



Belarus Enacts Unique Legal Framework for Crypto Economy Stakeholders

On the 21st of December, 2017 the President of Belarus Republic has signed Decree No. 8 "On the Development of Digital Economy" (hereinafter referred to as "Decree") which for the first time in history regulates blockchain technology implementation, token issuance, mining and other issues not yet considered by regulators of most countries. In many aspects, Decree is the first of a kind in global scale.

Invited by our colleagues from Belarus, Deloitte CIS team was among the consultants engaged in the drafting of Decree, and now we are happy to offer you an overview of its fundamentals.

We are sincerely grateful to our Belarussian colleagues from the law firm "Aleinikov & Partners" and to advocate Denis Aleinikov personally for their immense contribution to the

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drafting of Decree. A fundamental legal framework they developed for smart-contracts, just as other innovations, deserves to attract undivided attention globally, far beyond the confines of CIS. Also, we would like to express our gratitude to Vsevolod Yanchevsky, the Director of Hi-Tech Park (hereinafter referred to as "HTP"), for eminence in managing such a challenging drafting process.

General Characteristics of Amendments

Formally, Decree governs the status of HTP providing outstanding incentives for blockchain technology implementation in Belarus. At the same time, the vast majority of provisions in Decree fills the gaps in the existing legislation, so that the scope of Decree significantly exceeds the formal subject matter. In addition, the Minister Counsel of Belarus Republic is given an assignment to secure the adoption of relevant amendments to existing legislation within three months.

Decree itself enters into force in three months (except for the assignments given to the Minister Counsel and other bodies). According to the Constitution of Belarus Republic, Decree is but a temporary act and needs to be passed by the legislature which, in case of discontent, has to reject it by two thirds of votes. Decree has also the force of legislative act, which explains a broad intervention into the area of legislation undertaken in Decree.

The most important novelties are the following:

- official treatment of tokens as the objects of property rights (and as the assets in terms of accounting) that may be freely possessed by any legal entities and natural persons;
- rules for dealings with tokens;
- rules for ICO projects;
- introduction of legal definition for mining;
- introduction of legal definition for smart-contracts;
- new categories for contract law that would facilitate structuring of crypto economy dealings (options, warranties and representations, liquidated damages, shareholder agreements, restrictive covenants).

Token holding, dealings with them, ICO, mining and other activities are generally permitted to all legal entities and natural persons, however, some transactions are allowed only with HTP residents' involvement.

Decree also provides notable exemptions from general legislative requirements that exclude the possible adverse effect of regulators' activities

on the blockchain projects. Crypto economy is exempted from the legislation concerning securities market and foreign currency (although the settlements in foreign currencies between Belarus residents is still forbidden), not to mention extensive tax exemptions. Only AML regime remains applicable in conformity with the global trend.

It is worth to mention that whatever issues are not covered by Decree, they may be clarified in joint explanatory statements issued by the Minister Counsel of Belarus Republic and HTP Administration (concerning the general use of tokens and blockchain), in those of the HTP Administration and acts governing HTP.

Technologies Covered by Decree: Blockchain and Other Distributed Information Systems, and Smart-contracts

Appendix No. 1 to Decree contains a list of basic terms and definitions used in Decree including, among others, the concept of blockchain. Blockchain got a rather narrow definition while encompassing only decentralized distributed information systems. Nevertheless, Decree recognizes existence of "other information systems" which would comprise so called consortium and private blockchains.

Tokens and smart-contracts may be based on any kind of information system. Mining is restricted to the maintenance of blockchain though.

Smart-contracts are defined as program code securing the autonomous perfection, or fulfillment, of dealings with tokens, as well as of any other type of legal acts. Hence, smart-contract is deemed as a technical tool and not as the deal itself or a digital form of instrument, although its features obviously stem from underlying terms of the transaction which are reflected therein. This definition is the first one, and the only so far, to be adopted on the national level, whereas existing definitions (as in Arizona) have not yet become a unified rule for the whole state. Besides, the existing definitions seem less accurate, so they may be considered as obsolete. Decree establishes a rebuttable assumption that a person who entered into a transaction with the use of smart-contract is deemed to be fully acquainted with the terms of transaction, including those reflected in the smart-contract. It means that in the case of inconsistency the terms of underlying dealings shall prevail over the features of smart-contracts, but the person who asserts this also needs to prove that it was not aware of the difference. For instance, such assertion might succeed when the smart-contract presupposes a term of the dealing that actually never occurred therein, which remained unknown to the counterparty of a person due to the fact that this person precluded the counterparty from formation of smart-contract.

