

CRYPTOCURRENCY REGULATION IN THE BRICS COUNTRIES AND THE EURASIAN ECONOMIC UNION

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This article presents the results of a comparative analysis of the legislative approaches to the regulation of cryptocurrencies in the BRICS countries and the Eurasian Economic Union. During the analysis, regulatory legal acts and draft laws, including material on judicial practice, of the Russian Federation, China, India, Brazil, the Republic of South Africa, the Republic of Belarus, Kazakhstan, Kyrgyzstan and Armenia were studied. The use of a comparative-legal method makes it possible to develop recommendations about the development of legislation on the circulation of cryptocurrencies within the BRICS countries. The assessment of the experience of EEU countries, and especially that of the Republic of Belarus, has great importance since the Russian Federation is a member country of both the EEU and BRICS. Comparative analysis was achieved by taking into account such key points as the existence of a regulatory framework, regulation of transaction taxation and counteracting the legalization of profits from crime. The results of the analysis are presented for each country separately and then systematized in the form of an analytical table. Based on the analysis, three approaches to the regulation of cryptocurrencies are identified: conservative, liberal and neutral.

The study of the experiences of the BRICS and EEU countries allowed the authors to conclude that these countries need to formulate similar requirements for the regulation of cryptocurrencies so as to avoid the migration of investment and capital to other countries which have a more liberal approach.

Keywords: cryptocurrency; bitcoins; EEU; BRICS.

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Introduction

The current stage in the development of the economy and law poses more and more difficult challenges for legislators. The emergence of new financial and economic instruments requires the development of adequate measures of administrative and legal impact on economic relations. Legal and economic issues related to the circulation of cryptocurrencies are in the zone of close attention of domestic and foreign researchers. The scientific interest in digital currencies is comparable to the high demands that investors demonstrate in the markets. The relevance of this study can be evidenced by the fact that at the IV BRICS Legal Forum in Moscow, in December 2017, a decision was made to set up a working group to work out common approaches to the legal regulation of cryptocurrencies and their turnover in the BRICS countries.¹ There is also a similar task for the Eurasian Economic Union. The greatest complexity of the study is associated with the rapidly changing approaches to regulation, from full liberalization to prohibition.

The purpose of the study is to carry out a comparative analysis of the legal approaches to the regulation of cryptocurrencies within BRICS and the Eurasian Economic Union (EEU). The subject of the study is the cryptocurrency as an economic and legal phenomenon. It should be noted that many studies have focused on Bitcoin, which is the most popular digital currency. This narrow focus on one form of cryptocurrency seems insufficiently justified, since at the legislative level other digital assets are also understood as cryptocurrency. In view of the rapidly changing situation, it is necessary to take into account that all data are given as of December 2018.

¹ Гусарова С.А. Технология блокчейн и криптовалюта в странах БРИКС // Экономика и предпринимательство. 2017. № 10-2(87). С. 80–84 [Svetlana A. Gusarova, *Blockchain Technology and Cryptocurrency in BRICS Countries*, 10-2(87) Economics and Entrepreneurship 80 (2017)].

1. Cryptocurrency: Definition, Advantages and Problems

The term “cryptocurrency” originally was used by the Bitcoin system introduced in 2009. Cryptocurrency is a type of digital currency whose operations are based on methods of cryptography. The word “crypto” comes from Greek, meaning “hidden” or “private.” Cryptocurrency, then, means money that is made hidden and private – and therefore secure – by means of encryption, or coding.

The general arguments for cryptocurrencies are based on the following advantages:

1. Decentralization, freedom and trust. The system does not require a central authority; its state is maintained through distributed consensus.²

2. Global usage and opportunities for integration. Cryptocurrencies can be used throughout the world, as they do not refer to national currencies. This is very important in the context of economic, political and legal integration.

3. Income opportunities. Investors’ interest in cryptocurrencies is explained by the opportunity of high income (returns) without taxes and control.

4. From a state-legal position, cryptocurrencies also have great potential. In Russia 70 percent of the country’s gross domestic product comes from the sale of mineral resources such as oil, gas and coal. Developing digital technologies can help to reduce the country’s dependence on natural resources.

5. Cost reduction. Unlike traditional money, cryptocurrency is not issued in the form of coins or banknotes. Because of this, the costs of production and protection against forgery are reduced. The use of digital technology can significantly reduce the cost of organizing monetary circulation.

Despite the presence of significant advantages, cryptocurrencies carry a number of risks and threats:

1. Lack of clear legislative approaches. The legislation of most countries does not allow the circulation and emission of currencies other than those of the national state on the territory of the state. The financial legislation regulating monetary turnover was formed in the 20th century, which makes it difficult to apply them in the digital economy of the 21st century. The very word “currency” introduces a significant difficulty, since from the position of the classic approach “cryptocurrencies” cannot be considered to be money. Cryptocurrency is understood through such concepts as “money surrogate,” “financial instrument,” “commodity,” “security” and “property.”³ In some countries, the authorities and scholars use the words “virtual currencies,” “altcoins” and “digital currencies.” In this paper, we will use the term “cryptocurrency.”

2. Lack of state guarantees. Since the state does not issue and even in most cases does not regulate cryptocurrency, there are no state guarantees for investors and

² Jan Lansky, *Possible State Approaches to Cryptocurrencies*, 9(1) *Journal of Systems Integration* 19 (2018).

