

Legal regulation of cryptocurrency and NFTs

Poland





PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law's full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

Introduction

There is an increasing number of charities across the world that have started accepting cryptocurrency as donations, including **UNICEF** and the **Salvation Army**. New platforms like **The Giving Block** and **DoinGud** are helping nonprofits to raise funds with cryptocurrency and non-fungible tokens ("NFTs").

To help charities better understand the opportunities and risks involved in working in this new context, PILnet with its partners launched a project about legal regulation of cryptocurrency and NFTs in different jurisdictions around the world.

The report below aims to consider:

- (a) The legality of cryptocurrency
- (b) Accepting cryptocurrency
- (c) Accepting NFTs and its proceeds
- (d) Issuing NFTs to raise funds

Disclaimer

PILnet, and partners participating in this research are not liable towards third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein cannot be considered as legal advice. The research was carried out in 2022-2023 and responds to the regulatory framework in effect during this time period.

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1. Is engaging in blockchain technology legal in this jurisdiction?

Engaging in blockchain technology itself is generally legal in Poland.

There are no laws prohibiting the use of blockchain for various applications, such as supply chain management, data storage, and even certain financial transactions. However, the legal landscape for specific uses of blockchain technology, such as cryptocurrencies, is a bit more nuanced. Cryptocurrencies like Bitcoin are not illegal in Poland, but they are not considered legal tender either. This means you can own, buy, and sell cryptocurrencies, but they are not officially recognized as money by the Polish government. Financial institutions in Poland are also generally skeptical towards cryptocurrencies, and there are restrictions around using them for certain activities.

2. Is accepting cryptocurrency permitted for charities? If so, what legislation/regulation governs it?



There were no specific laws in Poland that explicitly restricted charities from accepting cryptocurrencies like Bitcoin (BTC), Ethereum (ETH), or stablecoins like Tether (USDT). However, there are a number of considerations and challenges that charities need to take into account:

Tax implications: the taxation of cryptocurrencies can be complicated and this includes charitable donations. Charities will need to figure out how to report such donations, how to account for their value and how this may affect their tax status. Despite the President's signing of SLIM VAT 3, abolishing the tax on drop-offs, we must remember that currently tax must only be paid if the sum of donations from a single donor exceeds the ceiling set by the law. As long as the sum of donations from one donor does not exceed this ceiling, the NGO should not be liable to pay tax. The donor deducts the donation made on their annual tax return by entering it in the relevant appendix. On the PIT-O appendix, donations are deducted by individuals, while for legal entities an appendix CIT-D is provided. The CIT-D form is a form intended to show both donations made and received. Thus, it will be used by a legal entity - the donor, but also by a legal entity - the recipient, including endowed NGOs (associations, foundations).

The obligation to submit this declaration applies to: organizations that have received donations from taxpayers who have obtained the right to deduct them from their taxable

income, and donors who have obtained the right to deduct donations made from their taxable income. The endowed organization shows in the CIT-D the donations received from legal and natural persons that reduce the donors' tax base. It shows here the amount of all donations received, even small donations. Large donations from legal entities must be listed with the indication of individual donors; this is the case when the amount of the donation exceeds PLN 15,000 at one time or the annual total of donations from one donor exceeds PLN 35,000. The declaration allows for providing data on three entities from which the organization has received large donations; if there are more, then another declaration form must be filled in. In addition, the legislator imposes an obligation to make information about the received donations available to the public by publishing it on the Internet, in the mass media or displaying it in generally accessible areas.

Payments: There is no Polish law explicitly prohibiting a charity or non-governmental organization (NGO) from opening its own cryptocurrency wallets or exchange accounts for the purpose of receiving donations and managing it as long as they follow AML Act.

As for paying with cryptocurrency this means of payment is not used in Poland so it will be difficult to make such payments.

Cryptocurrency exchange: Provisions of the AML Act cryptocurrency exchangers, that is, entities engaged in the business of providing:

1. exchanges between virtual currencies and means of payment;
2. exchanges between virtual currencies;
3. brokering such exchanges;
4. operating cryptocurrency wallets, to obtain an entry in the register of virtual currency activities - this will be kept in electronic form by the Minister of Finance.

This entry will be a condition for being able to carry out such activities, and the provision of these services without complying with the entry requirement may end up with a fine of up to PLN 100,000. In order to obtain an entry, an application must be submitted, in which all services generating a risk of money laundering and terrorist financing are indicated in the first place. The Minister of Finance should enter the entrepreneur in the register within 14 days of submitting the application. A person wishing to enter the register must first and foremost have knowledge and experience in the area of virtual currencies, as well as implement an anti-money laundering procedure. The procedure for obtaining an entry appears to be relatively simplified, but the Ministry nevertheless obtains information about the very existence of such an exchange office. This definitely allows for a more effective control, which

the General Inspector of Financial Information, acting within the MF, is authorized to perform. Donations: The donation can be made for any statutory activity of the NGO (e.g. feeding children, telephone charges, purchase of computer equipment, etc.). However, if the donor wishes to take advantage of the deduction for making the donation, then the purposes for which the organization was established (as stated in its statutes) are the basis for accepting the donation.