Legal Regime for Tokens

In Decree a token is defined as an entry in any kind of information system. A token is considered to be property: the proprietary rights are transferred by delivery to which equals the inclusion of the transaction in information system.

Also, Decree distinguishes between two types of tokens by their function (which may coincide in the same tokens):

- tokens that digitally certify any interests in property or claims against the issuer (the rights and claims may be of any nature, including, but not limited to, contractual rights, corporate rights, intellectual property rights etc.);
- cryptocurrencies.

The salient feature of cryptocurrencies' definition is that only those tokens may be treated as cryptocurrency which achieved a worldwide recognition as universal means of exchange. Hence, the tokens may not be treated as cryptocurrency just because this function was declared by the issuer in ICO documents. Therefore, new cryptocurrencies cannot be created at the stage of ICO. This implies that those frequent ICO projects involving creation of internal cryptocurrency require structuring of tokens as digital certificates of interests in property or claims against the issuer. These tokens will not constitute cryptocurrency unless they are recognized worldwide as universal means of exchange.

A legal entity that, with intermediation of HTP resident, generated and sold tokens certifying claims against it is obligated to honor the claim of tokenholder and is precluded from referring to the absence of obligation of its ineffectiveness.

Dealings with Tokens and Tax Implications

Tokens are legally susceptible to circulation and may be the subject matter of dealings. Miner may accept tokens as fees for verification of transactions. Tokens are classified as assets for the purposes of accounting (detailed rules for accounting shall be introduced by the Ministry of Finance of Belarus Republic within three months).

Natural persons, even without the status of individual entrepreneur, are granted the maximum freedom to dispose of tokens. They are allowed not only to acquire or alienate tokens without mandatory engagement of intermediaries, but also to dispose thereof by making gifts and testaments.

Legal entities without HTP resident status have an access to crypto market only through intermediaries that are crypto platform operators or cryptocurrency exchange operators as well as other HTP residents authorized to be intermediaries (other types of intermediaries are not identified explicitly, but one could expect the appearance of crypto brokers).

The alienation of tokens is exempted from VAT, including the alienation to foreign legal entities not acting through a permanent establishment and, therefore, not registered with tax authorities of Belarus Republic.

Decree also stipulates that the expenses related to token acquisition are not deductible in terms of income tax implications for legal entities and natural persons (individual entrepreneurs). Accordingly, the profit generated by HTP residents due to dealings with tokens shall not be taken into account for tax purposes (with regard to corporate income tax and income tax on individuals). Tax preferences will last till the 1st of January, 2023.

Status of HTP Resident

Only Belarussian legal entities and individual entrepreneurs may become the HTP resident. In order to perform a particular type of engagement in crypto economy, it has to be declared in business plan submitted during registration as the resident. HTP Rules specify the following blockchain-related activities (more than one may be selected):

- activities involving engineering, development, support, sale, employment of software and (or) hardware and software on the basis, and with the use of, distributed block of transactions (blockchain), other decentralized information systems, including those protected by cryptographic information security;
- provision of services involving the generation and initial offering of tokens by means of Internet, including the marketing, consultations and other ancillary services;
- activities of crypto platform operator;
- activities of cryptocurrency exchange operator;
- mining;
- other activities involving tokens, including those fitting within the definitions of professional and exchange dealings with securities, collective investment schemes, securitization and undertakings aiming at generation and initial offering of own tokens.

The regime of HTP is distinguished by the provision that the legal entities and natural persons registered as HTP residents may be located and perform anywhere on the territory of Belarus while benefiting from all privileges of HTP residents.

