



Draft Laws on the Digital Economy

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What's new?

On 26 March a draft law "Concerning the Introduction of Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation"¹ was submitted to the State Duma. Its purpose is to lay down a few basic provisions in civil law as a platform for developing further legislation to regulate the market for new online-based economic assets (such as cryptocurrencies), and to create the conditions needed for the conclusion and performance of transactions involving such assets in the digital environment.

Previously, on 20 March, the draft law "Concerning Digital Financial Assets"² and the draft law "Concerning Alternative Methods of Attracting Investments (Crowdfunding)"³ were also submitted to the State Duma.

¹ Draft Law No. 424632-7; [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=424632-7](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=424632-7).

² Draft Law No. 419059-7; [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=419059-7](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=419059-7).

³ Draft Law No. 419090-7; [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=419090-7](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=419090-7).

THE DRAFT LAW ON AMENDMENTS TO THE CIVIL CODE

The draft law contains only civil law provisions. It is not aimed at describing the conditions subject to which digital assets may be circulated or at establishing other public law rules, including security requirements for such circulation. All that is to be dealt with in special laws.

Digital Rights

The draft law introduces into civil law a basic concept of “digital rights” (Article 141.1), meaning rights to objects of civil rights, other than intangible benefits, that are certified by a set of electronic data (a digital code or symbol) existing in an information system which meets the statutory criteria of a decentralized information system. One condition is that the information technology and devices on which such a system is based must enable a person possessing unique access to a digital code or symbol to obtain a description of the corresponding object of civil rights at any time. The digital code and symbol in question constitute a digital right.

The essence of the new legal fiction/category is close to that of a security, and its establishment in the Civil Code will help define its place within the system of objects of civil rights and provide a basis on which to assert that such an object is tradable only by making an entry in an information system (register), set out the procedure for the circulation and purchase and sale of an object, and provide protection for transactions involving such objects.

The creation of digital rights, the areas in which they are used and specific rules governing their circulation are to be determined by federal laws.

In order for the concept of a digital right to take effect, the criterion for the existence of such a right in an information system (distributed ledger) needs to be established in another law.

The holder of a digital right has unique access to that right, by virtue of which he is able to dispose of it. It is also possible for another

person to be indicated as the holder in the records of the person who possesses that unique access.

Disposal of a Digital Right

The transfer of rights to objects of civil rights takes place by means of the entry of details of the transfer of a digital right in an information system. An encumbrance or limitation on the disposal of objects of civil rights arises when relevant details are entered in an information system. It is assumed that the buyer is aware of that encumbrance or limitation.

A digital right is alienated and transferred under the same conditions as objects of civil rights, subject to special considerations established by the Civil Code or by law.

Where a digital right certifies a right (claim), it is transferred in the manner prescribed by Article 141.1, except where the assignment of the right (claim) is required to be executed in notarial form or requires the debtor’s consent by law. A debtor does not, however, have the right to refuse to fulfil an obligation on the grounds that there is no basis for the obligation or it is invalid, and does not have the right to challenge a creditor’s claim that is certified by a digital right with objections that are not provided for in the description of the object.

Digital Right Transactions. Smart Contracts

To facilitate digital right transactions, improvements are made to the rules governing the form of transactions. The expression of intent with the aid of electronic media or devices is equated with simple written form, which lays the foundation for smart contracts.

The draft law introduces a rule whereby the fact of the performance of a transaction by a computer program is not contested (except where there has been interference in the operation of the program).

Digital Money

The draft law also introduces the concept of digital money, establishing first and foremost that it is not legal tender. However, in cases and

subject to conditions to be established by future law, it will be possible for digital money to be used as a medium of payment in controlled amounts and in accordance with separately established rules.

The rules concerning digital rights apply to digital money: records of owners of such money must be held in an information system, and money may be transferred only by means of an entry in the system.

It will be possible for digital money, as well as foreign currency, to be used in formulating currency clauses in agreements.

The chief merit of the draft law is that it provides the long-awaited legal recognition of cryptocurrency/crypto-assets as property, which paves the way for legalizing their circulation, providing legal protection for rights in respect of such assets and including them in a bankrupt or inherited estate (although this will only become possible when the technology allows for an entry in an information system indicating a new holder of rights to be made on a compulsory basis).

In our view, the draft law should serve as a basis on which to harmonize draft laws aimed at regulating the crypto sector in Russia, including the draft laws discussed below.

DRAFT LAW ON DIGITAL FINANCIAL ASSETS

The draft law in its current state provides framework regulation, with detailed rules for the issue and circulation of digital financial assets to be established by the Bank of Russia and the government.

Digital financial assets

Digital financial assets are defined in the draft law as property in electronic form which is created using cryptographic tools. Ownership of digital financial assets is certified by making digital entries in a digital transaction register.