³ Irina Cvetkova, *Cryptocurrencies Legal Regulation*, 5(2) *BRICS Law Journal* 128 (2018).

users. The lack of state guarantees significantly hinders the use of cryptocurrency and raises a lot of questions. Can we use cryptocurrency to pay wages and taxes? Can we inherit it? Can we lend it?

3. Volatility and high risks for the investor. Most cryptocurrencies are subject to significant fluctuations in their value. Periods of rising value may be followed by a collapse in value. Volatility increases the risk of investment by private investors, banks, corporations, etc.

4. Uncertainties in accounting and taxation. Investors' interest in cryptocurrencies is primarily connected with the possibility of earning income quickly. The tax legislation of many countries, including Russia, does not yet contain clear rules on the taxation of such earnings.

5. Criminal use. In 2017 in the United States, the first ever case of fraud in an initial coin offer (ICO) was instituted. At the moment, the U.S. Federal Bureau of Investigation is conducting more than 100 different investigations of connected crimes, including human trafficking and money laundering. The experience of the Russian Federation shows that cryptocurrencies are already being actively used in the criminal environment, for example as a payment for drugs. On the one hand, the use of the blockchain system can positively influence the investigation of crimes, but, on the other hand, the anonymity of cryptocurrencies facilitates the commission of crimes.⁴

6. High technological risks. Cryptocurrency is used on the internet, so a very important consideration of this technology is security. What will we do in the event that there is a hacker attack or blackout? Is it really safe to trust technology, computers and software?

Large-scale problems increase the value of conducting a comparative legal analysis and evaluation of the experiences of countries belonging to integration unions. Below are the results of the analysis of the legislative framework in the BRICS countries and the Eurasian Economic Union.

2. Legal Regulation of Cryptocurrencies in BRICS

Brazil. The market for cryptocurrency was almost absent in Brazil during 2014. However, in 2017 it was estimated at US\$2.5 billion. The number of Bitcoin traders in Brazil was twice as high as the number of investors registered on the Sao Paulo Stock Exchange – Brasil Bolsa Balcao. As of December 2017, there were 619,000 registered users on the exchange. The three largest Bitcoin-exchanges of the country, which account for 95% of all cryptocurrency transactions in Brazil, had 1.4 million registered

⁴ Сорокина Я.С., Торжевский К.А. Биткойн: инновационная валюта или инструмент финансовых преступлений? // Политематический сетевой электронный научный журнал Кубанского государственного аграрного университета. 2017. № 131. С. 1301–1310 [Yana S. Sorokina & Kirill A. Torzhevsky, *Bitcoin: Innovative Currency or Financial Crimes Instrument?*, 131 Polythematic Network Electronic Scientific Journal of the Kuban State Agrarian University 1301 (2017)].

customers. In addition, there were Bitcoin traders that use foreign exchanges or trade offline.

In particular, the number of the Brazilian crypto-exchange Mercado Bitcoin clients during 2017 increased by 275% and reached 750,000. The daily number of new users increased from 500 to 5,000. The largest Brazilian investment company, XP Investimentos, plans to enter the cryptocurrency market and launch a brokerage Bitcoin-exchange. XP Investimentos, which manages more than \$35 billion for about 500 thousand customers, has already registered the company XDEX Intermediacao LTDA with confirmed capital of \$7.3 million.

Despite the optimism of investors, Brazil's government institutions are wary of cryptocurrencies. Brazilian legislation in the field of regulation of the use of virtual currencies has been steadily tightening controls since 2015.

The Brazilian government established a commission in May 2017 to examine the regulation of the country's cryptocurrencies. Seven public hearings were held during which experts consulted with politicians on this topic. The decision was made to

designate our position as prohibitive, prevent commercialization of the cryptocurrency and... not allow its usage for mediation purposes and as a method of payment in the country.⁵

The lower chamber of the National Congress began discussing a bill that proposed to prohibit cryptocurrencies and equate their use to financial crimes as of December 2017.

The President of the Central Bank of Brazil, Ilan Goldfine, has said:

Bitcoin is an unsupported financial asset that people buy because they think that it will be valued. This is a typical bubble or pyramid... The central bank is not interested in bubbles or illegal payments.⁶

According to Goldfine, the motivation of those who buy cryptocurrencies is similar to the desire to make money on fraudulent schemes. The head of the Brazilian Central Bank believes that the price of the first cryptocurrency, similar to what occurs in Ponzi schemes, is based on the flow of new investors, who, in turn, also attract other buyers of bitcoins. Thus, we can state the change of approach in the regulation of Bitcoin from liberal to conservative.

The Russian Federation. Growing interest in digital currencies began in 2016. Cryptocurrency mining in Russia has expanded rapidly over the last few years; in

⁵ Central Bank of Brazil, Distributed Ledger Technical Research in Central Bank of Brazil: Positioning Report, 31 August 2017 (Jan. 8, 2019), available at https://www.bcb.gov.br/htms/public/microcredito/Distributed_ledger_technical_research_in_Central_Bank_of_Brazil.pdf.

⁶ *Id.*

many respects, it has already become an industrialized business. Home mining has also become a source of income for a number of crypto-enthusiasts. Amateur mining is very popular in Russia, because electricity rates for individual consumers are quite low: in some Russian regions, prices are currently below \$0.03 per kWh.