The purposes for which a tax-deductible donation can be made must fall within the list set out in Article 4 of the Act on Public Benefit Activity and Volunteerism. This is a very broad list and, in practice, it is difficult to find an organization whose statutory objectives would go beyond it. Donations are one of the sources of funding for the activities of associations and foundations. A donor, guided by the principle of generosity, may in this way give an organization free of charge e.g. money, property, an object. A written contract is a convenient and sometimes necessary form of it. By a donation contract, the donor (e.g. a supporter of a given organization, a company, an institution) undertakes to provide a non-refundable benefit to the recipient (e.g. a foundation, an association). This means that the donor transfers from his or her own assets, e.g. a certain amount of money for a specific purpose. For this donation, the donor receives nothing in return - there is no direct material benefit resulting from the donation.

The object of a donation contract (i.e. what we can transfer through it) can be various benefits, in particular: money, real estate, movable objects (e.g. a car, a computer), as well as things existing or to be created in the future, or certain rights (e.g. the right of perpetual usufruct), as well as the release of the giver from the debt he owes to the donor. A donation agreement is gratuitous, so it must not contain provisions evidencing that the donor receives a consideration from the donee as an equivalent for receiving the donation. The donation agreement may provide for a "charge to the donee of a command", i.e. an obligation on the donee to do something specific, e.g. for the donee to earmark the donated item for a specific purpose (rather than for an organization in general). Such a command may have in mind the interest of a third party (e.g. helping a lonely person), the interest of society (e.g. using the donated funds for a specific charity) or even the interest of the giftee itself (e.g. buying a computer).

According to the Civil Code, the donor should make the declaration in the form of a notarial deed (under pain of nullity). In practice, however, it is assumed that the absence of this required form (i.e. the conclusion of a simple written or oral agreement) does not render the donation invalid if the donor has already given/released to the donee what he or she promised, e.g. the company promised to donate a car and the foundation has already received it. Obligations for the donor arise from the donation contract. First and foremost, they must hand over the promised donation. They are also liable for defects in the donated

property, but only if they themselves knew about them and deliberately failed to notify them. The donor is relieved of this liability if the defects were such that the recipient of the gift could easily notice them. If, for example, it is apparent at first glance that the donated house has a hole in the roof, the donor is not liable for the damage, but if this house had a hidden structural defect, they are obliged to inform the donee of this without undue delay. The donor may revoke the donation if the contract has been concluded but not yet executed (e.g. before the promised premises have been handed over) and the revocation is due to a change in the donor's assets (e.g. due to illness, loss of property), due to which he cannot give the donation. The donor (or his heirs) may revoke the donation if the donee has committed 'gross ingratitude' towards him (e.g. has seriously breached his family duties towards the donor). The donor revokes the donation by a written declaration and also, for example, in a will.

2.1 How does the jurisdiction's anti-money laundering/counter-terrorism financing (AML/CTF) regime (if any) address cryptocurrency donations?

Although cryptocurrencies are not illegal, they are not recognized as official currency either. This creates a gray area in terms of financial oversight and reporting requirements. Charities might face increased scrutiny when accepting cryptocurrencies, given the anonymity and potential for misuse associated with these digital assets.

The AML Act of 1 March 2018 introduced a definition of virtual currency into the Polish legal order. This new statutory definition covers both cryptocurrencies and centralized virtual currencies. The same act also expanded the catalog of obliged institutions to include entities engaged in the business of providing services in the cryptocurrency industry with regard to:

- 1) exchange between virtual currencies and means of payment,
- 2) exchange between virtual currencies,
- 3) intermediating in the exchange of currencies mentioned in the points above,
- 4) maintaining accounts for virtual currencies (so-called wallets). Entities that provide at least one of the services listed above must comply with a number of AML obligations imposed on obliged institutions.

The tasks listed below are key to AML, although they do not exhaust the entire list of activities under the AML and terrorist financing law:

Registration of cryptocurrency activities for AML purposes - A key obligation is to make an entry in the register of virtual currencies maintained by the minister responsible for public finance.

Persons responsible for AML - Within each obliged institution, persons responsible for the implementation of AML obligations and compliance with AML procedures must be identified.

AML risk assessment document - It is mandatory to carry out a regular AML risk assessment taking into account assessments at national and EU level, as well as risk factors such as customers, geographical areas, products, services and delivery channels.

