

Special Alert

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Are Cryptocurrencies Considered Assets under Vietnamese Laws? Insights from Interpretations of the Authorities and Courts

Key Takeaways:

- Vietnamese laws are currently silent on whether digital assets including cryptocurrencies are lawful assets.
- Authorities express their own views on the legality of cryptocurrencies and their related transactions.
- Court judgments also differ, adding more obscurity to the status of cryptocurrencies.
- Investors should be cautious in engaging in digital asset-related transactions in Vietnam.

According to a report,¹ Vietnam's cryptocurrency market ranks second among ASEAN countries with a total transaction value of over 100 billion US dollars for the period from July 2021 to June 2022 alone.² Despite being a regional "hotspot" for digital currency transactions, Vietnam has not yet established a clear legal framework concerning digital assets which include cryptocurrencies, ICOs, NFTs, metaverse, etc. As a result, digital assets transactions in Vietnam carry inherent risks for related parties.

The 2015 Civil Code of Vietnam (Article 105.1) defines assets to include things, money, valuable papers, and property rights.³ Accordingly, digital assets do not well fit into any of these categories and

¹ See <https://blog.chainalysis.com/reports/central-southern-asia-oceania-cryptocurrency-geography-report-2022-preview/> (last access on 30 May 2023).

² See <https://e.vnexpress.net/news/economy/vietnam-crypto-trading-second-highest-in-asean-4514602.html> (last access on 30 May 2023).

³ Article 105.1 of the 2015 Civil Code which reads: "*Property comprises things, money, valuable papers and property rights.*"

are therefore not considered assets *per se*. Vietnamese authorities have different views on the legal status of digital assets within their regulatory domains. For instance, the State Bank of Vietnam states that cryptocurrencies are not a lawful means of payment in Vietnam.⁴ All acts of issuance, supply and/or use of digital currencies as a form of payment are prohibited and subject to penalties.⁵ Meanwhile, the Ministry of Finance viewed that cryptocurrencies are "property rights" (under civil law) and classify them as "commodities" that are taxable under tax laws.⁶

Against the foregoing background, court judgments should be a reliable source for law interpretation. Unfortunately, it does not meet such expectations. The two court cases below show perplexed views of Vietnamese courts on the wobbly status of cryptocurrencies in Vietnam.

First court judgment (case No. 16/2017/TLST-HC concerning a challenge against a tax collection decision)

During the period of 2008 – 2013, the plaintiff traded Bitcoin on exchanges. In 2015, the tax authority (the defendant) issued a tax collection decision to collect taxes from the plaintiff for his income of over VND 140 billion (approx. USD 6 million) from Bitcoin trading and the related VAT amount. The plaintiff argued that Bitcoin is not considered as taxable goods or services under applicable laws. He submitted his case before the People's Court in Ben Tre Province to seek the latter's annulment of the tax collection decision.

In its judgment, *the court reasons that Bitcoin is neither a lawful means of payment in Vietnam nor recognized as goods or services by any legislation.*⁷ Accordingly, the court annulled the tax collection decision. It is worth noting, however, that in the judgment, the court neither affirmed nor negated whether Bitcoin is a type of assets under Vietnamese laws.

Second court judgment (a Bitcoin robbery case)

Very recently, the People's Court of Ho Chi Minh City ("**HCMC Court**") held a first-instance trial of a so-called "Bitcoin robbery" case. In 2018, a group of individuals planned and staged an extortion scheme to obtain Bitcoins from a businessman who they claimed defrauded them to trade coins. The group successfully took away 168 Bitcoins and sold part of them for VND 18.8 billion (approx. USD 800,000). The victim reported to the police and the suspects were later criminally accused of the crime of "robbery of assets" under the 2015 Penal Code. In May 2023, the HCMC Court opened the hearing and sentenced the headman to life imprisonment while the accomplices received imprisonment sentences ranging from 9 to 19 years. In addition, the defendants were ordered to pay

⁴ Official Document No. 5747/NHNN-PC dated 21 July 2017 of the State Bank of Vietnam responding to a proposal regarding the design of a computing center for mining Bitcoin, Litecoin, and other types of digital currencies.

