Korpus Prava

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Analytics

Tax & Law Journal for Top Executives

ICOnomy

Co-publisher

МГЮА

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МОСКОВСКАЯ ГОСУДАРСТВЕННАЯ ЮРИДИЧЕСКАЯ АКАДЕМИЯ

МГЮА

Dear readers,

Welcome to the summer edition of our corporate journal “Korpus Prava.Analytics”. This edition is dedicated to cryptocurrency and all related matters.

The hype around ICO is growing with each passing year and draws the attention of not only people connected with the IT-world, but also those people who have never associated themselves with one. Our experts reviewed risks attributable to ICO, as well as key aspects which should be considered upon the project preparation.

Russia is likely to join the list of countries that recognized bitcoin at the national level. In the near future, we will observe transformations of the Russian legisla-

tion related to development of digital tendencies, as shown by the judgement of the Ninth Arbitration Court of Appeal dated May 7, 2018, according thereto the court recognised cryptocurrency as property. This edition covers draft laws that may be considered the first attempt to legalize blockchain technologies in Russia. Such draft laws have already been submitted for consideration to the State Duma.

Our managing director of the audit practice Igor Chaika reviewed issues of cryptocurrency classification for accounting purposes (both Russian Accounting Standards and IFRS), and the accounting procedure for cryptocurrency in the Russian accounting.

We are pleased to introduce Estonia as the European oasis for the cryptocurrency market. Our Estonian partners shared information on the regulation and taxation of cryptocurrency in Estonia, which we hope to be beneficial and interesting for you.

The summer edition includes articles covering other topics non-related to blockchain technologies. For example, it has the article covering the topical issue of the second stage of capital amnesty. You will also learn everything about the Law on Syndicated Lending and will be kept up to speed with the latest changes to the Federal Law, which simplified the procedure of state registration.

We hope each reader will find something useful in this edition. As always, we welcome your questions, requests and feed-

back. Feel free to contact us in any convenient way.

See you next time with
“Korpus Prava.Analytics”!

Artem Paleev
Managing Partner
Korpus Prava


a hot stove

Founder and Publisher

Korpus Prava
LAW & TAX

МОСКОВСКАЯ ГОСУДАРСТВЕННАЯ ЮРИДИЧЕСКАЯ АКАДЕМИЯ
МГЮА

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Korpus Prava
LAW & TAX

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REVIEW OF THE CHANGES TO THE FEDERAL LAW «ON STATE EGISTRATION OF LEGAL ENTITIES AND INDIVIDUAL ENTREPRENEURS»

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The first regulatory act any business participant (whether a legal entity or an individual entrepreneur) faces in Russia is the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs".

Many participants are likely to have fresh memories on how hard it was sometimes to "pass on" any changes to details of a legal entity. The highlight of the whole procedure was the refusal of a competent authority to register changes, which would consequently lead to another payment of the state fee for reapplication and, contrary to common sense, to the preparation of the whole set of documents, even though the fault was identified in the registration form only.

Federal Law No. 312-ФЗ dated 30.10.2017 "On Introduction of Changes

to the Federal Law "On State Registration of Legal Entities and Individual Entrepreneurs" in Relation to Cooperation between the Registration Authority and Multifunctional Centers of State and Municipal Services upon State Registration of Legal Entities and Individual Entrepreneurs" introduces a number of changes simplifying the process of state registration from 2018 onwards.

Changes shall be implemented in two stages. The first part of changes has already been effective since April 29, 2018.

Clarification of definitions

The legislator clarifies that e-documents filed for registration shall be signed not only by e-signature, but by an enhanced certified e-signature. Hitherto, this clause caused certain confusion. First-

time applicants used to file their documents signed by an ordinary e-signature to the Federal Tax Service Inspectorate and receive a refusal. However, now this discrepancy has been resolved.

Apart from these clarifications, the law introduces a more detailed procedure of cooperation between an applicant, multifunctional center, notary, Public Services portal, and tax authority itself.

Besides, the wording "incorporation documents" was replaced with the wording "incorporation document" throughout the whole regulatory act. In 2001 (when the law was adopted), incorporation documents included agreements made by participants. Now, the only

document of this kind is the Articles of Association, therefore, the legislator cancelled the plural form of the term.

Legal entity may be registered via multifunctional centers

Since April 29, 2018 tax authorities and multifunctional centers have to change to electronic communication upon state registration of legal entities and individual entrepreneurs with no hard copies made. It will speed up the receipt of registration results by applicants, as the process will not depend on how fast a multifunctional center could deliver documents to a tax authority and then get its response. Therefore, an applicant applying to a multifunctional center for state registration may expect to get its

response within the same time period as stated for applying to a tax authority (three business days for initial registration).

Electronic communication

One of the most significant changes effective as of April 29, 2018 covers the procedure of the document receipt after state registration. Thus, now documents related to state registration of legal entities and individual entrepreneurs shall be sent to an applicant by a registration authority in the form of an e-document.

The provision is made for e-documents signed with an enhanced certified e-signature to be sent to an e-mail address of a legal entity or individual entrepreneur registered in the relevant state register, or to an e-mail address specified

by an applicant upon filing documents to a registration authority.

The term relevant state register has been clarified neither by the legislator nor by a tax authority itself. We believe that e-mail addresses will be still kept in state registers of legal entities / individual entrepreneurs and used as contact information. The legislator specifies no obligations for registration of such address in any resources or address registration in the name of a legal entity.

It should also be noted, that the practice of filing resolutions on state registration of legal entities in the form of e-documents by a tax authority has already been set out in a number of court orders:

Specifically, it is stated that upon admission to a registration authority of documents specified by the federal law[1] in

the form of e-documents signed by an e-signature via public data and communications networks, including the Internet, and Public Services Portal of the Russian Federation, as well as upon including information provided for by sub-clause "в. 1", clause 1 or sub-clause "д. 1", clause 2, article 5 of the federal law[2] in the application on state registration, the resolution on refusal of state registration shall be sent in the form of an e-document to an e-mail address specified by an applicant. Thereupon, a registration authority is obliged to provide a document specified therein as a hard copy upon the relevant applicant's request[3].

1. Federal Law No. 129-ФЗ dated 08.08.2001 "On State Registration of Legal Entities and Individual Entrepreneurs".
2. Federal Law No. 129-ФЗ dated 08.08.2001 "On State Registration of Legal Entities and Individual Entrepreneurs".
3. Judgement of the Nineteenth Arbitration Court of Appeal dated 02.09.2015 on case No. A48-5411/2014.

We should also note that although no direct obligation on registering e-mail address details in the Unified State Register of Legal Entities is determined, there is a possibility that in future such details will be required for registering to ensure efficient cooperation with a tax authority. However, the absence of such registered address by now is not critical, because after state registration, documents will be sent, among others, to an e-mail address specified by an applicant upon filing documents to a registration authority[4].

In case of filing documents to a registration authority by mail, by hand or in the form of e-documents signed with an enhanced certified e-signature, a registration authority upon the applicant's request shall provide hard copies certifying the content of e-documents in relation to state registration to an ap-

plicant (applicant's representative). Given the absence of established legal practice, it is considered reasonable to request hard copies until relevant clarifications are introduced by a tax authority.

Besides, in case of filing documents to a registration authority through a multifunctional center or in case a notary provides documents upon the applicant's request, they are additionally sent in the form of an e-document signed with an enhanced certified e-signature to a multifunctional center or notary respectively. Upon the applicant's request, multifunctional centers also provide an applicant with a hard copy certifying the content of an e-document received from a registration authority. A notary shall also upon the applicant's request provide an applicant with documents received from a registration authority in relation

to state registration in the form of a hard copy, after notarizing the equal force of a hard copy and an e-document in accordance with the law on notaries.

One of the best news is the fact that from October 1, 2018 onwards, upon reapplication for state registration due to improper set of documents or document execution errors, no state fee shall be required.

Moreover, certain changes will be implemented in relation to notification on the future registration. At the moment, in order to monitor whether any legal entity or individual entrepreneur filed documents for registration to a tax authority you are required to check the website of the Federal Tax Service of Russia and enter required details. From October 1, 2018 onwards, the website will provide an opportunity to make a sub-

scription and receive this information via e-mail. This new feature will allow interested parties to timely file to a tax authority any objections to the future registration of details in the Unified State Register of Legal Entities.

New additions to the list of reasons for registration refusals

Two new items were introduced to the list of reasons for registration refusals, which shall become effective as of October 1, 2018.

First of all, it is a failure to comply (violation) with the document execution requirements specified by the Federal Tax Service of the Russian Federation. It primarily covers the format of application/notices and their content. For example, failure to specify e-mail address, tele-

phone number, Taxpayer Identification Number (INN), passport details, lowercase lettering, etc[5].

Besides, the law introduces misrepresentation as the reason for registration refusals. It may include any misstatement or erroneous information, i. e. errors in the dates and issuing place of the passport, misspelling of names or surnames, wrong document code, etc[6].

Dismissal of an appeal

From October 1, 2018 onwards, the list of reasons for dismissal of an appeal against regional Federal Tax Service Inspectorates shall be enlarged. However, this clause is very vaguely worded. Thus, a superior tax service will dismiss an appeal, if an applicant corrects errors and files the same documents again with no

state fee paid after the state registration refusal.

