

Russia Adopts Crowdfunding Law

September 4, 2019

On August 2, 2019, the Russian President signed the Crowdfunding Law.¹ This law continues the development of a digital economy in Russia, and it is the second law adopted in this sphere.²

The Crowdfunding Law will apply to relations arising from making and raising investments on investment platforms and does not apply to relations arising out of investments other than those covered by the Crowdfunding Law.

The Crowdfunding Law will come into force on January 1, 2020. Below is a summary of its key provisions and a short summary of amendments to other legislative acts related to the enactment of the Crowdfunding Law.

Investment Platform

According to the Crowdfunding Law, an investment platform is an online information system³ that allows investment agreements to be made using the information technologies and technical facilities of such information system.

The investment platform enables investments to be raised on the basis of:

- an agreement for services associated with raising investments; and

¹ Federal Law No. 259-FZ on Raising Investments via Investment Platforms and on the Amendments to Certain Legislative Acts of the Russian Federation dated August 2, 2019 (the “Crowdfunding Law”).

² On October, 1 2019, amendments to the Russian Civil Code regarding digital rights and smart contracts will come into force. These amendments were made by Federal Law No. 34-FZ on Amendments to Parts One and Two and Article 1124 of Part Three of the Civil Code of the Russian Federation dated March 18, 2019, which were discussed in detail in our *Debevoise Update* of March 14, 2019, available [here](#).

³ An information system comprises information contained in databases and information technologies and technical facilities procuring its processing (see Article 2(3) of Federal Law No. 149-FZ on Information, Information Technologies and Protection of Information dated July 27, 2006).

- an agreement for services associated with support in investing.

These agreements are adhesion contracts and their terms and conditions are determined by the investment platform operator in the rules of the investment platform.

The investment platform has to keep a register of the agreements for services associated with raising investments, agreements for services associated with support in investing and investment agreements made via such platform.

Investment Platform Operator

Access to the investment platform is provided by an investment platform operator, which is a business company incorporated in accordance with Russian laws organizing an environment for raising investments and included in the register of investment platform operators by the Central Bank of Russia.

The Crowdfunding Law sets forth the following requirements for investment platform operators:

- the investment platform operator must have at least RUB 5,000,000 of its own funds (capital);⁴ and
- generally, the investment platform operator may not conduct any financial activity other than its main activity as operator.⁵

The Crowdfunding Law also establishes restrictions in respect of persons entitled directly or indirectly, alone or in concert with other persons connected with them by trust management agreements, mandate agreements, partnership agreements and/or shareholders agreements, to control 10% or more of votes attached to the shares of an investment platform operator's charter capital. Such persons may not include:

- a legal entity:

⁴ Calculated according to the procedure for exchanges and trading systems adopted by the Central Bank of Russia.

⁵ However, the investment platform operator may conduct the following: 1) activity of an exchange or trading system; 2) clearing activity except for the activities of a clearing institution designated as a central counterparty; 3) brokerage activity; 4) dealer activity; 5) securities management; 6) depository activity; 7) maintenance of a share register; and 8) other types of financial activity, if so permitted by federal laws.

- incorporated in jurisdictions or territories with no requirements for disclosure and provision of information on financial operations, which are listed by the Russian Ministry of Finance; or
- whose license for conducting the activities of a credit institution or a non-credit financial institution was cancelled/revoked for misconduct; and
- a natural person:
 - who has been administratively prohibited to occupy certain positions and the period of the administrative prohibition has not expired; or
 - who has unexpunged or outstanding convictions for economic crimes and crimes against the government, interests of state service or local government service.

The activities of investment platform operators will be under the control and supervision of the Central Bank of Russia. The Central Bank of Russia will have the power to audit investment platform operators, issue mandatory orders for rectification of violations and for prohibition of services associated with raising investments or with support in investing, and adopt regulations in this sphere.

Investment Platform Rules

The investment platform operator can conduct its activities for raising investments only upon disclosure of the investment platform rules on its website.

The Crowdfunding Law sets forth a list of provisions that must be included in the rules of any investment platform:

- the terms and conditions of the agreement for services associated with raising investments and agreement for services associated with support in investing and the procedure for entering into such agreements;
- the requirements for the participants of the investment platform;
- the procedure for accepting the investment proposal, etc.

In addition, the investment platform rules may contain any other provisions not contradictory to the Crowdfunding Law.

