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Ukraine creates national legal framework for cryptocurrencies

The legal status of cryptocurrencies in Ukraine remained unresolved for quite some time. In the absence of a clear regulatory environment, the Ukrainian central bank declared cryptocurrencies (Bitcoin) as quasi-money/a monetary substitute, while issuing warnings about the risk of transactions in cryptocurrencies and even found signs of pyramid schemes in these transactions. At some point, it was recognised that the new technology has a rather complex legal nature, requiring an in-depth analysis in order to develop an adequate legal framework.

On 8 September 2021, the Parliament of Ukraine adopted the draft Law "On Virtual Assets", registration no. 3637 ("VA Law"), and thereby legalised virtual assets and the respective business in Ukraine. The VA Law is expected to be signed into law by the President.

The new law defines and specifies the notion of a "virtual asset" and provides for its criteria and types, introduces the system and requirements for circulation of virtual assets and related financial services, and allocates regulatory functions among state authorities. It also introduces the required amendments to the Civil Code of Ukraine and a number of other statutory acts.

The VA Law provides that virtual assets are not legal tender within the territory of Ukraine and cannot be exchanged for property (goods) or works (services). They can be exchanged for other virtual assets or Ukrainian currency (and in cases set forth by the National Bank of Ukraine – for foreign currency).

Scope of application limited to specific scenarios

Importantly, the application of the VA Law will be limited to situations when: (i) the virtual asset service providers are registered or have a permanent establishment in Ukraine, (ii) the contract with virtual assets is governed by Ukrainian law as determined by its parties, (iii) both parties to a contract with virtual assets are Ukrainian residents, and (iv) the acquirer of the virtual assets is a Ukrainian resident.

Two types of virtual assets introduced

Two types of virtual assets are introduced by the VA Law: (i) non-secured virtual assets, and (ii) secured virtual assets that certify property rights, claims, etc. In this context, securing virtual assets is different from securing the proper performance of an obligation. The mentioned certification of property rights refers to the confirmation of the right of the secured virtual asset owner to claim the object of security.

The secured virtual assets can be recognised as financial virtual assets if issued by a resident of Ukraine and secured by (i) currency assets, or (ii) securities or derivative financial instruments. The rules for circulation of these virtual assets will be set up by the National Bank of Ukraine and National Commission for Securities and the Stock Market of Ukraine, respectively.

Types of virtual asset services and providers

The virtual asset service providers can only be legal entities carrying out one or more of the following activities in the interests of third parties: (i) safekeeping or administration of virtual assets or keys of virtual assets; (ii) exchange of virtual assets; (iii) transfer of virtual assets; and (iv) intermediary services related to virtual assets. A non-Ukrainian entity may also act as a virtual asset service provider based on the rules and procedures that are yet to be introduced.

A virtual asset service provider will be legally able to provide any of the above services based on a permit for a respective service which will be issued by a special state authority which should be established by the Cabinet of Ministers of Ukraine within 6 months after the enactment of the VA Law. Within this term, the Cabinet of Ministers must also come up with a regulation for the issuance of permits for related virtual asset services.

Information about the issuance, re-issuance or cancellation of permits will be reflected in the State Register of Virtual Asset Service Providers which will also be developed for the unimpeded operation of the virtual asset market.

VA Law is a starting point for wider regulatory framework

The VA Law will enter into force on the day of entry into force of the Law of Ukraine amending the Tax Code of Ukraine, which will at that time introduce specifics of taxation for transactions in virtual assets. The respective draft law has been registered with the Parliament of Ukraine but has not yet passed a hearing.

Apart from that, the VA Law, as rather a general framework for virtual asset market operation, may be considered as a starting point in the development of the necessary regulatory landscape. It requires close cooperation among state authorities, regulators and most likely market players as well in order to create efficient and balanced rules which will be in line with modern technologies and which also takes into account the interests of all affected parties.

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