Considering the above-mentioned changes, one may conclude that since this year the process of communication between a tax authority and an applicant has become much simpler. Now all documents may be received via e-mail.

The number of incorporation documents filed for registration and reorganization of a legal entity is reduced, while the list of reasons for refusal (upon filing documents which violate requirements or documents containing misrepresentation) is enlarged.

For the first time ever, the law introduces an opportunity to file documents again within three months after the refusal, and no state fee is required to be paid again. Moreover, there is no need to file a full set of documents again, as one

shall file only those documents where errors were identified, which saves a lot of time and cuts applicant's costs.

As far as future changes to standard registration forms for changes to details of a legal entity (P13001, P14001) are concerned, we confirm that no changes were provided by a tax authority yet. Meanwhile, we believe that other changes may be introduced, but only after all the above-mentioned changes become fully effective. A

LAW ON SYNDICATED LENDING: IMPORT SUBSTITUTION IN BANKING

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Syndicated credit (loan) is a financial instrument, which provides for getting loan-based funding from several persons and sharing rights, obligations and risks attributable to lending among them. Federal Law No. 486-ФЗ dated 31.12.2017 "On Syndicated Credit (Loan) and Changes to Particular Legal Acts of the Russian Federation" became effective as of February 1, 2018, and basically laid the legal groundwork for its implementation in the Russian legal environment.

Syndicated loans and credits are granted to borrowers whose needs exceed financial resources of separate lenders.

Although loan granting by a group of lenders has never been banned as such, and was governed by the general law, granting of syndicated loans in accordance with the laws of the Russian

Federation was considered an exception rather than a general rule.

Russian market of syndicated loans

In recent years, syndicated loans were granted on an active basis, but they were mainly governed by international agreements and foreign legislation. Participants of relevant legal arrangements were primarily large raw materials monopolies and banks with prevailing or full state participation. According to experts, Russian entities generally get syndicated loans either directly from foreign investors, or by integrating a specifically established foreign company into the funding plan.

The largest most renowned syndicated loans granted in recent years to

Russian business representatives were as follows:

- syndicated loan for USD 2 billion with the maturity of 5 years granted to OJSC Mechel in 2010;
- syndicated loan for EUR 3.1 billion with the maturity of 16 years granted to NordStream consortium to implement Nord Stream project in 2010.

In 2017, grantees of the largest syndicated loans in Russia included such monopolies as Russian Railways, Norilsk Nickel, Uralkali, Siberian Coal Energy Company, RUSAL, Metalloinvest Holding Company. Significant grantees include only one commercial bank incorporated in Russia — Credit Bank of Moscow, and one IT-related representative — foreign members of VimpelCom-VEON group.

Russian commercial banks and large production holding companies are often granted syndicated loans by foreign investment banks and other financial institutions. They attract such funding for more efficient principal activities and expanding their network or business upgrade[1].

In 2017, according to CBONDS ranking data, the largest arrangers of syndicated loans in CIS countries were Sberbank of Russia and Gazprombank.

Thus, Sberbank holding its position in TOP-20 for seven years managed to arrange nine syndicated loans for the total amount of USD 645 million, which made up 4.11% of the total market of syndicated lending. Gazprombank made

1. For example, PJSC Credit Bank of Moscow has been using this instrument of financing since 2003: https://mkb.ru/investor/debt/syndicated-loans.

the ranking for the first time and forced out two other representatives from Russia, i.e. VTB and Alfa-Bank. During this period, it managed to arrange five deals amounting to USD 458 million, or 2.92% of the total amount of granted syndicated loans. For reference, ranking leader ING Bank arranged eighteen deals amounting to USD 1.383 billion, or 8.81% of the total market of syndicated lending[2].

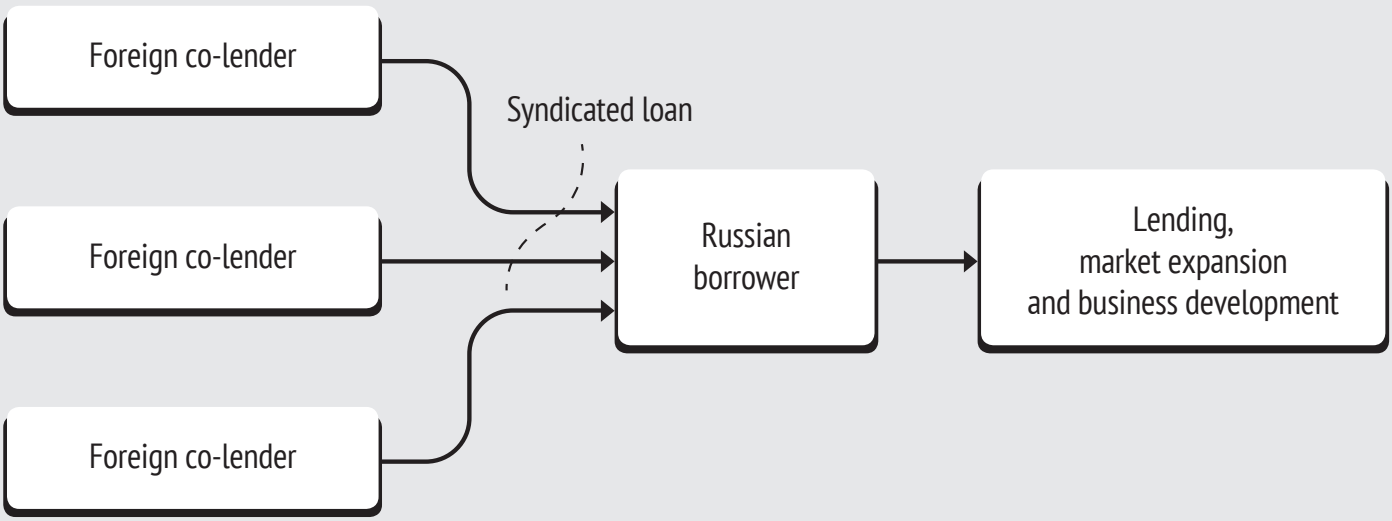
Growing attention to syndicated lending in Russia and under Russian legislation may have resulted from imposition and further expansion of sanctions against Russia. Sanctions made it significantly more difficult or even impossible for a number of entities to get funding from foreign banks. However, RBK experts agree that large borrow-

2. http://loans.cbonds.info/rankings/volume/243#cis.

ers will continue to get funding from foreign entities, though they will refocus on Chinese and other Asian lenders[3]. Nevertheless, this restriction of funding from European banks empowers Russian banks to enter the pool of arrangers or co-lenders for syndicated loans.

According to The Wall Street Journal estimates, in 2018, with the new Law effective the share of non-bank institutions possibly related to the private sector of the economy in this business shall significantly increase. The volume and proportion of participants in the Russian market of syndicated lending from 2015, and estimated figures for 2018 are presented in the chart below.

3. https://www.rbc.ru/finances/18/04/2016/57109e219a79474c7fba44af.


Foreign co-lender
Foreign co-lender
Foreign co-lender
Syndicated loan
Russian borrower
Lending, market expansion and business development

Legal regulation of syndicated lending before February 1, 2018

Up until recently, the Russian legislation had no law provisions governing rules and terms of such financial instrument as a syndicated loan. Syndicated lending was governed solely by general provisions of the Civil Code related to loan and credit agreements. However, it did not stop the Bank of Russia to adopt guideline regulations clarifying the procedure of relevant financial transactions[4].

The key risk, as seen by experts in this case, deals with the qualification of relations between co-lenders as relations of partnership (cooperation),

4. For example, the term syndicated loan was widely used in Regulation of the Bank of Russia No. 139-*И* dated 03.12.2012 "On Bank Statutory Requirements".

"and consequently, the risk of applying rules governing simple partnership agreements". While describing major difficulties participants of lending syndicates may face in the legal vacuum environment, Dentons specialists note that "In this case a borrower could make claims against one of syndicate participants for the total loan amount granted by all its participants. Besides, there is no doubt that special rules for participants' withdrawal from the partnership would hinder the development of the secondary market for credit claims, and imperative rules governing activities of partners would limit flexibility of lenders when making decisions"[5]. Considering total loan amounts granted in the relevant

5. https://www.dentons.com/ru/insights/alerts/2018/march/7/syndicated-loans-march-ahead.

markets, even potential risks identified by analysts should be taken into account. However, we should note that we failed to discover any evidence verifying feasibility of these concerns. Despite everything, the absence of any legal base for the syndication of debts made it difficult to use their advantages in full.

Rules for syndicated lending since February 1, 2018

The new law provided regulation for legal arrangements of the largest and most significant syndicated loans and credits. Their significance is determined by the parties of legal arrangements, as well as the total amount of funding.

The law determines major differences between the syndicated credit (loan) and

other types of loan-based funding. They include:

1. Multiple persons acting as the lender.
2. Coherence of lenders.
3. Individual terms and conditions for loan granting by each lender.
4. Specifics of the borrower and co-lenders.
5. Obligatory interest charges and payments.

