



AUGUST 2020

ON DIGITAL FINANCIAL ASSETS

On July 31, 2020, the Federal Law dd. July 31, 2020 No. 259-FZ "On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter - the Law) was published on the official web portal of legal information <http://www.pravo.gov.ru>. The Law regulates relations arising from the turnover of digital currency in the Russian Federation, as well as relations arising from issuance, accounting and circulation of digital financial assets, certain aspects of activities of information system operators and operators of exchange of digital financial assets. The Law comes into force on January 1, 2021, except for certain provisions.

TURNOVER OF DIGITAL CURRENCY (CRYPTOCURRENCY)

The Law defines the "digital currency" as a combination of electronic data (digital code or designation) contained in an information system, which:

(i) are offered and / or may be accepted as means of payment which are not the currency of the Russian Federation, a currency of a foreign state, an international currency or accounting unit, or as investment, and

(ii) in respect of which there is no person obliged to each owner of such electronic data, with the exception of the operator and (or) nodes of an information system¹, who are only obliged to ensure compliance of the procedure of issuance of these electronic data and the actions of making (changing) records in relation to the data in this information system with its rules.

The Law, unlike one of the versions of the draft law prepared for the second reading, does not contain provisions on criminal and administrative liability for issuance of digital currency by individuals, organizing its issuance and circulation. Furthermore, it is stipulated that issuance and circulation of digital currency in Russia will be regulated by separate federal laws. Thus, detailed regulation of these issues was temporarily postponed till the adoption of special laws.

However, the Law contains a number of restrictive conditions:

- a prohibition for Russian legal entities, divisions of international organizations and foreign legal entities established on the territory of the Russian Federation, individuals staying on the territory of the Russian Federation for at least 183 days within the 12 months period on accepting digital currency as means of payment for goods (work, services);
- a prohibition on spreading information about offering or accepting digital currency as means of payment for goods (services, works);
- obtaining judicial relief in relation to any claims related to possession of digital currency will only be possible if the tax authorities are informed about the facts of possession of such digital currency and transactions or operations with it in the manner provided by the fiscal legislation of the Russian Federation.

¹ The nodes of an information system are the users of an information system based on a distributed ledger (i.e. blockchain), ensuring the identity of the information contained in it using the procedures for confirming the validity of the records made (changed) in it.



DIGITAL FINANCIAL ASSETS

The Law introduces the concept of "digital financial assets" (hereinafter – **DFA**), which are digital rights, including:

- monetary claims;
- ability of exercising rights under securities;
- rights to participate in the capital of a non-public joint-stock company;
- rights to demand a transfer of securities stipulated in the decision to issue DFA.

By their legal nature, DFA are most closely related to depositary receipts certifying rights to other securities (but with a simpler issuance procedure).

Issuance, accounting and circulation of DFA are carried out by making records in the information system based on a distributed ledger (i.e. blockchain), as well as in other information systems.

PROCEDURE FOR ISSUANCE OF DIGITAL FINANCIAL ASSETS

The issuance of DFA is carried out by taking actions to make a record in the information system on crediting the DFA to their first owner.

According to the Law, individual entrepreneurs, as well as legal entities (commercial and non-commercial organizations) have the right to issue DFA.

The key document containing information about the DFA being issued is the decision to issue DFA.

The structure of the decision to issue DFA is in many aspects similar to that of the decision to issue securities. In particular, it shall contain:

- information about the person issuing the DFA (as for legal entities, the information about their beneficial owners is mandatory);
- information about the operator of the information system in which the DFA are issued;
- type and scope of rights certified by the DFA, or an indication that the issued DFA certify several types of rights with the possibility to choose to exercise one of these rights upon the occurrence of the conditions provided for in the decision to issue the DFA;
- amount of DFA being issued or an indication of the maximum monetary amount / maximum amount of other DFA which shall be transferred as payment for the DFA being issued;
- conditions upon the occurrence of which the DFA issuance is considered valid (completed);
- purchase price of the DFA or the amount of other DFA that shall be transferred as payment for the DFA being issued;
- date of the beginning of the placement of the DFA by concluding agreements on their purchase;
- method of payment (in cash and (or) by the transfer of other DFA);
- indication that transactions contemplating fulfillment by the parties of obligations arising from such transactions upon occurrence of certain circumstances without a separately expressed additional will of the parties aimed at fulfillment of such obligations by the use of information technologies (if such transactions are used) for the issuance of the DFA;
- indication that the issue of the DFA is secured with the property of the issuer or third parties, including a description of the collateral, which makes possible to identify such collateral, and terms of such security (if applicable);
- information about securities, the possibility of exercising the rights under which (the right to demand the transfer of which) is certified by the DFA being issued, as well as the period during which the right to demand the transfer of the security can be exercised, or an indication of the event which gives rise to such a right (if applicable);
- indication of the limitation on the grounds and (or) extent of liability of the person issuing the DFA (if such a limitation exists).



