worth USD 1.5 billion.

Source: Business Standard (23 Feb 2021).

Despite the growing popularity and financial flows, governments, institutions and lobby groups of existing asset classes such as gold, and stock markets have been critical of crypto-currencies. They note that volatility in crypto assets is far more than in the stock market or gold.

This probably was the reason why many countries began regulating crypto-currencies, showing the first signs of institutional embrace. The Reserve Bank of India, the currency manager, financial sector regulator, and the banker to the government, has remained strongly

¹On May 22, **2010**, a hungry man made **history**; he traded **10,000 Bitcoin** for **two pizzas** from **Papa John's**, the **first**-ever recorded real-world transaction involving **Bitcoin**.

²Coinbase is a digital currency exchange headquartered in San Francisco, California, United States. They broker exchanges of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, Litecoin, Tezos and many other crypto-currencies.

³VitalyDmitriyevich "Vitalik" Buterin is a Russian-Canadian programmer and writer who is best known as one of the co-founders of Ethereum. Buterin became involved with cryptocurrency early in its inception, co-founding Bitcoin Magazine in 2011. See, <https://ethereum.org/en/whitepaper/>

⁴ "Report of the Committee to propose specific actions to be taken in relation to Virtual Currencies"(28

February 2019) Department of Economic Affairs (DEA),

GoI<https://dea.gov.in/sites/default/files/Approved%20and%20Signed%20Report%20and%20Bill%20of%20IMC%20on%20VCs%2028%20Feb%202019.pdf>

⁵REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION Writ Petition (Civil) No.528 of 2018 INTERNET AND MOBILE ASSOCIATION OF INDIA.... Petitioner Versus RESERVE BANK OF INDIA...

Respondent WITH Writ Petition (Civil)

No.373 https://main.sci.gov.in/supremecourt/2018/19230/19230_2018_4_1501_21151_Judgement_04-Mar-2020.pdf

against Crypto-currencies due to several reasons. But plans to impose a statutory ban on Crypto-currencies and introduce a Central Bank Digital Currency (CBDC) in India are underway. CBDCs across the world are still at a nascent stage.

II. Countrywise Crypto-currency Regulation

1. Japan:

In April 2017, Japan recognized Bitcoin and other digital currencies as legal property under the Payment Services Act.⁶

In December 2017, the National Tax Agency (NTA) ruled that gains on Crypto-currencies should be categorized as 'miscellaneous income' and investors taxed at rates of 15%-55%.⁷

Exchanges are legal in Japan, but after a series of high profile hacks, including the notorious Coincheck heist of \$530 million⁸ In digital currency, crypto regulations have become an urgent national concern. The hacking at Coincheck, which bills itself on its website as "the leading bitcoin and Crypto-currency exchange in Asia," came to light during January 2018. Cybercriminals have been taking advantage of security weaknesses at young, often unregulated businesses that are handling huge sums of other people's money.

Managers of Coincheck bowing in apology at a news conference following the exchange's loss of \$530 million in Crypto-currency in a hack.



Source: CNN Business (29 January 2018).

Japan's Financial Services Agency (FSA) has stepped up efforts to regulate trading and exchanges: amendments to the Payment Services Act now require Crypto-currency exchanges to be registered with the FSA in order to operate – a process which can take up to

⁶A working group of the financial consultation council of the Financial Services Agency (FSA) of Japan proposed that Japan should consider establishing a cross-sectoral regulatory regime in order to provide a flexible environment for the development of various payment services.

⁷ "Cryptocurrency Regulations in Japan" by Complyadvantage <https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-japan/>

⁸CNN Bussiness (29 January 2018) <https://money.cnn.com/2018/01/29/technology/coincheck-cryptocurrency-exchange-hack-japan/index.html>

six months, and which imposes stricter requirements around both cyber security and AML/CFT.

Japan remains a friendly environment for Crypto-currencies, but growing Anti-Money Laundering (AML) concerns are drawing the FSA's attention to further regulatory steps. Following talks between exchanges and the FSA, an agreement to form a self-regulatory body – the “Japanese Virtual Currency Exchange Association (JVCEA)” was put in place. The JVCEA will provide advice to as-yet unlicensed exchanges and promote regulatory compliance.

The Japanese Virtual Currency Exchange Association (JVCEA)

The Japanese Virtual Currency Exchange Association (JVCEA) is a self-regulation entity for the Japanese Crypto-currency industry. It is formally recognized by the Japanese Financial Services Agency (FSA) and has the authority to pass and enforce regulations and standards for Crypto-currency exchanges in Japan.

