



Navigating digital currency

A brief update on the current state of affairs of digital currencies in Sweden

A. Background

In September 2021, Eversheds Sutherland published a [guide](#) on the current state of the CBDC's (central bank digital currencies) contemplated by the UK, US, EU, Sweden, Switzerland and China respectively, to which our Stockholm office contributed.

Digital currencies have since continued to gain traction, [with Nigeria's announcement that it will roll out a national CBDC](#), [China's crackdown on cryptocurrency trading](#), and various national financial supervisory authorities and financial institutions declarations that digital currency operations involve an increased risk for money laundering/terrorist financing, etc.

In this briefing, we provide an update of the progress of the Swedish CBDC (the "digital e-krona"), in light of a fresh legal research paper that dwells on the subject of a future digital e-krona and, also, the legal position of certain categories of existing crypto-assets (viz. centralized stablecoins, eg, USD Tether, and so called "anonymous cryptocurrencies", eg, Bitcoin).

B. Special investigator to examine the role of a future e-krona

As can be inferred from the Swedish chapter in the aforementioned guide, the Swedish Riksbank started the so called 'e-krona project' back in 2017 to analyse the need for a digital e-krona. The project has since entered a more practical phase, with the initiation of a pilot project with the aim to develop a technical solution for a digital e-krona based on DLT (distributed ledger technology).

Further to the work performed by or under the auspices of the Riksbank, the Swedish government has [appointed a special investigator](#) with the assignment to, at an overall level, *inter alia* form an opinion on whether a future digital e-krona is needed and, if so, whether legislative proposals or other measures are required to that effect. The investigator is due to report to the Swedish government by 30 November 2022.

C. Research paper regarding legal aspects of digital currencies

On behalf of the investigator, docent Emil Elgebrant, through Stockholm Centre for Commercial Law, Stockholm University, has delivered a [research paper on legal aspects of digital currencies](#) (*Forskningsrapport om juridiska aspekter av digitala valutor: En förmögenhetsrättslig studie*) (the "**Research Paper**").

The Research Paper builds on the premise that a digital e-krona (token-based or account-based) will ultimately be implemented and deals with legal aspects of not only a future digital e-krona but also stablecoins and anonymous cryptocurrencies, as **means of payment in Sweden**.

At an overall level, the Research Paper aims to answer the following questions:

- From a Swedish property law perspective (*Sw. förmögenhetsrättsligt perspektiv*), what is created through the introduction of a digital currency?
- How is legal technique neutrality with respect to different kinds of means of payment achieved?

The Research Paper is primarily concerned with private law aspects of digital currencies, whereas matters relating to banking law and other sectoral laws are studied at an overall level to form a benchmark for the legal analysis.

Below are a few key takeaways from the Research Paper (n.b., the analysis and conclusions in the Research Paper are exclusively the author's own).

- All the studied digital currencies (ie, the digital e-krona, stablecoins and anonymous cryptocurrencies) constitute **securities-like objects of property** that could, from a property law perspective, be viewed as means of payment.
- The studied digital currencies **do not qualify as “financial instruments”** (as per the definition in the MiFID II regulatory framework). However, derivative contracts that has stablecoins, anonymous cryptocurrency(ies) or other digital currency(ies) as underlying asset(s) may qualify as such (being so called “derivative financial instruments”).
- The digital e-krona and stablecoins are **debt-like instruments**, meaning that the Swedish Promissory Notes Act (SFS: 1936:81) is applicable by analogy. This would not apply to anonymous cryptocurrencies, due to their decentralized nature.
- If defined as a “legal means of payment” under the Swedish Riksbank Act (SFS: 1988:1385), the digital e-krona may, in certain situations, be subject to the **same property law system as cash** and, hence, in terms of payment be subject to the provisions in the Promissory Notes Act (SFS: 1936:81) on negotiable promissory notes (Sw. *löpande skuldebrev*).
- As regards **protection for rights in rem** (Sw. *sakrättsligt skydd*) in transfer (of title) situations in digital e-krona, stablecoins and anonymous cryptocurrencies respectively, the Research Paper puts forward the following analysis:
 - The acquisition of **token-based digital e-krona** would most likely, in terms of **acquirer protection** (Sw. *omsättningsskydd*) and **creditor protection** (Sw. *borgenärsskydd*), follow the same mode of application as **cash**, by analogy to the provisions of negotiable promissory notes in the Promissory Notes Act (SFS: 1936:81).
 - The acquisition of **account-based digital e-krona** would most likely, in terms of acquirer protection and creditor protection, primarily follow the same mode of application as **scriptural (non-cash) money**, by analogy to the provisions of non-negotiable promissory notes (Sw. *enkla skuldebrev*) in the Promissory Notes Act (SFS: 1936:81).
 - The acquisition of **stablecoins** will most likely, in terms of acquirer protection and creditor protection, follow the same mode of application as **non-negotiable promissory notes in general**, by analogy to the provisions of non-negotiable promissory in the Promissory Notes Act (SFS: 1936:81)
 - The protection for rights in rem (acquirer protection and creditor protection) in **anonymous cryptocurrencies** is largely non-existent under existing law.
- The Research Paper concludes that existing property laws are, to a great extent, applicable to digital e-krona and stablecoins, meaning that the need for legislative measures in these areas is low. Anonymous cryptocurrencies, on the other hand, are currently weakly anchored in the property law system.

We will continue to follow the developments of digital currencies, in Sweden and globally, with great interest. If you have any questions or need further information, please do not hesitate to contact our experienced members of the financial services group:



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