



## SRBIJA / SERBIA

### ŠTA NOVO DONOSI ZAKON O DIGITALNOJ IMOVINI?

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### WHICH NOVELTIES BRINGS THE LAW ON DIGITAL ASSETS?

Republika Srbija je jedna od prvih država koja je donošenjem Zakona o digitalnoj imovini („*Zakon*“) uredila oblast kupovine, prodaje i razmene kriptovaluta. Od trenutka pojave kriptovaluta pa sve do donošenja Zakona ova oblast bila je poprilično nedefinisana egzistirajući negde između postojećih zakonskih propisa i sive zone.

Naime, Zakon je na snagu stupio 29. decembra 2020. godine dok je početak njegove primene odložen za period od šest meseci (29. jun 2021. godine) u kom roku su

The Republic of Serbia is one of the first countries to regulate the area of buying, selling and exchanging cryptocurrencies by passing the Law on Digital Assets (“*Law*”). From the moment of appearance of cryptocurrencies until the enactment of the Law, this area was undefined, existing somewhere between the legal regulations and the grey zone.

The Law entered into force on 29 December 2020, while its application was postponed for a period of six months (29 June 2021) within which the subjects providing services related

lica koja pružaju usluge povezane s digitalnom imovinom dužna da svoje poslovanje i opšte akte usklade sa odredbama Zakona i podzakonskim aktima koji će na osnovu Zakona biti doneti kao i da podnesu odgovarajući zahtev za dozvolu.

Vlada Republike Srbije kao osnovni cilj sačinjavanja Zakona ističe dodatno podsticanje razvoja blockchain tehnologije i tokenizacije, kao i finansiranje inovativnih projekata u Republici Srbiji što bi u krajnjoj liniji trebalo da dovede do otvaranja većih mogućnosti za privrednike da lakše finansiraju svoje inovativne ideje.

Predmet regulisanja Zakona jesu: 1) izdavanje digitalne imovine i sekundarno trgovanje digitalnom imovinom u Republici Srbiji, 2) pružanje usluga povezanih s digitalnom imovinom, 3) založno pravo na digitalnoj imovini, 4) posebne radnje i mere za sprečavanje pranja novca i finansiranja terorizma u vezi s digitalnom imovinom, 5) nadležnost Komisije za hartije od vrednosti („*Komisija*“) i Narodne banke Srbije („*NBS*“) kao i 6) nadzor nad primenom ovog Zakona.

### **1. Šta je digitalna imovina?**

Digitalna odnosno virtuelna imovina definisana je kao digitalni zapis vrednosti koji se može digitalno kupovati, prodavati, razmenjivati ili prenositi i koji se može koristiti kao sredstvo razmene ili u svrhu ulaganja sa izuzetkom digitalnih zapisa valuta koje su zakonsko sredstvo plaćanja i drugu finansijsku imovinu koja je uređena drugim zakonima.

Zakon razlikuje dva oblika digitalne imovine: 1) virtuelnu valutu i 2) digitalni token.

*Virtuelna valuta* je vrsta digitalne imovine koju nije izdala i za čiju vrednost ne garantuje centralna banka, niti drugi organ javne vlasti, koja nije nužno vezana za zakonsko sredstvo plaćanja i nema pravni status novca ili valute, ali je fizička ili pravna

to digital assets are obliged to harmonize their business and general acts with the provisions of the Law and bylaws that will be adopted, as well as to submit an appropriate request for a permit.

Serbian Government pointed out that the main goal of the Law is further encouragement of the development of blockchain technology and tokenization as well as financing innovative projects in the Republic of Serbia, which should ultimately lead to greater opportunities for entrepreneurs to be able to easily finance their innovative ideas.

The Law regulates the following: 1) issuance of digital assets and secondary trading of digital assets in Serbia, 2) provision of services related to digital assets, 3) pledge on digital assets, 4) specific actions and measures to prevent money laundering and terrorism financing in connection with digital assets, 5) competence of the Securities and Exchange Commission (“*SEC*“) and the National Bank of Serbia (“*NBS*“) as well as 6) supervision over the application of the Law.

