eudaimonia

Journal for Legal, Political and Social Theory and Philosophy

Vol. 8 No. 1 • 2024.

Published by

IVR Serbia

Journal for Legal, Political and Social Theory and Philosophy

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Pages: 31–54

UDK 004:316.323.6
DOI 10.51204/IVRS_24102A

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In the introductory part of the paper, the most important explanations about the con-cept and nature of digital assets are given, serving as a guide in understanding the titled topic. The subsequent sections focus on some of the challenging practical issues related to it: whether digital assets can be a contribution to a company, can dividend be paid to shareholders in the form of digital assets, and what are the key conditions that companies must meet in order to provide digital asset services. The last lines of the paper summarize the findings and contain the observations on the legal and practical potential of digital assets in the context of compa-nies' business operations, both in current and the times to come. The research is conducted from the perspective of basic group of regulations of the Republic of Serbia, i.e. provisions that are most relevant for the analysis of the aforementioned questions.

Key words: *Companies Act, companies' business operations, digital assets, digital asset services, Law on Digital Assets*

1. INTRODUCTION

Companies' business operations are inseparable from the assets that companies own. The company's assets, as referred to in the Companies Act, comprise tangible and intangible assets owned by the company, as well as other company's rights.[1] More precisely, the company's assets consist of rights that the company has acquired by entering the contributions of its members,[2] through its business operations or

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[1] Companies Act – CA, *Official Gazette of the RS,* 36/2011, 99/2011, 83/2014 – other law, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021, Art. 44, Para. 1.

[2] Regardless of the legal form of the company, obligation to pay, i.e. to enter the contribution, is the foun-dation on which the company is built. Although the term

in another way (Jovanović, Radović, Radović 2021, 127), including the ownership right, company's claims and shares held in another company (Vasiljević 2019, 91). Determining what these assets comprise, as well as their value, is particularly important from the company law's perspective, since the CA regulates a set of le-gal situations to which the company's assets are related, both directly and indirectly.

Technological development "casts a shadow" over traditional understanding of the company's assets, giving rise to a (not so) new concept: the concept of digital assets. The digital era is rapidly moving on an upward trajectory, which indicated a clear need for the legal system to respond, through appropriate regulations, to the practical challenges it brings. One of the most important is the Law on Digital Assets, a relatively new law entirely devoted to its titled area.[3] This law is permeated with provisions that connect companies and digital assets in mul-tiple ways. In order to create a basis for considering this connection, the paper continues in the manner from the beginning: with a few key explanations, this time about *digital* assets, fol-lowed by an analysis (divided into separate sections) of whether digital assets can

"contribution" is used simplistically to denote a material good, legally speaking, a contribution is a subjective right that a member contractually transfers to the company in order to create its assets and enable the conduct of its activity (Jovanović, Radović, Radović 2021, 112, n. 130). In other words, the company, thanks to the fullfilment of this obligation (of course, and other prescribed condi-tions), "comes to life", while its business operations are gaining their full momentum. In addition, the payment, i.e. entry of contributions does not refer only to the creation of the company's assets, but also to the share capital increase by new contributions of existing company members or a member joining the company (CA, Art. 146, Para. 1, It. 1)). Furthermore and especially important, contributions enable the application of the *pro rata* principle to a number of rights and obligations of the company's members. Accordingly, a company member acquires a share in the company proportionately to the value of his contribution into the company's share capital (CA, Art. 151, Para. 1); unless provided otherwise in the memorandum of association, every member of the company has a voting right it the general meeting in the proportion to his share (CA, Art. 199, Para. 2); a stockholder is entitled to a pre-emption right to subscribe the stocks from a new emission on the day of adoption of the resolution on is-sue of stocks, in proportion to the number of the fully paid stocks of that class he holds on the day of adoption of the resolution on the issue of stocks, in relation to the total number of stocks of that class (CA, Art. 277, Para. 1); these are only some of the provisions in which the *pro rata* principle is incorporated. Previously outlined should serve as an aid in better understading of the paper's subtopic dedicated to considering whether a contribution to a company can be in the form of digital assets.

[3] Law on Digital Assets – LDA, *Official Gazette of the RS,* 153/2020. The law was passed at the end of 2020; its application in the Republic of Serbia has begun in the middle of the following year.

be a contribu-tion to a company, can dividend be paid to shareholders in the form of digital assets, and what are the key conditions that companies must meet in order to provide digital asset services. The last lines of the paper summarize the findings and contain the observations on the legal and practical potential of digital assets in the context of companies' business operations.

1.1. What are digital assets?

By passing the LDA, the Republic of Serbia joined the short list of countries that ex-panded their legislation to the new challenges of digital life, governing, in the first place, the issuance of digital assets, secondary trading in digital assets and the provision of services in connection with digital assets. The need to regulate these and other issues related to digital as-sets at the law level is becoming more pronounced and at some point will be inevitable (if it al-ready is not), but the practical reach of the subject law is questioned, giving the impression that its passing may have been rushed. Mihajlović points out that the regulation of digital assets can be considered unnecessary and premature at this moment, taking the position that the capital market, with which the digital asset market has the greatest similarities, is underdeveloped in Serbia (Mihajlović 2021a, 597). Motika is of the opinion that the LDA's provisions regarding the conduct and activity of digital asset service providers are to an extent similar to the ones that govern the permits' issuance for subjects operating on the financial market (Motika 2022, 109–110). Vujović suggests to refine the definition of digital assets, and believes that it is nec-essary to systematically work on the development of not only the digital asset market, but also the awareness of business entities regarding the possibilities available to them in terms of dig-ital assets (Vujović 2023, 80, 94).

