

# THE CONCEPT AND LEGAL FUNDAMENTALS OF DERIVATIVES (FINANCIAL INSTRUMENTS) IN THE REPUBLIC OF UZBEKISTAN

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*Keywords: derivative financial instruments, derivatives, financial market, financial and legal regulation, financial contract, futures, forwards, options, swap, state financial control.*

*Abstract: The paper concentrates on the legal analysis of approaches to the understanding of derivative financial instruments (derivatives). The author has analyzed laws and regulations governing relations in the derivatives market in the Republic of Uzbekistan and special features of their legal regulation in various legal systems. The author considers the processes of historical evolution and formation of the concept of derivative financial instruments (derivatives). Alongside this, the paper proposes findings of the special features of integrating new types of derivative financial instruments (derivatives) into the financial market of the Republic of Uzbekistan, as well as conclusions on the prospects and trends of sustainable formation of legal regulation of derivative financial instruments.*

*In his research, the author proceeds from economic and sociocultural approaches to law and state. The matter of the paper demonstrates the permissible limits of independence of the financial market of the Republic of Uzbekistan. Obviously, despite the ongoing processes of globalization of the country's economy accompanied by converging the national legal systems and harmonization of law in the field of financial legal standards, the tasks associated with this changes remain unresolved.*

*As such tasks, the author considers bringing approaches to understanding terms related to the financial market and, in particular, the concept of 'a derivative financial instrument (derivative)' to authenticity. In doing this, the author draws attention to the importance of maintaining the traditional practice, local specifics and established customs in certain areas of legal regulation of this financial market in the process of unifying and harmonizing the legislation.*

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*Using the method of comparison of approaches to understanding the subject of research existing in the world scientific community, the author demonstrates and justifies the permissible limits and ways of implementing the standards, norms and recommendations of international financial institutions concerning this subject in national legislation.*

*The author also provides his comments and suggestions on making changes to optimize the financial market of the Republic of Uzbekistan as a whole, and, in particular, focuses on solving challenging issues of legal regulation of relations with derivative financial instruments (derivatives).*

*As approaches to solving these issues, the author proposes that:*

- *the inclusion of the concept of ‘derivative financial instruments (derivatives)’ in the content of Article 3 as a separate definition in the list of basic concepts of the Securities Law should be jump-started;*
- *the law-making body should dismiss the term ‘derivative securities’ replacing it with the concept of ‘derivative financial instruments (derivatives)’;*
- *the law-making body should adopt a new regulatory legal act, the subject area of which will cover relations related derivative financial instruments (derivatives) only.*

## **I. INTRODUCTION**

Over a period of several decades, derivative financial instruments (derivatives) have become a new form of alternative, extra-liquidity investment. As a type of financial instrument, a ‘derivative’ is intended to optimize entrepreneurial risks and facilitate the generation of profit by creating new capitals.

Nowadays, it is impossible to imagine global finance without such a component as a derivative financial instrument (hereinafter – the ‘DFI’). In the legal science of foreign countries, the term DFI is denoted by the term ‘derivative’<sup>3</sup>(derived from the English word *derive*, which means originate, produce from), which is identical to the DFI.

An obvious long-sustained increase of the role of derivative financial instruments in the economies of states requires that the states should take timely measures to create conditions for sustainable development of the derivatives market, and therefore creates an objective need for the scientific validity of these processes.

The concepts of derivative financial instruments (derivatives) is a long-standing, debatable issue among representatives of financial science. Neither Uzbek or Russian researchers nor foreign ones have provided a comprehensive definition of this subject.

## **II. LITERATURE REVIEW**

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<sup>3</sup>‘The problem concerning the concept of this phenomenon of the financial market has long occupied the minds of jurists, economists, lawmakers, but no solution has yet been found. However, the urgency of the problem is a fact.’  
D.A. Zhukov.

According to the study conducted by E. Weber, the term ‘derivative’<sup>4</sup> was used in the Federal Court of New York at the hearing of the American Stock Exchange vs. Commodity Futures Commission in 1982. The Court defined a ‘derivative’ as a type of financial instrument, the value of which depends on the main, basic variable.

