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## LEGAL ASPECTS OF DIGITAL ASSET MARKET IN THE REPUBLIC OF SERBIA\*\*

*Over the last decade, virtual currencies have captured an increasingly significant role in financial markets, introducing a new class of assets and revolutionizing market notions of issuing, trading, storing and transferring value. Hence, the author considers the legal consequences of financial growth and success of digital assets in the contemporary economy. The wave of general transition on the Internet in 2020 also affected cryptocurrencies, i.e. digital assets, which existed somewhere between two extreme positions: legal regulation and grey area. The unresolved legal status of cryptocurrencies has created vast problems for both legislators and investors. As digital assets and other blockchain applications mature, the global regulatory authorities work hard to keep pace and to adopt legal frameworks pertinent to regulating this new method of exchange. At the end of 2020, Serbia adopted the Law on Digital Assets, thus becoming one of the first countries that legally regulate the field of digital assets. The paper analyses specific features of theoretical comprehension and legal regulation of digital assets in the Republic of Serbia. Using the normative and comparative method, the author will explore the legal status of cryptocurrencies, issuance and trade of cryptocurrencies, emphasizing the similarities and differences with the issuance and trade of securities. Therefore, the main objectives of this article are the regulation of digital asset and the application of securities law to issuance and sale of digital assets. Accordingly, it is of substantial importance to develop a holistic and coherent understanding of digital assets and related market activities rooted in empirical evidence and deeper knowledge of the underlying mechanisms.*

*Keywords: digital assets; virtual currencies; token; securities law; legal regulation.*

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## 1. INTRODUCTION

Around the world the so-called „Digital Law” or „Blockchain Law“ is in the „embryonic” development stage, because the legislative interventions into the sphere of cryptocurrencies is still in its infancy. Lawyers are still in a process of understanding phenomena such as „digital asset“, “blockchain” and „virtual space“, as well as the opportunities and limits of legal regulation of operating with digital information (Aryamov et al., 2019, p. 2). Over the last decade, digital assets have captured an increasingly prominent role in financial markets, introducing a new class of assets and transforming market notions of issuing, trading, storing and transferring value. Even social media platforms enter into the digital asset market. Facebook launched Libra, a new virtual currency that is globally recognized as a legal tender (Andriotis et al., 2019, p. 1). In the meantime, bitcoin has become one of the most prevalent cryptocurrencies globally. Bitcoin presents fascinating challenges to lawyers and financial market regulators. Bitcoin is the first scheme for a private virtual currency that operates without a centralised steering-mechanism and without direct intervention of central regulator (Kulms, 2014, p. 290). The primary technology – blockchain has transformed capital and credit markets, creating a digital pathway that expands opportunities for raising capital and collateralizing debt obligations (Johnson, Hsu Wilbur & Sater, 2018, p. 115).

At the present time, the key problem is the determination of the legal nature of the digital assets. We cannot foresee at the moment whether the respective digital law and civil law will determine it from the standpoint of the real right, of the non-property right, or otherwise. (Aryamov et al., 2019, p. 2). According to the international financial documents and global experience of legalizing a new class of assets, as a basic civil law concept, it is advisable to concentrate not on the concept of “digital rights”, but on “digital assets” and consider them as an independent, *sui generis* object of civil rights. It should be noted, that the term “digital rights” has a well established understanding in foreign literature. However, it does not relate to cryptocurrencies. Instead, it characterizes human rights in the digital space (Inozemtsev, 2020, p. 2). As opposed to classical objects of civil law, objects of digital civil law (digital objects) are intangible objects (e.g. tokens, cryptocurrencies, digital wallets, etc.), expressed in a computer code generated by a computer program using Distributed Ledger Technology (DLT).<sup>422</sup> Based on the analysis of soft law documents of international financial organizations as well as of the introduced models of comparative policy practices, it is evident that foreign regulators incline to concentrate on the DLT as a base when separating new “digital” objects and services from “electronic” objects and services that have long been familiar in the world (Inozemtsev, 2020, p. 3).