The decision to issue DFA is drawn up in electronic form and should be published on the website of the person who issued the DFA, as well as on the website of the operator of the information system in which the DFA is issued. However, it is not subject to registration with the Bank of Russia.

The placement of DFA being issued is carried out by concluding agreements on their acquisition between the person issuing the DFA and their first owner. The acquirer may use cash or other DFA as a consideration for the acquired DFA.

ACCOUNTING AND CIRCULATION OF DIGITAL FINANCIAL ASSETS

DFA are recorded in the information system, in which they are issued, in the form of records in the ways established by the rules of the specified information system. The records about the DFA are made or changed, as a general rule, at the direction of the person issuing the DFA or their owner.

The transfer of the rights certified by the DFA to the new acquirer, as well as the limitation or encumbrance of the right to dispose of the DFA, arise (are carried out) from the moment of making records on this in the information system in accordance with its rules.

INFORMATION SYSTEM OPERATOR

An information system operator is a legal entity that operates an information system, including processing information contained in its databases².

Only a Russian legal entity (including a credit institution, depository, trade organizer) included in the register of the operators of the information systems maintained by the Bank of Russia may act as an operator of an information system in which the DFA are issued.

The Bank of Russia oversees the activity of the information system operator in which the DFA are issued.

An information system operator is obliged to approve the rules of the information system in which the DFA are issued. Such rules should, in particular, contain:

- rules for issuing DFA;
- rules for engaging operators of exchange of the DFA, including the requirements for these operators;
- rules for providing access to the information system for the DFA owners;
- procedure for maintaining the register of users of the information system³.

The rules of the information system in which the DFA are issued are subject to mandatory approval by the Bank of Russia.

The Law imposes the following duties to the information system operator:

- to ensure integrity and reliability of information on the DFA contained in the records of the information system, as well as to compensate the users of this information system for losses incurred as a result of a loss of information on the amount of the DFA belonging to their owners and (or) about the owners of the DFA, as well as in other cases, provided by the Law;
- in case of loss of access to the records of the information system by the owner of the DFA, the operator of the information system shall provide the possibility of restoring such access upon the request of the owner;
- to maintain a register of users of the information system, containing the information about each user of the information system, including information necessary for its authentication, as well as information about the status of the user: the person who issued the DFA, their owner or an operator of exchange of the DFA;

² See Art. 2 of the Federal Law of July 27, 2006 No. 149-FZ "On Information, Information Technologies and Information Protection".

³ An information system operator has the right to engage persons performing functions of nodes of the information system, as well as operators of other information systems, to maintain the register of users of the information system.



- to identify the client, the client's representative and (or) the beneficiary before accepting them for service in accordance with the requirements of the Federal Law "On Countering Legalization (Laundering) of the Proceeds of crime and Financing of Terrorism"

Subject to the conditions stipulated by the Law, the operator of the information system in which the DFA are issued has the right to delegate the said identification to another operator.

OPERATOR OF EXCHANGE OF DIGITAL FINANCIAL ASSETS

An operator of exchange of digital financial assets is a person who ensures the conclusion of sale and purchase and exchange transactions, as well as other transactions with the DFA by collecting and matching oppositely directed orders for such transactions or by participating in a transaction with the DFA as a party to such a transaction at its own expense in interests of third parties.

The operator of exchange of digital financial assets may be: (i) a credit institution, (ii) a trade organizer, or (iii) a Russian legal entity, the amount of charter capital and net assets (for non-profit organizations - the aggregate annual amount of property contributions of members to property) of which is at least 50 million rubles, and complying with other requirements of the Law and regulations of the Bank of Russia.

The operator of exchange of the DFA has the right to carry out its activities from the moment it is included in the register of the operators of exchange of the DFA, which is maintained by the Bank of Russia and published on the website of the Bank of Russia.

The operator of exchange of the DFA approves the rules of exchange of digital financial assets, subject to approval of the Bank of Russia.

The operators of exchange of the DFA are also obliged to identify the client, the client's representative and (or) the beneficiary before accepting them for service in accordance with the requirements of the Federal Law "On Countering Legalization (Laundering) of the Proceeds of crime and Financing of Terrorism". However, subject to the conditions provided by the Law, an operator of exchange of the DFA has the right to delegate this identification to another operator.

