

Legal Framework for Bitcoin Under Canadian Law and Lessons for Vietnam

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ABSTRACT: Under the influence of Industry 4.0, numerous scientific breakthroughs have emerged, including "cryptocurrencies and virtual currencies." Globally, various types of crypto-assets such as Ethereum, Litecoin, Bitcoin, Swisscoin, and Zcash have gained prominence, with regulatory approaches ranging from outright bans to formal authorization. This article examines the legal framework governing virtual currencies in Canada—a pioneer in establishing such regulations—to derive critical lessons for Vietnam in refining its legal framework for assets currently being drafted in the Law on Digital Technology Industry

KEYWORDS: Bitcoin, law, virtual currency, real estate projects.

1. INTRODUCTION

At present, digital currencies in general, and Bitcoin in particular, lack legal recognition in Vietnam. There is a profound regulatory lacuna regarding the issuance, trading, and exchange of virtual currencies, digital currencies, and virtual assets. Despite this legal vacuum, investment groups and cryptocurrency exchange platforms continue to operate robustly. According to the latest report from the Triple-A cryptocurrency payment gateway, Vietnam ranks second among the top ten countries with the highest cryptocurrency ownership rates globally, trailing only the United Arab Emirates (UAE). Furthermore, data from the Vietnam Blockchain Association (VBA) indicates that in 2023, Vietnam ranked third globally in cryptocurrency investment profits—following the United States and the United Kingdom—with an estimated gain of \$1.2 billion out of a global total of \$37.6 billion [7]. These statistics demonstrate a stark contrast between legal prohibition and market reality. Although Bitcoin is not officially recognized under any of the three legal classifications—currency, means of payment, or virtual assets/commodities—it is de facto utilized by various entities as such. These operations frequently occur without authorization or under the guise of "educational dissemination" activities to circumvent regulatory scrutiny. This regulatory disparity entails significant systemic risks, including substantial tax revenue losses and the creation of legal loopholes that facilitate illicit activities, such as "pump and dump" schemes, unauthorized capital mobilization, and asset misappropriation through fraud. Consequently, the establishment of a comprehensive legal framework for Bitcoin management is both necessary and urgent. This aligns with the directive of Prime Minister Pham Minh Chinh, who stated that "as circumstances and tasks evolve, the methods of management and organization must adapt accordingly" [7]. To contribute to the refinement of the legal framework governing Bitcoin in Vietnam, this study focuses on analyzing the regulatory landscape in Canada—a jurisdiction with a developed approach—thereby deriving critical lessons for the Vietnamese context.

2. OVERVIEW OF BITCOIN AND THE LEGAL FRAMEWORK IN CANADA

Bitcoin was first introduced in 2008 through a white paper on a peer-to-peer electronic cash protocol authored by the pseudonymous Satoshi Nakamoto, and it officially entered circulation in 2009 [9]. To date, the creator's identity remains unverified. According to the most prevalent technical definition, Bitcoin is a digital currency issued as open-source software. This virtual currency enables direct peer-to-peer exchange via internet-connected devices, bypassing the need for intermediary financial institutions [6]. Distinguished by core characteristics such as pseudonymous accounts and negligible transaction fees, Bitcoin is lauded for its high security, with its issuance and distribution governed entirely by automated cryptographic algorithms. Bitcoin is exclusively generated through a process known as "mining"—the act of utilizing computational power to solve complex mathematical algorithms. Successful decryption results in the issuance of new Bitcoin units to the miner. Global regulatory responses to Bitcoin exhibit significant divergence. Some jurisdictions recognize it as a legitimate means of payment or have implemented tax recovery policies and oversight measures to mitigate risks of smuggling and money laundering (e.g., Japan, Australia, Germany, South Korea, Singapore, the Philippines, and New Zealand). Conversely, other nations strictly prohibit its circulation and refuse legal recognition (e.g., Russia, China, India, Brazil, and several countries in South Asia and the Middle East).

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Within the scope of this article, the authors focus on the Canadian legal framework, which is characterized by its clarity and progressive regulatory stance. The following points delineate the key pillars of Canadian law regarding Bitcoin:

Canadian law permits the use of digital currencies, including Bitcoin [2]. According to the Financial Consumer Agency of Canada (FCAC), consumers may utilize digital currencies to purchase goods and services online or at physical retail locations that accept such payment methods. Furthermore, individuals are entitled to buy and sell digital currencies through open platforms, commonly referred to as digital currency or cryptocurrency exchanges. However, cryptocurrencies (including Bitcoin) are not recognized as legal tender in Canada. Only the Canadian dollar holds the status of official currency. Specifically, the Currency Act (1985) defines legal tender as banknotes issued by the Bank of Canada under the Bank of Canada Act and coins issued under the Royal Canadian Mint Act [3].

