

# Bank of Russia Issues First Regulations Under the Law on Digital Financial Assets

19 February 2021

On 1 January 2021, Federal Law No. 259-FZ on Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation dated 31 July 2020 (the “DFA Law”) came into force.

The DFA Law requires the Bank of Russia to develop and adopt certain regulations. In late December 2020 and early January 2021, the Bank of Russia published the first batch of such regulations.

Although these regulations are quite technical, they show the Bank of Russia’s approach to the regulation of the market in digital financial assets (“DFAs”). A key concept is the protection of investors by establishing “qualified investor” concepts for persons who are permitted to invest in certain types of DFAs, as well as limits on the amount of other DFAs that may be acquired by individuals being non-“qualified investors”, in addition to imposition of strict requirements upon operators of information systems that issue DFAs (“Information Systems”) and DFAs exchange operators. This approach is consistent with existing global trends. The Bank of Russia indicates that it will not formally register an operator of an Information System or a DFAs exchange operator until its officials have completed an onsite audit of the operations of the applicant at its place of business.

Below we summarize the main provisions of the adopted regulations.

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## DFAs to Be Acquired by Qualified Investors Only

Only qualified investors<sup>1</sup> can acquire the following types of DFAs<sup>2</sup>:

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<sup>1</sup> Pursuant to Article 51.2 of Federal Law No. 39-FZ on the Securities Market dated 22 April 1996 (the “Securities Market Law”), qualified investors are (a) persons specified in Article 51.2(2) of the Securities Market Law, specifically, professional securities market participants, lending institutions, insurance companies, etc.; (b) persons meeting the requirements set forth by the Securities Market Law and the Bank of Russia and

- DFAs issued by Information Systems organized under foreign law;
- DFAs evidencing the ability to exercise the rights attaching to issuable securities that may be acquired only by qualified investors or evidencing the right to require transfer of such securities;
- DFAs comprising monetary claims if:
  - the decision on their issue does not indicate the period during which the issuer of such DFAs will perform its obligations underlying the monetary claim included in the DFAs; or
  - the payments under such DFAs are contingent on whether one or more circumstances envisaged by law or a regulation of the Bank of Russia would occur, in respect of which it is not known whether such circumstances would occur. For example, such circumstances may include a change of prices for commodities, securities, relevant currency exchange rates, interest rates, inflation rate or change of values calculated on the basis of one or more such indicators.

If a non-qualified investor acquires any such DFAs, such non-qualified investor would have the right to require that the operator of the Information System where such DFAs were issued or the DFAs exchange operator through which such DFAs were purchased buy back such DFAs at its expense and compensate such non-qualified investor for any expenses incurred in this respect. A non-qualified investor that wishes to exercise such right must make its claim within one year after the date of acquisition of such DFAs. The respective right will not apply if the non-qualified investor was believed to be a qualified investor by the respective operator on the basis of misleading information provided by such investor.<sup>3</sup>

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recognized as qualified investors (e.g., an individual can be recognized as a qualified investor if the total value of securities held by him/her is at least RUB 6 million (approx. USD 79,500)).

<sup>2</sup> Guidelines of the Bank of Russia No. 5635-U on the Digital Financial Assets That May Be Acquired by a Qualified Investor Only, on the Digital Financial Assets That May Be Acquired by Any Person Other Than a Qualified Investor Up to a Limit of Monetary Funds Transferred in Payment Therefor and the Aggregate Value of Other Digital Financial Assets Transferred as Consideration Therefor Set Forth by the Bank of Russia, and on the Above Amount of Monetary Funds and Aggregate Value of Digital Financial Assets dated 25 November 2020.

<sup>3</sup> Articles 6(7), 10(16) of the DFA Law.

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## DFAs Subject to a Limit for Acquisition by a Non-Qualified Investor

Individuals that are not qualified investors may acquire DFAs not intended only for qualified investors if the amount of monetary funds paid for all such DFAs and/or the aggregate value of other DFAs transferred as consideration does not exceed RUB 600,000 (approx. USD 8,000) during one year (twelve consecutive months) . Such annual limit is calculated on an aggregate basis for the monetary funds and the DFAs used as consideration. The value of the DFAs to be transferred as consideration will be determined pursuant to the applicable decision on their issue.

