УДК 341.96

LEGAL REGULATION OF VIRTUAL ASSETS IN THE PRINCIPALITY OF LIECHTENSTEIN

ПРАВОВЕ РЕГУЛЮВАННЯ ВІРТУАЛЬНИХ АКТИВІВ У КНЯЗІВСТВІ ЛІХТЕНШТЕЙН

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Abstract. *The article is devoted to the study of the current legal regulation of virtual assets in the Principality of Liechtenstein. The authors analyse the advantages and disadvantages of the relevant legal framework, as well as the possibility and feasibility of implementing the most effective provisions of the legislative acts into Ukrainian legislation. Due to the absence of studies that would analyse the main regulatory norms and definitions, as well as the experience of harmonising the current legislation with the European Union regulations, it became necessary to examine the current legal system of the Principality of Liechtenstein, which is known for one of the most progressive virtual asset regulations in the world. To study the current state of legal regulation of virtual assets in the Principality of Liechtenstein, the authors used comparative, analytical, inductive, hypothetical and systemic methods. As a result of the study, specific features of tokens are identified and a possible classification of virtual assets is presented in accordance with the established approach in other jurisdictions. Features of the right to dispose of a virtual asset in comparison with other objects of private law relations are analysed. Further, the particularities of the legislation on Anti–money laundering in this area are outlined. Changes to be made to the existing legislation to harmonise it with the new EU MiCA regulation are considered, including changes to the rules for issuing and trading in virtual assets. It is concluded that the Principality of Liechtenstein has managed to create an adaptive system of legal regulation of virtual assets. The creation of separate legislation on virtual assets, which at the same time refers to the regulation of other objects of private law relations, made it possible to implement it quickly, although harmonisation with the EU MiCA Regulation also requires compliance with the established classification of virtual assets. Although this Regulation eliminates some of the advantages that a particular jurisdiction may have, it simplifies access to the EU market for participants in the circulation of virtual assets. Based on this experience, the Ukrainian legislator needs to create a regulatory system that can be harmonised with the EU*

regulations for this industry, but at the same time introduce certain preferences that will attract investment in the Ukrainian economy and will not contradict EU regulations.

Keywords: *virtual assets, tokens, MiCA, Principality of Liechtenstein, European Union, harmonisation of legislation.*

Анотація. *Стаття присвячена дослідженню сучасного правового регулювання віртуальних активів у Князівстві Ліхтенштейн. Автори аналізують переваги та недоліки відповідної нормативно-правової бази, а також можливість та доцільність імплементації найбільш результативних положень законодавчих актів до українського законодавства. У зв'язку з відсутністю досліджень, які би проаналізували основні регуляторні норми та дефініції, а також детально розібрали досвід гармонізації діючого законодавства із регламентами Європейського союзу, виникла необхідність розглянути сучасну правову систему Князівства Ліхтенштейн, яке відоме одним з найпрогресивніших регулювань віртуальних активів у світі. Для дослідження сучасного стану правового регулювання віртуальних активів у Князівстві Ліхтенштейн, були використані порівняльний, аналітичний, індуктивний, гіпотетичний, та системний методи. В результаті дослідження визначено особливість токенів та наведено можливу класифікацію віртуальних активів відповідно до усталеного підходу в інших юрисдикціях. Було проаналізовано особливості права розпорядження віртуальним активом у порівнянні з іншими об'єктами приватноправових відносин. Приведено особливості законодавства щодо легалізації доходів, одержаних злочинним шляхом у цій сфері. Розглянуто зміни, які планується впровадити до існуючого законодавства, щоб гармонізувати його із новим регламентом ЄС MiCA, в тому числі плануються зміни до правил випуску та торгівлі віртуальними активами. Робиться висновок, що Князівству Ліхтенштейн вдалося створити адаптивну систему правового регулювання віртуальних активів. Створення окремого законодавства щодо віртуальних активів, яке в той же час відсилає до регулювання інших об'єктів приватноправових відносин, надало можливість швидко впровадити його, хоча гармонізація із регламентом ЄС MiCA вимагає також і відповідність прийнятій класифікації віртуальних активів. Хоча цей Регламент нівелює частину переваг, які може мати певна юрисдикція, але він спрощує для учасників обігу віртуальних активів доступ до ринку ЄС. Українському законодавцю необхідно, спираючись на цей досвід, створити таку систему регулювання, яку буде можливо гармонізувати із регламентами ЄС для цієї галузі, але в той же час і запровадити певні преференції, які залучать інвестиції до української економіки і не будуть суперечити регламентам ЄС.*