### **1. What are Digital Assets?**

Digital or virtual assets are defined as a digital record of value that can be digitally bought, sold, exchanged or transferred and that can be used as a means of exchange or for investment purposes with the exception of digital records of currencies that are legal tender and other financial assets regulated under other laws.

The Law differentiates two forms of digital assets: 1) virtual currency and 2) digital token.

*Virtual currency* is a type of digital assets 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 statutory defined means of payment and does not have the legal status of money or currency

lica prihvataju kao sredstvo razmene i može se kupovati, prodavati, razmenjivati, prenositi i čuvati elektronski.

but is accepted by individuals or legal entities as a mean of exchange and can be bought, sold, exchanged, transferred and stored electronically.

*Digitalni token* označava bilo koje nematerijalno imovinsko pravo koje u digitalnoj formi predstavlja jedno ili više drugih imovinskih prava, što može uključivati i pravo korisnika digitalnog tokena da mu budu pružene određene usluge.

*Digital token* means any intangible property right that in digital form represents one or more other property rights, which may include the right of the digital token user to be provided with certain services.

Nadležnost za obavljanje poslova u vezi sa digitalnom imovinom je podeljena između NBS-a i Komisije pa je tako NBS nadležna u delu koji se odnosi na virtuelne valute a Komisija u delu koji se odnosi na digitalnu imovinu koja ima odlike finansijskih instrumenata.

Competence for performing activities related to digital assets is divided between the NBS and the SEC, so the NBS is competent in the part related to virtual currencies and the SEC in the part related to digital assets that have the characteristics of financial instruments.

Dodatno, Zakonom je isključena odgovornost Republike Srbije, NBS-a, Komisije i drugih nadležnih organa i organa javne vlasti za vrednost digitalne imovine te u tom smislu sami korisnici i drugi imaoци digitalne imovine i/ili pružaoci usluga povezanih s digitalnom imovinom snose bilo koju eventualnu štetu i gubitke pretrpljene u vezi sa obavljanjem transakcija s digitalnom imovinom. Dakle, evidentno je da nepoverenje prema digitalnoj imovini i njenom značaju za razvoj celokupne privrede i dalje postoji.

In addition, the Law excludes the liability of the Republic of Serbia, the NBS, the SEC and other competent authorities and public authorities for the value of digital assets. Consequently, the users and other holders of digital assets and/or providers of services related to digital assets bear any possible damage and losses incurred in connection with transactions with digital assets. Considering that, it is evident that distrust towards digital assets and their importance for the development of the entire economy continues to exist.

S tim u vezi, za pružaoca usluga povezanih sa digitalnom imovinom propisana je obaveza da pre uspostavljanja poslovnog odnosa sa korisnikom digitalne imovine istog obaveste o svim rizicima obavljanja transakcija s digitalnom imovinom.

In this regard, before establishing a business relationship, the provider of services related to digital assets is required to inform the user of digital assets of all risks arising from transactions with digital assets.

## **2. Izdavanje i trgovanje digitalnom imovinom.**

## **2. Issuance and Trading with Digital Assets.**

Zakon propisuje da je izdavanje digitalne imovine u Republici Srbiji dozvoljeno bez obzira na to da li je za nju sačinjen i/ili odobren tzv. „beli papir“ s tim da je

The Law prescribes that the issuance of digital assets in the Republic of Serbia is allowed regardless of whether the so-called “white paper” has been prepared and/or approved,

mogućnost izdavanja digitalne imovine bez „*belog papira*“ u znatnoj meri limitirana.

whereby the possibility of issuance of digital assets without “*white paper*” is significantly limited.

Naime, tzv. „beli papir“ je dokument koji izdavalac sačinjava pre izdavanja digitalne imovine i čija je sadržina propisana Zakonom. Ovaj dokument u načelu sadrži sve neophodne podatke koji omogućavaju investitorima da donesu odluku o investiranju i proceni rizika vezanog za ulaganje u digitalnu imovinu. Beli papir mora biti odobren od strane nadzornog organa (Komisije ili NBS) i potom objavljen pre inicijalne ponude digitalne imovine.