The general existing form of understanding a derivative financial instrument (derivative) is an agreement between two counterparties in which the benefit of each party depends on the result of one or more external, future, uncertain events or indicators, and in which each counterparty accepts (expects) such a result that will be the opposite expectation of its counterparty. Such an understanding of the definition of a derivative financial instrument (derivative) is comprehensive and incomplete at the same time.

The concept of a ‘derivative’ is usually articulated in various modifications; the universal one can be used as an example: this is a type of financial instrument, concluded in the form of contracts whose price sources shall be underlying variables such as securities, commodities, indices, events, the terms of settlements and terms of activation, termination of which are determined on the basis of the nature (futures, forwards, options, swaps and combined forms) of contracts.

In case of more open interpretation, ‘derivatives’ or ‘derivative contracts are understood, in the most general sense, as bilateral contracts (or individual rights arising from the contracts fixed in a separate document) in which the duty to fulfill the obligation is formulated in such a way that the economic effect from the implementation of the contract for both parties depends on a certain random element in the form of a quantitative indicator that can be determined in the future, i.e. stochastic dependence is present’<sup>5</sup>.

However, the significance of the subject of research has long been known to the world community, and the international derivatives center Global Derivatives Study Group ‘Derivatives: Practice and Principles’ was established for this purpose in 1993.<sup>6</sup> As a result of the research conducted, the Group has formulated a broad definition of this term: a ‘derivative is a contract the value of which depends on (or) “originates” (c) from the value of the underlying asset, interest rate or index’<sup>7</sup>.

The definition, proposed by members of the Group of 30 financiers and experts in various specialized sciences, give us reason to make a conclusion of the complexity of the legal nature of the subject under study.

A little later, in foreign scientific literature, derivative financial instruments (derivatives) were defined as ‘mutual bilateral contracts, the price of which is derived from a certain underlying value (base value, basis), depending on market quotations.’<sup>8</sup>

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<sup>4</sup> Weber E.J. «A short history of derivative security markets». Crawley, 2008. P. 1

<sup>5</sup>For a narrower definition of derivatives, which refers only to contracts providing for the fulfillment of obligations in money terms, and contrasts such derivatives to ‘derivative-like’ transactions involving the transfer of liquid assets other than money (shares, interest, goods), see: Reiner G. *Derivative Finanzinstrumente im Recht* (Fn. 1). S. 12, 18. <\*> Translation: Statut Publishing House; performed by the associate of G. Rainer, trainee-lawyer Lyubov Dvoskina-Kletke.

<sup>6</sup> Global Derivatives Study Group July 1993. *Derivatives: Practice and Principles* (date: 03.12.17. time 05:30) [http://www.group30.org/images/uploads/publications/G30\\_Derivatives-PracticesandPrinciples.pdf](http://www.group30.org/images/uploads/publications/G30_Derivatives-PracticesandPrinciples.pdf)

<sup>7</sup> Global Derivatives Study Group July 1993. *Derivatives: Practice and Principles* (p. 3 date: 03.12.17. time 05:30) [http://www.group30.org/images/uploads/publications/G30\\_Derivatives-PracticesandPrinciples.pdf](http://www.group30.org/images/uploads/publications/G30_Derivatives-PracticesandPrinciples.pdf)

<sup>8</sup>Rainer, Günther, *Derivatives and Law*/Gunther Rainer: Translated from German by [Yu.M. Alekseev, O.M. Ivanov]. - M.: “Walters Clover, 2005. P. 1, 13. John C. Hull, *Options, Futures and Other Derivative Financial Instruments*, 6th edition: translated from English. - M.: LLC I.D. Williams, 2008. p. 3

Typically, among other opinions of foreign authors, this approach to the understanding of 'derivatives' is more common and accepted by many experts. Another advantage of such an understanding of 'derivatives' lies in the fact that the same definition is given in research works on derivatives by such well-known experts as the German jurist Günter Rainer and the Canadian financier John C. Hull.