The JVCEA was established in April 2018 in response to a hacking attack in January that caused more than \$534 million worth of NEM digital tokens were stolen from the Japan-based Crypto-currency exchange Coincheck. Initially, the focus of its operations was inspecting the security of exchanges in Japan. In August, the Japanese exchange Zaif was hacked, causing \$59.7 million worth of digital assets to be lost. In response, the JVCEA announced that it would begin enforcing stricter regulations for "hot wallets." It became an officially-recognized regulatory body on October 24th, 2018.

According to an amendment bill to the **Payment Services Act** (the “PSA”) and the **Financial Instruments and Exchange Act** (the “FIEA”), which was promulgated on June 7, 2019 (the “2019 Amendment”) the following crypto-based transactions are regulated:

- Crypto asset margin trading and other crypto asset derivative transactions will become subject to Japanese regulations on derivative transactions generally. Broker-dealers and exchanges will likely need to revisit and update their registration status and policies and procedures.
- Crypto asset-related custodial activities will be subject to licensing.
- Crypto asset trading activities will be subject to various prohibitions on unfair trading and practices.
- Certain crypto assets distributed through distributed ledger technologies (“DLT”) (such as blockchain) will be expressly regulated as Type I securities. Consequently, solicitation and offering of such crypto assets, including Initial Coin Offerings (“ICOs”), to Japanese investors will require careful review and structuring to avoid any regulatory pitfalls.

2. Canada

That Canada approved a Bitcoin ETF before the U.S. Securities and Exchange Commission (SEC) did show a growing recognition among Canadian regulators that Bitcoin is here to stay, and that regulated investments are better than unregulated investments.

The Government of Canada (GoC) has stated about Crypto-currency in the website as follows:

“Crypto-currency is a digital representation of value that is not legal tender. It is a digital asset, sometimes also referred to as a crypto asset or altcoin that works as a medium of exchange for goods and services between the parties who agree to use it. Strong encryption techniques are used to control how units of Crypto-currency are created and to verify transactions. Crypto-currencies generally operate independently of a central bank, central authority or government.”⁹

The Canadian Regulatory Authority (CRA) generally treats Crypto-currency like a commodity for purposes of the Income Tax Act. Any income from transactions involving Crypto-currency is generally treated as business income or as a capital gain, depending on the circumstances. Similarly, if earnings qualify as business income or as a capital gain then any losses are treated as business losses or capital losses. CRA treats it as a barter transaction for income tax purposes. A barter transaction occurs when two parties exchange goods or services and carry out that exchange without using legal currency.

Some examples of Crypto-currency businesses are:

- Crypto-currency mining
- Crypto-currency trading
- Crypto-currency exchanges.

Paragraphs 9 to 32 of Interpretation Bulletin IT-479R¹⁰: Transactions in securities provide general information to help you figure out if transactions are income or capital gains. Although the discussion of income and capital in this interpretation bulletin is helpful, remember that Crypto-currencies are not Canadian securities under the Income Tax Act.

Crypto-currency (CC) when treated as Business Income

⁹Government of Canada website <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency/cryptocurrency-guide.html>

¹⁰For detailed regulations see, <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/it479r/archived-transactions-securities.html>

Buying a Crypto-currency with the intention of selling it for a profit may be treated as business income, even if it's an isolated incident, because it could be considered an adventure or concern in the nature of trade.

Example 1: Business income or loss

Alice regularly buys and sells various types of Crypto-currencies. She pays close attention to the fluctuations in the value of Crypto-currencies and intends to profit from the fluctuations. Her activities are consistent with someone who is engaged in the business of day trading. In 2017, Alice sold \$240,000 worth of various Crypto-currencies, which she originally purchased for \$200,000. Her net profit is \$40,000. Since Alice is actively trading in Crypto-currency, which is a commercial activity, she has to report business income of \$40,000 on her 2017 income tax return.

Crypto-currency (CC) when treated as Capital Gain

If the sale of a Crypto-currency does not constitute carrying on a business, and the amount it sells for is more than the original purchase price or its adjusted cost base, then the taxpayer has realized a capital gain. Capital gains from the sale of Crypto-currency are generally included in income for the year, but only half of the capital gain is subject to tax. This is called the taxable capital gain. Any capital losses resulting from the sale can only be offset against capital gains; One cannot use them to reduce income from other sources, such as employment income. It can be carried forward for his/her capital losses if he/she do not have any capital gains against which to offset those losses for the year or any of the preceding three years.

