#3 / Summer, 2017

Korpus Prava

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# Cryptocurrency and the Ways of Electronic Payments or How Not to Feel Like an Analogue Device in the Digital World

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E-money is a New Cash | Legal Status of Cryptocurrency in the World | Payment Settlements With Electronic Money

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Co-publisher

## Dear readers,

I invite you to visit the pages of our summer edition of "Korpus Prava.Analytics". This issue is dedicated to cryptocurrency and electronic payment instruments.

We live at the time of rapid development of modern information technologies and financial markets, which have changed the way economies and financial systems function and the way businesses work. There have been several new and innovative products which have led to developments in electronic commerce and electronic banking. As a result of these developments, we have faced a new kind of payment instrument, namely electronic money, which is covered in our issue by our leading lawyer Anna Senchenko.

Our lawyer Roman Moskovskikh will elaborate on the topic of electronic money and analyze the legal nature of cryptocurrency in the modern world. Why has cryptocurrency become so popular? What fundamental legal principles lie at the basis of it? Cryptocurrency is treated differently in each country, and our expert will outline the situation in Russia.

Lately we have frequently addressed inheritance-related topics and it is not a mere coincidence. Once becoming very important, the matter of inheritance transfer to successors has immediately turned into a problem. This issue will give you an opportunity to read the article by our Swiss partner Ariel Sergio Goekmen on the transfer of family business and inheritance-related problems, as well as the article by our managing director Irina Kocherginskaya on a similar topic.

This issue continues to introduce novelties in legislation, this time on offshore jurisdiction. New requirements on maintaining the register of directors, collecting information and beneficiaries have been introduced. Our lawyer Irina Otrokhova examines which jurisdictions were affected by changes, where they have become more severe and updated.

In our up-to-date world of information technologies it's very important to stay connected, so we're always glad to get feedback from you. Contact us in any way convenient for you.

See you next time!

**Artem Paleev**
*Managing Partner*
*Korpus Prava*


a hot stove

Founder and Publisher

Korpus Prava
LAW & TAX

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# «CONTROLLED» LOAN INTERESTS

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On entry into force of Article 269 of the Tax Code of the Russian Federation, interest rate setting became difficult for accountants. Meanwhile, legislators update the procedure for rate setting on an annual basis and create new criteria and reasons to exclude part of paid charges interest that decrease the taxable base for the corporate profit tax.

The procedure for interest rate setting for controlled transactions is reasonably described and explained by legislators, whereas the procedure for interest rate setting for controlled indebtedness remains unclear.

Thus, controlled indebtedness is outstanding indebtedness of a Russian company taxpayer regarding the following debt obligations of this taxpayer:

1. Debt obligation to a foreign person affiliated with a Russian company taxpayer on the following basis:
    - A foreign company debtee directly or indirectly participates in a debtor company and has its share of more than 25%;
    - A foreign natural person debtee directly or indirectly participates in a debtor company and has its share of more than 25%;
    - Foreign companies and foreign natural persons are consequent shareholders of a Russian company debtor (a foreign person is one of them), and direct interest share of every preceding person in every following company equals more than 50%.
2. Debt obligation to a person affiliated with the abovementioned foreign person on the following basis:
    - A company or a natural person directly or indirectly participates in a foreign company and has its share of more than 25%;
    - The same person directly or indirectly participates in a debtor company and a foreign company and has its share in each company of more than 25%;
    - Companies and natural persons are consequent shareholders of a foreign company (a debtee is one of them), and direct interest share of every preceding person in every following company equals more than 50%.

The abovementioned outstanding indebtedness is not considered controlled indebtedness for a Russian company tax-

payer on simultaneous fulfilment of the following conditions:

- Debt obligation to a Russian company or a natural person that are tax residents of the Russian Federation arose during the accountable (taxable) period;
- A Russian company debtor or a natural person debtor does not have any outstanding indebtedness for comparable debt obligations to a foreign person mentioned in clauses 1 or 2 during the accountable (taxable) period.

Therefore, in case an affiliated foreign person independently provides a Russian company with a loan (does not act as an intermediary between a foreign person and a Russian company), this indebtedness is not considered controlled and interests for such indebtedness are not subject to rate setting.

3. Debt obligation for which a foreign person debtee mentioned in clause 1 and/or its affiliated person mentioned in clause 2 serve as warrantors, guarantors or otherwise guarantee to secure this debt obligation of a Russian company taxpayer.

The mentioned outstanding indebtedness is not considered controlled for a Russian company taxpayer on simultaneous fulfilment of the following conditions:

- Debt obligation arose to a company which is a bank (including organizations considered as banks in accordance with legislations of foreign countries) non-affiliated either with a taxpayer or persons that act as warrantors, guarantors or otherwise guarantee to secure a debt obligation of a taxpayer;
- From the date of taxpayer's debt obligation no termination (fulfilment) of the mentioned debt obligation occurred either for the principal amount or for the interest payment on behalf of persons that act as warrantors, guarantors or otherwise guarantee to secure the mentioned debt obligation.

Thus, if an affiliated person is a guarantor of a bank loan, but a Russian company fulfills its loan obligations, indebtedness is not considered controlled and interests for such indebtedness are not subject to rate setting.

To sum it all up, if a company gets a loan from an affiliated foreign person or an affiliated person of such a foreign person, or in case such persons act as warrantors or guarantors of a transaction (excluding the abovementioned specific cases), it is required to analyze the necessity for payable interest rate setting.

In case the amount of controlled indebtedness of a taxpayer is more than 3 times larger than a difference between total assets and total obligations of this taxpayer (total equity) as of the last day of an accountable (taxable) period, one shall calculate and use capitalization rate in order to define interest limit due to be recognized in expenses.

In order to calculate the amount of controlled indebtedness of a taxpayer, one shall consider amounts of controlled indebtedness for all obligations of this taxpayer in total.

Thus, if a company has several debt obligations that qualify as controlled indebtedness, in order to calculate the excess of indebtedness over total equity one shall not calculate the amount for each obligation, but summarize all controlled indebtedness.

For calculation purposes total equity is taken from entry 1 300 of Balance sheet (Equity) at the reporting date.

EXCESS = CONTROLLED INDEBTEDNESS / EQUITY

In case the amount of controlled indebtedness of a taxpayer is less than 3 times larger than company's equity, one shall not perform payable interest rate setting.

In case the amount of controlled indebtedness of a taxpayer is more than 3 times larger than company's equity, one shall calculate interest limit due to be recognized in expenses.

Interest limit on controlled indebtedness due to be recognized in expenses is calculated by a taxpayer as of the last day of each accountable (taxable) period by dividing interests charged by this taxpayer in each accountable (taxable) period from controlled indebtedness by capitalization rate calculated as of the last day of the relevant accountable (taxable) period.

Furthermore, in case of changes in capitalization rate in the following accountable period or according to the results of a taxable period in comparison with preceding accountable periods, interest limit on controlled indebtedness due to be recognized in expenses for the preceding period is not subject to changes.

It is worthwhile noting, that the abovementioned ban of interest changes for preceding periods appeared in the Tax Code only at the beginning of 2016 (entered into force from 2017). Previously the procedure for interest limit calculation was described in the Tax Code in fewer details and many people recalculated interest limit for preceding periods according to the decrease of controlled indebtedness.

Capitalization rate is calculated by dividing the relevant outstanding indebtedness by the equity proportionate to the share of an affiliated foreign person, and dividing the resulting number by 3.

Thus, capitalization rate formula is as follows:

CAPITALIZATION RATE = CONTROLLED INDEBTEDNESS / EQUITY * SHARE / 3.

Meanwhile, equity in the abovementioned formula differs from the initial one. Upon the calculation of equity one shall not include debt obligations on taxes and duties, as well as current obligations on tax and duties, set-offs, installment payments and investment tax credit. It means that equity shall be decreased by tax and duties liabilities.

INTEREST LIMIT = PAYABLE INTEREST / CAPITALIZATION RATE

Expenses include interests on controlled indebtedness at the amount not exceeding interest limit, but not more than accrued interests.

Thus, payable interests are partially not subject to profit taxation. However, it doesn't cover the whole additional tax burden.

Positive difference between accrued interests and interest limit for taxation purposes is recognized as dividends paid to a foreign person. Thus, a taxpayer shall act as a tax agent in relation to a foreign company and pay the corporate profit tax from the "dividends" paid.

The abovementioned legislative provisions are designed to prevent Russian business from large foreign loans. Unlike general provisions of Article 269 of the Tax Code, interest limit on controlled indebtedness is not calculated on the basis of interest rate of loan obligations, but from the amount of loan and the correlation between equity and debt capital.

Interest limit calculation is a multistep and complicated procedure. However, considering the fact that legislators do not exclude it from the Tax Code and actually try to elaborate and explain it, the procedure for interest rate setting for controlled indebtedness must be followed. A

# E-MONEY IS A NEW CASH

**Anna Senchenko**
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In the last two-three decades, innovations in information technology and in financial markets have changed the way economies and financial systems function and the way businesses work. There have been several new and innovative products which have led to developments in electronic commerce and electronic banking. As a result of these developments, we have faced with a new kind of payment instrument, namely electronic money or e-money.

Using electronic money people can make payments more efficient. Transaction costs are lower than in case of using other payment instruments. The amount of e-money transactions have the potential to grow. Widespread use of e-money will probably reduce the use of cash and credit cards. The digitalisation of financial services might boost the use of e-money in near future. Electronic money is a useful find for Internet users and a great assistant in banking transactions and its development potential is enormous. Having in mind that every innovation needs time for implantation, we can expect that in future the world would be covered with e-money.

Electronic money may be in the form of value stored on a technical device such as a chip card or indeed, a computer memory. E-money can be best described as a digital form of cash since it has many of the characteristics of cash.

Customers buy the electronic equivalent of coins and notes. The customer, in effect, has exchanged cash for another means of payment. Instead of using a debit card (which requires a bank account) or a credit card (which requires a contract agreement) the customer has purchased a non-cash means of payment, which can be used in much the same way as cash or other forms of card payment but without the requirement of third party authorization.

