

Information for citation:

Gagauz, V. D. & Chuvyrgyzalova, D. V. (2021) Legal Status of Cryptocurrencies: the Experience of BRICS. *European and Asian Law Review*. 4 (2), 16–24. DOI: 10.34076/27821668_2021_2_1_16.

UDC 346.7

BISAC LAW014010/ LAW016000

DOI: 10.34076/27821668_2021_2_1_16

Research Article

LEGAL STATUS OF CRYPTOCURRENCIES: THE EXPERIENCE OF BRICS

VICTORIA D. GAGAUZ

*Russian Association of Cryptoeconomics,
Artificial Intelligence and Blockchain (RACIB),*

Flex & Done Attorney's Office

ORCID ID: 0000-0001-5273-870X

DARYA V. CHUVYZGALOVA

Flex & Done Attorney's Office

ORCID ID: 0000-0002-0599-9218

According to the BRICS Economic Partnership Strategy until 2025, one of the goals of mutually beneficial cooperation between the BRICS member states is to overcome the digital gap and obtain common benefits from digitalization, taking into account the different levels of digital development of the member states. Spreading the use of blockchain technology and cryptocurrencies is of a special interest in the process of digital transformation of the economy, both at the state and global levels. Authors carried out a comparative legal analysis of the legal regulation of cryptocurrencies in the BRICS member states considering the relevance of the need to exchange experience and study approaches to regulating the digital transformation of the economies of the BRICS member states as one of the tasks of BRICS cooperation in the sphere of digital transformation. The subject of the research is the legal status of cryptocurrency as a digital asset, which does not provide its owner with any rights of claim in relation to other objects of civil rights. The authors analyze the current legal regulation of cryptocurrency in Russia and offer recommendations for its development based on the experience studied.

Key words: *cryptocurrency, digital asset, digital currency, blockchain, BRICS, digital rights*

Introduction

According to the Concept of the Russian Federation's Participation in the BRICS Association, approved by the President of the Russian Federation, the formation of the BRICS reflects the objective trend of world development towards the formation of a polycentric system of international relations and strengthening of the economic interdependence of states¹. Digital technologies are one of the connecting elements of such a process as the worldwide globalization of various spheres of human activity. Their rapid development sets the task for the legislator of creating a qualitatively new model of legal regulation, taking into account the experience of foreign states (Sidorenko, 2018: 130).

Taking into account the fact that the BRICS countries are at different levels of digital development, the BRICS Economic Partnership Strategy until 2025 identifies, *inter alia*, showing the potential of

¹ Concept for the Participation of the Russian Federation in the BRICS. Approved by the President of the Russian Federation. Available at: <http://static.kremlin.ru/media/events/files/41d452a8a232b2f6f8a5.pdf> [Accessed: 20 October 2021].

digital technologies and opportunities for the population of the BRICS countries as tasks necessary for implementation in order to ensure a synergistic effect from digitalization, sharing experience and studying approaches to regulating the digital transformation of the economy, improving cooperation within the BRICS Partnership on the New Industrial Revolution and launching promising projects under its auspices in order to accelerate the digital transformation of the economy².

The development of distributed ledger technology (blockchain) and, as a result, the emergence of cryptocurrencies is of particular importance in the digital transformation of the economy both at the state and at the global level (Shaidullina, 2020: 396).

The essence of cryptocurrency is currently insufficiently researched, as a result of which the hasty formation of a legal definition of 'cryptocurrency' is fraught with negative consequences. The risks associated with the circulation of digital currency, including criminological ones, are multifaceted (Sidorenko, 2019: 82) and they must be taken into account when choosing a model for legal regulation of digital currency based on the study of foreign experience.

It should be noted that the subject of the study is the legal status of exclusively cryptocurrency as a digital asset in the BRICS member states, which does not provide its owner with any rights of claim in relation to other objects of civil rights, unlike tokens that certify property rights to goods and (or) services.

Taking into consideration the rapid change in the political and economic environment associated, *inter alia*, with the spread of digital technologies, the development of legislation regarding the legal regulation of the cryptocurrencies circulation needs constant monitoring and analysis. The authors conducted a comparative law study of legal regulation regarding the legal status of cryptocurrencies in the BRICS member states as of October 2021.

Materials and methods

This study uses methods such as general scientific (analysis, synthesis, comparison, formal logical) and special legal (formal legal, comparative law).

