

Client Update

First Russian Bills on Cryptocurrencies, ICO and Crowdfunding

On 25 January 2018, the Ministry of Finance of the Russian Federation (the “Ministry of Finance”), the Ministry of Economic Development of the Russian Federation (the “Ministry of Economic Development”) and the Bank of Russia (the “CBR”) presented their bills on the regulation of cryptocurrencies, smart contracts, ICOs¹ and crowdfunding.² These bills have been drafted in response to the 21 October 2017 instructions of the Russian President for the establishment of a legal framework for the circulation of cryptocurrencies in Russia.³ According to the text of the bills, the CBR seems to take a more rigorous position than the Ministry of Finance or the Ministry of Economic Development (see below for details).

In addition:

- On 27 December 2017, the Russian Association of Cryptocurrencies and Blockchain presented its suggested amendments to the Federal Law on the Development of Small and Medium Scale Entrepreneurship in the Russian Federation relating to crowdfunding, which would provide for the voluntary accreditation of a crowdfunding platform and a higher threshold for a maximum amount of investments.
- On 25 January 2018, a draft federal law on the introduction of a “cryptorouble” as a legal means of payment in Russia was submitted to the Russian State Duma.

Below is a summary of the main aspects of the proposed regulation as of the date of this Client Update. The bills are likely to undergo numerous revisions prior to submission to, and in the

1 In this Client Update, the terms “issue of tokens” and “ICO” have the same meaning.

2 The Ministry of Finance prepared a draft federal law on digital financial assets (the “MinFin Bill”); the CBR also prepared a draft federal law on digital financial assets (the “CBR Bill on DFA” and, together with the MinFin Bill, the “Bills on DFA”).

The Ministry of Economic Development prepared a draft federal law on alternative methods of fund raising (crowdfunding) (the “MED Bill”); the CBR also prepared a draft federal law on alternative methods of fund raising (crowdfunding) (the “CBR Bill on Crowdfunding” and, together with the MED Bill, the “Bills on Crowdfunding”).

3 These instructions were discussed in more detail in our Client Update of 21 November 2017, available at: https://www.debevoise.com/~media/files/insights/publications/2017/11/20171110%20english_cryptocurrency_in_russia.pdf.

course of the deliberation at, the Russian State Duma, and it is not clear which of the bills will serve as the basis for the new legislation.

CRYPTOCURRENCIES AND TOKENS

Treatment as Property

Pursuant to the Bills on DFA, cryptocurrencies and tokens are digital financial assets (“DFA”) created using cryptography.

The Bills on DFA set forth that tokens are issued by legal entities or sole entrepreneurs for the purpose of raising funds. The key attribute of cryptocurrency is that it is created on blockchain and recorded in the blockchain-based distributed ledger of digital transactions by the participants in such ledger pursuant to its rules.

According to the Bills on DFA, cryptocurrencies and tokens:

- constitute “other property” within the meaning of Article 128 of the Russian Civil Code; and
- are not a legal medium of payment in Russia.

Exchange and Circulation

The Bills on DFA take different approaches to the exchange and circulation of cryptocurrencies and tokens:

- The MinFin Bill permits an exchange of one type of DFA for another type of DFA, roubles, foreign currency or other property.
- The CBR Bill on DFA permits an exchange of a DFA for roubles or foreign currency only, prohibiting an exchange between different types of DFA. It also prohibits any transactions involving DFA (including a resale of a DFA to the issuer), other than the exercise of a right attached to a DFA (some examples can be found below in *Crowdfunding and Investment Platforms – Forms of Investment*).

The Bills on DFA require that permitted transactions be made in compliance with the rules of a trading platform where DFAs are traded and which is registered with the CBR, and only through a DFA exchange operator – a Russian legal entity which is a broker, a dealer, a forex dealer, a trading institution or an entity engaged in securities management, or, under the CBR Bill on DFA, a depository or registrar as well.

SMART CONTRACTS

The Bills on DFA define a smart contract as a contract in digital form where the rights are exercised (under the CBR Bill on DFA, such rights are also determined) and the obligations are

discharged by means of digital entries made in a sequence strictly determined by such smart contract.

In addition, the MinFin Bill sets forth that the procedure for resorting to legal remedies available for the parties to a smart contract is similar to the procedure available for the parties to a contract made in the electronic form and does not provide for any specific legal remedies.

MINING

According to the Bills on DFA, mining is a business activity aimed at the creation of cryptocurrency and/or validation⁴ for the purpose of receiving remuneration in cryptocurrency. However, the Bills on DFA do not provide for any regulation of mining, including in particular the category of persons who can engage in, or any requirements for conducting, such activity (e.g., licencing).

ICO

The Bills on DFA define the issue of tokens as a series of actions leading up to the transfer of tokens by the issuer to acquirers.

Holding of Tokens by Owners

The Bills on DFA take different approaches to the holding of tokens acquired by investors:

- The MinFin Bill proposes that tokens acquired by non-qualified⁵ investors be held in a special digital wallet for non-qualified investors opened by a DFA exchange operator, while tokens acquired by qualified investors may be held in a digital wallet opened in the name of such qualified investors.
- The CBR Bill on DFA provides that tokens acquired by any person are to be held in a digital wallet opened in the name of the acquirer by a DFA exchange operator where the procedure for opening, operating and closing digital wallets will be established by the CBR.