Example 2: Capital gain or loss

Tim found a deal on a living room set at an online vendor that accepts Bitcoin. Tim acquired \$3,500 worth of Bitcoin to buy the furniture with. By the time he bought the furniture and converted his remaining Bitcoin back into dollars, the value of Tim's Bitcoin had increased by \$500. The gain realized by Tim was on account of capital, so Tim has to report a \$500 capital gain on his income tax return. However, only 50% of that capital gain is taxable.

Example 3: Trading one type of Crypto-currency for another¹¹

On July 30, 2018, Francis bought 100 units of Ethereum, which had a value of \$20,600. For this purchase, Francis used 2.5061 Bitcoins, which were trading at \$8,220 per unit on that day, or the equivalent of \$20,600. We consider that Francis disposed of those Bitcoins. Francis originally bought those Bitcoins for \$15,000 and exchanged them for 100 units of Ethereum at a value of \$20,600, resulting in a capital gain. It is calculated as follows:

\$20,600 [fair market value of 2.5061 Bitcoins at the time of transaction]

¹¹Examples are sourced from GoC website <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/digital-currency/cryptocurrency-guide.html>

- \$15,000 [adjusted cost base of 2.5061 Bitcoins, their original purchase price]

\$5,600 capital gain

\$5,600 capital gain taxed at 50% = \$2,800 taxable capital gain

If, on the other hand, the original purchase price of the 2.5061 Bitcoins had originally been \$25,000, but at the time that Francis exchanged them for 100 units of Ethereum they were worth only \$20,600, he would have a capital loss. It is calculated as follows:

\$20,600 [fair market value of 2.5061 Bitcoins at the time of transaction]

- \$25,000 [adjusted cost base of 2.5061 Bitcoins, their original purchase price]

\$4,400 capital loss

\$4,400 capital loss \times 50% = \$2,200 allowable capital loss

This example assumes that the Crypto-currency in question was held as an investment on account of capital; however, if this transaction occurred in the course of conducting a business, the entire amount of \$5,600 would need to be reported as income in the first transaction and the entire \$4,400 would be reported as a loss in the second transaction.

Recent transactions

On 16 February 2021, **LiteLink Technologies Inc.** ("LiteLink" or "the Company") (CSE:LLT) (OTC:LLNKD) (FRA: C0B:FF), a company focused in emerging technologies across growth sectors including: crypto, blockchain, AI and cloud technologies has announced that it has signed a definitive agreement to complete an equity investment in **CatalX CTS Ltd.**, ("CatalX") Canada's premier Crypto-currency exchange with over 40+ Altcoins available for purchase. CatalX is a Canadian-based FINTRAC registered and compliant digital asset exchange platform that specializes in Crypto-currency trading, blockchain and cybersecurity technology.

The equity investment of C\$2,000,000 will result in LiteLink obtaining 24,217 Class A voting shares of CatalX at a valuation of \$10,526,315.79. The investment also gives LiteLink ownership and control of 19% of the outstanding share capital of CatalX.¹²

The equity investment will be satisfied through the issuance of 15,000,000 common shares of LiteLink to CatalX and a cash payment to CatalX of \$500,000. In conjunction with closing of the investment, LiteLink will also pay a finders' fee to an arm's-length party of 750,000 common shares of Litelink. All securities issued in connection with the investment in CatalX

¹² "LiteLink Signs Definitive Agreement to Acquire Equity Stake in Canada's Premier Cryptocurrency Exchange, CatalX" (16 February 2021) PR newswire <https://www.prnewswire.com/news-releases/litelink-signs-definitive-agreement-to-acquire-equity-stake-in-canadas-premier-cryptocurrency-exchange-catalx-301228867.html>

will be subject to a four-month-and-one-day statutory hold period in accordance with applicable securities law.

About LiteLink Technologies Inc.

LiteLink Technologies Inc. (CSE:LLT) (OTC:LLNKD) (FRA: C0B:FF) is a company focused on emerging technologies across growth sectors including: crypto, blockchain, AI and cloud technologies. Led by senior leaders and industry experts, LiteLink invests in and provides subject matter experts within portfolio companies to accelerate success and maximize value for shareholders.

About CatalX Exchange

CatalX is a Canadian-based digital asset exchange platform that specializes in Cryptocurrency trading, blockchain and cybersecurity technology. As a fully regulated Cryptocurrency exchange with FINTRAC, CatalX has the highest standards in security and compliance and is partnered with world-trusted names in Blockchain technologies, risk management and financial solutions including Bittrex, Prime Trust, Trulioo and Stably to provide their users with a trusted, secure platform.