E-money can therefore be defined as monetary value as represented by a claim on the issuer, which is:

- Electronically stored;
- Issued on receipt of funds for the purposes of making payment transactions;
- Accepted as means of payment by a natural or legal person other than the issuer.

An Electronic Money Institution (e-money Institution) is an undertaking that has been authorized to issue e-money in accordance with the Regulations referred to below.

The first legislation for issuing of e-money was enacted in 2000, as a European directive for e-money. This directive gave the first definitions of e-money and its characteristics and the legislation for establishment and functioning of the institutions for e-money. The aim of the directive was to create a competition between the banking institutions and the e-money institutions, and at same time to stimulate further innovations in electronic industry. But, despite the established legislation for e-money, the development of this market was very weak and failed to match the initial expectations.

There was a need for change in the e-money legislation. The European commission published in 2009 the new E-money Directive, which implemented the main objectives of the first directive. A new definition of e-money covered the two basic types of e-money: e-money cards and server e-money; the initial capital required for establishing an e-money institution was decreased from 1 million Euros to 350 000 Euros; it increased the number of activities that e-money institution can perform in order to stimulate the competition. Other changes that were introduced with the new Directive were aimed at allowing better access to new and safer services of the electronic market.

Directive 2009/110/EC of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions was signed on 16 September 2009. Member States had to adopt and publish, not later than 30 April 2011, the laws, regulations and administrative provisions necessary to comply with the Directive.

Electronic Money Institutions (EMI) in the EU are regulated by the EU Directive 2009/110/EC, which has been transposed into the national legislation of Cyprus via Law 81(I) of 2012, whereas the relevant Regulatory and Licensing Authority in Cyprus is the Central Bank of Cyprus. An EMI, once established and duly licensed in Cyprus, may offer its services freely in the EU by setting up branches or on a cross-border basis without any further authorization.

In accordance with the provisions of the Electronic Money Law, electronic money services in the Republic of Cyprus may only be provided by an electronic money institution which has been granted an authorization by the Central Bank of Cyprus ("CBC"). In respect of the general requirements for obtaining the relevant license, an authorization for the operation of an EMI is only granted to a legal person which has been incorporated and has its head office in the Republic of Cyprus. Among the basic criteria for eligibility regarding the submission of an application is a minimum capital requirement of €350 000,00 at the time of authorization. For the purpose of obtaining an authorization as an EMI, interested persons must submit an application to the CBC accompanied by the information and documents prescribed in paragraph 3 of the Electronic Money Institutions Directive (241/2012) issued by the CBC by virtue of the powers vested in it under the Law.

The Criteria for obtaining an authorization by the CBC are set out in paragraph 3 of Electronic Money Institutions Directive 241/2012 issued by the CBC.

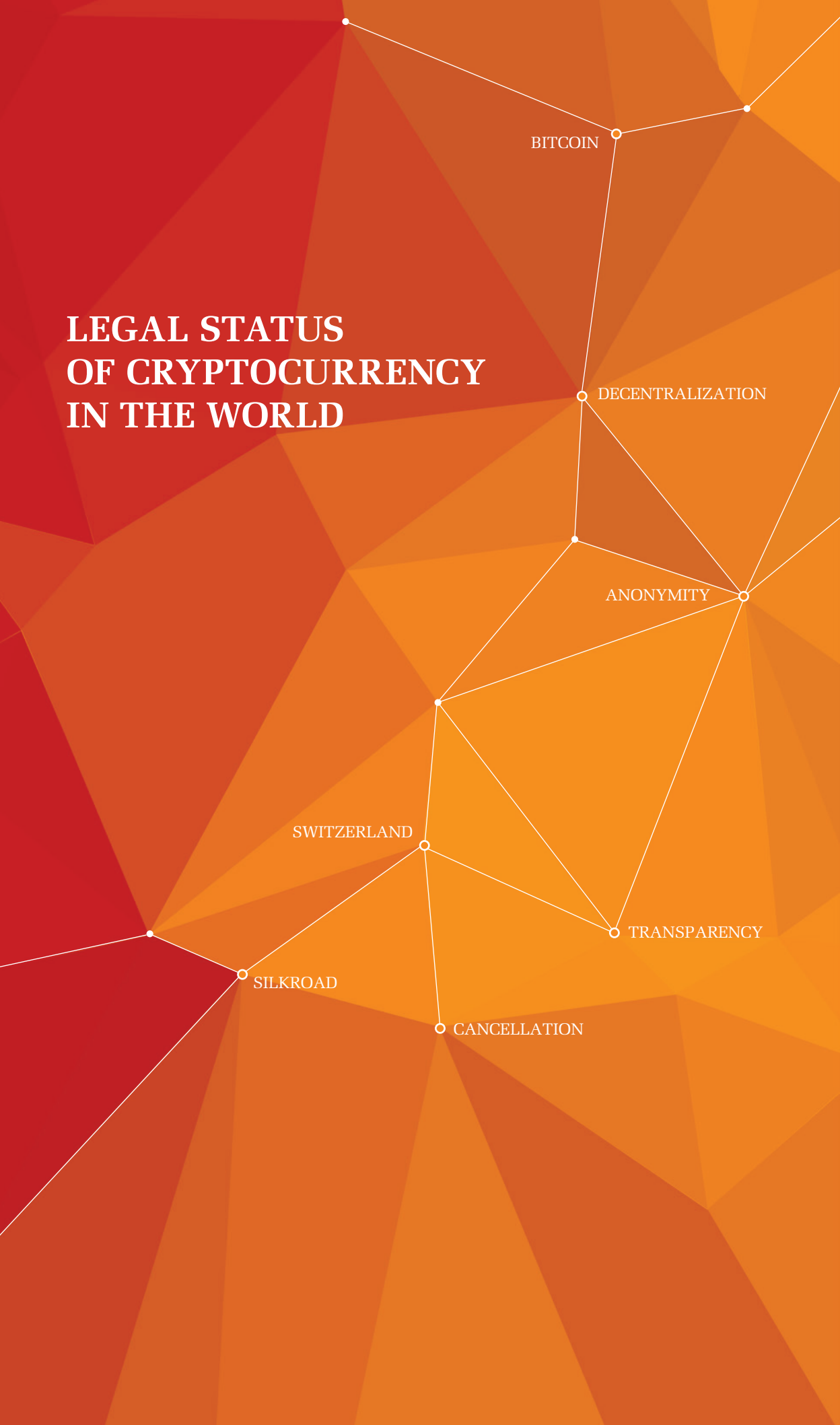
Every application for the authorization of an electronic money institution shall be submitted together with the following:

- A program of operations, setting out in particular the issue of electronic money and the type of any possible payment services envisaged;
- A business plan including a forecast budget calculation for the first three financial years, which demonstrates that the applicant is able to employ the appropriate and proportionate systems, resources and procedures to operate soundly;

- Evidence that the legal person applying for authorization holds the required initial capital;
- A description of the measures taken to ensure compliance with section 13 of the Electronic Money Law of 2012;
- A description of the applicant's governance arrangements and internal control mechanisms, including administrative, risk management and accounting procedures, which demonstrates that these governance arrangements, control mechanisms and procedures are proportionate, appropriate, sound and adequate;
- A description of the internal control mechanisms which the applicant has established in order to comply with obligations in relation to the Prevention and Suppression of Money Laundering Activities Laws of 2007 and 2010 and Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, as amended or replaced;
- A description of the participation of the applicant in a national or international payment system as well as the intended arrangements for outsourcing of operational activities, the intended use of agents and branches and the intended use of natural or legal persons for the distribution and redemption of electronic money;
- The identity of the persons that have, directly or indirectly, control of the applicant, including the identity of the natural persons that hold, directly or indirectly, shares or voting rights in one or more legal persons that have control of the applicant, as well as details on the size of the actual participation of these persons and their suitability, taking into account the need to ensure the sound and prudent management of an electronic money institution;
- The identity of directors and persons responsible for the management of the electronic money institution and, where relevant, persons responsible for the management of the issue of electronic money and the provision of payment services activities, as well as evidence that they are of good repute and possess appropriate knowledge and experience to issue electronic money and perform payment services, and in particular copy of clean criminal record report, nonbankruptcy report, description of professional and academic qualifications, managerial or board positions held in other legal persons, previous employments and experience in the issue of electronic money and the provision of payment services;
- The identity of statutory auditors;
- The applicant's legal status and articles of association and
- The address of the applicant's head office.

E-money is a new payment instrument on the electronic market — it is an innovation. Each of the innovations has its own path from birth to withdrawal from the market. The first and the second phase of their life cycle are followed by the phase of fast development and expansion in the market. There follows the phase with decreasing interest in this innovation, and the cycle is finished with the last phase when innovation leaves the market. The dimension of each of the phases of e-money development cannot be predicted. But we know its life cycle started. That is why we can predict growing expansion of e-money in the future and expect a phase of massive and full use of e-money. With further market penetration of e-money, its influence on monetary policy will become greater. E-money is going to become a very useful payment instrument, so monetary policy of each country will have to face the consequences. Furthermore, monetary policy needs to develop a system of instruments which will be capable of controlling the growing use of e-money and integrate this coming trend into monetary policy fields of interest. A

# LEGAL STATUS OF CRYPTOCURRENCY IN THE WORLD



**Roman Moskovskykh**
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The history of cryptocurrency in the world extends back less than 10 years, but the idea of potential replacement of existing traditional currencies (the so-called "fiat money") is already gaining popularity among progressive social classes. This may be convincingly proved by dry numbers: in 2008 exchange rate of hardly known Bitcoin (BTC) was 1 USD to 1 309,03 BTC, i. e. more than a thousand of bitcoin cost only one dollar. Exchange rate of bitcoin as of the date of this article was 2 467,3 USD to 1 BTC.

This article will cover the reasons for growing popularity of cryptocurrency as well as its legal status.

In general, cryptocurrency may be defined as a subset of electronic means of exchange of anonymous and decentralized nature, which is based on cryptographic algorithms.