Consequently, while Canadian law does not recognize digital currencies as fiat money, they are regulated as financial instruments and may be utilized as a medium for transaction settlements. As a result, Canadian tax regulations apply to digital currency transactions; specifically, these activities must comply with the Income Tax Act (ITA) [1]. Accordingly, when a consumer makes a purchase using digital currency, the value must be included in the seller's taxable income [2]. The Canada Revenue Agency (CRA) further affirms that when digital currency is used to pay for goods or services, the rules governing barter transactions are invoked. A barter transaction occurs when two parties agree to exchange goods or services without the use of legal tender. For instance, paying for a movie with digital currency constitutes a barter transaction. The value of the movie acquired must be included in the seller's income for tax purposes, calculated based on its fair market value in Canadian dollars [2]. Therefore, any resulting gains or losses from the use of digital currency in such transactions must be reported.

Additionally, cryptocurrency mining may be conducted for profit (as a business venture) or as a personal hobby (which is non-taxable). When a taxpayer engages in commercial mining, the resulting business income must be included in their annual tax return. Such income is determined based on the taxpayer's inventory valuation at the end of the fiscal year, established in accordance with Section 10 of the ITA and Part XVIII of the associated Regulations regarding inventory valuation.

In 2014, Canada enacted the Economic Action Plan 2014 Act, No. 1 (Bill C-31), which introduced pivotal provisions governing digital currencies by establishing measures for Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF). This legislation is recognized as the world's first national law specifically addressing digital currencies, and arguably the first globally to integrate digital currency financial transactions into a national AML framework [4]. Pursuant to Section 29, Subsection (1) of Bill C-31, the transmission of digital currency is defined as the utilization of electronic devices, telephonic equipment, or any computer system to execute instructions for the transfer of funds; in the context of interbank telecommunications, this is limited to SWIFT MT103 messages. Under these regulations, virtual currency exchange entities are mandated to: Register with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC); Implement comprehensive compliance programs; Maintain and preserve records as prescribed by law; Report suspicious transactions or those potentially linked to terrorist financing; and Conduct due diligence to determine if any clients are Politically Exposed Persons (PEPs). The jurisdiction of this Act extends to virtual currency exchanges operating outside of Canada that direct their services toward individuals or entities within Canadian territory. Furthermore, Bill C-31 prohibits financial institutions from facilitating accounts for digital currency entities acting as money services businesses (MSBs) unless they are duly registered. Specifically, banks are barred from establishing or maintaining correspondent banking relationships with digital currency MSBs that have not completed their registration with FINTRAC.

3. POLICY IMPLICATIONS AND LESSONS FOR VIETNAM REGARDING THE LEGAL FRAMEWORK FOR BITCOIN

Under current Vietnamese legislation, including the Civil Code (2015), there is a distinct absence of specific provisions governing virtual assets (including Bitcoin as a form of virtual asset). However, pursuant to Decree No. 52/2013/ND-CP dated May 16, 2013, on e-commerce, virtual currencies such as Bitcoin are not included in the list of goods or services prohibited from e-commerce activities. Furthermore, Official Dispatch No. 5747/NHNN-PC issued by the State Bank of Vietnam on July 21, 2017, affirmed that: "Virtual currencies in general, and Bitcoin or Litecoin in particular, do not constitute currency..." and are not recognized as legal means of payment in Vietnam [10]. Nevertheless, the lack of a transparent regulatory framework has exposed investors to significant risks, including fraud, market manipulation, and capital loss on unregulated trading platforms. In particular, the inherent anonymity of blockchain technology exacerbates the risks of money laundering and terrorist financing. The establishment of a comprehensive legal framework is essential, adopting a balanced regulatory approach to transform cryptocurrencies into a driver for growth. This would assist Vietnam in becoming a blockchain hub, attracting foreign investment, and promoting sustainable digital economic development. Drawing from the Canadian experience, the authors propose that the future legal framework for Bitcoin should focus on the following key pillars:

Firstly, it is imperative to clearly define the legal status of Bitcoin. The authors propose that Bitcoin should be formally classified as a legal asset, which would facilitate transaction management and ensure investor protection. Under this classification, Bitcoin would be valued in monetary terms, granting holders full proprietary rights and allowing it to serve as a legitimate medium

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of exchange in specific transactions. In determining Bitcoin's valuation, costs associated with production—specifically the utilization of computational power, electricity consumption, and hardware depreciation—must be factored in as intrinsic components of the virtual currency's value [8]. However, Bitcoin should not be granted the status of universal legal tender for all transactions; rather, its use as a means of payment should be restricted to specific, state-regulated scenarios.