The investment platform operator may unilaterally modify the investment platform rules. As expressly stated in the law, such modification will not apply to the relations

between the investment platform participants and the investment platform operator that arose prior to the date of entry into force of such amendments.

Investor

For the purposes of the Crowdfunding Law, investors are natural persons (individuals)⁶ or legal entities receiving the services of an investment platform operator associated with support in investing.

Special Conditions for Investments Made by Natural Persons

The Crowdfunding Law provides that the investment of an individual may not exceed RUB 600,000 during one calendar year provided that this limit applies to the aggregate investments of such individual, including on other investment platforms. This limit will not apply to:

- individuals who are sole entrepreneurs and/or individuals recognized as qualified investors, upon their application, by the investment platform operator pursuant to the Securities Market Law;⁷ and
- individuals who acquire digital utility rights under investment agreements with a public joint stock company.

If such limit is exceeded, the investment platform operator, upon demand of such natural person, will be required to purchase from such natural person rights, securities and/or digital utility rights previously acquired on such investment platform in the amount exceeding the established limit.

Person Raising Investments

Pursuant to the Crowdfunding Law, a person that raises investments is a legal entity incorporated in accordance with Russian law or sole entrepreneur that receives the services of an investment platform operator associated with raising investments.

⁶ Making investments on an investment platform by an individual does not require registration as a sole entrepreneur.

⁷ Federal Law No. 39-FZ on the Securities Market dated April 22, 1996 (as amended, the “Securities Market Law”).

The Crowdfunding Law limits the scope of persons that can raise investments. Such persons, their controlling persons⁸ and/or their chief executive officer cannot raise investments if they:

- are designated as an entity or individual involved in extremist activity, terrorism or proliferation of weapons of mass destruction; or
- do not fall within the requirements established by the investment platform rules.

A legal entity cannot be a person that raises investments if:

- the controlling persons of such legal entity and/or its chief executive officer have unexpunged or outstanding convictions for economic offences and offences against the government, interests of state service or local government service;
- the chief executive officer of such legal entity has been administratively prohibited from occupying certain positions and the period of the administrative prohibition has not expired; or
- bankruptcy proceedings have been commenced in respect of such legal entity.

Limits on Raising Investments

The Crowdfunding Law provides that a company may raise investments worth not more than RUB 1,000,000,000 on any investment platforms during one calendar year. Such limit does not apply to public joint stock companies that raise investments by selling digital utility rights to investors.

In addition, if investments are made on the investment platform in the form of acquisitions of issued securities, such securities may be offered only by way of closed subscription in compliance with the requirements of the Securities Market Law.

Procedure and Forms of Investments

Investments on the investment platform can be made by way of:

⁸ The controlling person is a person entitled to manage, directly or indirectly (through controlled entities), by virtue of their interest in the controlled entity and/or pursuant to a trust management agreement, partnership agreement, mandate agreement, shareholders agreement and/or any other agreement on the exercise of rights attached to shares/interests in the controlled entity, more than 50% of votes in the governing body of the controlled entity or to nominate/elect the sole executive body and/or more than 50% of members of the collective executive body of the controlled entity (Article 2 of the Securities Market Law).

- lending of funds;
- acquisition of issuable securities offered via the investment platform; and
- acquisition of digital utility rights.

The investment agreements will be made in writing between an investor and person raising investments with the assistance of the investment platform's infrastructure, through acceptance of an investment offer of a person raising investments with subsequent transfer of the funds provided by investors to the bank account of the person raising investments. The investment agreements will be deemed to have been executed upon the completed transfer of the investors' funds from the nominal account of the investment platform operator to the bank account of the person raising investments.

Digital Utility Rights

The Crowdfunding Law provides that digital utility rights (the first type of digital rights stipulated by Article 141¹ of the Russian Civil Code and directly named in the law) can be acquired, sold or exercised on an investment platform satisfying the requirements set out in the Crowdfunding Law. Digital utility rights include:

- the right to demand transfer of things;
- the right to demand transfer of exclusive rights to intellectual property and/or rights to use intellectual property; and
- the right to demand performance of works and/or provision of services.

However, digital utility rights may not constitute a right to demand property:

- subject to state registration; and/or
- transactions with which are subject to state registration or notary certification.

The rights will be considered utility rights if they were originated as digital rights pursuant to a contract for the purchase of a digital utility right made with the assistance of an investment platform.

