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In focus: Law on Digital Assets

The National Assembly of the Republic of Serbia has adopted the Law on Digital Assets (*"Official Gazette of RS", no. 153/2020,* hereinafter: the "**Law**"), which came into force on 29 December 2020 and shall become applicable six months from the date of its entry into force, i.e. as of 30 June 2021.

The main reasons for the adoption of this Law are: (1) regulation of the digital assets market for the purpose of its improvement and further development on one side, and preventing the misuse of digital assets for criminal purposes on the other side, (2) enabling financing by investment tokens, (3) improvement and development of the capital market using digital technology, and (4) strengthening the framework for combating misuse in the digital assets market. Additionally, it is emphasized that one of the main goals of this Law is improvement of the business environment and contribution to further digitalization of services in the economy of the Republic of Serbia, with adequate management of security and financial risks arising from the nature of this form of property.

This Law is primarily focused on the domestic IT community, i.e. it aims to further stimulate the development of information technologies while guaranteeing legal security in the digital assets business.

The Law introduced numerous novelties and institutes of which the most important are:

I. The most important terms introduced by this Law

Firstly, the Law defined a **digital asset** as a digital record of values that can be digitally purchased, sold, exchanged or transferred and may be used as a means of exchange or for investment purposes, whereas the lawmaker explicitly excluded from the legal definition digital currency records as a legal means of payment, so that the same are not treated as digital assets (e.g. electronic money does not represent digital assets and this Law does not apply to it, but rather provisions of the law governing payment services and issuance of electronic money).

The Law defines **virtual currency** as a type of digital asset that has not been issued and whose value is not guaranteed by the central bank, nor by another public authority body, which is not necessarily related to the legal means of payment and does not have legal status of money or currency but is accepted by natural or legal persons as a means of exchange and can be purchased, sold, exchanged, transferred, and stored electronically.
Cryptocurrency and bitcoin are the most common type of virtual currency that is most widely used worldwide.

In addition, the Law defines the term of **whitepaper** as a document published when issuing digital assets, containing data on the issuer of digital assets, the digital asset and risks associated with the digital asset, which enables investors to make an informed investment decision.

II. Application and exception from application of the Law

This Law regulates: 1) issuance of digital assets and secondary trading of digital assets in the Republic of Serbia 2) providing services related to digital assets; 3) right of pledge and fiduciary right to digital assets; 4) competence of the Securities Commission and the National Bank of Serbia.

On the other hand, **Article 6 of the Law defines two exceptions from the application of this Law,** i.e. a situations where this Law does not apply to transactions and/or the acquisition of digital assets.

The first exception to the application of this Law are *transactions with digital assets if these transactions are made exclusively within a limited network of persons who accept such digital assets.* As an example of these transactions, the Law stipulates the use of digital assets for certain products or services as a form of loyalty or reward, without the possibility of transferring or selling them.

Another exception to the application of this Law *is the acquisition of digital assets by participating in providing a computer confirmation service for transactions in information systems relating to certain digital assets* (so-called **digital assets mining**) in which case the Law does not apply to the acquirors during the acquisition.

"Digital assets mining" is a very important aspect of "blockchain" technology, and the lawmaker recognized the need to allow "mining" and exclude application of the Law on acquisition of digital assets in this manner, which in practice usually involves obtaining of bitcoin. However, it should not be forgotten that the Law does not apply only when digital assets are acquired in this manner, while any further disposal of digital assets by these persons (so-called "miners") shall be subject to the provisions of this Law.

III. Competence of the National Bank of Serbia and the Securities Commission

The Law designates the National Bank of Serbia and the Securities Commission as the supervisory authorities for application of this Law.

The National Bank of Serbia is competent for issues **relating to virtual currencies as a type of digital asset**. On the other hand, the Securities Commission is competent in the part concerning digital tokens **as a type of digital asset, as well as in the part relating to digital assets that have financial instrument characteristics.**

IV. Operation of legal entities and entrepreneurs in connection with digital assets

The Law introduces the possibilities, i.e. restrictions for legal entities and entrepreneurs when dealing with digital assets.

Firstly, we **should single out the special legal treatment of digital assets in the context of a company's share capital.**

The Law prescribes that **virtual currencies cannot be entered as a contribution in a company but can be converted (exchanged) for money and paid into the company as a monetary contribution.**

On the other hand, **non-monetary contributions in companies may be in digital tokens if the same are not related to the provision of services or execution of work**, except in the case of general partnership and

limited partnership companies when digital tokens, as non-monetary contributions, may be related to the provision of services or execution of work.

V. Issuance of a digital asset

The Law defines a detailed procedure that every legal entity, entrepreneur or natural person must comply with if they want to issue digital assets. This is especially important for tech start-ups which have the greatest interest in placing their digital assets on the market.

