

PROBLEMS OF RELATIONSHIP AND LEGAL REGULATION OF CRYPTOCURRENCY, BITCOIN, DIGITAL AND VIRTUAL CURRENCY: RUSSIAN AND FOREIGN EXPERIENCE

Abstract. *Cryptocurrency, bitcoins and virtual currencies are topics the scientific community has been discussing for years. The Bank of Russia has repeatedly warned about high risks of investments in crypto currencies and risks in its turnover. Populations of many countries continue to lose their investments in virtual currencies, which are positioned by their developers as tamper-proof. However, there is still a vacuum in the legal regulation of cryptocurrencies and the legitimacy of their use as legal payment. The article presents the author's view on a number of issues arisen in the process of cryptocurrency, bitcoin, digital and virtual currency use and presents ways to solve them in the context of Russian and world experience.*

Keywords: *crypto currency, bitcoin, fiat currency, virtual currency, legal regulation.*



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It is necessary to correlate the concept of "bitcoin" with other key concepts such as "virtual currency" and "digital currency", which are quite often used to define the cryptocurrency by foreign authors.

Digital currency is the most general concept, which means a special form of currency that exists only in digital (electronic) expression. Digital currency is intangible, operations with it and its storage are possible only when connected to the Internet or other designated network of electronic wallets. Digital currencies can be used for payment of the goods and services, most often on certain Internet portals, in social networks or on game sites.

There are two main directions of policy to regulate the cryptographic currency:

- a complete ban on the use of virtual assets;
- legalization of virtual money.

Most countries have not yet decided how to deal with the new type of payment instruments. Cryptocurrencies are not allowed nor prohibited in them.

Thus, there is a legal vacuum in the regulation of this sphere.

In general, digital currencies by control method can be divided into regulated digital currencies of central banks and virtual currency.

Regulated digital currency is a digital currency regulated by the state central bank.¹ For now, this term exists only conceptually, as several countries, including the UK, Sweden and Uruguay, are in the planning and discussion stage to launch digital versions of their fiat money.

Most countries have developed certain legal frameworks for digital currencies, such as Directive 2009/110/EC of the European Parliament or Article 4A of the US Uniform Commercial Code.

¹ *Morten Bech, Rodney L. Garratt.* Central bank cryptocurrencies // URL: https://www.bis.org/publ/qtrpdf/r_qt1709f.html.

Virtual currency is generally defined as unregulated digital money that is subject to control by its developer, parent organization or a particular network protocol and accepted for payment in a virtual world.

Virtual currencies can be convertible (which can be exchanged for fiat money) and non-convertible (which cannot be exchanged for fiat money, for example, virtual money that is used within the framework of an online game); centralized (they have a central administrator who regulates currency issuance and provides a centralized payment register and is authorized to withdraw currency from circulation) and a decentralized one (there is no central administrator, the transaction register is kept distributed).

At the same time, in our opinion, all operations with cryptocurrency is risky now.

But it is impossible to consider them illegal, being guided by general principles of law and common sense, because slow adoption of new economic phenomena and, as a consequence, development of new laws is a problem of management, power, but not participants of already formed digital legal relations.

From the technical point of view, a cryptocurrency is a record of transactions in the form of a register distributed among network members without an issuing or accounting center².

Cryptocurrencies were created as antipode of fiat money, respectively, as unauthorized and not requiring confidence in either the state or the monetary system, claiming the role of money. From the point of view of technical characteristics, the issue of cryptocurrency begins with the search for a cryptographic code, the so-called mining.

Thus, a cryptocurrency is a digital currency based on the usage of cryptography to the creation and control of new currency units and transactions. Since cryptographic currency is not subject to centralized regulation, it can be referred to as virtual currency or, as a special case may be, singled out as a separate type of digital currency³.

According to the recommendations of the Financial Action Task Force on Money Laundering (FATF), cryptocurrencies are a form of virtual money, namely decentralized, convertible, distributed, mathematically based peer-to-peer virtual currencies with no central administrator and no centralized control or supervision⁴.

Also, the Bank of Russia explains that a distributed register is a system of distributed storage and simultaneous processing and updating of almost any information on different media from all the participants. In this case, a blockchain is one of the options for implementing a network of distributed registers, in which data on completed transactions are structured as a sequence of linked blocks of transactions⁵.