The methodology of this paper comprises a comprehensive and systemic approach, including comparative and normative method. Primarily, the author will explore the legal status of cryptocurrencies in comparative law, then the issuance and secondary trading of cryptocurrencies, as well as the OTC trading of cryptocurrencies, emphasizing the

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<sup>422</sup> DLT and blockchain can be organized as permissionless or private networks. The software cannot be freely downloaded for private or permissioned DLT and blockchain. In lieu, participants will have to request access from the organisers of the platform, by accepting the terms of operation and the standards of digital trading (Kulms, 2019, p. 309).

similarities and differences with the issuance and trade of traditional securities. The results of this research can be applied for developing models for legal regulation of digital assets in foreign countries as well as for using positive aspects of the considered experience to the Serbian legal system (Inozemtsev, 2021, p. 515).

## 2. REGULATION OF DIGITAL ASSETS IN COMPARATIVE LAW

In recent years, there has been an incredible boom in the digital assets market. Since 2008, when the first issue took place until now, only a small number of jurisdictions have adopted rules governing issuance and sale of digital assets. Although the market boomed, there were no explicit and predictable rules. The securities laws in place were, and still are, a product of the 1930s, especially in the United States (US). Even though the laws have been permanently updated by the US Securities and Exchange Commission through rulemaking and guidance, this new approach to fundraising didn't fit properly into the regulatory framework. The whole point of crowdfunding was to find a less expensive way of raising money (Henderson & Raskin, 2019, p. 444).

Nowadays, digital assets present both promise and peril, which makes the space analogous to crowdfunding in the early 2010s. In both cases, there has been no absence of investor demand for new classes of assets or ways to participate in capital markets. In the same way, there hasn't been a lack of entrepreneurs who desire to ensure the public with digital assets. However, there is an absence of legal rules and capital market regulations which provide a clear and predictable legal framework for investors and issuers (Henderson & Raskin, 2019, p. 445).

As with any new technology, digital assets have opened a number of questions that need to be answered. Immense amounts of money funnelling into the „extraterritorial” virtual space have created conditions for a get-rich-quick on the part of investors and for cases of complete fraud on the part of promoters (Henderson & Raskin, 2019, p. 447). Due to the fact that the digital assets exist in the „extraterritorial” virtual space and that the payments by digital assets are possible through the registration of a cession with residents of other states, it is meaningless to limit its turnover to the frontiers within a state (Aryamov et al., 2019, p. 8).

Therefore, digital assets pose two crucial problems to capital market regulators. The first is a problem of information asymmetry. Information asymmetry is the animating force behind most securities regulation. The three pillars of modern securities laws are: mandatory disclosure, rigid anti-fraud rules, and insider trading limitations. They are designed to put traders on an equal footing, in spite of whether they are inside or outside of a particular company whose share is being traded. This comes from the reality that capital market will not provide the optimum amount of information so the legislator must instead compel it. The antifraud rules in turn are designed to make any disclosures credible (Henderson & Raskin, 2019, p. 447).

The second problem is regulation of supervisory authority permission. This puts regulatory authorities, such as US Securities and Exchange Commission, in a tough position, specially given the lack of legal rules. The absence of digital assets regulation

may give cover to bad participants, while at the same time the good participants are forced to apply with outdated capital market regulations (Henderson & Raskin, 2019, p. 448). Therefore, it is necessary to amend the existing securities regulations or adopt completely new regulations governing the digital assets market.

In the past five years several states in the US such as Arizona, New York, Tennessee and Vermont have enacted digital assets bylaws. On the other hand, the growing importance of digital assets market hasn't yet triggered legislative activities on the European Union (EU) level. The European Commission only has supported the establishment of regulatory authorities. France is only major jurisdiction in the EU that has moved for rules on trading certain securities via digital asset with *erga omnes*. Conversely, some minor European jurisdictions, like Malta, Gibraltar,<sup>423</sup> Monaco, Liechtenstein, Luxembourg<sup>424</sup> etc. have adopted digital asset rules to enhance their attractiveness as an off-shore centers for digital finance (Kulms, 2019, pp. 318-321).

After becoming one of the first countries to authorize the registration and transfer of unlisted securities using blockchain technology, France has adopted an innovative legal framework on Law on Business Growth and Transformation, the so-called PACTE Law,<sup>425</sup> governing initial coin offerings, digital assets (fr. *actifs numériques*) and digital assets services providers (*DASPs or PSAN, prestataires de services sur actifs numériques*) with the aim of being at the forefront of the blockchain technology (Praicheux, 2020).

