FIN TECH IN SERBIA: LEGAL OVERVIEW

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Fin Tech in Serbia: Legal Overview

Financial technology (FinTech) is an innovative new technology that seeks to compete with traditional financial methods in delivery of financial services. FinTech is a new industry that uses technology to improve activities in finance and generally aims to attract customers with products and services that are more user-friendly, efficient, transparent, and automated than those currently available offered by the financial institutions.

There are virtually no limitations regarding the application of FinTech since it can be used in various industries such as:

a) Online payments and electronic money;
b) Online P2P lending platforms;
c) Online trading;
d) Online exchange;
e) Crowdfunding;
f) Blockchain, cryptocurrency and ICO;
g) Smart contracts;
h) Risk management and consulting;
i) iAsset management;
j) Virtual data bases.

The main comparative advantage of FinTech over traditional financial industry is providing financial services more readily to general public, being simultaneously less expensive and much quicker. Global investment in FinTech increased from $930 million in 2008 to more than $31 billion in 2017. Even though providing digital services is not subject to any licenses, FinTech and startup culture is not as widespread as it could be in Serbia. However, the Serbian government has recognized the digitalization as one of its top priorities. Starting from 2016, all companies operating in Serbia need to possess the electronic signature in order to communicate with the Tax Administration Office. Also, the National Bank of Serbia has initiated a procedure of QR code payment system implementation with the purpose of diminishing costs and simplifying payment process, while reducing possible technical errors. Finally, with the aim of increasing electronic trade, electronic money has been introduced into the Serbian legal system.

Electronic money and online payments in the Republic of Serbia

Electronic money allows quick purchase of goods and services over the Internet from any location, as well as transfer of electronic money between entities. In addition to electronic money institutions, electronic money can also be issued by banks, public postal operator, the National Bank of Serbia, the Treasury Department or other public authorities in Serbia in accordance with the law. At this moment, there is only one electronic money institution registered with the National Bank of Serbia, which means that there is a significant potential for entering this particular market in Serbia. The Law on Payment Services (Official Gazette of RS no. 139/2014) stipulates the conditions for establishing the institution of electronic money and urges the companies and individuals to commence using electronic money. The customers are protected in the same manner as other users of financial services in the Republic of Serbia. There are many obvious advantages of using electronic money over classic money such as: lower cost, not having to open a bank account, availability of funds etc.

Law on Foreign Exchange Operations (Official Gazette of RS no. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) stipulates that transactions with foreign countries shall be settled in foreign currency and in RSD (Serbian dinars) through the bank. In order to give stimulus to electronic trade, the Law on Foreign Exchange Operations stipulates that residents can perform transactions abroad and through electronic money institutions - for payment and collection, on the basis of electronic purchase of goods and services.

In addition, even though transactions between residents and non-residents in the Republic of Serbia must be settled in RSD, the Law on Foreign Exchange Operations allows transactions in foreign currency in the case software purchase and purchase of other digital products on the Internet, delivered exclusively through telecommunication channels, digital or IT-technology, provided that payment is made using a payment card or electronic money through a payment service provider based in the Republic of Serbia.

When it comes to introduction of the QR code payment system in Serbia, the National bank of Serbia has prepared a guide – Recommendations for Use of the QR Codes when Displaying Transfer Orders Elements. The purpose of this guide is to standardize QR code transfer orders, providing in it that issued receipts and invoices must include QR code transfer orders. The practical implications of QR code payment system remains to be seen, since there is currently an ongoing public debate regarding this new technology.

Blockchain and cryptocurrency

Nowadays it seems that no FinTech event can pass without mentioning the blockchain and cryptocurrencies. The blockchain is a digitalized, decentralized, public ledger of all transactions that have ever occurred in the network.

Constantly growing as completed blocks (most recent transactions) are recorded and added to it in chronological order, which allows market participants to keep track of digital transactions without central recordkeeping. It is effectively a database that is validated by a wider community, rather than a central authority. It is a collection of records that a crowd oversees and maintains, rather than relying on a single entity, like a bank or government.

Some of the industries which blockchain might commercially disrupt are banking, insurance, cloud, public records, owner rights, healthcare etc. Today, entrepreneurs in industries around the world have become aware to implications of this development - unimagined, new and powerful digital relations are possible. Due to its huge potential, the blockchain technology is often described as the backbone of the Internet's transactional layer and the foundation of the Internet of Value.

When it comes to regulation of cryptocurrencies, globally they can be regulated as a commodity, currency or other. Cryptocurrencies are mostly unregulated in the Republic of Serbia. The only law mentioning the term virtual currencies is the *Law on Anti-Money Laundering and Financing of Terrorism (Official Gazette of RS no. 113/2017)*. This law imposes various obligations on natural and legal persons engaging in barter arrangements, sale, purchase and intermediation in the sale and purchase of virtual currencies – from obtaining identification details of the buyer or seller to notifying the Serbian Anti-Money Laundering Administration regarding such transactions, as well as being compliant with Know Your Customer procedures.

