

LEGAL BRIEFING

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CRYPTOCURRENCY TRADING RISKS IN VIETNAM

Over the past few years, Vietnam has seen a surge in virtual or digital currency (cryptocurrency) trading activities. While this may be an exciting new playground for investors, from the legal perspective, cryptocurrency trading falls within a grey area where there remains much uncertainty surrounding its legality. No comprehensive regulatory framework exists in this arena, which arguably calls for a higher level of caution from investors who wish to venture into the cryptocurrency trading market.

This update provides an overview of the treatment of cryptocurrency trading under Vietnamese laws, risks investors should be aware of and legal developments to look out for in this space.

What is cryptocurrency under Vietnamese legislation?

Since the emergence of cryptocurrency in 2009, policymakers around the globe have scrutinized its definition but yet to agree on a generally accepted term. In particular, the World Bank classifies cryptocurrency as a subset of *digital currencies*,¹ whereas the IMF and European Central Bank view cryptocurrency as a *virtual currency*.² Due to this dissension, cryptocurrency trading is still considered illegal or unrecognized in many parts of the world.

There is no definition of cryptocurrency under the laws of Vietnam. Cryptocurrency has not been recognized as a legitimate means of payment, neither does it fall within the legal definitions of property/assets, goods/services, or foreign currency. Specifically:

- Article 105 (*Property*) of the Civil Code 2015 defines “*property*” as comprising “*objects, money, valuable papers, and property rights. Property comprises immovable property and movable property. Immovable property and movable property may be existing property and property to be formed in the future.*” Since cryptocurrency is only a digital representation of value, it does not belong to any of the aforesaid concepts and therefore is not a type of property or asset under Vietnamese laws.
- Article 3.2 (*Interpretation of terms*) of the Law on Commerce 2005 defines “*goods*” as “*all types of moveable assets, including moveable assets to be formed in the future*” and “*objects attached to land.*” As cryptocurrency is not a type of property or asset as mentioned above, it does not fall within this definition either.
- Article 1.1 of Decree 80/2016/ND-CP defines “*non-cash payment instruments*” as including “*cheques, payment orders, collection orders, bank cards and other payment*”

¹ Prof. Dr. Robby HOUBEN, Alexander SNYERS, "Cryptocurrencies and blockchain: Legal context and implications for financial crime, money laundering and tax evasion", July 2018, 20 & 21 (electronically available via <https://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf>).

² Prof. Dr. Robby HOUBEN, Alexander SNYERS, "Cryptocurrencies and blockchain: Legal context and implications for financial crime, money laundering and tax evasion", July 2018, 22 (electronically available via <https://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf>).

instruments as prescribed by the State Bank. Non-cash payment instruments out of this scope are illegal". Applying this definition, since the State Bank of Vietnam ("SBV") has not officially recognized cryptocurrency as a legitimate means of non-cash payment, not only does cryptocurrency fall outside the scope of this definition, but it is also illegal to use cryptocurrency as a means of payment in Vietnam.

- Article 6.2 (*Interpretation of terms*) of the Law on the State Bank of Vietnam 2010 defines "foreign exchange" as "currencies of other countries or the common currency of Europe and other common currencies used for international or regional payments...." However, as a decentralized system, cryptocurrency is not issued by any central bank, credit institution, or e-money institution and thus not a recognized currency of any country. Consequently, cryptocurrency would not be deemed a foreign exchange under Vietnamese laws.

Is cryptocurrency trading legal in Vietnam?

In simple terms, cryptocurrency trading involves exchanging one cryptocurrency for another, buying and selling coins, and exchanging fiat money into crypto. While cryptocurrency trading is not listed in the system of economic branches of Vietnam under Decision No. 27/2018/QĐ-TTg, neither is it on the lists of conditional or prohibited business lines under the Law on Investment 2020. Taken together, this arguably shows that Vietnamese laws do not explicitly permit cryptocurrency trading but also do not expressly prohibit this activity either.

However, it should be noted that the SBV has explicitly prohibited all cryptocurrency related transactions via the banking system pursuant to Directive 02/CT-NHNN dated 13 April 2018. Specifically, with the aim of tackling risks of money laundering, terrorism financing and tax evasion, Directive 02 prohibits credit institutions and providers of intermediary payment services from providing domestic or cross-border payment services, card transactions, money transfer, and other cryptocurrency related transactions.

In addition, illegal card transactions in relation to, *inter alia*, virtual currency or digital currency are further regulated under the SBV's Directive No. 02/CT-NHNN dated 7 January 2021 on enhancing the prevention of bank card related violations. Specifically, the SBV directed card issuers, card payment organizations and providers of intermediary payment services to, *inter alia*, cooperate with each other to prevent illegal card transactions relating to virtual currency or digital currency.

Are there any risks associated with cryptocurrency trading in Vietnam?

Given the uncertain regulatory environment, cryptocurrency investors and traders face extremely high risk in the event of a dispute as they may not be able to protect their lawful rights.

