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ISSUES OF LEGAL IDENTIFICATION OF DIGITAL ASSETS IN THE CONTEXT OF OBJECTS OF CIVIL RIGHTS

Annotation

Digitalization is an integral part of all processes of modern life. Digital rights, digital assets, cryptocurrencies are the tools without which the development of the modern economy is impossible. At the same time, the development of digital tools, along with positive impacts, can also lead to negative consequences. Effective legal regulation of these objects, a reasonable definition of their legal nature and based on this adequate application of existing legal mechanisms is an important task for any state.

In this article, we propose to consider the legal possibilities for identifying digital assets as objects of civil rights, by understanding the features of digital assets.

The study aims to explore factors that indicate that the application of digital asset technologies, including blockchains and cryptocurrencies, requires a rethinking of the traditional understanding of property rights.

Keywords: digital asset, cryptocurrency, blockchain, property rights, information technology

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Вопросы правовой идентификации цифровых активов в контексте объектов гражданских прав

Аннотация

Неотъемлемой частью всех процессов современной жизни является цифровизация. Цифровые права, цифровые активы, криптовалюта есть инструменты, без которых невозможно развитие современной экономики. При этом развитие цифровых инструментов наряду с положительным влиянием, может привести и к негативным последствиям. Эффективное правовое регулирование этих объектов, разумное определение их юридической сущности и основанное на этом адекватное применение имеющихся правовых механизмов - есть важная задача для любого государства. В данной статье мы предлагаем рассмотреть юридические возможности идентификации цифровых активов как объектов гражданских прав, разобравшись в особенностях цифровых активов. Исследование направлено на изучение факторов, указывающих, что применение технологий цифровых активов, включая блокчейны и криптовалюту, требует переосмысления традиционного понимания прав собственности.

Ключевые слова: цифровой актив, криптовалюта, блокчейн, имущественные права, информационный технологии

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Азаматтық құқықтар объектілері контекстінде цифрлық активтерді құқықтық анықтау мәселелері

Аннотация

Цифрландыру қазіргі өмірдің барлық процестерінің ажырамас бөлігі болып табылады. Цифрлық құқықтар, цифрлық активтер, криптовалюталар қазіргі заманғы экономиканың дамуы мүмкін емес құралдар болып табылады. Сонымен қатар, цифрлық құралдарды дамыту оң әсерлермен қатар жағымсыз салдарға да әкелуі мүмкін. Бұл объектілерді тиімді құқықтық реттеу, олардың құқықтық табиғатын негізді анықтау және

осыған негізделген қолданыстағы құқықтық тетіктерді барабар қолдану кез келген мемлекет үшін маңызды міндет болып табылады.

Бұл мақалада цифрлық активтердің ерекшеліктерін түсіне отырып, цифрлық активтерді азаматтық құқықтар объектілері ретінде анықтаудың заңды мүмкіндіктерін қарастыруды ұсынамыз.

Зерттеу блокчейндер мен криптовалюталарды қоса алғанда, цифрлық активтер технологияларын қолдану меншік құқығының дәстүрлі түсінігін қайта қарауды талап ететін факторларды зерттеуге бағытталған.

Түйін сөздер: цифрлық актив, криптовалюта, блокчейн, меншік құқығы, ақпараттық технологиялар

Introduction

Information technologies permeate all spheres of human activity, and the economy is no exception. The development of the digital economy in general and digital technologies, in particular, has led to the emergence of a new concept - "digital asset" - and the rapid development of the processes associated with it. Cash, which used to exist in the form of banknotes, and coins, now also exists in the form of digital currency, namely cryptocurrency. The use of the term "digital asset" in the modern sense is primarily caused by the emergence of cryptocurrency and blockchain technology. Blockchain is a distributed registry, which is a sequential chain of transaction blocks built according to certain rules, where each subsequent block contains information about the previous one. Simultaneously with the advent of the concept of "cryptocurrency", the concept of "token" also came - an entry in the register of transaction blocks (blockchain), which certifies that the owner of the token has rights to objects of civil rights and (or) is a payment unit. In connection with the emergence of new forms and objects, the question arises of the legal identification of these digital objects. The concept of distributed ledgers of digital transactions and/or records is not universal and conflicts with established legal structures [1].