Also, after a lapse of time, determining the main characteristics of derivative financial instruments, (derivatives), has become an obvious necessity for international financial turnover. To this end, the Bank for International Settlements (BIS) has developed the definition of a 'derivative' as a 'financial contract, the value of which depends on the value of one or more of its underlying assets, rates or indices. The nature of derivatives that is dependent (derivative of) on the fixed (underlying) assets does not mean that the rights to the derivative extend to the underlying asset. The latter depends on the time period for fulfillment of obligations, the subject of which is the underlying asset. Moreover, although the derivatives are related to the creation of rights and obligations with respect to the underlying asset, transactions with them do not always lead to the actual transfer of such an asset.'<sup>9</sup>

In order to simplify and accelerate the cross-border circulation of derivatives, international non-governmental organizations have also developed rules and model documents in the field of derivatives.

In particular, the International Accounting Standards ('IAS') organization, which proposed the following characteristics of 'derivatives' contracts: 'A derivative instrument is a financial instrument or other contract that is within the scope of this Standard (see paragraphs 2 to 7) and has the following three characteristics:

(a) its value changes as a result of changes in the established interest rate, the price of a financial instrument, price of a commodity, exchange rate, price or rate index, credit rating or credit index, or another variable, provided that in the case of a non-financial variable (sometimes called a 'basic' one), it is not special for a party to the contract;

(b) it does not require an initial net investment or requires an initial net investment less than that which would be necessary for other types of contracts that are expected to react similarly to changes in market factors;

(c) settlements on it shall be in the future.'<sup>10</sup>

The above proposed characteristics of derivatives and other types of financial documents are also recognized and applied by the legislation<sup>11</sup> of many countries, provided that transactions are concluded with foreign counterparties.

As we can see, currently, there is no general, briefly formulated understanding of derivatives that would, at the same time, fully articulate its concept. In foreign literature, the definitions of derivatives are given with the help of characteristics and from the position of their economic functions.

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<sup>9</sup>Private international law: In 2 vols.: Textbook (Vol. 2) (resp. ed. S.N. Lebedev, E.V. Kabatova) (Statute, 2015), p. 739.

<sup>10</sup>International Accounting Standard for (IAS) 39 'Financial Instruments: Recognition and Measurement' (as amended on July 18, 2012) (put into effect on the territory of the Russian Federation by Order of the Ministry of Finance of Russia No.160n dated November 25, 2011) {ConsultantPlus}

<sup>11</sup>See: Order of the Federal Service for Financial Markets of Russia N 11-62/pz-n dated November 29, 2011 'On approval of the List of foreign organizations that have developed (approved) sample terms of contracts (other similar documents) that can determine certain conditions of a repurchase agreement, a contract, which is a derivative financial instrument, of a contract of another type, the object of which is securities and (or) a foreign currency, or a general agreement (single contract), if one of the parties to such a contract is a foreign entity.'

The need for a developed definition of the derivative is closely related to the functioning of the financial system, while uncertainty in interpretation can act as a destabilizing factor in such segments as financial operations, accounting, reporting, in terms of the interaction of control authorities on the derivatives market, and in the field of protection of interests and enforcement of the rights of investors. Each of these relations plays an important system-forming role for the financial market of the Republic of Uzbekistan.

As mentioned above, issues of the understanding of derivatives are and remain relevant both in Uzbekistan and many other countries of the world. In continuation of this thought, it will be appropriate to refer to the study of the representative of Russian science Yu.A. Tarasov. According to him, 'At present, Russian researchers attribute the main problems of the derivatives market to the difficulties associated with taxation and accounting of transactions with derivative financial instruments (high accounting risks related to the incorrect reflection of these transactions in accounting) [1, 2];

the absence of a generally accepted definition of a derivative financial instrument in Russian and foreign legislation, which makes it impossible to exercise regular and effective control over the functioning of the derivatives market and jeopardizes the future functioning of the entire global financial system [3, 4];

the insufficient level of development of the underlying assets market [5];

the non-transparency of transactions in the OTC market, the absence of centralized clearing[6].'<sup>12</sup>

### III. DISCUSSION AND ANALYSIS

In Uzbekistan, the understanding of derivative financial instruments (derivatives) is only being formed in terms of theory, depending on their legal coverage of individual characteristics. This term has not been studied by the scientific community of Uzbekistan as an independent legal category and there is no definition of a concept of derivative financial instruments in the legislation that would eliminate existing disagreements. One of the reasons for the absence of a legal definition of the term 'derivative financial instrument (derivative) is the absence of a regulatory legal act that could govern the subject.

