

Legal regulation of cryptocurrency and NFTs

People's Republic
of China





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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

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PILnet, and partners participating in this research, are not liable toward third parties for the accuracy of the information contained in the research about Cryptocurrency and NFTs. The information contained herein is intended as a general overview and discussion of the subjects dealt with and only responds to the regulatory framework in effect during a specific research period in 2022-23. It is not intended to be, and should not be used as, legal advice or a substitute for taking legal advice in any specific situation.

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

Engaging in blockchain technology per se is not illegal in the People’s Republic of China (“**PRC**”). That said, the PRC has taken a strict stance in regulating cryptocurrencies and has generally banned all cryptocurrency-related activities.

As of the date of this guide, cryptocurrency-related business activities are deemed illegal financial activities. Such activities include:

- exchanging legal tender for virtual currencies or vice versa;
- exchanging one virtual currency for another;
- buying and selling virtual currencies as a central counterparty;
- providing information and pricing services for the trading of virtual currencies;
- issuing tokens to raise funds;
- trading virtual currency derivatives; and
- engaging in other virtual currency-related activities.



The provision of cryptocurrency-related services by overseas virtual currency exchanges to residents in the PRC via the internet is also banned. Where any person breaches public order and good morals when investing in cryptocurrencies or related derivatives, the relevant civil legal acts are considered invalid, and the person would have to bear any such losses. Further, the PRC has also strictly prohibited investment and construction of any new mining projects in the name of data centers, etc.

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

Fundraising involving cryptocurrency-related business activities is strictly prohibited in China. Please see Section 1 above. The relevant regulations are the Notice on Further Preventing and Resolving the Risks of Virtual Currency Trading and Speculation¹ and the Notice on Regulating the Mining Activities of Virtual Currencies.²



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

NFTs are often referred to as digital collectibles by the Chinese authorities and have not been explicitly included in the scope of virtual currency, which has been banned in China. As of the date of this Guide, China

¹ See <http://www.pbc.gov.cn/en/3688253/3689012/4353814/index.html>.

² See https://www.ndrc.gov.cn/xxgk/zcfb/tz/202109/t20210924_1297474_ext.html.

does not forbid the issue and purchase of NFTs, whether for charitable purposes or not, provided that the NFTs are not tradable and are not currencies.

In the context of charities, charitable fundraising activities directed at the general public can be carried out subject to successfully obtaining qualification pursuant to the Charity Law of the People’s Republic of China (“Charity Law”). Such activities can be conducted in the form of charitable sales and auctions directed at the general public, publicizing fundraising information via the Internet or other media, etc. Please note that to engage in public fundraising activities (e.g., public NFTs auction), charitable organizations shall, in addition to first obtaining qualification, formulate a fundraising program and file it with the relevant civil affairs departments.

While there is no NFT-specific legislation in China, we recommend referring to the below regulations and circular for information about fundraising and tax matters for charitable organizations in China:

- The Charity Law of the People’s Republic of China
- Law of the People’s Republic of China on Enterprise Income Tax
- Implementing Regulations of the Enterprise Income Tax Law of the People’s Republic of China
- Circular on Issues Concerning the Recognition and Administration of Tax-exempt Qualifications of Non-profit Organizations



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?

As mentioned above, cryptocurrencies are completely banned in China. While there are no specific laws on the tax implications of NFTs, charitable organizations and their income are generally eligible for tax benefits in accordance with the Charity Law. Persons that donate property (including intangible property such as currencies, securities, and equity) are also eligible for tax benefits in accordance with the Charity Law.

Income of charitable organizations that have obtained qualification for tax exemption as a non-profit organization is tax-exempt. To qualify as a non-profit organization, the organization must, among other requirements:

- be a public institution, social group, foundation, social service agency, or a non-profit organization of another kind as recognized by the Ministry of Finance and the State Administration of Taxation;
- engage in public welfare or non-profit activities;
- use its income for public welfare or non-profit activities; and
- not distribute its property and interests accrued.



5. What is the best practice or guidance?

It is often not a clear-cut or straightforward situation when interpreting the law in this aspect, especially when determining whether a particular activity or product leveraging the blockchain technology would trigger any regulatory obligations in China.



Given NFTs are often associated with cryptocurrencies because they are both based on blockchain technology, the legal status of NFTs is arguably in a regulatory gray area in China, considering the complete ban of cryptocurrencies. In May 2023, the Supreme People's Procuratorate of the People's Republic of China published an opinion for the treatment of NFTs. The opinion sought to point out the inherent risks of digital collectibles and reaffirmed China's stance in regulating all types of financial activities in accordance with the law, with an emphasis on both punishment and governance.

We recommend keeping abreast of the latest regulatory development in the space of blockchain technology, cryptocurrency and NFTs in China. In case of uncertainties or doubts, please always seek professional advice.

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