The law regulating the circulation of cryptocurrencies has not yet been adopted in the Russian Federation. Legislators find it difficult to develop conceptual approaches because of the novelty of the phenomenon under consideration. The need to expand knowledge about the features of digital currency circulation is indicated by the placement of a notice by the State Duma on holding an open tender for rendering expert analysis services on the topic "Legislative Regulation of the Introduction and Practical Implementation of Modern Financial Technologies. Analysis of International Experience and the Modality of Adaptation in Russian Practice." The maximum contract amount was set at 2.5 million rubles (approximately \$40 thousand).⁷

Several draft laws have been submitted to the State Duma. An analysis of their texts shows that it is still difficult for the Russian legislators to determine the legal nature of this phenomenon. The authors of the draft laws adhere to fundamentally different approaches, from a complete ban on transactions with the digital currency to full liberalization. The attitude towards crypto-mining is much more positive than the use of cryptocurrency in general, as mining does not contradict Russian law. Proposals have been made to introduce a preferential tax regime and even tax breaks for miners in the energy-rich country.

The concept of "cryptocurrency" also remains unclear. Article 75 of the Constitution of the Russian Federation determines that the ruble is the monetary unit, and the issue of other money is not allowed. Proceeding from this, the authors of the bill use the term "digital financial asset," referring to it as property. In turn, cryptocurrencies and tokens are classified as types of digital financial assets. On 1 June 2018, the draft law on the regulation of cryptocurrency was adopted in the first reading with the following rules:

- The draft law defined "cryptocurrency" and "token" as digital financial assets, i.e. as property created in electronic form using cryptographic devices.⁸ Information on such property is stored in digital wallets, those being hardware and software devices;
- The activity of digital financial assets' exchange operators is subject to licensing (license of professional participants in securities markets or license of trade organizer is required);
- The activity of foreign legal entities acting as operators may be conducted subject to establishment of a Russian legal entity in the territory of the Russian Federation and the obtaining of a license;

⁷ Information on holding an open tender for procurement No. 0173100009617000107 (Jan. 8, 2019), available at <http://zakupki.gov.ru/epz/order/notice/printForm/view.html?printFormId=49515635>.

⁸ Draft federal law "On Digital Financial Assets" (Jan. 8, 2019), available at <https://www.minfin.ru/en/document/>.

- Tokens should be issued on the basis of a public offer containing the information specified in the draft law;
- Issuers of tokens will be obliged to disclose information both in the public offer and in the investment memorandum, which must also conform to the requirements of the draft law.

Although the draft law, adopted in the first reading, does not regulate all issues associated with mining, it defines mining as an activity aimed at the creation of cryptocurrency and/or validation in order to receive remuneration in the form of cryptocurrency. Based on the draft law, mining may be considered entrepreneurial activity subject to specific conditions (if during a three-month period the person exceeds the energy consumption limits established by the Government of the Russian Federation).

The changes should be implemented by amendments to the Civil Code of the Russian Federation in parallel with the enactment of new laws. The draft law “On Introduction of Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation” was introduced on 26 March 2018. Among other things, the draft law proposes to introduce in the Civil Code basic terms and general rules that may serve as the basis for more specific and detailed regulation of the existing objects of economic relations. Mainly, the provisions of this draft law relate to the introduction of definitions of “digital law” and “digital money.”

In the second reading, the bill “On Digital Financial Assets” was changed radically. First, it will not regulate taxation. The Federal Tax Service will have to decide on its own whether it will tax such operations. References about mining and cryptocurrencies were also removed from the bill. After long discussions, the bill was returned to the first reading in November 2018. We can conclude that Russian legislators still do not have a clear idea about the economic and legal nature of cryptocurrency.

Despite the absence of legislative regulation of the circulation of cryptocurrencies, judicial practice is gradually beginning to be formed in the Russian Federation. For example, in March 2018 the Moscow Arbitration Court considered the question of whether funds in the form of a cryptocurrency can be included in the insolvency estate when the debtor is declared bankrupt. In the opinion of the financial manager, the cryptocurrency can be attributed to the property and must be included in the insolvency estate. Representatives of the debtor objected to the claimed petition, explained that,

The current legislation of the Russian Federation does not regulate relations of the cryptocurrencies, the cryptocurrency is not an object of civil rights, the protection of the right on the cryptocurrency is not provided by the power of the state, and the cryptocurrency cannot be attributed to the debtor’s property.

The court of the first instance took the side of the defendant, and did not support the arguments of the financial manager, which is why the cryptocurrency was not included in the insolvency estate.⁹ However, the Ninth Appellate Court of Moscow canceled the previous decision of the court of first instance and included bitcoins in the insolvency estate. The analysis of this case is very revealing, since it becomes obvious that the inclusion of cryptocurrencies in civil circulation raises questions about inheritance and inclusion in the insolvency estate during bankruptcy procedure. The absence of legislative Acts leads to the formation of controversial judicial practice.

