

FORECLOSURE IN UKRAINE ON SECURED VIRTUAL ASSETS

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INTRODUCTION

When there is a shared vision, a strategy emerges. If there is a strategy, then a community appears. The subject of the strategy for the development of the virtual assets market cannot be only the state. It should be a community of experts, specialists, entrepreneurs and political figures. If we do something together, there is a chance to build a better future. In order for the cooperation between the state and the community to be successful, political support is also necessary.

The Chief Executive Officer of the Hacken company noted that he does not see any obstacles to Ukraine becoming a leading jurisdiction in the global market of virtual assets. The legal adviser of the crypto startup Trustee Wallet added: “What place Ukraine will occupy in the international arena depends on our joint actions today. I issued if legislative directives from above and do not find adequate support among the community, then these directives are doomed to be, “dead”. That’s why support is very important”¹.

Bitcoin has economic value, in terms of assets, meaning it is a digital asset that is now a property protected by Chinese law. In fact, in a notice published by the court, they recognized Bitcoin as financial security. It must be treated on an equal footing with other assets and protected by law.

Of course, the new decision of the Shanghai Higher People’s Court in China gained wide publicity – recognizing Bitcoin as a protected virtual property. The Shanghai Supreme People’s Court is the highest practicing public court in the provinces, but it is unclear whether other higher-level courts, such as the High Court, will share exactly the same opinion².

Literature review and initial prerequisites. On February 17, 2022, the Parliament of Ukraine adopted the Law of Ukraine “On Virtual Assets”

¹ «Мінцифра спільно з криптоспільнотою презентували стратегію розвитку ринку віртуальних активів», Міністерство цифрової трансформації України, 21, Липень 2021, <https://thedigital.gov.ua/news/mintsifra-spilno-z-kriptospilnotoyu-prezentovali-strategiyu-rozvitku-rinku-virtualnikh-aktiviv>.

² “The Shanghai High Court Released a Coin-Related Case: Bitcoin, as a Virtual Property, Is Regulated by the Laws and Regulations of Property Rights”, ICBC. 06 Травень 2022. URL: <http://www.icbc.com.cn/ICBC/网上理财/专家视点/朱英子/上海高院发布涉币案例比特币作为虚拟财产受财产权法律规范的调整.htm>.

No. 2074-IX (hereinafter – Law 2074)³. Which was signed by the President of Ukraine on March 15, 2022, after taking into account the changes, according to his previously submitted proposals⁴. According to Paragraph 1 of Chapter VI “Final and Transitional Provisions” of Law 2074, the law itself will enter into force⁵: and). from the date of entry into force of the law of Ukraine on amendments to the Tax Code of Ukraine, regarding the peculiarities of taxation of operations with virtual assets; b). implementation of the State Register of service providers related to the turnover of virtual assets, which is additionally specified in Paragraph 2 of Chapter VI of the Final and Transitional Provisions, as a limitation in the possibility of applying sanctions provided for in Article 23 of Law 2074. To fulfill the provisions of Clause 1 of Chapter VI of the Law 2074 and for the purpose of putting it into effect⁶, On March 13, 2022, the Parliament of Ukraine registered draft law No. 7150 “On Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets” (hereinafter – Draft Law 7150)⁷.

The aim of the study. To conduct a study of the prospects of recovery procedures in Ukraine for secured virtual assets, based on the existing legal norms in the Law of Ukraine “On Virtual Assets”.

Description of the methodology. When conducting the research, the following were used: general scientific research methods – deduction and induction, synthesis and analysis, scientific abstraction, systematic approach; specially legal methods of knowledge – formally legal; legal forecasting, retrospective and comparative legal method; methodological substantiation of the essence, nature and structure of terminology, which is the object of research.

1. Definition and regulation of virtual assets

1.1. Basic concepts of a virtual asset and its classification

Law 2074 forms its own division of virtual assets, which is not similar to the one generally accepted in the community related to the crypto industry:

³ «Про віртуальні активи», Pub. L. № 2074-IX (2022). URL: <https://zakon.rada.gov.ua/go/2074-20>.

⁴ «Пропозиції Президента України до Закону ‘Про віртуальні активи’». 11 Червень 2020. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/2698>.

⁵ «Пояснювальна записка до Проекту № 7150 Закону України ‘Про внесення змін до Податкового кодексу України щодо оподаткування обороту віртуальних активів в Україні’», 13 Березень 2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1245235>.

