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Aspects of Crypto Currency's Legislative Regulation

Aspectos de la regulación legislativa de la moneda criptográfica

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ABSTRACT

The issues of legal and regulatory governance of a new type of electronic money crypto currency are considered in the article. It has been proved that there is no uniform understanding of the forms and methods of the crypto currency regulation in the world. The existing formulations of the concept of "crypto-currency" are analyzed in the article, on which bases the necessity of crypto currency's adequate scientific understanding is identified and justified. As a result, of the study the main prerequisites for the legal regulation of the appearance and use of crypto-currency in payment systems are formulated by the authors.

Keywords: Bitcoin; crypto currency; digital technologies; legal regulation.

RESUMEN

Las cuestiones de la gobernanza legal y regulatoria de un nuevo tipo de moneda criptográfica de dinero electrónico se consideran en el artículo. Se ha demostrado que no hay una comprensión uniforme de las formas y métodos de la regulación de la moneda criptográfica en el mundo. Las formulaciones existentes del concepto de "criptomoneda" son analizadas en el artículo, en el cual se basa la necesidad de la comprensión científica adecuada de la criptomoneda. Como resultado del estudio, los autores formulan los principales requisitos previos para la regulación legal de la aparición y el uso de la cripto-moneda en los sistemas de pago.

Palabras Clave: bitcoin; moneda criptográfica; tecnologías digitales; regulación legal.

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INTRODUCTION

Nowadays digital technologies are firmly embedded in our everyday reality. Changing approaches to many traditional things and money is not an exception. Various virtual currencies called crypto-currencies have emerged. The most widely spread of them are Bitcoin, Ripple, Ethereum, Dogecoin, Litecoin. Today 500 kinds of crypto-currencies have come into being.

Crypto currency can be defined as digital currency created on the basis of blockchain technology. It stands to reason that it is not issued by central banks of states and is not attached to official currencies. Crypto currencies are voluntarily accepted by market participants as a means of payment (exchange) transmitted and stored electronically. The problems and opportunities of digital currencies have become in the fore point. Their economic component was discussed at the meetings of the World Bank, the European Central Bank, the Ministry of Finance and the Central Bank of Russia, Switzerland, Germany, Japan, the United States and a dozen other countries. The course of researchers of electronic money and crypto-currencies has formed among scholars of Western schools whose representatives are J. Mathonis, a member of the Bitcoin Foundation board, as well as the former chief economist of the IMF, a professor at the Sloan School of Management at the Massachusetts Institute of Technology S. Jones.

Regulation "as it is" is not welcomed among people using crypto-currencies including Bitcoin users. There is an opinion that any regulator is a bureaucratic machine that is incompetent in the issues of digital currencies and it hinders the development of this direction as a whole. This is partially true since any regulation is intended to ensure mutual trust between the parties to the transaction by a third party that is the guarantor of its conduct. Note that when creating the Bitcoin system there is no need for a third party to participate as a guarantor since the entire block system is built on a reliable protocol that cannot be compromised or in any way deceived.

Most countries do not attempt to prohibit digital money on their territory but rather seek opportunities for the existence of two parallel systems together. Nevertheless, the legal regulation of digital currencies including Bitcoin is very different (Bonneau *et al.*, 2015; Demidov, 2015).

WORLD EXPERIENCE AND TENDENCIES IN CRYPTO-CURRENCIES MARKET LEGAL REGULATION

The European Court on October 22, 2015 issued a decree according to which exchanges of Bitcoins and other digital money are exempt from VAT. Similarly, the European Court of Justice recommended the exclusion of crypto-currencies from assets subject to taxation. Unfortunately, not all countries treat Bitcoin and other crypto-currencies as progressively, as the European Union does (Hayek, 2013). Table 1 provides a list of states that have already expressed their position regarding the Bitcoins and their regulation.