In addition, it should be noted that the issuance, supply, and use of virtual and digital currencies as *means of payment* is prohibited in Vietnam. Breach of this regulation may result in the following administrative and criminal penalties:

- A fine of up to VND 100,000,000 (approx. USD 4,300) for issuing, providing or using illegal payment instruments (*Article 26.6(d) of Decree 88/2019/ND-CP*).
- A fine of up to VND 300,000,000 (approx. USD 12,900) or imprisonment of up to 3 years for issuing, supplying, or using illegal means of payment, or forging or using forged means/vouchers of payment, thereby causing another person a loss from VND 100,000,000 to VND 300,000,000 (*Article 206.1(g) of the Criminal Code 2015 (as amended)*).

Watch this space

In the absence of a legal framework, the Vietnamese government has taken action in response to the growing popularity of cryptocurrency trading. For instance, the government has approved an action plan to develop a legal framework on management of virtual assets, digital currencies, and virtual currencies, and set December 2020 as the deadline for the relevant authorities to propose revisions to laws on virtual assets and currencies (*Decision No. 1255/QD-TTg dated 21 August 2017*). As no regulation has been promulgated to date, it remains to be seen which legislative angle the authorities will adopt in this arena.

In addition to Decision 1255, the Prime Minister has also issued Directive No. 10/CT-TTg dated 11 April 2018 and subsequently the SBV has issued two directives as mentioned above to tighten the management of bitcoin-related activities and other virtual currencies. The Directives play an important role in putting cryptocurrency trading under control and minimizing its potential negative impacts on the Vietnamese market.

In conclusion, the regulatory framework for cryptocurrency business and investment remains in the pipeline. All investors and traders should thus be well aware of the potential risks associated with cryptocurrency-related activities in Vietnam and seek legal advice before making any cryptocurrency trading decision.

OTHER LEGAL UPDATES

Several important legal instruments have also recently been promulgated:

1. **Decree 11/2021/ND-CP** regulates the allocation of sea areas to organizations and individuals for the **exploitation and use of marine resources**. This instrument replaces Decree 51/2014/ND-CP and mainly clarifies the provisions concerning (1) the allocation, recognition, and return of sea areas, (2) the extension, amendment, and supplementation of decisions on sea area allocation, (3) sea area expropriation and invalidation of decisions on sea area allocation, and (4) methods for calculation and collection of sea area usage fees. The Decree shall come into effect on 30 March 2021.
2. **Decree 15/2021/ND-CP** regulates in detail the management of **construction investment projects**. The Decree particularly encourages the application of building information modelling (“**BIM**”) and digital technology solutions in construction activities and work management, although the final decision is left with the investors (and/or the relevant investment authority in public-private initiatives). The Decree also stipulates conditions for the application of certain management methods and foreign standards to construction investment projects. The Decree took effect on 3 March 2021.
3. **Decree 04/2021/ND-CP** provides for administrative penalty in the **education** sector. Significantly, representative offices of foreign educational establishments may be fined up to VND 40,000,000 (approx. USD 1,735) for operating without an establishment or operation license, or VND 50,000,000 (approx. USD 2,170) for teaching foreign educational program without obtaining prior permission. The Decree took effect on 10 March 2021.
4. **Decree 08/2021/ND-CP** regulates the management of **inland waterway operations**. Notably, the Decree requires investors to comply with regulations on investment, public investment, construction, land, minerals, environment, and other relevant regulations when investing in the construction of inland waterway infrastructure. In addition, investors shall apply to amend the relevant plan if the construction of the inland waterway channel, port, terminal, and anchorage area exceeds the approved plan. The Decree took effect on 15 March 2021.
5. **Decree 05/2021/ND-CP** regulates the management and use of **airports and airfields**. The Decree mainly focuses on (1) the planning, opening, closure, and investment of airports and airfields, (2) the issuance of the certificate of registration, certificate of airport operator, and business license at airports, airfields, and (3) the management and operation of airports and airfields. The Decree took effect on 10 March 2021.

6. **Circular 03/2021/TT-BTC** guides the exemption and reduction of corporate income tax (“CIT”) incurred by science and technology enterprises (“**STEs**”) under Decree 13/2019/ND-CP. Notably, to qualify for CIT exemption and reduction under Decree 13/2019/ND-CP, STEs are required to separately record revenues generated from production and trading of science and technology products and these must account for at least 30% of its total annual revenue. The Circular took effect on 1 March 2021.
7. **Circular 06/2021/TT-BTC** guides the implementation of several articles of the Law on Tax Management concerning imports and exports. Specifically, the Circular guides tax payment in foreign currencies, digital tax transactions, and terms for tax payment, handling late tax payment, tax reimbursement procedures, and other relevant matters. The Circular took effect on 8 March 2021.
8. **Circular 30/2020/TT-BYT** elaborates on several provisions on medical insurance. Notably, any card bearer who is in an emergency may be entitled to receive treatment at any medical examination and treatment facility nationwide. The Circular also sheds light on the payment of medical examination and treatment expenses to organ donors. This Circular took effect on 1 March 2021.

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