

Russia Adopts Law on Digital Financial Assets

August 6, 2020

On July 31, 2020, the Russian President signed the law on digital financial assets, digital currency and amendments to certain Russian legislation (the “Law”).¹

The Law regulates relations arising upon the issue, recording and circulation of digital financial assets (“DFAs”) and relations in connection with circulation of digital currency and will take effect on January 1, 2021.

The Law was substantially revised after its adoption in the first reading by the Russian State Duma on May 22, 2018—in fact, a new version of the Law was prepared for the second reading.² Below we present a brief overview of the key provisions of the Law.

DEFINITION OF DFAs

DFAs are a subset of digital rights³ that are set forth by the decision on the issue of respective DFAs and may include:

- monetary claims;
- ability to exercise rights attaching to issuable securities;⁴

¹ Federal Law No. 259-FZ on Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation dated July 31, 2020.

² For a discussion of the initial versions of the Law, please see our Client Update of February 26, 2018, available at: https://www.debevoise.com/-/media/files/insights/publications/2018/02/20180226-cryptocurrency_and_crowdfunding_bills_in_russia.pdf.

³ The digital rights are proprietary or other rights so defined by law with their scope and terms of exercise determined in accordance with the rules of the information system that meets the criteria set forth by law. For a detailed discussion of the law on digital rights which came into force on October 1, 2019, please see our Debevoise Update of March 14, 2019, available at: https://www.debevoise.com/-/media/files/insights/publications/2019/03/20190314_russian_state_duma_adopts_bill_on_digital_rights_in_the_ird_reading_eng.pdf.

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- interest in the capital of a non-public joint stock company (“non-public JSC”); and
 - right to require transfer of issuable securities.

The special feature of DFAs is that their issue and recording are carried out by means of making or amending entries in a distributed ledger-based⁵ information system or other information systems as provided for by the rules of such information systems operating on the Internet.

DFAs are the second type of digital rights expressly recognized by Russian law, together with utility digital rights that appeared in earlier Russian legislation.⁶ In addition, the Law provides for the existence of hybrid digital rights that include both DFAs and other digital rights.

ISSUE AND CIRCULATION OF DFAs

The Law sets forth the general procedure for the issue, recording and circulation of DFAs. However, the issue, recording and circulation of issuable securities where the ability to exercise the rights attaching to such securities is represented by DFAs must be carried out in compliance with the Securities Market Law,⁷ subject to special regulation set out by the Law.

Offering and Issue of DFAs

Pursuant to the Law, only legal entities and sole proprietorships have the right to issue DFAs.

DFAs are issued on the basis of a decision upon issuance that specifies the type and scope of rights represented by the issued DFAs and includes certain other information. The decision upon issuance is required to be published on the website of the entity or person issuing DFAs and on the website of the information system operator on which

⁴ Issuable securities are securities that: (i) certify a number of property and non-property rights which are verified, assigned and exercised according to the form and procedure established by law; (ii) are placed by an issuer; and (iii) have equal scope of rights and the same time periods for exercising such rights within one issue regardless of the time of their acquisition. Issuable securities include shares, bonds/notes, options and Russian depositary receipts.

⁵ A distributed ledger is a set of databases where the identity of information contained therein is maintained by applying a relevant algorithm(s).

⁶ For a discussion of digital utility rights, please see our *Debevoise In Depth* of September 4, 2019 with the overview of the crowdfunding law, available at: <https://www.debevoise.com/-/media/files/insights/publications/2019/09/20190904-russia-adopts-crowdfunding-law-eng.pdf>.

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

they are issued, and such decision may constitute a public offer if addressed to the public. A decision upon issuance of DFAs representing the ability to exercise the rights attaching to issuable securities or the right to require transfer of issuable securities or an interest in the capital of a non-public JSC cannot be addressed to the public.

Federal Law No. 38-FZ on Advertising dated March 13, 2006 will contain rules and restrictions in respect of advertising of DFAs. In particular, such advertisements will have to state that DFAs are high-risk assets and may not contain any promises in respect of paying income on DFAs (other than those contained in the decision upon issuance) or any forecasts in respect of the growth of market value of such DFAs.

Circulation of DFAs

The Law permits the sale and purchase of DFAs, as well as the exchange of DFAs for other DFAs or for other digital rights, including DFAs issued pursuant to foreign law or digital rights that include both DFAs and other digital rights.

There are no restrictions in the Law in respect of persons who can purchase DFAs. However, the Law specifically provides for the right of the Central Bank of Russia to determine that DFAs meeting certain criteria may be acquired only by qualified investors⁸ and/or may be acquired by purchasers other than qualified investors only up to an amount set forth by the Central Bank of Russia and/or up to an aggregate value of other DFAs transferred as consideration.

Amendments to Federal Law No. 115-FZ on Countering Money Laundering and Financing of Terrorism dated August 7, 2001 will include trading in DFAs in the list of operations subject to mandatory control.

Recording of DFAs

All users of the information system in which DFAs are issued will be registered in the respective register of users maintained by the operator of such information system.

A holder of DFAs is a person that:

- is included in such register of users of the information system; and
- has a unique code giving such person access to the information about the DFAs owned by such person and permitting transfer of such DFAs by means of the information system.

⁸ The list of persons recognized as qualified investors is set out in Article 51.2 of the Securities Market Law.

Operator of Information System in Which DFAs Are Issued

The information systems in which DFAs are issued will be maintained by information system operators. Only Russian legal entities (including credit institutions, depositaries and stock exchanges) included by the Central Bank of Russia in the respective register may act as such operators and only after their inclusion in such register. To become registered, an entity intending to become an information system operator must approve and obtain consent of the Central Bank of Russia for the rules of the information system, which must be filed together with the application for inclusion in the register.

