The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 05 ISSUE 08 PAGES: 35-39
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215) (2023: 7. 304)
OCLC – 1176274523
Publisher: The USA Journals

Journal Website: https://theamericanjournals.com/index.php/tajpslc

Research Article

EXPERIENCE OF TOKEN REGULATION AND UNDERSTANDING IN FOREIGN COUNTRIES: LESSONS FOR UZBEKISTAN

Submission Date: Aug 06, 2023, **Accepted Date:** Aug 11, 2023,
Published Date: Aug 16, 2023 |
Crossref doi: https://doi.org/10.37547/tajpslc/Volume05Issue08-07

Pulatov Alisher
Independent Researcher At Tashkent State University Of Law, Uzbekistan

ABSTRACT

The rapid development of blockchain technology in the world has shown that its application in all aspects of life is effective in solving many problems. Although there is no new approach to regulating the status of products (cryptocurrency, tokens) created using this technology and their use in foreign countries. This article analyzes the legal status of product tokens created on the basis of blockchain technologies, and issues of property rights. Based on the international experience and the legislation of developed countries, the author conducted analyzes aimed at determining the legal status of tokens in the legislation of Uzbekistan, and put forward proposals aimed at improving the national legislation.

KEYWORDS

Blockchain, virtual property, virtual currency, cryptocurrency, tokens, smart contract, stablecoin.

INTRODUCTION

The main obstacle in the formation of legal regulation and unified policy for the emerging industry of cryptoassets and blockchain is the lack of clear and common terms. Even the concept of "cryptocurrency" does not have a single definition, and in many sources it is interpreted as a general term for digital tokens issued and circulated in DTL – Distributed Ledger Technology[1]. This, in turn, shows the need to apply the most effective concepts and approaches used in the international experience to the legal regulation of token transactions.

It should be noted that the tokenization of products and assets based on blockchain technology facilitates the sale and purchase of assets, as well as increases the security, transparency and speed of asset

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 05 ISSUE 08 PAGES: 35-39
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215) (2023: 7. 304)
OCLC – 1176274523
Publisher: The USA Journals

transactions[2]. On the other hand, tokenization is located in the "gray" zone, that is, this type of presentation of physical assets, although not illegal, is outside the existing legal rules and standards, and is not clearly regulated by the laws of most countries of the world[3].

The main problem with tokenization is that there is still no clear regulation of these digital assets in all countries of the world[4]. It should be noted that the first cryptographic developments, including tokens, were used in the Digicash system, which is considered an electronic money corporation[5].

The United States of America was the first to raise the issue of token regulation. In 2017, the United States Securities and Exchange Commission (SEC) published a report on the applicability of local laws to the "DAO" token.

The "DAO project" is a crowdfunding platform based on smart contract technology using the Ethereum platform[6]. The US Securities and Exchange Commission has determined that tokens issued by DAOs are essentially investment contracts and valuable shares[6].

A guide published by the German Federal Financial Supervisory Office (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) in April 2018 states that all tokens must be considered individually. However, tokens that provide rights similar to those provided by traditional shares are classified as financial instruments and are regulated in the same way as the entire financial market. The German Federal Financial Supervisory Office classifies tokens as financial instruments. The regulation applicable to tokens depends on the rights they contain.

If the token implies ownership of an asset, then German laws are applied. BaFin also notes that German citizens holding tokens are not subject to the country's relevant legislation. Token is to be subject to German laws, it must be advertised and distributed in Germany. BaFin considers each token issue separately for its relevance to financial instruments[7].

In October 2017, French regulatory office of financial markets (Autorité des marchés financiers, AMF) published a document that reviewed various aspects of tokenization[8]. In this document, tokens are defined as "shares that confer economic and management rights similar to traditional shares or preferred shares"[2].

Singapore, Australia and New Zealand have similar views on tokenization. Their approach is that they separate tokens into stocks and collective investment contracts[9]. As can be seen, the world standard describing the terminology and legal aspects of tokenization issues is different.

Although there is a strong difference in the laws of different countries related to tokenization, the activities of token issuers are moving towards "tokenization refuge", that is, a situation where tokens are issued in countries whose laws are most loyal to issuers.

Therefore, investors cannot receive compensation for misleading or fraudulent token trading. The result of this mechanism has already been observed in the US token market. The strict security policy of the US Securities and Exchange Commission is considered the main driving force of token issuers leaving the market of this country.

