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Cryptocurrency and Specifics of Operation of Cryptocurrency Exchanges in Kazakhstan

To date, there are more than 200 cryptocurrency exchanges and exchange platforms worldwide allowing to sell more than 1,000 different types of cryptocurrencies. Meanwhile, almost each month marks the origin of a greater number of various cryptocurrencies, which definitely affects the world economy. The most popular cryptocurrencies are Bitcoin, Litecoin, Ethereum, Ripple, Dash, BitcoinCash, Qtum, DOT.

At the time of writing, many countries have no legal regulation of cryptocurrency, in which connection this object is "free floating".

Other countries partially or completely ban cryptocurrency. For example, China has recently banned cryptocurrency at all in connection with the fact that cryptocurrencies are not secured by real value, their prices can easily be manipulated, and commercial contracts are not protected by the Chinese legislation.

At the same time, there are countries, which adhere to a moderate position, imposing partial bans. For example, Russia considers cryptocurrency as a digital asset, establishes the amounts of legal transactions, and considers mining as entrepreneurial activities, despite the absence of special regulation.

In general, cryptocurrency is a variety of digital money, the basis of which is formed by a cryptography technology, i.e. data encryption. It has no physical appearance and exists in the electronic form only. The key advantages of cryptocurrency are anonymity, decentralization and security.

Please note that the laws of the countries, which have permitted the use cryptocurrencies, apply two general approaches to the essence of cryptocurrency.

1. Cryptocurrency is money¹.
2. Cryptocurrency is commodity (in case of taking the specific function of universal equivalent, means of payment and store of value pertinent to money, the Kazakhstan

¹ For more details, please see <https://www.asamblea.gob.sv/node/11282>.

approach determining cryptocurrency as property in all its universal nature tends to the position that "cryptocurrency is commodity").

The key features of cryptocurrency are:

1. Cryptocurrency is neither issued by any bank, nor bound to any country's economy. Issue of cryptocurrency is not controlled by a single authority.
2. As a rule, the work with cryptocurrency is anonymous. To work with a bank and a payment system it is necessary to specify at least a part of personal data. There is no need to do this in cryptocurrency. Each participant is anonymous. All information about a participant is a set of symbols in the wallet address. It is worth mentioning that certain cryptocurrency exchanges significantly limit the use of cryptocurrency until accomplishment of the account verification² at the exchange.
3. Simple and direct transfer of funds between the chain participants.

In light of active development of information technologies, the relevance of cryptocurrency issues becomes greater each day. Although cryptocurrency mining has been in demand over the previous years, to date, the most popular are the activities involving investments in cryptocurrency.

Until recent time, cryptocurrency has stayed in the background in Kazakhstan and has not been regulated in any way whatsoever.

However, the situation with cryptocurrency significantly changed in Kazakhstan along with the adoption of the Kazakhstan [Law](#) on Introduction of Amendments into Certain Legislative Acts of Kazakhstan on the Issues of Regulation of Digital Technologies dated 25 June 2020, which added cryptocurrency provisions to the Kazakhstan [Law](#) on Informatization. Relevant changes were also introduced into the Civil [Code](#) of Kazakhstan with respect to the types of objects of civil rights.

To date, cryptocurrency is referred to property and is defined by the term "digital asset", which means property created in the electronic and digital form with the application of cryptographic means and computer calculations, which is not a financial instrument, as well as the electronic and digital form of certifying property rights (Article 1(55-1) of the Law on Informatization).

If we consider the available rules concerning the digital assets, we will easily understand that the law-maker's approach to cryptocurrency is skeptical and wary. According to the current legislation of Kazakhstan, a digital asset is not a means of payment and may be divided into two types: secured and unsecured digital asset.

Secured digital assets include a digital token and other digital assets serving as a digital means of certifying property rights to goods and/or services issued (provided) by a person that issued a secured digital asset (Article 33-1(2) of the Law on Informatization).

Essentially, a secured cryptocurrency is a cryptocurrency, the value of which directly depends on real assets. Such cryptocurrency allows guaranteeing the stability of its exchange rate and preventing exceptional depreciation. The shining example of a

² Verification is the identity authentication procedure.

secured cryptocurrency is Tether (USDT), the exchange rate of which depends on the US dollar exchange rate³.

Unsecured digital assets include tokens received as an award for the participation in support of consensus in blockchain in accordance with the procedure established by the Kazakhstan legislation (Article 33-1(2) of the Law on Informatization).

However, despite the fact that much time has passed from the moment of introducing this rule, the blockchain consensus support procedure with respect to unsecured cryptocurrency has not been established yet.

At the time of writing, major part of cryptocurrencies are unsecured. These are Bitcoin, Electroneum, Ethereum, etc.

The price of such cryptocurrencies is formed by way of demand only, in which connection high volatility index makes investments in an unsecured cryptocurrency exposed to extreme risks. The rates of unsecured cryptocurrencies are subject to significant influence by mystery shoppers, activities of major investors and prohibitions of regulators of different countries.