More precise definition of digital currency was given by FATF (Financial Action Task Force on Money Laundering). According to this definition, digital currency is a value-expressing instrument which may be digitally traded and which functions as:

- Means of exchange;
- Unit of account;
- Means of holding value.

The most well-known type of cryptocurrency is Bitcoin. It is a compound of two English words bit and coin. There are also other types of cryptocurrency, including Litecoin, Namecoin, PPcoin, etc., which are sometimes collectively called Altcoin (alternative coin), but their popularity and market cap are nothing compared to Bitcoin. That is why it's reasonable to examine only this currency, taking into account that all other decentralized payment systems are based on similar principles.

Bitcoin was designed by a single programmer or a group of programmers under the name Satoshi Nakamoto. In November 2008 they published the White Paper which described the functioning mechanism of Bitcoin and its protocol. Bitcoin is an open source decentralized peer-to-peer digital currency.

Key differences of Bitcoin from fiat money are as follows:

- Decentralization. Bitcoin is a system based on a decentralized peer net that functions without a centralized clearing house or another intermediary. Bitcoin net is not controlled by a single institution like the central bank controlling fiat money circulation. Each computer, that "gains" bitcoin and processes transactions, is part of this net. It is notable that

"semilegal" and non-regulated by any legislation Bitcoin system is one the most successful examples of Blockchain technology implementation, which Russian state companies are introducing with lesser success. In fact Blockchain is a public ledger spread among all users of Bitcoin net. Each user of Bitcoin-wallet stores a data base, which contains records of all transactions ever performed in the system. It provides transparency of each transaction and a possibility to verify the origin of each Bitcoin by any interested user.

- Resistance to inflation. Unlike fiat money that may be emitted in order to expand money supply, Bitcoin system is designed in such a way that it's limited by a maximum of bitcoin-coins. According to a preset algorithm, only 21 million coins are allowed for emission. By now about 75% of coins have been emitted.
- Anonymity. Users may have several bitcoin-addresses, however, they are not connected to names, actual addresses or other ID details.
- Transparency. Although bitcoin transactions are mostly anonymous, they are also transparent. In fact bitcoins are just transaction records between different addresses in Bitcoin system which build a chain of blocks. Every user of the Net is able to see how many bitcoins are stored at each public Bitcoin-addresses
- Impossibility of transaction cancellation. It's impossible to cancel bitcoin transaction, unless a recipient sends coins back to a sender.

The abovementioned features of cryptocurrency (anonymity, in particular) were undoubtedly appreciated by persons with knowingly illegal agenda. Thus, cryptocurrency is widely used in trade deals of restricted or even banned items.

This matter became particularly important after the closure of anonymous online trading platform SilkRoad on October 2, 2013, which was part of ONION zone of the anonymous net Tor and carried its business from 2011 till 2013. Sellers and buyers used bitcoin as their currency, because this payment instrument guaranteed anonymity. This platform served trade transactions for about 1.2 billion USD.

Such usage of digital currencies has become a matter of careful study from regulatory authorities all over the world.

According to FINMA Report (Swiss Financial Market Supervisory Authority) on hearing to the final edition of their anti-money laundering directive, due diligence obligation while transferring digital currencies equals the same obligation while transferring money and valuables. By implication it means that digital currencies will be regulated by Swiss Law On Anti-Money Laundering. Due diligence obligations, including identification of a counterparty and verification of a beneficiary owner, include digital currency circulation in Switzerland from January 1, 2016. Thus, new due diligence obligations will include online-sellers that accept bitcoin as payment.

In accordance with the current Swiss legislation, the usage of cryptocurrency itself (emission, purchase and disposal) is permitted and not qualified as illegal. However, at the beginning of 2017 as part of the campaign against terrorism financing German politicians suggested to create the system of international legal regulation of digital currencies that would offer viable procedures for law-enforcement authorities during investigation and opportunities for implementation of injunctive measures.

Major concerns of state authorities are caused by a possibility to use this currency for illegal activities: terrorism financing, money laundering, purchase of prohibited goods, such as drugs, weapons, etc.

Meanwhile, Russian authorities have not defined their attitude to cryptocurrency.

At the beginning of 2014 the Central bank of the Russian Federation made an announcement according to which "considering an anonymous nature of "digital currency" emission by an unidentified number of persons and its usage for transactions, natural and legal

persons may be involved (involuntarily as well) in illegal activities, including money laundering and terrorism financing. The Bank of Russia warns that rendering exchange services of "digital currencies" for roubles and foreign currency or goods (work, services) to Russian legal entities will be regarded as potential involvement with doubtful transactions in accordance with anti-money laundering and terrorism financing legislation".

The Central Bank is supported by the Office of the Prosecutor General, according to which "anonymous payment systems and cryptocurrency, including the most well-known Bitcoin, are quasi-money and cannot be used by natural and legal persons".

There are Russian court judgments where these ideas are developed. Thus, according to the judgment of Nevyansky municipal court of Sverdlovsk Region dated January 13, 2015, free access to information on electronic currency results in the active usage of cryptocurrency in trading of drugs, weapons, counterfeit documents and other illegal activities. These facts alongside with a possibility of uncontrolled cross-border transfer of money and their consequent cash-out lead to a high risk of potential involvement of cryptocurrency into schemes aimed at money laundering and terrorism financing. As a result, hereby 7 web-sites connected with Bitcoin are included into the unified register of banned web-sites, including bitcoin.org.

After the release of these statements many online-shops and other companies that had accepted Bitcoin for payment before, stopped accepting cryptocurrency for the fear of potential prosecution.

In June 2015 the Russian Ministry of Finance proposed to the Government a more rigid edition of the bill on the responsibility for the usage of quasi-money, which banned such cryptocurrency as bitcoin.

Thus, it was proposed that punishment should be detailed and the Code of the Russian Federation on Administrative Offences should be completed by the following articles "Emission of quasi-money" and "Circulation of quasi-money". As a result, a fine for the emission of digital currencies for natural persons shall amount 20–40 000 roubles. Officials shall be fined 40–80 000 roubles, legal persons — 300–500 000 roubles.

For deliberate distribution of information that allows emitting digital currencies or performing transactions with them, the Russian Ministry of Finance proposes to impose fines for natural persons amounting to 5–30 000 roubles, for companies amounting to 100–300 000 roubles. But the most serious punishment from the ministry's point of view will await natural persons, officials and legal persons for creation and distribution of the relevant software. In this case fines for natural persons shall amount to 30–50 000 roubles, for officials — 60–100 000 roubles and for legal persons from 500 000 to 1 million roubles.

Circulation of cryptocurrency will also carry punishment for criminal offence. In particular, emission of quasi-money, purchase for distribution purposes and its distribution are subject to a fine in the amount of up to 300 000 roubles or in the amount of convict's wages or income for up to one year or compulsory community service up to 360 hours or correctional labor up to one year. In case of conspiracy to commit this offence, the accused are subject to the following penalties: a fine in the amount of up to 500 thousand roubles or in the amount of convict's wages or income for up to two years or compulsory community service up to 480 hours or correctional labor up to two years.

Also the Russian Ministry of Finance prepared amendments to the Federal Law No. 149-FZ dd. 27.07.2006 On the Information, Information Technologies and Information Protection, imposing a procedure of access limitation to web-sites that emit quasi-money and perform transactions with it.

In fact this bill not only bans cryptocurrency circulation, but also attempts to block the possibility of its usage.

Thus, although long-term future of cryptocurrency seems vague, nowadays its popularity is growing, particularly due to huge media coverage. This innovation has already spawned a whole market of companies involved with

exchange, storage, security of cryptocurrency, aggregation of transactions for online shops and other services demanded by consumers.

Unfortunately, some analysts emphasize only the usage of cryptocurrency for illegal purposes. It's a typical reaction of a certain concerned conservative segment of analysts, comparable to a similar reaction to the introduction of electronic money, mobile payment and other innovative instruments that now have become common and even conservative with the introduction of current innovations. In essence, decentralized private currencies are hardly more susceptible to be used for illegal purposes than national money, whether cash or non-cash (which is supported by crime statistics). The major peculiarity of bitcoin and its analogues is that their creators managed to fully get rid of a central issuer, which is possibly the only difference from state guaranteed currencies, revolutionary as it may be.

In long term perspective this technology in any form is likely to continue its existence. In order not to push it beyond legal coverage and make it susceptible to criminal activities, both government authorities and credit institutions must thoroughly consider opportunities for beneficial cooperation with this innovative ecosystem. A

