New amendments to the Russian Civil Code to introduce regulation for digital assets

On 18 March, the President of the Russian Federation signed the Law “On Introducing Amendments to Parts One and Two and Article 1124 of Part Three of the Civil Code of the Russian Federation”¹ (the “law”) to lay down basic principles for Russian legislators to regulate a new market of assets in the IT network and create proper conditions for the implementation of transactions in the digital environment, including transactions conducted to transfer blocks of data/information.

The law contains only civil law provisions. It is not intended to set forth any public law provisions such as security requirements for the circulation of digital assets, which are to be regulated by separate laws.

**Digital rights**

The law has introduced a new, basic term ‘digital rights,’ defined in Article 141 as “rights under the law of obligations and other rights whose content and exercise should be determined in accordance with the rules of the information system that has the necessary features as established by law.” Information system features are set forth in Federal Law No. 149-FZ “On Information, Information Technologies and Information Protection” of 27 July 2006.

Uncertified securities are in large part a prototype for digital rights. Such securities and digital rights have similarities in their exchange rules, with their transfer, encumbrances and other transactions recorded either by a registrar or in an information system. They also fall into the same category of civil law rights, namely property rights.

Article 128 of the Civil Code defines digital rights as civil law rights and a type of property rights. Being civil law rights means that digital rights are marketable and can be transferred for a consideration. Specific types of marketable digital rights are to be established by separate federal laws. No exhaustive lists have been adopted so far.

Unlike the initial version that was entitled “On Introducing Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation,” the newly signed law does not mention any digital codes or labels certifying digital rights or records in information systems. The newly signed law has a broader wording. For instance, it says that the owner of digital rights should be determined by the information system itself.

**Digital currencies**

Neither does the law feature any digital currency/cryptocurrency provisions compared with the initial draft that would have introduced the respective term, stipulating that a digital currency, though not being a legitimate medium of exchange, may be used as such in some cases. It was these provisions that sparked the most heated debate.

**Electronic transactions and electronic resolutions of meetings**

The newly signed law has introduced a general provision confirming the possibility of distant expression of the will by electronic or other technical means.

It amended Article 160 of the Civil Code, stipulating that the requirement for a transaction to be in writing is satisfied if it is recorded by electronic or other technical means. Further, the requirement for the signature of a person is satisfied when it is possible to reliably identify the person who has expressed the will. This allows the parties to determine on their own the procedure for the reliable identification of a person expressing the will. The law explicitly makes an exception for one type of transaction, i.e., wills (Article 1124 of the Civil Code), from rules set forth in Article 160 of the Civil Code.

Amendments were also introduced to expand on the rules for participation in meetings (Chapter 9.1 of the Civil Code) by allowing participants – in the same way as provided for in Regulation on General Meetings of Shareholders No. 660-P of the Bank of Russia of 16 November 2018 – to vote by electronic or other technical means (for instance, by filling in electronic ballots on the Internet).

**Smart contracts**

The law stipulates that obligations of parties to a transaction may be performed under certain

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circumstances using IT (Article 309 of the Civil Code).

After the identification of a user, his or her behavior in the system should be controlled by a code. The transaction is implemented by the information system, with the parties not required to additionally express their will. Such transactions are called self-executing. The new provisions are designed to simplify the process for many transactions. The execution of a transaction using software may not be challenged (unless the code has been tampered with).

Big Data

The law has introduced a new type of agreement – an agreement for the provision of information services – to specify it separately in legislation and create a legal framework for the collection and processing of large blocks of non-personalized data. Such agreements may prohibit one party or both of them from doing things that may lead to a disclosure of information to a third party.

Entry into force

The law will enter into force on 1 October 2019 and apply to transactions signed after this date or rights and obligations arising after this date under previously signed agreements.

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The law sparked a heated debate and underwent substantial changes compared with its initial version. A number of regulations need to be adopted to enable the enforcement of this framework law in practice. However, it is apparent that the concept of digital rights has already made its way into the system of civil law rights after the adoption of this law to occupy a separate place in it. Overall, a regulatory framework has been created to legitimize the circulation of digital rights and specify remedial measures, while the introduction of electronic transactions, electronic resolutions of meetings and smart contracts will significantly simplify the execution process for transactions.