The legal regime of digital assets and digital currency is different - in some countries of operation, digital assets are not recognized as separate objects, other countries have legalized digital assets, and cryptocurrency, introducing them not only into the financial system but also giving them the status of separate objects of legal relations.

At the initiative of President Kassym-Zhomart Tokayev, the development of projects in the crypto industry in Kazakhstan was launched. Article 115 of the Civil Code of the

Republic of Kazakhstan was supplemented with the concept of "digital asset" - this is a type of material good (property), the turnover of which is regulated by the regulatory legal acts of the Republic of Kazakhstan and the acts of the Astana International Financial Center (hereinafter referred to as the AIFC.) [2] When a new object of law, there are two options for its regulation: such an object will be subject to the legal regime of the object that is closest in terms of characteristics, or it becomes necessary to introduce a new legal regime for such an object.

In this article, we propose to consider the legal possibilities for identifying digital assets as objects of civil rights, by understanding the features of digital assets.

Hypothesis: a rethinking of the traditional understanding of property benefits and rights through the prism of digitalization is required.

Methods: Desk research methodology was used as the methodological basis of the study. When studying the literature, a systematic approach was used [3], based on the consideration of legal instruments for regulating digital assets. In the study of the meaningful meaning of the legal norms used in the article, the methods of legal linguistics were used, and the methods of comparative analysis of the legal norms of foreign legislation were also used.

Results and discussion

The Kazakh cryptocurrency exchange Intebix (Biteeu Eurasia) and the Eurasian Bank conducted the first joint transaction to buy bitcoin for fiat. The Eurasian Bank also announced plans to issue a crypto payment card by the end of the year, which could be accepted in stores. The operation itself will be carried out in tenge from the account associated with the client's account on the Intebix exchange [4].

According to the legislation of the Republic of Kazakhstan [5], a conceptual apparatus has been introduced about digital assets and their legal essence, so a digital asset is a property created in electronic digital form using cryptography and computer computing, which is not a financial instrument, as well as an electronic digital asset. form of the certificate of property rights. The digital token is a type of digital asset, which is a digital means of accounting, exchange, and certification of property rights.

On June 25, 2020, the Law of the Republic of Kazakhstan "On Informatization" was supplemented with Article 33-1, which identifies secured and unsecured digital assets [6].

Secured digital assets - a digital token and other digital assets that are a digital means of certifying property rights to goods and (or) services issued (provided) by the person who issued the secured digital asset. The release of a secured digital asset is carried out by making an entry in the information system by its owner or owner about the rights certified by the secured digital asset, following the agreement between the owner or owner of the information system and the user who is the person issuing the secured digital asset.

A person carrying out activities for the issuance of digital assets, organizing trading in them, as well as providing services for the exchange of digital assets for money, valuables and other property is the owner of the property or another person who owns the rights certified by the secured digital asset.

Unsecured digital assets are tokens for participating and maintaining consensus in the blockchain system, such assets are not secured by anything, and often their issuer (the person issuing digital assets) is unknown. Unsecured digital assets include such types of digital assets as bitcoin and Ethereum.

The circulation of unsecured digital assets in Kazakhstan is prohibited, however, as of today, administrative or criminal liability for violation of this rule is not provided.

Considering the legal nature of digital assets, I would like to cite the opinion of Suleimenov M.K. [7], who, under the construction of the norm of civil law on the attribution of digital assets to objects,

understands them as types of property. "This definition is incorrect and legally illiterate," sums up the scientist. First, the term "digital assets" itself is incorrect. There is no term "assets" in civil law. These are terms from financial and accounting legislation. Therefore, if we talk about assets, then we will have to use the term "digital property", which, according to Suleimenov M.K., sounds unacceptable. Secondly, according to the formula applied in the project, any property, that is, things, can be classified as digital assets. There is no need to prove the absurdity of this assumption. Things cannot be digital assets. They can only be property rights. Thirdly, the statement that digital assets are property, except for money and personal non-property rights, is illiterate. As for personal non-property rights, they have nothing to do with property, because they are non-property.