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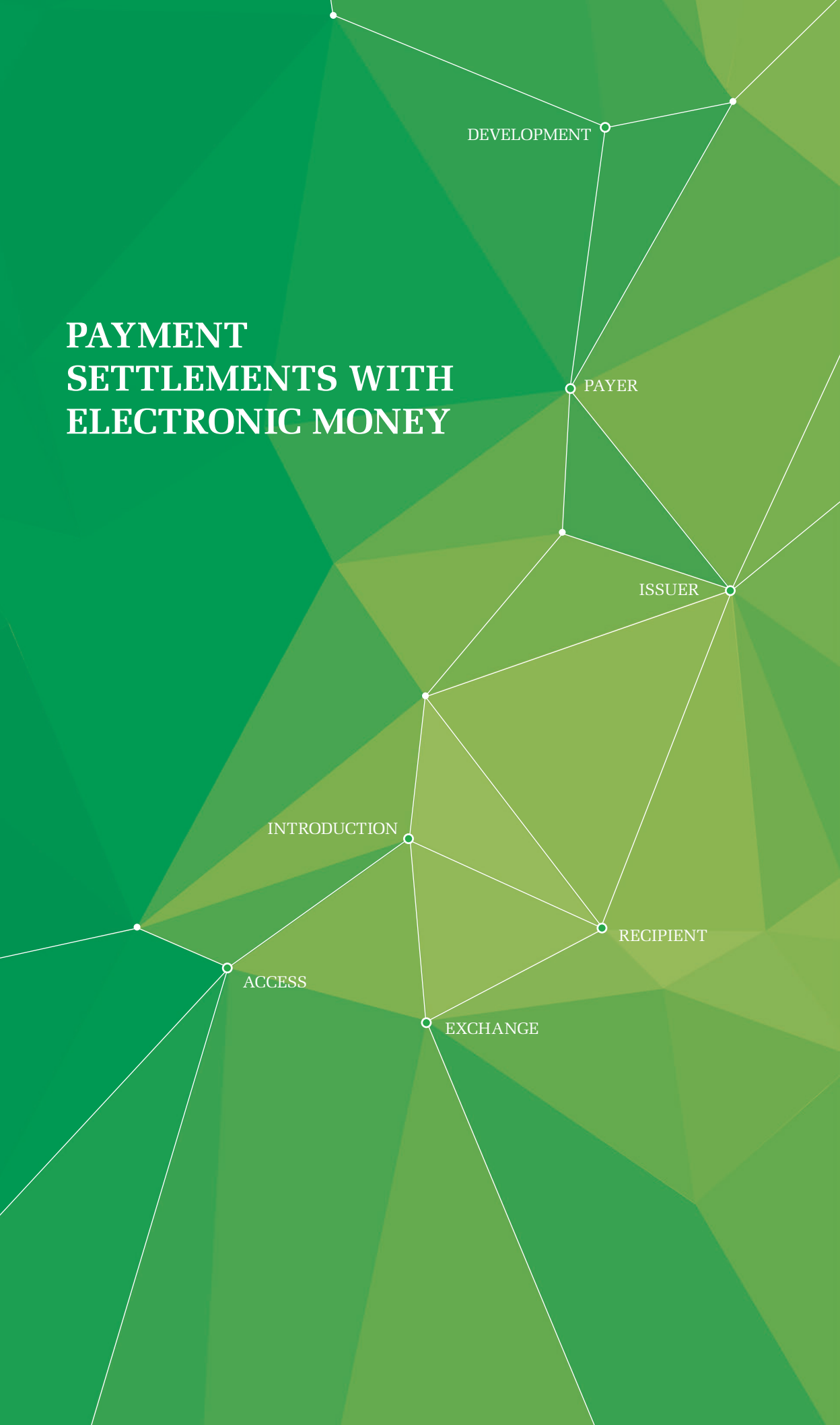
# PAYMENT SETTLEMENTS WITH ELECTRONIC MONEY



**Arina Makarova**
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*Tax and Legal Practice*
*Korpus Prava (Russia)*

Trade development, including via the Internet, led to the search of new faster and more efficient means of payment. Such means were discovered and implemented with the introduction of electronic non-cash payment and electronic money. Electronic money has a number of significant advantages in comparison with traditional payment instruments. Payment settlements with electronic money do not require conducting of each transaction via bank, which facilitates execution of deals. Electronic money is counterfeit-proof and difficult to steal. Even in case of stealing technical support will identify the fact of theft and money will be returned. Moreover, digital wallet maintenance is duty free, unlike some bank cards. One more significant advantage is anonymity, because customers are not obliged to submit their documents in order to open an account.

Nowadays it may be complicated to understand the nature of electronic money and whether it may be regarded as money at all. It's difficult to call it "money" in a traditional sense. Unlike usual cash payments, in case of payment settlements with electronic payment instruments, the participation of an intermediary, i.e. a credit institution, is required. Nowadays there are many terms related to electronic payments, including electronic money, electronic payment instruments, non-cash payment via the Internet. This article will cover the abovementioned terms.

First of all, a line must be drawn between two terms: electronic money and electronic payment instruments. Federal Law No. 161-FZ dd. 27.06.2011 On the National Payment System contains definitions of these terms. According to Clause 18 Article 3 of the Law, electronic money is money previously rendered by one person to another considering the information on the amount of the rendered money without opening a bank account, for the purposes of fulfilment of monetary obligations of the rendering person with third parties and in regard to which the rendering person has a right to transfer instructions exclusively with electronic payment instruments. According to Clause 19 Article 3 of the Federal Law On the National Payment System, electronic payment instrument is an instrument and/or means that allows a client of a money transfer operator to execute, certify and deliver instructions with the purpose of money transfer within the used forms of non-cash payment using information and communication technologies, electronic data storage devices, including payment cards, and other technical devices which allow to create

information of payments and exchange it electronically.

Thus, in essence electronic money is prepaid receivable that is recognized for the fulfilment of monetary obligations of the rendering person with third parties. Electronic payment instrument is an instrument that allows a client to manage funds using electronic technologies.

Electronic and non-cash money is similar, as both electronic and non-cash money may be recognized and transferred via electronic channels. In accordance with civil law provisions, both electronic and non-cash money is considered as receivables. This receivable is respectively due either to a bank or to an issuer. However, non-cash money is recorded as entries on each client's bank accounts and serves as an equivalent of deposited money. But in order to open an electronic account, a client "purchases" electronic money that is recognized on an accumulative account, and later uses that money to repay electronic money by means of its exchange for usual money on receiver's request. This electronic account is called digital wallet or virtual account, where client's rights are recognized.

Electronic money is basically a prepaid financial product, and a client may request its repayment at an electronic money transfer operator, i.e. its exchange for cash or non-cash money. Whereupon, legislation allows to issue only prepaid electronic money in order to preserve state emission monopoly.

Electronic money may be stored, i.e. recognized, by different means. It may be stored on chip cards, when a data storage device is a special micro chip, or it can be stored via special software installed on a holder's personal computer or issuer's server. Therefore, electronic money may be managed either by actual giving of a chip card or by transfer of this object via the Internet. This is the main difference of electronic money from such instruments of remote access to accounts as bank cards or online banking systems. These instruments are means of managing non-cash money on a usual bank account. Thus, a magnetic stripe bank card unlike a chip card means that a client has a bank account, while digital money is an independent object.

Despite the fact that nowadays a lot of specialists recognize electronic money as an independent object, it cannot be considered a "full-value" payment instrument, because one requires usual cash or non-cash money for its emission or repayment. Nowadays legislators aim at recognition of electronic money as a valid payment instrument. For example, Article 46 of the Tax Code allows collecting taxes and other statutory charges in the form of electronic money.

## Payment settlement

According to Article 7 of the Law On the National Payment System during non-cash payment settlement in the form of electronic money transfer, a client renders money to an operator of electronic money in accordance with a signed agreement.

According to this Article, a natural person may render money to an operator of electronic money using his/her bank account or otherwise. A legal person or individual entrepreneur renders money only using his/her bank account. The operator recognizes the money rendered by making an entry of the amount of operator's obligations to the client in the amount of money rendered by the client. According to the legislation of the Russian Federation, the functions of such operators may be performed only by credit institutions, including non-bank credit institutions with a right to transfer money without opening bank accounts. All legal relations with electronic money payments must be assisted by an electronic money operator, which turns such legal relations into three-party relations.

Thus, for payment settlement various contractual arrangements must be performed.

### Introduction of electronic money as a legal object

At this stage a client credits money to a payment system. As a result, the client acquires receivables to the issuer of electronic money.

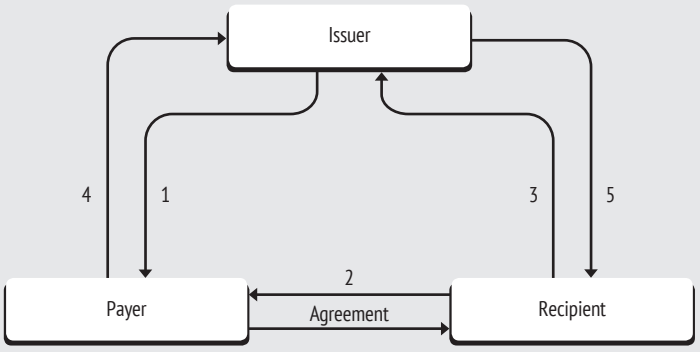



Fig. 1.

In legal terms such relations may be qualified as a mixed loan and sales and purchase agreement.

## Getting access to the system

These relations arise from the access to a technical device or by the usage of a computer program. As it was mentioned before, electronic money may be recognized on a server of a payment system or stored with the help of computer software. Legal arrangements for such relations are performed in the form of access providing agreement or license agreement.

## Purchase of goods and services

It may be performed via the Internet or using a card that stores electronic money.

Therefore, these are basic sales and purchase agreements.

## Money transfer to clients

When a client credits money to a payment system, he/she acquires receivables to the issuer. An agent (i.e. a payment system operator) transfers electronic money from a sender to a recipient on behalf of an issuer.

Therefore, relations between an issuer and an agent may be qualified as commission relations.

## Exchange of electronic money for traditional money

Electronic money is exchanged for traditional money upon client's request.