The so-called “white paper” is a document which is prepared by the issuer before the issuance of the digital assets and whose content is prescribed by the Law. In principle, it contains all the necessary information allowing investors to make an investment decisions and risk assessments related to investing in digital assets. The white paper has to be approved by the supervisory authority (SEC or NBS) and then published before the initial offering of digital assets.

Dodatno, u slučajevima kada digitalna imovina ima odlike finansijskog instrumenta, tada se na izdavanje, sekundarno trgovanje i pružanje usluga povezanih s takvom digitalnom imovinom primenjuje Zakon o tržištu kapitala osim u slučaju kada su ispunjeni uslovi propisani Zakonom.

Additionally, when digital assets have characteristics of a financial instrument, the Law on Capital Market applies on issuance, secondary trading as well as on provision of services related to such digital assets unless when the requirements prescribed by the Law are fulfilled.

Što se tiče sekundarnog trgovanja digitalnom imovinom, Zakon propisuje da se sekundarno trgovanje digitalnom imovinom može obavljati na organizovanoj platformi, OTC tržištu ili tzv. „pametnim ugovorima“.

As for the secondary trading with digital assets, the Law prescribes that it can be performed on an organized platform, OTC market or via so-called “smart contracts”.

Novi institut „*pametnan ugovor*“ Zakon definiše kao kompjuterski program ili protokol, zasnovan na tehnologiji distribuirane baze podataka ili sličnim tehnologijama, koji, u celini ili delimično, automatski izvršava, kontroliše ili dokumentuje pravno relevantne događaje i radnje u skladu sa već zaključenim ugovorom, pri čemu taj ugovor može biti zaključen elektronski putem tog protokola ili programa.

The Law defines a new institute “*smart contract*” as a computer program or protocol, based on distributed database technology or similar technologies, which, in whole or part, automatically executes, controls or documents legally relevant events and actions in accordance with the already concluded agreement whereby that agreement may be concluded electronically through that protocol or program.

### **3. Pružanje usluga povezanih s digitalnom imovinom.**

### **3. Provision of Services Related to Digital Assets.**

Zakon propisuje da pružalac usluga povezanih sa digitalnom imovinom mora imati pravnu formu privrednog društva u

The Law stipulates that a provider of services related to digital assets must be organized in one of the legal forms of companies defined

smislu Zakona o privrednim društvima uz detaljno regulisanje uslova koje ova društva moraju da ispune u zavisnosti od vrste usluga koje žele da pružaju. U tom smislu, Zakon, između ostalog propisuje da pružalac usluga povezanih sa digitalnom imovinom mora imati minimalni osnovni kapital u iznosu od 20.000 do 125.000 evra (u zavisnosti od obima usluga koje namerava da pruža) i dozvolu Komisije ili NBS-a (osim pružalaca savetodavnih usluga).

under the Company Law and regulates in detail the requirements that these companies have to fulfil depending on the type of services they want to provide. In this regard, the Law, inter alia, prescribes that the provider of services related to digital assets must have a minimum share capital in the amount of EUR 20,000 up to 125,000 (depending on the scope of services it intends to provide) as well as a permit from the SEC or the NBS (with the exception of providers of consultancy services).

S druge strane, shodno Zakonu, institucije pod nadzorom NBS-a nisu ovlašćene da pružaju usluge povezane s digitalnom imovinom izuzev usluge čuvanja i administriranja digitalne imovine za račun korisnika digitalne imovine i sa tim povezanih usluga i to samo u delu čuvanja kriptografskih ključeva.

On the other hand, according to the Law, institutions under the supervision of the NBS are not authorized to provide services related to digital assets, except for the service of storing and administering digital assets for the account of digital assets users and related services, and only in the part of storing cryptographic keys.

Zakonom je, takođe, utvrđen i niz obaveza pružaoca usluga povezanih sa digitalnom imovinom. Između ostalog, na pružaoce usluga povezanih sa digitalnom imovinom primenjuje se i Zakon o sprečavanju pranja novca i finansiranja terorizma, te su isti u obavezi da proveravaju identitet korisnika digitalne imovine.

