

## FIRST PIECE OF RUSSIAN CRYPTO LEGISLATION BECOMES EFFECTIVE

On 1 October 2019, the bill amending the Civil Code (the "**Amendment Law**") entered into effect, which gave express recognition to certain categories of crypto-assets (digital rights) and smart contracts in the Russian legal system, and has created a basic legal framework for crypto-assets in Russia.

### Digital Rights

The Amendment Law expressly recognises "digital rights" as a legitimate category of assets in Russia. "Digital rights" are defined as contractual and other rights, in each case specified as such by law, the essence and the conditions of exercise of which are determined by the rules of an information system that meets requirements specified by law. The exercise and disposal of digital rights are possible only within such information system and without recourse to a third party.

This definition suggests that a potentially exhaustive list of crypto-assets recognised as "digital rights" and related information systems (such as blockchain) is likely to be set out in crypto-specific laws to be adopted in the future. To this end, the options available to legislators range from basic eligibility criteria to a list of specifically eligible crypto-assets.

Under the Amendment Law, digital rights appear to be equivalent to "tokens" representing claims for an asset or utility. The first of the crypto-specific laws that has been adopted under the framework of the Amendment Law regulates crowdfunding with effect from 1 January 2020, follows this approach and provides for the issuance of "digital utility rights", being the rights to request delivery of tangible assets, transfer of exclusive rights or provision of services.

The concept of "digital money" (i.e. payment tokens) has been omitted from the Amendment Law, primarily on the basis that both the Russian Constitution and the Civil Code provide that the Rouble is the only legal tender in Russia. On the other hand, one may argue that the wording of the Amendment Law is flexible enough to provide for payment tokens in further crypto-specific laws.

### Smart Contracts

Under the Amendment Law, the requirement for a transaction to be executed in written form is deemed satisfied if such a transaction has been entered into using electronic or other technical means:

#### Key issues

- Certain types of crypto-assets and smart contracts have become part of the Russian legal system
- Further legislation will define what types of crypto-assets and related information systems (such as blockchain) are outside the grey area
- Smart contracts will have to meet certain statutory requirements

- which permit the terms of the transaction to be reproduced intact on a tangible medium; and
- which allow for accurate identification of the person who expressed the will to enter into the transaction.

The Amendment Law further provides that, in some circumstances, contractual obligations can be self-executed by technical means and without a separate expression of the parties' will.

The Amendment Law is silent on whether the entirety of the terms of the transaction must be capable of being reproduced on a tangible medium, or whether a print out of the code would suffice. However, on the face of it, Russian legislation seems to shift toward the former, and adhere to "automated performance" rather than "code is contract" school of thought.

The accurate identification requirement will also have to be clarified further, taking into account the recent draft law on digital profile and identification introduced by the Ministry of Digital Development, Communications and Mass Media.

## **What's Next?**

As noted above, the Amendment Law has recognized crypto-assets as a legal concept, but detailed regulations will be required to commercialize the use of crypto-assets in Russia. These laws should, among other things, clarify Russia's approach to:

- Permission-less blockchains and mining business;
- Crypto-exchanges and custody of crypto-assets in Russia, including applicable licensing, AML/CFT and data protection requirements;
- ICOs, STOs, IEOs etc. targeted at Russian investors, as well as any applicable financial promotion and marketing restrictions;
- The tax and accounting regime applicable to crypto-assets and related business activities in Russia.

The Amendment Law is an important step towards the creation of a full-fledged regulatory framework for digital assets in Russia, as it signals Russia's willingness to legitimize the use of crypto-assets, but the true success of Russia in the digital space will depend, among other things, on how flexible and balanced the upcoming crypto-regulations will be.

## CONTACTS



**Alexander Anichkin**  
Partner

**T** +7 495 258 5050  
**E** alexander.anichkin  
@cliffordchance.com



**Evgeny Soloviev**  
Counsel

**T** +7 495 258 5050  
**E** evgeny.soloviev  
@cliffordchance.com



**Ekaterina Makarova**  
Senior Associate

**T** +7 495 258 5050  
**E** ekaterina.makarova  
@cliffordchance.com



**Vitaly Koloskov**  
Senior Associate

**T** +7 495 258 5050  
**E** vitaly.koloskov  
@cliffordchance.com

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