Secondly, a comprehensive taxation policy must be established for the utilization and mining of Bitcoin. The authors suggest that Vietnam should reference Canadian legislation when drafting tax policies for commercial cryptocurrency activities. This approach is essential to prevent national budgetary revenue loss while ensuring the stability of the broader financial and monetary markets.

Thirdly, a robust regulatory framework for Bitcoin exchanges must be developed. All Bitcoin exchange platforms should be required to incorporate, register their operations, and strictly adhere to Anti-Money Laundering (AML) regulations. Such oversight is paramount to ensuring financial transparency, maintaining national security, and mitigating risks associated with fraud and illicit financing.

Furthermore, Vietnam must strike a strategic balance between safeguarding investors and fostering technological innovation. A well-designed legal framework will unlock the potential of Blockchain technology to drive economic growth while simultaneously fortifying the integrity of the national financial system.

4. CONCLUSION

In summary, this article has analyzed the Canadian legal framework and referenced Japanese legal practices in the management of virtual currency transactions to demonstrate that Canada's current policies serve as "precious precedents" for international learning. By contextualizing these experiences within the current landscape of virtual currency transactions in Vietnam, the authors have proposed several perspectives for developing a new regulatory framework. Furthermore, a strategic roadmap has been suggested to establish a formal institutional framework for managing virtual currency transactions in Vietnam today. With the implementation of appropriate policies, Vietnam can foster a secure, transparent, and innovative environment, paving the way to becoming a leading regional blockchain hub.

REFERENCES

- 1) Al-Shikarchy, M., et al. (2017). Canada's cryptocurrency taxes. Gowling WLG. Lexology. <https://www.lexology.com/library/detail.aspx?g=6283077e-9d32-4531-81a5-56355fa54f47>
- 2) Canada Revenue Agency. (2015). What you should know about digital currency. <https://www.canada.ca/en/revenue-agency/news/newsroom/fact-sheets/fact-sheets-2015/what-you-should-know-about-digital-currency.html> (Archived at <https://perma.cc/CYV2-236S>)
- 3) Currency Act, R.S.C., 1985, c. C-52. <http://laws-lois.justice.gc.ca/eng/acts/c-52/page-1.html> (Archived at <https://perma.cc/4A4E-3XBH>)
- 4) Duhaime, C. (2014, June 22). Canada implements world's first national digital currency law; Regulates new financial technology transactions. Duhaime Law. <https://www.google.com/search?q=http://www.duhaimelaw.com/2014/06/22/canada-implements-worlds-first-national-bitcoin-law/> (Archived at <https://perma.cc/4TLH-LTN5>)
- 5) Financial Consumer Agency of Canada. Digital currency. <https://www.canada.ca/en/financial-consumer-agency/services/payment/digital-currency.html>
- 6) Hoang, D. L. (2018, January 2). Bitcoin virtual currency - Part 2: What is Bitcoin? <https://tuoitre.vn/dong-tien-ao-bitcoin-ky-2-bitcoin-la-gi-20180102153341134.htm> (Accessed March 1, 2024) [In Vietnamese]
- 7) Hoang, V. M. (2024, March 1). Legal framework for Bitcoin management is an urgent requirement. <https://laodong.vn/su-kien-binh-luan/khung-phap-ly-de-quan-ly-tien-bitcoin-la-yeu-cau-cap-thiet-1425717.lido> (Accessed March 1, 2024)
- 8) Le, T. M. (2021). Laws of some countries on virtual currency control and recommendations for Vietnam. Democracy and Law Journal. <https://danchuphapluat.vn/phap-luat-mot-so-quoc-gia-ve-kiem-soat-tien-ao-va-khuyen-nghi-tai-viet-nam>
- 9) Nakamoto, S. (2009). Bitcoin: A peer-to-peer electronic cash system. <https://bitcoin.org/bitcoin.pdf> (Accessed March 1, 2024)
- 10) Nguyen, T. H. (2018). Recommendations for perfecting the legal framework for managing virtual and electronic currencies. Finance Magazine. <http://tapchitaichinh.vn/nghien-cuu--trao-doi-binh-luan/mot-so-khuyen-nghi-hoan-thien-khung-phap-ly-quan-ly-cac-loai-tien-ao-tien-dien-tu-139860.html>



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