India. The Indian government has not yet decided its position on Bitcoin and other cryptocurrencies. The Reserve Bank of India (RBI) issued a warning to investors about the risks of operations with cryptocurrencies, comparing them to financial pyramid schemes. A number of major world banks, including Citibank India in early 2018, banned the possibility of using credit cards when purchasing cryptocurrency. The position of the RBI is the following:

Rapid changes in the landscape of the payments industry along with factors such as emergence of private digital tokens and the rising costs of managing fiat paper/metallic money have led central banks around the world to explore the option of introducing fiat digital currencies. While many central banks are still engaged in the debate, an inter-departmental group has been constituted by the Reserve Bank to study and provide guidance on the desirability and feasibility to introduce a central bank digital currency. The Report will be submitted by end-June 2018. Technological innovations, including those underlying virtual currencies, have the potential to improve the efficiency and inclusiveness of the financial system. However, Virtual Currencies (VCs), also variously referred to as crypto currencies and crypto assets, raise concerns of consumer protection, market integrity and money laundering, among others. Reserve Bank has repeatedly cautioned users, holders and traders of virtual currencies, including Bitcoins, regarding various risks associated in dealing with such virtual currencies. In view of the associated risks, it has been decided that, with immediate effect, entities regulated by RBI shall not deal with or provide services to any individual or business entities dealing with or settling VCs. Regulated entities which already provide such services shall exit the relationship within a specified time.¹⁰

Indian Banks complied, and closed the accounts of crypto-exchanges by July 2018. The ban on the use of cryptocurrency in banks caused a wide public response

⁹ Decision of the Moscow Arbitration Court of 5 March 2018 in the case No. A40-124668/17-71-160F.

¹⁰ Reserve Bank of India, First Bi-monthly Monetary Policy Statement, 2018–19 (Jan. 8, 2019), available at https://rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=17479.

and reaction from the business community. For example, Zebpay was one of India's largest cryptocurrency exchanges. Nevertheless, its exchange activities in India were shut down at the end of September 2018 due to the cryptocurrency banking ban. The country's supreme court is willing to hear a case instituted by Zebpay, but the case keeps being postponed. Representatives from the Ministry of Finance submitted that the RBI circular as well as warnings issued by the Ministry of Finance on 29 December 2017, and by Finance Minister Arun Jaitley in his budget speech on 1 February 2018, are in line with the first inter-ministerial (interdisciplinary) committee's recommendations on cryptocurrencies. The country has begun work on the creation of a law for cryptocurrency regulation.

China, with its high rate of economic growth, plays an important role in the world economy, including in the circulation of cryptocurrencies. A Goldman Sachs report has shown that almost 80% of Bitcoin trading volume is held in RMB, only 19% of the exchange is in U.S. dollars and even less (1%) is in euros.¹¹ China is considered to be the world center of mining. Because of cheap electricity and developed infrastructure, as well as manufacturers of inexpensive hardware based in China, the country takes a leading position in both trade and mining. Operations with cryptocurrencies were carried out without a commission on Chinese exchanges until 2018, which facilitated the attraction of investors.

The high interest in cryptocurrencies in China has caused a large outflow of capital. According to Chainalysis, in 2016 \$2 billion were withdrawn from China. The government of the People's Republic of China then began to pay more attention to monitoring the trade operations of bitcoin-yuan. The People's Bank of China subsequently banned Bitcoin transactions in banks, retailers and payment operators, including Alipay and Tencent.¹²

Chinese banks are required to notify the national regulator of all money transfer transactions of more than 50,000 yuan (about \$7,000). In 2018, the largest Chinese cryptocurrency exchangers such as BTCC, Huobi and OKCoin announced the introduction of a commission for transactions with Bitcoin and Litecoin in the amount of 0.2% for each transaction. Measures have been introduced to "cut speculation" and "prevent volatility" in the digital currency market. In early January 2018, the Chinese authorities decided to

stop the country's mining of bitcoins because of the consumption of a huge amount of electricity and rising speculation with virtual currencies.

¹¹ Robert D. Boroujerdi & Christopher Wolf, *What If I Told You... Themes, Dreams and Flying Machines*, Emerging Theme Radar, Goldman Sachs Equity Research, 2 December 2015 (Jan. 8, 2019), available at <http://www.goldmansachs.com/our-thinking/pages/macro-economic-insights-folder/what-if-i-told-you/report.pdf>.

¹² Reshef Mashraky, *People's Bank of China Proclaims Bitcoin is Not a Legitimate Payment Method*, Finance Magnates, 9 March 2018 (Jan. 8, 2019), available at <https://www.financemagnates.com/cryptocurrency/news/cryptocurrencynewspeoples-bank-china-proclaims-bitcoin-not-legitimate-payment-method/>.

The introduced measures are aimed at the complete elimination of all areas of exchange and trade services for cryptocurrencies both in mainland China and in Hong Kong. The head of the Central Bank of the Russian Federation, E. Nabiullina, noted that, "China is following the path of prohibitions."¹³ The introduction of bans on operations with cryptocurrencies in China was one of the reasons for the sharp decline in the rate of Bitcoin in early 2018. In spite of introducing restrictions and bans on virtual currencies, the Chinese government as a whole positively assesses the technology of the blockchain. In mid-March 2018, the issue of creating national standards to stimulate the development of blocking and distributed ledger technology (DLT) in the country began to be developed.