Results

There is a legal uncertainty regarding the legal status of cryptocurrency in Russia, as in other BRICS member states. Meanwhile, the total capitalization of bitcoins exceeds \$ 3 billion, and as a result of the rapid emergence of new cryptocurrencies, the share of bitcoins in the total structure of market assets has decreased from 87% to 64%. The cryptocurrency market has a steady potential for internal development due to the structural evolution of this institution (Smirnova, 2021).

As a result of the analysis of legal regulation as well as law enforcement and judicial practice of the BRICS member states in relation to cryptocurrencies, it is obvious that states generally agree on the definition of cryptocurrency as a digital representation of value, which can be transferred in digital form and can be used as a means of saving or as a unit of accounting as well as a means of payment, but at the same time it is not a legal tender currency. Meanwhile, the legal status of cryptocurrency as an object of civil rights is currently not defined at the legislative level in any of the BRICS member states.

The lack of a legal definition of cryptocurrency, confusion of the concepts of 'cryptocurrency' and 'token', weak law enforcement and judicial practice entails the problem of legalizing cryptocurrency as an object of civil rights and, as a result, the impossibility of ensuring judicial protection of violated rights associated with the circulation of such currency.

Discussion

The authors consider it advisable to analyze the legal regulation of the BRICS member states (Brazil, India, the People's Republic of China, South Africa), an analysis of the current legal regulation in the Russian Federation, and formulate recommendations for its development based on the results obtained.

² BRICS Economic Partnership Strategy till 2025. Available at: <https://brics-russia2020.ru/images/114/81/1148133.pdf> [Accessed: 21 October 2021].

Brazil

Brazil has always adhered to perspective thinking in the sphere of technology implementation in the financial sector, which is confirmed, in particular, by the long-standing proliferation of electronic payments (Belykh & Alekseenko, 2021). But with regard to cryptocurrency, Brazil has taken a more low-key approach. Despite the fact that a bill with the aim of legal regulation of the turnover of cryptocurrencies was introduced for the first time in the Chamber of Deputies back in 2015³, the legal status of cryptocurrency is currently not defined (Makhalina & Makhalin, 2019: 118).

The Brazilian Real is legal tender under current regulation⁴, and all payment obligations due within Brazilian territory must be denominated in BRL⁵. Any agreements that, in any form, restrict or prohibit the use of the legal currency are void⁶.

Thus, cryptocurrencies cannot be used as a means of payment in Brazil, and therefore, as a rule, cryptocurrencies are currently classified as property which is referred to the general regime established by the Civil Code⁷.

Currently, the regulatory framework in the sphere of regulation of cryptocurrencies and other digital assets includes decisions of administrative bodies.

So, in May 2019, the Secretariat of Federal Revenue of the Brazilian Ministry of Finance issued a regulatory instruction on the introduction of reporting requirements for transactions related to cryptocurrency and other virtual assets⁸. According to Article 5 of the specified instruction, a crypto asset is a digital representation of value denominated in its own unit of account, the price of which can be expressed in local or foreign sovereign currency, which is circulated electronically using cryptography and distributed ledger technology, used as a form of investment, an instrument transfer of value or access to services and which is not legal tender⁹.

In August 2019, the Central Bank of Brazil, in a report on external sector statistics, recommended that transactions with crypto assets should be counted as transactions with ‘derivative non-financial assets’¹⁰.

Bill No. 2303/15 was the first legislative attempt to regulate cryptocurrencies. Turning to the teleological interpretation of the Bill, the main purpose of its introduction was to solve the problems associated with the use of cryptocurrencies in fraudulent schemes and the need to strengthen measures to prevent money laundering.

Meanwhile, the initial version of the Bill defined cryptocurrencies as ‘electronic currency’ and proposed regulation similar to the regulation of loyalty programs (for example, programs for calculating bonuses by air carriers for flights).

Bill as amended, adopted on 28 September 2021 in first reading¹¹, proposes to replace the concept of ‘cryptocurrency’ with the concept of ‘virtual asset’, which means a digital representation of value that can be sold or transferred using electronic means and used to make payments or for the purpose of investment¹². At the same time, according to the text of the draft law, the following meanings are excluded from the concept of ‘virtual assets’:

- national currency and foreign currency,
- electronic currency (according to the Law No. 12.865 of October 9, 2013),
- tools that provide the holder with access to products or services, as well as points and awards in the framework of loyalty programs;
- assets that are regulated by law, such as securities and financial assets¹³.

