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## Crypto Assets Legalised in Ukraine

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*Crypto assets have become widely used in Ukraine over the last few years. To promote and expand their legal use, the Parliament has adopted the Law on Virtual Assets, following the Presidential veto of last autumn. While crypto assets would need some implementing regulations to become a widespread alternative to fiat currencies in the country, Ukraine has already started to use crypto assets to collect donations for the support of the Ukrainian army and for the humanitarian efforts to save Ukrainians from the effects of Russia's unprovoked and illegal invasion. The new legal framework in Ukraine will permit crypto exchanges to work in Ukraine, Ukrainian banks will be able to open crypto cards and accounts, and users of virtual assets will be entitled to expand the use of such assets and enjoy legal protection for them.*

On 17 March 2022, the Law of Ukraine "On Virtual Assets" No. № 2074-IX (the **Virtual Assets Law**) was finally adopted, after being vetoed by the President last autumn. The Virtual Assets Law becomes effective on the adoption of amendments to the Tax Code of Ukraine. The relevant draft law<sup>1</sup> amending the Tax Code is still under consideration by the Parliament and the prospects of its adoption are currently unknown. Once the Virtual Assets Law is effective, market participants should be able to use banking services, pay taxes on income and receive legal protection of their rights to virtual assets. However, even now those willing to support Ukraine and help overcome the consequences of Russia's invasion can do so by donating in various crypto-currencies at the [Aid for Ukraine website](#) created by the Ministry of Digital Transformation of Ukraine.

The average daily market turnover in virtual assets in Ukraine is estimated to be close to USD 150-200 million, although this market remains unregulated. The idea behind adopting the new law was to shift activity with virtual assets out of the grey zone into a regulated area. This means that virtual assets now have a special legal status. The concept of virtual assets (which go beyond only cryptocurrencies) is expressly recognised in law as an object of legal relations.

### Key changes and advantages

As a result of the adoption of the Virtual Assets Law:

- the activities of foreign and Ukrainian crypto exchanges will be legalised;
- banks will be able to open accounts for market participants;
- Ukrainian residents who own virtual assets will be able to make transactions with them in accordance with the law; and
- Ukraine will guarantee judicial protection of all rights to virtual assets.

The key advantage is that the market will obtain official status and market participants will have legal protection for their rights. In practice, this means that the owners of virtual assets will be able to declare their income on those virtual assets and use banking services involving them.

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<sup>1</sup> Draft law No. 2461 "On Amendments to the Tax Code of Ukraine Concerning the Peculiarities of Taxation of Transactions with Virtual Assets". The draft law stipulates that profit from cryptocurrency transactions is subject to corporate income tax. The draft law suggests: (i) including income from cryptocurrency transactions into the tax base for individuals (5%); and (ii) establishing cryptocurrency transactions as those not subject to VAT.

Secondly, the Virtual Assets Law is an essential step in ensuring AML<sup>2</sup> requirements, especially given the size of the virtual assets market.

Thirdly, the legal recognition of virtual assets can help attract virtual asset suppliers and investors to Ukraine. This will bring economic benefits to Ukraine as a whole and will help overcome the economic consequences caused by the Russian invasion of Ukraine<sup>3</sup>.

## Extent of regulation

Importantly, the Virtual Assets Law applies to transactions with a “Ukrainian element”, meaning the law does not expand its scope outside Ukraine.

In particular, the Virtual Assets Law applies in the following cases:

- the provider or recipient of services has a registered location or permanent establishment in Ukraine;
- the parties to the transaction have chosen the law of Ukraine as the governing law;
- both parties to the transaction are residents of Ukraine;
- the acquirer of the virtual asset is a resident of Ukraine.

## Are crypto-payments possible?

According to the Virtual Assets Law, a virtual asset is an intangible benefit that has a cost and is expressed as a combination of electronic data. However, virtual assets are not a means of payment and cannot be exchanged for property (goods) or performances (services). Although the possibility of directly paying with virtual assets is excluded, in practice there may be cases when the virtual assets will be converted to UAH.

## Scope and types of virtual assets

Virtual assets (which go beyond only cryptocurrencies) are divided into secured, or asset-backed, and unsecured ones. The main distinction is that secured virtual assets certify proprietary rights, in particular the holder’s right to claim other objects of civil rights. This means that secured tokens are digital claims on physical objects and are backed by those objects. The object itself is determined by the transaction under which such virtual asset is created (it can be gold, crude oil, real estate, agricultural products or basically any other real, physical asset).

The types of securities that may back a virtual asset is to be determined by the National Securities and Stock Market Commission of Ukraine (the **NSSMC**).

At the same time, unsecured virtual assets do not certify any such proprietary rights (e.g. Bitcoin and Ethereum).

## Regulators

The virtual assets market will be regulated by both the NSSMC and the National Bank of Ukraine (the **NBU**).

The main tasks of the NSSMC are:

- formation and implementation of state policy and adopting bylaws to regulate virtual assets;
- promoting the development of the virtual assets market;
- implementing state regulation and control over the turnover of virtual assets;

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<sup>2</sup> The Virtual Assets Law is based on standards of regulating the virtual asset transactions set by Financial Action Task Force.

<sup>3</sup> On 24 February 2022, Russia began a military invasion of Ukraine.

- protecting the rights of the market participants;
- ensuring and exercising control over AML<sup>4</sup> requirements;
- financial monitoring, etc.

The NBU regulates the turnover of virtual assets issued by Ukrainian residents and secured (backed) by the currency values. In particular, the NBU:

- determines the list of currency values which can secure the virtual assets, and for which the virtual assets may be exchanged;
- approves the rules of exchange of virtual assets secured by the currency values and establishes the relevant restrictions;
- supervises the activities of service providers, conducts inspections and applies sanctions;
- determines the requirements for cyber security related to the turnover of virtual assets secured by the currency values.

## Crypto-support to Ukraine

The Ministry of Digital Transformation has created the [Aid for Ukraine website](#) to support the Armed Forces of Ukraine. The accepted currencies are: Bitcoin (BTC), Ethereum (ETH), Tether (USDT ERC-20), Tether (USDT TRC-20), Terra (LUNA), Polkadot (DOT), Solana (SOL), Cardano (ADA), Dogecoin (DOGE), Monero (XMR), ICON (ICX), and Casper (CSPR).

In three weeks of war, the Ministry of Digital Transformation has raised almost USD 60 million in cryptocurrency to support Ukraine.

## Conclusions

Once the Virtual Assets Law is effective, market participants should be able to use banking services, pay income tax and receive legal protection of their rights.

It is crucial to protect investors in virtual assets. However, the Virtual Assets Law is a framework legal act that establishes the general basis for regulation. Its real impact and benefit will become apparent only after the adoption of relevant bylaws establishing very specific requirements for mechanisms and procedures for dealing with virtual assets on the market.

In particular, these bylaws should be adopted in a timely manner, i.e. before or simultaneously with the entry into force of the Virtual Assets Law, to avoid a situation where the market will operate in violation of the law. There should also be a transitional period so that market participants will be able to bring their activities in line with the law.

To launch the market of virtual assets fully and effectively, the Ministry of Finance is also actively working on amendments to the Tax and Civil Codes of Ukraine.

In each case, considering the current state of the Ukrainian economy and the uncertain prospects of its recovery, the adoption of the Virtual Assets Law is an important step towards building a liquid regulated market.

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<sup>4</sup> Preventing and combating legalisation (laundering) of proceeds from crime, terrorist financing and financing the proliferation of weapons of mass destruction.

For more information on the economic situation in Ukraine and conducting business during the crisis, contact your CMS partner or local CMS experts.



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