

Amendments to the Russian Civil Code: Blockchain Tokens, Cryptocurrencies and Smart Contracts

May 17, 2018

On March 26, 2018, proposed amendments to the Civil Code of the Russian Federation (the “Russian Civil Code”) defining the civil law status of blockchain tokens and cryptocurrencies and addressing the enforceability of a smart contract were submitted to the State Duma (the “Bill”).



The Bill defines blockchain tokens and cryptocurrencies as “digital rights” and “digital money”, respectively, and addresses certain gaps in the previously proposed draft law on digital financial assets¹ relating, among other things, to the transfer of rights to blockchain tokens and cryptocurrencies and the execution and enforceability of smart contracts.

Below is a summary of the main aspects of the Bill.

DIGITAL RIGHTS

Legal Status

The Bill introduces a new Article 141.1 “Digital Rights” to the Russian Civil Code, providing that a digital right is a digital code or symbol (a series of digital data) contained in a decentralized information system and representing a right to an object of a right under the Russian Civil Code (other than non-material values) (the “object of civil law rights”). The definition and attributes of a decentralized information system (blockchain) will be set forth in the legislation at a later date.

The rights to the object of civil law rights may be evidenced by digital rights where the law so provides if the person that has sole access to the relevant digital code or symbol (“sole access”) can review the narrative of the relevant object of civil law rights at any time. Digital rights are also deemed to be objects of civil law rights per se as a form of property rights.

¹ The bills of the Russian Ministry of Finance and the Bank of Russia on digital financial assets were discussed in detail in our Client Update of February 26, 2018, *available [here](#)*.

On March 20, 2018, the bill on digital financial assets which follows the approach of the Bank of Russia was submitted to the State Duma.

Disposition of Digital Rights

According to the Bill, the owner of a digital right is a person who can dispose of such digital right by virtue of sole access, or another person where the law so provides if such person is designated as an owner of the digital right in the user account of the person with sole access.

It is expected that a digital right may be transferred to another person(s) on the same terms and conditions as the underlying object of the civil law rights. The transfer of the digital right to another person will result in the simultaneous transfer of the right/claim represented by such digital right, except where the assignment of such right/claim requires a notarial deed or a debtor's consent.

Disposition of Objects of the Civil Law Rights Evidenced by Digital Rights

The Bill provides that the transfer of title to the object of civil law rights evidenced by a digital right will occur solely by making an entry to the relevant information system. Encumbrance or restriction on the disposition of such object of civil law rights will arise solely upon the entry of relevant details of the encumbrance or restriction in the information system. The Bill sets out a presumption that the acquirer of the digital right is aware of such encumbrance or restriction.

DIGITAL MONEY

According to the Bill, digital money is a digital code or symbol (a series of digital data), created in a decentralized information system and used by its users for making payments, which does not represent any right to any object of civil law rights.

It is expected that digital money will be used as a means of payment where the law so provides, and the rules on digital rights will apply to its circulation.

SMART CONTRACTS

The Bill contains a significant innovation designed to make smart contracts legally binding. It is proposed to amend Article 309 of the Russian Civil Code (general provisions on civil law obligations) by inserting a provision specifying that the performance of a contractual undertaking may not, in some circumstances, require a separate expression of intent of the parties if software or other technology agreed upon between the parties is used. Transactions where undertakings of the parties are performed automatically can be challenged in exceptional circumstances only if there is evidence that the parties to the transaction or any third party have interfered in the process of performance.

In addition, the expression of intent through electronic or similar technical means (e.g., by completing an online form) will be treated as a written expression of intent provided that:

- such actions are sufficient to express the intent of the parties according to the terms and conditions of the transaction; or
- such actions are treated as consistent with the written expression of intent according to business practice in the relevant sector.

The possibility to conclude transactions in this way may be expressly prohibited by law in certain cases (e.g., for certain types of transactions) or by agreement of the parties.

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