The Law also provides for the possibility of combining the activity of the operator of exchange of the DFA with the activity of the operator of information system in which the DFA are issued.

OWNER (HOLDER) OF THE DFA

The owner of the DFA is a person who simultaneously meets the following criteria:

- 1) the person is included in the register of users of the information system in which the DFA are recorded;
- 2) the person has access to the information system through possession of a unique code that allows him to receive information about the DFA belonging to him, as well as to dispose of them through the use of the information system.

Taking into account the above provisions of the Law, anonymous persons cannot be the owners of DFA or other users of an information system.

FEATURES OF SOME TYPES OF DIGITAL FINANCIAL ASSETS

DFA certifying possibility of exercising rights under securities

An owner of DFA certifying possibility of exercising rights under securities has the right to demand from the person obliged under such DFA to exercise rights under securities (for example, the right to participate in a meeting of the shareholders, the right to receive dividends, etc.).

In this case, the person who issued the DFA exercises the rights to the securities in accordance with the instructions of the owner of the DFA.

DFA certifying the right to demand a transfer of securities

An owner of the DFA certifying the right to demand a transfer of securities has the right to demand from the person, obliged under such DFA, to transfer to him the securities provided for by the decision to issue DFA, within the period or upon the occurrence of an event provided for by such resolution.



DFA certifying the rights to participate in the capital of a joint stock company

The Law provides for the possibility of issuing DFA certifying the right to participate in the capital of a non-public joint-stock company (however, public JSC's are not allowed to issue shares in the form of DFA).

Registration of issues of shares of a non-public JSC issued in the form of DFA is carried out by an operator of the information system in accordance with the rules of information system approved by it. In this case, no state registration of share issues is carried out.

The Law establishes the following restrictions for non-public JSC which have issued shares in the form of DFA:

- the possibility of issuing shares of the non-public JSC in the form of DFA shall be provided for by the charter of the company at its foundation;
- the non-public JSC cannot acquire public status;
- the non-public JSC may only issue shares in the form of DFA and securities convertible into such shares (any issue of any other securities by this JSC is prohibited);
- it is prohibited to convert shares issued in the form of DFA into "regular" shares, as well as reverse conversion of "regular" shares issued by other JSC into shares issued in the form of DFA.

In this case, the person who records rights to shares of a non-public JSC will be an operator of an information system in which the DFA's are issued, not be a registrar.

Such an operator of an information system shall have a license of a professional participant on the securities market to carry out activities of maintaining a register.

MAKING TRANSACTIONS WITH UTILITY DIGITAL RIGHTS AND DFA IN AN INVESTMENT PLATFORM AND THROUGH AN OPERATOR OF EXCHANGE OF DFA

The Law provides for the possibility of acquiring and disposing of DFA, as well as digital rights combining both utility digital rights and DFA in an investment platform.

The Law also stipulates that transactions with utility digital rights can be carried out, inter alia, through an operator of exchange of DFA on the basis of exchange rules approved by it.

ADVERTISEMENT OF DFA

The Law also provides for the requirements of DFA advertisement. In particular, it is stipulated that advertisement should contain an indication that the proposed DFA are high-risk and their acquisition may lead to a total loss of the deposited funds.

Authors: Oleg Ushakov, Counsel, Gilyana Haraeva, Lawyer

Contacts



Dmitriy GLAZOUNOV

Partner, Banking & Finance,
Capital Markets

dmitriy_glazounov@epam.ru

+7 (495) 935 8010



Oleg USHAKOV

Counsel, Banking & Finance, Capital
Markets

oleg_ushakov@epam.ru

+7 (495) 935 8010

This material has been prepared for informational and/or educational purposes only and should not be taken as legal advice or opinion. Egorov Puginsky Afanasiev & Partners, its management team, attorneys and employees cannot guarantee that such information is applicable for your purposes and shall not be responsible for your decisions and related eventual direct or consequential loss and/or damage resulting from the use of all or any information contained in the material.

Subscription

You have received this information because this topic may be of interest to you. If you have received this information in error, we would like to extend our apologies and ask that you send us an unsubscribe request. To unsubscribe from Egorov Puginsky Afanasiev & Partners' mailing list, please reply to this email with **Unsubscribe** as email subject.

To subscribe to our legal alerts, please reply to this email with **Subscribe** as email subject. Please note that we reserve the right to limit the range of recipients of newsletters.