

## PROPERTY STATUS OF CRYPTOCURRENCY UNDER THE LAWS OF VIETNAM

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One of the most common debates in the legal realm is whether cryptocurrency is a property, and therefore subject to the property laws or not. This article will attempt to address this issue in the context of the Vietnamese laws.

### Overview legal development of cryptocurrency in Vietnam

The growth in the use of cryptocurrencies is remarkable all over the world for the past few years. Interestingly, according to Statista, Vietnam is ranked among top countries where cryptocurrency is most heavily used<sup>1</sup>. Against such background, early movement towards developing the legal framework to regulate cryptocurrencies was made in 2017 when the Prime Minister of Vietnam promulgated Decision No. 1255/QD-TTg dated 21 August 2017 on approval for the scheme for development of legal framework on managing virtual asset, digital currency, virtual currency. After that, in order to implement Decision No. 1255/QD-TTg of the Prime Minister, the Ministry of Finance has promulgated Decision No. 664/QD-BTC dated 24 April 2020 to form a research group on virtual currencies and virtual assets.

However, nothing remarkable on the development of an official legal framework regulating cryptocurrencies is worth noting since then. In general, the Vietnamese State authorities have only issued public announcement, directives, or recommendations under which the overall attitude of the Vietnamese Government towards cryptocurrencies is that a complete ban against cryptocurrencies is not desirable but at the same time, the use of cryptocurrencies is neither encouraged and has to be strictly supervised<sup>2</sup>.

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<sup>1</sup> Visit: <https://www.statista.com/chart/26757/cryptocurrency-adoption-world-map/>

<sup>2</sup> The conclusion of the author with regards to the Vietnamese Government's opinion toward cryptocurrencies is made upon considering the following documents:

- (i) State Bank of Vietnam's public announcement on Bitcoin and similar virtual currencies dated 27 February 2014 on its website (visit:
- (ii) Public announcement of the State Securities Commission ("**SSC**") on its website on 20 January 2018 (visit:
- (iii) Directive No. 10/CT-TTg dated 11 April 2018 of the Prime Minister on enhancing management of activities in relation to Bitcoin and similar virtual currencies;

## Cryptocurrencies: Property or non-property

### *Case studies*

- *The first lawsuit regarding cryptocurrencies in Vietnam*

The first lawsuit regarding cryptocurrencies in Vietnam was resolved by way of Judgment No. 22/2017/HC-ST dated 21 September 2017 of the Court of Ben Tre Province. In particular, the plaintiff filed a lawsuit demanding the Court to cancel the decision on administrative sanction issued by the district-level tax authority of Ben Tre Province, under which the plaintiff was required to pay tax for trading Bitcoins. The relevant administrative sanction decision was based on the instruction under Official letter No. 4356/BTC-TCT dated 1 April 2016 of the Ministry of Finance which stated that **cryptocurrency is property right** and it is taxable. This is also the opinion of the prosecutor. However, the trial panel disregarded the opinion of the prosecutor as well as the argument of the tax authority by holding a decision in favor of the plaintiff. Accordingly, such administrative decision was canceled. The reason given for the Court's decision is that there have yet been any official regulations recognizing cryptocurrencies as assets/goods, and therefore cryptocurrencies are not taxable.

- *A criminal case regarding cryptocurrencies*

In 2020, 16 defendants had forcedly taken 168 Bitcoins which were valued at 37 billion Vietnamese Dong from its owner. In particular, the owner was threatened to disclose the password of his digital wallets. The 16 defendants were then prosecuted by the Supreme People's Procuracy of Vietnam for conviction of robbery. Controversy arises as to such decision on prosecution of the Supreme People's Procuracy since it can be inferred from such decision that Bitcoin is a property under the laws of Vietnam, at least from the eye of the Supreme People's Procuracy.

Different viewpoints taken by the Court and the Procuracy as outlined above have shown that there is currently no single unified approach on the property nature of cryptocurrencies, even amongst the State authorities, under the laws of Vietnam.

