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Genesis and Prospects of Development of Legal Regulation of Digital Financial Assets in the Russian Federation

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Keywords

Blockchain,
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token

Abstract

Objective: to research the existing problems and promising directions of the legal regulation of digital financial assets as a relatively new tool of the modern digital economy.

Methods: the methodological basis of the work is the set of scientific cognition methods such as theoretical analysis, research, comparison, synthesis, and summarization of scientific literature.

Results: the work analyzes the existing approaches to legal regulation of digital financial assets in the Russian Federation and some foreign countries, reveals the existing gaps in the Russian legislation in the field of circulation of digital financial assets, gives estimation to the prospects of development of the legal regulation of these tools and forms proposals for its improving. Also, during the research, the approaches to legal regulation of digital currencies and digital financial assets, adopted in certain foreign countries, were analyzed, the trends were considered, and the positive and negative aspects of using cryptographic algorithms for the goals in economic and juridical spheres of the global economy were reflected.

Scientific novelty: within the work, the topical issues of legislative regulation of such a relatively new notion as digital financial assets are considered. The positions of Russian and foreign jurist are considered concerning

the existing problems and risks associated with "tokenization" and "blockachainization" of private law. Besides, the author comes to a conclusion about the existence of significant gaps in the current approach to legal regulation of digital financial assets, indicates them and proposes certain mechanisms to solve these problems.

Practical significance: is due to the imperfect current legislation in the sphere of relations occurring when using the technologies based of distributed ledger, including digital financial assets. Research of these problems allows evaluating the risks, considering the existing ways of overcoming and solving the emerging disputable questions. Also, the conclusions obtained can be used to improve the Russian legislation, as well as in the academic literature devoted to the topical issues of developing the digital legislation.

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Contents

Introduction

The global economic crises of the recent years cause a significant growth of mistrust of the population towards traditional financial tools, such as banking technologies, state or municipal securities, investment insurance. Another consequence of the catastrophically reducing periods between global shocks, resulting from political and regulatory mistakes, is the striving of the society to get rid of extra middlemen in the financial sector. The reasons for that are both the growing doubts of citizens in the reliability of political systems, and the significantly growing, despite a widespread digitalization of financial processes, fees for the basic services in the financial sector. This trend is reflected in the development of the contemporary, system-based areas of economics which allow establishing peer-to peer (P2P) contacts between the parties. This, in turn, creates significant prerequisites

for rapid development of various systems, based on distributed ledger technologies, such as blockchain (Garcia-Teruel, 2019).

The most popular of such systems is the blockchain of the first digital currency – bitcoin, which was developed as a digital, unmodifiable, jointly used and synchronized database. The cryptographic mechanisms built-in by its creator (or creators – it is still not known for certain, who launched a bitcoin), as well as the basic functional principles allow speaking of high reliability of the tool and of the absent necessity in the mediation institution when implementing the system functionality.

Blockchain is based on technology of the so-called smart contracts, i.e. sequences of computer codes automatically executing preset instructions determined by the internal executable code. Today, smart contracts allow almost instantly transferring any cryptocurrency or digital asset between two virtual wallets. This to become possible, the technology was developed and introduced of creating a digital asset intended for certifying a user right. In the modern world, this digital asset is called "token", and the phenomenon – "digital tokenization".

Later, technological development allowed creating virtual tokens of various types. For example, using ERC-20 protocol, the parties may create fungible tokens which may be exchanged for a respective digital equivalent or converted. With ERC-721 protocol, it became possible to create non-fungible tokens, which comprise in their metadata some specific properties and characteristics differentiating them from other tokens and making them unique. This opened wide prospects of using digital assets not only in the financial sector but also in other sectors such as medicine, notary, state registration, tourism, education, etc.

As a result, in the recent years, digital financial assets (further – DFA) become a more and more popular tool in the system of commercial and other interrelations in cyberspace and even beyond it. A high interest to DFA, as well as to the related processes, is due to the global digitalization. The current transformations in the sphere of economy and information technologies allow simplifying various types of human activity, including in the sphere of financial relations. Besides, one of the key factors stimulating the process of virtualization of certain economic processes is the pandemic. The growing popularity of digital money, in particular cryptocurrencies, caused the need in their legal regulation.

Digital tokenization in various spheres of human activity and in cyberspace may give a number of advantages in the future, such as potentially cheaper and safer transactions, increased transparency of transaction data and emitter information, providing investors with direct access to primary and secondary markets, increased level of assets liquidity, including digital assets, from the viewpoint of selling them to a much broader circle

of participant. In the sphere of real estate, this technology can be used to develop platforms facilitating transborder transactions with real estate assets in Russia and abroad, and, at the same time, due to the cryptographic safety algorithms built in the technology, to resist the challenges associated with digitalization of the global economy under the changing global balance of forces and the new economic reality, which emerges after the COVID-19 crisis (Garcia-Teruel, 2020).