Authors:

Georgy Kovalenko
Yulia Tsykalo
Anna Evlanova

For more information, contact the authors of this publication:

Georgy Kovalenko
+ 7 (495) 287 6511
Georgy.Kovalenko@ru.ey.com

Yulia Tsykalo
+ 7 495 664 7892
Yulia.Tsykalo@ru.ey.com

Should you require more detailed information, please contact the following EY professionals:

**Moscow**

**Tax & Law Leader**
- Irina Bykhoverskaya +7 (495) 755 9886

**Oil & Gas, Power & Utilities**
- Alexei Ryabov +7 (495) 641 2913
- Victor Borodin +7 (495) 755 9760

**Financial Services**
- Alexei Kuznetsov +7 (495) 755 9687
- Ivan Sychev +7 (495) 755 9795
- Maria Frolova +7 (495) 641 2997

**Industrial Products**
- Andrei Sulin +7 (495) 755 9743

**Consumer Products & Retail, Life Sciences & Healthcare**
- Dmitry Khalilov +7 (495) 755 9757

**Real Estate, Hospitality & Construction, Infrastructure, Transportation**
- Anna Strelnichenko +7 (495) 705 9744
- Svetlana Zobnina +7 (495) 641 2930

**Technology, Telecommunications, Media & Entertainment; Tax Performance Advisory**
- Ivan Rodionov +7 (495) 755 9719

**Tax Technology**
- Sergey Saraev +7 (495) 664 7862

**People Advisory Services**
- Gueladjo Dicko +7 (495) 755 9961
- Sergei Makeev +7 (495) 755 9707

**Private Client Services**
- Anton Ionov +7 (495) 755 9747

**Customs & Indirect Tax**
- Vadim Ilyin +7 (495) 648 9670

**Transaction Tax**
- Yuri Nechuyatov +7 (495) 664 7884

**Cross Border Tax Advisory**
- Vladimir Zheltonogov +7 (495) 705 9737
- Marina Belyakova +7 (495) 755 9948
- Andrey Vostokov +7 (495) 755 9708

**Transfer Pricing and Operating Model Effectiveness**
- Evgenia Veter +7 (495) 660 4880
- Maxim Maximov +7 (495) 662 9317

**Tax Policy & Controversy**
- Alexandra Lobova +7 (495) 705 9730
- Alexei Nesterenko +7 (495) 662 9319

**Global Compliance and Reporting**
- Yulia Timonina +7 (495) 755 9838
- Alexei Malenkin +7 (495) 755 9898

**Legal Services**
- Georgy Kovalenko +7 (495) 287 6511
- Alexey Markov +7 (495) 641 2965

**St. Petersburg**
- Dmitri Babiner +7 (812) 703 7839

**Vladivostok**
- Alexey Erokhin +7 (914) 727 1174

**Ekaterinburg**
- Irina Borodina +7 (343) 378 4900

**Krasnodar**
- Alexei Malenkin +7 (495) 755 9898

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EY offices

Almaty +7 (727) 258 5960
Astana +7 (7172) 58 0400
Atyrau +7 (7122) 99 6099
Baku +994 (12) 490 7020
Bishkek +996 (312) 39 1713
Vladivostok +7 (423) 265 8383
Ekaterinburg +7 (343) 378 4900
Kazan +7 (843) 567 3333
Kyiv +380 (44) 490 3000

Krasnodar +7 (861) 210 1212
Minsk +375 (17) 240 4242
Moscow +7 (495) 755 9700
Novosibirsk +7 (383) 211 9007
Rostov-on-Don +7 (863) 261 8400
St. Petersburg +7 812 703 7800
Tashkent +998 (71) 140 6482
Tbilisi +995 (32) 215 8811
Togliatti +7 (8482) 99 9777
Yuzhno-Sakhalinsk +7 (4242) 49 9090

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