⁶ «Порівняльна таблиця до Проекту № 7150 Закону України ‘Про внесення змін до Податкового кодексу України, щодо оподаткування операцій з віртуальними активами’», 13 Березень 2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1245233>.

⁷ «Проект № 7150 Закону Про внесення змін до Податкового кодексу України щодо оподаткування операцій з віртуальними активами», 13 Березень 2022. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/39211>.

- *Virtual asset* – an intangible good that is the object of civil rights, has a value and is expressed by a set of data in electronic form. The system of ensuring the turnover of virtual assets ensures the existence and turnover of a virtual asset. A virtual asset can testify to property rights, in particular, rights of claim to other objects of civil rights (Paragraph 1 Paragraph 1 Article 1 of Law 2074); Virtual assets are intangible assets, the specifics of their turnover are determined by the Civil Code of Ukraine and this Law. Virtual assets can be unsecured or secured. (Paragraph 1 of Article 4 of the Law of 2074);

- *Unsecured virtual asset* – a virtual asset that does not certify any property or non-property rights (Paragraph 6, Paragraph 1, Article 1 of Law 2074); Unsecured virtual assets do not prove property rights. (Paragraph 2 of Article 4 of the Law of 2074).

- *A secured virtual asset* – a virtual asset that certifies property rights, in particular the right of claim to other objects of civil rights (Paragraph 3 Paragraph 1 Article 1 of Law 2074); *Secured* virtual assets certify property rights, in particular, rights of claim to other objects of civil rights (Paragraph 3 of Article 4 of the Law of 2074);

I understand the provision of a virtual asset as the certification of property rights, in particular the rights of claim to other objects of civil rights. The security of virtual assets is not security for the performance of an obligation. A certificate of property rights means confirmation of the right of the owner of the secured virtual asset to claim the security object. (Paragraph 4 of Article 4 of the Law of 2074).

The object of securing a virtual asset is another object of civil rights, the right of claim to which such a virtual asset certifies. The object of securing a virtual asset is determined by the deed according to which it created such a virtual asset. Property rights, in particular claim rights, to the virtual asset security object are transferred to the acquirer of such virtual asset (Paragraph 5 of Article 4 of Law 2074).

In turn, a secured virtual asset, as a financial virtual asset, forms two separate directions of its internal distribution, into: secured by currency values and secured by securities or a derivative financial instrument (Paragraph 6 of Article 4 of the Law of 2074):

- A secured virtual asset secured by currency values issued by a resident of Ukraine (hereinafter – SVA (CV));

- A secured virtual asset issued by a resident of Ukraine, secured by a security or a derivative financial instrument (hereinafter – SVA (FI)).

1.2. State regulation of the virtual assets market

State regulation of the virtual assets market – implementation by the state in the person of the National Securities and Stock Market Commission⁸ and the National Bank of Ukraine⁹ comprehensive measures to organize, control, supervise the market of virtual assets, regulate the rules of operation of service providers related to the turnover of virtual assets, as well as measures to prevent and counter abuse and violations in the market of virtual assets (Paragraph 1 of Article 16 of Law 2074).

- State regulation in the sphere of circulation of secured virtual assets secured by currency values (SVA (CV), within its competences, is carried out by the National Bank of Ukraine;

- State regulation in the sphere of circulation of virtual assets, except for SVA (CV), in particular regarding secured virtual assets secured by a security or a derivative financial instrument (SVA (FI)), within its competences, is carried out by the National Securities Commission and stock market.

2. Legal definition and life cycle of virtual assets

2.1. Creation, civil turnover, and termination of virtual assets

- *creation* – the moment of creation of a virtual asset is the moment from which the first owner gets the opportunity to own, use and dispose of the virtual asset in the system of ensuring the turnover of the corresponding virtual asset, if it is not possible to reliably establish another moment of creation of the virtual asset, based on the technical features of the system of ensuring the turnover of virtual assets (Paragraph 1 of Article 5 of the Law 2074);

- *the turnover of a virtual asset* starts from the moment of its creation and is carried out until the moment of termination of the turnover of the virtual asset (Paragraph 2 of Article 5 of the Law 2074);

- turnover on the territory of Ukraine SVA(CV) is carried out in accordance with the procedure established by the National Bank of Ukraine¹⁰ (Paragraph 3 of Article 5 of the Law 2074);

- turnover on the territory of Ukraine of virtual assets, except for ZVA (VC), is carried out in accordance with the procedure established by the National Commission for Securities and the Stock Market¹¹ (Paragraph 4 of Article 5 of the Law 2074).