It should be noted that the development of such Internet initiatives is also beneficial for the economic processes taking place within individual states, as they increase their investment attraction, reveals economic and intellectual potential. However, the documented cases of violation of the rights and interests of the participants of economic relations in the sphere of DFA circulation, as well as infringement of the interests of state and society, allow concluding that it is necessary to create a balanced and relevant normative base, regulating the order of functioning and ensuring the work of the said systems in a definite territory.

Attempts to act in this direction have been made in many countries, for example, in Germany, France, Italy, USA, Monaco, Luxemburg, and Malta. Some Asian countries, like China and Vietnam, have totally prohibited using cryptocurrency as a means of payment, while in some others it is not recognized as such (for example, in Philippines and Malaysia) (Garcia-Teruel & Simón-Moreno, 2021). Other countries, like Portugal, have not taken any steps in this sphere, content with preventing and prophylactic work among investors, aimed at informing them about the risks and difficulties associated with the turnover of cryptocurrency and other DFA (Basilio, 2019). A number of advanced countries attempted to integrate the distributed ledger technology into the existing state processes; for example, Sweden and Georgia experiment with using a special blockchain functional for registering transactions with land plots and executing their cadastre accounting.

Russian Federation is not standing back, searching for relevant and promising approaches to the legal regulation of cryptocurrencies and DFA. In this respect, one should accentuate a novel in the legal regulation of modern cryptographic instruments, namely, Federal Law of July 31, 2020 No. 259-FZ "On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation"[1] (further – Law on digital financial assets), which came into force on January 1, 2021.

At the same time, the very structure and content of the said law imply building a whole system of legislative and sub-legislative acts, aimed at regulating modern blockchain technologies, as well as instruments created on their basis, including cryptocurrencies and digital financial assets. However, this structure has not been built so far, which ultimately

[1] On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation. No. 259-FZ of 31.07.2020. (2020). *Collection of legislation of the Russian Federation*, *31* (part I), Article 5018.

creates substantial difficulties in the legal regulation of the said technologies, leading to a restricted and narrow profile character of the law adopted, and in some cases – to zero efficiency and impossibility to apply some of its norms. In this regard, it seems expedient to perform analysis and formulate proposals to overcome the problems and gaps in legal regulation of the public relations associated with digital currencies and DFA. In this article, we will focus on the issues of legal regulation of digital financial assets.

Assumingly, the problems associated with systemic analysis of the development and legal regulation of digital financial assets are not sufficiently elaborated today.

To achieve the set research goals, one should consider feasible to solve the following tasks:

to study the existing approaches to legal regulation of digital financial assets in the Russian Federation and certain foreign countries;

to reveal the current gaps in the Russian legislation in the sphere of DFA circulation;

to estimate the prospects of legal regulation of digital financial assets in the Russian Federation.

The object of study is administrative and civil-legal norms regulating the DFA circulation, as well as the practice of applying the respective legal norms and the opinions of scholars regarding the efficiency of the current Russian system of DFA legal regulation.

Assumingly, the theoretical and practical value of this research consists in the conclusions, which may be used both in scientific-research activity in this sphere and in law-making when elaborating and improving the administrative, criminal and civil legislation.

1. Genesis of legal regulation of digital financial assets in the Russian Federation

Since the moment of appearance and development of blockchain, digital currencies and related cryptographic financial tools, the Russian legal doctrine manifested various opinions and approaches regarding the need to legislatively regulate cryptocurrencies and tokens. Some scholars spoke for the need to discretely regulate the digital assets circulation, only when such need was due, as establishing rigid regulations in the sphere of digital assets circulation, in their opinion, contradicts the very essence of this phenomenon and its origins (Kudryashova, 2018). Other representatives of academic community insisted on elaborating a comprehensive regulatory legislation for the processes of digitalization and tokenization (Ryzhov, 2018).

At the official level, the need of cryptocurrencies legal regulation in Russia was first declared about nine years ago. In January 2014, recommendations of the Bank of Russia “On using ‘virtual currencies’, in particular, a ‘bitcoin’, in transactions” were published, according to which, it was proposed to consider cryptocurrency to be a monetary surrogate,

and its use in transactions – a basis for referring such transactions (operations) to those aimed at funding terrorism[2]. At that moment, the position of the Bank of Russia referring cryptocurrencies to a monetary surrogate was supported by the Russian Finance Monitoring Service[3] and the Prosecutor General's Office of the Russian Federation[4].

For a long time, the role of digital financial assets and digital currency in the Russian system of civil rights' objects was not defined, as they were not isolated as a separate object of civil law and their legal nature did not allow referring them to any objects of legal relations stipulated by Article 128 of the Civil Code of the Russian Federation[5] (further – CC RF). This resulted in forming and adopting opposite approaches in the law-enforcement practice of courts and state authorities in the issues of whether digital financial assets and digital currency are civil rights' objects and whether their circulation is restricted.

