

## **Law on cryptocurrency adopted in Ukraine**

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On 8 September 2021, the Ukrainian Parliament adopted the Law of Ukraine On Virtual Assets (hereinafter – the Law).

The President returned the Law to the Parliament with several proposed amendments. On February 17, having incorporated the President's proposals, the Ukrainian parliament passed the amended Law. It will enter into force after the relevant amendments to the Tax Code of Ukraine.

### **1. Relations regulated by the Law**

The law will apply to relations that arise:

- 1) in the case of services provision related to virtual assets turnover, if the subjects of such legal relations have a registered location or a permanent representation in Ukraine;
- 2) due to a virtual asset transaction, if the parties have determined the law of Ukraine as applicable to the transaction as a whole or a separate part thereof;
- 3) due to a virtual asset transaction, if both parties to the transaction are residents of Ukraine;
- 4) due to a virtual asset transaction, if the person buying virtual assets in his/her interests (a virtual asset buyer) is a resident of Ukraine.

A foreign investor should take into account the provisions of the Law if the transactions (services) contain a Ukrainian component (resident of Ukraine, a person registered in Ukraine, or an entity with a permanent representation in Ukraine), defined by this Law, or the parties to such transactions (services) subject their relations to the law of Ukraine.

Note! The law will not apply to: a) legal relations related to the issuance, turnover, storage, and redemption of electronic money; b) legal relations related to the use of software or software-hardware complexes of electronic data exchange that ensure the implementation of these legal relations concerning financial instruments; c) legal relations arising in the course of professional activity in the capital markets and organized commodity markets.

## 2. Virtual asset in Ukraine

According to the Law, an intangible asset that is the object of civil rights, having value and is expressed as a set of data in electronic form will be recognized as a virtual asset. This wording allows not only cryptocurrency but also tokens and even game skins to be related to virtual assets.

Note! The Law clearly states that virtual assets will not be a payment instrument in Ukraine. They cannot be exchanged for goods or services.

Virtual assets can be secured or unsecured. Unsecured virtual assets don't certify property rights. Secured virtual assets certify property rights, in particular claim rights to other objects of civil rights. The owner of the secured virtual asset acquires the right to claim the object by which the virtual asset was secured.

At present, the Law does not clearly define which objects of civil rights can secure an asset. However, the Law separately stipulates that virtual assets may be secured by currency values or securities. In this case, the virtual assets are financial and regulated separately.

### 3. Moment of creation and start of a virtual asset's turnover

The moment of creation of a virtual asset is the moment from which the first owner can own, use and dispose of the virtual asset in the system of ensuring the turnover of the respective virtual asset. The moment of a virtual asset creation may be defined differently by the technical features of virtual assets turnover system.

The turnover of a virtual asset begins from the moment of its creation.

### 4. Ownership of virtual assets in Ukraine

One can become an owner of a virtual asset in Ukraine:

- by creating a virtual asset;
- by having received a virtual asset based on an agreement (another transaction);
- by having received a virtual asset under the law or court order.

Ownership of a virtual asset is evidenced by the possession of the key to such a virtual asset.

The person who owns such a key is not recognized as an owner of a virtual asset if:

- a virtual asset or a virtual asset's key is given to the person for safekeeping under a contract with the owner of this virtual asset;
- a virtual asset is transferred to the person for safekeeping under the law or a court decision that has entered into force;
- the person misappropriated such a key.

### 5. Services related to the turnover of virtual assets

The following services will be considered related to the turnover of virtual assets:

- storage or administration of virtual assets or keys of virtual assets (safekeeping of virtual assets or keys of virtual assets with the ability to independently move such virtual assets in the interests and on behalf of third parties. The services provider for storage or administration of virtual assets or keys of virtual assets performs the transfer of such virtual assets only if such transfer is made following the instructions of the virtual asset's owner and expressly provided by the relevant agreement with the virtual asset's owner;
- exchange of virtual assets (activities related to the exchange of virtual assets for other virtual assets and currency values, carried out for

- third parties and/or on behalf of and in the interests of third parties);
- transfer of virtual assets (transfer of virtual assets in the interests of third parties from the wallet of virtual assets of third parties to the wallet of virtual assets of others);
- provision of intermediary services related to virtual assets (making transactions on virtual assets (including a public offering of virtual assets) in the interests of third parties).

## 6. Service providers

The provider of services related to the turnover of virtual assets may be a legal entity:

- 1) managers, chief accountant, capital's substantial shareholders, and ultimate beneficial owners of which have an impeccable business reputation;
- 2) which has formed the authorized capital in the amount established by the Law, and can confirm the legality of the received funds directed to the formation of the legal entity's authorized capital;
- 3) which meets other requirements of the Law.