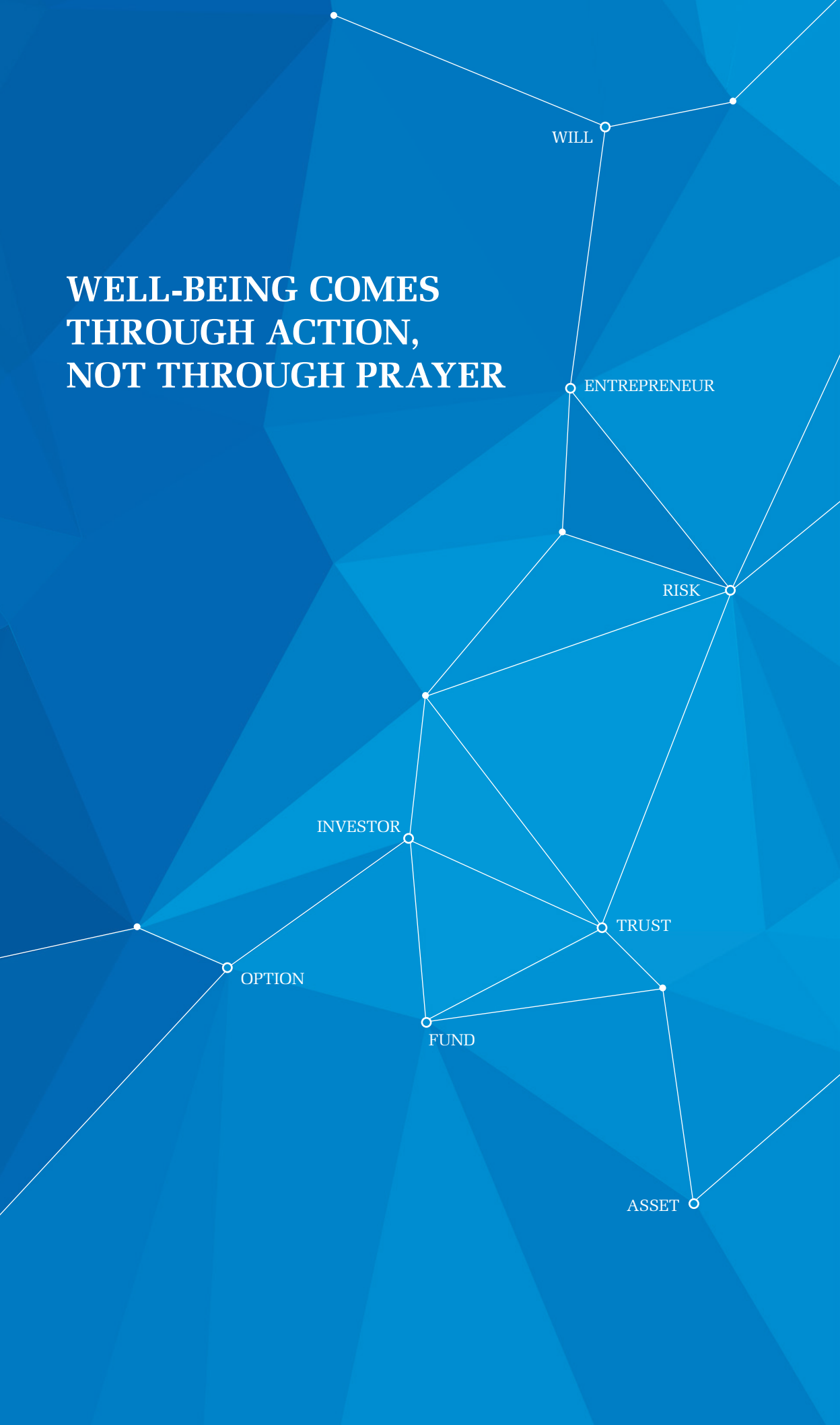
It may be qualified as fulfillment of a mixed loan and sales and purchase agreement.

Electronic money payment (Fig. 1):

1. Issuer renders prepaid electronic money to Payer.
2. Payer and Recipient enter into sales and purchase agreement.
3. Recipient requests payment from Issuer.
4. Payer gives instructions to Issuer.
5. Recipient gets money.

Therefore, electronic money is receivable to the issuer and is a specific legal object. Electronic money is not money in the usual sense of the word, but electronic money payments are legal and useful for goods and service payments via the Internet. Such payments require intermediaries: a payment system operator and an electronic money issuer.

# WELL-BEING COMES THROUGH ACTION, NOT THROUGH PRAYER



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*Managing Director*
*Tax and Legal Practice*
*Korpus Prava*

# WELL-BEING COMES THROUGH ACTION, NOT THROUGH PRAYER

**Dalai Lama XIV**

Lately in the pages of Korpus Prava. Analytics we have frequently addressed inheritance-related topics. It is not a mere coincidence. Inheritance matters, or as they say in modern language — inheritance transfer, are currently very important for business community. It happens for a reason. Our Russian entrepreneur who started his way in the 90s at the age of 20–30 has achieved everything by now: he survived 1991, 1998, 2008, 2014 and according to the common saying planted a tree, built a house, raised a son... This entrepreneur is now over 50, his son is at least 25, so it's time to pass his business to this "son".

Once becoming very important, the matter of inheritance transfer to one's successors has immediately turned into a problem. First of all, it happened due to the fact that assets are either ill-structured or unstructured at all. Cases when a person wishing to appoint a successor is not able to legally confirm his rights to an asset are quite frequent. The case becomes particularly complicated if this person has already passed away. Sometimes it's impossible for a "son" to get assets from a nominee who had non-binding obligations to his "father". Moreover, while wishing to transfer his assets to a particular heir in his lifetime or give them under the will after death, a person faces certain legal restrictions, such as statutory share and joint ownership of spouses. Finally, one shouldn't forget that in case of inheritance transfer after employer's death, unless such transfer has been prepared beforehand, assets get frozen for at least 6 months. In such cases problems with real asset disposal tend to arise and corporate governance of legal entities may be paralyzed. Sometimes it becomes impossible to get through to providers of corporate services that manage foreign companies. In other cases heirs have no idea of asset

composition; they don't know anything about the companies, their location and maintenance or how to work with contacts. It turned out that life leads one to think about inheritance transfer beforehand, before it's too late.

## Typical risks

What should a person who has decided to structure his "estate" consider?

First of all, he should consider matters that heirs will face in case everything takes its course (Fig. 1).

1. 6-month period for accession to heirship. This period starts from the death of a testator. It's impossible to register one's heirship before the abovementioned period. Therefore, for half a year a heir will not be able to control real estate or broker's securities, or stakes and shares of Russian and foreign companies. The most unfortunate scenario may happen, when a testator is the sole shareholder (member) and director of a legal entity. Activities of such company will be frozen for 6 months, as the change of the director may be performed only after registration of heirship for shares (stakes).
2. "Unplanned" heirs. 6-month period is given in accordance with the legislation for all potential heirs to make their claim for heirship. During this period some people may appear that haven't been taken into account either by a testator or by other heirs. If they prove their heirship, they will not only have to be shared with, but probably also given access to asset management.
3. Asset search. In cases when inheritance transfer hasn't been registered beforehand, asset search (particularly for foreign assets) may turn into a "crusade". This search is not complicated for real estate and legal entities located in Russia. However, in order to find a foreign company, knowing just a country of registration is not enough. One should know not only registration data, but also contact details of the corporate administrator of this company. Moreover, ideally one should be an authorised representative in order to contact this administrator, otherwise communication may be hindered.
4. Spouse share. This restriction implies that unless otherwise stated in the prenuptial agreement, the spouse of a deceased has a right to 50% of marital property. It means that even with a will for "all property" in favour of a particular heir, this heir will actually get only 50% of all property that belonged to a deceased. It won't be considered a problem for a happy family. However, if to quote L. N. Tolstoy "Happy families are all alike; every unhappy family is unhappy in its own way", one may expect various unpredictable disputes to arise. For example, spouses may live apart and don't consider themselves spouses,

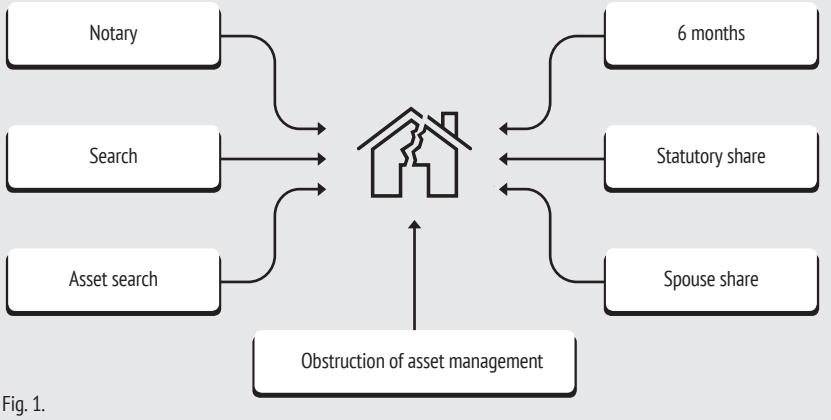



Fig. 1.

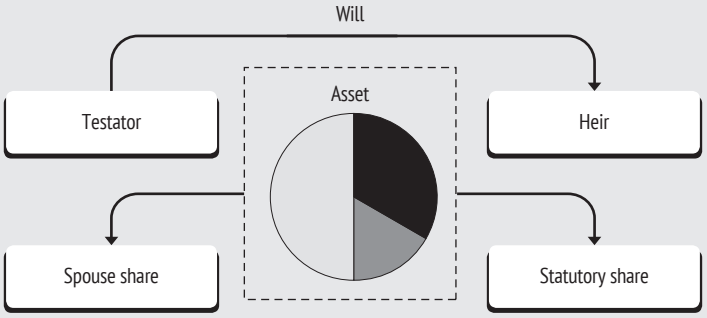



Fig. 2.

but legally stay married. In this situation spouse share rights will be valid. One more example is when a spouse bought an asset before marriage, accepted it as a gift or inherited it. This asset is obviously the property of this spouse. However, all the money from disposal of this asset during marriage, especially a new asset bought with this money, is joint property of both spouses and will be covered by provisions of matrimonial regime.

5. Statutory share. The requirement of statutory share in the estate implies that testator's dependents (primarily minor children, disabled adult dependents), who even with a will have a right to 50% of the share they would have obtained in case of hereditary succession without a will.

In order to avoid the abovementioned complications, one should consider structuring of assets beforehand and perform certain actions that will eventually lead to a smooth and easy inheritance transfer to a successor and will allow a testator:

- Firstly, to be certain that asset management will get into the hands of the heir he counts on;
- Secondly, not to worry about asset management being obstructed.

## Will

We will start with a simple instrument that is very obvious. One may dispose of property on occasion of death by drawing up a will. A testator is entitled at his own discretion to leave his property to any persons, assign heir shares in any manner he deems fit, disinherit one, any or all heirs at law with no reason given (Fig.2). The size of the estate is limited only by spouse share, which may be avoided by signing a prenuptial agreement beforehand. Discretion of the will is restricted only by regulations on statutory share, which are obligatory.