Malta is one of the first countries which adopted digital asset laws. In July 2018, Malta passed the Digital Innovation Authority Act. It was adopted in an attempt to develop the innovative technology sector while protecting investors, consumers, integrity of the financial market, and public interest in general against abuse and non-compliance with mandatory laws intended for such purposes.<sup>426</sup> In addition, Malta adopted the Virtual

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<sup>423</sup> In 2017, Gibraltar passed Financial Services (DLT) Regulations, which specify that DLT may be used for storing and transmitting value belonging to others, as well as the authorization of Authority. Financial Services (DLT) Regulations, *LN 2017/204*, Repealed by Act.2019-26 as from 15.1.2020. Art. 1-4. New Regulation, which adopted in 2020, regulates the position of DLT Providers. Financial Services (DLT Providers) Regulations, *LN 2020/012*, Art. 2.

<sup>424</sup> Luxembourg endeavors to be a leader in the regulation of digital assets markets by continuously amending and updating its securities law. The 2001 Law was amended by the Luxembourg law of April 6, 2013 on dematerialised securities to allow Luxembourg corporations and investment funds to issue securities in dematerialised form and convert existing registered or bearer securities into dematerialised securities. In 2020, the 2001 Law was further amended by the Luxembourg law of March 1, 2019 providing increased legal certainty by expressly permitting securities to be maintained by the account keeper through secured electronic registration mechanisms, involving DLT and blockchain (Bill 7363). The intention of Luxembourg legislator is to enable capital market participants to benefit from opportunities offered by new technologies in the field of the circulation of securities. In particular, this Law enables the use of tokens in the form of digital assets stored in a blockchain (Pascual, Holle & Petit, 2021).

<sup>425</sup> The PACTE law of May 22, 2019 permits entities, under certain conditions, to issue digital assets that may grant certain rights to customers (excluding shareholder rights such as voting rights or dividends). Digital assets involve tokens (except those qualifying as financial instruments) and digitally registered assets, involving cryptocurrencies, that are recognized as a means of exchange that can be transferred, stored or exchanged electronically through DLT or blockchain (Praicheux, 2020).

<sup>426</sup> Malta Digital Innovation Authority Act, Chapter 591 of the laws of Malta, *Act XXX of 2018*. Art. 3(c).

Financial Assets Act, that permits initial coin offerings of digital assets on DLT.<sup>427</sup> Initial coin offerings of digital assets will be accompanied by registered whitepaper which serves as an abridged prospectus (Kulms, 2019, p. 322).

A separate question is the issue of specialized regulation of new activities in relation to digital assets. The existing legal rules sometimes may apply directly to new financial intermediaries that implement tasks related to traditional financial activities. On the other hand, some services on the digital assets market may request additional regulation. For instance, experts from Cambridge Centre for Alternative Finance consider that only a relatively small number of brokerages in the digital asset market to be wholly new (e.g. blockchain analytics, the issue and placement of tokens, etc.) (Inozemtsev, 2021, p. 520).

### 3. DEFINITION OF VIRTUAL CURRENCY AND DIGITAL TOKEN

The National Assembly of the Republic of Serbia adopted the Law on Digital Assets, which entered into force on December 29, 2020, and shall apply as of June 29, 2021, which will provide enough time to create conditions for its implementation, as well as for all interested participants in the digital assets market to get informed with the provisions of the Law.

The principal objective of this law is to define digital assets and its forms, and to create an explicit distinction between official means of payment recognized in the Republic of Serbia and abroad. The Law on Digital Assets regulates the issue of digital assets for the first time in the Republic of Serbia, which not only sets the rules for market participants, but also regulates the entire process of issuing and trading digital assets, which will certainly result in increased security for investors and businessmen from the potential risks (Božović, 2021, p. 1). The aim of adoption of the Law on Digital Assets is to improve the business environment, which will significantly contribute to strengthening the integrity of the capital market, as well as to the financial stability in the country.

The Law on Digital Assets defines digital assets, or virtual assets, as a digital representation of value that can be digitally bought, sold, exchanged or transferred and used as a means of exchange or for investment purposes, whereby digital assets shall not include digital representation of fiat currencies and other financial assets governed by other laws, unless otherwise provided by this Law (Law on Digital Assets, Art. 2). It appears from the Law that digital asset is a good on which a certain person has the right of ownership, and that good is digitally recorded (in a digital database, which can be DLT or any other technology that can serve a purpose), has a certain value, can be digitally bought, sold, exchanged or transferred, and used as a means of exchange or for investment purposes.

