

Chinese Arbitration Court Recognizes Bitcoin as Property Protected by Law

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On October 25, 2018, the Shenzhen Court of International Arbitration (the “**SCIA**”) published a [case analysis](#) detailing its decision on a business contract dispute involving the possession and transfer of cryptocurrencies. The arbitral panel found that although Bitcoin does not have the legal status equal to currency and should not be utilized as a currency in the market, this does not prevent Bitcoin from being protected by Chinese law as property with economic value. Arbitration proceedings are normally confidential. However, this decision was clearly regarded as important by the SCIA, and published, although with the parties anonymized.

Background

The (unnamed) Plaintiff signed an equity transfer agreement with the (unnamed) Defendant, entrusting the Defendant to manage a pool of cryptocurrencies on the Plaintiff's behalf. The pool of cryptocurrencies consisted of Bitcoin, Bitcoin Cash and Bitcoin Diamond, worth approximately half a million yuan in total. After the Defendant refused to return the cryptocurrencies in accordance with the agreement, the Plaintiff brought the case to the SCIA, seeking the return of the assets along with interest.

One of the Defendant's main arguments was that cryptocurrency transactions had become illegal (and void) as a result of the announcement by the PBOC in September 2017 which banned cryptocurrency trading and ICOs. However, the arbitral panel rejected this. The panel decided that, whilst the announcement reminds the public of investment risks associated with Bitcoin trading, the announcement does not explicitly prohibit the holding of, or private transactions in, Bitcoin. The agreement involves an obligation to return Bitcoins owed by one natural person to another, which falls outside the scope of ICO financing activities prohibited under the announcement. The panel found the agreement to be legally binding.

The Defendant also argued that, because trading and circulation of cryptocurrencies is prohibited in China, it is not legally possible to deliver the cryptocurrencies to the Plaintiff. The panel held that, although cryptocurrencies are prohibited from being used in the market as legal tender, there are no laws or regulations that prohibit cryptocurrencies from being privately delivered or transferred. The panel decided that, notwithstanding the closing down of Bitcoin trading platforms in China since September 2017, the Defendant could have returned the cryptocurrencies to the Plaintiff by means of Internet technology. The panel found that there are neither legal nor technological barriers for the Defendant to fulfill its obligations and the Defendant's failure to return the cryptocurrencies was a breach of contract.

The panel ruled in favour of the Plaintiff, stating that the fact that Bitcoin is not recognized as legal currency does not prevent it from being protected by law as property. It recognized that Bitcoin has attributes representative of property, can be “dominated and controlled by man”, has economic value and is capable of bringing economic benefit to parties.

Impact of the SCIA Decision on the Cryptocurrency Landscape in China

This decision is unlikely to signal a turn in the regulatory tide.

The SCIA is one of the Arbitration Committees formed by city governments in China to rule on economic disputes relating to contract issues in areas such as business, finance and real estate. According to the

SCIA website, the three arbitrators who adjudicated the dispute between the Plaintiff and Defendant specialize in contract law, private international law, real property law and commercial disputes.

The dispute before the SCIA concerns the contractual obligation to return cryptocurrencies, which does not involve cryptocurrency trading or ICOs addressed by the PBOC's announcement.

More specifically, the dispute concerned the return of Bitcoins owed by one private individual to another. The decision does not conflict with the position of the Chinese government. Under Chinese contract law, debt resulting from illegal activities cannot be enforced. According to the risk alert (the "**Risk Alert**") issued by the Peoples Bank of China in December 2013, Bitcoin is not a real currency and does not enjoy the legal and mandatory attributes of money. The Risk Alert characterizes Bitcoin as a type of virtual commodity that does not have the legal status equivalent to currency and cannot and should not be used as legal tender in the market. The Risk Alert states that people have the freedom to participate in bitcoin trading, being a form of buying and selling goods online, at their own risk.

Whilst the Chinese government prohibits raising funds from the public through the issuance of new cryptocurrencies and bans ICO activities and domestic cryptocurrency exchanges, it does not prohibit peer-to-peer transfer of cryptocurrencies between individuals. Possessing or transferring cryptocurrencies in itself is not considered illegal.

However, uncertainties remain with regard to the regulatory landscape of cryptocurrencies in China and the potential legal impact and risks of private commercial activities involving cryptocurrency. For example, the SCIA decision came less than a week after Xinhua News Agency reported on [a ruling](#) by the Futian District People's Court of Shenzhen that cryptocurrency investments are not protected by law in a civil case concerning what appears to be the purchase of tokens and cryptocurrency mining tools. In addition, key mobile payment providers in China including Alipay and WeChat Pay have reportedly enhanced their monitoring of platforms for transactions related to cryptocurrencies and restricting, or suspending, fund transfers of associated accounts.

Moreover, as with all arbitral awards, the SCIA decision has no binding force on non-parties to the dispute and, in principle, no value as a precedent. The SCIA is not a lawmaking body itself and the decision in question does not necessarily have any influence over the future status of cryptocurrency assets in China. In any case, Chinese courts are generally not bound by precedents.

We will continue monitoring cases and developments relating to cryptocurrency regulation in China and will provide updates on any notable developments.

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