The Law contains a number of requirements both for the persons holding office with the corporate bodies of the information system operator (*e.g.*, education and work experience in the respective area, reputational requirements such as no convictions or administrative disqualifications, *etc.*) and for the activities of the operator. For example, the operator must ensure smooth and continuous operation of the information system, accuracy of the information regarding DFAs contained in the records of the information system and restoration of access of DFA holders to the records of the information system if such access has been lost. The above requirements for business reputation also apply to persons entitled, directly or indirectly, to dispose of 10% or more of the shares of the information system operator.

The activities of information system operators will be supervised by the Central Bank of Russia. If an information system operator fails to perform its obligations or comply with the requirements, it may be removed from the register by the Central Bank of Russia. In addition, the operator is liable for the losses suffered by any user of the information system due to, among other things, operational failures of the system, loss of information stored in the information system or inaccuracy of the provided information.

DFA Exchange Operator

Any transactions with DFAs will be made through a DFA exchange operator, which can act both as an intermediary between the parties to the transaction and as a party to the transaction for the benefit of a third party. A credit institution or a stock exchange can act as such exchange operator, as well as any Russian legal entity if it meets the criteria set forth in the Law, including if it has (among other qualifications):

- share capital of at least RUB 50 million;
- net assets of at least RUB 50 million; and
- a risk management system in its corporate structure.

Similar to information system operators, exchange operators will be registered by the Central Bank of Russia in a special register, and their corporate bodies and persons entitled to dispose 10% or more of shares will also be subject to qualification and reputational requirements. As with information system operators, DFA exchange operators can be removed from the register by the Central Bank of Russia.

For the purposes of managing a DFA exchange, the exchange operator will approve the DFA exchange's rules and obtain consent of the Central Bank of Russia for such rules, which must be filed together with the application for inclusion in the register.

The same person may act as both an information system operator and a DFA exchange operator.

DFAs REPRESENTING INTEREST IN THE CAPITAL OF A JOINT STOCK COMPANY

Only shares in non-public JSCs can be issued in the form of DFAs, and the issue of shares in the form of DFAs can be made only upon the incorporation of a non-public JSC. Accordingly, the charter of a non-public JSC must provide for the ability to issue its shares in the form of DFAs upon its incorporation and to record such shares in the information system where they will be issued. Such non-public JSC will subsequently be unable to issue any issuable securities (including shares) in any form other than DFAs, convert the shares issued in the form of DFAs into ordinary shares in any form other than DFAs or become a public joint stock company.

State registration of a share issuance of a non-public JSC in the form of DFAs will not be required—such issue will be registered by the information system operator in accordance with the rules of the respective information system. The shares of such non-public JSC will be recorded by the operator of the respective information system.

The Law also makes corresponding amendments to Federal Law No. 208-FZ on Joint Stock Companies dated December 26, 1995.

DIGITAL CURRENCY

The Law introduces the definition of so-called “digital currency”—a series of digital data (digital code or reference) contained in the information system that is offered and/or can be accepted as a means of payment not constituting a monetary unit of Russia, a foreign country or an international monetary unit or a payment unit and/or as an

investment. Therefore, the definition of digital currency should embrace classic cryptocurrencies (payment tokens), in particular, Bitcoin and Ether.

In the case of digital currency, there is no obligor liable to its holder (other than the operator and/or nodes of the information system⁹ required to ensure that the procedure for the issue of digital data and for making or changing entries in its respect on the information system complies with its rules). The absence of an obligor distinguishes digital currency from DFAs.

Digital currency is not a legal means of payment in Russia, and the Russian ruble remains the only official monetary unit.

It is expected that the status of digital currency and the relations arising out of its circulation will be regulated by a separate federal law. However, the Law contains the fundamentals of such regulation:

- Russian legal entities and Russian branches or representative offices of foreign legal entities and Russian individual tax residents are prohibited from making and/or accepting payment for works and services in digital currency; and
- dissemination of information about the offer or acceptance of digital currency as payment for goods, works or services is prohibited, which may potentially be inconsistent with the definition of the digital currency where it is stated that the digital currency “is offered or may be accepted as a means of payment.”

Moreover, the Law does not contain any provisions on liability for using digital currency as a means of payment in Russia or dissemination of respective information. It is likely that appropriate amendments to the Russian Code of Administrative Offenses and the Russian Criminal Code will be tabled for consideration together with the relevant draft law specifically regulating digital currency.

Trading operations and civil law transactions involving digital currency are permitted. However, the Law provides for a mandatory condition for judicial protection of claims related to such operations and/or transactions—persons who hold digital currency or make transactions with it will be required to report it in the manner set out by the tax legislation.

⁹ Nodes of the information system are those users of the information system on the basis of distributed ledger that ensure the identity of information contained in such information system by applying the procedures for the confirmation of validity of the entries made/changed in it.

The Law also defines mining (“issue of digital currency” as formulated in the Law) as activity involving Russian information infrastructure and/or user equipment located in Russia aimed at enabling the use of digital currency by third parties.

The provision of services with the purpose of facilitating civil law transactions and/or trading operations resulting in the transfer of digital currency from one holder to another with the use of Russian information infrastructure is defined by the Law as “arranging for the circulation” of digital currency, which is also expected to be subject to a special federal law on digital currency.

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Please do not hesitate to contact us with any questions.

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