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Decree on Development of the Digital Economy

On 21 December 2017 Alexander Lukashenko signed the Decree which significantly improves the conditions for residents of the High-Tech Park and makes our country much more competitive in terms of creation of a modern digital economy. The provisions of the Decree came into force on 28 March 2018.

The document establishes that legal entities in Belarus have the right to own any tokens (including crypto-currencies), store tokens in the virtual wallets, exchange tokens for one another or for fiat money. Belarusian legal entities now have a unique opportunity to create and place their own tokens in the Republic of Belarus and abroad via crypto platform operators and crypto currency exchange operators (such operators must be registered as High-Tech Park residents).

Tax crypto-holidays until January 1, 2023

Until the specified date HTP residents are exempted from VAT (20%) and corporate profit tax (18% for legal entities) in relation to turnover and profit from mining, creation, acquisition and disposal of tokens, and individuals – from income tax (13%) for mining, acquisition (including as a gift), alienation of tokens in exchange to fiat money and (or) other tokens. At the same time, numerous restrictions of currency legislation (purchase of currency for specific purposes, permissive procedure for opening of bank accounts abroad and conducting foreign exchange operations etc.) do not apply to transactions with tokens specified in the Decree.

In accordance with the Decree independent mining, acquisition and alienation of tokens by individuals is not considered as a business activity and therefore tokens are not subject to declaring.

Accounting, KYC & AML

One of the main issues of the crypto-business is proper accounting of tokens on the balance sheet. The Decree establishes that the mined or otherwise acquired tokens are considered as assets, and the Ministry of Finance shall soon develop specific rules for accounting of tokens.

Same is the situation with the identification of parties of the transactions (know your customer) and the requirements for the prevention of money laundering (anti money laundering laws), which all participants in these legal relationships will have to deal with. But first of all it will be crypto platform operators and crypto currency exchange operators. The Decree does not provide for special requirements (except for the exchange of one token for another, that are specifically put out of scope of the current AML requirements). Such requirements shall be defined by the Government. The success of Belarus as a haven of a crypto business in Eastern Europe will mainly depend on the requirements that will be adopted in the nearest future in the development of the Decree.

Crypto Platform Operators

The Decree provides for the possibility of creating crypto platform operators and crypto currency exchange operators. The purpose of the latter is to exchange, on their own behalf and in their interest, one token for another, as well as the output of tokens into fiat and digital money via crypto ATMs.

The main function of the crypto platform operators (that is how the Decree calls crypto stock exchanges) is the creation and placement of tokens (i.e. ICO), as well as the output of tokens into fiat and digital money.

Both types of operators involve registration as residents of HTP and require availability of funds at bank accounts in Belarusian

banks in amount of at least \$500,000 and \$100,000 (for crypto stock exchanges and crypto ATMs respectively).

Green light for product companies

Belarusian IT-business today is based on the principle: development is in Minsk, trade is through a European Union legal entity. The way to resolve this problem provided by the Decree consists in simplifying the requirements for the execution of contracts (avoiding paper contracts and obligatory sealing), primary accounting documents (the transition from bilateral acceptance certificates to invoices common in the West), and also in exempting from taxes (VAT and withholding tax) in relation to services (products) purchased by Belarusian entities from foreign companies in order to develop and promote their own product.

Subsidiary responsibility of founders

Belarusian businessmen long ago got used to the fact that mistakes lead to liability, and the corporate veil is so thin that sometimes the courts remove it in case of bankruptcy faster than the groom does on the wedding night. Not afraid of three magic letters (LLC, limited liability company), courts tend to involve the founders and the director of the bankrupt company to reimburse its debts, which makes you think twice before you start implementing an idea, because you can get much more serious problems than a bad experience.

The Decree gives a new message to innovators and protects the owners (founders) and managers of HTP residents from being involved in subsidiary liability for the company's liabilities in case of bankruptcy. The only exception is when bankruptcy is caused by actions of such persons, which entailed their criminal liability.

Convertible notes is the new black

It is insane how many transactions have broken down in Belarus just because of the answer that the investors received from legal advisors at the structuring stage that the usual way to invest money through a convertible loan in Belarus does not work, not only because local corporate legislation does not provide for such legal instrument, but also because it is unable to implement due to specific provisions. Now, HTP residents have the opportunity to enter into convertible loan agreements between themselves and with third parties. A convertible loan lets the investor provide money to the company in exchange for the shares or a stake in the share capital at the price fixed at the time of signing the contract, in case of the circumstances specified in the contract (for example, an IPO), instead of repaying the loan amount.

Non-compete & Non-solicitation

Today the only restriction for enticing employees of competitors is the idea of corporate ethics of the enticing company and the employees themselves. The right to work is rock solid from the time of the victory of the labor proletariat, and the Belarusian legislator always assumes that one cannot simply prohibit a person to work where they want. The rules of the game change for HTP residents, now they have the right to stipulate both the prohibition (and responsibility for violating it) for enticement of employees with their counterparts (non-solicitation), and prohibit the employees themselves from getting a job at a competitor or otherwise competing with their employer (Non-compete). In the case of Non-compete, the employee is entitled to a monthly fee of not less than one-third of his average monthly earnings for the last year of work.

#CryptoRefugeesWelcome

Every foreigner who has ever worked in Belarus knows how inconvenient it is to obtain a special permit for employment and the one-year limit for a temporary residence permit. The Decree abolishes the requirement for the residents of the HTP to obtain permits for their foreign workers, and the temporary residence permit for a foreign worker will now be determined by the duration of the concluded employment contract plus two months after its termination. Icing on the cake, a 180-day visa-free regime is established for employees and proprietors of HTP residents.