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PROBLEMS IN LEGAL REGULATION OF CRYPTOLOGY MARKET IN THE REPUBLIC OF BELARUS

Abstract

The purpose of this work is to analyse the emergence and development of digital economy. The Author studied the main activities of the state in the implementation of legal regulation and prospects for the development of the cryptocurrency market in the Republic of Belarus. The article identifies problems and ways to solve legal issues that arose in the process of applying Decree No. 8 "On the development of the digital economy".

Keywords: Law, High-Tech Park, cryptocurrency, tax, right

Introduction

Cryptocurrency itself reflects new technological ideas that do not have any significant analogues today. Any technological innovation takes time to win the hearts and minds of ordinary consumers, to form the necessary economic and legal prerequisites for their development. If we separate the legal aspect and consider only the socio-economic aspect, among the main factors of the development of the use of cryptocurrency in Belarus and abroad can be identified economy and security of cryptocurrency, mobility of money capital and increased labour migration in the country and, in general, in the world. In order to create favourable conditions for improving the competitiveness of the Belarusian branches of the economy, based on new and high technologies, further improving the organizational, economic and social conditions to develop modern technologies and increase their exports, attract domestic and foreign investment in this area, based on Article 101 of the Constitution of the Republic of Belarus, the President of the Republic of Belarus in the Decree on the Park of High Technologies decided to create a:

A fleet of high-tech software, information and communication, other new and high technologies aimed at improving the competitiveness of the national economy in Belarus;

High-tech Park Administration. The Decree on the Park of High Technology defines its legal status, territory and sphere of activity [Decree of the President of the Republic of Belarus No. 12 (2005), on the Park of High Technologies].

In December 2017, Decree No. 8 was signed on the development of the digital economy, which creates some of the best conditions in the world for the development of information technology (IT), high technology, businesses based on blockchain technologies. In 2018, the Government's decision established the Council for the Development of the Digital Economy. The Council's competence includes:

- creating and developing modern digital infrastructure, creating digital platforms of various purposes;
- the development of national information and communication technology industry;
- issues of efficiency of state bodies in the development of the digital economy. The Council is tasked with implementing investment and public-private partnership (PPP) projects in the field of information and communication technologies as well as international cooperation in the digital economy. At the same time, the practice has shown a number of legal problems, which we will try to solve further.

The following methods were used in the work: comparative analysis, systemic, abstraction method, formal-legal.

Main Part

A year has passed since the adoption of Decree No. 8 "On the development of the digital economy" providing for comprehensive legal regulation of cryptocurrencies, crypto-exchanges, ICO, smart contracts and other aspects of

the emerging crypto economy in the world. Decree No. 8 is aimed at liberalizing the business environment in the IT sector and creates unique conditions for residents of the High Technology Park (GWT). There are a few interesting things to note.

1. Full-Scale Legalization of Crypto-Economy

Residents of the High Technology Park are granted the right to implement the "Digital Economy" with Decree No. 8:

– the activities of the cryptocurrency exchange and the operator of cryptocurrency exchange;

– mining (Mining, the activities of the cryptocurrency exchange, the operator of cryptocurrency exchange, other activities using tokens are not recognized by banking activities);

– the activity of the platform for ICO (in addition to the cryptocurrencies themselves, a separate activity is the so-called ICO, crowdfunding investment projects. Traditional crowdfunding with traditional currencies, due to its ease of investment at the expense of cryptocurrency, convenient tools for auditing the incoming funds of the organization and general popularity);

– other activities using digital signs (tokens), which contain signs of professional and stock-based securities, investment fund activities, securitization, and operations to create and Placing your own digital signs (tokens);

– making and/or executing transactions through smart contracts.

Securities, securitization, licensing requirements for professional and stock securities activities do not apply to the relationships (activities, transactions) of GWT residents using tokens, including identical (similar) to the relationships (activities, operations) regulated by the specified legislation.