³ The draft bill PL 2303/15, 2015 [Projeto de Lei PL nº 2303, de 2015].

⁴ Decree-Law 857/69 (art. 1) [Decreto-Lei nº 857, de 11 de Setembro de 1969]; Law 10192/01 (art.1) [Lei nº 10.192, de 14 de Fevereiro de 2001].

⁵ Law 8.880/94 (art. 6) [Lei nº 8.880, de 27 de Maio de 1994]; Decree no 23.501, de 1933 [Decreto nº 23.501, de 27 de Novembro de 1933], Law Nº 10406/02 (art. 318) [Lei nº 10.406, de 10 de Janeiro de 2002].

⁶ Ibid.

⁷ Law no 10406/02 (art. 318) [Lei nº 10.406, de 10 de Janeiro de 2002].

⁸ Normative instruction of the RFB Nº 1888/19 [Instrução Normativa RFB nº 1888, de 03 de Maio de 2019].

⁹ Ibid, art. 5.

¹⁰ Press Release, External Sector Statistics of Central Bank of Brasil, 2019 [Nota para a Imprensa, Estatísticas do Setor Externo de Banco Central do Brasil, de 26 de Agosto de 2019].

¹¹ The draft bill PL 2303/15, 2015 with amendments [Projeto de Lei nº 2.303, de 2015, Apensados: PL no 2.060, de 2019, PL no 2.140, de 2021 e PL no 2.234, de 2021].

¹² Ibid., art. 3.

¹³ Ibid.

Thus, as of the date of this article writing, there is no law in Brazil that would enshrine the definition of cryptocurrency.

India

As of July 2021, over 15 million investors in India hold over \$ 1.3 billion worth of cryptocurrencies¹⁴.

Currently, there is no definition of cryptocurrency in Indian legislation¹⁵, meanwhile, the development of the definition and attitude to the circulation of cryptocurrency took place with the help of law enforcement and judicial practice and is characterized by diametrically opposite approaches of various authorities.

In 2018, the Reserve Bank of India, taking into account the risks of cryptocurrency turnover, issued a circular letter, which actually imposed a ban on banks and financial institutions to carry out operations in cryptocurrency or provide services to any individual or legal entity carrying out operations in cryptocurrency (Chudinovskikh & Sevryugin, 2019: 70)¹⁶.

In 2019, the Interdepartmental Committee of the Ministry of Finance of India presented a draft law 'On the Prohibition of Cryptocurrency and Regulation of the Official Digital Currency', which proposed the following definition of cryptocurrency:

any information, code, number or token that is not part of any official digital currency,
which is generated by cryptographic means or otherwise,
providing a digital representation of a value that is exchanged with or without a counter-grant; with a promise or assurance that they have their own value,
in the framework of any business activity that may involve the risk of loss or expectation of profit or income,
or functioning as a means of value saving or unit of account, including but not limited to its use in any financial transaction or investment¹⁷.

The specified project was criticized for the dubious definition of cryptocurrency, which could include gift cards, discount coupons, loyalty points; as a result, the project was not submitted to Parliament.

On March 4, 2020, the Supreme Court of India declared illegal the circular letter issued by the Reserve Bank of India in connection with the violation of the principle of proportionality of the application of the preventive provisions of the law to the risk of possible harm¹⁸. After analyzing the development of the position of intergovernmental organizations, as well as government authorities of India regarding the turnover of cryptocurrencies in their historical retrospective, the Supreme Court of India ruled that since the legislation does not regulate the issue of the legal status of cryptocurrency, the Reserve Bank of India's ban on banks and financial institutions with respect to operations in cryptocurrency should be canceled¹⁹.

At the same time, the reasoning of the Supreme Court of India regarding the legal nature of cryptocurrencies in this decision is of particular interest. In particular, the court expressed some doubts as to whether a cryptocurrency can only be classified as a commodity or goods. According to the position set out by the court, cryptocurrencies are not legal tender in the sense that they are not a regulated currency issued by the state, but have the fundamental characteristic of intangible property as an identifiable valuable item²⁰.

According to the Parliament's notification posted on the official website, during the winter session of Parliament in 2021 (from November 29 to December 23, 2021), the Bill 'On Cryptocurrencies and Regulation of the Official Digital Currency' will be considered, the key goals of which are stated to prohibit the circulation of all private cryptocurrencies in India while allowing for some exceptions that

¹⁴ Parikh, V. & Reddy, J. (2021) *The Virtual Currency Regulation Review: India*. Available at: <https://thelawreviews.co.uk/title/the-virtual-currency-regulation-review/india> [Accessed: 15 October 2021].