Two types of digital financial assets are identified: cryptocurrency and tokens. Neither is recognised as legal tender in Russia.

Mining

Mining is defined as activity aimed at the creation of a cryptocurrency and/or validation with a view to receiving remuneration in the form of a cryptocurrency. Mining will be recognised as an entrepreneurial activity only if the person carrying it out exceeds, for three consecutive months, the power consumption limits which are to be established by the government.

Issue of Tokens

The purpose of issuing a token is to enable a company or a private entrepreneur to obtain financing. There is therefore a limit on the range of persons that may use this arrangement as token issuers.

The issue of tokens would take place in two stages:

1. the publication by the issuer on the Internet of an investment memorandum, a public offer for the issue of tokens and other documents
2. the conclusion of agreements, including in the form of smart contracts

The investment memorandum, the rules for the maintenance of the digital transaction register and other documents must be published not later than three working days before the issuer begins concluding contracts to alienate tokens. Until the public offer for the issue of tokens has been published, tokens may not be offered to potential buyers in any form or by any means through advertising.

Circulation of Digital Financial Assets

Transactions involving the exchange of tokens for roubles or foreign currency may take place only through a digital financial asset exchange operator. The Bank of Russia is to establish, in conjunction with the government, a list of other transactions involving the exchange of digital financial assets in Russia.

Smart Contract

A smart contract is defined in the draft law as an agreement in electronic form whereby rights and obligations are exercised/fulfilled by means of automatically executed digital transactions in a distributed register of digital transactions

according to a sequence strictly defined by the agreement and subject to the occurrence of events defined by the agreement.

The chief focus of this draft law is on protecting the interests of investors and establishing unified crypto-market rules enabling the state and participants in the crypto-market to speak in one language. We welcome the fact that the regulatory details are to be kept outside the law itself, which should help to make digital legislation reasonably flexible.

DRAFT LAW ON CROWDFUNDING

This draft law was developed in line with the Strategy for the Development of Small and Medium-Sized Enterprises (SMEs) in Russia⁴ insofar as it concerns the development of collective investment (crowdfunding or crowdinvesting) as an alternative source of financing for SME projects (primarily high-technology companies).

Crowdfunding

Crowdfunding - the organization of retail financing - is defined as the provision of services involving the granting to investors and persons seeking investments of access to an information platform through which to conclude investment agreements (services involving the organization of retail financing).

Only Russian companies and private entrepreneurs may attract investments in this way.

Service Contracts

Services involving the organization of retail financing are rendered on the basis of contracts for the provision of investment attraction services and (b) contracts for the provision of investment support services.

The draft law gives a brief description of what those contracts involve. They are both adhesion contracts, the conditions of which must be set out in an investment platform's rules.

The draft law pays particular attention to matters relating to the identification and authentication of users of an investment platform (investors and persons seeking investments).

Methods of Investment on an Investment Platform

1. Granting of loans
2. Acquisition of securities
3. Acquisition of an interest in the charter/pooled capital of a limited liability company/partnership association/partnership
4. Acquisition of investment project tokens

Tokens and Investments

Investors may, on an investment platform, acquire tokens certifying:

1. Rights (claims) arising from loan agreements
2. Rights to demand the transfer of securities upon their placement
3. Rights to demand the transfer of securities and the exercise of related rights
4. Rights to demand the transfer of things
5. Rights to demand the transfer of exclusive rights to intellectual property and rights to the use thereof
6. Rights to demand the performance of work and the rendering of services

The Bank of Russia is to establish the maximum total amount of investments that may be made by the above-mentioned methods per year by a citizen who is not a qualified investor and/or a private entrepreneur and the total amount of investments attracted by one person in the course of a year through investment platforms.

The draft law sets out the procedure for making investments on an investment platform and special considerations relating to investment in issuance securities which are offered on an investment platform.

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<http://static.government.ru/media/files/jFDd9wbAbApxqEiHNaxHveytq7hfPO96.pdf>.

Investment Platform Operator

Only Russian companies included by the Bank of Russia in the register of investment platform operators may act as an investment platform operator.

The draft law sets out fairly detailed requirements for operators, such as their right to combine activities, the amount of their charter capital, controlling persons, management bodies, internal documents, the disclosure and provision of information, etc.

The draft laws propose amendments to a number of existing laws, such as those on information, advertising and credit histories.

The draft law appears to be an attempt to write into law the already popular practice of attracting private money. Again, the finer details are kept outside the scope of the law.

Nevertheless, an important issue is the mechanism for investment. The draft law provides for investment to be made only by bank transfer on an investment platform, while current practice is for private money to be attracted through a “technology” platform, and usually in cryptocurrency.

The draft laws are expected to be passed by the State Duma in the spring session. We hope that they will be modified to take account of recommendations from the expert community, will be brought closer into line with actual practices and will be founded on unified principles, such as those proposed by the draft law on amendments to the Civil Code.

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