



NEWSLETTER

14/04/2021

Virtual Financial Assets Law

("Official Gazette of RS", no. 153/2020)

At the Seventh Session of the Second Regular Meeting, on December 17th 2020, the National Assembly of the Republic of Serbia adopted the Virtual Financial Assets Law ("Official Gazette of the RS", No. 153/2020, hereinafter referred to as: **the "Law"**). The Law entered into force on December 29th, 2020, and its implementation shall begin after the expiration of six months from the day of its entry into force, that is from June 30, 2021.

With the adoption of the Law, Serbia became one of the few countries that legally regulated the area of virtual financial assets. At the level of the European Union, there is still no harmonized regulation in this area, but only a proposal for a decree of the European Commission which regulates virtual financial assets.

The Law regulates:

- issuance of virtual financial assets and secondary trading of such assets in the Republic of Serbia;
- provision of services related to virtual financial assets;
- pledge and fiduciary right on virtual financial assets;

- the competence of the Securities Commission (hereinafter referred to as: the “**Commission**”) and the National Bank of Serbia (hereinafter referred to as: the “**NBS**”) as well as the supervision over the implementation of the Law.

I DEFINITION OF MAIN TERMS

The key terms introduced by the new Law are:

- **Virtual financial assets**, defined as a digital record of value that can be virtually bought, sold, exchanged or transferred and that can be used as a medium of exchange or for investment purposes, whereas virtual financial assets does not include digital records of currencies that are legal means of payment and other financial assets that is regulated by other laws, except when otherwise regulated by the Law.

The Law defines two types of virtual financial assets and those are *virtual currencies* and *digital tokens*, and this division is important because they are subject to different legal regimes in certain situations.

- **Virtual currency** is a type of virtual financial asset that has not been issued and whose value is not guaranteed by the central bank or other public authority, which is not necessarily tied to a legal means of payment and has no legal status of money or currency, but is accepted by individuals or legal entities as a means of exchange and can be bought, sold, exchanged, transmitted and stored electronically.
- **Digital token** is a type of virtual financial asset that means any intangible property right that in digital form represents one or more other property rights, which may include the right of the user of the digital token to be provided with certain services.

The line between virtual currencies and digital tokens is not clearly drawn, so many forms of virtual financial assets will have the characteristics of both virtual currencies and digital tokens at the same time.

- **White paper** is a document that is published during the issuance of virtual financial assets, which contains data on the issuer of assets, assets and risks associated with it and which allows investors to make an informed investment decision.

By its nature, white paper is reminiscent of a prospect published on a traditional capital market.

- **A smart agreement** is a computer program or protocol, based on distributed database technology or similar technologies, which, in whole or in part, automatically executes, controls or documents legally relevant events and actions in accordance with an already concluded agreement, whereby the agreement may be concluded electronically via that program or protocol.

A smart agreement, in the sense of the Law, is a computer program that automatically pays a certain amount of for example bitcoins to the seller when the goods are delivered.

II ISSUANCE / SECONDARY TRADING OF VIRTUAL FINANCIAL ASSETS

The issuance of virtual financial assets is permitted regardless of whether a white paper has been created and / or approved for it. The Law stipulates restrictions when it comes to the issuance of virtual financial assets related to advertising of such that is its initial sale.

Secondary trading of virtual financial assets is allowed, regardless of whether the assets are issued in the Republic or abroad. Secondary trading can be done either through a virtual financial asset trading platform or on the OTC market.

A significant benefit that the Law brings for startup companies is *crowdfunding* as an innovative and important institution of raising capital for small and medium companies. These business entities can issue digital tokens that do not have the characteristics of shares, nor are they exchangeable for shares, and their total value for 12 months does not exceed the amount of 3,000,000 euros.

The law governing the capital market does not apply to virtual financial assets issued in this way. This exception allows financial instruments, for example bonds, to be issued using blockchain technology, bypassing the Central Registry of Securities. This option is ideal for group financing and allows small and medium-sized enterprises to access more easily the necessary funds.

III PROVISION OF SERVICES RELATED TO VIRTUAL FINANCIAL ASSETS

Providers of virtual financial asset-related services must be licensed by the supervisory authority to provide these services, and may perform only those activities that are directly related to virtual financial asset. Exceptions to this rule are broker-dealer companies and market organizers (stock exchanges), which can freely perform other activities in accordance with the law governing the capital market. The Law prescribes the conditions regarding the legal form and the minimum capital that service providers must have.

The Law also prescribes services that are considered related to virtual financial assets, and prescribes a special regime for them. Some of them are the receipt, transfer and execution of orders related to the purchase and sale of virtual financial assets for the account of third parties, then the services of purchase and sale of virtual financial assets for cash and / or funds in the account and / or electronic money, storage and administration of assets for the account of digital users, organizing a platform for trading of virtual financial assets etc.

IV PLEDGE AND FIDUCIARY RIGHT

A pledge on virtual financial assets can be acquired by registering in a pledge register maintained by a virtual financial assets service provider licensed by the supervisory authority to maintain a pledge register on assets, as well as to store and administer assets for the user's account and related services.

In addition to pledge, the Law introduces fiduciary on virtual financial assets. What is specific about fiduciary is that the creditor, unless otherwise agreed, has the right to use the virtual financial asset that is the subject of the fiduciary agreement and to dispose of it, including the right to its alienation. Until the entry into force of the Law, fiduciary as an institute of securing claims was not regulated by any valid law in the Republic of Serbia.

V SUPERVISION

The NBS, as the supervisory body, is competent for issues related to *virtual currencies* as a type of virtual financial assets, and on the other hand, the Commission is responsible for issues related to *digital tokens* as a type of virtual financial assets, as well as assets that have the characteristics of *financial instruments*.

The law also prescribes **penalty provisions** and, in addition to fines, also prescribes the revocation of a license to provide services related to virtual financial assets, as well as criminal offences of trafficking based on insider information and market manipulation with up to five years in prison.

Although the enactment of the Law has increased legal certainty, the area of virtual financial assets remains a somewhat precarious terrain for all interested parties, largely due to the lack of appropriate practice. **That is why it is necessary that all entities that want to start a crypto business or engage in it, harmonize their business activities and internal acts with the new legislation and obtain appropriate permits within six months from the date of entry into force of the Law.**

For any additional consultations or legal assistance, you can contact the Tasić & Partners team by email at na office@tasiclaw.com or by phone at +381116302233.