There is a unique experience of the State of New York on the creation of a special legal framework for the regulation of Bitcoin. It is shaped as The New York Bitlisense. This document was issued by the Department of State of New York for financial services in July 2014 and then it underwent significant changes. The license is a set of laws, regulations and rules that govern the issues of virtual currency. The document includes information on how to obtain such a license (Fomin, 2013). Business activity in the field of virtual currency means engaging in any of the processes carried out in New York or by a resident of New York. It encompasses obtaining a virtual currency for forwarding or forwarding it except when the transaction is not for financial purposes and carries more than a nominal amount in a virtual currency; storage, maintenance, management or control over virtual currency on behalf of another person; purchase and sale of virtual currency in the framework of customer service; the execution of exchange services within the framework of customer service; control, dispose or issue of a digital currency. The development and distribution of software is not a business activity in the field of virtual currency that provides financial benefits of mining and the growth of bitcoins and other digital currencies.

Table 1: **Legal status of Bitcoin in different countries**

Country	Legal status
Germany	Legal status of Bitcoin as private money is established and non-cash payments are allowed in this crypto currency on the territory of Germany.
Croatia	According to the National Bank of Croatia, crypto-currencies can be legally used in the country but cannot be considered a legal tender.
Japan	The Central Bank of Japan has recognized crypto-currencies as a means of payment and exempted them from VAT.
Thailand	All operations with crypto-currencies are prohibited except their exchange into the national currency.
China	Any operations with crypto-currencies for banking institutions and their employees are prohibited; there is no prohibition for ordinary citizens.
USA	Crypto-currencies are considered as property and subject to corresponding taxation. Bitlisense was introduced for Bitcoin companies in the state of New York. The issue of recognizing Bitcoin as a currency is being considered.
Switzerland	The Parliament of the country decided to consider crypto-currencies as a foreign currency.
Singapore	All operations with crypto-currencies are regulated and monitored by the state.
Bulgaria	All transactions with crypto-currencies are taxed at a rate of 10%.
Russia	According to the statement of the Bank of Russia, crypto-currencies are speculative due to the lack of security and legally binding subjects of operations on them. There is no direct ban on the issue.
Norway	Crypto-currencies are recognized as exchange-traded assets rather than as a currency.
Bolivia	According to the Central Bank of Bolivia, it is illegal to use any currency that is not issued or controlled by the government or an authorized body.
Ecuador	The use of crypto- currencies is strictly prohibited. It can be attributed by the creation of a national electronic money system. Thus, the authorities feel the need to protect their product from something that has an obvious competitive advantage.

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Organizations that received "bit license" are required to file financial statements, form a financial reserve established by the Department, maintain accounting records and provide this information to the Department and inform clients about the risks associated with such financial activity. Yet the practice shows that the

attempts to regulate Bitcoin legislatively do not bring the desired results. Throughout the existence of this, normative legal act only two-bit licenses have been received and 30 companies specializing in operations with Bitcoins have announced their departure from the state. Also note that no state has dared to follow the path of regulation of Bitcoins and other digital currencies as the New York State government did.

REGULATION AND PROSPECTS FOR THE DEVELOPMENT OF DIGITAL FUNDS IN RUSSIA

The approach to the use of digital money in Russian Federation, including Bitcoins, is developing in a restrictive manner. At the same time, a semi-legal business related to Bitcoin operations and mining is developing. Russian investors are not the only ones who are interested in such currencies, but also the country's largest banks are.

Taking into account the risks of ML/FT the Central Bank for the first time voiced its attitude to the regulation of virtual currencies in January 2014. With reference to the Federal Law "On the Central Bank of the Russian Federation", it was reported about a complete ban on "money surrogates" on the territory of the Russian Federation. The services for exchange of virtual currencies for rubles and foreign currency were required to be classified as potential activity in ML/FT. However, during the joint meeting between Central Bank and the Prosecutor General's Office it was concluded that Bitcoin was a speculative and high-risk instrument. In July 2014, First Deputy Chairman of the Central Bank Georgy Luntovsky announced that such currencies should be treated with the utmost care because: "...they may have a future"...

Such position of the restrictive initiatives was sounded alongside with other government agencies in charge of this item. In October 2014, the first draft law introducing a number of amendments to the list of normative legal acts was published. The draft law did not mention directly the prohibition or restriction on transactions in Bitcoins and other digital currencies on the territory of the Russian Federation but it was indicated that these currencies should be attributed to "money surrogates" (Rothbard, 2013). It was proposed to introduce responsibility for illegal activities related to the issue of money surrogates, the creation of software for their issuance, the implementation of transactions with money substitutes and the dissemination of information that allows issuing. There was a penalty for committing the abovementioned offenses from 500 thousand to 1 million rubles for citizens, from 50 to 100 thousand rubles for officials.