The Republic of South Africa (RSA). The positions reflecting the approaches to the regulation of cryptocurrencies in South Africa are reflected in the "Position Paper on Virtual Currencies."¹⁴ Their essence boils down to the following:

– There is no separate regulatory Act or law about regulation of cryptocurrencies in the RSA;

– Virtual currencies are not recognized as a method of payment, since the requirements for money are not observed, such as: a stable means of exchange, units of measurement and a stable unit of value. Instead of using the term "cryptocurrency" the term "cyber-token" has been proposed;

– Due to the lack of the necessary legislative base, the protection of investors' rights is not guaranteed, thus operations should be carried out by the investor with an understanding of the high level of risk;

– The current legislation in the field of currency control of South Africa limits the opportunities for citizens there to transfer funds abroad for investment in virtual currencies.

The foregoing allows us to assess the approach to the regulation of cryptocurrencies in South Africa as conservative.

3. Legal Regulation of Cryptocurrencies in the Eurasian Economic Union

As mentioned earlier, the experience of regulating the currency by the nearest neighbor countries and partners in the EEU is of great importance for the Russian Federation.

¹³ Литова Е., Маляренко Е. Набиуллина заявила об «опасности криптомании» // РБК. 14 сентября 2017 г. [Ekaterina Litova & Evgeniya Malyarenko, *Nabiullina Stated the Danger of Cryptomania*, RBC, 14 September 2017] (Jan. 8, 2019), available at <https://www.rbc.ru/finances/14/09/2017/59ba53ae9a794762264bf471>.

¹⁴ National Payment System Department, South African Reserve Bank, *Position Paper on Virtual Currencies* (2014) (Jan. 8, 2019), available at [https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Legal/Documents/Position%20Paper/Virtual%20Currencies%20Position%20Paper%20%20Final_02of2014.pdf](https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Legal/Documents/Position%20Paper/Virtual%20Currencies%20Position%20Paper%20%20Final_02of2014.pdf).

The Republic of Belarus. The most consistent regulation of cryptocurrencies circulation is carried out in the Republic of Belarus. In order to develop the innovation sphere and build a modern digital economy in the state, the President of the Republic of Belarus on 21 December 2017 signed Decree No. 8 “On the Development of the Digital Economy.” First of all, it should be noted that during the development of the document the opinions of experts not only those of the Belarusian High-Technology Park but also those of the largest IT companies in Belarus were collected and analyzed. In addition, consulting companies and legal firms contributed their input on the decree. The decree supports

all the ideas and initiatives of the IT community and, as the Belarusian mass media has stated, can rightfully be called revolutionary.¹⁵

This normative Act is designed to create the conditions for the introduction into the economy of the Republic of Belarus of blockchain technology for transactions registration and other technologies based on the principles of distribution, decentralization and security of operations performed with their use. It should be pointed out that before the adoption of the decree, the circulation of digital assets (tokens) was not regulated by legislation of the Republic of Belarus, and they were not the object of legal relations.¹⁶ Today, the key statements of the decree establish that legal entities (primarily residents of the Belarusian High Technology Park) and individuals have the right to own tokens and perform the following operations: mining, storing tokens in virtual wallets, exchanging tokens for other tokens, their acquisition, alienation for Belarusian rubles, foreign currency, electronic money, as well as donation and bequeathing of tokens.

The activities of mining, acquiring and alienation of tokens, carried out by individuals independently without involving other individuals under labor and (or) civil law contracts, are not considered to be business activities in the Republic of Belarus. Also, tokens are not subject to declaration.

In addition, in accordance with the decree statements, participants involved in the use of modern technologies are granted significant benefits and preferences. Thus, until 1 January 2023 the following are not recognized as objects of taxation:

– Turnover, profit (income) of legal entities from mining activities and the creation, acquisition, alienation of tokens;

¹⁵ Воробей А.В. ICO как новая форма привлечения капитала // Промышленно-торговое право. 2017. № 10. С. 22–26 [Alexey V. Vorobey, *ICO as a New Form of Raising Capital*, 10 Industrial and Commercial Law 22 (2017)].

¹⁶ Карпекина У.И., Ярош А.С. Виртуальные деньги – миф или реальность? // Промышленно-торговое право. 2017. № 10. С. 27–30 [Ulyana I. Karpekina & Anton S. Yarosh, *Virtual Money – A Myth or a Reality?*, 10 Industrial and Commercial Law 27 (2017)].

– Income of individuals from mining activities, acquisitions (including gifts), alienation of tokens for Belarusian rubles, foreign currency, electronic money and (or) exchange for other tokens.

The decree also establishes that it is not required to obtain special permission (a license) for the activities of legal entities which are related to the development and (or) application of the technology of transaction blocks registration (blockchain); the activities of individuals in the implementation of mining, storing, acquisition, alienation of tokens; the activities of legal entities during storage, acquisition, alienation of tokens, and other transactions with them. Tokens do not relate to funds in the meaning defined by the legislation on preventing the legalization of proceeds from crime, financing terrorist activities and financing the proliferation of weapons of mass destruction.

In addition, the decree provides a field for a legal experiment within the Belarusian High Technology Park to approve new legal institutions for the possibility of their implementation in the civil legislation of the Republic of Belarus. For this purpose, the residents of the High Technology Park were given the right to conclude a contract for a convertible loan, as well as to execute transactions through a smart contract. The Ministry of Finance in Minsk has developed a new standard that specifies the procedures for keeping accounting records of crypto transactions. The document does not explicitly mention cryptocurrencies, which are not regarded as legal tender in Belarus. Nevertheless, it effectively regulates the reporting of cryptocurrency flows.