2. Tax Preferences for IT Business until 2049

Residents of the High Technology Park until 2049 (on activities related to tokens (cryptocurrencies) - until 2023) are exempt from the payment of:

1. VAT;
2. corporate tax;
3. any other taxes.

All residents of the High Technology Park, including those who carry out activities related to tokens (cryptocurrencies), pay reduced contributions to the FSN - a maximum of $150 monthly for each employee, regardless of salary and bonuses. High-Tech Park residents pay 9% income tax instead of 13% (except support staff). In order to develop the product IT model, the Decree established that

residents of the High Technology Park do not pay VAT, income tax of foreign organizations when ordering advertising and marketing services from foreign legal entities operating in the Republic of Belarus through permanent representation, and offshore collection.

3. Simplifying Paperwork and Rules of Conduct of Foreign Economic Activity

In accordance with the Decree, residents of the High Technology Park are allowed to issue foreign trade deals with Google, Apple, Facebook and other foreign counterparties in non-documentary form.

It is easier to issue accounting primary records (foreign counterparties of High-Tech Park residents may not sign primary accounting documents).

Regulatory acts governing the conduct and control of foreign trade operations do not apply to foreign trade transactions involving GWT residents.

It is allowed without the permission of the National Bank to open foreign currency accounts in banks and other credit and financial institutions established in accordance with the law of a foreign state, with a location outside the Republic of Belarus, as well as to deposit money in them and make calculations using these accounts.

4. What We Have Today

Since Decree No. 8 came into force, there have been no smart contracts and current legal regulation has been a problem.

According to Decree No. 8, a smart contract refers to a software code intended for operating in the register of transaction blocks (blockchain), another distributed information system for the purpose of automated commissioning and/or execution transactions or other legally significant actions.

It is worth noting that in order to recognize the code that entails the automated commission Inhofe and execution of transactions by smart contract, it is necessary that this code is executed in a distributed information system (for example, in the blockchain). The code under which transactions are automatically executed outside the distributed system is not recognized by the smart contract.

5. The Problem Lies in the Simultaneous Permissiveness and Prohibitions Contained in Decree No. 8

In accordance with section 5.3. High-Tech Park residents have the right to commit and/or execute transactions through a smart contract, which stipulates that the person who made the transaction using the smart contract is considered appropriately aware of its conditions, including those expressed by the software code, until proven otherwise. At the same time, paragraph 5.3. of the Decree

No. 8 does not prohibit making and executing transactions through a smart contract and other entities that are not resident of the PVT. However, the prohibition on the commission and execution of transactions through smart contracts for non-resident PTIs is based on other rules of Decree No. 8. Specifically, according to section 2.1. Decree No. 8 legal entities have the right to own tokens and, taking into account the features established by Decree No. 8, to make the following operations:

– Through a resident of the PVT, which carries out the relevant activity, to create and place their own tokens in Belarus and abroad;
– Store tokens in virtual wallets;
– Through crypto-platform operators, cryptocurrency exchange operators, other residents of the High Technology Park, carrying out the relevant type of activity, to acquire, alienate tokens, to make other transactions with them (operations).

Therefore, any legal action with a token is possible only through a resident of the PVT. At the same time, there is no clear legal understanding of what it means to perform an operation "through a resident of the PVT".

Thus, any change in any entry in the register of transaction blocks of the distributed information system must be made through the resident of the PVT.

It is obvious that the commissioning and execution of transactions in a distributed information system will entail an operation with a token and the need to perform such an operation through a resident of the PVT. This all creates a serious problem, as it turns out that any functioning of a distributed information system and, therefore, smart contracts without the participation of a PVT resident is impossible.

6. **In Addition to the Need to Involve a Resident of the PTA, the Regulation of Smart Contracts Has a Number of Legal Problems**

1. Smart contracts operate in a specific technological environment, which means that it needs to be used to account for civil rights. In other words, automated execution is possible when the code can be used to make a money transfer or ensure the transfer of title. This requires that the rights to civil rights objects need to be enshrined in this distributed information system. For example, the blockchain system organizes a real estate registry, and creates its own cryptocurrency to provide settlements. In this case, a smart contract for the sale of real estate for a certain equivalent in cryptocurrency is possible. Otherwise, it is difficult to imagine the automated execution of such code.