- *termination* – a person who bears obligations under a secured virtual asset must ensure the termination of the circulation of the virtual asset, if the

⁸ «Положення про Національну комісію з цінних паперів та фондового ринку», Pub. L. № 1063/2011 (2011). URL: <https://zakon.rada.gov.ua/go/1063/2011>.

⁹ «Про Національний банк України», Pub. L. № 679-XIV (1999). URL: <https://zakon.rada.gov.ua/go/679-14>.

¹⁰ Про Національний банк України.

¹¹ Положення про Національну комісію з цінних паперів та фондового ринку.

objects of civil rights with which it was secured are lost or dropped from civil circulation for one reason or another, and the possibility replacement of the security of such a virtual asset is not provided for by the deed on the creation of the corresponding secured virtual asset or by the deed on the alienation of such a virtual asset (Paragraph 5 of Article 5 of the Law 2074).

2.2. Legal status and ownership of the virtual asset

Virtual assets are not a means of payment on the territory of Ukraine and cannot be the subject of exchange for property (goods), work (services) (Paragraph 7 of Article 4 of Law 2074).

The content of the right of ownership of a virtual asset includes the right to own a virtual asset, the right to use a virtual asset and the right to dispose of a virtual asset at one's discretion, if this does not contradict the law, in particular by transferring the right of ownership to a virtual asset (Paragraph 5 of Article 6 of Law 2074). Ownership, use and disposal of a virtual asset is recorded in the system to ensure the turnover of virtual assets (Paragraph 6 of Article 6 of Law 2074). Acquisition conditions, transfer conditions and the scope of rights to virtual assets can be expressed in the form of algorithms and functions of the system for ensuring the turnover of virtual assets, within which the turnover of virtual assets is carried out (Paragraph 2 of Article 6 of Law 2074).

Ownership of a virtual asset is acquired by the fact of creating a virtual asset, committing and executing a deed regarding the virtual asset, based on the norms of the law or a court decision and is evidenced by the possession of the key to such a virtual asset, except for the cases provided for in the third part of Article 6 of Law 2074 (Paragraph 1 of Article 6 of Law 2074). Virtual asset key – a set of technical means implemented in the system for ensuring the turnover of virtual assets, which makes it possible to control the virtual asset (Paragraph 5, Paragraph 1, Article 1 of the Law of 2074);

The owner of the key of a virtual asset is the owner of such a virtual asset, except for cases, if (Paragraph 3 of Article 6 of Law 2074):

- 1) the key of the virtual asset or the virtual asset is kept by a third party in accordance with the terms of the transaction between the custodian and the owner of this virtual asset;
- 2) the virtual asset is deposited with any person in accordance with the law or a court decision that has entered into legal force;
- 3) the key to the virtual asset was acquired by a person illegally;

In the absence of a court decision establishing otherwise and which has entered into legal force in Ukraine, it is considered that any person to whom a virtual asset belonged in the past, on legal grounds, had and has the right to ownership of this virtual asset during the entire period of ownership of the

virtual asset key asset in relation to such a virtual asset (Paragraph 4 of Article 6 of Law 2074).

2.3. Peculiarities of turnover and transactions with virtual assets

Turnover of virtual assets – all legal relations related to virtual assets that arise between participants in the virtual assets market, as well as between them and the state (Paragraph 7, Paragraph 1, Article 1 of Law 2074).

The turnover of secured virtual assets is subject to all restrictions applicable to the turnover of objects of civil rights with which such virtual assets are secured (Paragraph 1 of Article 8 of Law 2074).

Law 2074 does not apply to legal relations related to the issuance, circulation, storage and redemption of electronic money, as well as to legal relations arising during the emission, circulation, redemption of securities and fulfillment of obligations under them, conclusion and execution of derivative contracts, replacement of parties to derivative contracts and execution of transactions regarding financial instruments on the capital markets, operation of software or software-hardware complexes of electronic data exchange, which ensure the implementation of the specified legal relations regarding financial instruments, as well as relations arising during the conduct of professional activities on the capital markets and organized commodity markets (Paragraph 3 of Article 2 of the Law of 2074).

The disposition of a secured virtual asset is the disposition of the property right to the object of securing this virtual asset (Paragraph 1 of Article 7 of the Law of 2074). If the law establishes requirements regarding the form or essential conditions of the transaction on the disposition of the object of securing a virtual asset, such requirements are subject to fulfillment also during the execution of the transaction on the disposition of such a virtual asset (Paragraph 7 of Article 6 of Law 2074).