In October 2017, as part of the program "Digital economy of the Russian Federation", the Russian President charged the Russian Government and the Bank of Russia with introducing changes in the Russian legislation to determine the status of modern digital and cryptographic technologies used in the financial sector and to determine the conditions of their legal regulation, based on the approach, according to which a ruble is the only legal means of payment on the territory of the Russian Federation.

The result was Federal Law of July 31, 2020 No. 259-FZ, in accordance to which, digital financial assets[6] were recognized as digital rights. In turn, digital rights, in compliance with Article 128 CC RF, act as property rights. Relevance of this conclusion is further confirmed in the commentaries of the Committee of the Federation Council on budget and financial markets[7].

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2 Bank of Russia. (2014, January 27). *On using 'virtual currencies', in particular, a 'bitcoin', in transactions*. https://www.cbr.ru/press/pr/?file=27012014_1825052.htm

3 Federal Finance Monitoring Service. (2014, February 6). *On using cryptocurrencies*. https://www.fedsfm.ru/news/957

4 *In the Russian Prosecutor General's Office, a meeting was held on the legality of using anonymous payment systems and cryptocurrencies*. Official website of the Prosecutor General's Office of the Russian Federation. https://epp.genproc.gov.ru/web/gprf/search?article=83101813

5 Civil Code of the Russian Federation. (1994, December 5). (1994). *Collection of legislation of the Russian Federation*, *32*, Article 3301.

6 "Digital financial assets are the digital rights, including monetary claims, the possibility to implement rights on emission securities, the rights to participate in the capital of a nonpublic joint stock company, the right to claim transition of emission securities, which are stipulated by a decision on emitting the digital financial assets in the order established by this Federal Law, while their issuance, accounting and circulation are only possible by making (changing) records in an information system based on distributed ledger, as well as in other information systems". (On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation. No. 259-FZ of 31.07.2020. (2020). *Collection of legislation of the Russian Federation*, 31 (part I), Article 5018).

7 *Conclusion on the Federal Law "On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation" (draft No. 419059-7).* Official website of the Federation Council of the Federal Assembly of the Russian Federation. http://budget.council.gov.ru/activity/legislation/resolutions_law/118341

In cryptographic world, DFA most often acts as so called tokens and are, actually, digital accounting units, issued by particular persons, the value of which comprises various goods, services, shares, rights, etc. In compliance with the Russian legislation, digital financial assets may include:

1) DFA as the right of claim;

2) DFA for the right to participate in nonpublic joint stock company;

3) DFA for the rights on emission securities;

4) hybrid DFA, complemented with the signs of utilitarian digital right.

It should be noted also that the issuance of digital financial assets requires just one document – decision on the issuance of DFA, which contains all the key details of the asset and all its main parameters (value, amount, information on the emitter, etc.). This document is the key for launching a digital asset into circulation.

The Russian legislation implies using a distributed ledger system, a so called blockchain, for DFA circulation. This technology simplifies the circulation of financial assets by possessing the following important properties: unmodifiable information within the system, operational sustainability, mutual dependence of blocks within the system, resistance to hacking, and efficiency, as distributed systems are much cheaper than centralized ones.

To better understand the tool of digital financial assets, it is expedient to compare them with the current tools already existing in the market.

1. The most popular tool is DFA as a monetary claim.

A monetary claim is a claim to transfer rubles or other currency. Due to the specificity of DFA, they may act as a right of claim when transferring digital currency. However, it should be emphasized that cryptocurrencies, in particular, bitcoin or ether, do not refer to money, although are considered as a possible means of payment according to the federal legislation.

This type of DFA is most close to a bond or credit, depending on what the DFA is based on. For example, if it implies systematic fixed payments to the investor, then it is similar to bonds with coupon income.

A distinctive feature of DFA compared to a classic bond is that this tool is much more accessible in the market both for investors and emitters. An emitter of any size may issue DFA, and its attraction for investors will depend only on the reliability of the emitter and degree of trust in them, which, in turn, makes emitters do their business in a more open and reliable manner.

It should be noted that this kind of DFA is per se a monetary claim of an investor to an emitter. Thus, the emitter cannot transfer their obligations of payment to a third party, for example, their debtor. This is very important, as the main factor in investors making a decision on investing into a particular type of DFA is, first of all, reliability of the emitter, not their debtors.

2. Another type is DFA for the right to participate in nonpublic joint stock company. This type of digital financial assets suits for creating a new nonpublic joint stock company. Although one may not tokenize an old nonpublic joint stock company with this tool,

in the sphere of large business this tool can be applying to quickly create joint companies. Accordingly, this functional of DFA serves to attract share funding (the so called equity financing), if one of the participants of a joint stock company is a bank, for example. For small businesses and promising startups, DFA for the right to participate in nonpublic joint stock company is suitable to perform an ICO (Initial Coin Offering), i. e. primary placement of digital shares in compliance with the Russian legislation.