The Law on Digital Assets specifies two types of digital assets: virtual currency and digital token. Virtual currency or cryptocurrency is a medium of exchange over a network without having the features of a real currency. Nevertheless, virtual currency has an equivalent value

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<sup>427</sup> The Virtual Financial Assets Act defines virtual financial asset or VFA as a means of any form of digital medium recordation that is used as a digital medium of exchange, unit of account, or store of value and that is not: 1) electronic money; 2) a financial instrument and 3) a virtual token. Virtual Financial Assets Act, Chapter 590 of the laws of Malta, *Act XXX of 2018*, as amended by *Legal Notice 106 of 2021 and Act XLVI of 2021*, Art. 2(2).

in real currency or commodities or may serve as a substitute for real currency (Kulms, 2014, p. 292). Virtual currency which is completely used for payment purposes will not exceed the borderline between the property law and contract law (Kulms, 2019, p. 317). Cryptocurrencies function in a manner similar to long-recognized forms of money, such as government-issued fiat or specie. These forms of asset enable market participants to buy and sell valuables or engage in a variety of other financial transactions (Johnson, Hsu Wilbur & Sater, 2018, p. 125). According to the Law on Digital Assets, a virtual currency means a type of digital assets that is not issued or guaranteed by a central bank or public authority, that is not necessarily attached to a legal tender and that does not have the legal status of money or a currency, but that is accepted by natural or legal persons as a means of exchange and that can be bought, sold, exchanged, transferred, and stored electronically (Law on Digital Assets, Art. 2(1)). Therefore, the Law is explicit that cryptocurrencies are not used for payment, i.e., that cryptocurrencies are not money. Instead, the Law on Digital Assets foresee that a transaction in which cryptocurrencies are given for a service or commodities, is treated as an exchange. *De facto*, this activity is a payment, but *de iure* it is not. The concept of exchange was used to satisfy the position of the National Bank of Serbia that cryptocurrencies are not money, and this further affected the legal position, as well as the tax treatment of cryptocurrencies (Motika, 2021, p. 4). On the other hand, a digital token is a type of digital assets and means any intangible property representing, in digital form, one or more property rights, which might include the right of a digital token user to specific services (Law on Digital Assets, art. 2(1)).

The issue of classification of digital assets is legally significant, since such a classification allows regulators to customize tools of legal regulation to the specifics of digital assets. The principal classification in both the US and the EU is that of payment tokens, utility tokens and security tokens (Inozemtsev, 2021, p. 517). In its reports European Securities and Markets Authority (ESMA) uses the categorization of tokens based on their major economic functions introduced by the Swiss Financial Market Supervisory Authority (FINMA). At present, there is no generally recognised terminology for the classification of tokens either in Serbia or internationally. The FINMA categorises tokens into three types, but hybrid forms are possible: payment tokens, utility tokens and security tokens.

Payment tokens or currency tokens are tokens which are intended to be used, now or in the future, as a means of payment for obtaining goods or services or as a means of money or value transfer (FINMA, 2018, p. 3). In fact, payment tokens are cryptocurrencies, among which the most famous is certainly the BTC as the first cryptocurrency, conceptually created in 2008 and first mined in January 2009 (Golić, 2020, p. 234). There are numerous legal opinions as to whether tokens of this kind constitute securities. In the legal and financial literature, some authors assert that all types of tokens, including payment tokens, should be considered as securities, while others disagree. According to the FINMA, the payment tokens will not be treated as securities, since these tokens are designed to act as a means of payment and do not have functions similar to those of traditional securities (FINMA, 2018, p. 4).

Utility tokens or consumptive tokens are tokens which are intended to provide digital access to an application or service by means of a blockchain-based infrastructure. *De facto*, utility tokens are like the means of payment used on certain applications. However, these tokens are not accepted as a means of payment for other applications, and the value of the product or service depends solely of the investor's perception (Golić, 2020, p. 234). Utility tokens issued by a company financing the purchase of prospective customers will not be treated as securities if their sole purpose is to confer digital access rights to an application or service and if the utility token can really be used in this way at the point of issue. In these cases, the underlying function of granting the access rights and the connection with capital markets is missing, although it constitutes a typical characteristic of securities (FINMA, 2018, p. 5). If an utility token additionally or only has an investment purpose at the point of issue, it will be treated as securities (i.e. in the same way as security tokens).