Nevertheless, evaluating the law in that direction is not the subject of this paper, as it would require research that is significantly more complex and extensive than the one that re-sulted in the titled analysis. In any event, the fact is that, thanks to the development of digital technologies and relocation of a large number of activities from the "live" to the virtual space, which inevitably follows technological progress, the forms, ways of use and practical impor-tance of digital assets are passing through, it seems, a golden age. People nowadays are using digital assets for investment purposes, different services related to digi-

tal assets are provided and highly complex activities of issuance and secondary trading in digital assets are performed. At the same time, as it usually happens when life speeds up and overtakes existing legal frame-works, the task arises for law to adequately respond to changed or newly created circumstances, especially in the interest of legal certainty and suppression of possible abuses, which can leave particularly negative consequences in a legally unregulated field. Companies, the dominant participants on the market in both domestic and cross border operations, strive to keep their op-erations in step with modern trends, which, when it comes to digital assets, entails a series of legally very important questions that need to be answered. Therefore, it is justified to conclude that regulating, in the broadest sense, the use of digital assets, is not unnecessary, but that it is certainly a challenging and demanding task, which must be approached in detail, systematical-ly, and also innovatively, in an effort to find a balance between many advantages that are inher-ent in business operations related to digital assets and the risks of that operations that partici-pants in the digital asset market unavoidably face.[4]

According to the LDA, digital or virtual assets refer to 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 fi-at currencies and other financial assets governed by other laws, unless otherwise provided by the LDA itself (LDA, Art. 2, Para. 1, It. 1). Digital assets can represent a substitute for some services in the field of bank-ing and capital markets, especially payment services and capital market investments (Jovanić 2021a, 21). This is not suprising considering that the provisions of the LDA that govern the is-suance of digital assets and secondary trading in digital assets, in their essence and objectives, are similar to the corresponding provisions of the Law on Capital Market,[5] and the relation be-tween the two laws could be

[4] What stands out the most when it comes to positive aspects od digital assets is the efficiency of financial transactions that are related to digital assets, given that they are conducted on a peer-to-peer basis, which, essen-tially, rules out the third parties (notably banks) that are operating under a traditional payment system, resulting in time savings and a reduction in overall transactions costs. The risks associated with digital assets can be classi-fied into several categories: market immaturity, market abuse, financial stability, financial crime and security risks (see Huang, Yang, Yang Loo 2020, 322–326).

[5] Law on Capital Market – LCM, *Official Gazette of the RS,* 129/2021.

considered in particular in terms of legal responsibility of the issu-er in the issuance of securities and digital assets (see Sovilj 2023).

There are two types of digital assets that the LDA regulates.[6]

1.1.1. Virtual currencies

Virtual currency is 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 can be bought, sold, exchanged, transferred and stored electronically (LDA, Art. 2, Para. 1, It. 2)). Virtual currencies can be understood also as "digital representations of value, issued by private developers and denominated in their own unit of account" (International Monetary Fund – IMF 2016, 7). In other words, virtual currencies have a different unit of account than national curren-cies. They are managed by private issuers and they may or may not have a monetary or account-ing value (Jovanić 2021b, 400). Considering the definition of virtual currencies from the begin-ning, it is safe to say that the LDA made a clear demarcation between virtual currencies and money, indicating that there should not be an equals sign between them. In practical terms, nevertheless, virtual currencies are used like money, which means, Motika concludes, that this activity *de facto* is a payment, while *de iure* it is not (Motika 2021).

Virtual currencies are – in the true sense of the word – decentralized. They do not have physical form and all activities involving them take place electronically,[7] under the conditions of a decentralized

[6] Mihajlović, in contrast, explains that there are three basic types of digital assets (see Mihajlović 2021a, 600–603).

[7] Digital assets are largely based on the so-called blockchain technology. The technology owns its sym-bolic name to the mechanism through which digital asset transactions are carried out, and which implies that the transaction data is entered into blocks that are "chained" together so that every block contains the "hash" (a kind of a crypted security code) of the previous one, making it almost impossible to alter the chain or otherwise abuse the transaction (see Organization for Economic Co-operation and Development – OECD 2018, 4). It is a specific technology of publicly available distributed (main) ledger: distributed ledger technology (DLT), where merging of the blocks is documented in publicly available database of unique transaction history (Jovanić 2021a, 22). Blockchain technology maybe is the most notable, but is not exclusive digital environment in which digital asset transactions are being conducted. The LDA stipulates that its provision shall apply to all digital assets and to the provision of all digital assets services referred to in the LDA regardless of the underly-

mechanism that allows the verification of transactions to be performed by the system participants themselves[8] (Radivojević 2018, 62; IMF 2016, 9). This means that there is no central authority to manage the transactions related to virtual currencies; instead, they are carried out by units simbolically called "miners",[9] who can be individuals, associations or companies, using the capacities of their own computer equipment to join the online network of the currency (Radivojević 2018, 62).

Determining the legal nature of virtual currencies is not at all a simple task. Given that they are intuitively associated with money and consequently mistakenly equated with it, in or-der to approach it in the right way, it would be useful to make a brief review of the legal nature and functions of money itself, and then compare them with the characteristics of digital assets for the sake of determining the extent to which there is an overlap.

Namely, from an economic perspective, money serves as a measure of the value of all goods, is used for payment in the circulation of any type and quantity of goods and services and enables conservation of value (Jankovec 1997, 1–2). The first-mentioned property of money cannot be attributed to virtual currencies. Natural or legal persons who accept virtual curren-cies as a means of exchange declare the price of goods and services in the national currency; how virtual currency unit will be accepted for the execution of the monetary obligation, depends on the exchange rate on the day of the transfer (in that sense Damnjanović 2022, 73). Furthermore, despite the fact that the tendency

ing technology, by which the legislator opted for the principle of technology-neutral approach (LDA, Art. 8).

[8] This does not mean, however, that the transactions related to digital assets are carried out without su-pervision. On the contrary, the LDA divided the competence in the field of digital assets between the Securities Commission (when it is about digital tokens) and the National Bank of Serbia (when it is about virtual curren-cies). Such a division of competences was made in a meaningful way, given that digital tokens represent a kind of digital counterpart of securities, while virtual currencies, although cannot be equated with money, successfully imitate, to a certain extent, at least one of its functions in the digital sense. The National Bank and the Commission shall cooperate in the performance in their respective competences. Their competences can even be intertwined in the event of so-called hybrid digital assets, which refer to digital assets that have both the features of virtual currencies and digital tokens. See the LDA, Art. 2, Para. 1. It. 4) and Art. 10, Paras. 1–4. For a detailed analysis of the supervision in the field of digital assets see Cucić 2023, 356–381.