The provisions of the Civil Code of Ukraine on storage contracts, taking into account the features established by Law 2074 (Paragraph 3 of Article 10 of Law 2074) apply to contracts for the provision of services for the storage or administration of virtual assets or keys to virtual assets.

Intermediary services related to virtual assets are the execution of transactions regarding virtual assets (including the implementation of a public offer of virtual assets) in the interests of third parties (Paragraph 1 of Article 13 of Law 2074). The provider of intermediary services related to virtual assets has the right to perform transactions with virtual assets (including the implementation of a public offer of virtual assets) in the interests of third parties, on its own behalf and on behalf of third parties on behalf of other persons and at their expense (Paragraph 2 of Article 13 of the Law of 2074).

If the secured virtual asset is secured by an object of civil rights, that is under private or public encumbrance, or is secured by an object of civil rights that has been removed from civil circulation, the alienation of such a virtual asset is not allowed, and any act of alienation of such a virtual asset is worthless (Paragraph 2 of Article 8 of the Law of 2074).

3. Providers of services for the turnover of virtual assets

Terms that we need in the context of the purpose of our research, which are specified in Article 1 “Definition of Terms” of Section I “General Provisions”:

- *virtual assets market* – a set of participants in the virtual assets market and legal relations between them regarding the turnover of virtual assets (Paragraph 10, Paragraph 1, Article 1 of the Law of 2074);
- *participants of the virtual assets market* – providers of services related to the turnover of virtual assets, as well as any persons who carry out operations with virtual assets in their own interests (Paragraph 12, Paragraph 1 of Article 1 of the Law of 2074).

Business entities of all forms of ownership have the right to operate as a provider of services related to the turnover of virtual assets, subject to compliance with the requirements defined by Law 2074 (Paragraph 1 of Article 18 of Law 2074).

The activity of service providers related to the turnover of virtual assets is allowed only on the condition of obtaining a permit for the provision of services related to the turnover of virtual assets of the appropriate type, defined by Law 2074 (Paragraph 2 of Article 18 of Law 2074).

Business entities are allowed to conduct more than one type of activity of a provider of services related to the turnover of virtual assets, subject to obtaining a permit for the provision of each relevant type of services related to the turnover of virtual assets (Paragraph 3 of Article 18 of Law 2074).

Providers of services related to the turnover of virtual assets are exclusively business entities – legal entities that conduct one or more of the activities related to the turnover of virtual assets in the interests of third parties.

Only a financial institution can be a provider of services related to the turnover of SVA (CV) (Paragraph 7 of Article 9 of Law 2074).

A financial institution is a legal entity that, in accordance with the law, provides one or more financial services, as well as other services (operations) related to the provision of financial services, in the cases expressly defined by the law, and is entered in the relevant register in accordance with the procedure established by law. Financial institutions include banks, credit unions, pawnshops, leasing companies, trust companies, insurance companies,

accumulative pension institutions, investment funds and companies and other legal entities, the exclusive type of activity of which is the provision of financial services, and in cases expressly defined by law, – other services (operations) related to the provision of financial services. Financial institutions are not financial institutions (they do not have the status of a financial institution) independent financial intermediaries that provide services for issuing financial guarantees in the manner and under the conditions specified by the Customs Code of Ukraine (Paragraph 1 Paragraph 1 of Article 1 of the Law of Ukraine “On Financial Services and state regulation of financial services markets”)¹².

According to Art. 80 of the Civil Code of Ukraine, a legal entity is an organization created and registered and entered in the “Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organizations”, which is endowed with civil legal capacity and legal capacity and can be a plaintiff and a defendant in court^{13, 14}.

The service provider can be a foreign legal entity that is a participant in the virtual assets market, under the law of a foreign state, conducts activities as a service provider in the manner and under the conditions determined by the National Commission for Securities and the Stock Market, taking into account the requirements and restrictions determined by this Law (Paragraph 6 of Article 9 of the Law 2074).

The provider of services related to the turnover of virtual assets can be a legal entity:

- managers, chief accountant, owners of significant participation and ultimate beneficial owners of which have an impeccable business reputation;
- which has formed authorized capital in the amount established by Law 2074 and can confirm the legality of receiving funds that were directed to the formation of authorized capital of a legal entity;
- which meets other requirements established by Law 2074 (Paragraph 5 of Article 9 of Law 2074).