Security tokens or asset tokens represent assets such as a debt or equity claim on the issuer. Security tokens promise, for instance, a share in future company earnings or future capital flows. The owners of security tokens take part of company's ownership by purchasing the tokens in a new issuance. In addition, blockchain technology provides a voting system that allows investors to exercise their rights in the company's decision-making process (Golić, 2020, p. 233). In terms of their economic function, asset tokens are similar to equities, bonds or derivatives. Tokens which enable physical assets to be traded on the blockchain also fall into this category (FINMA, 2021, p. 3). Asset tokens constitute securities if they represent an uncertificated security and these tokens are standardised and suitable for mass standardised trading. In that case, security tokens are subject to the rules applying for securities and, regardless of the technology on which they are recorded, fall under well-known legal regulations. In practice, they are not usually present, because the issuance procedure is regulated, and their issuers are responsible for the potential damage caused to the investors (Motika, 2021, p. 5).

Hybrid tokens are a particular legal issue. For instance, for a security token that is same as a payment token, regulators and courts may ensure different types of legal regulation, such as: 1) integrated: a hybrid token should comply with both securities law and payment regulation. In that case, the requirements are cumulative; the tokens are deemed to be both securities and means of payment. 2) hierarchical: a hybrid token should meet the rigid requirements of the securities law or payment regulation (depending on its prevailing functionality) (Inozemtsev, 2021, p. 518).

As opposed to virtual currencies that are not used as a stake in a company, but may be converted for money and paid into a company as a contribution in money, in-kind contributions into a company in digital tokens are allowed if the digital tokens are not related to providing services or execution of work (Law on Digital Assets, Art. 14). Notwithstanding of this rule, in-kind contributions into a general partnership or limited partnership may be in digital tokens related to providing services or execution of work (Law on Digital Assets, Art. 14(3)).

#### 4. THE ISSUANCE OF DIGITAL ASSET – A CASE STUDY OF SERBIAN REGULATION

The issuance of digital tokens is a way for business entities to obtain capital, i.e. to achieve their business plans and strategies. Therefore, digital tokens are associated with crowdfunding, i.e., the opportunity for start-ups around the world raising fresh capital with facilitated legal procedures. The Initial Coin Offering (ICO) has demonstrated and proved to be both a powerful innovative way of raising funds and a powerful mechanism for stimulating innovative businesses like start-ups, based on DLT or blockchain. Thanks to ICOs, new companies and start-ups raise funds by selling tokens to a large number of both individual and institutional investors around the world without any limit, for a relatively short time and at near zero transaction costs (Golić, 2020, p. 231). The situation reached its peak in 2018 when the number of ICOs started was 1080, while 991 were completed with funds raised of 21.6 billion USD. Despite the incredible amounts of capital raised through ICOs and the growing interest of innovative companies and start-ups, investors, regulators and policymakers, it seems that it is relatively little known about what ICOs are and what its opportunities and benefits are in general (Golić, 2020, p. 232). That uncertainty allows purchasers to be investors in ICO projects and share their later destiny. It directly depends on the success of the start-ups and companies issuing tokens whether investing in a particular ICO product will be profitable.

According to the definition of both the European Securities and Markets Authority (ESMA) and the Organization for Economic Cooperation and Development (OECD), the ICO implies the creation of digital tokens by young micro, small and medium-sized enterprises, i.e., start-ups and their distribution to investors in exchange for fiat currency or, in most cases, the most well-known cryptocurrencies such as Bitcoin (BTC) or Ether (ETH), using DLT or blockchain, which facilitate value exchange without the need for reliable central authority or intermediary (ESMA, 2019, p. 11). Momtaz (2018, p. 5) gives a slightly different definition according to which ICOs or token sales are smart contracts based on DLT or blockchain, that are designed to provide external funding through the emission of tokens. The blockchain records all transactions made in the cryptocurrency chronologically and publicly. The possessor of the token has a key that lets it to create new entries on the blockchain to reassign the token ownership to someone else (Momtaz, 2018, p. 5).