Parties of syndicated lending[6]

As seen from the list above, syndicated loan relations may be established only between legal entities, i.e. this instru-

6. Article 2 of Federal Law No. 486-ФЗ dated 31.12.2017 "On Syndicated Credit (Loan) and Changes to Particular Legal Acts of the Russian Federation".

ment may be deemed strictly professional by default. Besides, it should be noted that it cannot be used for transactions with lenders registered in Russia, but not included in the list above. The last clause regarding other Russian legal entities is worded in a way that requires a special law reference for a particular legal entity to be able to grant syndicated loans. As of the date of this article, no such references were introduced, therefore, we may only speculate what items the legislator plans to include in this clause. Those are likely to be residents of any special economic zones or organizations of certain value as investment sources. However, we should note that foreign funding may be attracted from any foreign organizations, with sufficient legal capacity being the only requirement.

The law provides for several specific participants of syndicated loan agreements:

1. Arranger of the syndicated credit (loan) is the future co-lender that bears fee-based liabilities for the preparation of a syndicated loan agreement. One or more persons may act as the arranger, and each of them will further become a lender[7].
2. Loan manager is one of the co-lenders that keeps the register of syndicated lenders, records all amounts of money granted to the borrower by each syndicated lender, communicates with the borrower, and performs any other organizational

7. Article 3 of Federal Law No. 486-ФЗ dated 31.12.2017 "On Syndicated Credit (Loan) and Changes to Particular Legal Acts of the Russian Federation".

and technical functions required to exercise rights and obligations of the parties. Thus, it is the manager that receives on its account amounts of money from the borrower as the repayment of the principal amount and interest thereon, and distributes them among co-lenders in accordance with the requirements of the agreement. Unlike the arranger, the manager shall be appointed for any syndicated loan relations. However, only a credit institution, state corporation Bank for Development and Foreign Economic Affairs (Vnesheconombank), foreign bank or international financial institution may act as the loan manager[8].

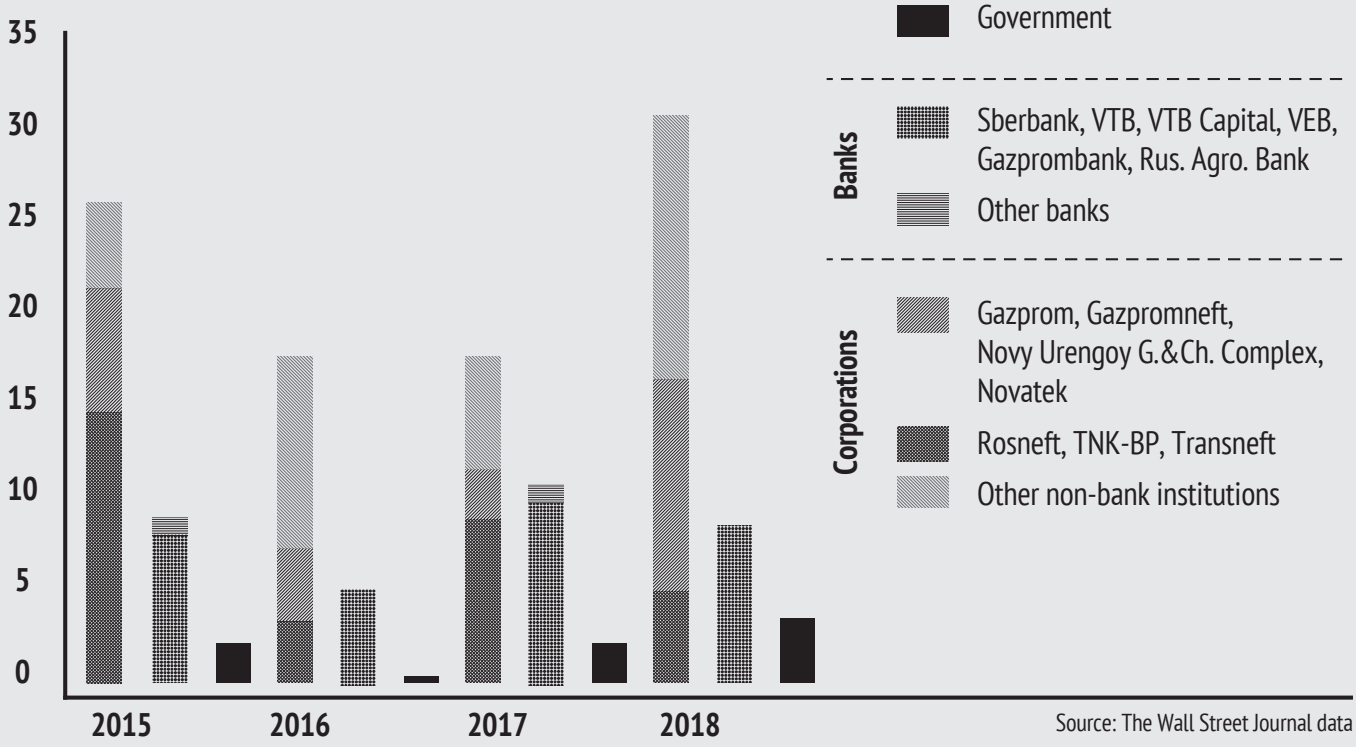
8. Article 4 of Federal Law No. 486-ФЗ dated 31.12.2017 "On Syndicated Credit (Loan) and Changes to Particular Legal Acts of the Russian Federation".

Therefore, it is impossible to enter into a syndicated loan agreement in the absence of at least one professional participant of the financial market.

3. Pledge manager is the person acting for and behalf of all lenders which entered into the agreement, that undertakes to enter into the pledge agreement with the pledgor and/or exercise all rights and obligations of the pledgee under the pledge agreement[9]. The loan manager may act as the pledge manager, if it is duly authorized by the syndicate of lenders[10].

9. Article 356 of the Civil Code of the Russian Federation.
10. Clause 3, article 4 of Federal Law No. 486-ФЗ dated 31.12.2017 "On Syndicated Credit (Loan) and Changes to Particular Legal Acts of the Russian Federation".

Syndicated Loans



Source: The Wall Street Journal data

The future of syndicated lending

According to the statistics presented in this article, analysts detect growth tendencies for the syndicated lending market primarily due to Russian commercial banks, which by acting jointly may partially satisfy loan-based funding needs of large business. Therefore, in the nearest future credit institutions will start offering new and objectively more advanced lending instruments to their clients. Besides, a part of Russian banks legal entity clients may be involved as direct lenders in projects that prioritize domestic funding.

Law provisions now do not come across as regulations that will cover a significant part of entities. Nevertheless, the national legal system received

a modern instrument that may make it possible to transfer a part of large financial projects to the Russian jurisdiction. This fact gives Russian-speaking lenders and borrowers a chance to make such guarantee-based deals, and with no involvement of foreign lawyers, consultants and attorneys required for their structuring, execution and dispute settlement.

In any case, we hope that the Russian legislator will also give a chance to use similar regulations for funding with no participation of credit institutions. A

WHAT TO KNOW BEFORE GETTING INTO ICO

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The hype around ICO grows with each passing year and attracts not only a limited number of people connected in any way with the world of digital technologies, but also those people who have never associated themselves with one.

On the one hand, the appeal for investors is explained by the promised super-efficiency of projects. On the other hand, projects discovered a new instrument for attracting limitless investments.

In practice ICO participants face a great number of issues related to legal regulations, technical support and business planning. The main goal for a participant is to clarify all these issues in time. It is important for investors to be able to estimate investment potential of the project, and it is necessary for

projects to ensure their feasibility and competitive ability in the market.

Let's start with the basics: what is ICO?

ICO (Initial Coin Offering) is an actual emission of tokens for payment purposes by any project. In other words, a project issues its payment instrument which will be acceptable in its ecosystem.

What is the "project" that issues tokens? It is a certain issuer, generally, a legal entity.

Traditionally, at the basis of any project there are founders with their original idea. It is much easier to administer a project through a legal entity where creators also act as founders (shareholders). Therefore, founders face certain issues

related to the establishment and functioning of this legal entity, specifically.

Incorporation jurisdiction

Upon choosing jurisdiction, one should consider numerous aspects, both obvious (such as tax planning, incorporation cost and maintenance cost) and seemingly unobvious (complicated implementation of corporate procedures and protection from fraud). For example, company incur, and quickly implement corporate procedures. However, under certain off-shore jurisdictions the obligation to keep the shareholder register is vested upon the company director, rather than state authorities, therefore, shareholders fully depend on bona fide of the company administrator.

Correlation between control and equity share held by shareholders.

This means not only the number of stocks or equity shares, but a right to influence company decisions (shares may be voting/non-voting).

Profit distribution procedure

As a rule, standard forms of incorporation documents provide for profit distribution pro rata shares held, however, alongside with ordinary shares one may issue preference shares, and although holders thereof have no votes, they have first claim to company dividends.

Shareholders' agreement

This agreement serves as an additional instrument to secure inner arrangements between shareholders.

Options

In certain cases there is a need to attract large investors to the project by giving them an opportunity for equity participation in future, rather than providing them with tokens. In this case, such instrument as an option agreement may be appropriate.