This bill arose a lot of indignation among the users of digital currencies and largest companies. In their responses to this bill MTS and Megaphone highlighted that it would make it impossible to conduct various campaigns related to the use of bonuses, prepaid cards. Later a new bill was submitted for consideration. Various bonuses, miles and other surrogates stimulating the acquisition of goods and services were excluded from the bill.

The prohibition against the dissemination of information related to the issue of digital currencies was another controversial issue. Proposing amendments to the Federal Law "On the Central Bank of the Russian Federation" and 149-FZ "On Information Technologies and Information Protection" the Ministry of Finance expands the list of resources that are prohibited in the Russian Internet segment at the account of agencies specializing in working with crypto-currencies. Shortly after the publication of this bill, a number of websites (Bitcoin.org, Bitcoin.it, BTCsec.com, etc.) began blocking including the blocking of the Bitcoin Stock Exchange Indacoin referring to the decision of the Nevyansk City Court of the Sverdlovsk Region.

It is necessary to create a new legislative framework for a more successful government regulation of these transactions. This is essential not only for the state but for entrepreneurs since the latter cannot accept payments in digital currencies in the absence of established rules. In January 2014, the "Killfish" bar was fined for failing to comply with the rules for using cash registers while receiving Bitcoins as a means of payment. The company immediately ceased to accept them. This circumstance can be attributed to the category of main

risks associated with the use of digital funds. Entrepreneurs do not want to be penalized and do not take any risk.

Qiwi and Sberbank are the main supporters of digital currencies on the territory of the Russian Federation, especially the technology of blockchain (Taylor, 2016). Qiwi was the first to announce the launch of its own crypto currency "bitrubl" in 2015 and the head of Sberbankcalled for not exaggerating the dangers of crypto currency. The head of the company also claims that the multibillion-dollar firm's IT system is obsolete and the Russian Federation is obliged not to miss the new technological revolution (Gryaznova, 2002).

The Ministry of Communications of the Russian Federation and the head of the Central Bank are also monitoring the technology of blockchain. The head of the Central Bank asserts that it is necessary to concentrate on studying a particular system and not the currency functioning in it. Nabiullina E.S. believes that it is necessary to distinguish such correlating concepts as "crypto-currencies" and "blockchain" since in the long term the latter technology can be used in almost any sphere related to entrepreneurship. It should be noted that if this technology is finalized and approved by the world's largest banks the Russian Federation will have a chance to get rid of such restrictions as imposed sanctions. Since the political factors do not affect the technology of distributed data Russia is not likely suffer large losses and financial costs in the event of disconnection from the SWIFT.

Unfortunately, Russian attitude towards advantageous digital currencies remains restrictive. At the same time, the state began to consider more seriously the technology of distributed data. That technology provides a significant costs reduction in various operations involving third parties such as auditing, holding tenders for state contracts, and others. It also allows saving the time necessary to conduct a transaction since all operations are performed by the system excluding the human factor.

ESTIMATION OF PROSPECTS AND THE FORECAST OF THE BLOCKCHAIN TECHNOLOGY DEVELOPMENT IN THE RUSSIAN FEDERATION

Nowadays due to the prohibitive tendencies, prevailing in the governmental regulation Russia does not play a significant role in the blockchain industry and is weakly represented in a number of key segments of the bitcoin system or not represented at all. Therefore, there are no largest Russian mining pools in the world list; there are no Bitcoin terminals on the territory of the country while there are more than forty thousand of them in the world. In the segment of crypto-currency virtual exchanges, Russian sites also do not rank among the largest, although some large exchanges support Russian-language interfaces. As the result of the prohibitive innovations a number of companies (InterMoneyExchange, ALFAcoins, etc.) dealing with crypto-currencies chose to immigrate to other countries in order to register their activities. The only niche in the Bitcoin system that is actively developing in Russia is the Internet resources on crypto-currencies and digital money. Moreover, seminars, symposiums, thematic conferences are also held on this topic (Molchanova and Solodkovsky, 2015).