¹⁵ Ibid.

¹⁶ Prohibition on Dealing in Virtual Currencies (VCs) No. RBI/2017-18/154 (2018) Available at: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI15465B741A10B0E45E896C62A9C83AB938F.PDF> [Accessed: 15 October 2021].

¹⁷ Banning of Cryptocurrency and Regulation of Official Digital Currency Bill (2019) art.2. Available at: <https://www.medianama.com/wp-content/uploads/2021/02/Draft-Banning-of-Cryptocurrency-Regulation-of-Official-Digital-Currency-Bill-2019.pdf> [Accessed: 19 October 2021].

¹⁸ *Internet and Mobile Association of India v. Reserve Bank of India* (2020) W.P. (C) 528/2018. Supreme Court of India.

¹⁹ Ibid.

²⁰ Ibid.

contribute to the development of blockchain technology, as well as create a regulatory framework for the digital currency to be issued by the Reserve Bank of India²¹. However, the text of the Bill has not yet been published.

Thus, the legal status of cryptocurrency in India is not defined at the legislative level; however, it is likely that the Parliament will introduce legal certainty in the next session.

People's Republic of China (PRC)

Similarly as in other BRICS member states, the legal status of cryptocurrencies has not been regulated in China at the legislative level. Regulation is carried out at the sub-legal level simultaneously by several departments, the key role among which is played by the People's Bank of China (Alekseenko, 2019: 210).

The first step towards regulating the legal status of cryptocurrency was proclaimed in the Notice 'On the Prevention of Risks Arising from Bitcoin' in 2013 (Makhalina & Makhalin, 2019: 119). At the same time, the departments have chosen a banning approach, prohibiting banks and other financial organizations from performing money exchange operations for bitcoins and other cryptocurrencies, as well as providing any other services related to maintaining and servicing accounts that are used for such exchange operations. Restrictions have been established regarding the possibility of using bitcoins only on sites with a special permit with regard to the use of cryptocurrency by individuals (Alekseenko, 2019: 210).

Article 1 of the Notice presented the first attempt of departments to define cryptocurrency using the example of bitcoin as cryptocurrency. Among the characteristic features of cryptocurrency one can mention the decentralization of emission, a limited number, anonymity, and the absence of geographic restrictions. At the same time, it is emphasized that cryptocurrency is not money, but a virtual asset, and the value of goods and (or) services cannot be measured by it (Alekseenko, 2019: 211).

Legal regulation in relation to virtual assets was continued in 2017 with the adoption of the Notice of September 04, 2017 'On Measures to Prevent Risks Associated with the Issuance of Tokens in Order to Attract Funding', published jointly with a number of Chinese authorities. The Notice was made concerning the prohibition of token circulation and ICO (initial token offerings) in China (Alekseenko, 2019: 210).

On October 1, 2017, the Law 'General Part of Civil Law of the PRC' came into force, which consolidated the concept of 'virtual property' in Article 127 (Haijun, 2019: 417) making a reference to special legislation that will be developed.

On October 25, 2018, for the first time in China, the Shenzhen Court of International Arbitration issued a decision that determined the legal status of cryptocurrency in China as personal property²², which was confirmed by judicial practice on July 18, 2019 by a court decision on a claim for violation of ownership of bitcoin²³.

On September 24, 2021, against the background of testing the national digital currency, the People's Bank of China declared all transactions with bitcoin and other cryptocurrencies illegal, which was published on the official website of the regulator²⁴. The notification indicates the definition of a virtual currency, indicating its main characteristics: decentralization of emission, the use of cryptography, distributed ledgers or other similar technologies, existence in digital form. Virtual currencies are not legal tender and should not and cannot be used as currency in the marketplace, and activities related to virtual currency are illegal financial activities²⁵.

Thus, in China, judicial practice recognizes the status of cryptocurrency as property; meanwhile, a special law regarding its legal status has not been adopted at present.

²¹ Parliament Session Alert: Winter Session (2021) Available at: <https://prsindia.org/sessiontrack/winter-session-2021/session-alert> [Accessed: 31 October 2021].

²² 'China court: Bitcoin legal to own and transfer' Available at: <https://www.jurist.org/news/2018/10/china-court-bitcoin-legal-to-own-and-transfer> [Accessed: 27 October 2021].