There are a number of restrictions on the acquisition by a legal entity of the status of a provider of services related to the turnover of virtual assets:

- which is registered in accordance with the legislation of a state recognized by the Parliament of Ukraine as an occupying state or an aggressor state;

¹² «Про фінансові послуги та державне регулювання ринків фінансових послуг», Pub. L. № 2664-III (2001). URL: <https://zakon.rada.gov.ua/go/2664-14>.

¹³ «Цивільний кодекс України», Pub. L. № 435-IV (2003), <https://zakon.rada.gov.ua/go/435-15>.

¹⁴ «Про державну реєстрацію юридичних осіб, фізичних осіб – підприємців та громадських формувань», Pub. L. № 755-IV (2003). URL: <https://zakon.rada.gov.ua/go/755-15>.

- which is located on the territory of a state recognized by the Parliament of Ukraine as an occupying state or an aggressor state;
- managers, chief accountant, owners of significant participation and ultimate beneficial owners of which are citizens of a state recognized by the Parliament of Ukraine as an occupying state or an aggressor state;
- who is a person who is directly or indirectly controlled in the sense given in Article 1 of the Law of Ukraine “On the Protection of Economic Competition” by residents of a foreign country, recognized by the Parliament of Ukraine as an occupying state or an aggressor state, or acts in their interests;
- the ultimate beneficial owners of which are residents of a foreign country, recognized by the Parliament of Ukraine as an occupying state or an aggressor state;
- participants (shareholders) of which are the ultimate beneficial owners of a resident of a foreign country, recognized by the Parliament of Ukraine as an occupying state or an aggressor state;
- that owns directly or indirectly (through another natural or legal entity) any share of a resident of a foreign state, a state recognized by the Parliament of Ukraine as an occupying state or an aggressor state;
- has among its participants (founders, shareholders) legal entities registered in states (jurisdictions) that do not fulfill or improperly fulfill the recommendations of international, intergovernmental organizations involved in the fight against the legalization (laundering) of criminal proceeds or the financing of terrorism or financing the proliferation of weapons of mass destruction. (Paragraph 4 of Article 9 of the Law of 2074)

3.1. Permission to carry out activity on the turnover of virtual assets

In some cases, it is not necessary to obtain a permit to conduct activities involving the turnover of virtual assets, and in some cases, it is necessary to additionally have another license:

- *Issuance of a permit for the provision of services related to the turnover of virtual assets of SVA (FI)*—in the cases and procedure established by the National Securities and Stock Market Commission, professional participants of the capital markets have the right to carry out the relevant type of activity of the provider of services related to the turnover of virtual assets, without obtaining the permits provided for by Law 2074 (Paragraph 17 of Article 19 of Law 2074);
- *Issuance of a permit for the provision of services related to the turnover of virtual assets of SVA (CV)*—a. A provider of services related to the turnover of virtual assets, which is a bank, has the right to provide services related to the turnover of SVA(CV) based on a banking license and permission to provide services related to the turnover of virtual assets b. A provider of

services related to the turnover of virtual assets, which is a non-banking financial institution, has the right to provide services related to the turnover of SVA (CV) based on a license by the National Bank of Ukraine to carry out currency operations and a permit to provide services related to the turnover of virtual assets (Paragraph 16 of Article 19 of the Law of 2074).

3.2. Obligations of virtual assets market participants

- conduct transactions with virtual assets in good faith and at your own risk;
- before carrying out transactions with virtual assets, familiarize yourself with the features of the functioning of the systems to ensure the turnover of virtual assets, in which we planned it to conduct transactions with virtual assets;
- when conducting operations with virtual assets, comply with the requirements of Law 2074, laws of Ukraine “On prevention and countermeasures against legalization (laundering) of proceeds obtained through crime, financing of terrorism and financing of the proliferation of weapons of mass destruction”¹⁵, “About currency and currency transactions”¹⁶, international treaties, consent to the binding nature of which has been granted by the Parliament of Ukraine, other normative legal acts regulating the turnover of virtual assets. (Paragraph 2 of Article 9 of the Law of 2074;
- providers of services related to the turnover of virtual assets, at the request of other participants of the virtual assets market, are obliged to provide the necessary, accessible and reliable information about themselves, the rules of their work, an exhaustive list of the conditions for carrying out operations, as well as about the available opportunities to protect the rights of users – other participants in the virtual assets market. The procedure for providing such information is determined by the National Securities and Stock Market Commission. (Paragraph 3 of Article 9 of the Law of 2074.

