Virtual Currencies: In the first official pronouncement in Argentina about the issue, without mentioning Bitcoin or other instruments, in six paragraphs, the Central Bank of Argentina prepared and aimed, but did not open fire. It posted this announcement on its web page on May 27, 2014. What can we expect?

Communication

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- The Central Bank of Argentina (BCRA) published a communication stemming from the consideration that the growing interest of the media merits alerting the public about the risks involved in the use of what it calls 'virtual currencies'.

As a first analysis, the issuance of this notice by the BCRA implies recognition and acceptance of the use of so-called 'virtual currency' without insinuating any type of prohibition.

It is likely that this communication does not only respond to the growing media interest in so-called 'virtual currency' but must have been the result of approaches made by other governmental agencies for the monetary authority to express its technical view.

- The communication 'suggests' to the public user to keep in mind that the so-called 'virtual currencies' are not issued by the BCRA nor by any other international monetary authority, and thus are not legal tender and have no backing whatsoever.

The tone of 'suggestion' from which the communication is issued allows the inference of a second idea with regards to the approach of the monetary authority on this issue, which is precisely the theme of self distancing itself by the understanding that it is out of the scope of its functions.

In summary, the Central Bank has among its legally recognized duties, in accordance with section 4 of its Charter:

(a) Regulate the financial system;

(b) Regulate the money supply, the interest rate, and credit;

(c) To be the financial agent of the Federal Government;

(d) Concentrate and manage reserves;

(e) Contribute to the functioning of the capital markets;

(f) Implement the foreign exchange policy;

(g) Regulate, to the extent of its authority, payment systems and activities related to financial and foreign exchange activity; and,

(h) Provide for the protection of the rights of the users of the financial system.

It can be reasoned that this distancing of the BCRA is derived from the consideration that the so-called 'virtual currencies' do not technically qualify as currency because they are not legal tender and are not immersed in the financial system, hence the position of abstention.

- The communication alludes to the absence of international consensus over the nature of these assets and that various authorities have warned about their eventual use in money laundering and other types of fraud.

The BCRA invokes other non-monetary 'authorities' because it considers it is not within its authority and therefore ratifies the idea of self-exclusion.

- The publication of the BCRA explains that governmental mechanisms do not exist to guarantee the official value and that the so-called 'virtual currencies' have shown great volatility up to this point, experiencing swift and substantial variations in price.

Here the BCRA would be confirming the interpretation that the so-called 'virtual currencies' are not currency from another angle: they lack official value –also, as previously mentioned they are not legal tender-.

These two characteristics for an instrument to be considered currency arise from section 30 of the BCRA's Charter, that says that it will be understood that they are susceptible to circulate like currency, whatever be the conditions and characteristics of the instruments, when:

(i) The issuer imposes or induces in a direct or indirect form, its forcible acceptance for the satisfaction of whatever type of obligation ("legal tender");

(ii) It is issued for nominal values less than or equal to 10 times the largest denomination of banknotes of national currency that are currently in circulation ("official value").

- In accordance with these implications –as signaled by the BCRA-, the associated risks to the transaction that involve the purchase or use of virtual currencies as a payment method, are borne exclusively by its users.

This clause of the Communication leaves no room for doubt about the demarcation of responsibility in the matter by the monetary authority: transactions with 'virtual currencies' are at the cost and risk of the user or consumer.

Thus, under the umbrella of the warning, the BCRA would be excusing itself from providing protection to the users of the so-called ‘virtual currencies’ for the technical considerations put forward, and does not identify a particular competent authority in these issues.

- Finally, the communication expresses that the Central Bank is currently analyzing diverse scenarios to verify that the transactions with these assets do not constitute a risk for those aspects which surveillance is expressly established in its Charter.

In this final declaration the BCRA takes the position that it will limit its intervention exclusively to those aspects that fall under its responsibility, which in plain language means that it will only intervene in the framework of the powers of superintendence of financial and foreign exchange institutions (Chapter XI of the Charter).

This means that if from the scenarios that it is evaluating a risk could be constituted, the BCRA would only intervene in the case of those transactions with 'virtual currency' performed by financial and foreign exchange institutions.

Therefore, it can be assumed that the Central Bank of Argentina does not consider the hypothesis of interfering in the activity of the customers of those institutions that operate with ‘virtual currencies’ including those that transact within the financial system as well.

This does not indicate the inapplicability of the regulations on foreign exchange over the disposal or acquisition of the so-called ‘virtual currencies’ that involve payments or receipts in foreign currency to/from non-Argentine resident parties.

Conclusions

In the tone of suggestion, the Central bank tries to warn the population over the use of the so-called ‘virtual currencies’, without mentioning any specie, type in particular, or concrete instrument.

The communication does not contribute descriptive novel ingredients to the –already abundant- literature over this thematic, this is:

- That they present risks;
- That they are not issued by the BCRA nor by any other monetary authority in the world;

- That they are not legal tender, have no backing, and no official value;
- That they present a great volatility;
- That the authorities of various countries do not agree about its characterization; and,
- That attention must be given to money laundering and possible fraud.

The publication could be considered constructive in certain aspects –at the risk of redundancy- that it leaves clear the Central Bank will not advance more than in those aspects that result from its functions of supervision defined in its Charter and only to the extent that it sees risks from transactions with this type of assets.

Although not expressed in these terms, the BCRA has arrived at this conclusion from the understanding that the so-called 'virtual currencies':

(i) do not qualify as money and are not currency because they are not legal tender, have no official value; and,

(ii) do not participate in and are not related to the financial system.

This plainly discards the possibility of intervention of the monetary authority in the business of private parties even if they are customers of entities subject to the control of the superintendence of financial and foreign exchange entities.

Does this mean a free path for anything having to do with the so-called 'virtual currencies'?

Not. The current legislation is fully applicable, beginning with the Federal Constitution with the principle of reserve reflected in section 19 at the header (that which is not prohibited is permitted), following the Civil Code – as it refers in section 2312 to inmaterial property of any value- and those of Commerce and Criminal, in addition to:

- Foreign exchange provisions, particularly when there are payments or receipts in foreign currency by nonresidents;
- The rules on money laundering;
- Tax legislation; and, amongst others,
- Securities regulations.

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