The obligations of organizations conducting token sales and the exact approaches to assessing the cost of “digital tokens” are also defined in the Ministry’s decree. The rules apply to private entities and not to the state-owned banks or government institutions. The new standard classifies “cryptos” according to their acquisition and intended use. Tokens acquired through initial coin offerings (ICOs) are referred to as “investments.” They should be debited as either “long-term financial investments,” if their circulation period exceeds twelve months, or as “short-term financial investments.” Their amounts must be credited in the accounting balance sheet under “Settlements with different debtors and creditors” and “Other income and expenses.”

If tokens are purchased for subsequent sale, by a trader or an exchange, they have to be reported in the “Goods” debit account and under the following credit accounts: “Settlements with suppliers and contractors” and “Income and expenses for current activities.” Digital tokens acquired as the result of mining operations or as remuneration for verification of crypto transactions are to be recorded under the “Finished goods” debit account and also as “Main activities” in the credit section of the balance sheet.

The new regulations include measures to simplify procedures regarding foreign trade and the hiring of foreign nationals by the residents of the High Technology Park. Employees and investors in the High Technology Park will not be required to apply for work permits. They will also benefit from a special visa-waiver regime and

will be granted temporary residence status in Belarus. In 2018, a special Council for the Development of the Digital Economy was created. President Lukashenko also introduced the creation of a Ministry of the Digital Economy. The new department may be set up very soon. This demonstrates that Belarus wants to become a new financial hub in the EEU, and even in Europe. The number of new registrations with the High Technology Park increased by about a quarter in 2018. Residents of the High Technology Park now work in 67 markets around the world. Belarus is becoming more popular among Russian IT and financial experts. While the new regulations create favorable conditions for foreign investment and technological development, there are several critical points to consider. The first and main one is that Belarus may become merely a crypto-offshore zone. The decree also does not solve the problem of paying salaries and bills with cryptocurrency.

The Republic of Kazakhstan. In the Law of the Republic of Kazakhstan “On Currency Regulation and Currency Control” there is a definition of currency, and it is as follows:

Currency is the monetary units accepted by states as legal means of payment, or official standards of value in cash and non-cash forms, in the form of banknotes, treasury bills and coins, including those from precious metals (including those withdrawn or withdrawn from circulation, but subject to exchange for banknotes in circulation), as well as funds in accounts, including international money governmental or units of account.

Thus, the legislation of Kazakhstan defines an exhaustive list of funds that may be attributed to the currency. This rule, which defines the concept of currency in Kazakhstan, is fundamental, and the prevention of digital technologies in it as a means of payment (currency) gives the right to classify cryptocurrency as property.

The National Bank of the Republic of Kazakhstan in its information message of 16 January 2017 noted the following:

In Kazakhstan, organizations currently providing investment services for the population using cryptocurrencies are functioning. Participants who have given money in favor of these organizations do not have legal guarantees for the return of the invested money, because in accordance with the civil legislation of the Republic of Kazakhstan, entry into this organization and the transfer of money by individuals occur on a voluntary basis and without any reinforcement by documentary procedures.¹⁷

The position of the National Bank of Kazakhstan is largely determined by the adopted course on countering financial pyramid schemes.

¹⁷ Information message of the National Bank of Kazakhstan (Jan. 8, 2019), available at <http://www.nationalbank.kz>.

In May 2018, the President of Kazakhstan called for a joint study with other countries on the possibility of adapting digital money to the financial system and developing common rules for regulating cryptocurrency. It can be assumed that at this stage of development of the economy of Kazakhstan the regulation of cryptocurrency at the legislative level will have a positive impact not only in the sphere of entrepreneurship but also in other areas of the state and society.

The Kyrgyz Republic. The National Bank of the Kyrgyz Republic has recommended that the citizens of the country refrain from using cryptocurrency and not take cryptocurrencies as payment for goods, services and work. Citizens investing their funds in cryptocurrencies must fully and clearly understand and assess the risks and possible financial losses, and losses incurred, in the funds invested in cryptocurrency.¹⁸

Despite the tough official position of the National Bank, in 2018 Kyrgyzstan prepared to issue a national cryptocurrency. Kyrgyz authorities had decided to engage in the development of gold mines, and for this the state needed private investment. The project name is GoldenRock. To raise money quickly, it was decided to use cryptocurrency. This is the first such state project in the countries of the Eurasian Economic Union to do so. Each token of GoldenRock will be provided with a gold equivalent. After the development of the field, the owner of the token will be able to exchange it for gold metal. At the time of the writing of this paper, the decision on the exact price of the token had not yet been made.

By order of the Prime Minister of Kyrgyzstan, the local state company Trading House Kyrgyzstan (TDK) was appointed responsible for the implementation of the project. It will generate cryptocurrency tokens at its facilities. The main trader of GoldenRock will be the Russian company Crypt NN. ICO is an analogue of IPO (Initial Public Offering) – the initial public offering of shares of a company on the stock exchange in the traditional economy. This is the process of issuing tokens (digital certificates – the equivalent of stocks on the traditional financial market) and placing them on a cryptocurrency exchange. Placement on the stock exchange will be handled by the main trader Crypt NN.

Since the TDK shareholder is the state, specific ICO parameters are at the stage of coordination with the government. The government of Kyrgyzstan hopes to receive between \$5 million and \$40 million by ICO. The TDC invests this money in the development of a gold field with reserves of 40 tons. If the project is successful, the next stage will be investments in agricultural projects.