[9] "The steady addition of a constant of amount of new coins is analogous to gold miners expending re-sources to add gold to circulation" (Nakamoto 2008, 4).

to use cryptocurrencies for the purpose of pur-chasing goods and services is increasing (Damnjanović 2022, 72–73), it remains that *de iure* it is not about payment, but exchange of virtual currencies, which means that virtual currencies do not perform the second-mentioned function of money either. Lastly, given that they are neither issued or guaranteed by a central bank or public authority (e.g., by the National Bank of Serbia or Securities Commission), their stability as a currency is questionable, because the criteria it depends on are outside the traditional monetary system, which increases the risk of unpredictable or hard-to-predict oscillations when it comes to their exchange rate. Virtual cur-rencies are, therefore, facing the volatility much higher than national currencies (IMF 2016, 17). Such an excessive volatility indicates their speculative investment purposes rather then characteristics of a currency (Yermack 2013, 16). Based on the above, it is clear that virtual currencies do not perform the mentioned functions of money; although they resemble them to a certain extent. Nevertheless, it should be kept in mind that, despite the fact that virtual curren-cies are not established as legal tender, the purchase or sale of digital assets for money is, in fact, allowed, as well as the exchange of digital assets for other digital assets (LDA, Art. 2, Para. 1, It. 7)).

1.1.2. Digital tokens

Digital token is the second type of digital assets that the LDA regulates and means any intangible property representing, in digital form, one or more property rights, which might in-clude the right of digital token user to a specific services (LDA, Art. 2, Para. 1, It. 3)). Like virtual currencies, digital to-kens do not exist in physical form. They are nothing but digital records that provide certain rights. It could be said that the term "token" is used as a "metaphor of what tokens are in phys-ical world", e.g., casino tokens, which represent value, wardrobe tokens, which grant access to another object or to a service, like telephone tokens, used for making calls from public phones (Gariddo 2023, 7). As not all digital tokens have the same function, there are several types of them that can be distinguished.

Particularly important for the titled analysis, given that their function is the same as that of traditional securities, such as bonds or shares, are security tokens (Gariddo 2023, 23). This means that the rights that these tokens symbolize are similar to or the same as the rights that are derived from securities. For instance, security tokens

promise a share in future company earnings or their owners take part of company's ownership by purchasing the tokens in a new issuance (Sovilj 2021, 303). In addition to the right of ownership, security tokens may entitle to dividend distribution (Deloitte 2020, 9) and overall grant financial benefits resulting from the issuer's main activity (Falempin et al. 2019, 6).

This raises the question of the legal relation between digital tokens and securities, i.e. financial instruments. Firstly, it should be noted that, unless otherwise provided by the LDA, the law governing the capital market[10] shall apply to the issuance of digital assets that have all the features of financial instrument and to the secondary trading and the provision of services connected with such digital assets; however, there is an exception: the law on capital market is not applicable if digital assets do not have characteristics of stocks, are not fungible with stocks and 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 (LDA, Art. 7). Still, can it be said that security tokens are securities?

According to the Securities Commission (2022), the Republic of Serbia's first digital token – *Finspot factoring token* – issued by the Finspot limited liability company, seated in Belgrade, gives the right to its holder to invest in a total of four investment indices, which differ in maturity and interest rates. A token holder who has invested in one of the investment indices has the right to an interest, which is paid in dinars, at the fixed interest rate set for the selected investment index. After the index matures, the tokens that are invested return to the investor's blockchain wallet. This means that, in this case, the token legally behaves like a bond, but it seems right to conclude that it is not the same as a bond. The bonds are not among the provi-sions of the LDA. As debt securities, they are regulated by the LCM and the CA (convertible bonds). This should indicate that these are not the same legal institutes, and that the fact that a certain digital token has the features of security, i.e. financial instrument, is not enough to legal-ly equate them. In the previous example, it could be cautiously said that digital token is a kind of "digital bond", but fundamentally it remains

[10] Meaning the LCM as a current regulation in this area.

a digital token, which means that the application of the relevant provisions of the LDA cannot be avoided.

The following should be also taken into account while reaching the conclusion on this topic. Namely, the LDA seems to be quite explicit[11] regarding the rule that digital tokens repre-sent one or more *property* rights, which leaves non-property rights beyond their reach and rais-es the question of whether there is and/or should be an equals sign between the legal position of the holder of digital token (assets) on the one hand, and holders of securities that provide certain non-property rights beside the property rights, on the other. For instance, a stockholder, pursuant to his share in a joint stock company, in addition to the typical right to a share in the company's profit, has the voting right and the right to participate in the general meeting, which are classified as non-property rights. Does this mean that a digital token that, e.g., provides the right to a share in the issuer's profit, like stocks provide the right to a dividend, can be equated with such stocks, which comprise certain non-property rights as well? Viewed in this way, it appears that digital tokens, even those which have the most similarities with them, should not be equated with securities. In other words, having the features of financial instrument does not mean being a financial instrument. The provision that openned this dillema (Art. 7 of the LDA) is practically important in a different context, since it determines whether the LDA or the LCM will be applicable in a concrete case.

[11] On the contrary, on the basis of the provision that refers to the definition of digital token, a conclusion that *implicitly* follows from it can be drawn. Namely, the LDA prescribes a unique token definition, making no distinctions regarding different types of tokens, which undoubtedly exist. However, it can be noted that the first part of the provision ("... and means any intangible property representing, in digital form, one or more property rights") refers to nothing but security tokens, while the second part ("which might include the right of a digital to-ken user to specific services") refers to so-called utility tokens, which are used to access the specified services or products of the issuing company (Amroush 2022, 2). These tokens may prove to be quite useful for the com-pany's business operations, especially if the company is newly established, since it can issue tokens that give in-terested parties the right to use goods or services that the company intends to sell or provide on the market, and then, from the funds obtained from the sale of that tokens, create the necessary sources for finansing a new busi-ness venture (Mihajlović 2021b, 373). The classification of digital tokens usually also includes payment tokens (see, e.g., Garrido 2023, 20–26; Sovilj 2021, 302–303; Mihajlović 2021b, 372–373). On the other hand, given that these tokens do not provide rights, issuer claims or access to a specific product or service (Deloitte 2020, 9), it appears that they are not included in the subject provision. Considering the paper's research scope, no type of digital tokens other than security tokens will not be further discussed.