The government does not impose a ban on crypto-currencies and all transactions with them on the territory of the Russian Federation since there is a potential in the technology of block-chain that can be realized in various state programs. Currently, the working group of the Central Bank of the Russian Federation holds the discussion on the possible use of this technology for a register of depositors. Data from the block system cannot be deleted which makes it the most trustworthy. For example, many citizens cannot receive compensation that they have been given in accordance with the law when a bank's license is revoked. In order to reduce the contributions to the DIA fund banks do not enter many depositors into the lists. Keeping a register of depositors in the system of blockchain will reduce the number of crimes related to fraudulent activity. For example, there is a scheme according to which individuals who have entered the register of depositors of a particular bank apply for insurance compensation by using criminal means.

More intensive development of plans and projects for the use of blockade technology is already underway in the private sector. International Company Life. SREDA engaged in activities with Chris Skinner in the field of venture financial and technical capital is creating a fund to support the development of blockchain startups in the banking sector on the territory of the Russian Federation. It was planned to attract $ 50 million by the end of 2017. Life.SREDA will provide advisory services to investors in the implementation of this technology.

The Russian brand "Raketa" engaged in the manufacture of watches and "Blockchain Engine" began the introduction of blockchain technology to the watches manufacturing. Thanks to this technology, it will be easier for the end user to check the clock for authenticity and practically exclude the possibility of forgery of the product certificate. It will be possible to enter information about the date of production, the producer, and the cases of maintenance. It is planned to expand the scope of the blockchain to other products – decorations, paintings, exclusive garments, mobile phones, cars. The technology, which is planned to be introduced at the company "Rocket" is called EMC DPO (proof of ownership). It can be used to verify the rights to any types of property behind which individual identifiers are assigned – VIN car numbers, IMEI mobile phones, cadastral lot numbers, and serial numbers of expensive watches and so on. When selling a thing that owns this kind of individual identifier, a record is entered in the lock record and the previous owner automatically ceases to be the owner of the goods.

"Russian Post" announced the use of blockchain technology to track parcels. During the recent presentation of PJSC "Sberbank" a new digital system "EVOTOR" primarily intended for small businesses was introduced. This system uses some elements of the blockchain ecosystem to transmit data on online purchases to the Federal Tax Service.

One of the largest in the CIS payment operators QIWI in 2016 announced the introduction of blockchain technology in its payment processing system. This technology will help the company replace the central payment-processing database, which will in turn reduce the transaction costs. This pattern of using blockchain technology is a kind of "private" blockchain. Prospects for the development of blockchain technology in Russia depend on the position of the state that, as said above, is dual to this innovation. On the one hand, this technology helps to reduce the costs and increase the reliability of operations. On the other hand, it makes all operations as transparent as possible which virtually eliminates the corruption component.

CONCLUSION

The regulation and uniformization of practices regarding the use of crypto-currencies pose a great challenge to the states and international institutions given the new paradigms generated by this technology. The unique characteristics of cryptocurrencies, such as the independence of any state, agility in performing operations, issuance of units of value in mathematical form, among others, were never observed on such a scale in the capitalist system. The very union of a means of payment, custody and creation of value, roles that were previously fulfilled individually by different legal entities, in a sole instrument generated and still generates discussion. With this, in the absence of state regulation, the market has to organize and implement a self-regulation of the use of cryptocurrencies so that this promising market is not negatively affected by the state omission.

This kind of market organization can be achieved locally, through the issuance of state regulation, or internationally, through the issuance of recommendations by international entities. These recommendations must consider the specific aspects of this new technology, but also must be careful so that the possibilities presented by crypto-currencies are not smothered by excessive regulation. Given that the use of cryptocurrencies shares many similarities with banking activities, since it achieves the same effects, banking regulation could be used as a basis for the verification of how companies and people should use cryptocurrencies in international trade, such as the implementation of compliance policies, client background

checking and other measures. However, since the understandings regarding cryptocurrencies are not uniform throughout the world, the treatment of this instrument in all applicable jurisdictions should be verified.

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