3. Another tool is DFA for the rights on emission securities. Definition of emission securities is found in Article 2 of the Federal Law of April 22, 1996 No. 39-FZ "On securities market": various securities characterized simultaneously with such properties as equal volume and terms of the right implementation within one issue; observance of the stipulated form and order of consolidation of a set of property and non-property rights; placement by issues or additional issues[8].

According to the Russian legislation, emission securities include shares, bonds, emitter's options, and Russian depositary receipts.

4. Hybrid digital financial assets are digital rights including simultaneously DFA and other digital rights. Other digital rights, in particular, include the right to use a service, goods, or a discount. In other words, hybrid DFA have signs of both digital financial assets and utilitarian digital right.

An example of a hybrid digital financial asset is a stablecoin. Stablecoins are not homogeneous and may have varied economic-legal signs. Most of stablecoins are issued by clearly identified emitters based on blockchain both in the form of circulating digital obligations and depositary receipts, used as a means of exchange, storage and payment. The most popular stablecoins are centralized ones, secured by fiat currencies and gold. Such stablecoins are used to execute stock exchange operations or retail payments. Local stablecoins are used as a means of storage and exchange. Global stablecoins can accelerate transborder payments and reduce their cost, as well as increase financial accessibility of cryptoassets for users without the need to open accounts.

The described legislative approach is an important step towards legalizing DFA and creates a good platform for further development of the legal regulation system currently created. Nevertheless, to implement the potential advantages of using various DFA tools, it is necessary to solve legal, normative and supervisory tasks associated with the national and transborder circulation.

8 "On securities market" No. 39-FZ of 22.04.1996. *Collection of legislation of the Russian Federation*, *17*, Article 1918.

2. Gaps in the Russian legislation on digital financial assets

In the recent years, the market of cryptocurrencies is growing. Despite a significant fall by 65% in 2022, it should be noted that the overall capitalization of cryptocurrencies reached over $2.4 trillion at some moment. Today, there are grounds to assume that the actual global crises and challenges, as well as the advantages and prospects of blockchain technology will facilitate the market returning to the previous positions and, most likely, significantly growing in the future. In this regard, the issues of legalizing the income obtained and implementing their activities within the legal framework are still topical for all companies and physical persons actively working with modern cryptographic financial tools[9].

Besides, the academic community actively discusses, alongside with technological aspects of the system, the possibility and prospects of using blockchain for the market and society needs (Raskin, 2017), possibility of tokenization of property rights (Yapicioglu & Leshinsky, 2020), including in the context of changes in the current processes of registration and keeping of land and cadastre registers, real estate registers, and other accounting bases (Verheye, 2017). Assumingly, the opportunities provided by the distributed ledger and nonfungible tokens (further – NFT) technologies should be introduced into these processes even today, as this opens broad opportunities for optimizing the activity of state authorities, improving the quality of state services and optimizing budget expenses.

A number of scholars point out certain problems associated with the risks of "tokenization" and "blockchainization" of private law (Savelyev, 2018). One of the actual and prospective issues is the potential opportunity to substitute the existing mechanism of transferring the property rights with new coded rules, used within the distributed ledger and digital tokens technologies. However, in this regard, there is a grave need for qualitative definition of the legal nature of such tokens and elaboration of regulatory legislation in the sphere of property digitalization (Ishmaev, 2017; Vasilevskaya, 2019). We believe NFT technologies can be rather successfully applied here.

Another interesting and disputable question is extrapolation of contract and property relations to smart contracts, which may lead, according to some authors, to the beginning of the end of the "classical" contract law (Savelyev, 2017). At the same time, some researchers believe that the choice of which technology to use for implementation of one's rights and obligations should be left to citizens and they should have an opportunity to use both classical concepts of contract law and modern ones, implemented through cryptographic algorithms (Konashevych, 2020). We completely agree with that, at least, under the conditions of the current transitional period.

The above and many other questions constitute a serious challenge for contemporary and future legislators and academic community, which consists in the need for profound

[9] "Law on DFA caused disappointment". Jurists on the problems of cryptocurrencies regulation. (2021, January 25). *rbc.ru*. https://www.rbc.ru/crypto/news/600eba6f9a79470a85424efa

analytic conceptualization of the technologies, their legal nature, risks and prospects, as well as in creating, based on this analysis, a relevant, modern and effective legislation, able not only to ease the life of citizens but also to successfully protect their interests.

We believe that this process should unfold stage by stage, in close cooperation between practitioners and theoreticians of law, as well as specialists in the field of information technologies. Although a Federal Law regulating DFA came into force in Russia on January 1, 2021, some questions remained uncovered.