At the same time, attempts have been made to articulate the term only as an economic category. An example, in his research work, the financier N.M. Abdukadirov offers the following approach to understanding the term derivative: 'Derivative financial instruments are an economic category that has not been fully studied, although their first varieties appeared several centuries ago. With the complication of economic relations, an increase in the possibilities of redistributing financial resources, new opportunities arise for using derivative financial instruments. Derivatives make it possible not only to use new investment options, but also to manage risks, which is most important from the standpoint of rational investment инвестирования.'<sup>13</sup>

If a financier adheres to N.M. Abdukadirov's opinion, then in his/her research work, the financier, when defining the term, will equate it with the term 'derivative securities' based on Article 3, the basic concepts of the

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<sup>12</sup>Article: Derivative Financial Instruments: Definition, Recognition Mechanism for Accounting Purposes (Tarasova Yu.A.) (International Accounting, 2017, N 10)

<sup>13</sup>The dissertation for a Candidate Degree by the N.M. Abdukadirov on the topic: Trends in the Development of Derivative Financial Instruments and Financial Innovations, Tashkent - 2017.

Law of the Republic of Uzbekistan ‘On Securities’, which states that ‘derivative securities are securities certifying the rights or obligations of their owners with respect to other securities and issued by legal entities in the form of issuer options, securities futures and other financial instruments.’<sup>14</sup> Including this norm, the legislator was limited only by the legally interconnectedness of instruments.’

At present, we think this norm to be obsolete and denying approaches to the understanding of the sameness of DFIs and DSs. In addition, given the above statements about the essence of the derivatives, the Global Derivatives Study Group (July) states that ‘a derivative is a contract, the value of which depends on (or) ‘originates’ from (c) the value of the underlying asset, interest rate or index.’<sup>15</sup>

In the same way, in its definition of the features of a derivative, the Bank for International Settlements (BIS) draws particular attention to its nature: a derivative is derived (depending) on the price of the underlying asset. The price of a derivative shall be formed from the variables that are the underlying assets themselves, but it is neither legally related to the underlying asset nor part of it.

Also, a little earlier, it was possible to meet similar thoughts in scientific works of Russian researchers that were related to the sameness of the concept of a derivative financial instrument (derivative) and a derivative security, in particular, in the works of such scientists as A.B. Feldman<sup>16</sup> and A.I. Basova<sup>17</sup>.

For example, according to M.G. Kholkina, ‘derivative securities (derivatives): an issuer option, a Russian depositary receipt. The derivative nature of securities is expressed in the content of the rights certified by them, in their secondary nature, derivativeness in relation to other securities, i.e. the subject of this type of securities is the underlying asset, expressed in a certain amount of other securities determined by generic characteristics.’<sup>18</sup>

Within the meaning of the above opinions, we can make a conclusion that refutes N.M. Abdukadirov’s opinion on the sameness of the DFI and DS concepts. Alongside this, definitions of the concept of derivative financial instruments at a regulatory level are mentioned in the Regulation to the Resolution of the Central Bank of the Republic of Uzbekistan: ‘derivative financial instruments are financial instruments such as financial options, futures and forward contracts, interest and currency swaps that generates rights and obligations resulting in the transfer of one or more financial risks contained in the underlying primary financial instrument by one party to the contract to the other.

Derivative financial instruments, as a rule, do not entail the transfer of a primary financial instrument at the beginning of the contract period, and such a transfer does not have to occur when the contractual obligations are

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<sup>14</sup>Law of the Republic of Uzbekistan ‘On the Securities Market’ (Collection of Legislation of the Republic of Uzbekistan, 2008, No. 29-30, Article 278; 2009, No. 39, Article 423, No. 50-51, Art. 531; 2013, No. 1, Article 1, No. 18, Article 233, No. 41, Article 543; 2014, No. 4, Article 45, No. 20, Article 222, No. 36, Article 452 editions in accordance with the Law of the Republic of Uzbekistan No. ZRU-387 dated June 3, 2015 ‘On Amendments and Additions to the Law of the Republic of Uzbekistan “On the Securities Market”.’)