In contrast to Initial Coin Offerings, conventional financing methods are adjusted to specific funding stages. Crowdfunding is used to fund early stages, venture capital covers all stages until a firm goes public, and Initial Public Offerings (IPO) are used to obtain high volume growth capital for established start-ups. As opposed to the aforementioned, Initial Coin Offering can be employed during all funding stages, although entrepreneurial firms dominate the pool of firms raising capital through ICOs (Momtaz, 2018, p. 6). Another significant distinction between IPOs and ICOs is that investors obtain products or equity-like instruments in crowdfunding campaigns, while venture capitalists or IPO investors receive shares. Initial Coin Offerings are used to provide all this and more, i.e. equity shares (security tokens), products or services (utility tokens), and mediums of exchange (payment tokens) (Momtaz, 2018, p. 6).



As can be concluded, the ICO actually is a modified IPO adapted to digital assets and new technologies that are increasingly taking their place in the world of economics and investments. From the perspective of the raising funds and risks, the ICO has a lot of similarities with the IPO. However, the IPO is a process regulated in detail by strict legal regulations, and each company that collecting investment on this matter, must pass under rigorous control of state institutions and fulfil the explicit requirements provided by the Law on the Capital Market. Given that Initial Coin Offering has not been regulated in most countries, many companies have used these legal loopholes and issued their tokens. Therefore, in the light of blockchain technology as a new technological solution, the ICO began to apply globally without defining a legal status and previous regulation. It is one of the main reasons for the uncertainty on the digital assets markets, and large fluctuations in the prices of tokens (Milic Law Office, 2021).

The new regulation governing this area is largely limited to the ICO and bring to order on the primary and secondary market of digital assets. Thus, it turned out that any regulation is better both than the grey zone and the potential prohibition that has been speculated. The recognition of digital tokens as official evidence of the existence of rights or financial instruments has instilled confidence in investors who will make easier to invest in this form of asset, i.e., increasing share in their investment portfolio.

The Serbian Law on Digital Assets differentiates between the issuance of digital assets for which a white paper has been made or approved and the issuance of digital assets for which a white paper has not been approved.

The Law on Digital Assets has taken the position that the initial offering of digital assets for which a white paper hasn't been approved cannot be advertised on the territory of the Republic of Serbia. The exceptions of this prohibition imply that the issuer may advertise an initial offering of digital assets without an approved white paper in the following cases: 1) the initial offering is addressed to fewer than 20 natural and/or legal persons; 2) the total number of digital tokens issued does not exceed 20; 3) the initial offering is addressed to buyers/investors buying/investing in digital assets in the amount of at least EUR 50,000 in the dinar equivalent at the official average exchange rate of the dinar against the euro determined by the National Bank of Serbia on the date of purchase/investment, per buyer/investor; and 4) the total value of digital assets issued by one issuer during a period of 12 months does not exceed EUR 100,000 in the dinar equivalent at the official middle exchange rate of the dinar against the euro determined by the National Bank of Serbia (Law on Digital Assets, Art. 17(2)). The publishing of a white paper, that has not been approved in accordance with the Law on Digital Assets, is allowed only if clearly indicated at the publishing and during the initial offering of digital assets that the relevant white paper has not been approved (Law on Digital Assets, Art. 17(3)). The notion of publishing of white paper refers to the publication on the website of the issuer of digital assets. Hence, in a case when the publication of white paper is not approved by the supervisory authority or the same is not requested, and even in a case when the white paper is not written, the issuance of digital assets is not prohibited. However, the advertising is prohibited under such circumstances.

When it comes to the issuance of digital assets for which a white paper has been made or approved, before the issuance of digital assets, the issuer makes a white paper, the content of which is regulated by Law and which is approved by the supervisory authority (Securities Commission). Prior to the issuance of digital assets, an issuer may draw up a white paper that contains all the relevant data which, having regard to the special features of the issuer and the digital assets offered, enable investors to make an investment decision and to assess the risks associated with investment in digital assets, and that meets all other white paper requirements laid down by this Law. Information in the white paper shall be concise, explicit and comprehensible and its layout conducive to easy analysis. In addition, the content of the white paper must be accurate, clear, complete, and not misleading (Law on Digital Assets, Art. 19). The Law on Digital Assets stipulates key data and information which the white paper should contain (see in detailed Art. 20 of Law on Digital Assets), leaving the powers to both the National Bank of Serbia and the Securities Commission to determine the detailed content and additional elements of the white paper. At this moment, in the absence of bylaws, there is no precise information that supervisory authority can additionally request, but hopefully the future bylaws will be an incentive for the development of this area.