The said legal act regulates the relations associated with using new digital instruments which may significantly influence the Russian financial market. A Russian legislator abstained from complete prohibition of cryptocurrency and digital tokens, as such taboo could have resulted in a substantial development of certain segments of shadow economy. However, within the frameworks of this law, a number of restrictions were stipulated regarding the process of circulation of digital financial assets.

As was mentioned above, to the category of digital financial assets the Russian legislator referred certain rights to possession and operation execution, implemented within an information system complying with the requirements stipulated in legislation. This caused a lot of questions, as it largely contradicts the forming global practice and factual circumstances.

Besides, the expectations were not met that the Law on digital financial assets would regulate the both the process of initial placement of digital financial assets (ICO), and the procedure of issuance and circulation of virtual currency and mining. As for the features of investing using blockchain-based digital instruments, they continue causing disputes in the Russian juridical community (Sarnakov, 2019).

When considering and adopting the Law on digital financial assets, the Central Bank of the Russian Federation, Ministry of Economic Development of the Russian Federation, Federal Agency for Financial Monitoring and Prosecutor General's Office of the Russian Federation, acting, as was mentioned above, initially concordantly, expressed opposing positions in regard to how DFA should be regulated; this gravely hindered the law adoption and resulted in three serious changes in the law draft wording (Emtseva & Morozov, 2018).

Difficulties with adopting the Law on digital financial assets showed that a Russian legislator failed to quickly define was cryptocurrency and DFA are and how to regulate them. At the same time, in the final version of the draft law the legislator marked that the said cryptographic tools exist, but failed to comprehensively explain how they are regulated. Hence, the order of their circulation was largely left without legal regulation.

Meanwhile the fact that cryptocurrency is considered as a potential object of civil rights shows that in the nearest future one should expect the adoption of a normative legal act regulating the order of its using.

As for the digital financial assets called tokens in the cryptographic community, most of the provisions of the said Law are devoted to them and the procedure of their issuance. In this regard, it seems an urgent necessity to study what risks and advantages they have

for the Russian investors and other financial market participants, and whether they correspond to the trends of digital economy development.

Prior the adoption of the said Law, Russian scholars expressed various concerns related to tokens. In particular, they marked that the existing legal regimes of the civil rights' objects might be substituted for the token legal regime (Savelyev, 2018) and emphasized that a problem arises how to define the character of rights to tokens and means of legal protection for their owners (Belykh & Bolobonova, 2019). Besides, certain concerns were expressed regarding difficulties with taxation (Troyanskaya et al., 2020; Grigoriev, 2020).

Thus, adoption of the on digital financial assets determines the need to consider the main provisions of the legislation referring to digital financial assets, its influence on the financial market and investors, and the sphere of financial technologies.

The finally adopted version of the draft law is largely similar to its second version, but contains fewer prohibitions and restrictions applied to the digital tokens circulation. The Russian researchers call this variant a compromise, unlike the previous two (Rozhdestvenskaya & Guznov, 2020). Indeed, many provisions barring DFA legalization were excluded from its text.

Although the adopted approach to regulating DFA and their issuance was generally rather fully reflected in the said normative act, it still has significant drawbacks, in particular, due to the issues of determining the legal status of the instruments under consideration.

According to Article 1 of the said Law, digital financial assets are essentially a certain object existing in the digital form and certifying corporate rights of their owner. This thesis directly follows from part 4 of Article 1 of the Law, according to which the issues of digital tokens issuance, if they certify the rights to securities, are subsidiarily regulated by Federal Law of April 22, 1996 No. 39-FZ "On securities market"[10] taking into account the features stipulated by the Law on digital financial assets.

From the above it is obvious that in the Law on digital financial assets the definition of digital financial assets stems from the notion of token inferred in the cryptographic community, but significantly narrows it. Besides, the law does not stipulate dividing digital financial assets into various types depending on their purpose. This does not account for the actual situation, within which investment, raw materials, utility, hybrid and other types of tokens exist. While investment tokens confirm the right to participate in a company management, utility tokens do not possess this quality and only confirm the right to a certain item (service) or a discount. Both types of tokens cardinally differ from each other; hence, they require different approaches to regulating their issuance and circulation.

[10] "On securities market" No. 39-FZ of 22.04.1996. (1996). *Collection of legislation of the Russian Federation*, 17, Article 1918.

At the same time, hybrid digital financial assets (the Law on digital financial assets does not directly stipulate but implies the possibility of their issuance) are digital rights comprising DFA and other digital rights. In other words, hybrid DFA have signs of both digital financial assets and utilitarian digital right.

In connection with this, adoption of a single procedure of issuance and accounting of all digital assets in a single mechanism makes doubtful the possibility of legal circulation of certain types of tokens in Russia. This step of a Russian legislator cannot be estimated as positive. We assume it is appropriate to demarcate between types of tokens, as differences in their purposes determine the different order of their circulation and use, which also needs legal regulation in order to eliminate the probable controversies and to form clear mechanisms of issuance and circulation of the respective assets.

