

# Russian State Duma Adopts Bill on Digital Rights in Third Reading

March 14, 2019

On March 12, 2019, the Russian State Duma adopted, in the third reading, the bill amending the Civil Code of the Russian Federation (the “Russian Civil Code”) to define the civil law status of certain cryptoassets and provide clarity in respect of the legal force of smart contracts.<sup>1</sup> From a civil law perspective, the Revised Version appears to be more detailed, but the authors of the Bill have decided not to set out the legal status of cryptocurrency in the Russian Civil Code.

**Debevoise  
& Plimpton**

The Revised Version indicates that the proposed amendments will come into force on October 1, 2019.<sup>2</sup>

Below is a summary of the key developments of the Revised Version in comparison with the Previous Version.<sup>3</sup>

## DIGITAL RIGHTS

### Definition

Similar to the Previous Version, digital rights are deemed to be objects of civil law rights as a form of proprietary rights. The Revised Version does not set out the ambiguous “right to a right” framework, according to which a digital right was defined as a digital code or symbol contained in a decentralized information system and certifying a right to an object of civil law rights. Instead, it defines digital rights as obligations or other rights specifically named as such by law, and their essence and terms for exercising them are provided for by the rules of an information system meeting the requirements set forth by law. The Revised Version, contrary to the Previous Version, does not provide for the possibility to evidence rights to objects of civil law rights by digital rights only if the

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<sup>1</sup> Bill No. 424632-7 on Amendments to Part One, Two and Four of the Civil Code of the Russian Federation (on Digital Rights) (version adopted in the first reading on May 22, 2018—the “Previous Version”) and on Amendments to Part One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation (on Digital Rights) (version adopted in the third reading on March 12, 2019—the “Revised Version” and, together with the Previous Version, the “Bill”) is available [here](#) in Russian.

<sup>2</sup> To be enacted as a federal law, the Bill has to be approved by the Federation Council, signed into law by the Russian President and officially published.

<sup>3</sup> The Previous Version was discussed in detail in our *Debevoise Update* dated May 17, 2018, available [here](#).

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person that has sole access to the relevant digital code or symbol can review the narrative of the relevant object of civil law rights at any time.

### Disposition of Digital Rights

According to the Revised Version, unless the law provides otherwise, the owner of a digital right is the person who, in accordance with the rules of the information system, has the ability to dispose of such right. Compared to the Previous Version, the Revised Version sets out less-detailed provisions on the disposition of digital rights and provides only that the exercise, disposition (including transfer, pledge or encumbrance of digital rights in any other way) or restriction on disposition of a digital right can be conducted within the information system without applying to a third party<sup>4</sup> and that the general provisions on sale and purchase agreements can be applied to the sale of digital rights unless doing so is inconsistent with their essence or nature. The Revised Version also indicates that the transfer of a digital right by way of a transaction does not require approval of the person who is bound by such digital right.

### SMART CONTRACTS

The Revised Version retained the main provisions of the Previous Version that were designed to make smart contracts legally binding, but the provisions related to compliance with requirements for the written form of the transaction were changed. To make smart contracts legally binding, it is proposed to amend Articles 160 and 309 of the Russian Civil Code and set out that:

- in some circumstances, the performance of a contractual undertaking may not require a separate expression of intent of the parties if software or other technology agreed upon between the parties is used;
- the requirement for a written form of a transaction is deemed to be satisfied if the transaction is executed through electronic or similar technical means, and the terms of the transaction can be reproduced intact on a tangible medium; and
- signature requirements are deemed to be fulfilled if the parties used an instrument allowing for credible identification of the person who expressed the intent (the law, other legal acts or an agreement between the parties may provide for a special instrument identifying the person who expressed the intent).

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<sup>4</sup> The Previous Version provided for the similar provisions but in respect of the objects of civil law rights, rights to which were evidenced by digital rights.

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The Revised Version also removes the definition of an electronic document from the Russian Civil Code. The Previous Version indicated that the expression of intent through electronic or similar technical means (e.g., by completing an online form) would be treated as a written expression of intent if such actions were sufficient to express the intent of the parties according to the terms and conditions of the transaction or if such actions were treated as consistent with the written expression of intent according to business practice in the relevant sector.

## OTHER AMENDMENTS

### Conclusion of Particular Transactions by Electronic Means

Nominal account agreements and insurance agreements may be concluded in accordance with new rules set out in Article 160 of the Russian Civil Code on compliance with the written form of a transaction using electronic means.<sup>5</sup>

### Restriction on Making a Will by Electronic Means

The process of making a will by electronic or other technical means is restricted in accordance with new rules set out in Article 160 of the Russian Civil Code on compliance with the written form of a transaction using electronic means.

### Absentee Resolution of a Meeting by Electronic Means

An absentee resolution of a meeting can be passed by voting using electronic or other technical means.

## REJECTED AMENDMENTS

### Digital Money

The Revised Version did not find a place for “digital money”—a term similar to cryptocurrency that was intended to be set out in the Russian Civil Code as a recognized means of payment where the law so provided, with the rules on digital rights applying to its circulation.

### Challenge of Smart Contract Transactions

The Revised Version abandoned the proposed amendment to Article 309 of the Russian Civil Code setting forth that transactions where undertakings of the parties are performed automatically can be challenged in exceptional circumstances only if there is

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<sup>5</sup> Peculiarities of the execution of insurance agreements in the form of an electronic document are stipulated in Article 6.1 of Law of the Russian Federation No. 4015-1 on the Organization of Insurance in the Russian Federation dated November 27, 1992.

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evidence that the parties to the transaction or any third party have interfered in the process of performance. This provision was previously criticized by lawyers and the professional community as limiting the right to judicial protection when the default in performance under a smart contract transaction could occur due to reasons beyond the control of the parties to the transaction or third parties.

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