Furthermore, given the commercial objective of the project, the company obviously needs to open a bank account in order to settle payments with counterparties. Nowadays, opening bank accounts is not an easy task. As a rule, apart from a standard set of company

documents, banks request information on counterparties, business plan, estimated cash flows, etc. Thus, the more accurate the project planning is the easier and faster it is to open a bank account. It might be reasonable to collect information on the bank's business reputation, availability of payment settlement with potential counterparties (certain banks do not settle payments from Russia).

Obviously, apart from the so-called fiat money in banks and crypto-assets in e-wallets, the company is supposed to have other assets (tangible: office, servers; intangible: website, logo/trade mark, etc.). Consequently, there is a great number of issues from economic efficiency of renting an office and acquiring servers to the protection of intellectual property rights, represented specifically by a trade mark, website content.

In view of the above, any project needs to prepare a business plan for ICO, which would contain general issues related to project objectives, its market mission, original nature, as well as specific goals (for example, minimal viable product, budget plan, estimated use of tokens in the ecosystem, token value).

Token economics (or the widely used Internet term tokenomics) is very important, because a token may be accepted as:

- prepayment for goods/works/services, for example, a platform sells its tokens, and one may acquire something at the same platform using these tokens (such tokens are known as utility tokens);
- security (security tokens), in this case a project offers to acquire a token, and in future an investor is

granted a right to profit. In this case a project will have to comply with the regulation of the securities market depending on the jurisdiction of the issuer and investors. Here one may apply some knowledge of Howey Test and other similar tests.

Despite the free scope for imagination caused by the absence of precise international ICO regulation, there are tried-and-tested practice guidelines that make it possible to implement ICO and various projects.

Particularly, legal framework for ICO includes the following documents:

- Whitepaper is a document posted on the project website, which is available for general public and includes marketing research of similar products in the market, describes

the mechanics of the project and its advantages, answers the question of its innovative nature. Given the fact that investors may have different levels of knowledge and the whitepaper is quite a complicated document, which describes various aspects of the project, certain websites offer several versions of it, e. g. full version and short version (containing basic principles and schemes).

- Roadmap is a document posted on the project website, which is available for general public and gives an overview of the process history: emission, token circulation and project implementation, growth rate.
- Token sale agreement is a document posted on the project website, which

is actually a sale and purchase agreement for tokens.

- Terms and conditions, in order not to complicate a token sale agreement, basic terms and conditions of offering, circulation, etc. are set out in a separate document.
- Consent to personal data processing is a document posted on the website and signed individually by each investor.
- Data protection policy is a document posted on the website, which allows investors to learn about the protection policy for submitted personal data.
- Legal opinion on the token nature is an in-house document for an is-

suer, which specifies the legal nature of the token (utility/security).

- Cyber security audit procedure is the information on the procedure, choice of auditors (dependent/independent); posting of the auditor's report is possible.

First two documents shall contain information on the token distribution procedure and give a clear idea on the token emission and circulation process, including:

- total amount of tokens;
- amount of tokens planned for ICO;
- amount of tokens planned for holding up by the team and restrictions;
- offering period;
- restrictions for investors;

- soft cap / hard cap;
- stock exchange listing (if any), list of stock exchange (if any);
- risk hedging.

Without any doubt, innovative nature and absence of similar ideas has no small share in the project success, however, these are not the only details project creators and investors should consider. They both should acknowledge risks that arise from the absence of national and international regulation of this sphere, as mentioned already in this article. On the one hand, it gives freedom to implement projects, but on the other hand, it provides no protection of investors' or project founders' interests.

Investors risk investing money in a non-viable or fraudulent project (scam),

which aims to attract funds with no further development of its goal.

Besides, project creators may deem involvement of technical, law or marketing specialists as excessive, and may prefer taking a chance and hoping that their idea is good enough by itself. In this case there is a risk that a project will not attract enough investments, as after seeing the project's "cover" investors may deem this project as untrustworthy or unpromising. But even if they managed to attract enough funding, it is far more difficult and costly to adjust ill-conceived aspects along the way, for example, if the issuing company is registered under inappropriate jurisdiction. Moreover (which is generally overlooked in the initial stage, because at that point project creators have nothing to share, but only have an inspiring idea that unites all

project participants), if the idea is really good and the project generates profit, there appears an urgent need to share responsibilities and powers to make key decisions. In the company this process is regulated by incorporation documents at best, so parties have to appeal to courts, which not only entails significant litigation expenses, but also hinders the ordinary course of project.

Apart from the above-mentioned economic risks, there are risks of administrative or criminal liability.

In view of the above, it is important to prepare the project to ICO with care before entering the market. Nowadays, ICO has proved itself as an efficient technique of investment attraction, but the future of this technique depends a lot on its legal regulation both on the state (national) and international levels. A

IT IS PROPERTY, AFTER ALL!

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On May 7, 2018, the Ninth Arbitration Court of Appeal delivered a judgement that caused a great stir to the "digital world". Cryptocurrency was recognized as property that could be foreclosed.

We must give credit to the audacity of the court, because at the moment there is no legal framework to support such decision, but the court delivered its judgement based on the current tendencies and upcoming legislative innovations.

Let's refer to the case history.

A certain Mr. C owned a huge amount of money to a certain company RT, LLC, which resulted in Mr. C being declared bankrupt. Afterwards, an ordinary procedure of property disposal took place. However, this procedure seemed ordinary only until a financial receiver decided to

include cryptocurrency owned by Mr. C into the bankruptcy estate.

Mr. C objected to such decision of the financial receiver and decided to file an appeal against this decision to the Arbitration Court for the City of Moscow. It must be noted, that the court took the debtor's side and dismissed the claims of the financial receiver.

The reasons of the court were as follows:

1. Cryptocurrency status is not defined. The legislation of the Russian Federation provides no definition or legal nature of cryptocurrency as of the date of the case court hearing.
2. Cryptocurrency exists solely in the cyberspace, and unlike real money, it is impossible to credit an account or e-wallet with cryptocurrency.

3. Cryptocurrency appears literally "out of the Internet", thus, emission of digital money is not secured by the state.

The court decided that cryptocurrency is a certain set of symbols and signs contained in some data system accessible via the internet through the use of special software.

The major argument against cryptocurrency was the fact that the court was unable to determine its category: property, asset, information or substitute.

Besides, the court considered Information of the Central Bank of Russia dated 27.01.2014 "On the Use of "Virtual Currencies", Particularly Bitcoin, in Transactions". Thus, the Central Bank points out that "virtual currencies" have no security or legally binding parties as-

sociated therewith. Transactions therewith are of speculative nature; they are carried out at the so-called "virtual stock exchange" and bear high risk of value loss.

The Bank of Russia warned individuals and legal entities (mainly, credit institutions and non-credit financial institutions) against using "virtual currencies" in exchange for goods (works, services) or cash in roubles or foreign currency.

According to Article 27 of the Federal Law "On the Central Bank of Russia (Bank of Russia)", emission of money substitutes on the territory of the Russian Federation is prohibited.

Given the anonymity of "virtual currency" emission by an unlimited number of persons and their use for transactions, individuals and legal entities may be involved, involuntarily inter alia, into il-

legal activities, such as money laundering or terrorism financing.

The Bank of Russia warned that the provision of exchange services of "virtual currencies" into roubles or foreign currency, as well as goods (works, services) to Russian legal entities would be regarded as potential involvement with dubious transactions in accordance with the legislation on money laundering or terrorism financing.

Besides, according to the Information of the Central Bank of Russia dated 04.09.2017 "On the Use of Private "Virtual Currencies" (Cryptocurrencies)", the Bank of Russia confirms its position declared in 2014; however, it points out that the Bank of Russia in cooperation with relevant federal state authorities monitors the cryptocurrency market and develops strategies to define and

regulate cryptocurrencies in the Russian Federation.

The Central Bank of the Russian Federation points out that most transactions with cryptocurrencies are carried out beyond the legal jurisdiction of the Russian Federation or the majority of other countries. Cryptocurrencies are not guaranteed or secured by the Bank of Russia.

Cryptocurrencies are emitted by an unlimited number of anonymous persons. Given the anonymity of virtual currency emission, individuals and legal entities may be involved into illegal activities, including money laundering or terrorism financing.

Transactions with cryptocurrencies bear high risks both during exchange transactions due to drastic exchange rate fluctuations, and during fund rais-

ing through ICO (Initial Coin Offering, a method of attracting individual investments through emission and selling of new cryptocurrencies/tokens to investors). The risks also include technological risks upon cryptocurrency emission and circulation and risks of reinforcement of rights to "virtual currencies". It may lead to financial losses by individuals and inability to protect rights of consumers of financial services in case of their violation.

Given high risks of cryptocurrency circulation and use, the Bank of Russia deems the access of cryptocurrencies and any other financial instruments nominated or associated therewith to circulation and use at on-exchange trading and clearing and settlement infrastructure of the Russian Federation for transactions with cryptocurrencies and deriva-

tive financial instruments thereupon as premature.

Therefore, the Bank of Russia draws the attention of individuals and other participants of the financial market to high risks upon the use and investments into cryptocurrencies.