⁴ According to the Bills on DFA, validation means an act of legal significance required to confirm the validity of digital entries in the ledger of digital transactions.

⁵ A qualified investor is either a person directly referred to by Federal Law No. 39-FZ on Securities Market dated 22 April 1996 (e.g., banks, insurance companies, brokers) or a person classified as such if any of the following requirements are met: (a) *for individuals*: (i) the individual holds securities or financial instruments of a total value of at least six million roubles, (ii) the individual has professional experience performing transactions with securities or other financial instruments by virtue of his or her employment with a Russian or foreign organisation as a general rule for at least three years, (iii) the individual has performed on the whole at least 10 transactions with securities or other financial instruments per quarter over the past four quarters and at least once per month for a total value of at least six million roubles, (iv) the individual owns certain property of aggregate value not less than six million roubles or (v) the individual has received higher education in economics or has certain certificates (e.g., “chartered financial analyst”); and (b) *for legal entities which are commercial organisations*: (i) a legal entity’s own capital equals 200 million roubles, (ii) a legal entity has performed on the whole at least five transactions with securities or derivatives per quarter over the past four quarters and at least once per month for a total value of at least 50 million roubles, (iii) a legal entity’s revenue is not less than two billion roubles as of the latest completed reporting year or (iv) the value of a legal entity’s assets is not less than two billion roubles as of the latest completed reporting year.

ICO Procedure

The Bills on DFA provide that an ICO starts with the publication on the Internet by the issuer of a public offer for the issue of tokens, an investment memorandum (similar to a white paper) and other documents.

The public offer for the issue of tokens must contain, among other things:

- the details of the issuer and its beneficial owners (if any);
- the scope of rights represented by tokens and the procedure for exercising such rights; and
- the procedure for opening digital wallets, the rules for maintaining a ledger of digital transactions, and the procedure for payment for tokens.

The public offer must be signed by enhanced encrypted and certified digital signature by an individual registered as a sole entrepreneur acting as the issuer or a sole executive body of the issuer that is a legal entity.

The Bills on DFA set forth different types of information required to be included in the investment memorandum: for example, the CBR Bill on DFA requires that, in addition to the general information on the issuer and description of the ICO, the investment memorandum contain details of the facts likely to impact the implementation of the project, disclosure of risks that may result in a loss of investment and the inability of buyers to sell tokens or property rights represented by such tokens.

It is expected that non-qualified investors will be able to acquire tokens issued in a single ICO for up to RUB 50,000 (USD 877).⁶

CROWDFUNDING AND INVESTMENT PLATFORMS

Participants in Crowdfunding Activities

The Bills on Crowdfunding do not define the term “crowdfunding”; however, it is treated as the equivalent of the term “retail financing”.

Investments in a project through an investment platform may be made by individuals, including those not registered as sole entrepreneurs.

Investments may be solicited by Russian commercial organisations and sole entrepreneurs through an investment platform – a special information Internet system owned by the operator of the investment platform.

⁶ In this Client Update, the relevant amounts are calculated using the exchange rate of USD 1 = RUB 57.

The investment platform may only be operated by a Russian legal entity with its own capital base of not less than RUB 5,000,000 (USD 87,719), provided that such entity is included in a special register maintained by the CBR. In addition, restrictions apply not permitting certain persons to directly or indirectly control 10% or more of the voting shares (participatory interests) in the charter capital of an investment platform operator, for example, individuals disqualified as a result of an administrative offence or entities registered in offshore jurisdictions.

Forms of Investment

The Bills on Crowdfunding set out an exhaustive list of forms of investments and rights that an investor can obtain upon the acquisition of an investment project token.⁷ Thus, for example:

- investments may be made by way of loan, acquisition of securities, acquisition of a participatory interest in a limited liability company or a business partnership or acquisition of investment project tokens;
- upon acquisition of the investment project tokens, the investor may obtain rights/claims under a loan agreement in connection with the provision of a loan to a person soliciting investments; rights to demand the transfer of securities, property, exclusive rights; or rights to demand performance of works or provision of services.

The Bills on Crowdfunding set forth the following limits on investments made on investment platforms:

- the total amount of investments made by an individual who is not a qualified investor and/or a sole entrepreneur during one year may not exceed:
 - RUB 1,400,000 (USD 24,561) under the MED Bill;
 - RUB 500,000 (USD 8,772) under the CBR Bill on Crowdfunding;
- the total amount of investments solicited by an individual who is a sole entrepreneur or a qualified investor or by a legal entity during one year may not exceed:
 - RUB 2,000,000,000 (USD 35,087,719) under the MED Bill;
 - RUB 200,000,000 (USD 3,508,772) under the CBR Bill on Crowdfunding;
- the CBR Bill on Crowdfunding sets forth an additional limit: the total amount of investments made by an individual who is not a qualified investor and/or a sole entrepreneur in any one investment project on an investment platform during one year may not exceed RUB 50,000 (USD 877).

⁷ The Bills on Crowdfunding refer to the term “token” as defined in the Federal Law on Digital Financial Assets (at present, the Bills on DFA); however, an “investment project token” represents property rights envisaged by the Bills on Crowdfunding and is recorded in the name of the investor in the database of the investment platform.

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