²³ 首例比特币财产侵权纠纷案宣判 认定比特币虚拟财产地位 (The First Bitcoin Property Infringement Dispute Case Was Resolved to Determine the Status of Bitcoin Virtual Property). Available at: <http://www.bjnews.com.cn/finance/2019/07/18/604945.html> [Accessed: 26 October 2021].

²⁴ 关于进一步防范和处置虚拟货币交易炒作风险的通知 (2021) (Notice on Further Preventing and Disposing of the Risk of Virtual Currency Trading Speculation) Available at: <http://m.safe.gov.cn/safe/2021/0924/19911.html> [Accessed: 25 October 2021].

²⁵ Ibid.

Republic of South Africa (South Africa)

The first steps towards determining the legal status of cryptocurrency in South Africa were made by the South African Reserve Bank in 2014 with the release of an advisory report, which introduced the concept of ‘virtual currency’, which meant a digital representation of value that can be sold digitally and functioning as means of exchange, unit of account and/or saving of value but does not have legal tender status²⁶.

In 2016, South Africa established the Intergovernmental Fintech Working Group (IFWG), which currently consists of representatives from the National Treasury, the South African Reserve Bank, the Financial Sector Conduct Authority, the National Credit Regulatory Authority, the Financial Intelligence Center and the South African Tax Service (Dulatova & Razak, 2020: 53).

South African policy towards cryptocurrencies is neither hostile nor overtly friendly: in the position paper of the IFWG Working Group, the South African financial sector regulators seek to remain neutral in order to create conditions for the development of innovative activities while ensuring similar conditions for both existing and new market participants²⁷.

FWG explains that cryptocurrencies are not money within the meaning of the South African Reserve Bank Act No. 90 of 1989, they are not electronic money within the meaning of the National Payment Systems Act No. 78 of 1998, but at the same time the assessment of the working group in relation to transactions with cryptocurrencies is interesting. The document states that although cryptocurrency is not legal tender, this does not mean that legal entities and individuals are expressly prohibited from accepting it when it is offered as a means of payment. In this case, cryptocurrencies will function as a barter instrument, with the price being determined by agreement between the seller and the buyer. Although cryptocurrencies are not monetary assets, they can nevertheless fulfill certain financial functions²⁸.

Russia

There have been several attempts in Russian legislation to establish the legal status of digital currency (cryptocurrencies).

So, on March 26, 2018 by the draft Federal Law No. 424632-7, introduced by the deputies of the State Duma V. V. Volodin, P. V. Krasheninnikov ‘On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation’, it was proposed to amend article 128 of the Civil Code of the Russian Federation (hereinafter – the ‘Civil Code of the Russian Federation’), according to which digital rights are recognized as objects of civil rights referred to other property²⁹. What is noteworthy, the bill proposed to introduce the concept of ‘digital money’ into Article 141.2 of the Civil Code of the Russian Federation. Under ‘digital money’ it was proposed to recognize ‘a set of electronic data (digital code or designation) that does not certify the right to any object of civil rights, created in an information system that meets the characteristics of a decentralized information system established by law, and applied by users of this system to make payments’³⁰.

Subjects of the legislative initiative indicated in the explanatory note to the Draft, inter alia, that digital money is not a legal tender, but in cases and under the conditions established in the future by law, digital money can be used by individuals and legal entities as a means of payment in controlled amounts and in an additionally regulated manner³¹. At the same time, it is clarified that the rules on digital rights (that is, on other property) apply to the circulation of digital money as a means of payment³².

The bill was adopted on March 18, 2019, while although the bill retained the previous concept, it was the special provisions on digital money that were excluded.

²⁶ SARB (2014) *Monitoring of Virtual Currencies*. Available at: http://www.treasury.gov.za/comm_media/press/2014/2014091801%20%20User%20Alert%20Virtual%20currencies.pdf [Accessed: 25 October 2021].

²⁷ IFWG (2021) *Frequently Asked Questions about Crypto Assets*. Available at: http://www.treasury.gov.za/comm_media/press/2021/IFWG_CAR%20WG_Crypto%20assets%20FAQs_Final.pdf [Accessed: 26 October 2021].

²⁸ Ibid.

²⁹ Federal Law Draft No. 424632-7 ‘On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation’.

³⁰ Ibid.

³¹ Explanatory Note to the Federal Law Draft ‘On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation’.