For example, after the ban on cryptocurrencies in China and news in the context of the position of the US Securities and Exchange Commission, the value of almost all cryptocurrencies has decreased.

The Kazakhstan law-maker prohibited to organize the issue and circulation of unsecured digital assets in the Kazakhstan territory with a reservation that otherwise may be provided for by the Kazakhstan laws, and established that a digital asset neither secures the rights to financial instruments, nor gives relevant rights to its owner or possessor with respect to a legal entity. At the same time, National Bank of Kazakhstan established that banks must not be involved in any operations in the Kazakhstan territory associated with the values created and considered in a decentralized information system with the application of cryptography means and/or computer calculations, which are not any financial instruments or financial assets under the Kazakhstan legislation and do not contain any right of claim to anyone. In other words, local banks are prohibited to interact with cryptocurrency in any manner, which precludes from the activities of cryptocurrency exchanges, because it is impossible to open a bank account or a fiat channel with a local bank (paragraph 98(4) of the Resolution No. 188 of the Management Board of National Bank of Kazakhstan dated 12 November 2019).

When stating that the laws of Kazakhstan may provide for otherwise, the law-maker most likely implied legislation of the Astana International Financial Centre ("**AIFC**"), which does not prohibit the activities with cryptocurrency in its territory.

The said prohibition does not cover the activities in the AIFC, because the AIFC has its own legislation composed of the AIFC acts, which may be based on the principles, rules and precedents of the laws of England and Wales and/or standards of the world leading financial centers, and the current legislation of Kazakhstan, which is applied to the extent

³ <https://www.forbes.com/sites/ktorpey/2017/09/30/this-u-s-dollar-backed-token-issued-on-bitcoin-and-ethereum-is-a-ticking-time-bomb/?sh=7f7752e76a16>.

not regulated by the AIFC acts (Article 4(1) of the Constitutional Law of Kazakhstan "On the Astana International Financial Centre").

The AIFC made a significant step towards cryptocurrency much earlier than the Kazakhstan law-maker and created the legal environment for the circulation of cryptocurrencies, regulation and functioning of special exchange platforms (exchanges).

The AIFC acts distinguish cryptocurrency as an independent item of circulation. It follows from the official definition given in the glossary of the AIFC committee for the regulation of financial services ("**AFSA**") that a digital asset is a digital expression of value, which may be sold in the electronic form and functions as a medium of exchange, unit of account or store of value, and which may be bought/sold for a fiat currency, but is not guaranteed by the government of any jurisdiction (AIFC Glossary / AIFC Act No. Fr0017 of 2018).

Activities involving the circulation of cryptocurrency are also distinguished in the AIFC as a separate type of market operations and include:

- management of a digital asset trading facility ("cryptocurrency exchange");
- ensuring of storage and management of digital assets, which belong to another person (AIFC Glossary / AIFC Act No. Fr0017 of 2018).

Management of a cryptocurrency exchange includes the activities carried out for the purposes of entering into contracts between the counterparties for:

- purchase, sale or exchange of digital assets for a fiat currency;
- exchange of one digital asset for another (Schedule 4(3) of the AIFC General Rules).

The above types of activities may be performed only by the AIFC participants who obtained a relevant license for the management of a digital asset trading facility.

As of the time hereof (10 August 2021), the AIFC published the Consultation Paper on the development of cryptocurrency industry, and one of the issues raised therein deals with a possibility to open bank accounts to allow for the exchange of cryptocurrencies at local banks (paragraph 8 of Consultation paper No. AFSA-G-CE-2021-0004).

In order for a cryptocurrency exchange to start functioning in the AIFC it is necessary to strictly comply with the following conditions:

- to register as an AIFC participant (AIFC Glossary / AIFC Act No. Fr0017 of 2018);
- to obtain an AFSA license and pay a duty for filing an application for the license (AIFC Glossary / AIFC Act No. Fr0017 of 2018);
- to develop clear and transparent rules for admission of digital assets to stock trading (6.3.1 of the AIFC Authorised Market Institution Rules);
- to obtain the AFSA's approval of a digital asset to be accepted for trading (6.3.2 (3) of the AIFC Authorised Market Institution Rules);

- to comply with requirements concerning technology resources, cybersecurity, technology governance, and to maintain a compliance system (6.6 of the AIFC Authorised Market Institution Rules); and
- to have arrangements in place to ensure storage of the client's funds on the electronic wallet at most equivalent to 10 BTC⁴ or 10% of all client's funds, whichever is greater (paragraph 1.1 (h) of Schedule 1 of the AIFC Fintech Rules).

According to the general rule, circulation of decentralized assets is not allowed now in the Kazakhstan territory, except for the AIFC territory, where the activities with cryptocurrency are permitted in case of compliance with precise requirements established by the AIFC acts.

Kazakhstan has only started to solve the issues of activities with cryptocurrency (including the AIFC territory) by way of developing additional acts, which, in our view, evidences the intention to further recognize and ensure regulatory support of this industry.

⁴ Bitcoin is a type of cryptocurrency.