### *Theoretical analysis*

To address whether cryptocurrency is a property, the Civil Code 2015 must be revisited. Accordingly, under Article 105.1 of the Civil Code 2015 (the "**Civil Code**"), property comprises of

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- (iv) Directive No. 02/CT-NHNN dated 13 April 2018 of the State Bank of Vietnam on enhancing management of activities in relation to Bitcoin and similar virtual currencies; and
  - (v) Official letter No. 4486/UBCK-GSDC dated 20 July 2018 of the SSC on management of activities on placement, transaction, transaction brokerage in relation to virtual currencies.

“objects, money, valuable papers and property rights”. Therefore, in order to be classified as a property under the Civil Code, cryptocurrency must fall under one out of the above four types of properties.

- *In terms of objects*: Despite not being officially defined by laws, it is widely accepted that objects are tangible assets and exist in the physical world. However, as cryptocurrency is only a virtual object without tangible form and accessible only on the internet environment, it cannot be recognized as an object in accordance with the Civil Code.
- *In terms of money*: The term *Money* is mentioned in several law documents. However, it is not explicitly defined elsewhere. As provided under the Law on State Bank 2010, the State Bank performs the function of a central bank in issuing money. Meanwhile, the State Bank of Vietnam only issues paper money or metallic money<sup>3</sup>. As such, it can be inferred that the term *Money* under the Civil Code refers to paper money or metallic money as issued by the State Bank of Vietnam. As cryptocurrency is clearly neither paper money nor metallic money, it is safe to conclude that cryptocurrency is not an asset under the form of money under the Civil Code.
- *In term of valuable papers*: Valuable papers are defined under the Law on State Bank 2010 rather than the Civil Code “as proofs evidencing the debt-payment obligation of the issuer towards the owner in a certain duration under the interest payment condition and other conditions”<sup>4</sup>. According to the prevailing laws of Vietnam, valuable papers may include<sup>5</sup>:
  - (i) Bill of exchange (*hối phiếu đòi nợ*), promissory note (*hối phiếu nhận nợ*), cheque (prescribed under the Law on Negotiable Documents 2005 (*Luật Các công cụ chuyển nhượng 2005*));
  - (ii) Government bond, enterprise bond, negotiable note (*kỳ phiếu*), and stock (prescribed under the Ordinance on Foreign Exchange Control 2005);
  - (iii) Debt instrument including bond, treasury bill, development bond (prescribed under the Law on Public Debt Management 2017);
  - (iv) Securities (prescribed under the Law on Securities 2019); and
  - (v) Corporate bond (prescribed under Decree 153/2020/ND-CP dated 31 December 2020 on placement of, transaction on private corporate bond on local market and placement of private corporate bond on international market).

It is quite clear that cryptocurrencies are not any of the valuable papers as mentioned in Item (i) to (iii), and (v) above which mostly are issued by the Government or used to certify debt obligations (*except for Stock which will be analyzed below as a type of securities*).

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<sup>3</sup> Law on State Bank of Vietnam 2010, Art. 17.1.

<sup>4</sup> Law on State Bank of Vietnam 2010, Art. 6.8.

<sup>5</sup> According to Official Letter No. 141/TANDTC-KHXX dated 21 September 2011 of the Supreme People’s Court re. the scope of authority regarding settlement of request of returning certificates of asset ownership.

Among those, cryptocurrencies seem to be *misunderstood* as securities, in which, Initial Coin Offering (“ICO”) is one of the activities that makes cryptocurrencies seem to *look alike* securities. ICO is a form of capital raising usually held by start-up enterprises in the field of blockchain technology. In an ICO, a number of cryptocurrencies (called tokens) will be sold to the investors in exchange of fiat or other types of cryptocurrencies (which generally are established and more stable cryptocurrencies such as Bitcoin or Ether<sup>6</sup>). The investors will expect for a rise in the value of tokens owned by them via the ICO or other privileges resulting from the success of the project under ICO. It can be seen that ICOs share some similarities with IPOs (Initial Public Offering – the traditional way of raising capital). ICO has also become a prevalent way of raising capital for Vietnamese startup entrepreneurs<sup>7</sup>.