This should not affect what digital tokens (assets) and se-curities, in essence, represent, nor the rights they provide based on the laws that respectively regulate them.

2. DIGITAL ASSETS AS A CONTRIBUTION TO A COMPANY

2.1. General rules

Discussion whether digital assets can be a contribution to a company should not be brought to the table before a brief reminder of the provisions of the law that primarily regulates the subject matter, which is, of course, the CA. Understanding how this law stipulates the obli-gation to pay, i.e. enter the contribution will prove to be crucial when consindering certain types of digital assets as potential contribution to the company in question.[12]

With that being said, according to the CA, contribution to the company may be pecuni-ary or in kind, and are expressed in dinars. In kind contributions may be given in tangibles or intangibles, unless otherwise specified by the CA for certain types of companies. If a pecuniry contribution is paid in a foreign currency in accordance with the law governing foreign curren-cy operations, the dinar counter value of the contribution is calculated using the National Bank of Serbia middle exchange rate on the day of contribution payment (CA, Art. 45, Paras. 1–3). Considering these rules while keeping in mind the earlier explanations about the nature of virtual currencies and digit-al tokens, it could be said, at least at first glance, that digital assets have the potential to be le-gally eligible as a contribution to the company. Besides, this matter has also found a foothold in the LDA, which approached it from its own angle, stipulating that in kind contributions in digital tokens that are not related to providing services or execution of work are allowed, and that, notwithstanding with this rule, in kind contributions to the general or limited partnership may be in digital tokens related to providing services or execution of work (LDA, Art. 14, Paras. 2–3), correctly taking into account the corresponding exception from the CA that the partner's and

[12] There are lines in the introductory part of the paper that are dedicated to the practical importance of determining the contribution of each company member; see n. 2.

general partner's in kind contribution may consist of providing services or execution of work (CA, Art. 96, Para. 2 and Art. 129, Para. 1). The list of digital tokens that the LDA refers to when stipulating that in kind contributions in digital tokens are allowed shall be established by the Securities Commission (LDA, Art. 14, Para. 4).

It is different with virtual currencies. As previously explained, unlike digital tokens, virtual currencies do not symbolize any property right that could be entered as an in kind contri-bution to the company. The purpose for which virtual currencies are used does not derive its value from any rights; they are used solely as a means of exchange. Once again, it is important to underline that, since virtual currencies do not have the legal status of money or a currency, and their issuance and overall use rest on a system that differs and is separate from the tradition-al monetary system, they are not eligible to be a pecuniary contribution to the company either, at least not in their original form. Namely, virtual currencies may be converted (exchanged) for money and then paid into a company as a contribution in money (LDA, Art. 14, Para. 1). Nevertheless, this still does not mean that virtual currencies are contribution to the company. It is important to be precise and notice that what actually becomes a contribution are not virtual currencies, but the money obtained by exchanging virtual currencies for it. Therefore, after the conversion of virtual cur-rencies, the matter continues to follow the rules that apply to pecuniary contributions in the sense of the CA as the "parent" law of this issue.

2.2. Appraisal of digital tokens as an in kind contribution

Appraisal of in kind contributions is quite an important task: the company's share capi-tal represents the *pecuniary* value of the company's members' contributions (CA, Art. 44, Para. 3), meaning both pecuniary and in kind. The company's members acquire a share in the company proportionately to the value of their contribution into the company's share capital, unless otherwise provided by the memorandum of association upon company incorporation or by a unanimous resolution of the general meeting (CA, Art. 151, Para. 1). The principle of maintaining the value of the company's share capital acts as general "pledge" to secure the company's creditors (Vasiljević 2013, 108), which can also be said for the need to realistically present the value of the company's share capital. If it is not presented in such a way as to

correspond to the true state, either intentionally or uninten-tionally, third parties as potential creditors of the company could be misled regarding the com-pany's ability to repay its eventual debts.

When it comes to digital tokens, the appraisal needs to be adjusted to their legal features. Therefore, the question arises as to how it will be implemented. The LDA does not address this issue; the procedure and conditions of appraisal of in kind contributions is regulated by the CA, and it should be considered whether its provisions in this matter are applicable in the event of appraisal of digital tokens.

According to the CA, in kind contributions to the company are appraised by a certified expert witness, auditor or other qualified person authorized by a competent state authority of the Republic of Serbia to appraise the values of certain tangibles and intangibles. The appraisal may also be performed by a company that meets the conditions prescribed by law to appraise the value of tangibles and intagibles subject to appraisal (CA, Art. 51, Paras. 1–2). There appears to be no obstacle to the application of this provision to the appraisal of digital tokens as well (when they are used as an in kind contribution). Primarily, the provision emphasizes the appraiser's expertise and authorized position. These conditions are undoubtedly among the most important ones that must be met in order for the appraisal to be valid. Furthermore, the appraiser is appointed to appraise the values of *certain* tangibles and intangibles, which may be understood as the need to appoint a natural or legal person with appropriate qualifications for the appraisal of a specific type of right provided by the token in question. Taking into account the previous explanations regarding digital tokens, it seems justified to conclude that the subject of the appraisal is not the token as such, but one or more property rights incorporated into it. A token is nothing more than a digital record on a corresponding digital ledger technology. Digital tokens derive their value from the right(s) they represent, which means that the nature of that right should de-termine the direction of appraisal. Accordingly, the appraisal includes in particular: (1) descrip-tion of each tangible or intangible constituting the in kind contribution; (2) appraisal methods used and (3) the statement as to whether the appraised value is at least equal to par value of the shares acquired in the case of a general partnership, limited partnership and a limited liability company or par value of the stock acquired, or accounting value in the case of stocks without par value, increased for the premium paid for such stocks if it exist, in the case of a joint stock company (CA, Art. 52).