Thus, the Law on digital financial assets does not contain a clear, complying with the modern realities, definition of tokens, does not reveal their actual properties. It just lists the rights which the tokens may conform. We believe this situation is a serious gap in legislation and will not promote clearance in the sphere of legal regulation of digital technologies. In this connection, a Russian legislator should make amendments in the law or issue a special clarification, which would allow distinguishing between various types of digital financial rights.

Stemming from clause 5 of Article 1 of the Law on digital financial assets, Russian legislation is applied to initial token placement (ICO). This rule is applied even when digital tokens are issued with participation of foreign legal persons. Such legal stipulation confirms the dominion of the Russian legislation, which cannot be called an excessive restriction. It corresponds to the international trends referring to ICO.

For example, in Singapore, which is justly recognized as one of the leaders in digitalization, clause 339 of the Law on securities and futures stipulates that, in case a Singapore citizen purchases digital tokens, Singapore legislation is applied exterritorialy to a foreign operator of the platform where such digital tokens are placed (Gorian, 2020). Hence, the persons executing ICO and located outside Singapore must have a respective license, issued by a competent body of that state. Such approach ensures a legal basis for legal prosecution of platform operators regardless of their location and the place of crime. Thus, exterritorial application of the Russian legislation to the persons executing ICO in Russia can be estimated as positive, but the competent bodies should provide official clarifications for the foreign organizations attracting the funds of Russian investors to understand the consequences of activity in Russia.

Also, it is necessary to decide how ICO will be regulated if the Russian legislation contradicts to the foreign one. These issues are extremely important and must be solved when elaborating the regulatory legislation in pursuance of Federal Law of July 31, 2020 No. 259-FZ “On digital financial assets, digital currency and making changes in certain legislative acts of the Russian Federation”. We believe, if a token is initially issued

in the Russian segment by a person located within the Russian jurisdiction, the Russian legal regulation must be prioritized.

Articles 2, 3, and 15 of the Law on digital financial assets stipulate the ICO rules. Thus, ICO can be performed solely by a nonpublic joint stock company. At the same time, only a licensed organization may register the issuance of tokens and keep records of operations performed with them. This requirement is aimed at protecting the rights of investors and maintaining the stability of the stock market.

ICO can be carried out only based on the decision complying with the requirements of Article 3 of the Law on digital financial assets. In particular, a decision on issuance of digital financial assets must contain information on the emitter of digital tokens; information on the type of rights certified by tokens, number and price of tokens, and the means of their payment; information on the operator of the information system in which digital financial assets are issued, etc.

Although the list of information which must be reflected in the decision on this issue is rather broad, the Central Bank of Russia is entitled to set additional requirements to the decision on issuance of digital financial assets. This demonstrates its key role in issuing by-laws in the sphere of digital financial assets.

Given that the placement of tokens takes occurs in a digital environment, a legislator stipulated the requirement that the decision on DFA issuance must be signed with an enhanced qualified electronic signature and placed on the website of emitter and operator of the information system. This provision of law allows guaranteeing that the decision on tokens issuance actually comes from a person entitled to do it.

Analyzing of the provisions of the Law on digital financial assets and comparing them with the rules of shares issuance allows concluding that the Russian legislation has maximally approximated the ICO rules to the way shares are issued. As it clearly stems from the Law, the Russian approach to DFA is analogous to the approach to securities regulation (Alekseenko, 2020). It is not a russian invention. For example, in Singapore, according to the Law on securities and futures, a token is viewed as a digital expression of a security. Other countries also have an experience of applying the legislation on securities to tokens.

Adoption of the Law on digital financial assets in Russia is one of the most important events in the country. It will help to draw a significant segment of digital economy out of the shadow. Despite the striving, manifested in 2018, to maintain balance between the total control and “anarchy” in legal relations associated with digital assets, a legislator still opted for stricter control. This was done to protect the rights of investors, but at the same time to protect the state interests in the financial sector. The state, by strictly establishing control over the circulation of digital financial assets, will, on the one hand, reduce its risks, and on the other hand, will manage to provide judicial protection to the deceived investors. Meanwhile, the feasibility of the methods chosen in Russia to regulate the activity of ICO operators still causes doubts. The adopted rules provide more advantages to large investment banks and IT companies. This may negatively influence the development of start-ups.

3. Prospects of development of legal regulation of digital financial assets in the Russian Federation

After the adoption of the Federal Law of July 31, 2020 No. 259-FZ, the Federal Taxation Service (further – FTS of Russia) proposed to make respective amendments into the Taxation Code of the Russian Federation. Upon the anvil, the draft law was repeatedly criticizes by experts in the field of finance, but ultimately the amendments to the respective legislation were approved in the first reading by the State Duma of the Russian Federation in February 2021.