The court considered all these arguments upon the judgement delivery, but it failed to consider the fact that back in 2017, President of the Russian Federation Vladimir Putin approved the list of orders following the meeting on the use of digital technologies in the financial sphere. Particularly, the Government of the Russian Federation and the Bank of Russia were ordered to make amendments to the legislation of the Russian Federation, which would define the status of digital technologies used in the financial sphere and their terms (including such terms

as blockchain technology, electronic letter of credit, digital pledge, cryptocurrency, token, smart contract) based on the obligatory nature of the rouble as the only legal means of payment in the Russian Federation.

It must be mentioned, that the work in this direction is in progress. Thus, on March 20, the draft law "On Digital Financial Assets" was submitted for consideration to the State Duma of the Russian Federation. This draft law covers basic terms regarding cryptosphere, permitted transactions and ICO procedure.

The key idea of the draft law worth mentioning for this particular case is recognition of cryptocurrency as property.

Thus, the draft law contains the following definition:

Digital financial asset is digital property created with the use of encryption

(cryptographic) instruments. Ownership rights to such property are certified by making digital records in the register of digital transactions. Digital financial assets include cryptocurrency, token. Digital financial assets are not legal means of payment in the Russian Federation.

The same definition is included in the draft law published on the website of the Ministry of Finance on January 25, 2018.

The Arbitration court delivered the court decision on the case under consideration on March 5, 2018, i. e. before submission of the draft law to the State Duma, but after the text of the future law, albeit in its initial unedited form, was available to the general public.

Obviously, the draft law is not the law, but the general tendency of future changes has already become clear. Was the Arbitration court allowed to rely on

those tendencies? The record shows that the Ninth Arbitration Court of Appeal took the liberty and set a precedent by declaring bitcoin property before the adoption of legislative innovations.

Recognition of bitcoin nationwide is the common tendency all over the world.

USA, Finland, Denmark, Estonia, South Korea, Japan, the Netherlands, Sweden recognize cryptocurrencies and support bitcoin-related start-ups.

All over the world, Russia included, there are exchange ATMs where anyone may acquire bitcoin online. However, most countries that recognize bitcoin on the state level point out that cryptocurrency is not considered a monetary unit.

There is another list of countries where cryptocurrency is banned, includ-

ing Bangladesh, Bolivia, Vietnam, Kyrgyz Republic, China, Ecuador.

Logically, Russia will join the first list, and in the nearest future we will observe transformations of the Russian legislation related to the development of digital tendencies, as shown by the judgement of the Ninth Arbitration Court of Appeal dated 07.05.2018. A

PROBLEMS OF CRYPTOCURRENCY REGULATION IN RUSSIA

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10 years ago, Satoshi Nakamoto published an article titled “Bitcoin: A Peer-to-Peer Electronic Cash System”. Now cryptocurrencies are considered one of the most promising technologies. Unfortunately, transactions with cryptocurrencies in Russia are not properly regulated, and what is more, they are hardly even reviewed.

Private money has always been in circulation, particularly the one generated by wars, acts of God, economic crisis, regional fights for autonomy (for example, Chechen naxar and Ural frank in the Russian Federation).

In our technologically advanced world private money was reborn due to online payment systems (e. g. PayPal, WebMoney, Yandex.Money (Яндекс. Деньги). Technologies helped to simplify the emission of private money and

expand its circulation. Around the same time, loyalty programs started to appear and issue limited means of payment, i. e. miles for plane flights, points for pay cards, as well as game currency which could be converted into real money.

The development of e-money made law-enforcement authorities concerned, particularly for the status of money emitting platforms and absence of control over the volume of private money emission. Moreover, e-money is exposed to failures, and there is a possibility of decline in demand for state money.

Therefore, certain measures were taken to reduce the above-mentioned risks by equating e-money to payment systems or banks with client identification, which caused restrictions of anonymous payments, limited access of legal entities to e-money platforms in

order to avoid “leaking” of private money to the settlement system, restrictions of platform powers to manage customers’ accounts.

By equating private money platforms to payment systems the government negated most of advantages inherent to private money. For example, a payment system working online may be located off-shore, but its attempts to create an independent payment system were shut down by the actions of law enforcement authorities and financial regulators.

By the 00s, the development of the Internet allowed to use decentralized structures, which came in handy with all the constant external pressure on the Internet. Decentralized networks spurred the development of decentralized file exchange services, anonymous dark net. Thus, application of decentral-

ized networks to the financial sphere was just a matter of time. The decentralized payment system turned out efficient, as transfers in this system required no intermediaries, and therefore, could not be cancelled or altered. The blockchain technology solved the problem of transaction data forgery, thus contributing to its advantages.

The blockchain technology may be described as follows:

- decentralized database;
- managed by the actions of participants, external influence is highly unlikely;
- open and anonymous;
- resistant to data forgery, transactions on behalf on any participant are impossible;

- active participants of the network (miners) are awarded with fees for network performance support.

All these advantages made the platform hugely successful, and cryptocurrency, called bitcoin, became the first implementation of this technology. Consequently, there appeared alternative cryptocurrencies (altcoins) and new decentralized blockchain-based platforms, e.g. Etherium.

Government reaction to the appearance of blockchain technology and cryptocurrencies differed throughout time:

1. Initial absence of reaction in 2012-2013.
2. Declared warnings against Bitcoin Foundation after the first bitcoin peak in 2013.
3. Discussions on the full prohibition in 2014–2016.

4. Resolution on the legalization of cryptocurrencies in 2017.

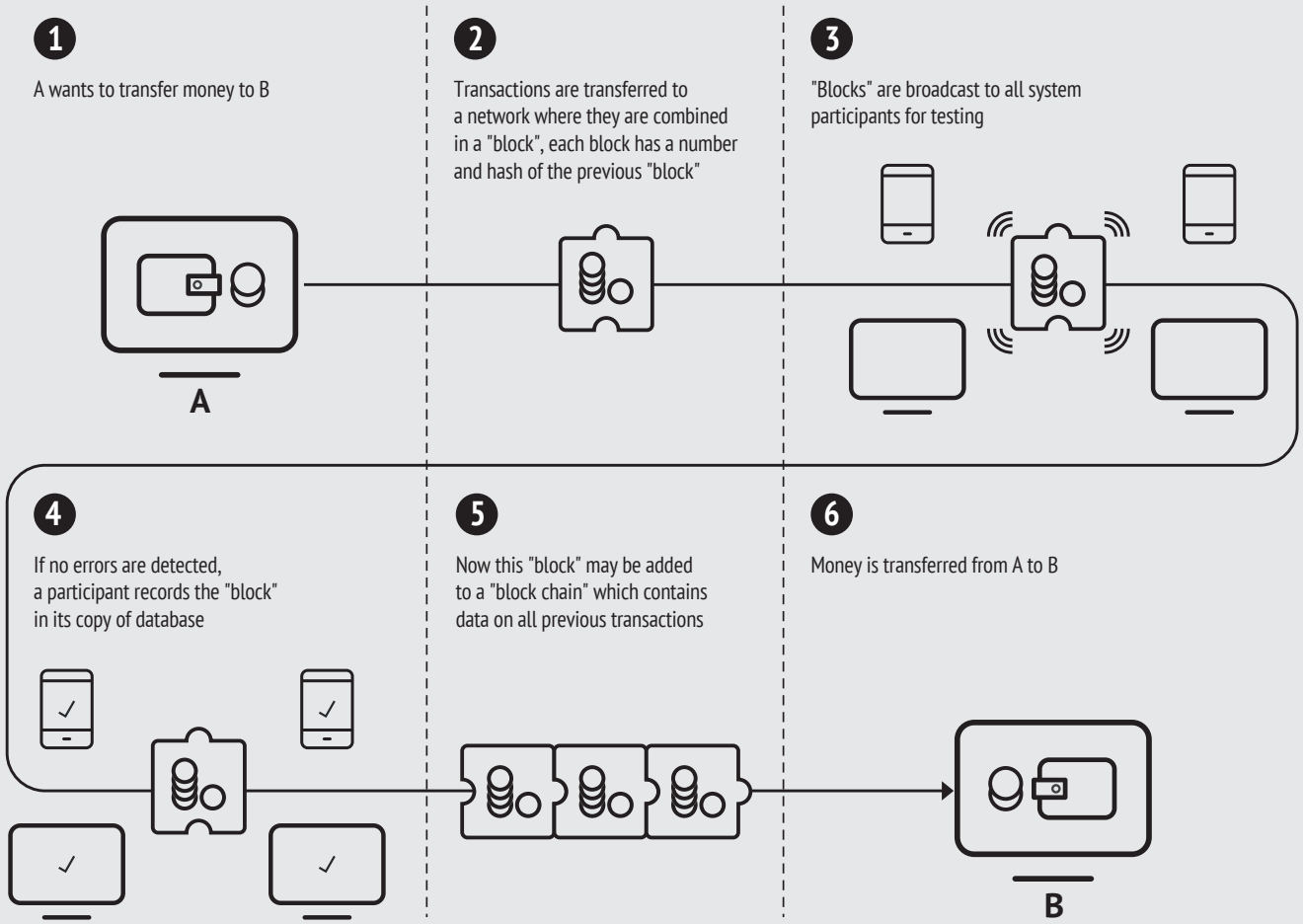
The scheme below presents mechanics of blockchain technology using cryptocurrencies as an example.