In addition, the National Bank of Serbia issued an official opinion stipulating that cryptocurrencies cannot be considered as a valid means of payment, since the only legal tender in the Republic of Serbia is RSD. Also, banks and money exchange offices are prohibited from accepting payments in virtual currencies such as Bitcoin. It is important to keep in mind that any natural or legal person dealing with cryptocurrencies is doing so at its own risk since no effective statutory remedies exist against potential fraud or misuse, unlike in the case of financial services users that are protected by the law.

Since the cryptocurrencies cannot be treated as a currency they are most likely to be treated as a commodity i.e. an intangible asset. That means that in absence of specific regulation, cryptocurrencies could be traded as any other commodity.

Another interesting legal issue regarding cryptocurrencies is taxation. No law mentions revenue from crypto activities such as mining, trading or exchanging as a taxable category. Due to its specificity in formal, material and legislative terms, it is not likely to subcontract this type of realized profit under any of the existing categories such as capital gain or capital income.

Nevertheless, it could always fall under general clause in terms of other income which allows Tax administration to tax any income which is not taxed on other basis, or which is not exempt from taxation, or which is exempt from taxation by law.

However, given the restrictive way of interpreting the provisions of the law by the tax authorities in the Republic of Serbia, it would not be far-fetched to expect that the Serbian Tax administration may take the restrictive position and apply analogously some of the existing legal categories to cryptocurrencies.

What we know so far is that Ministry of Finance has issued an opinion regarding Value Added Tax treatment of Bitcoin. Since the Bitcoin is not a legal means of payment in the Republic of Serbia, the provision of *Law on Value Added Tax (Official Gazette of RS no. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014, 68/2014, 142/2014, 5/2015 - 83/2015, 5/2016, 108/2016, 7/2017, 113/2017, 13/2018 and 30/2018)*, prescribing tax exemption without the right to deduction of the previous tax in business operations and mediation in the business using legal means of payment cannot apply to the Bitcoin.

It remains to be seen how the authorities will regulate cryptocurrencies, whether positively, which can bring significant foreign investments and favorably position Serbia as a crypto-friendly country, or in alternative negatively, which might result in missing a valuable window of opportunity for business growth through innovations.

Smart contracts

What if a legal contract could be monitored, executed and enforced without the need for human action or interference? Imagine a world in which a code could recognize the fulfilment of conditions, automatically transfer assets at the agreed terms and register those transfers. That is the world of the smart contracts powered by Ethereum protocol aiming to decentralize the Internet as we know it.

A smart contract is a computer protocol intended to digitally facilitate, verify, or enforce the negotiation or performance of a contract. Smart contracts allow the performance of credible transactions without third parties. These transactions are trackable and irreversible.

The idea behind this concept is that contracts could be converted to computer code, stored and replicated on the system and supervised by the network of computers running on the blockchain. Advantages of smart contracts over regular contracts are:

a) Autonomy - there's no need to rely on intermediaries to confirm;
b) Trust - documents are encrypted on a shared ledger without possibility of someone losing it or subsequently changing it ;
c) Backup – blockchain maintains any document duplicated many times over the network;
d) Safety – cryptography and huge computing power of users keeps the network safe from hacking;
e) Speed - smart contracts use software code to automate tasks, thereby saving hours off a range of business processes;
f) Savings - smart contracts save money since they eliminate the necessity for an intermediary;
g) Accuracy - automated contracts are not only faster and cheaper but also avoid the errors that come from manually filling out heaps of forms by a human.

Currently, there is no regulation of smart contracts in the Serbia. In the absence of regulation, it remains to be seen whether these will be treated as "regular contracts", executed between natural and legal persons in digital form using electronic devices as stipulated in the Law on Electronic Trade (Official Gazette of RS no. 41/2009 and 95/2013) or these will fall within a completely new legal category. For now, it appears that there are no legal barriers preventing new market participants from getting involved in this new digital world of smart contracts.

Regardless of possible future regulation of smart contracts, what can be said with a dose of certainty is that for a while smart contracts could be used in rather simple contracts. It will certainly take time for them to be fully implemented in the current legal system.

Conclusion

It appears likely that FinTech industry and its pioneers and established players should recognise and utilise tangible opportunities for growth in Serbia. To be perfectly (albeit proverbially) succinct - watch this space.

Both the presence and absence of applicable legal regulation mean that there is currently much room in Serbia to sensibly and prudently give shape and further develop existing legal framework. Such legal framework, if the right balance is struck, should equally deliver benefits to both FinTech industry and the Republic of Serbia.

As with any other exciting new technology or industry, it is advisable that industry players seek professional legal guidance to avoid common pitfalls and more intricate, less visible legal risks.

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