One of the proposals by FTS of Russia was introduction of a tax on cryptocurrency, as it was officially equaled to property assets. Also, FTS of Russia considers it necessary to oblige all citizens possessing DFA and other cryptoassets to notify about the execution of transactions exceeding 600 thousand rubles. It is proposed to fine for delay in submitting this information – 10 % of the sum of transactions executed, and 40 % for evading taxes on cryptocurrencies. FTS of Russia proposed that these notifications are made prior to April 30 of the respective year.

In turn, Ministry of Finance of the Russian Federation started elaborating amendments to the Russian Criminal Code: repeated evasion of taxes by the results of the said activity was proposed to be fined, punished with compulsory labor, and in some cases with incarceration, if the sum of operation executed during three years is large or especially large. However, many of the issues and questions considered were not fully implemented so far.

Notably, although the Federal Law of July 31, 2020 No. 259-FZ laid the bases of regulating the digital financial sector, it is far from perfect. This is due to the fact that today there is no answer to the question, what physical and legal persons should do for the investments into cryptocurrencies and DFA or operations with cryptocurrencies and DFA not to bear substantial risks related to violation of legislation.

On the positive side, one should mention that the said law demarcates such notions as digital currencies and digital financial assets. The notion of digital currencies, stipulated by the law, largely corresponds to the classical approach to the definition of cryptocurrencies, that is, coins emitted an independent blockchain. At that, a legislator marks that with regard to the digital currencies, representing a set of electronic data contained in the information system, there is no person obliged to any owner of such electronic data. At the same time, digital financial assets, as was mentioned above, are by definition closer to cryptographic tokens (just partially, though), which, in turn, function on the basis of the existing blockchains of individual cryptocurrencies. This allows making a conclusion that the said Law distinguishes between cryptocurrencies, like Bitcoin or Ethereum, and digital financial assets, like DAI token, functioning within the Ethereum blockchain ecosystem, or TRC-20, using the blockchain of a Tron digital currency. This approach largely corresponds to the modern cryptographic realities, and

we consider it expedient to continue developing the Russian legislation through the prism of this position.

At the same time, the Law contains blanket norms, according to which the legal regulation of digital currencies' circulation is carried out in compliance with federal legislation. However, such federal legislation has not been so far adopted in the established order. This is explained both by the existing difficulties in determining the effective approaches to legislative regulation of cryptocurrencies, and by the need to maintain the balance between the interests of the state controlling the financial flows taking place in its territory and the users, who are attracted to cryptocurrencies by the absence of an external authoritative regulator. As a result, in the territory of the Russian Federation no restrictions or special conditions are stipulated for acquisition and selling of cryptocurrency, except specific cases listed in special legislation or internal departmental instructions. For example, according to Information Letter by the Russian Ministry of Labor of December 16, 2020 No. 18-2/10/B-12085[11], officials and the staff of security agencies are not allowed to buy and sell cryptocurrency.

Another problem is certain aspects related to regulating the activity of exchange systems and digital stock exchanges. Assumingly, the law defines them as "operators of exchange of digital financial assets", and this definition generally correlates with the existing approach to defining crypto stock exchanges and crypto exchange offices. At the same time, there are still unanswered questions, whether foreign exchange platforms and system are recognized in the territory of the Russian Federation, what the order of operators' licensing is, as well as jurisdictional interaction and regulation of liability for the violation of users' right.

Similar questions arise regarding the order of emitting digital currencies and digital financial assets. Certain aspects associated with counteraction to money laundering, distribution of drugs, corruption crimes are stipulated in special legislation. However, the general order of licensing the emitters of cryptocurrencies and tokens in the territory of the Russian Federation is not established, which creates difficulties in providing the due level of protection of the rights of citizens and participants of the digital assets' circulation.

The described problems open up a wide range of promising directions of development both for the Russian legislation and for digitalization of various aspects of social life, as well as increasing the efficiency of interaction between the citizens and the state.

Besides the above-mentioned, such directions include improving interaction and reaching the balance between large banking institutions and small and middle-sized finance-credit organizations. The specificity of digital transactions today is that small companies and physical persons can take an active part in them. However, large finance-credit organizations

[11] Letter by the Russian Ministry of Labor No. 18-2/10/B-12085 of December 16, 2020. https://mintrud.gov.ru/docs/mintrud/employment/62

are most often well-equipped with qualified staff and technical devices, enabling them to pursue a more aggressive market policy, establish exorbitant prices to their services, oust other participants of the financial services sector. However, as the practice of emergence and development of cryptocurrencies shows, there is currently an urgent need in the society to reduce dependence on external regulators, including by distributing liability among a large number of market participants in order to decrease the level of influence of large actors on economy both in the private segment and at the global level.

At that, it is important to maintain the balance which would allows the state, in the person of authorized executive bodies, including the Central Bank of the Russian Federation, to provide sustainability of a large amount of relatively disjoint digital financial ecosystems and to control their activity without restricting their development. Solution of these tasks is considered to be an extremely complicated but important prospective direction of the development of the digital financial assets market in Russia. The efficient implementation of this task largely determines the future of the country, and given the current political realities, also the possibility of survival of certain sectors of economy.