At the moment, first attempts to legalize the blockchain technology in Russia are underway. Thus, the Ministry of Finance submitted one draft law (developed by Anatoly Aksakov), which was registered with the State Duma on March 20, 2018, but the first reading of the draft law has not been scheduled yet. The draft law states that the maximum amount of investments from an uncertified investor to ICO shall be determined by the Central Bank. At the moment, the draft law received an official favourable feedback from the Government with the certainty of 90% chance of passing the draft law upon the first reading, and the

fact that this draft law will become a starting point for the blockchain technology regulation in Russia.

The second draft law was submitted by the same Anatoly Aksakov, Pavel Krasheninnikov and Vyacheslav Volodin. This draft law aims at making amendments to the Civil Code of the Russian Federation regarding the introduction of blockchain-related terms and recognition of tokens and cryptocurrencies as property. Law drafters determine cryptocurrency as a digital asset issued and recorded in the register in accordance with an algorithm. It is possible to exchange these assets for currency, but terms and conditions of such transactions are yet to be determined. The Government is expected to determine them together with the Central Bank.

Mechanics of blockchain (cryptocurrency)



This draft law is also very significant, for it may help to resolve the problem of cryptocurrency taxation by suggesting market cryptocurrency regulation, whereas Aksakov's draft suggests cryptocurrency regulation under the supervision of the Central Bank.

Both draft laws cover only the financial aspect, while the blockchain technology contributes to maximum transparency and accuracy in legally binding transactions. One of such blockchain-based projects tests Rosreertr upon the transaction registration. Moreover, blockchain is currently being tested for accounting during citizens' voting in the project 'Active Citizen'.

One of the key problems of cryptocurrency regulation is taxation. There are suggestions of charging interest against market participants, assigning block-

chain companies with a non-bank credit institution status, or extending the patent system to include miners. However, suggested regulation does not correlate with the current legislation. If blockchain is interpreted as an information system, then the technology inevitably falls under IT-legislation with its strict regulatory provisions. Therefore, in order to develop this technology in the Russian Federation, blockchain should be excluded from the definition of the information system.

Besides, there is one more problem related to individual and corporate liability for violations in the sphere of blockchain, cryptocurrency and illegal business activities. The draft law states that mining is a business activity limited by the level of energy consumption, which does not comply with the current

Criminal Code of the Russian Federation. Therefore, this problem shall be resolved; otherwise there is a risk of introducing a new business activity with no duly defined requirements.

In China the government pursues the policy of blockchain regulation and prohibition of cryptocurrencies, because the Chinese government believes that cryptocurrencies serve as the means of getting money out of the country. It appears that in case of full prohibition of cryptocurrency in China all Chinese capacities will move to Russia, as Russia is seen as a top-priority region for Chinese miners. However, a substantial barrier of moving to Russia is legal uncertainty regarding blockchain and cryptocurrency regulation. One should remember that moving equipment to the Russian Federation would become a large investment

to the country's economy, but it would require convenient terms of taxation. Now China alternatively considers Canada as a country with favourable conditions for miners. We currently observe the situation similar to off-shoring, when countries start fighting for capital that may be brought in by cryptocurrency. Given the economic downfall in Russia, it is vitally important to answer the question whether we will be able to enter this race or not, and if yes, whether we will be able to make it in time. A

ACCOUNTING OF TRANSACTIONS WITH CRYPTOCURRENCIES

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Cryptocurrency is not money. People tend to emotionally perceive various things and events. The appearance of such substance as cryptocurrency (hereinafter — CC) with such characteristics and features as the exchange rate, ability to be exchanged for fiat money (money with nominal value determined and guaranteed by the state), limited use as a means of payment, creates a sustainable image of CC as money. With no disregard to the above-mentioned CC features, it should be remembered that recognition of CC as money for accounting purposes is possible only upon compliance with a number of criteria specified by the civil law and legislation on accounting (Law on Accounting and IFRS). This article covers issues of CC classification for accounting purposes (Russian Accounting Standards and

IFRS), as well the accounting procedure for CC in the Russian accounting.

Firstly, we should clear up some terms. The key issue is whether CC is recognized as money for accounting purposes and preparation of accounting statements.

Accounting Regulation 23/2011 contains no definition of money.

The definition provided by IAS 7 is unsuitable for application. We see the following definition, "Cash includes cash in hand and demand deposits". It contains neither CC nor non-cash money (even though non-cash money actually forms the major part of corporate funds).

Cash and non-cash money is separately attributed to objects of civil rights (article 128 of the Civil Code of the Russian Federation). Cash money is classified

as belongings, while non-cash money as other property.

Article 140 of the Civil Code of the Russian Federation defines money as a legal means of payment, but provides no full list of its features.

Therefore, in order to be recognized as money CC should be a legal means of payment.

In the Russian Federation the status of a legal means of payment is set out for:

- cash and non-cash money (article 140 of the Civil Code of the Russian Federation, article 27 of Federal Law No. 86-ФЗ dated 10.07.2002 "On the Central Bank of the Russian Federation (Bank of Russia)");
- non-cash foreign currency (to the extent expressly permitted by the law).

It should be noted that in legal terms means of payment and money are equivalent. Cash foreign currency used for transactions therewith in Russia acts as goods (substance of the transaction). It is impossible to recognize virtual money as means of payment (money) in legal terms, as each issuer uses its own virtual money, which is not provided for by the law.

- e-money (Federal Law No. 161-ФЗ dated 27.06.2011 "On the National Payment System"). In fact, e-money is not money as such, but a form of accounting for money rendered to a debtor to fulfill monetary obligations of the rendering person. But since e-money is expressly defined as money (clause 18, article 3 of Federal Law No. 161-ФЗ dated 27.06.2011),

then it is recognized as money for accounting purposes.

The draft of the federal law "On Digital Financial Assets" states that digital financial assets are not legal means of payment on the territory of the Russian Federation. Meanwhile, the same draft law recognizes cryptocurrency as a type of digital financial assets.

Thus, we learned that as of the date of this article CC could not be recognized as money for accounting purposes in the Russian Federation, since they are not legal means of payment.

The review of the term cash equivalent and its structure set out in accounting regulations (Accounting Regulation 23/2011 and IAS 7) is not the subject of this article; therefore, we will not cover it.

If not money, then what?

In order to understand the status of CC for accounting purposes, we may review transactions that are generally carried out with CC.

Transactions involving CC are as follows:

- mining ("creation" of cryptocurrency through electronic devices);
- exchange of CC for other digital financial assets (CC, tokens);
- exchange of CC for roubles, foreign currency (sale and purchase of CC);
- exchange of CC for other property (actual use as a means of payment in sale and purchase transactions).

It must be noted that, as a rule, it is impractical for a company to use CC as

a means of payment, because its application as a means of payment is limited. In most cases, the main reason for CC acquisition is a desire to gain profit on the growth of CC exchange rate.

Having regard to the above, the review of CC features draws to the conclusion that in accordance with the Russian Accounting Standards, CC complies with the definition of financial investments.

In order to account for assets as financial investments, the following conditions shall be complied with simultaneously (clause 2 of Accounting Regulation 19/02):

- duly executed documents verifying the company's right to financial investments and payments or other assets arising thereof;

- transfer of financial risks associated with financial investments to the company (price risk, risk of debtor's insolvency, liquidity risk, etc.);
- ability to generate future economic benefits (income) in the form of interest, dividends or increment of value (difference between the selling (redemption) price of a financial investment and its purchase cost following its exchange, use for repayment of company's obligations, increase of the current market value, etc.).

For accounting in accordance with IFRS requirements, CC should be classified as financial instruments in accordance with IFRS 9. Meanwhile, if a business model which a company uses to manage financial assets in the form of CC

means using CC as an instrument for re-sales aiming at exchange gains, then CC should be estimated upon recognition at fair value through profit or loss.

Recognition of acquisition (mining) and changes in value of CC

CC purchase

Acquisition for roubles in accounting is recognized as follows:

- Dr 58 Cr 76 — CC acquired;
- Dr 76 Cr 51 — CC paid.

CC mining

In case CC was acquired through mining, there are two approaches to accounting of this transaction.

The first one is to recognize CC on the balance as donated property.

In this case accounting records should contain the following entry:

- Dr 58 Cr 91.1 — CC generation through mining recognized.

The second option is to recognize mining as production-related transactions. Mining requires computing capacity, electricity consumption, etc. Therefore, depreciation of equipment used for mining, electricity required for mining (based on equipment consumption), salaries and insurance contributions for employees involved in mining (to the

extent related to mining) form the cost of generated CC.

In accounting records, mining as a "production process" is recognized as follows:

- Dr 20 (26) Cr 02 — depreciation of electronic and computing equipment used for mining recognized,
- Dr 20 (26) Cr 60 — consumed electricity recognized,
- Dr 20 (26) Cr 70, 69 — salaries and insurance contributions for employees involved in mining recognized,
- Dr 58 Cr 20(26) — CC generation through mining recognized.

The second option seems more appropriate if mining may be qualified as a separate process (it uses certain items

of electronic and computing equipment, there is a possibility to account for consumed electricity, labor costs are identifiable).