Only a financial institution can be a provider of services related to the secured virtual assets' turnover secured by currency values.

To become a provider of services related to the turnover of secured virtual assets, non-residents must meet the following requirements:

- 1) to have an authorized capital in the amount of:
  - not less than UAH 5,950,000 (approx. USD 223,485) – to become a provider of services for storage or administration of virtual assets or keys of virtual assets;
  - not less than UAH 2,975,000 (approx. USD 111,745) – to become a provider of virtual asset exchange services;
  - not less than UAH 2,975,000 (approx. USD 111,745) – to become a provider of virtual asset transfer services;
  - not less than UAH 2,975,000 (approx. USD 111,745) – to become a provider of intermediary services related to virtual assets;
- 2) to obtain a permit in Ukraine for the provision of services related to virtual assets turnover.

## 7. Permission to provide services

To obtain a permit, one must apply for a permit to provide services related to virtual assets turnover. The application must contain information on:

- the applicant (full name of the legal entity, code of the legal entity in the State Register, location, postal address, numbers of means of communication, e-mail address, which is the official communication channel);
- the service provider's activities related to the turnover of virtual assets that the applicant intends to carry out.

The following shall be attached to the application for a permit for the provision of services related to the turnover of virtual assets:

- access code to the results of providing administrative services in the field of state registration, which provides access to a copy of the applicant's charter or another constituent document in electronic form in the State Register;
- description of the ownership structure;
- documents confirming the sources of origin of funds for the authorized capital and the actual contribution of funds for its formation;
- details containing information about:

a) the business reputation of the ultimate beneficial owners;b) the substantial shareholders of the applicant's capital (identification data of such persons, their business reputation, percentage of authorized capital, or voting rights held by each such shareholder with the applicant);c) identification data, business reputation and professional experience of the applicant's managers, the applicant's business reputation;d) identification data, professional experience, and impeccable business reputation of the applicant's founders, chairman and members of the collegial executive body (person exercising the powers of the sole executive body), chairman and members of the supervisory board (if any) of such legal entity;

- the applicant's internal documents regulating the rules of personal data processing taking into account the requirements of the Law of Ukraine On Personal Data Protection;
  - the applicant's internal documents regulating the implementation of the relevant type of the service provider's activity related to virtual assets turnover;
  - a copy of a payment document confirming the payment for the issuance of a permit to provide services related to virtual assets turnover .
- At the same time, the Law sets the following fees for non-residents:

a) for the issuance of a permit for storage or administration of virtual assets or virtual assets keys – UAH 680,000 (approx. USD 25,540);b) for the issuance of a permit for the exchange of virtual assets – UAH 425,000 (approx. USD15,965);c) for the issuance of a permit for the

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transfer of virtual assets – UAH 425,000 (approx. USD 15,965);d) for the issuance of a permit for the provision of intermediary services related to virtual assets turnover – UAH 425,000 (approx. USD 15,965).

Currently, the Law does not define specific requirements for information provided by non-residents (which documents confirm the registration of non-resident legal entities, etc.).

The permit is issued for one year within 30 days from the date of receipt the application and supporting documents. After its expiration, the permit can be reissued free of charge. The term of permit's re-issuance is 2 working days from the date of receipt of the relevant application.

## **8. Liability for the violation of service provision rules**

The following financial sanctions will be applied to those who carry out activities in the field of virtual assets turnover:

- 1) for carrying out activities displaying characteristics of provision of services related to virtual assets turnover without obtaining a permit – a fine from UAH 34,000 to UAH 119,000 (approx. USD1,280 to 4,470);
- 2) for carrying out other activities that are not granted by the permit by the provider of services related to virtual assets turnover – a fine from UAH 17,000 to UAH 85,000 (approx. USD640 to 3,190);
- 3) for providing designedly unveracious or unreliable information in the documents attached to the permit application for the provision of services related to virtual assets turnover – a fine from UAH 8,500 to UAH 17,000 (approx. USD320 to 640);
- 4) for violating deadlines for the submission of changes in the information entered in the State Register of service providers related to virtual assets turnover – a fine of up to UAH 17,000 (approx. USD 320);
- 5) for failure to submit or not fully submitted reporting and information or submission of inaccurate information by service providers related to virtual assets turnover – a fine of up to UAH 17,000 (approx. USD 320).

However, the procedure for considering cases, as a result of which such financial sanctions may be applied, has not yet been developed.

In general, the implementation of the Law will have a positive effect on foreign investments through the creation of more transparent rules in this market in Ukraine.

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At the same time, a foreign investor interested in the virtual assets market in Ukraine and services related to their turnover should keep in mind that the Law will only become a basis for more detailed regulation in the future.