Ключові слова: *віртуальні активи, токени, MiCA, Князівство Ліхтенштейн, Європейський союз, гармонізація законодавства.*

Introduction. In recent years, it has become evident that virtual assets have become one of the fastest growing segments of the economy. However, uncertainty in legal regulation makes it difficult to protect the rights of investors in such assets, which has led to some jurisdictions with clear regulation becoming much more popular than others.

One of the leaders in introducing such regulation is Liechtenstein, whose legislation in this area has become a model for other jurisdictions.

The European Union has also already developed a new regulation aimed at establishing common minimum standards and requirements, which allows to significantly simplify the process of licensing activities in the area of virtual assets in the EU member states. Liechtenstein has decided to harmonise its legislation with this regulation, so this experience will be useful for Ukrainian legislators to implement this regulation into Ukrainian legislation. This article will explore which legal norms have proved to be the most effective.

The purpose of the article is to analyse the legislation of the Principality of Liechtenstein in order to identify the most appropriate norms and definitions that can be further implemented in Ukrainian legislation, and to outline examples of harmonisation of the existing regulation of virtual assets with the new EU regulation.

Literature review. Analyses of the legal regulation of virtual assets in Liechtenstein have not been previously addressed in the Ukrainian scientific literature, and it is possible to find abroad only some advice from practicing lawyers on Internet portals in Switzerland and Germany, but there are no specialised researches on this topic in the scientific literature.

Thus far, the legislation directly, government commentaries and reports are the most complete and reliable source of information on the regulation of virtual assets.

Main results of the research. The Principality of Liechtenstein's desire to integrate blockchain technology into its financial and legal system has led to significant regulatory changes and legislative amendments. Liechtenstein has become one of the most convenient jurisdictions and safe harbor for investors in virtual assets with the adoption of the Token and Trusted Technology Service Providers Act of 03 October 2019 (hereinafter referred to as the "**TVTG**" or the "**Act**") (*Token and TT Service Provider Act, 2019*), which entered into force on 1 January 2020. The main purpose of this legislation is to provide legal certainty to the token economy, including creating a safe environment for virtual assets market participants where their assets are protected and oversight of service providers is established to discourage fraud and money laundering. This Act, according to Article 1, establishes the legal framework for all transaction systems based on Trustworthy Technology and in particular governs the basis in terms of civil law with regard to tokens and the representation of rights through tokens and their transfer, and the supervision and rights and obligations of Trustworthy Technology service providers.

The Government Report on the application of the Act (*The Report and Application of the Government to the Parliament of the Principality of Liechtenstein*, *2019*) states that various options for classifying virtual assets were considered, but it was decided that it was necessary to introduce a new object of civil rights.

At the same time, the provisions of the Act in the context of blockchain technologies are somewhat abstract. For instance, instead of explicitly referring to blockchain technology, the term "Trustworthy Technology" (hereinafter referred to as the "**TT**") is used to preserve the applicability of the Act for subsequent technologies – technologies through which the integrity of tokens, the clear assignment of tokens to TT Identifiers and the disposal over tokens is ensured. It also introduced the term "TT Systems" referring to the transaction systems which allow for the secure transfer and storage of tokens and the rendering the services based on these systems by means of trustworthy technology. And only then the token is itself defined as "a piece of information on a TT System which: (a) can represent claims or rights of memberships against a person, rights to property or other absolute or relative rights; and (b) is assigned to one or more TT Identifiers that allows for the clear assignment of tokens".