General ICO Rules

Basically, every legal entity is allowed to generate, and arrange initial offering of, tokens, as well as an individual entrepreneur if he obtained the status of HTP resident. But, to make it, they need to involve an HTP resident who may perform the services of generating, and arranging initial offering of, tokens (including the crypto platform operator who is granted with such powers by Decree).

The initial offering is defined as any legal acts aiming at delivery of tokens to their primal holders. It is worth to emphasize that fundraising is mentioned only as one of possible ends of ICO. The funds collected by legal entities are not recognized as revenue for tax purposes and alienation of tokens is VAT exempt. Nevertheless, the issuer shall record obligations arising out of ICO in the accounting documents.

Infrastructure Stakeholders: Miners, Crypto Platform Operators, Cryptocurrency Exchange Operators

The definition of mining implies that miners are persons maintaining the functioning of blockchain, i.e. the functioning of other distributed information systems does not involve mining. Legal entities may mine in the status of HTP resident provided they declared this activity in business plan during registration. The natural persons may mine freely and, to that end, they do not need to become individual entrepreneurs if for the purposes of mining they do not engage third parties under independent contractor or labor contracts. An individual entrepreneur, being an HTP resident, may mine if he declared this activity by registration.

With regard to corporate income tax, income tax on individuals and VAT mining has no tax implications. For the purposes of accounting the tokens mined or acquired otherwise are classified as assets.

Functioning of Belarus crypto market will be maintained by crypto platform operators and cryptocurrency exchange operators (the status is achieved by becoming an HTP resident). These concepts respectively match the concepts of decentralized and centralized crypto exchange.

- Crypto platforms enable dealings with tokens; to arrange it, the operators adopt trading rules, access requirements, listing rules. Operators are required to store, and maintain the balance of, at least 1 million Belarus rubles on Belarus bank accounts.
- Cryptocurrency exchange operators are the same as crypto dealers who trade with tokens in his own name and in his own interest. They are

required to store, and maintain the balance of, at least 200 thousand Belarus rubles on Belarus bank accounts.

These infrastructural stakeholders may be intermediaries in dealings with tokens for legal entities without the status of HTP resident.

Clearing and crypto broker services may have no explicit reference in Decree but the list of crypto activities in the Rules of HTP does not exclude their appearance in the future.

New Opportunities

Decree gives an opportunity to arrange an absolutely legal ICO in a most friendly environment. Until the term of tax preferences expires in 2023, Belarus wins tax competition even with offshore jurisdictions.

There are at least two general scenarios of ICO:

Firstly, ICO may be conducted through an HTP resident. In this case, the issuer shall choose in the register a resident authorized to conduct the activities involving tokens generation and their initial offering, enter into the contract with him and launch a tokensale.

Secondly, an SPV may be formed in Belarus in order to obtain the HTP residency.

Besides ICO, Decree allows to conduct all varieties of cryptocurrency-related activities under transparent and predictable legal framework.

Decree is a milestone in the history of crypto industry. Its greatest achievement is obliteration of the most lamentable drawbacks that crypto market stakeholders have to face in every jurisdiction (and frequently are unable to mitigate).

On the one hand, Decree ensures legal certainty by introducing a legal framework specifically for blockchain projects. Belarus Republic has prevailed over many other jurisdictions by enacting a much more detailed body of rules than anywhere else. Legal status was finally attributed to the basic elements of crypto market (blockchain, smart-contracts, tokens, mining).

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On the other hand, Decree disperses typical (and common for all jurisdictions) concerns related to the applicability of securities and foreign currency legislation, licensing requirements, and so forth. Besides, Decree provides significant tax incentives for the next several years.

Surely, Decree will impact and boost the development of crypto economy in all Customs Union's member states.

We hope that with the elimination of legal uncertainty in relation to the developers and investors of blockchain projects, coupled with the introduction of an exempted legal regime in the frames of HTP, including the abolishment of visa and other requirements making the engagement of foreign experts difficult, Belarus will attract more foreign experts all around the world and, with HTP as a starting point, this will ultimately result in the rise of one of the leading competence centers for the blockchain, IoT, AI and other breakthrough areas.

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