

Regulation of virtual assets may soon become reality in Ukraine

October 27, 2021

The rights and obligations of virtual asset market participants, as well as the principles of state policy for virtual assets circulation recently came close to being set out in Ukrainian law.

On September 8, 2021, the Ukrainian parliament, the Verkhovna Rada (the “**Rada**”) adopted the Law “On Virtual Assets” (the “**Law**”). The Law is designed to regulate legal relations arising in connection with the circulation of virtual assets in Ukraine. But the Law was vetoed by the president on October 5, 2021 and returned to the Rada with proposals for further revision. In particular, the president noted that the establishment of a new regulator would result in a significant increase in state budget expenditures, proposing instead to assign responsibility for regulating the circulation of virtual assets to the National Securities and Stock Market Commission. ([link](#))

The Law can be a significant step in the development of the cryptocurrency market in Ukraine. Therefore, we consider it important to let you know about possible changes that, the Law would bring. ([link](#))

Virtual assets

The law defines virtual assets as an “intangible benefit that is an object of civil rights, has a value and is expressed as a set of data in electronic form. The existence and negotiability of a virtual asset is ensured by the system for ensuring the circulation of virtual assets. A virtual asset can certify property rights, including the right of claim to other objects of civil rights.” Virtual assets can be secured and unsecured.

Secured virtual assets certify property rights, specifically rights of claim with respect to other objects of civil rights. A virtual asset is secured by another object of civil rights (the “**Collateral**”), the rights of claim that are certified by such virtual asset. In its turn, unsecured virtual assets do not certify property rights.

A person that has obligations under a secured virtual asset must ensure cessation of the virtual asset circulation if the Collateral securing that asset has been lost and the possibility of replacing it is not provided for by the transaction involving the creation/alienation of the relevant secured virtual asset. Thus, for example, if the virtual assets are backed by securities and circulation of those securities has been stopped (due to issuance cancelation, repayment, etc.), the respective virtual assets circulation could also be stopped.

If the collateral is property to which special legal requirements apply (for example, immovable property, currency values, etc.), those requirements must be met under a virtual asset transaction.

If the collateral is encumbered (pledged, seized, etc.), the relevant virtual asset may not be alienated.

All such specific requirements could be quite challenging to apply, taking into account the phenomena of virtual assets.

The circulation of secured virtual assets can also be regulated by government agencies that regulate or register transactions involving the relevant collateral.

The Law also introduces the concept of “**financial virtual assets**”, which include:

- Secured virtual assets that are issued by a resident of Ukraine and secured by currency values (the “**SVA(CV)**”); and
- Secured virtual assets that are issued by a resident of Ukraine and secured by a security or a derivative financial instrument (the “**SVA(FI)**”).

SVA(CV) will circulate in accordance with the procedure established by the National Bank of Ukraine, while SVA(FI) will circulate in accordance with the procedure established by the National Securities and Stock Market Commission of Ukraine.

Ownership of a virtual asset is acquired (i) upon creation of the virtual asset, (ii) upon the execution and completion of a virtual asset transaction, (iii) by virtue of law or (iv) under a respective court decision.

Virtual assets cannot be used as a means of payment in the territory of Ukraine or exchanged for property, work or services.

Field of application of the Law

The Law applies to legal relations under these circumstances:

1. Entities—service providers involved, have a registered address/permanent establishment on the territory of Ukraine.
2. Ukrainian law is determined as applicable to the virtual asset transaction.
3. The virtual asset transaction is being concluded between residents of Ukraine.
4. The virtual asset transaction is concluded by the person, which is a resident of Ukraine (the purchaser of a virtual asset) in its own interest.

If Ukrainian law applies to a transaction involving the disposal of objects of civil rights, or to the securing of a virtual asset, circulation of such respective virtual asset is also governed by Ukrainian law.

Service providers

The Law sets out that a provider of services related to the circulation of virtual assets (the “**Provider**”) may be a legal entity that meets the criteria established by the Law and carries out one or more of the following activities in the interests of third parties:

1. Custody or administration of virtual assets or virtual asset keys
2. Virtual assets exchange
3. Virtual assets transfer
4. Provision of intermediary services related to virtual assets.

Foreign legal entities may be Providers.

Financial institutions may only be providers of services related to the circulation of SVA(FI).

The following do not qualify as a Provider:

- A legal entity registered under the law of, or having its registered address on the territory of, a state recognized by the Rada as an occupying state or aggressor state (an “**Aggressor**”), or if its executives or chief accountant are substantial shareholders and ultimate beneficial owners of such legal entity.
- A legal entity that holds, directly or indirectly (through another individual or legal entity), any participation interest in a resident of the Aggressor.
- A legal entity that has among its participants (founders, shareholders) legal entities registered in a state (jurisdiction) that does not comply with recommendations of international, intergovernmental organizations counteracting to legalization (laundering) of the proceeds of crime or financing of terrorism or financing proliferation of weapons of mass destruction (these currently are: Iran, North Korea) or improperly complying with those recommendations (these currently are: Albania, Barbados, Botswana, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Malta, Mauritius, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Uganda, Yemen, Zimbabwe).
- In other cases, as envisaged by the Law.

Business entities may carry out Provider activities if they meet and comply with the requirements established by the Law, subject to obtaining permission for the provision of the relevant type of services related to the circulation of virtual assets.

A permit for carrying out certain types of provider activities will be valid for one year.

Banking / nonbanking financial institutions have the right to provide services related to the circulation of SVA(CV) on the basis of a banking license / license for foreign exchange transactions and a permit for the provision of services related to the circulation of virtual assets.

The Law sets the following requirements on the charter capital of Providers:

- For residents of Ukraine providing services related to custody and administration of virtual assets or virtual asset keys—the equivalent of at least 70,000 non-taxable minimum incomes (UAH 1,190,000), and for non-residents—the equivalent of at least 350,000 non-taxable minimum incomes (UAH 5,950,000).
- For residents of Ukraine providing services related to (i) the exchange of virtual assets, (ii) providers of services related to the transfer of virtual assets, or (iii) providers of intermediary services related to virtual assets—the minimum charter capital must be the equivalent of at least 35,000 non-taxable minimum incomes (UAH 595,000), and for non-residents—at least 175,000 non-taxable minimum incomes (UAH 2,975,000).

The Law also determines the fee for issuance of a permit for carrying out the activities of the Provider:

1. For residents, the fee is set from UAH 68,000 to UAH 136,000, depending on the type of activity.
2. For non-residents, the fee is set from UAH 340,000 to UAH 680,000, depending on the type of activity.

Establishment of the State Register of Providers is also provided for by the Law.

Public offerings of virtual assets

The Law provides for the possibility of public offerings of virtual assets. In such cases, the issuer of the virtual assets must publish information about the issuer and the virtual asset on the official website of the issuer.

Financial penalties for violations of the Law

Financial penalties for violations of the Law can range from 500 to 7,000 non-taxable minimum incomes (from UAH 8,500 to UAH 119,000), depending on the type of violation.

The Law should not become effective until the respective amendments to the Tax Code are introduced specifying taxation in respect of virtual assets transactions.

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