The situation is somewhat more complex in "borderline" cases. Those cases imply digit-al assets that have the features of both digital tokens and virtual currencies, i.e. digital assets that not only provide certain rights, but can be used as a means of exchange at the same time (hybrid digital assets). As previously stated, the only option for virtual currencies to find their way into the company is to be converted into money and then as money, as a pecuniary contri-bution, be paid to the company. Therefore, it is a situation in which the potential contribution to the company is both in kind and pecuniary (provided that the conversion has been conduct-ed). How should the appraisal be carried out in that case? Neither the LDA nor the CA do not (directly) regulate this issue; the solution must be found on the ground of already existing rules.

Additionally, there is no clear answer to the question of whether a general manager, board of directors/supervisory board if management of the company is organized in two-tiers should be allowed the freedom to choose the appraiser if digital tokens are the ones that should be appraised (CA, Art. 53). Namely, guided by what criteria the company's management should make the choice of the appraiser, especially if it is not competent enough in terms of digital assets. Considering that digital assets have been given a special attention by passing the law entirely devoted to them, it is clear that digital assets consitute a delicate legal area that is minimally tolerant of mistakes and and any kind of abuses. In that spirit, it seems that it would be useful to prescribe in the form of a non-*numerus clausus* list of criteria by which the management of the company should be guided while selecting the appraiser. In any event, if it is opted for the application of the provision of the CA that refers to the conditions that the appraiser must meet (Art. 51, Para. 1 – criterion of expertise and authorised position), that provision should be understood as "the first line of defense" against possible abuses, while the list of guiding criteria should provide additional legal certainty and further reduce the chances of abuse.

3. DIVIDEND IN THE FORM OF DIGITAL ASSETS

As previously discussed, digital assets, or to be more precise, digital tokens, may entitle its holder to dividend distribution. This should not be confused with the dilemma of whether the company's profit – a dividend – can be paid to the company's members in the form of digital assets. The right to a dividend is one of the basic property rights of

a shareholder. According to the CA, a dividend may be paid in cash or company stocks, pursuant to the resolution on payment of dividend. If dividends are paid in the form of stocks of the company, such a payment shall be approved by the stockholders of the class of stocks to which such a payment is made under the rules on voting of stockholders within a class of stocks and payment to each stockholder of a class of stocks who is entitled to dividend is made in stocks of that class (CA, Art. 272, Paras. 1–2). This means that the CA has limited the methods of dividend payment, without the possibility to add new ones. Is there a basis for dividend payment in any of the forms of digital assets?

In the introductory part of the paper, is it underlined that virtual currencies are not mon-ey, regardless of the fact that they are accepted by natural or legal persons as a means of ex-change. Therefore, even if there was a stockholder's consent for a dividend to be paid to him in the form of virtual currencies, such a payment would not be in accordance with the rule on the methods of dividend payment. On the other hand, there are digital tokens that may have the features of financial instrument, in this case – stocks. If dividends are paid in the form of the company's stocks, it should be added to the abovementioned rules that a dividend may be paid in the form of stocks of some other type or class only if any such a payment is approved by a three-quarter majority of the present stockholders holding the stocks of the class of stock to which such a payment is made and by the same majority of votes of the stockholders of the class of stock in whose stocks the dividend is paid (CA, Art. 272, Para. 3).

In other words, the payment of dividends in the form of stocks of the company is subject to a number of rules that need to be determined as to whether they can be applied to such to-kens. Seemingly, it is not clear how these requirements would be complied with if the dividend was intended to be paid in digital tokens. Digital tokens represent various rights against a com-pany, similar to how different classes of stocks provide different stockholders' rights. However, analogously applying the rules regarding the payment of dividend in the form of the company's stocks in the event of digital tokens as a potential payment method appears difficult to imple-ment. Perhaps a dividend payment in the form of digital tokens would be possible in an ideal scenario in which all the company's members participate in its share capital in digital tokens that could be classified into classes in the same way as is done with stocks. Although, even if that scenario were to come true,

the question is whether there would be any talk of a joint stock company at all: a joint stock company is a company whose share capital is divided in stocks (not tokens) held by one or more stockholders (CA, Art. 245, Para. 1). With all of that being said, the law does not seem to leave room for a dividend to be paid to stockholders in any form of digital assets.

4. DIGITAL ASSET SERVICES AND COMPANIES

A significant part of the LDA is dedicated to regulating the provision of digital asset services. In the subsequent lines, it will be explained what these services comprise, who is au-thorized to provide them and under what conditions, followed by appropriate observations.

4.1. Types of digital asset services

Digital asset services are various and include: (1) reception, transmission and execution of orders relating to the purchase and sale of digital assets on behalf of third parties; (2) pur-chase and sale of digital assets for cash and/or scriptural money and/or e-money; (3) exchange of digital assets for other digital assets; (4) custody (safekeeping) and administration of digital assets on behalf of digital asset users and the related services; (5) services pertaining to the is-suing, offering and placing of digital assets on a firm commitment basis (underwriting) or with-out a firm commitment basis (uncommitted placement/ agent services); (6) maintaining a regis-ter of pledges on digital assets; (7) digital assets acceptance/transfer services; (8) digital asset portfolio management and (9) operation of a digital assets trading platform (LDA, Art. 3, Para. 1, Its. 1) to 9)).

Certain similarities can be found between the services pertaining to the issuing, offering and placing of digital assets on a firm commitment basis or without a firm commitment basis and the process of issuing securities. Namely, in the latter, the issuer can hire a person who will help in the activities related to the emission in question. That "person" is actually an investment company, which either carries out operations pertaining to the offering and placing of the secu-rities on a firm commitment basis, which is classified as underwriting, or without a firm com-mitment basis, which is understood as agent services

(Jovanović, Radović, Radović 2021, 452–453). The difference between the two variants lies, therefore, in the scope of obligations related to the activities in question.