The Law, also, sets out various obligations for providers of services related to digital assets. In this regard, the Law, inter alia, prescribes that the Law on Prevention of Money Laundering and Terrorism Financing applies to providers of services related to digital assets and thus the service providers are obliged to verify the identity of digital assets users.

#### **4. Poslovanje privrednih subjekata u vezi sa digitalnom imovinom.**

#### **4. Activities of Business Entities Related to Digital Assets.**

Zakon predviđa da je kao nenovčani ulog u privredno društvo moguće uneti digitalne tokene koji se ne odnose na rad ili usluge (pri čemu se kod ortačkih i komanditnih društava digitalni tokeni mogu odnositi i na rad i usluge), a listu kojih će utvrditi Komisija.

The Law stipulates that digital tokens that are not related to work or services can be an in-kind contribution in a company (whereby in case of general partnership and limited partnership digital tokens may be related to work and services). The list of such tokens will be determined by the SEC.

Za razliku od digitalnih tokena, virtuelne valute ne mogu da budu predmet uloga u privredno društvo već će iste jedino moći da se konvertuju odnosno zamene za novac i kao novčani ulog uplate u društvo.

Unlike digital tokens, virtual currencies are not eligible to be a contribution in a company, but they can be converted or exchanged for money and paid-in as a monetary contribution in a company.

Dodatno, Zakon propisuje da finansijske institucije pod nadzorom NBS-a ne mogu u svojoj imovini imati digitalnu imovinu, kao ni instrumente povezane s digitalnom imovinom, niti uložiti u kapital tih institucija mogu biti u digitalnoj imovini. Izuzetno, NBS-u je dato ovlaštenje da propiše uslove pod kojima i način na koji finansijske institucije pod njenim nadzorom mogu ulagati u digitalne tokene koji imaju odlike finansijskog instrumenta ili koji se koriste isključivo u svrhu ulaganja.

#### **5. Založno pravo na digitalnoj imovini.**

Zakonom je predviđena moćnost zalaganja digitalne imovine i to radi obezbeđenja novčanog potraživanja u domaćoj ili stranoj valuti ili nenovčanog potraživanja izraženog u digitalnoj imovini a na osnovu ugovora o zalozi na digitalnoj imovini čija je sadržina predviđena samim Zakonom.

Trenutak sticanja založnog prava na digitalnoj imovini jeste trenutak upisa u registar založnog prava koji će voditi pružalac usluga povezanih s digitalnom imovinom koji ima dozvolu nadzornog organa za vođenje registra založnog prava na digitalnoj imovini, te za čuvanje i administriranje digitalne imovine za račun korisnika i sa tim povezane usluge.

Zakon takođe detaljno reguliše i način namirenja založnog poverioca iz založene digitalne imovine.

Konačno, zanimljivo je da, iako institut fiducije ne postoji u našem pravu, Zakon reguliše fiduciju na digitalnoj imovini te propisuje da se ugovorom o fiduciji digitalne imovine fiducijarni dužnik – fiducijant obavezuje prema fiducijarnom poveriocu – fiducijaru da na njega, u svrhu obezbeđenja potraživanja, prenese pravo svojine na digitalnoj imovini, a fiducijar se obavezuje da, u skladu sa tim ugovorom, primljena ili

In addition, the Law stipulates that capital of financial institutions under the supervision of the NBS cannot include digital assets nor instruments related to digital assets, nor digital assets can be a contribution in such institutions. Exceptionally, NBS is authorized to prescribe the conditions under which and the manner in which financial institutions under its supervision may invest in digital tokens that have the characteristics of a financial instrument or that are used exclusively for investment purposes.

#### **5. Pledge on Digital Assets.**

The Law explicitly provides the possibility of establishing a pledge on digital assets in order to secure a monetary claim in domestic or foreign currency or a non-monetary claim expressed in digital assets by concluding a pledge agreement whose content is determined by the Law.

The moment of acquiring the pledge on digital assets is the moment of registration the pledge in the register maintained by a provider of services related to digital assets, licensed by the supervisory authority to maintain a digital assets pledge register, and for storing and administrating digital assets for the user's account and for related services.

