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Capital contributions and crypto-assets

A new option subject to control of the General Inspection of Justice

In recent months we are witnessing a new disruptive economic phenomenon in Argentina and in the world: the use of crypto assets as payment methods and to cancel obligations.

In Argentina it is public knowledge that real estate and construction companies already accept crypto assets from potential investors as a means of payment and investment in real estate projects to be built from founding , or sale of properties, houses or apartments.

There have also been cases in which companies are evaluating paying the salaries of certain hierarchical employees with crypto assets, either at the request of such employees, or as a policy for attracting or conserving human resources in the company. Thus, it is evaluated to register them as payments in kind.

Well, the same phenomenon is occurring in the corporate sphere looking for the possibility of making equity increase with crypto assets.

First of all, we clarify that, as of today, crypto assets do not have a legal definition in Argentina. Currently, there are two bills in the national Congress to define them and regulate the operations carried out with them. Until then, they are governed by the famous Latin adage *permissum videtur id omne quod non prohibitum*, or principle of legality, enshrined in Article 19 of the National Constitution, and which reads: "No inhabitant of the Nation shall be forced to do what is not the law mandates, nor deprived of what it does not prohibit. " Therefore, since they are not prohibited, crypto assets are legal, and their use as well.

In this sense, beyond the absence of a univocal legal definition, and the different conceptualizations of some organizations (Tax Authority, Financial Information Unit (FIU) - the organization for the prevention of money laundering and financing of

terrorism in Argentina, etc.), there is consensus that these are digital financial assets and / or goods in terms of the National Civil and Commercial Code.

After this clarification regarding its legal nature, we will analyze whether it is possible to accept it as a capital contribution or not, and the risks or considerations to take into account.

The article 38 of the General Corporations Law (“Ley General de Sociedades” or “LGS”) establishes: “Contributions may consist of obligations to give or to make, except for the types of companies in which they are required to consist of obligations to give. [...] Compliance with the contribution must comply with the requirements established by law in accordance with the different nature of the assets. [...] “. Likewise, article 39 of the LGS adds: “In limited liability companies and by shares, the contribution must be of specific assets, susceptible of forced execution.” Finally, article 51 of the LGS completes: “Contributions in kind will be valued in the manner provided for in the contract or, failing that, according to the market prices or by one or more experts appointed by the registration judge. ”

In other words, the contribution of crypto assets by a partner as capital could be categorized as an obligation to give specific assets, susceptible to forced execution, and valued in the social contract or according to the market price. All the elements indicated by the LGS to be considered contributions in kind are given in the case of crypto assets because they are specific goods, which can be valued according to market prices, that is, according to the markets in which they are listed, and, in the case of LLC and/or stock corporation, subject to forced execution under the terms of article 777 of the National Civil and Commercial Code.

The same conclusions hold if they were considered monetary goods or money itself, which has not yet been clearly established by law. Furthermore, if they were considered assets, their conversion to money or legal tender is possible, like any other asset contributed to society.

However, on the other hand, the last word will be held by the inspectors of the General Inspection of Justice (“IGJ” *the public authority where commercial companies must be registered*) who, at present, have not expressed themselves in this regard, either in favor or against. This is because the specific regulation of the IGJ identifies the different types of contributions such as money, recordable property, movable property and securities. In general lines, with the exception of monetary contributions, the valuation of the asset contributed by a professional is required (Book III, arts. 68-74, and concordant, IGJ Resolution N° 7/2015).

Finally, regarding the risk inherent to the volatility in the price of crypto assets, let us bear in mind that the valuation of the contribution affects the share capital, and from there, for example, on the value and number of shares to be issued, or in the determination and eventual distribution of profits and dividends, or in the possibility or not of being able to have social interests in other companies, free reserves, issue premiums, financial statements, etc., according to the company type.

Regarding this topic, the volatility of the price of crypto assets is not different from the volatility of the price of securities that are listed on the Stock Exchange and accepted as capital contributions, or that of any foreign currency whose price is subject to the trading of market, and that it is also accepted as a contribution of monetary capital. In this sense, the same mechanisms that are used when accepting said contributions can be used to mitigate the price risk and give security to the valuation: choose a recognized crypto-asset market, determine a date to make the contribution, subscription or integration, and even the exchange rate if, instead of entering the crypto asset, its equivalent value in legal tender in Argentina is entered as a contribution.

In conclusion, crypto assets are assets susceptible to economic valuation and comply with the requirements of the law to be considered contributions to social capital, whether of a monetary nature, either in kind as assets to be valued, and always with the possibility of conversion to legal tender in Argentina. Although there is no prohibition for this, if this type of contribution is chosen, its acceptance or not will be considered by the IGJ inspectors. Let us remember the intimate relationship that exists between the object of the company and the capital stock, recognized by national doctrine and jurisprudence for years, and which determines the power of the IGJ to require the adequacy of capital due to insufficiency according to the corporate purpose as control of legality.