3.3. Rights of virtual assets market participants

- independently choose a counterparty among the participants of the virtual assets market for transactions with virtual assets;
- To receive from service providers related to the turnover of virtual assets, the necessary, accessible and reliable information about such a service

¹⁵ «Про запобігання та протидію легалізації (відмиванню) доходів, одержаних злочинним шляхом, фінансуванню тероризму та фінансуванню розповсюдження зброї масового знищення», Pub. L. № 361-IX (2019). URL: <https://zakon.rada.gov.ua/go/361-20>.

¹⁶ «Про валюту і валютні операції», Pub. L. № 2473-VIII (2018). URL: <https://ips.ligazakon.net/document/view/T182473>.

provider, the rules of its work, an exhaustive list of conditions for carrying out operations by it, as well as available opportunities to protect one's rights;

- On the proper quality of services related to the turnover of virtual assets;
- Open and use bank accounts for transactions with virtual assets;
- On judicial and other ways of protecting one's rights to virtual assets from the state and from other participants in the virtual assets market;
- To protect your personal data in accordance with the procedure provided by the Law of Ukraine "On the Protection of Personal Data";
- Independently determine and set the value of virtual assets, based on which they carried transactions with virtual assets out. (Paragraph 1 of Article 9 of the Law of 2074).

4. Types of activities of the service provider for the turnover of virtual assets

Providers of services related to the turnover of virtual assets are exclusively business entities – legal entities that conduct one or more of the following types of activities in the interests of third parties:

- 1) storage or administration of virtual assets or virtual asset keys;
- 2) exchange of virtual assets;
- 3) transfer of virtual assets; provision of intermediary services related to virtual assets (Paragraph 8, Paragraph 1 of Article 1 of the Law of 2074).

4.1. Type of activity of the service provider – services for the storage or administration of virtual assets or virtual asset keys

The services of storage or administration of virtual assets or keys of virtual assets are the provision of safekeeping of virtual assets or keys of virtual assets with the possibility of independently moving such virtual assets in the interests and on behalf of third parties. The provider of services for the storage or administration of virtual assets or virtual asset keys moves such virtual assets only on the condition that such movement is carried out in accordance with the instructions of the owner of the virtual asset and is expressly provided for in the relevant contract with the owner of the virtual asset regarding its storage or administration.

The size of the authorized capital for residents of Ukraine – providers of services for the storage or administration of virtual assets or virtual asset keys must be at least 70 thousand tax-free minimum incomes of citizens. The size of the authorized capital for non-residents of Ukraine – providers of services for the storage or administration of virtual assets or virtual asset keys must be at least 350 thousand tax-free minimum incomes of citizens. (Paragraph 1 of Article 10 of the Law of 2074).

The storage or administration of virtual assets or keys to virtual assets is not considered an activity that does not give the custodian the opportunity to independently carry out the transfer of such virtual assets in the interests of and on behalf of third parties (Paragraph 2 of Article 10 of Law 2074).

The provisions of the Civil Code of Ukraine on storage contracts, taking into account the features established by Law 2074 (Paragraph 3 of Article 10 of Law 2074) apply to contracts for the provision of services for the storage or administration of virtual assets or keys to virtual assets.

4.2. The type of activity of the service provider is virtual asset exchange services

Virtual asset exchange services are activities related to the exchange of virtual assets for other virtual assets and currency values, carried out for third parties and/or on behalf of and in the interests of third parties.

The size of the authorized capital for residents of Ukraine – service providers for the exchange of virtual assets must be at least 35 thousand tax-free minimum incomes of citizens. The size of the authorized capital for non-residents of Ukraine – service providers for the exchange of virtual assets must be at least 175 thousand non-taxable minimum incomes of citizens (Paragraph 1 of Article 11 of the Law of 2074).

Providers of virtual asset exchange services have the right to provide virtual asset exchange services exclusively for other virtual assets or for the national currency (hryvnia), and in cases determined by the National Bank of Ukraine – for other currency values (Paragraph 2 of Article 11 of Law 2074).

4.3. The type of activity of the service provider is virtual asset transfer services

Virtual asset transfer services are the transfer of virtual assets in the interests of third parties, from the wallet of virtual assets of third parties to the wallet of virtual assets of other parties.