Internal AML procedure - It is mandatory to establish and comply with an AML and terrorist financing procedure including, inter alia, anonymous reporting of actual or potential AML violations. A fully anonymous bank transfer order is not possible. This is regulated by the Banking Law of 29 August 1997, which states that:

A bank transfer order is an instruction given to a bank by a debtor to debit his account with a specified amount and credit the creditor's account with that amount. The bank executes the debtor's instruction in the manner provided for in the bank account agreement. In order to execute the transfer, the bank must know the data of the sender and the recipient. In Poland, it is not possible to open a bank account anonymously, without going through the AML procedure, which was imposed by a European Parliament and Council (EU) directive. It is intended to curb money laundering and income tax evasion. That is to say: if you want to open a bank account, you have to identify yourself. The bank, which has the customer's details, will pass them on to third-party banks where the accounts of the recipients of the transfers are held. This data is, of course, protected and can only be accessed by specific institutions, such as the National Revenue Administration or the public prosecution service, in the event of suspected illegal activity. In such a case, the money in its holder's account may also be blocked. There is therefore no legal possibility to order an anonymous bank transfer. At least two institutions will always be informed of the fact that money has been sent to another account, namely the sender's bank and the recipient's bank, which may, in a justified case, notify the relevant authorities of the transaction.

Financial security measures - The obligation relates to the implementation and application of measures such as the identification of the customer and the beneficial owner, the monitoring of discrepancies between the CRBR and the findings of the obliged institution, the determination of the ownership and control structure in the case of a customer that is a legal person or an unincorporated entity, and the ongoing monitoring of the customer's economic relations. The application of financial security measures applies to occasional transactions equal to or exceeding €1,000.

Training on AML topics - The obliged institution must provide its employees with regular training in line with the latest regulations (in the form of e-learning courses or classroom training).

Cooperation with the GIIF - An obliged institution in the cryptocurrency industry must collect and transmit data on certain transactions to the GIIF, as well as perform tasks at the request

of the GIIIF such as stopping transactions, blocking an account, freezing or withholding assets (e.g. withholding credit or failing to make payments).



3. Is issuing NFTs to raise funds permitted for charities? If so, what legislation/regulation (if any) governs it?

If an NGO issues tokens that are truly non-fungible (ie. that are not qualified as cryptocurrencies, securities etc.), there are no applicable regulations. The main issue is always a correct assessment of a token to be minted.

4. Are there tax implications for donations of cryptocurrency or NFTs? Are there obligations to pay tax for charities who sell NFTs for fundraising purposes?



In the case of CIT taxpayers, i.e. legal persons (among others, limited liability companies, joint stock companies, foundations, associations, cooperatives) capital companies in organization. unless a given entity operates, for example, a stock exchange or a virtual currency exchange, the settlement of transactions related to cryptocurrencies will be made under the source of revenue - revenue from capital gains. Importantly, this tax (at a rate of 19%) will be payable regardless of whether the company has recorded income or loss in the revenue source 'capital gains'. Income from cryptocurrencies cannot be offset against, for example, a loss from investing in shares. In addition, the Court of Justice of the European Union already took the position in 2015, in its judgment of 22 October 2015 in the Hedqvist case C-264/14, that rights that are traded similarly to money should be treated in terms of VAT in the same way as the handing over of money itself - thus justifying the tax exemption. This will entail taxing such income, by the due date of the annual return, at the rate of 19%, even if the company is entitled to apply the 9% rate. However, the reduced rate applies within the source of income - income from other sources, i.e. for the company's core business.



5. What is the best practice or guidance?

5.1. Is there non-binding guidance (if any) issued by any regulatory or government authority or industry association in your jurisdiction in

relation to best practices relating to acceptance and issuance of cryptocurrencies and NFTs?

At the moment, the Polish system does not have a cryptocurrency policy adapted to foundations and NGOs. If you have any questions regarding opinions, you should contact directly the office dealing with the area in question, e.g. Krajowa Informacja Skarbowa (KIS) in the tax and customs elements. It also follows from the AML Act that cryptocurrencies are a means of economic circulation that can be exchanged for other legal tender (e.g. the 'legal tender issued by the NBP, popularly known as fiat money). This means, more or less, that Poland, like many other countries, does not recognise virtual currencies as generally acceptable means of payment or electronic money, but considers them in terms of property.

5.2. Additional research findings worth noting?


We find it prudent to consider that the acquisition of an NFT does not result in the transfer of title to use copyrights, image right or any other intellectual property right. The purchase of an NFT secures the ownership of a copy of a work, product, invention or otherwise any other intellectual property, and thus any ownership right the law associates with such ownership, such as owning a piece of art.

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