CC receipt from buyers

Sales of goods (works, services) in exchange for CC are recorded as follows:

- Dr 62 Cr 90.1 — proceeds from sales of goods (works, services) recognized;
- Dr 90.3 Cr 68.VAT — VAT charged;
- Dr 90.2 Cr 41 (26, 44, etc.) — cost price for goods (works, services) estimated;
- Dr 58 Cr 76 — CC received;
- Dr 76 Cr 62 — set-off performed.

Revaluation of CC

CC should be classified as financial investments with unidentifiable current market value, and in accounting records as of the reporting date CC should be recognized at historical cost (clauses 19, 21 of Accounting Regulation 19/02).

Financial investments in the form of CC should be revalued for indications of impairment.

Sustainable and significant decrease in value of financial investments with unidentifiable current market value below the value of economic benefits the company expects to gain on these financial investments in the ordinary course of business is recognized as impairment of financial investments. In this case the company bases its calculations on the estimated value of financial investments, which equals to the difference between

their value recognized in accounting records (book value) and the decrease amount.

Sustainable decrease in value of financial investments features the following conditions simultaneously:

- book value is significantly higher than their estimated value at the reporting date and the previous reporting date;
- during the reporting period the estimated value of financial investments changed significantly solely downwards;

In accounting records the value of such financial investments is recognized at the book value less impairment provisions.

Revaluation for impairment of financial investments is carried out

at least once a year as of December 31 of the reporting year upon identification of impairment.

Impairment provisions for financial investments are recognized in accounting records as Dr 91.2 Cr 59.

Recognition of CC disposal

Settlement for acquired goods (works, services) using CC

Settlements for acquired goods (works, services) using CC should be recorded as follows:

- Dr 41 (26, 44, etc.) Cr 60 — acquisition of goods (works, services) recognized;

- Dr 76 Cr 91.1 — disposal of CC recognized;
- Dr 91.2 Cr 58 — disposal of CC previously recognized as financial investments recognized;
- Dr 60 Cr 76 — set-off performed.

Exchange of CC for roubles

- Dr 91.2 Cr 58 — write-off CC previously recognized as financial investments recognized;
- Dr 51 Cr 91.1 — inflow of roubles recognized.

CC inventory

The issue of CC inventory is very urgent. Given the fact that the existence of CC is based on blockchain technology, it is

impossible to confirm CC holder's rights to a certain amount of CC items by traditional means. It is not problematic when company's CC balance as of the reporting date is insignificant. But in case of material transactions with CC and CC balance as of the reporting date, it may result in the auditor failing to confirm true and fair nature of accounting (financial) statements of the company which has material CC balance as assets.

The draft law "On Digital Financial Assets" defines the Register of digital transactions as a systematized database of digital records generated at any time. Maybe getting register extracts for a certain company will become casual for certifying rights to CC, but at the moment, the legal environment for CC

use in Russia is unclear, therefore, this process is terra incognita.

What next?

In the current version of the draft law "On Digital Financial Assets" there is one inconsistent, but very convenient for a traditional approach to property ownership definition — Digital financial asset is digital property created with the use of encryption (cryptographic) instruments. Ownership rights to such property are certified by making digital records in the register of digital transactions.

Basically, this definition lays ground for company's recognition of CC property on its balance.

After the adoption of this law, one may expect companies to actively invest

in such an interesting, high-yielding, though risky due to its imbalance and volatility, instrument as CC. All the above-mentioned issues regarding accounting may be partially applied to tokens. Though in my view, token is a simpler instrument due to the presence of a particular issuer, but at the same time, it is more complicated due to various types of business activities resulting in token emission and circulation.

ESTONIA: EUROPEAN OASIS FOR THE CRYPTOCURRENCY MARKET

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OÜ Juridium

Estonia is considered an advanced country in the IT-field. In recent years, it has become one of the most successful European countries in the business sphere, mainly due to IT-technologies and its innovative model of e-government. Any businessman may get an e-resident card to access all e-services provided by state institutions, including registers, bank services, taxation, etc. The tax burden is bearable, as companies have 0% income tax, and there is no need to establish the charter capital at once upon company's incorporation.

Apart from other businessmen, these conditions also attract various crypto-currency-related start-ups. A significant number of successful ICO-projects were implemented in Estonia, and even the government showed its intention to issue its own cryptocurrency EstCoin. Unfortu-

nately, president of the European Central Bank criticized such intentions and added that no EU member state shall issue its own cryptocurrency.

On October 22, 2015, European Court of Justice declared bitcoin an alternative means of payment exchange transactions with which shall be exempt from VAT.[1] Consequently, cryptocurrency in Estonia is VAT-free and ICO-projects are exempt from any taxation. Therefore, funds raised with ICO are exempt from income tax until the dividend distribution on such project.

As for personal income tax charged on client's funds, Estonian companies bear no such liability. Thus, it is the client that is held liable for payments

1. http://curia.europa.eu/juris/document/document.jsf?text=&docid=170305&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=604646

of income tax on stock exchange income. If a company's clients are residents of Estonia, they should file returns and pay income tax on their own in accordance with Estonian tax rates. If their clients are non-residents of Estonia, then stock exchange income is subject to taxation in their country of residence.

When working with clients, one should pay close attention to money transfers to off-shore banks, as such transfers are subject to taxation at 25% tax rate (it is better to avoid such transactions). According to the Estonian law, an off-shore bank is a bank which is located in the country with either no income tax, or its rate being less than 1/3 of income tax in Estonia (at the moment, less than 7%).

See https://www.riigiteataja.ee/akt/129122016034 (text in Estonian) for the list of countries which are not quali-

fied as off-shore, despite requirements to income tax.

Transactions with cryptocurrency in Estonia were tarnished by the judgement of the State Court[2] dated April 11, 2016 for the case of the Dutch entrepreneur trading cryptocurrency in Estonia vs. Estonian state. As a result, the entrepreneur lost the case, and administrative board of the State Court ruled that cryptocurrency trading is a business activity governed by the law on money laundering or terrorist financing, and state supervision.

This court practice did not undermine any interest towards cryptocurrency in Estonia. For example, this year foreign investors funded the project of mining-farms on the rented territory

2. https://www.riigikohus.ee/et/lahendid?asjaNr=3-3-1-75-15

of the second largest energy supplier in Estonia, where they located a full park of containers for cryptocurrency mining.

The revised law on money laundering or terrorist financing based on Directive (EU) 2015/849 of the European Parliament and of the Council[3] became effective in Estonia at the end of 2017. The new revised law introduces the term virtual value to replace a general term alternative means of payment. This term covers cryptocurrency, clarifies its meaning and allows all interested parties to legally engage into circulation (trading, exchange, investing) having the relevant regulatory license. According to the law, virtual value is value in a digital form, which may be transferred, kept or sold,

3. https://publications.europa.eu/en/publication-detail/-/publication/0bff31ef-0b49-11e5-8817-01aa75ed71a1/language-en

and accepted by individuals and legal entities as a means of payment, but which is not deemed a legal means of payment or money of any state.

Based on the new law, persons engaged into cryptocurrency circulation should get a relevant license, which is regulated by the data office on money laundering. The Law "On Money Laundering or Terrorist Financing" provides for two key types of cryptocurrency-related licenses:

- according to paragraph 2, part 1, clause 10 — service of virtual currency exchange for fiat currency;
- according to clause 11 — service of virtual currency wallet.[4]

4. https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/521122017004/consolide

The service license for virtual currency exchange for fiat currency makes it possible to provide services of virtual currency exchange for fiat currency and vice versa. The license for the service of virtual currency wallet makes it possible to provide services of virtual wallet to clients, i. e. cryptokeys used for saving or transferring virtual currency are created or held for the client.

Persons that received such licenses are entitled to provide services of exchange, circulation, transfer and holding of cryptocurrency with no territorial limitations, i. e. all over the world. One of the key requirements for getting such licenses is the development of inner company procedures in accordance with AML and KYC principles. The term for consideration of a license application is up to 30 calendar days.

Given that activities in the crypto-sphere in many countries are not clearly regulated, and in some countries are even deemed illegal, licenses issued to Estonian regulators are in great demand. It shows serious, transparent and legal nature of activities. For most clients it serves as a determining factor, because crypto-hype sparked activities of frauds that tend to take advantage of people's trust by offering various get-rich-quick schemes. A

CAPITAL AMNESTY. VERSION 2.0

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In February 2018, a set of laws aimed at prolongation of the capital amnesty procedure was adopted and became effective.

Particularly, the following legal acts were adopted, and it marked the continuing campaign on deoffshorization and amnesty of the Russian capital:

- Federal Law No. 33-ФЗ dated 19.02.2018 "On Amendments to the Federal Law "On Voluntary Declaration of Assets and Bank Accounts (Deposits) by Individuals and Amendments to Particular Legal Acts of the Russian Federation" (hereinafter — Law No. 33-ФЗ);
- Federal Law No. 34-ФЗ dated 19.02.2018 "On Amendments to Part One and Two of the Tax Code of the Russian Federation (Income Taxation

of Foreign Companies under Control and Foreign Organizations)" (hereinafter — Law No. 34-ФЗ);

- Federal Law No. 35-ФЗ dated 19.02.2018 "On Amendments to Article 76.1 of the Criminal Code of the Russian Federation" (hereinafter — Law No. 35-ФЗ).

