

Crypto-currencies in bankruptcy: Specifics of Belarusian regulation

Ivan Simanovsky foresees that Belarus is about to become a major crypto-hub



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The much talked-of Decree No.8 “On the Development of Digital Economy” has been in effect since March 28 of this year (further referred to as the “Decree”).

Among other things, it is aimed at the creation of conditions for implementing the Blockchain technology in the Belarusian economy and it secures the terms of Blockchain itself in the legal environment of Belarus (smart contract, token, owner and offering of tokens), and it introduces the definitions of crypto-currency, its operator and the operator of its exchange, the e-wallet, mining etc.

Let us try to evaluate what this Decree can bring to the sector of crisis management and bankruptcy.

In Russia, the legal precedents have already started to form: one can remember the recent first case at the Moscow Arbitration Court when crypto-currency assets were included in the bankruptcy assets of a bankrupt company. This case is interesting because so far, the status of crypto-currency has not been legally determined in Russia.

In Belarus, following to the Decree, the definition of the term and that of the status of crypto-currency already exist. With the entry of the Decree into force, the Belarusian legal entities can now

officially mine.

In the nearest future the question of what is the place of crypto-currencies in bankruptcy procedures will be in focus. And since there is a new law on bankruptcy that has been prepared and is about to be adopted in Belarus, it would be great if it took into consideration the legislative innovations of 2018 and if it focused on the business of the future in general.

The Decree clearly defines that for the accounting purposes tokens are acknowledged as assets. That is why in Belarus, as opposed to Russia, the question of whether crypto-currency should be included into the bankruptcy

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assets no longer exists. Some questions and problems may occur later, once there is a necessity to evaluate and realise such assets for the payment of debts to the creditors, but also concerning the competency of the financial departments of bankrupt companies which accounted for such assets and the readiness of the crisis managers and courts to work with new realities. We believe that in the future the bankruptcy question will be just as interesting on the crypto-currency exchange markets.

With the Decree crypto-currency was introduced into the legal turnover in Belarus as “bitcoin, another token, used in international turnover as universal means of exchange”. For the purposes of accounting the tokens that emerged (have been mined) in the process of mining or were acquired by a different way, are acknowledged as assets.

In bankruptcy procedures creditors have the right to expect payment of the debt by means of disposal of any assets belonging to the debtor. That is why today we can confidently say that Belarusian companies that will issue or acquire tokens in the market and then will find themselves in bankruptcy will be able to sell these digital assets in order to settle with the creditors. These assets will be included in the bankruptcy mass as intangible assets. As tokens have not been acknowledged as a legal means of payment, it will be impossible to pay the creditors directly by tokens. It is unlikely that it will be possible to transfer tokens to creditors under the Accord and Satisfaction Agreement because in order to do that, tokens would have to preliminarily and repeatedly be put out for futile public auctions.

The only way to sell tokens is to involve an operator of crypto-currency exchange among the residents of the High Tech Park (HTP). In this way, it is assumed that the crisis manager should not have any problems in discovering these assets. The Decree establishes that transactions with

tokens shall be shown in the accounting records of the company. However, even when there is no due record keeping or when the accounting data is concealed, it will be still possible to discover the evidence that this bankrupt company had tokens by addressing a corresponding request to the operators of crypto-currency exchange. That is why one can expect that the economic courts will be sending requests to HTP to find out whether the legal entities in relation to which the economic insolvency (bankruptcy) procedures have been initiated, have / have had (do not have / have not had) tokens the HTP residents might be aware of.

It is obvious that the provisions of the Decree require serious explanations to the public and the economic entities and that they require improvements brought to the applicable regulatory framework.

How will the crypto-currency market be regulated?

Let us consider a number of important aspects.

- a) Belarusian rouble remains the only legal means of payment on the territory of Belarus.
- b) Tokens circulation will be limited on the territory of Belarus. The Decree does not stipulate the possibility to exchange tokens for anything other than Belarusian roubles, foreign currency, electronic money, and other tokens. As such, it is prohibited to use the foreign currency in settlements between the residents of Belarus in crypto-currency operations, except for transactions with crypto-currency platform operators.
- c) The Decree secures the measures to improve legal safety of participants in transactions with tokens. State authorities, in accordance with their competence, will have the task to control the activity of crypto-currency platform operators and crypto-currency exchange operators.

- d) Legal entities will be able to pay for acquired or assigned tokens under operations made via HTP residents; individuals will be able to pay by transfer of money to bank accounts or e-wallets of tokens owners, crypto-currency platform operators, crypto-currency exchange operators and foreign trading platforms.
- e) Transactions with tokens are of high risk because there is no specific and clear pricing policy procedure and no guarantees of protection of rights and legal interests of token holders. In particular there are no guarantees concerning discharge of liabilities towards these holders (including the purchase of tokens at foreign trading platforms).

In order to mitigate the risks of involvement of banks into carrying out suspicious transactions of the clients, and in order to protect the interests of individuals carrying out regular transactions with tokens, the National Bank has prepared draft Provisions designating:

- crypto platform operators, crypto currency exchange operators as having a high risk customer profile when working with the bank, and
- financial transactions with tokens, systematically conducted by bank customers – to high risk operations.

At this stage everything is still evolving. And only time will show how well all participants, starting with the debtor or creditor and ending with the judicial system (as the ultimate authority in the issue of bankruptcy), will manage to make sense of all the subtle aspects of the dealings with crypto-currency and to work with these new realities. ■



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