Based on the above, we may conclude that the further effective functioning and development of the state requires both specifying certain legislative acts and elaborating, actually from inception, a broad range of normative regulation of the new spheres of digital transformation of the society. The key in this process will be not only a balance of the system constructed but also efficiency of reducing the risks of data leakage and unauthorized access to the broadening private digital world.

Conclusion

Thus, the legislation novel in the sphere of DFA introduces substantial restriction, but at the same time opens certain opportunities for developing business in operations with digital financial assets. Analysis has shown that the terminology used in the Law on digital financial assets does not always correspond to the concepts and standards established in the international legal and business practice, as well as to modern realities.

The transition from the traditional system of financial services rendering to the digital one offers a lot of opportunities for both large actors and promising startups to work with financial organizations and assets. However, the reverse side is that the global financial market is entered by large technological companies, which receive more and more instruments to broaden their influence in the global market. This generates a number of risks and barriers, among which of primary importance are the risks of economic sectors monopolization. At the same time, the digital transformation becomes a part of objective reality and its pace is not likely to slow down in the nearest future, including in the territory of the Russian Federation.

Moreover, the current geopolitical realities create serious grounds for a Russian legislator paying more attention to the said technologies, allow considering them to be a means of strategic maneuvering, lifting the sanction pressure on the economy and unblocking

certain financial processes, implementing seamless payments for goods and services supplied by foreign partners, and fulfilling the contracted debts.

This is reflected in the decisions made recently. For example, on September 13, 2022, Chairman of the Government M. V. Mishustin tasked the Ministry of Finance of the Russian Federation, the Central Bank of the Russian Federation and other departments in follow-up of the strategic session of August 30, devoted to the country's financial development. The tasks include a large block of instructions regarding the development of digital currencies and digital financial assets. Up to December 1, 2022, the Ministry of Finance in cooperation with the Central Bank must submit coordinated proposals on developing the digital financial assets market in the country, including the use of decentralized technologies, and taking these proposals into account, implement a complex of measures to improve the Russian legislation in 2023.

Based on the above, allows concluding that the issues of legal regulation of digital financial assets will be substantially reviewed and broadened in the nearest future. However, we believe that for these changes to be really effective and reflect the modern trends, they must be implemented in cooperation with respective specialists and representatives of the academic community, engaged in the analysis of the issues of a legal status of blockchain technology and digital tools created on its basis.

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Генезис и перспективы развития правового регулирования цифровых финансовых активов в Российской Федерации

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Ключевые слова

Блокчейн,
законодательство,
криптовалюта,
право,
правовое регулирование,
распределенный реестр,
токен,
цифровые права,
цифровые технологии,
цифровые финансовые активы

Аннотация

Цель: исследование существующих проблем и перспективных направлений правового регулирования цифровых финансовых активов как относительно нового инструмента современной цифровой экономики.

Методы: методологической основой работы выступает совокупность методов научного познания, таких как теоретический анализ, исследование, сопоставление, синтез, а также обобщения научной литературы.

Результаты: в работе рассмотрены существующие подходы к правовому регулированию цифровых финансовых активов в Российской Федерации и отдельных зарубежных странах, выявлены существующие пробелы отечественного законодательства в области обращения цифровых финансовых активов, дана оценка перспективам развития правового регулирования указанных инструментов и сформированы предложения по его совершенствованию. Кроме того, в процессе исследования проанализированы подходы к правовому регулированию цифровых валют и цифровых финансовых активов, принятые в ряде иностранных государств, рассмотрены тенденции и отражены положительные и отрицательные моменты использования криптографических алгоритмов для целей экономической и юридической сфер глобальной экономики.

Научная новизна: в рамках работы рассмотрены актуальные вопросы законодательного регулирования такого относительно нового явления, как цифровые финансовые активы. Проанализированы позиции отечественных и иностранных ученых-правоведов относительно существующих проблем и рисков, связанных с «токенизацией»

и «блокчейнизацией» частного права. Помимо этого, в процессе исследования автор статьи приходит к выводу о существовании значительных пробелов в существующем подходе правового регулирования цифровых финансовых активов, указывает на них и предлагает отдельные механизмы решения данных проблем.

Практическая значимость: обусловлена несовершенством существующего законодательства в сфере регулирования отношений, возникающих в процессе использования технологий, базирующихся на базе распределенного реестра, в том числе цифровых финансовых активов. Исследование данных проблем позволяет оценить риски, рассмотреть существующие пути преодоления и разрешения возникающих дискуссионных вопросов. Кроме того, полученные в результате исследования выводы можно использовать для совершенствования отечественного законодательства, а также в учебной литературе, посвященной актуальным вопросам развития цифрового законодательства.

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