These days, using the services of banks in the creation of projects with the help of tokenization, and in the

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 05 ISSUE 08 PAGES: 35-39
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215) (2023: 7. 304)
OCLC – 1176274523
Publisher: The USA Journals

process of tokenization, various contracts are being concluded that contradict the principles of this technology and make its advantages practically zero, or the advantages of the technology can be preserved by sacrificing the legal security of investors. In the future, after overcoming the above problems, tokenization can replace the value of physical assets, that is, the traditional way of presenting securities, and also become a convenient financial tool for trading products and assets.

A number of foreign countries have chosen a prospective position regarding the issue of legal regulation of token circulation. It should be noted that such a position can provide a number of benefits for small countries that increase their investment attractiveness by creating tax offshores.

Tokens of various systems can be created in the process of mining, as well as bought or obtained to perform certain actions. Tokens can perform the function of a reward for an action in the system, as well as the functions of credit, payment, mediation in the transfer of other assets.

However, the most common is the permissive civil legal regime, within which tokens are classified as objects of civil rights of various natures in the legislation of foreign countries: 1) treated as an intangible asset/goods, an object of property rights and subject to double taxation (US (at the level of federal law[10]), Great Britain[11]; 2) have the status of means of payment / currency and are exempt from VAT (European Union (recommended)[12], Germany[13], Japan[14], Australia[15], Belarus[16]. However, it is not currently considered as legal means of payment in above-mentioned country.

ICOs in Switzerland are regulated by Swiss Financial Market Supervisory Authority (FINMA). FINMA distinguishes four types of tokens:

The first – payment tokens. Includes classic cryptocurrencies and tokens that can be used as means of payment;

The second – utility tokens. Tokens that can be exchanged for a product or service in a given ecosystem;

The third – asset tokens. It is the analogue of a security token under Swiss law and represents a tokenized security;

The fourth – hybrid forms.

FINMA analyzes each ICO and, depending on the nature of the token, assesses the need to apply the law on financial markets, banks or money laundering.

Many OECD (Organisation for Economic Co-operation and Development) countries have issued guidelines and recommendations on how to conduct an ICO, which specify the application of applicable legislation. For instance, in February 2018 Switzerland issued guidance explaining the application of various laws, including POD/FT and financial laws, to ICO projects. A classification of available tokens was also provided[17]. Projects were given an opportunity to get clarifications on legal issues from the financial regulator.

In order to protect the rights of consumers, countries strive to spread information about the potential risks of fraud with ICOs. The US Securities and Exchange Commission has launched a website, howeycoins.com, which lists typical examples of investor appeals in ICOs used by fraudsters. Other countries are trying to create ICO certification systems that identify projects that provide the maximum guarantee to investors. For

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 05 ISSUE 08 PAGES: 35-39
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215) (2023: 7. 304)
OCLC – 1176274523
Publisher: The USA Journals

instance, in the spring of 2018, the French regulator announced that the country is discussing the introduction of voluntary certification of ICO projects [18].

Thus, the world has accumulated a huge amount of regulatory legal basis that defines the legal nature of the token based on different approaches and regulates the scope of its circulation. In this, an active process of its creation, which is accelerating every year.

Based on the analysis of international experience, it was found that the countries that have established the legal regulation of tokens and crypto-assets are currently seeking to introduce legal regulation in the following areas:

1) introduction of measures aimed at preventing legalization and financing of terrorism;

2) The most famous measure of the direct response of the state to the dynamically developing market of virtual currencies, the experience of Argentina, the Philippines, Japan and the USA shows that, it is essential to oblige virtual currency exchange operators and legal entities operating as participants in other settlement transactions with virtual currencies to implement the know your customer (KYC) procedure, maintain accounting records of transactions and take other measures to reduce the risk of lowering the reputation of the national jurisdiction;

3) development of a system of taxation of accounts using virtual currency (Japan, EU countries, Brazil, USA), performing exchange operations with virtual currency (Japan, EU countries), implementation of virtual currency mining activities (income from self-employment of citizens – Great Britain, Sweden, USA);

4) reducing the risk of losing the reputation of the national jurisdiction by implementing measures to regulate foreign exchange operations and other exchange operations with virtual currencies aimed at increasing accountability to customers. In particular, the financial support of exchange activities, ensuring the cyber security of operations, the use of special alternative mechanisms for client-side dispute resolution by exchange operations operators (Philippines, Japan).