³² Federal Law Draft No. 424632-7 ‘On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation’.

Legal regulation of the status of cryptocurrency was continued in the draft Federal Law No. 419059-7 ‘On Digital Financial Assets and on Amendments to Certain Legislative Acts of the Russian Federation’ (introduced to the State Duma of the Russian Federation on March 28, 2018 by a group of deputies), aimed at regulating relations, arising from the creation, issue, storage and circulation of digital financial assets, as well as the exercise of rights and performance of obligations under smart contracts. This Bill, inter alia, contained the concepts of ‘cryptocurrency’ and ‘token’³³. According to the proposed Bill, both the cryptocurrency and the token are property, defining the key differences between the cryptocurrency and the token based on the attribute of one issuer (token) and multiple issuers/miners (cryptocurrency), as well as the purpose of the issue. At the same time, the bill directly establishes that digital financial assets are not legal tender on the territory of the Russian Federation³⁴.

By the stage of adoption of the law by the State Duma on July 22, 2020 (entered into force on January 1, 2021), the text of the bill was significantly revised, in particular, the concepts of ‘cryptocurrency’ and ‘token’ were excluded, instead of them the concepts of ‘digital financial asset’ and ‘digital currency’ were introduced. We believe that the cryptocurrency was fixed precisely under the definition of ‘digital currency’ in Part 3 of Article 1 of Federal Law No. 259-FZ of July 31, 2020 ‘On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation’, under which the following is understood:

*set of electronic data (digital code or designation),
contained in the information system,*

which are offered and (or) can be accepted as *a means of payment* that is not a monetary unit of the Russian Federation, a monetary unit of a foreign state and (or) an international monetary or unit of account, and (or) *as an investment* and in respect of which there is no person obligated to each owner of such electronic data, with the exception of the operator and (or) nodes of the information system, only obliged to ensure compliance with the procedure for the release of these electronic data and the implementation of actions in relation to them concerning making (changing) entries in such an information system according to its rules.

Taking into account the current edition of the definition in the law ‘On Digital Financial Assets’, the legislator recognizes digital currency as a special object and type of means of payment. Meanwhile, the legislator does not determine the place of digital currency in the system of objects of civil rights, does not determine the scope of acceptable use of digital currency, does not correlate the definition of digital currency with the definition of digital rights enshrined in Article 141.1 of the Civil Code of the Russian Federation (Gagauz et al., 2021: 5–6), as well as the procedure for issuing cryptocurrencies (Fedorov, 2018: 38).

In addition, the final version of the law was criticized by the Council under the President of the Russian Federation for the codification and improvement of civil legislation, in particular, due to the fact that the concept of digital currency does not fully reflect the technological features of digital currency³⁵. Thus, the Council draws attention to the fact that according to the adopted version of the law, the operator and (or) nodes of the information system have a duty before each owner of digital currency that is ‘to ensure compliance with the procedure for issuing <...> electronic data and the implementation of actions in relation to them on making (changing) entries in such an information system according to its rules’³⁶. Meanwhile, this feature is not typical for any of the known types of ‘cryptocurrencies’ that exist in public distributed registries, which, accordingly, does not allow determining the range of objects that are subject to the law ‘On Digital Financial Assets’ in terms of regulation of digital currency³⁷.

It should be noted that for the purposes of the Federal Law ‘On Insolvency (Bankruptcy)’ of October 26, 2002 No. 127-FZ (in Article 2), the Federal Law ‘On Enforcement Proceedings’ of Octo-

³³ Federal Law Draft No. 419059-7 ‘On Digital Financial Assets and on Amendments to Certain Legislative Acts of the Russian Federation’.

³⁴ Ibid.

³⁵ Expert opinion of the Council under the President of the Russian Federation for the codification and improvement of civil legislation of February 11, 2021 No. 205-7 / 2021 on the federal law draft No. 1065710-7 ‘On amendments to parts one and two of the Tax Code Russian Federation’, 6.

³⁶ Part 3 of Article 1 of the Federal Law of July 31, 2020 No. 259-FZ ‘On digital financial assets, digital currency and on amendments to certain legislative acts of the Russian Federation’.

³⁷ Expert opinion of the Council under the President of the Russian Federation on the codification and improvement of civil legislation of July 20, 2020 No. 199/op-1/2020 on the draft Federal Law No. 419059-7 ‘On Digital Financial Assets and on Amendments to Certain Legislative Acts of the Russian Federation’, 11.

ber 02, 2007 No. 229-FZ (in part 4 of Article 68), and the Federal Law 'On Combating Corruption' of December 25, 2008 No. 273-FZ (in part 10 of Article 8), digital currency is recognized as property.