However, a testator is not able to predict all possible future changes in his will. Such changes include appearance of new heirs, marriage of children, remarriage of the surviving spouse, misdeeds of heirs, etc. Moreover, even with a prenuptial agreement, absence of minor heirs and existing will containing detailed information on the assets, a heir will have to wait for 6 months for accession to heirship.

## Trust

In order to avoid 6 month asset freeze, one may use such an instrument as trust. A typical trust structure is illustrated in the figure 3.

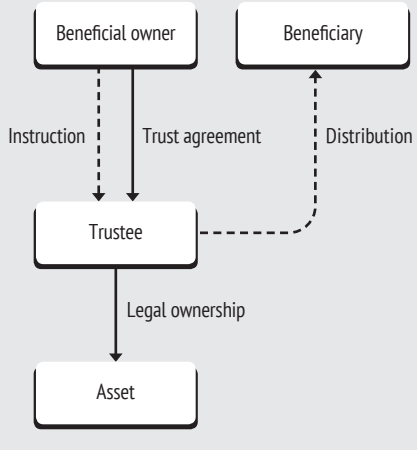



Fig. 3.

However, this typical trust structure is used only in Commonwealth countries with trust law. In order to assign an asset to a trust located in Russia or other continental law countries, one will have to transfer it to a legal entity registered in a trust law country. The trust structure for such assets is shown in figure 4.

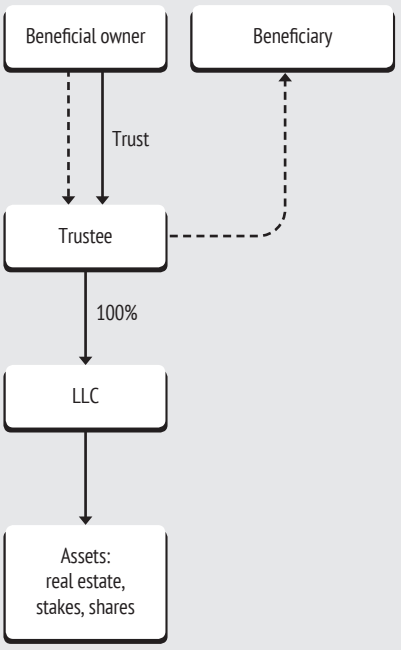



Fig. 4.

Due to the fact that upon property transfer the ownership title will be registered in the name of a trustee, this property will not be included into the estate and all disputes between "heirs at law" are limited only to those types of property that weren't assigned to a trust and remain registered under testator's name. Thus, structuring of assets via trust will allow a testator to avoid 6-month period for accession to heirship, as well as regulations on statutory and spouse shares. Pursuant to a trust agreement a settlor may give any instructions. Thus, one may determine cases when the property is distributed in fixed shares between heirs, or an appointed beneficiary will continue to receive income from management of assets assigned to a trust after the death of a settlor, if a relevant instruction is given. Alternatively, a settlor may give instructions on trust termination and transfer of an asset to a specific beneficiary under certain circumstances, including settlor's death (Fig. 5).

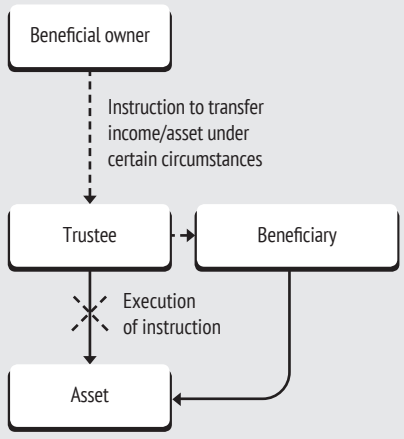



Fig. 5.

## Fund

In case a potential testator doesn't contemplate transfer of ownership to a trustee due to various reasons, such instrument as a fund serves as an alternative to a trust.

As an asset management instrument fund has as figure 6.

Unlike trusts where one avoids all restrictions of inheritance law by changing of the asset owner and leaving specific instructions in relation to an appointed beneficiary, with funds one transfers assets to the ownership of a fund, a potential testator becomes fund's investor managing these assets, and the abovementioned aims are gained due to an increased level of non-disclosure of information on fund's investors.

Non-disclosure implies that information on fund's investors is not disclosed to third persons, as well as during information exchange sessions. As a rule, such participation doesn't lead to participation in controlled foreign companies for the purposes of the Tax Code of the Russian Federation. Thus, during asset search such property as fund shares will be impossible to find, which will allow to exclude them from the estate and the list of marital property. A heir will be notified by a testator on asset transfer to a fund

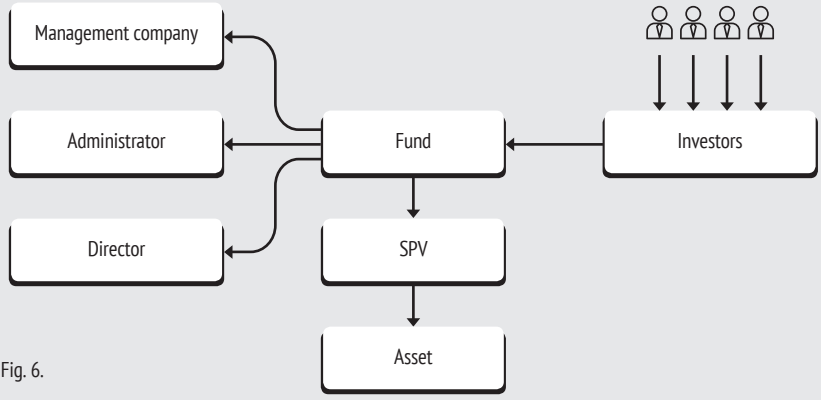



Fig. 6.

beforehand and will be able to gain fund investor's rights by using a note of wishes, executed and delivered to a fund administrator by a testator at reasonable time (Fig. 7).

## Option

Less attractive and secure but in some cases an efficient instrument is asset registration in the name of a third party with simultaneous signing of an option agreement with a potential heir. Pursuant to the option agreement, in accordance with the terms therein one of the parties is entitled to claim the fulfilment of obligations thereof by the other party within the fixed period of time (including payments, transfer or acceptance of property). In a given case signing an option agreement with a potential heir by the third party will give this heir the right to acquire an asset under certain circumstances. This method of asset structuring is not systematic, it is difficult to multiply and it is 100% dependant on whether there is a trusted third person among people known to a testator. However, under certain circumstances considering personal characteristics of some testators this option may seem the only one.

Thus, any of the abovementioned instruments of asset structuring for inheritance transfer is valid. It's possible to use different instruments for different assets, which will allow diversifying risks. No matter what the state of his assets is or how young their owner feels at the moment, he must consider how the ship will sail when the captain comes ashore.

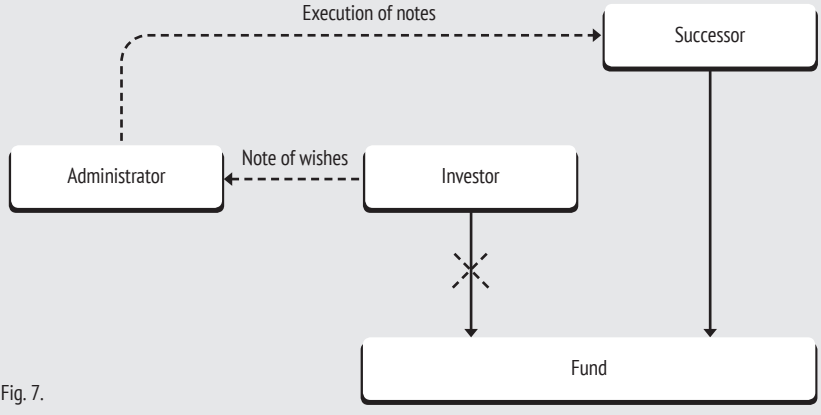
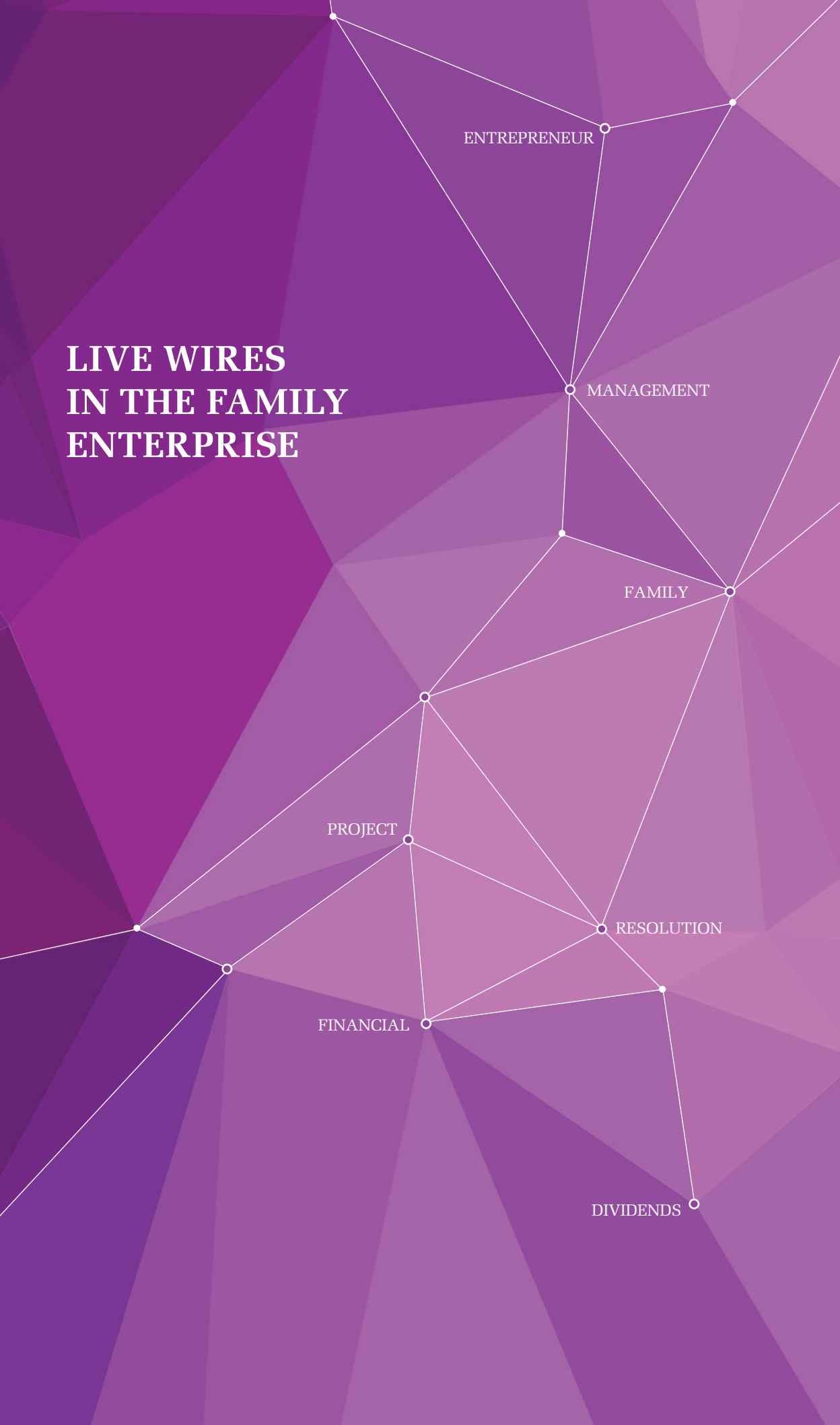



Fig. 7.