The Law also regulates in detail the manner of settling the pledgee from the pledged digital assets.

Finally, interestingly, although the institute of fiduciary ownership does not exist in our law, the Law prescribes that fiduciary on digital assets is regulated by the digital assets fiduciary agreement. According to such agreement, the fiduciary debtor is obliged to transfer to the fiduciary creditor the ownership on digital assets in order to secure the claim and on the other hand the fiduciary creditor is obliged to return the received or

ekvivalentna sredstva obezbeđenja vrati fiducijantu po izvršenju obezbeđenog potraživanja, odnosno istovremeno s tim izvršenjem.

## **6. Kaznene odredbe.**

Zakonom su utvrđene prilično visoke novčane kazne za subjekte za koje se utvrdi da nisu postupili u skladu sa odredbama Zakona i podzakonskih akata uz propisivanje kriterijuma za utvrđivanje visine novčane kazne. Tako se, shodno Zakonu, subjektu nadzora ne može izreći novčana kazna manja od 100.000 dinara ni veća od 5.000.000 dinara, a članu uprave i rukovodiocu subjekta nadzora ne manja od 30.000 dinara ni veća od 1.000.000 dinara.

Osim novčane kazne, Zakonom je propisano da nadzorni organ u ovom slučaju može prema subjektu nadzora preduzeti i neku od sledećih mera: 1) uputiti preporuku, 2) uputiti pismenu opomenu, 3) izreći naloge i mere za otklanjanje utvrđenih nepravilnosti i 4) doneti rešenje o oduzimanju dozvole za pružanje usluga povezanih s digitalnom imovinom, uz ostavljanje nadzornom organu diskrecionog prava da odlučuje o meri koju preduzima prema subjektu nadzora.

Zakon takođe, predviđa i dva krivična dela u vezi sa digitalnom imovinom, za čije najteže oblike je kumulativno propisana novčana kazna i kazna zatvora do pet godina. Pokušaj ovih krivičnih dela je takođe kažnjiv.

## **7. Zaključna razmatranja.**

Samo donošenje Zakona nesumnjivo predstavlja pokušaj daljeg razvoja digitalnog društva u Republici Srbiji. Međutim, iznenađuje činjenica da Zakonom nije uopšte nije regulisana oblast tzv. rudarenja

equivalent collateral to the fiduciary debtor after the execution of the secured claim, i.e. simultaneously with that execution.

## **6. Penalty Provisions.**

The Law stipulates fairly high fines for entities that are not in compliance with the provisions of the Law and bylaws and also prescribes criteria for determining the amount of the fine. Thus, according to the Law, a subject of supervision cannot be fined less than RSD 100,000 or more than RSD 5,000,000, and a member of the management or the head of the subject of supervision cannot be fined less than RSD 30,000 or more than RSD 1,000,000.

In addition to the fine, the Law determines that in such case the supervisory authority may take some of the following measures against the subject of supervision: 1) send a recommendation, 2) send a written warning, 3) issue orders and measures for elimination of identified irregularities and 4) issue a decision on revoking the license for the provision of services related to digital assets. In this regard, the Law provides the supervisory authority with discretion to decide on the measure it takes against the subject of supervision.

The Law also defines two criminal offences related to digital assets. The most severe forms of these criminal offences are punishable cumulatively by fine and imprisonment of up to five years. Attempts of these criminal offences are also punishable.

## **7. Key Takeaways.**

The adoption of the Law undoubtedly represents an attempt for further development the digital society in the Republic of Serbia. However, it is surprising that the Law does not even regulate the so-

kripto valuta koja je u mnogim državama sveta striktno regulisana.

called cryptocurrency mining, which is in many countries strictly regulated.

Svakako, praksa će pokazati u kom delu Zakon treba da bude izmenjen i/ili dopunjen kako bi na sveobuhvatan način regulisao oblast digitalne imovine te da li će rešenja predviđena Zakonom moći da uspešno budu sprovedena u praksi.

Certainly, the practice will show in which part the Law needs to be amended and/or supplemented in order to comprehensively regulate the area of digital assets and whether the solutions provided by the Law can be successfully implemented in practice.

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