Digital asset services can also be of an advisory nature. In that event, they include the provision of investment advice, investment recommendations, advice on capital structure, busi-ness strategy, issuing of digital assets and similar, as well as other digital asset advisory servic-es. Apparently, a distinction between investment advice and investment recommendation is made. Investment advice means the provision of personal recommendations to a user of digital assets, in respect of one or more transactions relating to digital assets, while investment recom-mendation means investment research or other information for the public that explicitly or tacit-ly recommends or suggests an investment strategy regarding digital assets (LDA, Art. 5).

4.2. Digital asset service providers

4.2.1. Legal form

In terms of the LDA, digital asset service provider means a legal person providing one or more services in connection with digital assets (LDA, Art. 2, Para. 1, It. 5). The definition is specified by the provision that stipulates that a digital asset service provider shall have the legal form of a company within the meaning of the governing companies (LDA, Art. 51). As when defining digital token, the LDA did not take into account that there are different types of digital asset services, thus prescribing a single concept of digital asset service provider, as explained just before. Nevertheless, there are several bylaws adopted on the basis of the LDA that nuance the Law's provisions.

For instance, the Decision on Detailed Conditions and Manner of Supervision over Vir-tual Currency Service Providers and Virtual Currency Issuers and Holders stipulates that, for the purposes of this Decision, "service provider" means a digital asset service provider in the part of its operations pertaining to virtual currencies that is a company licensed by the National Bank of Serbia to provide virtual currency services.[13] There is also the Decision on the Content of the Register of Virtual Currency Service Providers and Detailed Condi-

[13] Decision on Detailed Conditions and Manner of Supervision over Virtual Currency Service Providers and Virtual Currency Issuers and Holders, *Official Gazette of the RS,* 49/2021, Para. 2, It. 1).

tions and Manner of Keeping that Register, which prescribes that, e.g., the register number of the service provider, its business name and head office address and the number and date of the National Bank of Serbia's decision licensing the service provider for the provision of virtual currency services, as well as the number and date of all National Bank of Serbia's decisions amending or supple-menting that licence shall be entered in the Register of virtual currency service providers.[14]

The stated examples of bylaws are intended to support the position that the provisions of the LDA are not isolated, and, as is practically the case with every law, that they are elaborat-ed and clarified by various bylaws adopted on the basis of it. In addition, two important details can be observed from the cited provisions. The first is that the service provider shall have the legal form of either a general partnership, limited partnership, limited liability company or a joint stock company (CA, Art. 8). An enterpreneur, accordingly, is not allowed to provide digital asset ser-vices. However, an advisory service provider shall have the legal form of a company *or* entrepreneur *or* be registered as a natural person performing a free profession as an activity in accordance with separate regulations (LDA, Art. 55, Para. 3, emphasis added), meaning that, when it comes to ser-vices of an advisory nature, the requirement regarding the legal form is, justifiably, *lighter* than regarding digital asset services that do not have such a nature, taking into account the risks as-sociated with performing them respectively. The second is that the company must be licenced in order to provide digital asset services. The obligation to obtain the licence and its practical significance are considered in more detail as a subtopic below.

4.2.2. Minimum capital

The same amount of minimum capital is not required for every legal form of a company.

When it comes to limited liability company, the minimum capital is symbolic and amounts to at least RSD 100 (CA, Art. 145).[15] For joint stock companies, the minimum capital is significantly higher and amounts to at least RSD 3,000,000 (CA, Art. 293). High minimum

[14] Decision on the Content of the Register of Virtual Currency Service Providers and Detailed Conditions and Manner of Keeping that Register, *Official Gazette of the RS*, 49/2021, Para. 3, Its. 1) to 2) and It. 4).

[15] About the reasons why the lower limit of the minimum share capital in the event of this legal form is set to this low, see Jovanović, Radović, Radović 2021, 370.

share capital requirements should act as deterrent to small investors (Jovanović, Radović, Radović 2021, 455), i.e. as a threshold that only those investors who intend to sustainably engage in the chosen activity (business opera-tion) are willing to cross, under the assumption that the payment of the required amount is a signal of a planned and potentially successful business venture.

It should be noted that the rules regarding the minimum capital of a limited liability company and joint stock company are subject to suspension, in the event that a higher amount of minimum capital is prescribed by a special law for companies dealing in certain business activities (CA, Art. 145 and Art. 293). In the context of this analysis, that special law is the LDA, which prescribes the minimum capital of the company submitting the application for a licence to provide digital as-set services.

If the company intends to provide digital asset services referred to in Art. 3, Para. 1, Its. 1) to 6) of the LDA, the minimum capital shall be no less than EUR 20,000 in the dinar equiva-lent at the official middle exchange rate of the dinar against the euro determined by the National Bank of Serbia; for providing digital asset services referred to in Its. 7) and 8), no less than EUR 50,000, and if the company intends to operate a digital assets trading platform, the min-imum capital required amounts to EUR 125,000. Notwithstanding, if the company intends to operate a platform for trading in digital tokens of a single issuer, its minimum capital shall be no less than EUR 20,000 in the dinar equivalent at the official middle exchange rate of the dinar against the euro determined by the National Bank of Serbia (LDA, Art. 54, Para. 1, Its. 1) to 3) and Para. 2). If a company applying for a licence to provide virtual currency services intends to provide virtual currency services for which different amounts of the minimum capital have been prescribed, it must have minimum capital in the amount prescribed only for the virtual currency service or services for which the highest amount of the minimum capital has been prescribed.[16]

It is noticeable that the highest amount of minimum capital is required for the operation of a digital assets trading platform, which is understandable, given that by obtaining a licence to provide the mentioned service, the service provider performs, as the platform

[16] Decision on the Manner of Calculating the Minimum Capital and Reporting on Minimum Capital of a Virtual Currency Service Provider, *Official Gazette of the RS,* 49/2021, Para. 2, It. 4.

organizer, complex tasks that arise from the properties of the platform, through which companies that have the permission of the supervisory authority to provide digital asset services, as well as all other legal and natural persons and enterpreneurs, can trade in the Republic of Serbia (Mihailo-vić, Danilović Terzić 2022a, 114; see LDA, Art. 30).