# LIVE WIRES IN THE FAMILY ENTERPRISE



**Dr. Ariel Sergio Goekmen, LL.M.**
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*Schroder & Co Bank AG, Zürich*

As practitioners, we all know the situation: we arrive at the scene and are presented with the situation. Like a detective or journalist, we investigate what happened. Usually, when families are involved, it is after the event. Porcelain has been shattered. Electrical current has electrocuted people. And now, what do we do?

Let us look at an example.

Henry M., a successful entrepreneur, has built a sizeable business generating millions in profit. But as luck would have it, he is diagnosed with Alzheimer's. While he had at times thought about the uncertain future, did he envisage the onset of such a debilitating situation so soon? No. Did he find the successors to lead his tremendously profitable firm? No. And now, as always, it is getting late. Darkness sets in. His three grown children, an engineer, a financial accountant and a lawyer, stand ready to take action. So does his wife, who stood shoulder to shoulder with Henry in building the family firm.

But there is also his management, who wish to have a share in the business. They too have worked diligently for decades, by Henry's side. Now the usual dance begins. Do we keep the management in place, do we replace the management with the second generation, and if so, who does what? The question of governance has not been thought of. Wires have criss-crossed; the family is prone to misunderstandings. Seemingly trivial queries spark bigger firestorms. If the firstborn son, Adam the engineer, takes the helm, can he and his young family use the family plane to fly to Mallorca for holidays? And how much remains for the other siblings and the wife?

At this moment, as practitioners, we can only wish that we had been called in earlier. Surely a functional set-up could have been lined up in advance. We could have helped Henry in good times to prepare for such an incident and prepare a power grid, where the electrical current actually propels the business forward instead of causing ripples and negative currents to the remaining family members, in times of crises?

With Henry on the sick bed, it is now getting too hot to handle. With family vs management the tension is palpating.

Another curve ball comes in when the daughter who is a financial accountant and has married a leading CPA, suggests to manage the books with her husband to provide the steady hand that the family business may require. It is not only the management which may beg to disagree but also within the siblings, the sibling rivalry could ensure. This would

be a testy situation since in-laws were usually kept at arm's length in the past. There was enough confusion when family members wanted to work in the firm, and how their performance was to be assessed and by whom, and how they were to be compensated? Imagine now an in-law wading into that wave pool. There are innumerable potential crossed wires that can stop the flow of the positive current. The youngest lawyer progeny could stake a better professional claim and managing affairs in such crises as well.

As practitioners, we see a lot of problems coming in from such governance issues. Who is allowed to have access to corporate assets such as cars, houses and planes? And how often, and over the weekend? Those who don't work in the family business sometimes want to be paid out higher levels of dividends, those in the firm might wish to retain profits to support future corporate projects. All these items require a mutual understanding and constant dialogue. With Henry on the sick bed, the ineffective system of communication and decision making is getting augmented into the open.

A very electrifying suggestion doing the rounds these days is that parents should not shy away from spending their children's inheritance. First of all it's fun for the parents, and secondly it definitely emancipates the children, possibly allowing them to become self-reliant. One could compare it to enabling the children to have their own power house, instead of connecting to the parents'. This is an attitude shared by some of the wealthiest people on this planet. We don't know about measures in place to soothe conflict in these wealthy families but we can presume that there is greater probability of conflict. As soon as the spark of disagreement flies, family members maybe severely burnt. So preventing fire is so much better than fighting fire!

According to a study undertaken by PWC, more than half of their family business clients have argued about the future direction of the firm. Without an established dialogue culture there will be trenches between family members and even family groups.

Let's take a step back as to what we could have helped with in the ideal scenario.

It all starts with the founder's entrepreneurial values — that are intrinsic to the entrepreneur and his family. Whether he is furthering young talents, or puts himself first, or puts his family first — all of this could have been enshrined from the beginning and the whole family and management would know what the values of the patriarch and the family are.

If the founder is a philanthropist, we could have helped him put his money to good use in his lifetime. If he was more into personal materialistic wealth, his vintage car or art collections, horses, or other luxuries such as yachts and aeroplanes — would still do well with an ownership structure.

In well-organised families the wealth owner takes it upon him to educate the next generations. The next generations need to be re-wired to connect to the power house of the first generation, or simply the preceding generation. They might be included early on and work in the family business, and thus inspired to carry the torch. Or they might be entrusted with philanthropy and running the family foundation, selecting appropriate projects to invest in to achieve the purpose of the foundation.

In not so well-organised families, the practioners could be the ideal blessing. We could coach the founder as to how to explain the wealth and its implications to his wife and family. How to explain and teach them how to run an enterprise, how to keep the wealth together, and how to work together for a mutually shared vision or goal? Such a vision is the ultimate goal, where the family wishes to go. It's certainly the centre of gravity. It is the generator of power, even in unstable times when the family needs to adapt to external changes.

Sibling rivalry can be mitigated by getting the children involved in the family business from an early age so that they grow up with the family values, the family ethics code, the DNA. Alternatively, the creation of a family council with regular, minuted meetings can create

a sense of involvement and belonging for all ages and roles.

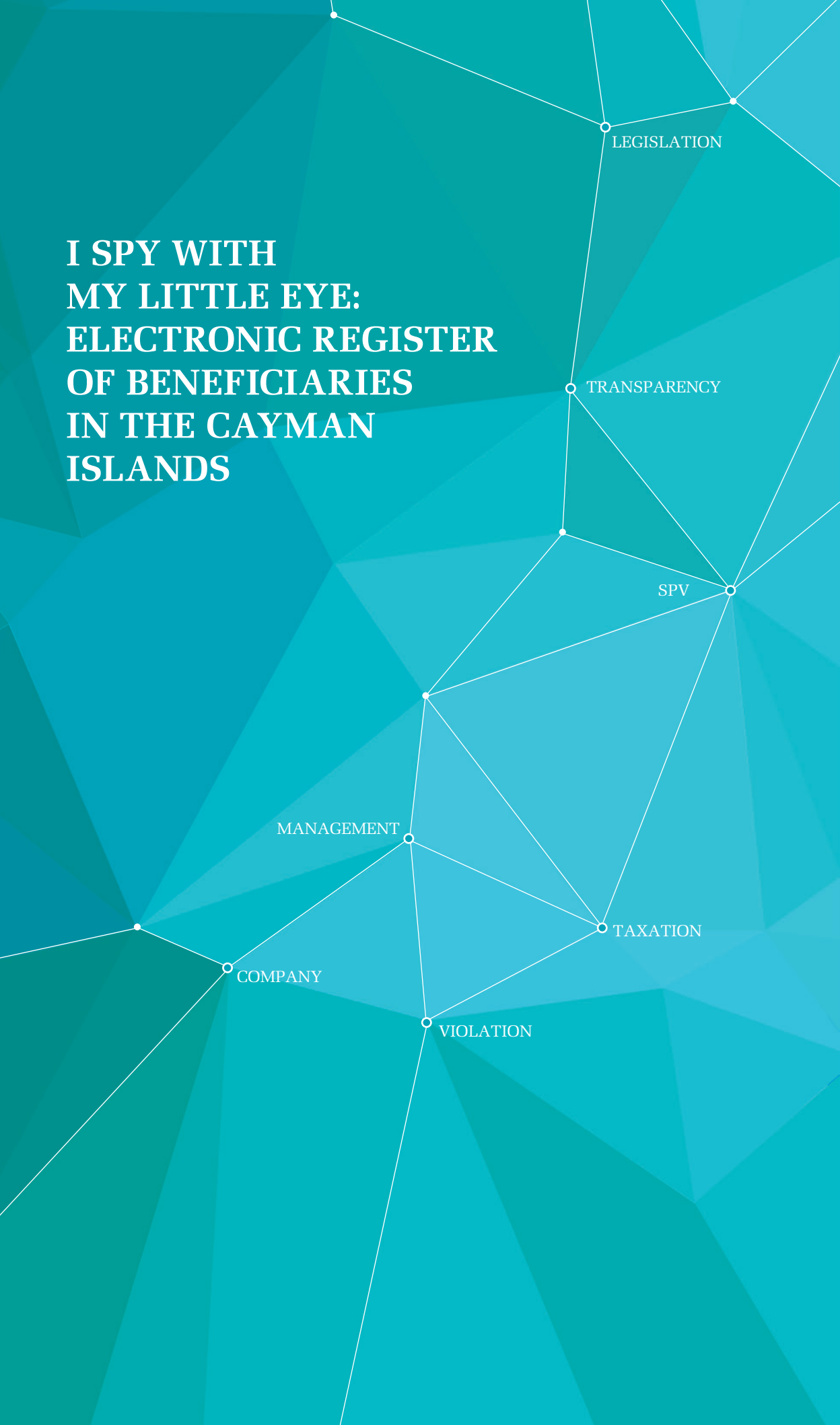
Conflict resolution is always family-specific. Some like to have a family council. Others prefer a family forum. There is also the possibility that the shareholders' general assembly can be a forum or council. In my practice, governance does play a role — although seldom do families, especially not first-generation families, want to write up and integrate it into a family constitution.