There are doubts about the validity of the choice of the term 'digital currency' (in the original version of the bill No. 424632-7 'digital money') in relation to the definition of cryptocurrencies, in view of the fact that there may be a conflict with the current legislation on currency regulation and currency control³⁸, in particular, taking into account the work of the Bank of Russia on the concept of issuing the digital ruble as a digital form of the official currency of the Russian Federation³⁹. The law will establish the concept of 'currency of the Russian Federation' with the advent of the digital ruble⁴⁰, 'digital currency' (which is not the currency of the Russian Federation)⁴¹, 'digital ruble' (which presumably will be the digital form of the currency of the Russian Federation)⁴², which will confuse understanding of many similar terms.

In addition, the authors believe that the lack of a definition of digital currency in the system of objects of civil rights (Article 128 of the Civil Code of the Russian Federation) creates an absolutely irreconcilable contradiction, a conflict between the norms of the Civil Code of the Russian Federation and the above-mentioned norms of special regulation (Gagauz et al., 2021: 6), creating legal uncertainty in the classification of cryptocurrency as objects of absolute or relative legal relations.

The introduction of digital currency as 'other property' into Article 128 of the Civil Code of the Russian Federation, the supplement of the Civil Code of the Russian Federation with Article 141.2 in order to detail the characteristics of digital currency seems to be the most favorable option to the authors, allowing the digital currency to be assigned the status of an object of civil rights and to resolve most legal conflicts (Gagauz et al., 2021: 8), given that the legal status of digital currency as property has already been secured for the purposes of bankruptcy legislation, enforcement proceedings and anti-corruption regulation.

Conclusion

Having analyzed the approaches to the legal regulation of cryptocurrencies in the countries of the interstate union of the BRICS, we can conclude that in none of the participating states there is no legal certainty at the legislative level regarding the legal status of cryptocurrencies.

In Brazil, the current regulatory framework for the regulation of cryptocurrencies and other digital assets consists of decrees adopted by administrative authorities. The legal status of cryptocurrency in India is currently not defined at the legislative level; however, it is likely that the Parliament will introduce legal certainty in the next session. In China, judicial practice recognizes the status of cryptocurrency as property, meanwhile, a special law regarding its legal status has not been adopted at present, and the current legal regulation is carried out only by bylaws. In South Africa, this issue is in the stage of elaboration of the cryptocurrency qualification.

In the Russian Federation, although a law has been adopted that consolidated the concept of cryptocurrency as a digital currency, there is a legal uncertainty regarding the legal status of digital currency as an object of civil rights, as well as an object of taxation.

We believe that in order to comply with the principle of reasonable restraint of legal regulation when choosing a model for legal regulation of cryptocurrency turnover, it is necessary to take into account the foreign experience of the BRICS member states, as well as the risks of introducing cryptocurrencies.

References

Alekseenko, A. P. (2019) Regulation of ICO and Crypto Currency's Transactions in the PRC and Macao. *Baltic Humanitarian Journal*. 8(3), 209–212. <https://doi.org/10.26140/bgz3-2019-0803-0053>. (in Russian)

³⁸ Federal Law of December 10, 2003 No. 173-FZ 'On Currency Regulation and Currency Control'.

³⁹ The concept of the Digital Ruble (approved by the Bank of Russia). Available at: https://cbr.ru/Content/Document/File/120075/concept_08042021.pdf [Accessed: 20 October 2021].

⁴⁰ Article 1 of the Federal Law of December 10, 2003 No. 173-FZ 'On Currency Regulation and Currency Control'.

⁴¹ Article 1 of the Federal Law of July 31, 2020 No. 259-FZ 'On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation'.

⁴² The Concept of the Digital Ruble (approved by the Bank of Russia). Available at: https://cbr.ru/Content/Document/File/120075/concept_08042021.pdf [Accessed: 20 October 2021].

Belykh, V. S. & Alekseenko, A. P. (eds.) (2021) *Obespechenie prav investorov v usloviyakh tsifrovizatsii ekonomiki: opyt stran Evropy i Azii* [Ensuring the Rights of Investors in the Context of the Digitalization of the Economy: the Experience of the Countries of Europe and Asia]. Yekaterinburg, Prospekt. (in Russian)

Chudinovskikh, M. & Sevryugin, V. (2019) Cryptocurrency regulation in the BRICS Countries and the Eurasian Economic Union. *BRICS Law Journal*. 6 (1), 63–81. <https://doi.org/10.21684/2412-2343-2019-6-1-63-81>.