Based on the information contained in the white paper, the future potential investor makes an informed decision regarding the investment (Božović, 2021, p. 5). The white paper shall contain all information about the persons responsible for the accuracy and completeness of information contained therein – name, surname and title of a legal person for natural persons and business name, or name and head office for legal persons. If the white paper contains incorrect, inaccurate or misleading data and information, or significant omissions, the issuer and his/her responsible person or legal representative shall be held liable. In addition to the issuer, the following persons shall also be held liable for the data related to previous statement: 1) independent auditors of the issuer (e.g. audit firm, auditor entrepreneur and/or licensed certified auditor), solely in connection with the information from the financial statements that have been included in the white paper and covered by their audit report; 2) other person responsible for the accuracy and completeness of information in the part of the white paper he/she has assumed responsibility for – solely in connection with that information (Law on Digital Assets, Art. 21).

The issuer or an authorized person on behalf of the issuer submits a request for approval of the publication of white paper to the competent supervisory authority. The supervisory authority shall issue a decision on the approval of a white paper publishing within 30 days following the receipt of a duly completed application and shall submit the decision to the applicant (Law on Digital Assets, Art. 23(4)). On the other hand, the Law on Digital Assets leaves the possibility for the supervisory authority to reject the request of the issuer of digital asset to publish a white paper for one of the following reasons: 1) the white paper or information, and/or documentation supporting the application do not meet the conditions prescribed by this Law or enactments adopted pursuant to this Law, and the applicant failed to remedy this within the set timeframe; 2) the white paper contains incorrect, inaccurate or misleading information or significant omissions resulting in incorrect, inaccurate or misleading information for investors, and the applicant failed

to remedy this within the set timeframe; 3) the applicant is an issuer in respect of which the supervisory authority has imposed a supervisory measure due to non-compliance with the provisions of the law governing the capital market, law governing investment funds, law governing alternative investment funds, law governing the prevention of money laundering and the financing of terrorism, laws governing the operations of financial institutions or this Law, and the issuer failed to act pursuant to the measure imposed; 4) data in the white paper are not in line with the issuer's decision on the issuing of digital assets or with other data that must be submitted along with the application; 5) the decision of the issuer's competent body on the issuing of digital assets is null and void or rescinded; 6) preliminary bankruptcy procedure has been initiated against the issuer; 7) bankruptcy procedure has been initiated against the issuer; 8) liquidation or forced liquidation has been initiated against the issuer (Law on Digital Assets, Art. 25).

If the supervisory authority approves the publication of the white paper, the issuer shall publish the white paper within a reasonable time, but no later than the commence of the initial offering of digital assets. In addition, the issuer is obliged to publish the white paper in the Serbian language on its website (Law on Digital Assets, Art. 27(1-2)). Where the publishing of the white paper for the initial offering has been approved, the timeframe for the beginning of registration and payment of digital assets shall commence at the latest within 30 days following the day of receipt/issuing of the decision on the white paper approval. The payment of digital assets will be made in money, digital assets, and/or services of the acquirer of those digital assets (e.g. transfer of issued digital assets to the "miners" of those digital assets) (Law on Digital Assets, Art. 28(1-2)). If the initial offering of digital assets is successfully completed (this is a criterion that the issuer should determine in a white paper), the issuer is obliged to immediately notify the supervisory authority, as well as to publish a report on the outcome of the initial offering on its website by no later than three business days after the offering is closed (Božović, 2021, p. 5). Succeeding a successfully completed initial offering of digital assets with an approved white paper, the issuer shall inform investors through its website about secondary trading in digital assets.

## 5. SECONDARY TRADING OF DIGITAL ASSET

The Law of Digital Assets explicitly permits secondary trading of digital assets issued in the Republic of Serbia or abroad regardless of the fact whether a white paper has been approved for them in accordance with the Law. (Božović, 2021, p. 6). Digital assets can be bought or sold through platforms specialized for that purpose, but also through crypto math, which include automated electro-mechanical devices through which the acquisition or disposal of digital assets can be made for cash or the exchange of digital assets for each other. On the other hand, the digital asset trading platform is a multifunctional system used for organized digital asset trading, administered by the platform operator, with the objective to facilitate the connection of third parties interested in buying, selling and exchanging digital assets (Milic Law Office, 2021). Companies licensed by the supervisory authority for the provision of digital asset services and all other legal persons, entrepreneurs and individuals may trade via the digital assets trading platform in the Republic of Serbia. The