The size of the authorized capital for residents of Ukraine – service providers for the transfer of virtual assets must be at least 35 thousand tax-free minimum incomes of citizens. The size of the authorized capital for non-residents of Ukraine – service providers for the transfer of virtual assets must be at least 175 thousand tax-free minimum incomes of citizens (Paragraph 1 of Article 12 of the Law of 2074).

The provision of a virtual asset transfer service is not considered to be any related activity related to ensuring the process or part of the transfer process, if the provider of such services cannot directly influence, make decisions and control the transfer of virtual assets (Paragraph 2 of Article 12 of the Law 2074).

4.4. The type of activity of the service provider is intermediary services related to virtual assets

Intermediary services related to virtual assets are the execution of transactions regarding virtual assets (including the implementation of a public offering of virtual assets) in the interests of third parties.

The size of the authorized capital for residents of Ukraine – providers of intermediary services related to virtual assets should be at least 35 thousand tax-free minimum incomes of citizens. The size of the authorized capital for non-residents of Ukraine – providers of intermediary services related to virtual assets, must be at least 175 thousand non-taxable minimum incomes of citizens (Paragraph 1 of Article 13 of the Law of 2074).

The provider of intermediary services related to virtual assets has the right to perform transactions with virtual assets (including the implementation of a public offer of virtual assets) in the interests of third parties, on its own behalf and on behalf of third parties on behalf of other persons and at their expense (Paragraph 2 of Article 13 of the Law of 2074).

5. Changes to the normative legal acts of Ukraine

Changes to the normative legal acts of Ukraine, related to the prospect of regulating the collection procedure for secured virtual assets, such as SVA (CV) and SVA (FI).

Law 2074 in Chapter VI “Final and Transitional Provisions” does not contain provisions for making changes to the regulatory legal acts of Ukraine, which regulate the procedure for recovery of secured virtual assets. However, the Cabinet of Ministers of Ukraine was obliged within three months from the date of entry into force of Law 2074 to adopt the normative legal acts necessary for the implementation of its provisions (Paragraph 1 Paragraph 4, Chapter VI of Law 2074); of the National Bank of Ukraine (Paragraph 5, Chapter VI of Law 2074) and the National Securities and Stock Market Commission (Paragraph 6, Chapter VI of Law 2074) within a six-month period from the date of entry into force of Law 2074, to bring their normative legal acts into compliance with the Law 2074 and ensure the adoption of acts necessary for its implementation.

At the time of writing this work, the regulatory acts of Ukraine do not have relevant changes for the implementation of the provisions of Law 2074 in the part of the recovery procedure for secured virtual assets.

5.1. Proposals for the collection procedure

Asset tokenization is generally similar to equity issuance. A share is an instrument that makes it possible to divide some single asset into parts between different owners. Tokenization effectively does the same thing, but

in a more functional way than traditional tools. This could be a separate layer of real-world asset tokenization applications, such as real estate or corporate relationships¹⁷.

Thanks to tokenization, you can see the history of all transactions, you can create a smart contract, specifying, for example, in which case the owner of the token changes. This is automation of a completely original order.

We see as promising the mechanism of recovery of secured virtual assets such as SVA (CV) and SVA (FI), in the context of the use of smart contracts, where it will be possible to prescribe all the conditions under which the owner of the asset will change, in the event of initiation and execution of the recovery procedure by such virtual assets.

5.2. The turnover of a virtual asset starts from the moment of its creation and is carried out until the moment of termination of the turnover of the virtual asset

Termination – a person who bears obligations under a secured virtual asset must ensure the termination of the circulation of the virtual asset, if the objects of civil rights with which it was secured are lost or dropped from civil circulation for one reason or another, and the possibility of replacement securing such a virtual asset is not provided for by the deed on creation of the corresponding secured virtual asset or by the deed on alienation of such virtual asset. (Article 5 of Law 2074)

Based on the interpretation of Paragraph 5 of Article 5 of Law 2074, a number of legitimate questions arise that do not have an answer in Law 2074:

- will a person who bears obligations under a secured virtual asset comply with such provisions of Law 2074, because, as an example, it would be against his interests?
- how can something not be fulfilled, and the secured virtual asset will remain in existence, despite the fact that the object of civil rights will be lost or withdrawn from civil circulation?
- how come the possibility of replacing the security of the virtual asset is foreseen, but it is not carried out intentionally, and the directly secured virtual asset is destroyed, because, as an example, it will correspond to the interests of such a person?
- what about the deed for the alienation of such a virtual asset? Under certain conditions, we provide its alienation form, and it is beyond the reach of the interested person?