Dulatova, N. & Razak, A. (2020) The Ecosystem of Cryptocurrency as an Object of Civil Rights in BRICS Countries. *BRICS Law Journal*. 7(2), 37–65. <https://doi.org/10.21684/2412-2343-2020-7-2-37-65>.

Fedorov, D. V. (2018) Tokens, Cryptocurrency and Smart Contracts in Domestic Bills from the Perspective of foreign experience. *Civil Law Review*. 18 (2), 30–74. <https://doi.org/10.24031/1992-2043-2018-18-2-30-74>. (in Russian)

Gagauz, V. D., Zakharov, E. A., Rakov, I. A. & Chuvyrgalova, D. V. (2021) *Analiticheskiy otchet po voprosam razrabotki kontseptsii pravovogo regulirovaniya tsifrovoi valyuty v Rossiiskoi Federatsii* [Analytical Report on the Development of the Concept of Legal Regulation of Digital Currency in the Russian Federation]. Available at: https://www.researchgate.net/publication/355043155_Analiticeskiy_otchet_po_voprosam_razrabotki_koncepcii_ppravovogo_regulirovaniya_cifrovoj_valyuty_v_Rossiiskoj_Federatsii [Accessed: 20 October 2021]. (in Russian)

Haijun, V. (2018) The General Principles of Civil Law and Development of Chinese Civil Law. *Vestnik of Saint Petersburg University. Law*. 9 (3), 413–421. <https://doi.org/10.21638/11701/spbu14.2018.310>. (in Russian)

Makhalina, O. M. & Makhalina, V. N. (2019) Prospects for the Creation of National and Supranational Cryptocurrencies in the BRICS Countries. *Management*. 7(2), 115–123. <https://doi.org/10.26425/2309-3633-2019-2-116-123>. (in Russian)

Shaidullina, V. K. (2020) Legal Regulation of Electronic Trade: the Experience of BRICS. *Baltic Humanitarian Journal*. 9 (1), 393–397. <https://doi.org/10.26140/bg3-2020-0901-0097>. (in Russian)

Sidorenko, E. L. (2018) On the Status of the Cryptocurrency in Russian and Foreign Law. *Gosudarstvennaya sluzhba*. 20 (1), 53–59. <https://doi.org/10.22394/2070-8378-2018-20-1-53-59>. (in Russian)

Sidorenko, E. L. (2018) The Legal Status of Cryptocurrencies in the Russian Federation. *Ekonomika. Nalogi. Pravo – Economy. Taxes. Law*. (2), 129–137. <https://doi.org/10.26794/1999-849X-2018-11-2-129-137>. (in Russian)

Sidorenko, E. L. (2019) Digitalization Risks and New Directions of Financial Control. *Gosudarstvennaya sluzhba*. 21 (1), 81–85. <https://doi.org/10.22394/2070-8378-2019-21-1-81-85>. (in Russian)

Smirnova, T. L. (2021) *Razvitie kriptovalyuty v tsifrovoi ekonomike* [Development of Cryptocurrency in the Digital Economy]. In: Gerasimov, V.I. (ed.) *Rossiya: tendentsii i perspektivy razvitiya* [Russia: Trends and Development Prospects]. Moscow, INION RAN. 16-1, 669–770. (in Russian)

Information about the authors

Victoria D. Gagauz – regional representative of the Russian Association of Cryptoeconomics, Artificial Intelligence and Blockchain (RACIB) in Sverdlovsk region, partner in Flex & Done digital attorneys at law (15.12, Krasnoarmeyskaya str., Yekaterinburg, 620075, Russia; e-mail: v.gagauz@flexndone.com).

Darya V. Chuvyrgalova – paralegal in Flex & Done digital attorneys at law (15.12, Krasnoarmeyskaya str., Yekaterinburg, 620075, Russia; e-mail: d.chuvyrgalova@flexndone.com).

© V. D. Gagauz, 2021
© D. V. Chuvyrgalova, 2021

Date of Paper Receipt: October 28, 2021

Date of Paper Approval: November 2, 2021

Date of Paper Acceptance for Publishing: December 10, 2021