However, considering the prevailing laws of Vietnam on securities, it is incorrect to conclude that cryptocurrencies are securities. In accordance with Article 4.1 of the Law on Securities 2019, securities only comprise (i) shares, bonds and fund certificates; (ii) securities rights, guaranteed securities rights, share purchase rights and depository receipts; (iii) derivative securities; and (iv) other types of securities stipulated by the Government. Meanwhile, cryptocurrencies are not any of the foregoing.

In addition, in practical terms, investing in ICOs is risky. Such investment form is not regulated by law or either supervised by competent authorities. The investors are likely facing the potential risk of complete loss from investing in ICOs. In Vietnam, there are even cases ICOs turning out to be frauds. Due to this issue and together with the fact that there are no regulations clearly stipulating that cryptocurrencies are securities; the Vietnamese governmental authorities show no supportive opinions that cryptocurrencies are securities. In particular, on a public announcement, the Ministry of Finance has emphasized that under the laws on securities, cryptocurrencies are not a type of securities<sup>8</sup>.

▪ *In term of property rights:*

It is stipulated under the Civil Code that property rights are “*rights which are able to be valued in terms of money, including property rights in respect of subjects of intellectual property rights, land use rights and other property rights*”<sup>9</sup>. There are opinions that cryptocurrencies are likely to satisfy the characteristics of property rights according to the Civil Code. Of which, the characteristic of having monetary value is attributable to the fact that the ownership of cryptocurrencies may bring economic value to the owners from trading cryptocurrencies. To a certain extent, ownership of cryptocurrencies even shares similarities with the property rights in respect of subjects of intellectual property rights which

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<sup>6</sup> Visit: [https://en.wikipedia.org/wiki/Initial\\_coin\\_offering](https://en.wikipedia.org/wiki/Initial_coin_offering).

<sup>7</sup> Visit: <https://vjst.vn/vn/tin-tuc/6145/ico--xu-the-moi-trong-huy-dong-von-cua-doanh-nghiep-khoi-nghiep-cong-nghe.aspx>.

<sup>8</sup> Visit: <https://cand.com.vn/Thi-truong/Tien-ao-khong-phai-la-mot-loai-chung-khoan-i598522/>.

<sup>9</sup> Article 115 of the Civil Code.

are recognized as traditional property rights. Both cryptocurrencies and intellectual properties are intangible and formed from the creation activities of human beings' intellect and the ownership of those is economically value.

However, considering thoroughly the definition of property rights under the Civil Code, it can be seen that in order to be recognized as a property right, there are two characteristics that shall be satisfied which are (i) being a right; and (ii) having monetary value. It seems that it is inappropriate to describe cryptocurrencies as rights. Cryptocurrencies themselves may not be property rights as they do not satisfy in full the characteristics of a property right. Therefore, the author opines that it is relatively ungrounded to classify cryptocurrencies themselves as property rights under the Civil Code.

## **Conclusion**

During the past few years, Vietnam is always ranked among top countries with highest cryptocurrency ownership rate and cryptocurrency transaction value. Vietnamese Government has initiated the development of a complete legal framework to regulate cryptocurrencies since 2017. However, till date, cryptocurrencies have yet been given an official legal status under the laws of Vietnam. In consideration of the prevailing regulations of the Civil Code, it is ungrounded to classify cryptocurrencies as any kind of asset under the Civil Code.

The lack of an official legal framework to regulate activities in relation to cryptocurrencies has more or less impacted the legitimate rights of the Vietnamese investors as their ownership of and investment activities in such "asset" are not protected by the prevailing laws of Vietnam. On the other hand, the lack of provisions by law also limits the ability of the State to control illegal activities as well as to impose taxes on activities in connection with cryptocurrencies. Therefore, cryptocurrencies need to be recognized as a new kind of asset under the Civil Code. As a result, the principals of the Civil Code will be applicable to activities in relation to cryptocurrencies. The fact that cryptocurrencies are assets is also widely accepted by different countries of both common law system and civil law system.