What has worked in the past is the inclusion of a place of arbitration in the event of internal conflict within a family. This can be prepared by strictly separating family business from family life, i. e. relationships should not be influenced by issues or discontent in the family business. In our experience, this is more difficult to achieve in family businesses of the first or second generation. It can become easier later on when not so many family members work directly in the family firm.

Probably the most successful way to resolve family business issues is to escalate to a mutually agreed third party, who should be benign but impartial — a person of respect and integrity. Such roles can be created unbeknownst to the holder of such a privileged position. It could be an uncle, it could be the family financial director, the CFO or a former CEO. Or it could be a trusted advisor: a trustee, a lawyer or indeed a trusted banker.

To return to Henry's case, during the "good times" he would have taught his wife and children how to build connections with each other as well as the management and prepared the grid where communication flow was solid. He would have shared his vision of how he would deal with the future. In order to safeguard the power house, the family has to understand electrical tensions roast everyone in sight. Understand how to distribute wealth amongst the family - which child would be at the helm of which division of the firm, which should include the family foundation and philanthropy. Henry would have had time to do so. It falls to the advisors to create awareness of the pitfalls of not doing so, and how to organise the firm and wealth so that his wife and children can enjoy the fruit from the trees planted by Henry. It might be useful to explain this to Henry while he is still enjoying the good life.

# I SPY WITH MY LITTLE EYE: ELECTRONIC REGISTER OF BENEFICIARIES IN THE CAYMAN ISLANDS



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Transparency tendencies continue to win over international corporate community, including offshore jurisdictions. There's nothing new about the fact that certain offshore jurisdictions have already defined requirements on maintaining the register of directors, collecting information on shareholders and beneficiaries. Jurisdictions of the Seychelles and the British Virgin Islands may serve as examples of such jurisdictions. Some jurisdictions only start to introduce such requirements, while others tighten or upgrade them. This article will cover the situation in the Cayman Islands.

It must be mentioned that before recent amendments to legislation that will be discussed below, requirements on maintaining the register of beneficiaries didn't exist. Legislators not only introduced these requirements, but immediately made them more severe in comparison with other offshore jurisdictions.

On April 7, 2017 the official edition of The Extraordinary Gazette of the Cayman Islands published a number of legislative changes related to beneficiary owners, including the Companies Act. The changes will affect companies registered under the Companies Act, except for:

- Companies with shares listed at the stock exchange of the Cayman Islands or any other certified stock exchange;
- Companies registered or licensed in accordance with the Law On monetary management;
- Companies registered, managed and administered by such authorised entities as special purpose ventures (SPV), private equity funds, investment companies and investment funds;
- Companies in the capacity of principal partners of SPV, private equity funds, investment companies and investment funds. Registration, administration and management of partner companies should be performed by duly authorised persons;
- Companies exempt from taxation.

In accordance with new amendments companies are now obliged to identify beneficiary owners. Beneficiary owners are defined as individuals who meet one or more of the following conditions:

- Hold, directly or indirectly, more than 25% shares in the company;
- Hold, directly or indirectly, more than 25% voting rights in the company;

- Hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company.

In case one fails to identify an individual that meets at least one of these conditions, for example, shareholders of the company are legal entities, it's required to analyze the whole shareholding structure in order to identify individuals performing or having the right to perform absolute control over the company. Director, professional manager and professional expert do not qualify as beneficiary owners. In order to identify beneficiary owners and associated legal entities, companies shall deliver notifications to beneficiary owners and legal entities with the purpose of confirmation, change or rebuttal of information. Response period for such notifications shall equal 1 month. In case no information is submitted, companies shall be able to make the following restrictions:

- Any deals on transfer of possession shall be deemed invalid;
- No rights ensuing from possession shall be performed;
- No shares shall be issued on behalf of a shareholder or in connection with an offer to a shareholder;
- No payments connected with possession to authorized capital or otherwise shall be made, except for winding-up.

The company may lift restrictions if requirements of the notification are satisfied, reasonable excuse for non-submitting of information is provided or third party rights are affected. Third parties shall also be entitled to debate restrictions affecting their rights in court. Persons that violate established restrictions will be fined in the amount of 5 000 USD. Companies and individuals mentioned in these restrictions are entitled to apply to court for abolition of restrictions.

Companies are also obliged to maintain the register of beneficiary owners, which must be kept at the registered office of the company. In order to maintain their corporate register resident companies of the Cayman Islands will have to address their agents or the Registrar. Meanwhile, the Registrar may impose additional fee for this service. Companies exempt from taxation, non-resident companies and companies registered in accordance with 2011 Law On Special Economic Zones are provided with the service of register maintaining by incorporation agents. In order to maintain the register of beneficiaries, companies shall submit all the acquired information to incorporation agents or the Registrar. The register of beneficiaries will contain the following details:

1. Individual beneficiaries or controlling parties:
   - Name;
   - Address;
   - Date of birth;
   - Passport or ID details;
   - Starting date of beneficial ownership;
2. Legal entities participating in beneficial ownership:
   - Name;
   - Address details;
   - Legal form and governing legislation;
   - Registration number, if any, and register name;
   - Starting date of beneficial ownership participation.

In case of substantial changes, a beneficiary owner or a company with beneficial ownership participation must file information on these changes within a month since these changes occurred. Companies in their turn must collect information on changes by sending notifications in the manner mentioned before, and then file this information to the incorporation agent or the Registrar. The incorporation agent and the Registrar must in turn promptly update registers of beneficiary owners. A person may be deleted from the register of beneficiary owners in five years after the date when the incorporation agent or the Registrar learned about the termination

of his beneficial ownership participation. In case beneficiaries or legal entities with beneficial ownership participation do not agree with the content of the register of beneficiaries, they may appeal to court.

THE COMPETENT AUTHORITY WILL SET UP A SEARCH PLATFORM INCORPORATING INFORMATION FROM ALL REGISTERS OF BENEFICIARIES

The competent authority of the Cayman Islands, i. e. Minister or a duly authorized person, will set up a search platform incorporating information from all registers of beneficiaries. Incorporation agents and the Registrar must file the information from the registers of beneficiaries to the competent authority for the purposes of information database update. The platform will be protected from unauthorized access. Access to the platform will be granted only to the following authorities:

- Financial intelligence unit in accordance with the Proceeds of Crime Act;
- Financial Statement Department in accordance with the Proceeds of Crime Act;
- Monetary Authority of the Cayman Islands;
- Tax Information Department in accordance with clause 4 of the Tax Information Act;
- Other authorities that are granted the right for monitoring in accordance with clause 4 (9) of the Proceeds of Crime Act.

The abovementioned authorities will be able to start their search only after confirmation of a previously filed request by the competent authority. Search by request from the Financial intelligence unit for a foreign country will be performed in case this foreign country has signed a relevant agreement on information exchange with the government of the Cayman Islands. By now this agreement has been signed by Great Britain.

Legislation carries significant penalties for the violation of the established requirements. Thus, violations performed by companies are punishable by fines amounting from 5 to 25 000 dollars. The company may be held responsible not earlier than a year after legal amendments come into force. Failure to provide information or false representation by individuals is punishable by up to 10 000 dollar fine and/or up to two years in prison. Illegal search for the registers of beneficiaries and disclosure of information are also punishable by 5 000 dollar fine and/or up to 12 months in prison.

Legislators reserved the right to apply exceptions to individuals and companies under the abovementioned legal amendments to the competent authorities. These exceptions will be based on the criteria determined by the competent authorities. Legislators also reserve the right to make regulation amendments.

By now, the search for beneficiaries may be performed only in the Cayman Islands, and on the international level the information on beneficiaries may be submitted only to the competent authorities of Great Britain. It's difficult to predict what other countries will sign this agreement with the Cayman Islands. Even with a blocked access one can no longer claim full confidentiality for beneficiaries, as was formerly the case under this jurisdiction.

## About the Company

Korpus Prava was established in 2003 in Moscow, Russia. Together with our offices in Russia, Cyprus, Malta, Latvia and Hong Kong we offer clients a truly international service. Our highly qualified and friendly staff is available to provide to the clients a flexible, reliable and efficient service.

The mission of the Company is to raise the business value of the client and bring down risks.

### Korpus Prava offers services in:

- Legal and tax consulting
- Transformation of financial statements to IFRS
- International tax planning
- Project consulting
- Corporate services
- Capital transactions / M&A
- Tax disputes
- Economic disputes and bankruptcy
- Real estate transactions
- Intellectual property
- Financial Consulting

The company is mentioned in the rankings of the leading international directory "Legal 500" that is completely and comprehensively overtaking the global scope of legal services.

Korpus Prava was nominated as the best legal firm in Russia according to the authoritative magazine "The Lawyer"; it takes one of the leading positions amongst Top 50 legal firms in Cyprus, and it has also been recognised as the best international legal firm for tax planning in Cyprus. Korpus Prava Private Wealth Practice has taken fifth place in Private Banking and Private Wealth sector in Russia, in the category of Succession Planning Advice and Trusts according to the annual rankings of Private Banking Russia Survey 2016 of the prestigious magazine "Euromoney" (as of February, 2016).

Korpus Prava is a member of Cyprus Fiduciary Association (CFA) and Franco-Russian Chamber of Commerce and Industry (CCIFR). It takes part in the development of business community, business presentations and the exchange of professional experience.

Our certified specialists conduct seminars and consultations for accountants and the representatives of company financial services; they act as experts, and they are published in popular financial publications.

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