For simplicity of understanding, the Government Report uses already standardized terms to categorize virtual assets (*Garrido, 2023, pp. 22-26*), namely:

1. Utility tokens that provide access to a specific service or product and are not considered as financial instruments;

2. Payment tokens that function as a medium of exchange and are similar to digital currencies;

3. Security tokens that represent financial instruments such as stocks, bonds or other forms of instruments, which entails additional regulatory oversight under the Financial Markets Act.

But in fact, this classification was not incorporated into the Act. It is pointed out that this would be too much of a restriction for the application of tokens. Therefore, the concept of token itself is fairly abstract and does not require technical realization as a specific programme on a technological platform.

A remarkable innovation of this Act is the introduction of the concept of "token container model", which distinguishes traditional assets and rights from the digital representation of these rights.

Although the conflict of laws issues in general fall outside the ambit of this Act, it nevertheless seeks to establish clear localization criteria for tokens. It is a general understanding and common perception of virtual assets as a legal phenomenon that they are so delocalized that it is difficult or even impossible to localize them in space. This Act tries to solve this problem by introducing precise

criteria for localization of tokens and applicability of Liechtenstein law to such virtual assets. From the legal standpoint, it shifts an emphasis from any physical characteristic features that are conventionally used for localization of moveable tangible assets as *res corporales* to persons involved in the issuance of tokens or persons using them in their legal transactions (*Marinotti, 2021, pp. 696-702*).

Further to Articles 3 and 4 of this Act, the token shall be deemed to be an asset located in Liechtenstein, and the TVTG shall correspondingly apply, if:

(a) tokens are put into circulation or issued by a TT Service Provider with headquarters or place of residence in Liechtenstein;

(b) parties declare its provisions to expressly apply in a legal transaction over Tokens; or

(c) tokens are used in legal transactions by a natural or legal person with place of residence or headquarters in Liechtenstein.

As we can imply from this legislative provision, location of the relevant persons shall indicate the presumable location of the relevant tokens. Alternatively, such persons may agree upon the applicability of the Act, in particular, in their contractual documentation. Therefore, it can be concluded that the Liechtenstein's legislator introduced the concept of fictional *situs* for virtual assets covered by the TVTG without seeking to extrapolate or accommodate traditional localization criteria conventionally used for physical objects to virtual assets being completely different in terms of their essence and legal nature. Such an approach can provide a further roadmap for solving conflict of laws puzzle with respect of virtual assets.

Within this Act a particular emphasis is placed on the fact that the creation of tokens does not create new rights, but only transfers or confirms existing rights. Although it is recognized that tokens have similarities with property, the current definition of property in The General Civil Law Code of Liechtenstein (in German: Allgemeines Bürgerliches Gesetzbuch) (*Allgemeines bürgerliches Gesetzbuch, 1811*) is limited to physical objects, whereas tokens consist of lines of software code in a particular system and are not physical in nature.

This model makes it possible to flexibly apply the Act to different types of assets that can in principle be tokenized, including payment claims (documentary or non-documentary), commodities, real estate, financial instruments or intellectual property. For securities, the legal concept of a book-entry system has even been adopted. "Empty containers" are also allowed referring to the tokens without granting any rights, including traditional cryptocurrencies that acquire intrinsic value through the rules of the system in order to function as a means of payment.

This Act should be seen as an addition to the special legislation that already exists, for instance, if banking or securities services are offered in the TT system, the provisions of the Law on Bank and Investment Firms (*Law on Banks and Investment Firms [Banking Act], 1992*) or the Asset Management Act (hereinafter referred to as the "**VVG**") (*Law on Asset Management [Asset Management Act; VVG], 2005*) shall apply.

In this situation it was determined that it is necessary to distinguish between power and right of disposal, because only in the first case a person has full freedom to dispose of the token, and in the second case it is a statement of physical possibility to dispose of the token knowing its TT Key (being a part of the TT identifier, also known in payment systems as the public key).