<sup>15</sup> Global Derivatives Study Group July 1993. Derivatives: Practice and Principles (стр.3 дата: 03.12.17. время 05:30)

[http://www.group30.org/images/uploads/publications/G30\\_Derivatives-PracticesandPrinciples.pdf](http://www.group30.org/images/uploads/publications/G30_Derivatives-PracticesandPrinciples.pdf)

<sup>16</sup>Feldman A.B. On the Issue of Derivative Financial Instruments/Finance and Credit. 2003. N 17. pp. 2 - 15.

<sup>17</sup>Galanov V.A. Securities Market: Textbook. M.: INFRA-M, 2006. - 379 p.

<sup>18</sup>Protection of the Rights of Investors in the Securities Market: Scientific and Practical Guide (Kholkina M.G.) (Prepared for the ConsultantPlus system, 2014)

due.<sup>19</sup> Despite the fact that this rule was created with the aim of streamlining economic relations that take shape in the process of banking activities (the term operational accounting), it also fulfills the form of an official disposition.

Based on the content of this legal definition, it is clear what the legislative will is aimed at. Despite the confusing nature of the definition, it has gathered many aspects that characterize the nature of transactions on derivative financial instruments (derivatives). When analyzing, it is possible to distinguish significant areas regulated by the norms of the demonstrated article:

- the procedure for calculating transactions with derivative financial instruments (derivatives);
- the nature of calculating transactions with derivative financial instruments (derivatives);
- methods of fulfillment of obligations by the parties to the transaction with derivative financial instruments (derivatives);
- by basic primary financial instruments, the Central Bank implies securities, goods, indices, events, actions, unforeseen circumstances arising from the activities of state institutions and their officials. Types of underlying assets are described and taken into account in full, despite their difference or absence in the economic turnover in the country.

In addition, in scientific research works, there were significant differences in the approaches to the understanding of DFIs, for example:

Continuous discussions were conducted among those who considered a DFI to be a wagering transaction. According to A.Kh. Golmsten, 'Under the guise of operations in futures, a gambling stock exchange speculation is conducted, enriching some people without labour and capital and pushing others into poverty. Having become enormous, it has also caused innumerable disasters. Its influence on public morality is extremely destructive.'<sup>20</sup>

The opposite opinion was proposed by P. Tsitovich: 'On the stock exchange, people do not gamble or make any bets on the difference, but they speculate, that is, buy and sell, buy in order to resell, sell because it is bought.'<sup>21</sup>

Also, ignoring the growth volumes of OTC transactions concluded, Ye.V. Ivanova considers 'derivatives' exclusively transactions concluded on the stock exchange: 'exchange agreement (contract) with a deferred due date, the value of which depends on (is derivative of) the value of the exchange asset that underlies the contract (underlying asset)';<sup>22</sup>

At the same time, representatives of civil law science consider a derivative to be a purchase and sale agreement or a supply agreement, while cash settlement DFIs remain unsettled, their status becomes uncertain. Since the intended results (purposes of the conclusion) pursued from transactions with DFIs are heterogeneous:

- physically-settled;
- cash settled;

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<sup>19</sup>On Approval of the Regulation on the Requirements of the Central Bank of the Republic of Uzbekistan to the Published Annual Financial Statements of Commercial Banks - approved by resolution of the Board of the Central Bank No. 21/1 dated October 2, 2004.

<sup>20</sup>Golmsten A.Kh. Essays on Russian Commercial Law. St. Petersburg, 1895. - p. 184.

<sup>21</sup>Tsitovich P. Textbook of Commercial Law. St. Petersburg, 1891.p. 250.

<sup>22</sup>Ivanova Ye.V. Futures Contract // International Banking Transactions. 2006. N 4. LRS 'Guarant'.

the proposal to relate a derivative to a specific type of civil contract is not fully justified. As an alternative solution to such a discrepancy, V. Utkin<sup>23</sup> proposes to consider physically-settled DFIs to be purchase and sale transactions using a deposit (Article 380 of the Civil Code), and cash settled DFIs to be securities.