As can be seen, for the majority of digital asset services, the LDA does not prescribe the amount of minimum capital higher than that required as a minimum for joint stock compa-nies. When a higher amount is indeed required, it is due to the nature of the service to be provid-ed, given that the provision of such services is accompanied by greater formalities and risks[17] (as is the case with the operation of a digital assets trading platform) which, consequently, af-fects the amount of minimum share capital required from the company-service provider.

4.2.3. License application

A company intending to provide digital asset services shall submit to the supervisory authority an application for a licence to provide digital asset services (LDA, Art. 56, Para. 1). The list of data to be submitted with this application is quite extensive, which should not be suprising considering the specifics involved in providing digital asset services and the complexity of digital assets in general. It could be said that the LDA paid special attention to the conditions that imply long-term planning of certain aspects of digital asset service providing, by which the company should "convince" the supervisory authority of the stability of its intended business operations and to make a positive decision upon its request.

In that sense, the company-applicant must support its application by the business plan with revenue and expenditure projection for the period of the first three years of operation, based on which it is possible to conclude that the applicant will be capable of meeting adequate organisational, personnel, technical and other conditions for continuous, safe and sound opera-tion, including the number and type of expected digital asset users, and the expected volume and amount of digital asset transactions, for each type of service connected with digi-

[17] The very nature of these services and risks that they carry implies the application of a stricter legal re-gime than the one that is applied in accordance with the law governing companies. These are the subjects whose regulation requires a special legal framework of business operations (Mihailović, Danilović Terzić 2022b, 158).

tal assets it intends to provide. Additionaly, the company is expected to provide the supervisory authority with the: (a) description of the planned staff training programme in connection with digital as-set transactions; (b) description of the organisational structure, including data on the planned outsourcing of some operational tasks relating to the provision of digital asset services; (c) de-scription of planned measures for managing the security of the information and communications system, as well as a number of data that indicates that the company's personnel have a good business operation (LDA, Art. 56, Para. 2, It. 5) and Its. 9) to 17)). With that being said, it is safe to conclude that the company is ex-pected to show a certain/high degree of responsibility already through the application, in terms of three very important aspects of digital asset service providing: personnel, structural and se-curity system. By putting the provision of digital asset services under the permit regime, a big step has been taken in the direction of creating the legal certainty regarding the conduct of dig-ital asset services and business operations of their providers (Mihailović, Danilović Terzić 2022b, 158–159).

5. FINAL REMARKS

Digital assets represent a relatively young, but without any doubt, increasingly topical subject of legal interest, which is yet to experience its full momentum. By passing the LDA, the Republic of Serbia opened its door to a new type of investment-attractive market and inova-tive business ventures it offers. A special role in that market belongs to companies, which, as it was discussed, claimed the role of digital asset service providers. Especially in the context of digital tokens, it becomes easier for startup companies to raise capital needed to support their business operations.

The conducted analysis is based on the laws that, seemingly, have nothing or little in common; it turned out, as a matter of fact, that the LDA and the CA are intertwined regarding quite a few issues, and that it is often not enough to rely on the provisions of only one of them, without consulting the other.

As it could be concluded, digital assets a potential contribution to a company must be considered from the CA's point of view as well, given that this law prescribes the types of con-tributions and regulates

the procedure of appraisal of in kind contribution, under which catego-ry digital tokens fall according to the LDA. While the only way for virtual currencies to become a contribution to a company is to be converted into money and then payed to the company in question in the pecuniary form, there is no clear answer on how to approach the problem of hy-brid digital assets as a potential contribution, i.e. their appraisal as such. The solution could be to appraise the value of the rights that such assets confer and to add to it an estimated value of their potential to be used as a means of exchange (in essence, to approach the problem in the same way as is done with regular in kind contribution). If at the moment when hybrid digital assets are to be appraised their exchange possibility has already been exhausted and such assets have already been ex-changed for money, there is no obstacle to treat such assets as a pecuniary contribution in the way described above.

Several observations can be made when it comes to the minimum share capital of the companies that intend to provide digital asset services. Primarily, the lower limit of the mini-mum capital is not excessively high for majority of digital asset services. That circumstance might be understood as a consequence of the legislator's desire to encourage a greater number of potential applicants willing to enter this perspective new market. If it was the opposite, if the minimum share capital requirements were disproportionately high in the eventual aspiration to tighten the regulation of digital assets and allow entry to the new market only to those partici-pants who, based on the high capital they are ready to invest, send a signal that they expectedly will be sustainable by operating within its framework, chances are good that a certain number of possible digital asset service providers would be, at the very begining, deterred of this type of business operations. Ensuring that only the most sustainable and promising participants se-cure their entry to the market of digital asset service providing does not depend only on seting a high minimum share capital limit, but on prescribing other, more or less strict conditions that companies-applicants must meet. As could be seen, the LDA indeed precribes and regulates in detail such additional conditions. In other words, it can be said that a legislator made a good choice by prescribing the minimum share capital requirements in the way explained above.

Finally, it is safe to say that digital assets have enormous practical potential in the light of companies' business operations. The challenges that digital era brings are constantly becom-ing more complex,

thereby expanding the possibilities in terms of practical activities related to digital assets. Based on everything previously stated, the conclusion is that the foundation of issues considered in this paper is well laid, but that their further "construction" should be even more detailed than it is now. In any event, it remains to be seen how these issues will be re-solved in practice and whether (and it is practically certain they will), new ones will appear, requiring additional considerations and creative problem-solving approaches.