Law insists that during this form of trading of digital assets, the organizer of the platform respects the principle of transparency, both before and after the transactions regarding digital assets. The platform operator may temporarily dismiss trading in digital assets admitted to trading if it assesses that this is necessary to protect investors or eliminate risks to smooth or stable trading in digital assets. In this event, the platform operator will inform the supervisory authority about the cancellation of such trading without delay. The supervisory authority may order to platform operator to temporarily or permanently dismiss trading in specific digital assets if such trading contravenes this Law or if such action is necessary to preserve financial stability (Law on Digital Assets, art. 31-35).

The Law also allows OTC (Over-The-Counter) trading of digital assets. The contracting parties are not required to use the services of any digital asset service provider for the conclusion and implementation of transactions in OTC trading. In addition, the Law forecasts using smart contracts in secondary trading in digital assets. If a digital asset service provider ensures services which include the use of smart contracts, it shall obtain the consent of the digital asset user for the use of smart contracts (Law on Digital Assets, Art. 36 and 37). Finally, it remains to be seen to what extent these provisions of the Law will be applicable in practice.

Unless otherwise provided by this Law, the law governing the capital market<sup>428</sup> shall apply to the issuing of digital assets that have all the features of a financial instrument and to the secondary trading and the provision of services connected with such digital assets (Law on Digital Assets, Art. 7(1)). Notwithstanding of this rule, the law governing the capital market shall not apply to the issuing of digital assets that have all the features of a financial instrument, nor to the secondary trading and the provision of services connected with such digital assets, if all of the following conditions are met: 1) digital assets have no characteristics of shares; 2) digital assets are not fungible with shares; 3) the total value of digital assets issued by a single issuer during a period of 12 months does not exceed EUR 3,000,000 in the dinar equivalent at the official middle exchange rate of the dinar against the euro determined by the National Bank of Serbia on the day of the issue, i.e. during the primary sale (Law on Digital Assets, Art. 7(2)). Therefore, for legal persons who decide to issue digital assets in accordance with all aforementioned required conditions, the issuance can be performed under a significantly simplified procedure, fulfilling only the requirements of the Law on Digital Assets as *lex specialis*. In that case, the issuer is not obliged to fulfil formally and substantively significantly stricter rules prescribed by Law on the Capital Market (Milic Law Office, 2021).

## 6. CONCLUSION

The future of digital asset is hard to predict due to its vulnerability to external crash and its potential for abuse through crime activities such as fraud or money laundering. On the other hand, we can notice that digital assets markets and associated innovative technologies raise new and complex issues related to the regulation and compliance. It should be noted,

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<sup>428</sup> Law on the Capital Market, *Official Gazette of RS*, No. 31/2011, 112/2015, 108/2016, 9/2020 and 153/2020.

that there are many significant differences in the positions and risks connected with issuance and trading of digital assets and traditional securities. Taking into account that digital assets as a category don't fit neatly into existing regulatory framework – currencies or securities, but rather cover all of them, most jurisdictions have yet to develop thoughtful regulation to create a fair, transparent and orderly digital assets market. The current legal loophole maintains fraud and a digital asset market is not yet safe for investors, particularly for institutional investors to enter with certainty and confidence. Therefore, a comprehensive legal approach is necessary, combining insights from digital processes with securities law, capital market regulation, contract law and property law.

The Republic of Serbia is one of the few countries in the world that has adopted the Law on Digital Assets. The Law on Digital Assets provides legal security on the digital assets market and withdraws the digital asset itself out of the grey zone, giving its status a legal form. Hence, the Law on Digital Assets is a good step forward but it remains to be seen whether its implementation will follow the digital assets market. Regulations will to an important extent be regulated by bylaws. Such bylaws will regulate in more detail the issuance and secondary trading of digital assets, whose efficiency will determine the successful implementation of the Law on Digital Assets in practice (Božović, 2021, p. 7).

Therefore, the Law on Digital Assets unequivocally represents a remarkably step forward towards the introduction of digital assets in both life and economy. When it comes to the introduction of the institute of fiduciary, such a step is even progressive. It seems indisputable that this is definitely a good beginning of the regulation of the digital assets market in the Republic of Serbia. However, a clear position of the legislator regarding certain relevant issues is yet to come in the future.

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