

Russian Court Holds That Cryptocurrency Constitutes Property

June 20, 2018

On May 15, 2018, the Ninth *Arbitrazh* (Commercial) Appellate Court (the “9AAC”) handed down a significant decision for the development of the Russian blockchain and cryptocurrency industry: cryptocurrency constitutes property and, therefore, it can be included in a bankruptcy estate.

**Debevoise
& Plimpton**

Background. In July 2017, the *Arbitrazh* (Commercial) Court of Moscow (the “ACM”) commenced voluntary bankruptcy proceedings in respect of an individual debtor. On October 24, 2017, the debtor was declared bankrupt, and the ACM ordered that the debtor’s property be sold and appointed an administrator.

The administrator determined that the debtor had a cryptowallet containing approximately 0.2 bitcoins, equivalent to about RUB 125,000 (approximately USD 1,985)¹ based on the exchange rate indicated on the cryptowallet provider’s website.

In November 2017, assuming that cryptocurrency was property to be included in the bankruptcy estate, the administrator applied to the ACM for a ruling to refuse to exclude the cryptocurrency from the bankruptcy estate. In February 2018, the administrator sought a ruling requiring the debtor to transfer the cryptowallet’s password to the administrator.

ACM position. On March 5, 2018, the ACM refused the administrator’s application for the following reasons:

- cryptocurrency is not an object of civil law rights, but it is rather a “set of symbols/digits”;
- there is no legal regulation in respect of cryptocurrency, and cryptocurrency transactions are not enforceable;

¹ The amount is calculated using the exchange rate of USD 1 = RUB 63.

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- because of this uncertainty and inability to treat cryptocurrency as money or any other object of civil law rights, it is impossible to apply legal rules by analogy; and
 - such factors as the absence of any controlling central authority and the anonymity of cryptocurrency users do not allow a court to make a reliable determination whether the debtor is a true owner of cryptocurrency.

While the ACM noted that Russian law did not prohibit cryptocurrency transactions by Russian individuals or organizations, it referred to the Central Bank of Russia's warnings about the risk that cryptocurrency could be used to launder money and finance terrorism, and financial and technological risks of cryptocurrency investments.

9AAC arguments. The 9AAC rejected ACM's position. It ordered the debtor to transfer the cryptowallet's password to the administrator. The 9AAC supported its decision as follows:

- there is no exhaustive list of objects of civil law rights; the civil law does not define the scope of "other property", and present day economic realities and the level of technology development allow a very broad interpretation of this term;
- even if the civil law cannot be applied to cryptocurrency by analogy, that does not mean that the legal treatment of cryptocurrency cannot be inferred from the general principles of law or the principles of good faith, reasonableness and fairness;
- cryptocurrency cannot be treated as other than "other property" within the meaning of Article 128 of the Russian Civil Code containing a list of objects of civil law rights;
- the bill on amendments to Parts One, Two and Four of the Russian Civil Code considered by the State Duma, where the definition of the basic term "digital right" rather than the term "token" is introduced in the system of objects of civil law rights, should be taken into account;²
- any debtor's property that has economic value for the creditors, including cryptocurrency, cannot be arbitrarily excluded from the bankruptcy estate without a good reason expressly provided for by law; and

² Bill No. 424632-7 on Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation (on Digital Rights) (the "Bill") was discussed in detail in our Debevoise Update of May 17, 2018, *available [here](#)*. On May 22, 2018, the State Duma adopted the Bill in the first reading.

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- as shown by the materials submitted to the court, the debtor may at his own discretion hold, use or dispose of the content of the cryptowallet as his own property, *i.e.*, exercise powers similar to those of the owner.

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Please do not hesitate to contact us with any questions.

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