In his study guide, V.A Galanov defines derivative financial instruments as obligations on future transactions. In a broad sense, these are any market instruments based on primary profitable assets - goods, money, property, and securities.<sup>24</sup>

There are no studies at the doctoral level in the Republic of Uzbekistan in the field of the concept of derivative financial instruments (derivatives). However, it is possible to find the concept in the legal advisory publications of some official legal reference systems. In support of this, we provide the views of norma.uz lawyer L. Khikmatov, stating that ‘A derivative financial instrument (derivative) is a contract under which the parties undertake to buy, sell, exchange or perform other actions with goods, securities, currency or other assets. Examples of derivatives are options, futures, currency swaps, etc.’; however, the generally recognized types of derivative financial instruments (derivatives) are much wider than indicated above and all interpretations of this concept have included forward contracts as a special type of derivative financial instruments at all times. There are no opinions of the above author on this issue, which makes the author’s deduction that was embedded in this definition understandable.

#### **IV. CONCLUSION**

Thus, it becomes clear that many jurists ambiguously determine the nature of derivative financial instruments (derivatives). In addition, based on the method of financial and legal regulation of the derivatives market in other countries, we can conclude that in legislation the norms aimed at regulating ‘derivatives’ will increase rapidly, for example:

as evidence, the Resolution of the Cabinet of Ministers on additional measures to streamline exchange and exhibition-fair trade. This document officially confirms the inclusion of DFIs in the financial sector of Uzbekistan: ‘at exchange trades, goods of a certain kind and quality, including derivative financial instruments (derivatives) that do not require preliminary examination, characterized by the invariance of quality indicators and the constant conclusion of exchange transactions, included in exchange quotation list and admitted in the established manner to exchange trading shall be sold;’<sup>25</sup>

the law on exchanges and exchange activity also confirms the tradability of derivative financial instruments (derivatives) as exchange commodity: ‘Exchange commodity is a commodity of a certain kind and quality, including derivative financial instruments (derivatives), admitted in the established manner to exchange trading.’<sup>26</sup> This norm articulates the exchange nature of derivatives, but it should be borne in mind that a derivative as a transaction is

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<sup>23</sup> Utkin V. ‘On the New Concept of the law “On Derivative Financial Instruments”/“ Securities Market ”, No. 17 (296), 2005. P. 28.

<sup>24</sup> Securities Market: Textbook / Ed. V.A. Galanov, A.I. Basov. 2nd ed., revised. and enlarged. - M.: Finance and statistics, 2007.p. 35.

<sup>25</sup> Resolution of the Cabinet of Ministers of the Republic of Uzbekistan ‘On Additional Measures to Streamline Exchange and Exhibition-Fair Trade’ dated January 17, 2018

<sup>26</sup> Law of the Republic of Uzbekistan ‘On Exchanges and Exchange Activities’ No. ZRU - 375 dated September 12, 2014.

wider and includes not only exchange transactions, but also all civil transactions, which indicate the period from which the parties have rights and obligations, the term and termination of the transaction.

Nevertheless, it must be borne in mind that many persistent disagreements existing in this field over the past years with the adoption by the law-making authorities of the aforementioned fragmentary norms in the field of regulation of derivatives will become theoretically obsolete or be changed over time.

In general, it should be noted that at the moment there are regulatory legal acts in the financial market that are governing relations associated with derivative financial instruments (derivatives). However, they are doing this fragmentarily. One of the existing normative legal acts mentioning the term derivative financial instrument (derivative) is the Law of the Republic of Uzbekistan ‘On Exchanges and Exchange Activities’, in which the law-making authority tried to regulate the types of derivative financial instruments available for the given period on the financial market of the Republic of Uzbekistan.

The subject-oriented approach of governing shall be contained in the currency regulation law, where the law-making body considers only relations associated with the regulation of foreign currency derivatives of financial instruments (derivatives): ‘Derivative financial instruments related to foreign currency (currency derivatives) shall be contracts for the sale of foreign currency, under which fulfillment of obligations may be carried out after a certain period of time or depending on the value or change in the foreign exchange rate.’<sup>27</sup>The term ‘currency derivative’ is used by our legislation for the first time, and in the law-making body’s opinion and formulation, a ‘currency derivative’ is a type of derivative financial instruments (derivatives’. According to the indications of the norm of the above article, the law-making body articulates an existing type of derivative financial instrument (derivatives”, such as a ‘currency swap’.