Russia has Federal Law No. 161-FZ "On the National Payment System" dated June 27, 2011, which regulates the sphere of payment services, money transfer, cashless payment for goods, works and services.

² See: Kudryashova E. V. Legal regulation of cryptocurrency: selection of development vector // Financial law. 2018. № 6. p. 7-11.

³ Virtual Currencies. Monetary Dialogue July 2018. Policy Department for Economic, Scientific and Quality of Life Policies // URL: <http://www.europarl.europa.eu/committees/en/econ/monetary-dialogue.html>.

⁴ Virtual Currencies. Monetary Dialogue July 2018. Policy Department for Economic, Scientific and Quality of Life Policies // URL: <http://www.europarl.europa.eu/committees/en/econ/monetary-dialogue.html>.

⁵ URL: http://www.cbr.ru/content/document/fie/36009/rev_ico.pdf.

Therefore, the adoption of the law on cryptocurrency will lead to the issue of determining the status of virtual currency in the system of payment instruments, as well as the need to make changes in the order of organizing the activities of the national payment system entities.

The Federation Council of Switzerland has also defined cryptocurrency as a virtual currency, the digital representation of the value that is circulating on the Internet, performs the function of money, i.e. is used as payment for real goods and services, but are not accepted anywhere as legal tender⁶.

The experience of France demonstrates that the French Financial Market Authority (AMF) and the Supervision Authority (ACPR) have recently issued a joint investor notification, a warning about the current unregulated nature of cryptocurrency.

The document notes that cryptocurrency is not considered financial instrument under French law and therefore, is not subject to the regulatory framework of actual currencies or to surveillance AMF. Also AMF and ACPR have warned that cryptocurrency is unregulated, and the investment in them is highly volatile.⁷

In spring 2016, the Japanese authorities passed the Cryptocurrency Law, which was a response to the problems encountered in regulating the cryptographic market and protecting the population after the bankruptcy of the Mt. Gox Exchange.⁸

The Law sets out the following conditions for the use of cryptocurrency:

- recognition of virtual money as legal tender;
- regulation of crypto exchange implies obligatory registration with the financial control and supervision body;
- in order to work with digital assets, legal entities must have a reserve fund (from 100 000 USD) and report regularly to the tax authority;
- companies need to acquire a license to work with cryptocurrencies, which is worth \$300,000. If the permit is denied, there is no refund⁹

In Japan, the Financial Instruments and Exchange Law and the Payment Services Law are to be amended to replace the term "virtual currency" with "crypto asset".

Although "virtual currency" is widely used by the Financial Action Task Force and is found in many international laws and regulations, the Government of Japan wants to limit the use of the word "currency" to sovereign currencies such as the yen and the dollar.

In October 2017, the law came into force in China, which establishes the legal regulation of cryptocurrency in the country. This act was the first legal document to describe the principle of cryptocurrency regulation in China. According to this document, the cryptocurrency is regarded as "virtual property".

⁶ Bericht des Bundesrates zu virtuellen Währungen in Beantwortung der Postulate Schwaab (13.3687) und Weibel (13.4070) // URL: <http://www.news.admin.ch/NSBSubscriber/message/attachments/35361.pdf>

⁷ Bitcoin Purchases: The AMF and ACPR Warn Savers, AMF & ACPR (Dec. 4, 2017) // URL: <https://acpr.banque-france.fr/sites/default/files/medias/documents/>.

⁸ URL: <https://www.mtgox.com/>

⁹ URL: <https://forklog.com/v-yaponii-vstupil-v-silu-zakon-priznayushhij-kriptovalyuty-zakonnymsposobom-oplaty/>.



Shortly afterwards, all ICOs¹⁰ were banned and Chinese exchanges were forced to stop all trading (especially crypto) due to government investigations into the crypto industry. In addition to warning the Chinese authorities about the risks associated with illegal collection activities, the Chinese government also banned all ICOs from trading in the cryptographic industry. The President of China, Xi Jinping, praises the Blockchain technology as "part of the technological revolution"¹¹.

Thus, taking into account the available positions, we define the cryptocurrency as virtual currency based on mathematical principles, decentralized and convertible, protected by cryptographic methods.

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¹⁰ The Central Bank of the People's Republic of China // URL: <http://www.pbc.gov.cn/en/3688006/index.html>.

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