The annual limit does not apply to the acquisition by individual non-qualified investors of the following types of DFAs:

- DFAs evidencing the ability to exercise rights attaching to issuable securities listed on a securities exchange other than bonds, or the right to require transfer of such securities;
- DFAs evidencing the ability to exercise rights attaching to sovereign bonds, or the right to require transfer of such bonds;
- DFAs evidencing the ability to exercise rights attaching to bonds, or the right to require the transfer of bonds, if the credit rating of the issuer or the entity providing security for the bonds is not lower than that established by the Board of Directors of the Bank of Russia;
- DFAs comprising monetary claims equivalent to the value of precious metal if such precious metal's description and weight is indicated in the applicable decision on the issue of such DFAs; and
- DFAs comprising monetary claims whose credit rating is not lower than that established by the Board of Directors of the Bank of Russia.

If an individual non-qualified investor exceeds the annual limit for the acquisition of any such DFAs not falling under the above exceptions, such non-qualified investor would have a right similar to that described previously but limited to the amount of such DFAs acquired in excess of such limits. An individual that wishes to exercise such right must make its claim within one year after the date of acquisition of such DFAs in excess of the applicable annual limit. The respective right will not apply if the individual

was believed to be a qualified investor by the respective operator on the basis of misleading information provided by such individual.<sup>4</sup>

Legal entities that are not qualified investors may acquire, without application of any limit, DFAs not intended only for qualified investors.

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## Supporting Documents Confirming the Information to Be Entered in the Register of Users of the Information System

The register of users of the Information System must contain the following information in respect of each user<sup>5</sup>:

- details of each user of the Information System;
- details required to authenticate each user in the Information System; and
- a record showing the capacity in which each user is authenticated in the Information System.

The supporting documents confirming such information<sup>6</sup> in respect of an individual user include:

- an identity document;
- an identity document of a person authorized to act on behalf of the user for the provision of information in respect of such user to the register of users of the Information System (the “Representative”), where such user acts through a Representative;
- a document confirming the Representative’s authority, if applicable;
- a document confirming registration of the user with the tax authority or, if it is not available, a document confirming the inability to obtain such registration;

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<sup>4</sup> Articles 6(7), 10(16) of the DFA Law.

<sup>5</sup> Article 8(2) of the DFA Law.

<sup>6</sup> Guidelines of the Bank of Russia No. 5625-U on the Documents Envisaged by Article 8(4) of Federal Law No. 259-FZ, dated 31 July 2020, on Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation and the Requirements for the Storage Thereof, dated 19 November 2020.

- an extract from the Unified State Register of Sole Entrepreneurs (for users that are sole entrepreneurs).

The supporting documents confirming such information in respect of a legal entity include:

- an identity document of the Representative;
- a document confirming the Representative's authority;
- a document confirming registration of the user with the tax authority or, if it is not available, a document confirming the inability to obtain such registration; and
- a document confirming the user's legal person status (for users that are foreign legal entities).

These documents may be provided at the discretion of the user in original or duplicate hard copies or in electronic form as provided by the rules of the respective Information System or, if there are no such provisions in the rules of the respective Information System, the documents may be provided in a way permitting confirmation of their delivery and the date of their receipt by the Information System operator.

The documents and data entered in the register of users of the Information System must be stored by the operator in compliance with the rules of the respective Information System. The operator is required to protect the documents and data from destruction or corruption, including physical damage, theft or loss, unauthorised access or exposure to malware or unauthorised modification (if stored in electronic form), including as a result of unlawful acts of third parties or the operator/its employees, and take measures aimed at timely detection of such occurrences.

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## The Grounds and Procedure for the Transfer of DFAs to a Nominal Holder

Article 2(4) of the DFA Law permits the transfer of DFAs to a nominal holder through which other persons hold their DFAs. Only entities licensed for the conduct of depository activities can act as nominal holders.