Thus, the inclusion of the term "digital assets" in the Civil Code is unacceptable. The inclusion of the term "digital rights" is also very doubtful, this is not an independent right, but a form of existence of claim rights.

Moreover, it is quite clear that the concept of "digital asset" is very broad, and to determine the legal essence of this issue, it is important to dwell on the special features of this object.

First, transactions with digital assets are provided by the telecommunications network and electric networks. A distributed data ledger allows you to ensure the transparency of transactions and protects against forgery. Based on the absence of borders for information and telecommunication technologies, the issue of interstate regulation of these objects and finding an effective legal mechanism for the protection of relevant rights is quite complicated [8].

Second, the legal fate of a digital asset is determined by its owner without the use of intermediaries. As an intermediary Laptev V.A. [9] defines the Internet provider, however, in our opinion, it is rather a technical tool that does not have any rights. The release of a secured digital asset is carried out by making an entry in the information system by its owner or owner about the rights certified by the secured digital asset, following the agreement between the owner

or owner of the information system and the user who is the person issuing the secured digital asset. The person carrying out the activities of issuing digital assets, organizing their trading, as well as providing services for the exchange of digital assets for money, valuables and other property is the owner of the property or another person who owns the rights certified by the secured digital asset [5].

The third issue is the confidentiality of transactions with digital assets. The digital fingerprint is a confirmation of the transaction, however, the confidentiality of the participants will be preserved and identification of the person who made the transaction is impossible. Anonymity, in addition to the use of electronic means of signature, is ensured by the creation of a special digital account, on which digital assets are accumulated. There is one negative point that is difficult - this is the loss of a personal password from a digital wallet. In this case, the digital asset falls out of civil circulation. While maintaining the electronic form and electronic media, the possibility of using this object does not exist, the main feature of the object of civil law is lost - this is the possibility of using and the defense capability of property.

The Republic of Kazakhstan, like many countries, has taken the path of securing legal tools for identifying participants in digital transactions. The turnover of a secured digital asset in Kazakhstan is carried out by certifying and transferring rights to secured digital assets, as well as encumbrance with the rights of third parties, including the alienation, acquisition, exchange of digital assets for electronic money, valuables, and other property, by entering information into the information system, under the agreement between users of the information system. Entering into the information system information about the transfer of a digital asset or rights to it is allowed under the following conditions:

1) the person who entered the information has access to the information system of the person engaged in issuing digital assets, organizing trading in them, as well as providing services for the exchange of

digital assets for money, valuables, and other property on a distributed data platform;

2) the information system of a person carrying out activities for the issuance of digital assets, organizing trading in them, as well as providing services for the exchange of digital assets for money, valuables, and other property on a distributed data platform, meets the requirements established by law.

Conclusion

Modern digital technologies have forced us to reassess the issues of classifying objects as material. The application of digital asset technologies, including blockchains and cryptocurrencies, requires a rethinking of the traditional understanding of property rights.

With the development of this kind of technology, it is not legal regulation that comes to the fore, but technological regulation. The absence of intermediaries, and the exclusion of human influence on transactions makes this area of investment attractive and does not require legal regulation. This is also confirmed by the fact that the legislation of many countries, including Kazakhstan, is more likely not aimed at validation or confirmation, but rather at identifying participants to legalize circulating funds through blockchain and digital currency.

Also, the issue of restoring digital assets lost for technical reasons, and the issues of misappropriation of digital assets through theft of passwords, remain open. In this case, it should be borne in mind that even when developing a legislative solution to this issue, the question of technical possibilities for implementing legislative procedures remains open.

Here I would like to agree with the opinion that modern digital technologies used in the digital economy indicate the need for a detailed and speedy legal assessment of technological processes [10].

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