Pursuant to the provisions of the Law, digital assets can be issued in two ways:

- by issuing an initial offer of digital assets for which the whitepaper has not been approved;
- by issuing an initial offer of digital assets for which the whitepaper has been approved;

1) Issuing of an initial offer of digital assets for which the whitepaper has not been approved

The Law, as a rule, stipulates that issuing of an initial offer can only be performed if the whitepaper has been previously approved. Exceptionally, in cases strictly prescribed by the Law, the issuer may also issue the initial offer of digital assets for which the whitepaper has not been approved, and without introducing any special conditions for such publishing, which leaves room for legal uncertainty that must be accepted by all participants in the process of issuance and purchase of digital assets if they wish to operate in the market without the whitepaper.

2) Issuing an initial offer of digital assets for which the whitepaper has been approved

Except in the above referred situations, issuing an initial offer of digital assets made by issuers of digital assets can be conducted only with prior approval of the whitepaper by the supervisory authority.

Prior to publishing the whitepaper, the issuer is obliged to compile the whitepaper, apply for and obtain approval of the supervisory authority, in a manner stipulated by the Law.

VI. Secondary trading of digital assets

The Law stipulates that secondary trading of digital assets is allowed when they are issued in the Republic of Serbia and for which the whitepaper is approved in accordance with the Law, as well as digital assets issued abroad and for which the whitepaper is approved in accordance with the Law.

In addition, the Law allows the secondary trading of digital assets issued in the Republic of Serbia for which no whitepaper has been approved in accordance with the Law, as well as with digital assets issued abroad for which no whitepaper has been approved in accordance with the Law. The Law elaborates more closely on the conditions under which digital assets can be issued in this way.

VII. Trading via platform

The Law regulates that companies that have permission from the supervisory authority to provide services associated with digital assets, as well as all other legal entities, entrepreneurs and natural persons can trade digital assets via the digital assets platform.

The jobs of organizer of the digital assets trading platform can be performed only by a digital assets service provider who is licensed to provide the service of organizer of the digital assets trading platform.

VIII. OTC Digital Asset Market

The Law allows trading in the OTC market for digital assets trading where transactions are conducted directly between the seller and buyer of digital assets without the mandatory participation of the service provider associated with digital assets and outside of digital assets trading platforms.

IX. Market misuses - insider information and market manipulation

The Law defines **insider information** as information on specific facts that have not been made public and directly or indirectly refer to one or more issuers or one or more types of digital assets, which, if made public, would likely have a significant impact on the price of such digital assets.

The Law prohibits any person who possess insider information to use this information directly or indirectly when acquiring, alienating and attempting to acquire or alienate, in his/her behalf or on behalf of a third party, digital assets to which this information refers to.

On the other hand, the Law rather extensively defines situations that would be considered as market manipulation, which is prohibited by this Law.

The supervisory authority is obliged to regulate in a more detailed manner actions that may be considered as market manipulation and the obligations of supervisory bodies and providers of services associated with digital assets in order to prevent and detect these manipulations.

X. Digital asset service providers and advisory service providers

The provider of services associated with digital assets must have a legal form of a company with a minimum share capital of 20,000 - 125,000 euros, depending on the specific service associated with digital assets that it intends to provide. Minimum capital can be monetary and non-monetary (e.g. in software), but at least half of the minimum capital must be registered and paid in cash.

The provider of services associated with digital assets is obliged to obtain from the supervisory authority permission to provide these services, in the manner and under the conditions prescribed by the Law and cannot perform activities and services that are not directly related to services associated with digital assets, except for broker-dealer companies and market operators which are, provided that they have obtained a license from the competent authority, entitled to perform services associated with digital assets in addition to the existing services.

On the other hand, **advisory service providers** are not obliged to obtain permission from the supervisory authority for the provision of these services, but they are obliged to disclose to each of their users information that they are providing these services without a license, as well as to highlight this information on their website.

XI. Right of pledge and fiduciary right on digital assets

The law prescribes the right of pledge and fiduciary right to digital assets.

In respect of the right of pledge over digital assets, the Law, inter alia, stipulates that the agreement on pledge on digital assets can be concluded in paper or electronic form, i.e. on a permanent data carrier that enables the storage and reproduction of source data in an unchanged form.

With regard to fiduciary rights on digital assets, the Law stipulates that this right is regulated by the fiduciary agreement of digital assets by which the fiduciary debtor is obliged, for the purpose of securing receivables, to transfer the ownership right on digital assets to the fiduciary creditor and the fiduciary creditor is obliged, in accordance with the agreement, to return to the fiduciary debtor the received or equivalent securities upon execution of the secured receivables, i.e. simultaneously with that execution.

XII. Tax aspects of digital assets

With respect to the tax aspects of digital assets, the latest changes to the Law on Property Tax stipulate that, for the time being, digital assets will be taxed only through inheritance and gift tax.