According to the head of the working group of the Central Bank of Russia on cryptocurrency issues, Elina Sidorenko, Kyrgyzstan has developed a good idea to attract investment. This approach is similar to the idea behind bonds and shows that modern digital technologies can make a smooth transition from the model of joint stock company to an ICO.

¹⁸ Предостережение Национального банка Кыргызской Республики относительно распространения и использования «виртуальных валют», в частности биткойнов (bitcoin) [Warning of the National Bank of the Kyrgyz Republic Regarding the Distribution and Use of “Virtual Currencies,” in Particular Bitcoins] (Jan. 8, 2019), available at <http://www.nbkr.kg/newsout.jsp?item=31&lang=RUS&material=50681>.

The Republic of Armenia. At the time of the writing of this paper, the legislative basis for circulation of cryptocurrencies in Armenia had not yet been created. In 2015, the Central Bank of Armenia, following the experiences of the EEU countries, warned citizens about the risks of investing funds in bitcoins. Since 2015 the situation and opinions about cryptocurrencies have been changing. Analysis of the experience of the Republic of Belarus had a significant impact on Armenian legislators, with the result that a bill has been submitted to the National Assembly of Armenia and is aimed at liberalizing the circulation of cryptocurrency and excluding transactions from taxation.

The newly proposed draft bill “On Digital Technologies” provides the basis for cryptocurrency and mining in the country. This draft offers tax exemptions and allows mining without any licensing. Mining companies may get other benefits such as preferential customs tariffs. If the bill is adopted, Armenia may follow Belarus with a liberal approach to cryptocurrency regulation. (It is important to mention that Georgia (Armenia’s neighbor in the South Caucasus) is a real pioneer in crypto legalization. The implementation of blockchain technologies there has been expanding for several years, in both the private and the public sectors. In fact, the first Bitcoin mining farm in the South Caucasus was set up in Georgia, and since 2016 the Georgian land register has been maintained with blockchain technology.) Armenian authorities also announced plans to create a free economic zone for startups developing distributed ledger applications.

4. Approaches to Regulation and the Future of Cryptocurrencies

Table 1 shows the results of the study. It presents a comparison of the characteristics of the approaches to the regulation of cryptocurrencies in the BRICS and EEU countries.

Table 1: Comparative Characteristics of Approaches to the Regulation of Cryptocurrencies

Country	Availability of a separate law on cryptocurrencies circulation	Approach to regulation
Brazil	No	Conservative
Russia	The draft law has been developed and adopted in the first reading	Neutral
India	No	Changing from liberal to conservative
China	No	Conservative
South Africa	No	Conservative

Belarus	Decree No. 8 of 21 December 2017 "On the Development of the Digital Economy"	Liberal operations with cryptocurrency are allowed; Incomes are not taxed
Kazakhstan	No	Conservative
Kirghiz Republic	No	Neutral
Armenia	No	Liberal (potentially)

The normative framework for regulating the circulation of cryptocurrencies was created only in the Republic of Belarus. In the Russian Federation, the law was passed in the first reading. There are no thematic laws in other BRICS and EEU countries; the position on regulation is voiced mainly by representatives of the central banks.

On this issue the range of opinions is broad. A number of scientists and representatives of the banking environment assess virtual currencies extremely negatively, equating them with "financial pyramids" and "bubbles."¹⁹ Taking into account the high volatility of digital currency rates, a proposal has been made to limit access to such currencies in order to prevent speculation.²⁰

Supporters of virtual currencies speak of a digital revolution, freedom and a decrease in dependence on intermediaries. One of the most important arguments in their favor is that "the digital economy needs a digital currency."²¹ Here is the opinion of Yu. Kozenko:

The application of exclusively prohibitive measures to the sphere of creation and use of digital financial assets, in conditions of extremely dynamic development of appropriate approaches and technologies in developed countries, may turn into another century of backwardness for our country.²²

There is a largely negative and cautious attitude to this phenomenon inside the Russian legal environment.

The Central Bank of Russia proposed creating the first joint multinational cryptocurrency for the BRICS and EEC countries. By jointly adopting a new

¹⁹ Philip Godsiff, *Bitcoin: Bubble or Blockchain in Agent and Multi-Agent Systems: Technologies and Applications: 9th KES International Conference, KES-AMSTA 2015 Sorrento, Italy, June 2015, Proceedings* 191 (G. Jezic et al. (eds.), Cham: Springer, 2015).

²⁰ Chung Baek & Matt Elbeck, *Bitcoins as an Investment or Speculative Vehicle? A First Look*, 22(1) *Applied Economics Letters* 30 (2014).

²¹ Прокопович Г.А., Юсупов А.Р. Биткоины в платежной системе онлайн бизнеса: возможности правового обеспечения и проблемы использования // Вестник экономической безопасности. 2017. № 1. С. 196–200 [Galina A. Prokopovich & Alisher R. Yusupov, *Bitcoins in the Online Business Payment System: The Possibilities of Legal Provision and the Problems of Use*, 1 *Economic Security Bulletin* 196 (2017)].