From the above, it can be concluded that there is still no clear regulation of these digital assets in all countries of the world regarding tokenization and cryptoasset regulation. Determining these issues at the international and regional level is becoming more and more urgent.

REFERENCES

1. Blockchain and distributed ledger technologies — Reference architecture. ISO/CD 23257.3 [Электронный ресурс].
2. Analysis of the legal qualification of cryptocurrency derivatives // Autorité des marchés financiers: AMF Articles, 2018
3. Рудзейт О. Ю., Недяк А. В., Зайнетдинов А. Р. Токенизация активов и продукции //Отходы и ресурсы. – 2020. – Т. 7. – №. 2. – С. 9-9.
4. Jai Singh Arun, Jerry Cuomo, Nitin Gaur. Blockchain for Business – Addison-Wesley Professional, 2019
5. Смирнова В. В. Проблемы правового регулирования криптовалюты в России //Ответственные редакторы: Чеботарева Анна Александровна—доктор юридических наук. – 2021. – С. 437.
6. Tom Wolfe. Blockchain Basics Explained: The Definitive Beginner's Guide to Blockchain Technology and Cryptocurrencies, Smart Contracts, Wallets, Mining, ICO, Bitcoin, Ethereum, Litecoin and Ripple. – Independently published by Tom Wolfe, 2018

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 05 ISSUE 08 PAGES: 35-39
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215) (2023: 7. 304)
OCLC – 1176274523
Publisher: The USA Journals

7. Романовский Ю. Ю. Сравнение привлечения инвестиций через ICO и IPO в международной практике. Цифровая трансформация. 2022; 28(2): 14-22
8. Philipp Maume, Mathias Fromberger. Regulation of Initial Coin Offerings: Reconciling U.S. and E.U. Securities Laws // Chicago Journal of International Law: Vol. 19: No. 2, Article 5. 2019
9. Andrew Romans, Tim Draper. Masters of Blockchain: The rise of blockchain and crypto, the tokenization of the world's assets and what that means for startups, corporations and investors – CreateSpace Independent Publishing Platform, 2018
10. IRS to Tax Digital Currencies as Property, Not Currency. – URL: https://www.coindesk.com/ internal-revenue-service-treat-digital-currencies-property (дата обращения: 22.01.2019).
11. Tax on cryptoassets. – URL: https://www.gov.uk/ government/publications/tax-on-cryptoassets (дата обращения: 22.01.2019).
12. The exchange of traditional currencies for units of the 'bitcoin' virtual currency is exempt from VAT. – URL: https://curia.europa.eu/jcms/upload/docs/ application/pdf/2015-10/cp150128en.pdf (дата об¬ращения: 30.12.2018).
13. Umsatzsteuerliche Behandlung von Bitcoin und anderen sog. virtuellen Währungen; EuGH-Urteil vom 22. Oktober 2015, C-264/14, Hedqvist. – URL: https://www.bundesfinanzministerium. de/Content/DE/Downloads/BMF_Schreiben/ S t e u e r a r t e n / U m s a t z s t e u e r / U m s a t z s t e u e r- Anwendungserlass/2018-02-27-umsatzsteuerliche-behandlung-von-bitcoin-und-anderen-sog-virtuellen-waehrungen.html (дата обращения: 30.01.2019).
14. Virtual money poses accounting dilemma for Japan's early adopters. – URL: https://asia.nikkei.com/ Business/Trends/Virtual-money-poses-accounting-dilemma-for-Japan-s-early-adopters (дата обраще¬ния: 01.02.2019).
15. Budget 2017 – Fact Sheets. – URL: https://www. budget.gov.au/2017-18/content/glossies/factsheets/ html/FS_innovation.htm (дата обращения: 08.10.2018).
16. Декрет от 21.12.2017 № 8 «О развитии цифровой экономики». – URL: http://president.gov. by/ru/official_documents_ru/view/dekret-8-ot- 21-dekabrja-2017-g-17716 (дата обращения: 08.08.2018).
17. https://www.finma.ch/en/news/2018/02/20180216-mm-ico-wegleitung.
18. https://www.planet-fintech.com/ICO-cryptos-Quand-La-France-prepare-une-certification-AMF_a793.html.