3. Switzerland

The Swiss law states that Crypto-currencies and exchanges are legal, and the country has adopted a progressive stance towards Crypto-currency laws and regulations. The **Swiss Federal Tax Administration (SFTA)** considers Crypto-currencies to be assets: they are subject to the Swiss wealth tax and must be declared on annual tax returns.

Crypto-currency Exchange Regulations

Switzerland imposes a registration process on Crypto-currency exchanges – which must obtain a license from the **Swiss Financial Market Supervisory Authority (FINMA)**¹³ in order to operate. In February 2018, FINMA published a set of guidelines which applied existing financial legislation to offerings across a range of areas – from banking to securities trading and collective investment schemes (depending on structure).

Switzerland's government has indicated that it will continue to work towards a regulatory environment which is friendly to Crypto-currencies. In 2016, the town of Zug, a prominent global Crypto-currency hub, introduced Bitcoin as a way of paying city fees. In January 2018, Swiss Economics Minister Johann Schneider-Ammann stated that he was aiming to make Switzerland “the crypto-nation”.¹⁴ Meanwhile, the Swiss Secretary for International

¹³<https://www.finma.ch/en/>

¹⁴<https://complyadvantage.com/knowledgebase/crypto-regulations/cryptocurrency-regulations-switzerland/>

Finance, Jörg Gasser, has emphasized the need to promote Crypto-currencies without compromising existing financial standards.

Despite its encouragement towards fintech and virtual currencies like Bitcoin, the regulations stated that:

Since trade in these currencies is not out of the possibilities of entailing terrorism financing and money-laundering risks, therefore, trading activities in virtual currencies require a banking licence and involve ongoing monitoring by FINMA.

If FINMA receives specific information that an activity involving virtual currencies or other blockchain based applications is being carried out without the authorization required under financial market law FINMA will launch an investigation. If the investigation found any suspicious transaction(s) to be not in compliance with its ALM statute then FINMA will take all necessary compliances which might lead to even liquidation of the company concerned.

Moreover, any breach of licensing requirements under supervisory law is a criminal offence and FINMA will take necessary actions based out of the guidelines FINMA Guidelines on Initial Coin Offerings (ICOs).¹⁵

New York sues to shut down 'fraudulent' Coinseed crypto platform

New York's attorney general filed a lawsuit on 17 Feb 2021 to shut down the Crypto-currency platform CoincidENCE for allegedly defrauding thousands of investors, including by charging hidden trading fees and selling "worthless" digital tokens. Attorney General Letitia James said Coinseed traded Crypto-currencies such as bitcoin without registering as a broker-dealer, and sold "CSD" tokens without authorization to raise money for its mobile application startup.

James also sued Coinseed Chief Executive Dagderdale Davaasambuu and former Chief Financial Officer Sukhbat Lkhagvadorj, saying they overstated the midtown Manhattan-based company's management experience, while Lkhagvadorj misrepresented himself as a former Wall Street trader.

Coinseed's fraud totaled more than \$1 million, according to James, who is also seeking restitution for investors. The U.S. Securities and Exchange Commission filed a related lawsuit against Coinseed and Davaasambuu over the tokens, which both regulators said were sold from December 2017 to May 2018.

"I'm 100% sure that the suit is full of false accusations," Davaasambuu said in an email, referring to James' lawsuit. "It's very strange that they're blaming the very nature of how a startup works."

Both defendants have residences in Long Island City, New York, but Davaasambuu has expressed an intention to return to his native Mongolia, James said.

¹⁵ "Legal framework for distributed ledger technology and blockchain in Switzerland" (14 December 2018) The Federal Council <https://www.news.admin.ch/news/message/attachments/55153.pdf>

“Unregulated and fraudulent virtual currency entities, no matter how big or small, will no longer be tolerated in New York,” James said in a statement.

The attorney general said Coinseed had touted the CSD token as “a great opportunity for young people who want to make money in the crypto market,” and that the mobile app was “guaranteed” to help push its market value higher.

“In truth, nearly three years later, the CSD token has not been listed anywhere,” her lawsuit said.

James’ lawsuit in Manhattan Supreme Court alleged violations of the Martin Act, a New York state securities law. The SEC’s lawsuit is in Manhattan federal court.