²² Козенко Ю.А. Аксиомы использования цифровых финансовых активов // Дальневосточный аграрный вестник. 2017. № 4(44). С. 203–210 [Yuriy A. Kozenko, *Axioms of Using Digital Financial Assets*, 4(44) *Far Eastern Agrarian Bulletin* 203 (2017)].

cryptocurrency all these states will be able to increase their investments in blockchain and smart contract technology, which will serve as the basis for creating a cashless society and improve the management of trade liquidity with substantial support from the New Development Bank (NBR).

If the initiative is adopted and implemented, the first multinational cryptocurrency could be used by more than 41 percent of the world's population. This could potentially increase the efficiency of trade between the states by replacing the local currencies that are currently being used for trade. And this could create a technological trading block that could change global trade through blockchain and the technology of smart contracts. Thus, several factors play a role here: speed of transactions, trust and reducing costs. Therefore, when we talk about the use of cryptocurrencies in the trade exchange between the countries that are members of BRICS and the EEU association, we realize that this can give a tangible, practical result. For the Russian Federation such an initiative is very important, because it allows the development of trade even in the context of international sanctions: the use of cryptocurrency will limit the impact of the SWIFT system.

Creating a single supranational currency will mitigate volatility problems. Modern digital currencies, such as Bitcoin, are not secured. Changes in supply and demand and the impact of positive and negative news lead to serious price fluctuations. In the case of the emergence of a single cryptocurrency within the framework of BRICS, a fundamentally new situation will arise. The rate of supranational cryptocurrency can be based on the exchange rate of the ruble, yuan, rupee and the Brazilian real, as well as, possibly, other national currencies. In this case, volatility will decrease. Based on blockchain technology, this cryptocurrency will be tied to the central banks of member countries, as well as to the financial policies that they enforce. Accordingly, the cost of such a cryptocurrency will be determined by the value of the national currencies of the BRICS countries, and this will lead to stability.

However, in order for this initiative to succeed, among other things, the transnational legislation of states in respect of cryptocurrencies must be updated simultaneously. Currently, there are significant differences between the laws of states that can potentially use a single cryptocurrency. The study allows us to identify the most important points that should be reflected in the legal framework:

1. The circulation of cryptocurrency should be anchored on a legislative basis. The absence of laws or their imperfection leads to chaos.
2. Prohibitions will not stop the development of cryptocurrencies. The digital economy needs digital money. The Indian experience shows that the introduction of restrictive measures can result in acrimonious public debate and protests.
3. When drafting laws, it is necessary to take into account the experience of neighboring countries. The provision of a liberal regime by Belarus will facilitate the outflow of capital from the countries of the Eurasian Economic Union.
4. The task of each state is to improve financial literacy and explain the risks of investing in digital assets. The possibility of limiting investments in digital assets to

a certain amount can be justified, at least at the initial stage. Private investors need to understand that the value of digital currency is subject to fluctuations. The state cannot be responsible for the risks of investors. Being aware of the high volatility, it seems reasonable to determine the maximum amount of investment in digital assets for banks, pension funds and other institutional investors.

5. Transactions with digital assets are subject to accounting and taxation. At the first stage, the BRICS and Eurasian European Union countries may provide tax benefits. These actions should be coordinated. It seems that over time it will be necessary to introduce norms that will allow the taxation of income from transactions in the same way as transactions with securities is now organized. The tax base for cryptocurrency purchase and sale transactions may be determined as the excess of the total income received by the taxpayer in the tax period from the sale of the corresponding cryptocurrency over the total amount of documented expenses for its acquisition.

6. All countries that are part of BRICS and the EEU should work together to develop common approaches that prevent the use of cryptocurrency for criminal purposes.

Conclusion

On the basis of the comparative analysis, several approaches to the regulation of cryptocurrencies can be formulated. Within the conservative approach, either restricting or prohibiting cryptocurrencies is envisioned. China, South Africa, Brazil and Kazakhstan are leaning towards conservative regulation. It should be noted that the implementation of a complete ban on this activity in the conditions of a global regulatory trend for the formal permission of such activities under special licenses may lead to the reduction of innovative projects in this area and transfer them to more transparent regulatory jurisdictions within the framework of BRICS or the Eurasian Economic Union. This problem has already been faced by China.

Within the liberal approach, operations with cryptocurrencies are allowed, tax exemptions are made, and licensing and financial control requirements are lowered by the government. This approach was implemented in the Republic of Belarus at the time of the writing of this paper, and the possibility of its application in Armenia is also being considered.

The third approach, which can be called neutral, is common to the position of Russia. Within this approach, it is necessary to find the best compromise in the legislative regulation of the cryptocurrency, determine its legal nature and the approach to licensing the activities of the market participants, and decide upon the taxation of transactions and revenues. Also, special attention should be paid to countering the legalization of proceeds from criminal activities.

The Russian state should not refrain from the legal regulation of new economic instruments. Within BRICS and the Eurasian Economic Union, it is feasible to formulate similar requirements for the regulation of cryptocurrency, in order to avoid the migration of investments and capital to countries with a more liberal approach.

On the analysis of the legislative base, and the evaluation of the advantages and disadvantages of cryptocurrencies, the authors conclude that it is possible and feasible to create a single currency within the framework of integration associations. The use of a supranational cryptocurrency will reduce the dependence on the dollar and may have a positive impact on the economic development of the countries in BRICS and the EEU. At the same time, it is important to remember that, while adopting new laws and putting to use new technologies holds promise, cryptocurrencies cannot now replace traditional money and national currencies.

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