2. The current legal regulation of transactions does little to apply to smart contracts. The provisions of Decree No. 8 did not bring special novelties in regulation. Thus, a number of provisions (Chapter 9) of the Civil Code of the Republic of Belarus on the conclusion, execution and termination, as well as the invalidity of contracts do not apply to smart contracts, which are implemented in the public blockchain. All legal regulation of the smart contract is concentrated in its executable code. Therefore, virtually all legislation regulating treaties does not apply. The will of the party in the smart contract is not possible to determine (computer code does not recognize the will of the subject of relations); computer code automates a transaction that is prohibited by law; automatically performs even an obviously erroneous command to write off any amount. Even if, for example, the contract was deemed invalid in court and therefore not having legal consequences, it cannot affect the automated execution of the smart contract code.

   Further work is therefore needed to improve the rules of Decree No.8, taking into account the provisions of the legislation and the subsequent possibility of enforcement of court decisions.

3. With the registration of primary records.

   In accordance with Article 10 of the Accounting and Reporting Act, each business transaction is subjected to a primary accounting document. When you apply smart contracts that exist in the form of a code, there will be difficulties with the registration of primary credentials. It turns out that in many cases the automated transfer of an asset will need to be issued with a document that meets the requirements of Article 10 of the Accounting and Reporting Act [Belarus Act (2017), Accounting and Reporting Act].

Today, certain easing for residents of the PRT is made only in relation to economic transactions with non-residents of the Republic of Belarus.

It turns out that in many cases the automated transfer of an asset will need to be issued with a document that meets the requirements of Article 10 of the Accounting and Reporting Act.

Thus, the primary records, unless otherwise established by the President of Belarus, should contain the following information:

– The name of the document, the date it was drawn up.
– The name of the organization, the name and initials of the individual entrepreneur who is a member of the business operation.

- The content and basis of the business transaction, its assessment in natural and value or value.
- The positions of those responsible for the business operation and/or the correctness of its registration, their names, initials and signatures.

There may be a funny situation: you can conclude and execute a smart contract, and then to this automatic contract will need to draw up a primary accounting document, conditionally, the act of receiving and transferring bitcoin. It is clear that the practical meaning of such technology is practically leveled.

4. Given that a smart contract is a software code, it is subject to a legal copyright protection regime such as a computer software (see Article 13 of the Copyright and Related Rights Act). In particular, the question arises not only about the legality of the use of the computer program, but also about the authorization of the rights holder to make the necessary adjustments to the possibility of formulating individual contract terms.

5. Despite the presumption set out in 5.3. Decree No. 8, the awareness of the person who made the transaction using the smart contract, about its terms, including those expressed by the code, until proven otherwise, the terms of the contract must be disclosed to many other persons, the regulatory authorities, courts in the event of disputes, auditors, participants of economic societies, if the transaction is large or with the interest of affiliates, etc. in fact, it does not allow the use of legal methods of protection of rights. (For example, the listing of cryptocurrencies is difficult to dispute by mistake).

6. Decree No. 8 narrows the technological environment in which smart contracts are possible to a distributed information system. It seems that legally binding to the relevant technology on the one hand limits the possibility of a smart contract, so it would be useful to take into account in the legal regulation of automated commissioning or execution of transactions in general order outside of reference to the relevant technology. An example is the transaction made by robots on the stock exchange, which are now outside the framework of special legal regulation. Similarly, legal issues are already being raised when making deals within the IoT, for example, when a refrigerator will automatically order products in a retail store. Decree No. 8 singled out only one technology and effectively narrowed the subject of legal regulation significantly, and it would be strategically more appropriate to settle the general principles of automated transactions and thus not only expand the field of activity for IT companies.

Conclusions

Today, the smart contract as a phenomenon is still at the stage of development both from a legal and technical point of view. It is for this reason that the smart contract in our country is introduced, as stated in Decree No. 8, "as a legal experiment", to which many readers do not pay attention. And it is intended for use by a narrow but professional circle of residents of the PRT.

Many of the legal issues that are being raised today are not so much about smart contracts as with the properties of DLT itself (blockchain or other technology), which is the habitat of smart contracts. At the same time, we do not see unresolved problems with the application of the provisions of the CC on transactions, nor with copyright issues in relation to distributed, but conditionally "decentralized" information systems with understandable advice of nods (as in the National Bank for example). Therefore, over time, the number of people using smart contracts will become wider. Today, changes in the legislation are prepared, allowing the use of smart contracts in the banking and financial spheres. The order of use will be determined by the National Bank of Belarus and the High Technology Park.

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