Source: Reuters (18 Feb 2021) <https://www.reuters.com/article/us-crypto-currency-coinseed-new-york/new-york-sues-to-shut-down-fraudulent-coinseed-crypto-platform-sec-also-sues-idUSKBN2AH2JR>

4. India

In India, various Crypto-currency exchanges have reached out to the government in a hope to lobby against a complete ban in the country. In case of a blanket ban, crypto trading will likely happen through parallel channels like P2P, whatsapp, telegram or other social media platforms ,hawala, and other non-traceable anonymous platforms. In the absence of the required infrastructure for a blanket ban, this might lead to a parallel shadow economy.

Insiders put most crypto investors in India into two buckets:

- Who want to sell their Crypto-currencies and avoid paying income tax;
- Who want to hold their existing crypto currencies.

If the government regulations force investors selling their crypto assets they could face tax up to 42 per cent of their returns. Avoiding tax implications may not be easy if the crypto assets are brought through Indian exchanges, subject to an audit over the entire transactions. Such transactions could also be testified for possible money laundering.

What Indian Crypto-currency Bill implies

Crypto-currency as defined in the draft bill:

Any information, code or token which has a digital representation of value and has utility in a business activity or acts as a store of value or a unit of account and is generated through cryptographic means.

What is banned?

- Use of Crypto-currency as legal tender or currency is not allowed.

- Mining (creation), buying, holding, selling, dealing in, issuance, disposal or use of crypto-currency are also not allowed.

Rationale behind Regulation:

- Risk to consumer, Crypto-currency is not legal tender.
- Crypto-currencies (CC) are volatile in nature.
- No access to currency if private key is lost.
- Vulnerable to criminal activity and money laundering.
- Central Bank cannot regulate CC supply in the economy hence it possess financial risk.
- Validating transactions is energy intensive.

Then, what is allowed?

- Government in consultation with RBI, may issue digital rupee as legal tender.
- RBI can also notify a digital currency recognized in a foreign jurisdiction.
- Draft bill also allows use of underlying technology (blockchain) for other research/teaching purposes. (buy Crypto-currency trading is not allowed).

After the Act is passed:

- Existing holdings of Crypto-currencies have to be declared.
- These have to be disposed of within 90 days of the passage of Act.
- Uncertainty on whether the Bill will ban holding/trading crypto assets in India or whether it will apply to Indians holding /trading crypto assets anywhere.
- At present, there are 7 million Indians holding crypto assets of over USD one billion.

Over two years after being booked for setting up a Bitcoin ATM in Bengaluru mall (in violation of RBI norms) co-founders of Crypto-currency exchange Uncoin, B V harish and SathvikVishwanath got rid by the Karnataka court judgment, following the Supreme Court decision in March 2020, the court quashed the FIR registered against them by the cybercrime police. In March 2020, the SC set aside in the Internet and Mobile Association of India case the RBI's April 2018 circular banning financial services companies from trading in Crypto-currency. Citing the same, Harish and Vishwanath had challenged the FIR. In 2018, the Bitcoin ATM was set up at Kemp Fort mall in Bengaluru. Thereafter, the police has registered a case citing violation of RBI norms.

Source: Times of India (23 Feb 2021).

RBI has expressed concern about Crypto-currency

The RBI has expressed their concern that Crypto-currency might have a destabilizing impact on financial stability. In an interview with media he stated the following:

“We have certain major concerns about Crypto-currencies. I want to make it clear that blockchain technology is different. Blockchain technology benefits

have to be exploited, that is another thing. But on crypto we have major concerns from the financial stability angle.”¹⁶

The Last Word

Since Crypto-currency does not derive its value from any assets/earning, its value depends entirely on what an investor is willing to pay for it. As a consequence, its price can be oscillated, very frequently. The price of Bitcoin spiked significantly on 8th February 2021, after electric car maker Tesla announced its USD 1.5 billion investments in Bitcoin. But in a few days, it dropped 10 per cent. Even in the months of February and March 2020, when the spread of Covid-19 and economic slowdown had astounded the stock markets, Bitcoin dipped severely. Such price volatility is very risky for retail investors who lack deep pockets to absorb such losses. Another major issue with virtual currency is since it is not widely used as a medium of exchange backed by legal tender by still many countries, its universal acceptance is problematic, and due to its private transactions type, it is very difficult, if not impossible whether it is used in any illegal activities like money laundering, terror funding/ human trafficking etc.

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¹⁶ “Shaktikanta Das voices ‘major concerns’ about cryptocurrency” (25 February 2021) Economic Times <https://economictimes.indiatimes.com/news/economy/policy/rbi-governor-shaktikanta-das-voices-major-concerns-about-cryptocurrency/articleshow/81187214.cms?from=mdr>

<https://ethereum.org/en/whitepaper/>

<https://www.finma.ch/en/>

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