It is noteworthy that the TVTG resolves the issue of legitimacy of a token holder. According to Article 8(1) of the Act, the person possessing the right of disposal reported by the TT System is considered the lawful holder of the right represented in the token in respect of the obligor (i.e. the underlying asset represented by the relevant token). This means that the Liechtenstein's legislator adopted an approach for legitimization of a token holder similar to that used for legitimization of a securities holder as the owner of the securities and holder of the rights attested by the securities: it is generally known that availability of such rights can be established exclusively by referring to the system where the rights to securities are duly recorded.

Separately, it is necessary to mention that the TVTG does not cover regulation of financial market related activities such as exchanges for payment tokens.

Liechtenstein's anti-money laundering system is crucial in the context of regulating virtual assets. The Due Diligence Act (*Due Diligence Act [SPG],* 2008) and the Due Diligence Ordinance (*Due Diligence Ordinance [SPV], 2009*) impose strict anti-money laundering obligations on financial institutions and virtual asset service providers, requiring them to implement comprehensive customer due diligence, transaction monitoring, and reporting mechanisms. Together with the TVTG, ensuring that all TT service providers comply with international standards, including those set by the Financial Action Task Force and European Union anti-money laundering Directives.

An important feature of the Act is the "travelling rule", which requires transactions to be accompanied by information about the originator and beneficiary of virtual asset transfers, which applies to traditional financial transactions as well.

To keep pace with the rapidly changing regulatory environment among the surrounding EU member states, Liechtenstein is improving its legislative framework and aligning regulations with the Regulation (EU) 2023/1114 of 31 May 2023 on Markets in Crypto-Assets (the "Markets in Crypto-Assets Regulation" or "MiCA") (*Regulation [EU] 2023/1114, 2023*). Provisions that will harmonize requirements for the issuance and trading of virtual assets are intended to be introduced, as well as strengthening consumer protection measures is suggested. This will be achieved via the special Act on the Implementation, which is currently in the legislative process and is due to enter into force on 1 February 2025 (*Financial Market Authority's notification on the EEA MiCAR Implementation Act, 2024*).

In order to obtain a license to operate in the virtual asset sector in Liechtenstein, companies must meet certain requirements set by the Financial Market Authority (hereinafter referred to as the "**FMA**") under the TVTG.

Contemporaneously the interaction between the TT Service Providers and the FMA is regulated by another act, namely the Tokens and TT Service Provider Ordinance (TVTV) (*Tokens and TT Service Provider Ordinance [TVTV], 2019*). This Act lists the required documents for registration of the TT Service Provider, as well as the procedure for informing the FMA of its actions, including the issuance of tokens.

The Liechtenstein FMA is the main regulatory authority overseeing the implementation and enforcement of the TVTG and other regulations that govern this area. To facilitate dialogue between representatives of innovative companies and the FMA, the government established the regulatory laboratory, whose work has led to the preparation of legislative initiatives.

The process for obtaining a license to operate as a TT Service Provider in Liechtenstein is regulated by the TVTG and monitored by the FMA.

Capital requirements vary depending on the nature of the services provided. For instance, token issuers must maintain a minimum capital based on the volume of tokens issued, and TT exchange service providers must have a minimum capital based on the volume of transactions.

Conclusions. Liechtenstein's legal framework for virtual assets has unique features and a broad approach to asset categorisation without reference to a specific technology platform.

Together with the AML rules, it has created a regulatory environment that provides precise criteria for determining the place of virtual assets among other objects of private law relations. And unlike most other jurisdictions, there is no rigid classification of virtual assets, as tokens only confirm the rights to a certain object, the specifics of their regulation depend on the legislation that is used for the objects, the rights to which they confirm. In this case, other analogies are also used, a characteristic example is the legitimisation of a token holder by analogy with the legitimisation of a securities holder.

Liechtenstein's efforts to comply with EU regulations, in particular MiCA, suggest that the Principality will continue to play a leading role among the most favourable jurisdictions for investors in virtual assets. This approach attracts investment and fosters innovation in financial markets.

However, Ukrainian legislators should first of all consider as a model terminology that is not tied to a clearly specified technology, for instance, blockchain, but at the same time it is desirable to use the classification specified in the EU regulation to avoid unnecessary legal collisions and harmonize the legislation in a short time.

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