The scope and the exercise conditions for such digital utility rights will be determined by the person raising investments in accordance with the rules of the investment platform. Any change of the scope and/or the exercise conditions will not be permitted after the investment offer to purchase such digital utility rights has been made.

A digital utility right can be created, exercised or transferred only on the investment platform. A digital utility right is initially created by its first acquirer, transferred from one person to another and/or terminated upon a respective entry being made by the investment platform in accordance with its rules. Upon the termination of the obligation underlying the right which is a digital utility right, the investment platform will make an entry as to the termination of such rights.

The Crowdfunding Law specifically provides that digital utility rights can be recorded by a depository.

Digital Certificate

The Crowdfunding Law introduces a new type of securities—a digital certificate. A digital certificate is a non-issuable, uncertificated security without a nominal value certifying that its holder has a digital utility right which can be managed by a depository. The digital certificate entitles its holder to demand that the depository provide services related to the exercise of the relevant digital utility right and/or disposal of such right.

Upon the issuance of a digital certificate, an entry is made to the securities (depo) account of the acquirer as to the withdrawal of the digital utility rights attached to such certificate. The holder of the certificate will be treated as the holder of the related digital utility right.

When recording the digital utility rights of an investment platform, the depository is required to separate records of digital utility rights in respect of which digital certificates have been issued from other digital utility rights held by the depository and its depositors.

Transitional Provisions

Under the Crowdfunding Law, after January 1, 2020, the raising of investments with the assistance of an investment platform can be conducted only by persons included in the register of investment platform operators.

However, the Crowdfunding Law contains transitional provisions under which the above requirement does not apply to organizations conducting the activity stipulated by the Crowdfunding Law as of January 1, 2020. Such organizations will be required to ensure compliance with the new requirements of the Crowdfunding Law and federal laws amended by the Crowdfunding Law by July 1, 2020.

Amendments to Applicable Laws

The Crowdfunding Law provides for amendments to certain legislative acts implementing the new rules contained in it.

A significant number of amendments are made to the Securities Market Law, specifically, to the effect that:

- recording of digital rights can be conducted by a depository on securities (depo) accounts and such digital rights will be evidenced by an extract issued by the depository;
- a digital right evidenced by an entry to the securities (depo) account will be deemed held by the holder of such securities (depo) account; the depository will exercise the digital rights as instructed by the deponent, manage such rights and may encumber those rights in the information system without involvement of any third party;
- in the event of transfer of digital rights recorded on a securities (depo) account in the information system, such rights must be withdrawn from the respective account in accordance with the rules of depository operations on the date when the depository learned or should have learned of such transfer;
- liability of the depository for any damages caused by wrongful disposal of digital rights may be limited by contract if such damages were suffered by the deponent due to third-party misconduct;
- issuable securities can be issued by closed subscription to investors that are participants of an investment platform; issuance of non-public joint stock company's shares or additional shares offered by closed subscription on an investment platform can be registered by a registrar; and
- payment for securities offered on an investment platform will be made in cash from the nominal account opened by the investment platform operator.

The amendments to the Law on Advertising⁹ provide that:

- advertisement of services associated with support in investing rendered by an investment platform must contain:
 - a website address where information is disclosed by the investment platform operator; and
 - a cautionary statement to the effect that making investment agreements on an investment platform is a high-risk activity that could lead to the loss of all funds invested; and
- no advertising is allowed related to raising investments on an investment platform in the following forms:
 - lending of funds;
 - acquisition of offered securities of a non-public joint stock company or issuable securities convertible into shares of a non-public joint stock company; or
 - acquisition of digital utility rights.

In addition, investment platform operators will be designated as organizations operating with monetary funds or other property under the AML Law,¹⁰ which impose a number of obligations on them to comply with the AML Law requirements, e.g., identification of clients and submission of information about clients' transactions and their beneficiaries to the Russian Federal Financial Monitoring Service (Rosfinmonitoring) upon its request, as well as the freezing of assets or other property in accordance with the grounds set out in the AML Law.

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Please do not hesitate to contact us with any questions.

⁹ Federal Law No. 38-FZ on Advertising dated March 13, 2006 (as amended, the "Law on Advertising").

¹⁰ Federal Law No. 115-FZ on Countering the Legalization of Illegal Earnings (Money Laundering) and Financing of Terrorism dated August 7, 2001 (as amended, the "AML Law").

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