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Russian law on digital rights

On 12 March 2019, the State Duma adopted in its final reading a draft federal law “On Digital Rights”, amending parts one, two, and article 1124 of part three of the Civil Code of the Russian Federation (the “Law”).

According to the developers of the Law, its goal is to enshrine a number of basic concepts in civil legislation, on the basis of which the Russian legislator could regulate the market of such objects of economic relations in the information and telecommunication network as “tokens”, “cryptocurrency” and other digital assets, to provide conditions for the execution and performance of transactions in the digital environment, including transactions with large volumes of information (Big Data). At the same time, the Law does not set a task to describe the conditions under which turnover of so-called digital objects is possible in principle, including requirements for entities issuing such objects or organizing such a turnover, for ensuring the safety of the respective turnover and other public law norms.

This review highlights the main changes introduced by the Law into the Civil Code of the Russian Federation (the “Civil Code”).

1. Digital Rights

The Law introduces a new article 141.1 in the Civil Code, which establishes the basic concept of “digital right” (instead of the term “token”, which originally designates a device for identification, and is currently used in the IT lexicon to denote ciphers, the possession of which grants certain rights in the information and telecommunication network).

Digital rights shall be deemed “obligations and other rights, the content and conditions of which are determined in accordance with the rules of the information system that meets the criteria established by law. Exercise, disposal, including transfer, pledge, encumbrance of a digital right by other means or restriction of disposal of a digital right are possible only in the information system, without recourse to a third party.” As a general rule, the holder of a digital right is deemed a person who, in accordance with the rules of the information system, has the opportunity to dispose of this right.

The introduction of the concept of “digital right” in the Civil Code according to the explanatory note to the Law allows:

- ▶ to determine its place in the system of civil rights objects (new wording of clause 1 of article 128 of the Civil Code);
- ▶ to indicate that the turnover of such an object is carried out only by making entries in the information system;
- ▶ to describe the turnover of the object;
- ▶ to provide protection to citizens and legal entities in connection with transactions with this object.

According to the developers of the Law, a digital right can certify only the rights to things, other property, work results, provision of services, exclusive rights, and its essence as a new legal fiction is close to that of a security.

The Law, however, does not establish the criteria for an information system in which digital rights can be exercised and disposed of. The developers of the Law believe that criteria for a decentralized information system (“distributed registry”) should be defined in other federal laws, in particular, in Federal Law No. 149-FZ dated 27 June 2006 “On Information, Information Technologies, and Information Protection”.

2. Form of transactions

The Law amends the rules of the Civil Code on the form of transactions, including contracts, in order to facilitate the execution of transactions with digital rights and other transactions in information and telecommunication networks.

The written form of a transaction will be considered as complied with if the person executes a transaction using electronic or other technical means that allow reproducing the content of the transaction on a tangible medium in unchanged form. At the same time, the requirement for signing is considered fulfilled if any method is used to reliably determine the person who has expressed his/her will. A special method to reliably determine a person who has expressed his/her will may be provided for by law, other legal acts and agreement of the parties.

Thus, the expression by a person of his/her will using electronic or other similar technical means (for example, by transmitting a signal, i.e. when filling in a form on the Internet) is equal to the simple written form of a transaction. Therefore, according to the developers of the Law, all transactions made remotely, including by filling in a form on the Internet site or by sending SMS, will be considered valid, as well as “electronic” powers of attorney and ballots for voting at general meetings of companies’ shareholders filled in an electronic form.

At the same time, in Article 1124 of the Civil Code, a special prohibition is introduced on drawing up a will using electronic or other technical means.

3. “Self-executable” transactions (smart contracts).

For the purpose of executing transactions with digital rights (“self-executable” transactions or “smart contracts”), Article 309 of the Civil Code is supplemented by the provision that in the transaction it is possible to provide for performance by the parties of the obligations arising from it under certain circumstances without expressing any additional will of the parties aimed at such performance, through the use of information technology, defined by the terms of the transaction.

A smart contract based on this rule is deemed not a separate transaction, but a condition for the automatic execution of any civil-law contract (contract of sale, lease, contract, etc.). With regard to transactions with digital rights (virtual objects), after users are identified in the information system, their further behavior is subject to the computer program algorithm organizing the network, and the person acquiring a particular virtual object will receive this object automatically when the circumstances specified in the user agreement take place, without additional orders or other expressions of the will of the parties to the transaction.

4. Legalization of the collection and processing of significant volumes of depersonalized information (“Big Data”).

A new article 783¹ is introduced, establishing the specifics of the contract for the provision of information services. The contract, by virtue of which the contractor undertakes to provide certain information to the customer, may stipulate the obligation of one of the parties or both parties not to take actions during a certain period as a result of which the information may be disclosed to third parties.

This article not only establishes a new type of contract in the Civil Code, but also provides for a mechanism to ensure the confidentiality of information that is the object of the contract, by stipulating in the contract the negative covenants of the parties or one of them.

It should be noted that during the consideration of the Law the rules on “digital money” (“cryptocurrencies”) were excluded from it: initially it was assumed to explicitly provide that digital money is not a legal means of payment, but in the cases and on conditions established by law, it can be used by individuals and legal entities as a means of payment in controlled amounts and in an additionally regulated manner. In Article 1412 of the Civil Code, it was planned to extend to digital money the rules on vesting digital rights: there should be records in the information system about owners of digital money and such money is transferred from one person to another only by means of a record.

In addition, in the initial version of the Law, it was intended to amend the definition of the database in Article 1260 of the Civil Code, by replacing it with a more general one – “a set of data or information”.

Two other bills, adopted in the first reading in May 2018, are also under consideration by the State Duma:

- ▶ “On attracting investments using investment platforms”, which regulates relations in connection with attracting investments by business entities or individual entrepreneurs using information technologies, and also defines the legal framework for the activities of operators of investment platforms for organizing retail financing (crowdfunding);
- ▶ “On Digital Financial Assets”, aimed at regulating relations arising from the creation, issuance, storage and circulation of digital financial assets, exercise of rights and performance of obligations under smart contracts; it also proposes to introduce such concepts as “digital transaction”, “digital recording”, “digital transaction register”, “digital record validation”, “mining”, “cryptocurrency”, “token”, “smart contract”.

Subject to the adoption of these bills by the Federal Assembly, their signing by the President of the Russian Federation and official publication, it is planned that they will come into force simultaneously with the Law - on 1 October 2019.

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