The first amnesty stage lasted from July 1, 2015 to June 30, 2016. Following the results of the first stage, taxpayers (subject to provisions of the amnesty law granting guarantees and preferences) are divided into the following groups:

- 1 group: taxpayers that used guarantees and filed special tax returns as part of the 1st stage (according to various public sources, the number

of filers amounted from 2.5[1] to 7.2[2] thousand people).

- 2 group: radical group of taxpayers that refused to provide their personal data and details of their property as part of deoffshorization, and moreover, they changed their tax residency by leaving the Russian Federation (in mid-2017, Reuters agency reported that the deoffshorization policy in Russia failed, and a number of large businessmen withdrew from Russian tax residency after the Law "On Deoffshorization" became effective. Quoting the source close to the Kremlin, the agency stated

1. https://www.vedomosti.ru/economics/articles/2017/12/22/746232-amnistiyu-kapitalov.
2. https://www.rbc.ru/newspaper/2018/02/01/5a71d7fd9a79470410e91497.

that by its estimates nearly one-third of 500 wealthiest Russian businessmen left the country upon the adoption of the law on deoffshorization).

- 3 group: the remaining part (majority) of taxpayers that took a wait-and-see approach being guided by the principle ‘no good deed goes unpunished’, and did not use guarantees and exemptions offered by the government.

As one of the arguments, the third group expressed assurance that Russian regulatory authorities would not have an instrument of getting data from abroad, that services of automatic data exchange would not work, and that in the end, everything would remain unchanged.

However, under current circumstances when:

- the Russian Federation started to develop the legal base for integration into data exchange procedures;
- more than 70 countries confirmed (by signing bilateral agreements) their willingness to provide information to Russian tax authorities as part of automatic data exchange;
- active works are underway to develop and integrate software that would let Russia join automatic data exchange,

arguments and hopes of third group taxpayers are undoubtedly proven wrong.

Let us review some key aspects and peculiarities of filing tax returns set out by new amendments.

What may be specified in the special tax return?

As usual, the same as in compliance with the first stage, one may specify data on:

1. Property held or actually owned as of the filing date by the filer, including:
    - land plots, other real estate,
    - vehicles,
    - securities, including stocks, shares and equity interest in share (joint-stock) capital of Russian and/or foreign companies;
2. Foreign companies under control, where the filer acts as a controlling person as of the filing date (in case of indirect or latent participation in the share capital of such company);

3. Individual accounts (deposits) at banks outside the Russian Federation;
4. Accounts (deposits) at banks, in case the filer is declared a beneficiary of the account (deposit) as of the filing date.

The new feature in terms of objects for declaration purposes is an opportunity to declare not only foreign accounts open as of the filing date (as before), but also accounts already closed by the filing date. The only requirement is as follows: accounts have to be opened before 01.01.2018.

Who may file special tax returns?

Any individual regardless of their citizenship or tax residency may file a special

tax return. Moreover, filing a special tax return as part of the first stage does not prevent them from filing a special tax return as part of the second stage. The filer may deliver a tax return in person or by proxy acting under the notarized power of attorney. However, filing a tax return by post is not stipulated by the law.

Where to file tax returns?

According to adopted innovations, a tax return may be filed to any tax authority upon the filer's choice (previously, tax authority at the filer's place of residence/registration) or to the central office of the Federal Tax Service of Russia.

Filing term for special tax returns

A special tax return may be filed as part of the second amnesty stage within the time period from March 1, 2018 to February 28, 2019.

What guarantees are granted upon filing a special tax return?

Guarantees granted to the filer include exemption from criminal, administrative and tax liability for a number of crimes/offences committed during acquisition, use or disposal of property and/or foreign companies under control, as well as during crediting bank accounts (deposits).

Exemption from criminal liability covers the following crimes:

- evasion of obligations on repatriation of cash in foreign currency or the currency of the Russian Federation (Article 193 of the Criminal Code of the Russian Federation);
- evasion of customs payments charged for individuals and legal entities on a large scale (Parts 1 and 2, Article 194 of the Criminal Code of the Russian Federation);
- evasion of tax and/or duties charged for individuals (Article 198 of the Criminal Code of the Russian Federation);
- evasion of tax and/or duties charged for legal entities (Article 199 of the Criminal Code of the Russian Federation);

- failure to perform tax agent's obligations (Article 199.1 of the Criminal Code of the Russian Federation);
- concealment of cash or property held by the company or individual entrepreneur subject to collection of taxes and/or duties (Article 199.2 of the Criminal Code of the Russian Federation).

Exemption from administrative liability is limited to the following administrative offences:

- carrying out business activities without state registration or without a special permit/license (article 14.1 of the Code on Administrative Offences of the Russian Federation);
- carrying out illegal foreign exchange transactions on declared foreign

accounts (part 1, article 15.25 of the Code on Administrative Offences of the Russian Federation);

- untimely submission to the tax authority (or failure to submit in due time) of a notification on bank account (deposit) opening (closing) or changes to account (deposit) details at the bank located outside of the Russian Federation (parts 2, 2.1, article 15.25 of the Code on Administrative Offences of the Russian Federation).

Besides, the filer is exempt from the tax liability for:

- failure to pay taxes, in case such tax obligation was imposed on the filer and/or another person before January 1, 2018 for carrying out of transactions related to acquisition, use or

disposal of property and/or foreign companies under control, for the failure to file notifications on its participation in a foreign company and on a foreign company under control, as well as crediting bank accounts (deposits) reported in a special tax return;

- failure to meet due terms for filing a notification on foreign companies under control (part 1, article 129.6 of the Tax Code of the Russian Federation);
- failure to meet due terms for filing a notification on the participation in foreign companies (part 2, article 129.6 of the Tax Code of the Russian Federation).

Peculiarities of guarantees

It should be noted, that guarantees regarding tax exemption (collection of tax arrears) do not exempt from taxes on retained earnings of foreign companies under control.

Moreover, tax arrears accumulated before 01.01.2018 are not subject to collection. Given that the due term for personal income tax expires on July 15 of the year following the year of income gain, an individual may be granted income tax exemption as part of amnesty only for income gained before 31.12.2016. In case income was gained during 2017, then an obligation to declare and pay taxes appeared in 2018, therefore, such transactions are not covered by guarantees.

As for the exemption from liability for illegal foreign exchange transactions

on foreign accounts reported in the tax return, all transactions carried out on such accounts before filing a tax return are deemed legal.

Key differences between the first amnesty stage and the second one are presented in the table below.

Differences between amnesty 2.0 (2018) and amnesty 1.0 (2016)

Feature for comparison	Amnesty 1.0 (2016)	Amnesty 2.0 (2018)
Return filing location	• Tax authority at the place of registration or • Central Office of the Federal Tax Service of Russia	• Any tax authority or • Central Office of the Federal Tax Service of Russia
Possibility to declare a closed account	No	Yes (provided the account was opened before 01.01.2018)
Filing terms	From 01.07.2015 to 30.06.2016	From 01.03.2018 to 28.02.2019
Exemption from the liability for the failure to file (untimely filing) of notifications on foreign companies under control, notifications on participation in foreign companies	No	Yes
Exemption from the liability for illegal foreign exchange transactions carried out before filing a tax return	Yes	Yes

Feature for comparison	Amnesty 1.0 (2016)	Amnesty 2.0 (2018)
Conditions for non-collection of tax arrears	If the tax obligation arose due to carrying out of transactions before January 1, 2015 related to acquisition (generation of sources for acquisition), use or disposal of property (property rights) and/or foreign companies under control reported in a special return, or for opening and/or crediting accounts (deposits) reported in such special return	If the tax obligation arose before January 1, 2018 due to carrying out of transactions related to acquisition (generation of sources for acquisition), use or disposal of property (property rights) and/or foreign companies under control reported in a special return, or for opening and/or crediting accounts (deposits) reported in such special return
Exemption from taxes on retained earnings of foreign companies under control	N/A	Non-available
Required repatriation of property	No	No

Prolongation of tax-free liquidation

Amnesty was not the only procedure prolonged by the legislator. One more procedure closely connected with the process of deoffshorization was prolonged, i. e. tax-free liquidation of foreign companies under control.

The said procedure makes it possible to liquidate any foreign company under control with no adverse consequences for the controlling person and receive assets of such company. Acquisition of such assets is not recognized as personal income for tax purposes, and upon future re-sale of such assets such individual may apply tax deductions (tax base reduction by the asset value determined in accordance with accounting records of the liquidated foreign company under control as of the liquidation date).

Earlier, the deadline for liquidation of a foreign company under control and acquisition of assets tax-free was set until 01.01.2018.

Adopted amendments prolong this procedure until 01.03.2019.

Besides, earlier exemption on tax-free liquidation covered only property

(cash excluded), while now cash is also recognized as assets which may be acquired by the controlling person tax-free upon the liquidation of a foreign company under control.

Without any doubt, adopted amendments are treated as favourable because they enhance opportunities of taxpayers to use guarantees and indemnities. Nevertheless, the rationale for participation in the second amnesty stage, as well as implementation of tax-free liquidation procedure, may be determined only after a detailed analysis and review of such factors as the structure of assets, history and procedure of their acquisition, exposure to liability risks and their valuation, etc. A

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