In Article 16 ‘Exchange Transactions and Types Thereof’ of the Law of the Republic of Uzbekistan “On Exchanges and Exchange Activities’, the law-making authority added the term ‘currency swap’ as a type of derivative financial instruments, which incorporated the same features of the previous norm ‘currency derivative’ the Law of the Republic of Uzbekistan ‘On Currency Regulation’. The possible reasons for this, as we can assume, lie in the fact that the law-making body sees these two norms as different from each other (the former is wider than the latter). Therefore, there is no correlation between the norms and at first glance this situation looks as if duplication or a legislative mistake was made. But, despite this, we can also assume that in this case, in the process of developing the law of the Republic of Uzbekistan ‘On Exchanges and Exchange Activities’, the law-making body tried to specify the types, thereby avoiding all possible discrepancies in the field of the correlation of these norms.

In conclusion, it is necessary to mention that despite the changes in the legal regulation of the financial sector in the Republic of Uzbekistan, some laws and processes regarding derivative financial instruments (derivatives) need to be accelerated and should not be given a free rein.

For example, the inclusion of the concept of ‘derivative financial instruments (derivatives) in the content of Article 3, as a separate definition in the list of basic concepts of the law on securities should be accelerated;

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<sup>27</sup>To introduce amendments and additions to the Law of the Republic of Uzbekistan ‘On Currency Regulation’ dated May 7, 1993 (Bulletin of the Supreme Council of the Republic of Uzbekistan, 1993, No. 5, Article 225; 1994, No. 11, Article 285), approving it new edition (attached).

also, the it seems appropriate for the law-making body to renounce the term ‘derivative securities’ by replacing it with the concepts of ‘derivative financial instruments (derivatives)’, which is much more voluminous than the meaning that is incorporated in the concept in the first case.

It is advisable for the law-making body to adopt a new regulatory act, the subject area of which will be purely relations associated with derivative financial instruments (derivatives), as well as regulating the basics of state financial control in the derivatives market in the Republic of Uzbekistan. The need for such a regulatory legal act in the Republic of Uzbekistan exists, and it has been possible to see the prerequisites for this for a long time. During a nationwide discussion of <http://www.regulation.gov.uz/ru/>, in the process of amending other financial standards and the legislation of the Republic of Uzbekistan, active participants in the financial market and practitioners made suggestions of a similar nature in their comments. Accordingly, it shall not remain unseen, and the law-making body will certainly take appropriate measures to create this normative legal act.

The fragmentary nature of such normative legal acts indicates that the law-making body is not yet ready to proceed to regulating all possible types of derivative financial instruments (derivatives). The reason lies in the existing need for regulating, therefore, it must be recognized that specific types of derivative financial instruments have not yet entered the financial market of the Republic of Uzbekistan. At the same time, the main, common types are already present and have become the subject of regulation of the Law of the Republic of Uzbekistan ‘On Exchanges and Exchange Activities’. This implies two things. Firstly, other types of derivative financial instruments will appear in the financial market of the Republic of Uzbekistan in the near future. This statement is based on the studied experience of other countries and, accordingly, the law-making body has adopted a regulatory act. Secondly, other types are already on the OTC market, but so far, the law-making body has not paid due attention to the issue, as in the case of the non-recognition of the existence of forward contracts.

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6. The problem concerning the concept of this phenomenon of the financial market has long occupied the minds of jurists, economists, lawmakers, but no solution has yet been found. However, the urgency of the problem is a fact.’ D.A. Zhukov.
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8. For a narrower definition of derivatives, which refers only to contracts providing for the fulfillment of obligations in money terms, and contrasts such derivatives to ‘derivative-like’ transactions involving the transfer of liquid assets other than money (shares, interest, goods), see: Reiner G. Derivative Finanzinstrumente im Recht (Fn. 1). S. 12, 18. <\*> Translation: Statut Publishing House; performed by the associate of G. Rainer, trainee-lawyer Lyubov Dvoskina-Kletke.
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