The DFAs may be transferred to a nominal holder if<sup>7</sup>:

- the Deposit Agreement executed between the nominal holder and its account holder provides for the obligation of the nominal holder to record the digital rights transferred to it by its account holder (or any other person on its behalf) by transferring such digital rights to a depository account opened for the account holder; and
- the register of users of the Information System contains information that such person acts as a nominal holder.

Prior to the transfer of DFAs to the nominal holder for recording of the account holder's rights to such DFAs, the nominal holder is required to comply with the procedures set forth by the rules of the Information System for the purpose of keeping its account holders' DFAs separate from the nominal holder's own DFAs.

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## The Calculation of Net Asset Value for the Purposes of Listing of a Company in the Register of the DFAs Exchange Operators

In accordance with Article 10(3) of the DFA Law, a company that is not a lending or a trading institution must have, *inter alia*, net assets of at least RUB 50 million (approx. USD 660,000) to become a DFAs exchange operator.

The net asset value will be determined as the difference between the assets value and the liabilities of the company as of a date not earlier than five business days preceding the date of filing of the application for listing in the Register of DFAs exchange operators with the Bank of Russia.<sup>8</sup>

The net asset value of the company will be calculated on the basis of its balance sheet assets and liabilities, with certain exceptions (*e.g.*, any shares in subsidiaries, including legal entities incorporated under the laws of a foreign jurisdiction, will not be taken into account for the purposes of the calculation). The assets and liabilities will be accounted for at their balance sheet value on the basis of accounting records, except for the exclusive rights to computer software. The exclusive rights to computer software will be

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<sup>7</sup> Guidance of the Bank of Russia No. 5646-U on the Grounds and Procedure for the Transfer of the Digital Financial Assets to the Nominal Holder of the Digital Financial Assets Through Which Such Digital Financial Assets Are Held by Other Persons, dated 3 December 2020.

<sup>8</sup> Guidance of the Bank of Russia No. 5647-U on the Requirements for the Calculation of Net Assets Value of a Company for the Purposes of Listing of a Company in the Register of the DFAs Exchange Operators, dated 3 December 2020.

accounted for at the value determined by an appraiser for the purposes of calculation of the net asset value.

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## The Procedure for Applying for Listing in the Registers of Operators of Information Systems and DFA Exchange Operators, and Consideration of Applications

The application and related documents must be submitted to the Bank of Russia either in hardcopies by registered mail with receipt notification or as electronic documents through an account on the Bank of Russia website.<sup>9</sup> Financial institutions may file the application and related documents only through an account on the Bank of Russia website.

The Bank of Russia will confirm compliance of the applicant with the DFA Law, as well as the accuracy of information provided in the application, by means of an onsite audit at the address where the applicant plans to carry out activities of an operator of an Information System or a DFAs exchange. During the audit, the Bank of Russia officials, in particular, will review the information system of the applicant and observe a demonstration of its functionality.

If during the course of the audit the Bank of Russia identifies any inconsistencies between the information provided in the application and the information received during the audit or otherwise in possession of the Bank of Russia, or any breach of requirements as to content or form of documents, the Bank of Russia will send to the applicant a request for additional information. In this case, the term for consideration of the application<sup>10</sup> is calculated from the date of receipt of the additional requested documents by the Bank of Russia.

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Please do not hesitate to contact us with any questions.

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<sup>9</sup> Regulation of the Bank of Russia No. 746-P on Maintenance by the Bank of Russia of the Register of Operators of the Information Systems That Issue the Digital Financial Assets, the Register of Digital Financial Assets Exchange Operators, on Procedure and Terms for Provision by the Operators of the Information Systems That Issue the Digital Financial Assets and Digital Financial Assets Exchange Operators to the Bank of Russia of Information on Persons That Possess Shares of Such Operators as Well as Provision to and Approval by the Bank of Russia of Amendments to the Rules of the Information Systems That Issue Digital Financial Assets and to the Rules of Digital Financial Assets Exchange, dated 16 December 2020.

<sup>10</sup> The term for consideration of an application for listing in the register of operators of the Information Systems is 60 business days. The term for consideration of the application for listing in the register of DFAs exchange operators is 45 business days for a lending or trading institution and 90 business days for other legal entities.

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