⁵ See <https://baochinhphu.vn/nhnn-cam-su-dung-bitcoin-102229280.htm> (last access on 29 May 2023).

⁶ Official Document No. 4356/BTC-TCT dated 1 April 2016 of the Ministry of Finance on the guidance for tax management related to the activities of the sale and purchase of digital currency.

⁷ Court Judgment No. 22/2017/HC-ST dated 21 September 2017 of the People's Court of Ben Tre Province.

the money gained from the sale of the Bitcoins (VND 18.8 billion) to the owner.

In this case, *the court reiterates that Vietnamese law does not acknowledge Bitcoin and other cryptocurrencies as lawful currencies or means of payment in Vietnam*. Thus, there is no basis for a formal evaluation of the value of the taken Bitcoins⁸ as a Vietnamese court normally applies in determining the damage in a criminal case (for a corresponding penalty). However, the court views that because part of the taken Bitcoins has been converted/sold to a VND amount, such converted amount could be seen as the amount of damage to the Bitcoin owner. On these bases, the defendants were sentenced and ordered to compensate the Bitcoin owner.⁹

In other jurisdictions, the above ruling may raise controversies because it appears to contradict with the ruling for the first Bitcoin case. Further, such ruling may imply that Bitcoins (and other cryptocurrencies) can be considered lawful assets because the court applied the crime of “robbery of assets,” and the Bitcoin owner was paid the converted VND amount and other similar arguments. Nevertheless, it seems far from clear that such an implication can be made from a practical point of view here. In fact, from one case to the other, the courts or authorities may express their different views.

Conclusion

Vietnam does not have a clear-cut answer if cryptocurrencies and other digital assets are considered lawful assets under Vietnamese laws. From time to time and depending on a particular case, authorities or courts may have different views on the same issue. Owners and investors in digital assets such as cryptocurrencies, ICOs, NFTs, metaverse, etc. should take extra care in transactions related to these assets. Indochine Counsel with its profound experience in this area is pleased to assist clients in advising on the law compliance and best practices for digital asset-related transactions in Vietnam. Please do not hesitate to contact us for legal advice if you have any inquiries.

⁸ See <https://thanhnien.vn/2-cuu-cong-an-tham-gia-vu-cuop-bitcoin-tren-cao-toc-lanh-an-18523051616405241.htm> (last access on 29 May 2023). It is worth noting that at the date of this article, the judgment is not yet available for public view.

⁹ It is worth noting that the judgment can be appealed, and the appellate court may uphold, revise or reverse the judgment of the court of first instance.

About Indochine Counsel

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Contact Us

For further information or assistance, please contact the following Indochine professionals:



Nguyen Quoc Vinh

Senior Counsel

E vinh.nguyen@indochinecounsel.com



Dang The Duc

Managing Partner

E duc.dang@indochinecounsel.com



Pham Viet Tuan

Senior Associate | Head of Litigation & Dispute Resolution, Real Estate & Construction

E tuan.pham@indochinecounsel.com



Nguyen Thi Hong Anh

Partner | Co-Head of IP & TMT Practice Group

E anh.nguyen@indochinecounsel.com

Ho Chi Minh City

Unit 305, 3rd Floor, Centec Tower
72-74 Nguyen Thi Minh Khai, District 3
Ho Chi Minh City, Vietnam

T +84 28 3823 9640

F +84 28 3823 9641

E info@indochinecounsel.com

Hanoi

Unit 705, 7th Floor, CMC Tower
Duy Tan Street, Cau Giay District
Hanoi, Vietnam

T +84 24 3795 5261

F +84 24 3795 5262

E hanoi@indochinecounsel.com

www.indochinecounsel.com

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