¹⁷ Мінцифри: 'В Україні можна буде легально розраховуватись криптовалютами'. Мінфін, 06 Серпень 2021. URL: <https://minfin.com.ua/ua/currency/articles/oleksandr-bornyakov-virtualni-aktivi-mozhut-povnistyu-zaminiti-deyaki-nacionalni-valyuti/>.

The general answer to these questions can be the following: the secured virtual asset must be outside the scope of its management by the person who bears obligations under the secured virtual asset – and be within the scope of its management by a third party.

A provider of services can perform the temporary storage of a virtual asset, pending the fulfillment of its obligations for the storage or administration of virtual assets or keys of virtual assets, based on its rights and obligations under Law 2074.

CONCLUSIONS

The law establishes that a secured virtual asset certifies property rights. We should understand a certificate of property rights as confirmation of the right of the owner of the secured virtual asset to claim the security object. At the same time, there are no provisions in the text of the draft law that would make it possible to establish what is meant by the “right to claim the object of security” (usually the right to claim one party corresponds to the obligation to perform/not perform actions by the other party), how the owner can demand object of security, with which entity and how the owner can exercise the right to protection in case of non-fulfillment of the corresponding requirement. There is a lack of clarity in determining the status of a secured virtual asset.

The regulatory and legal acts of Ukraine at the time of conducting the research do not yet contain the relevant changes to implement the recovery procedure for secured virtual assets. However, the Cabinet of Ministers of Ukraine was obliged within three months from the date of entry into force of Law 2074 to adopt the normative legal acts necessary for the implementation of its provisions. The National Bank of Ukraine and the National Securities and Stock Market Commission are obliged within six months from the date of entry into force of Law 2074 to bring their regulatory acts into compliance with Law 2074 and ensure the adoption of acts necessary for its implementation.

In the context of the development of the recovery procedure for secured virtual assets, we proposed:

The mechanism for recovery of secured virtual assets such as SVA (CV) and SVA (FI), to be carried out using smart contracts, where it will be possible to prescribe all the conditions under which the owner of the asset will change, in the event of initiating and carrying out the recovery procedure for such virtual assets;

A provider of services can perform temporary storage of a virtual asset, pending the fulfillment of obligations under it for the storage or administration of virtual assets or keys of virtual assets; given the fact that the secured virtual asset must be outside the control of the person who bears obligations under

the secured virtual asset, and must be within the scope of its management by a third independent party.

SUMMARY

The article studies the prospects of the recovery procedure in Ukraine for secured virtual assets. When there is a common vision, a strategy appears. If there is a strategy, then there is also a community. The subject of the strategy for the development of the virtual asset market cannot be only the state. It should be a community of experts, professionals, entrepreneurs and political figures. If you do something together, there is a chance to build a better future. In order for the cooperation of the state and the community to be successful, political support is also needed. The Chief Executive Officer of Hacken noted that he sees no obstacles for Ukraine to really become a leading jurisdiction in the global virtual asset market. Trustee Wallet, legal adviser to the cryptostartup, added: “It depends on our joint actions today what place Ukraine will take in the international arena. If the legislative directives are lowered from above and do not find proper support among the community, then these directives are doomed to be “dead”. Support is very important. The Parliament of Ukraine adopted on 17.02.2022 the Law of Ukraine “On Virtual Assets” No. 2074-IX (hereinafter referred to as the Law 2074). Which was signed by the President of Ukraine on 15.03.2022, after the changes were taken into account, according to his previously submitted proposals. Also, on 13.03.2022, draft law No. 7150 “On Amendments to the Tax Code of Ukraine on Taxation of Transactions with Virtual Assets” was registered in the Parliament. **The purpose of the article** is to conduct a study of the prospects of the recovery procedure in Ukraine for secured virtual assets, based on the existing legal norms in the Law of Ukraine “On Virtual Assets”. In the context of developing a procedure for recovering secured virtual assets, we **propose (conclusions)**: a) the mechanism for collecting secured virtual assets to carry out the use of smart contracts, where it will be possible to prescribe all the conditions under which the owner of the asset will change, in the case of initiation and carrying out the procedure for recovery of such virtual assets; b). the temporary storage of a virtual asset, prior to the performance of its obligations, must be performed by the provider of services for the storage or administration of virtual assets or keys of virtual assets.

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