REFERENCE LIST

1. Amroush, Fadi. 2022. Tokenizing Startups, from Utility Tokens into Security Tokens. *https://mpra.ub.uni-muenchen.de/116021/1/MPRA_paper_116021.pdf*, last visited 28 October, 2023.
2. Cucić, Vuk. 2/2023. Nadzor u oblasti digitalne imovine. *Pravo i privreda* 61: 356–381.
3. Damnjanović, Nikolija. 2022. Pravna priroda kriptovaluta. *Harmonius, Journal of Legal and Social Studies in South East Europe* 6: 71–96.
4. Deloitte. 2020. Are Token Assets the Securities of Tommorow? *https://www2.deloitte.com/content/dam/Deloitte/lu/Documents/technology/lu-are-token-assets-the-securities-tomorrow.pdf*, last visited 28 October, 2023.
5. International Monetary Fund. 2016. Virtual Currencies and Beyond: Initial Considera-tions. *https://www.imf.org/external/pubs/ft/sdn/2016/sdn1603.pdf*, last visited 28 October, 2023.
6. Falempin, Luc, Philippe Van Hecke, Daniel Coheur, Eamon Walsh. 2019. Tokenized Securities. The Ultimate Handbook on how to Issue Compliant Securities on the Blockchain. *https://tokeny.com/wp-content/uploads/2019/01/TOKENIZED-SECURITIES.pdf*, last visited 28 October, 2023.
7. Gariddo, José M. 2023. Digital Tokens: A Legal Perspective. International Monetary Fund. *https://www.imf.org/en/Publications/WP/Issues/2023/07/28/Digital-Tokens-A-Legal-Perspective-537041*, last visited 28 October, 2023.
8. Huang, R. H., Demin Yang, Ferdinand Fai Yang Loo. 2020. The Development and Regulation of Cryptoassets: Hong Kong Experiences and a Comparative Analysis. *European Business Organization Law Review* 21: 319–347.
9. Jankovec, Ivica. 11–12/1997. Pravni pojam novca. *Pravo i privreda* 34: 1–10.
10. Jovanić, Tatjana. 2021a. Kripto-imovina kao primer uticaja digitalizacije na pravo i praksu regulatornih organa. *Međunarodna naučna konferencija "Pravo i digitalizacija", Zbornik radova*: 21–39.

11. Jovanić, Tatjana. 2021b. Kriptovalute kao novi izazov zaštite potrošača. *Zaštita kolektivnih interesa potrošača, Međunarodna naučna konferencija, Zbornik radova*: 396–427.
12. Jovanović, Nebojša, Vuk Radović, Mirjana Radović. 2021. *Kompanijsko pravo, Pravo privrednih subjekata. 2nd edition*. Belgrade: University od Belgrade – Faculty of Law.
13. Mihailović Jovana, Ivana Terzić Danilović. 1/2022. Pružaoci usluga povezanih s virtuel-nim valutama – pojedini statusnopravni aspekti. *Pravo i privreda* 60: 138–160.
14. Mihailović Jovana, Ivana Terzić Danilović. 2022. Osobenosti poslovanja pružalaca usluga povezanih sa virtuelnim valutama kroz prizmu njihovu delatnosti. *Zbornik radova sa XXX Susreta pravnika u privredi Srbije*: 108–131.
15. Mihajlović, Borko. 2021a. Digitalna imovina u pravnom sistemu Srbije: osnovne karakte-ristike. *Usklađivanje pravnog sistema Srbije sa standardima Evropske unije*: 595–609.
16. Mihajlović, Borko. 2021b. Zaštita potrošača na tržištu digitalne imovine. *XXI vek – vek usluga i uslužnog prava*: 369–381.
17. Motika, Željka. 1/2022. How Digital is the New Serbian Law on Digital Assets? *Pravni zapisi* 13: 93–112.
18. Motika, Željka. 2021. ICO u Srbiji – Izdavanje digitalne imovine po Zakonu o digitalnoj imovini. *https://lawlife.rs/index.php/pravo/178-ico-u-srbiji-izdavanje-digitalne imovine-po-zakonu-o-digitalnoj-imovini*, last visited 22 January, 2024.
19. Nakamoto, Satoshi. 2008. Bitcoin: A Peer-to-Peer Electronic Cash System. *https://bitcoin.org/bitcoin.pdf*, last visited 22 January, 2024.
20. Organization for Economic Co-operation and Development, OECD Blockchain Primer. *https://www.oecd.org/finance/OECD-Blockchain-Primer.pdf*, last visited 28 October, 2023.
21. Radivojević, Aleksandar. 2018. Virtuelne valute, razvoj i regulacija. *Ekonomske ideje i praksa* 29: 59–71. *https://www.ekof.bg.ac.rs/wp-content/uploads/2014/10/Rad-04.pdf*
22. Securities Commission. 2022. *https://www.sec.gov.rs/index.php/en/news/actual/775-commission-approves-issuance-of-the-first-digital-token*, last visited 28 October, 2023.
23. Sovilj, Ranko P. 1/2023. Similarities and differences in the issuance of securities and digit-al assets – the issue of legal responsibility of the issuer. Glasnik *of the Bar Association of Vojvodina* 95: 196–233. *https://scindeks.ceon.rs/article.aspx?artid=0017–09332301196S*
24. Sovilj, Ranko P. 2021. Legal Aspects of Digital Asset Market in the Republic of Serbia. *Collection of papers from the second International Scientific Conference Regional Law Review*. 297–311.

25. Vasiljević, Mirko S. 2013. *Korporativno upravljanje – izabrane teme*. Belgrade: The Busi-ness Lawyers Association of the Republic of Serbia.
26. Vasiljević, Mirko S. 2019. *Kompanijsko pravo, Pravo privrednih društava. 11th edition.* Belgrade: University of Belgrade – Faculty of Law.
27. Vujović, Bogdan. 1–6/2023. Regulativa digitalne imovine u Srbiji – propuštena prilika za razvoj tržišta ili neiskorišćeni potencijal. *Finansije* 78: 75–95.
28. Yermack, David. 2013. Is Bitcoin a Real Currency? An Economic Appraisal. NBER Working Paper Series. *https://www.nber.org/system/files/working_papers/w19747/w19747.pdf*, last visited 28 October, 2023.