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**DIGITAL FINANCIAL ASSETS AND DIGITAL CURRENCY IN
THE RUSSIAN LEGAL FIELD**

M. N. Zubkova (a)*

*Corresponding author

(a) Samara State University of Economics, Soviet Army Str., 141, Samara, Russia, zubkova_maria@mail.ru

Abstract

This article is devoted to the research and analysis of such instruments of the global financial market as digital financial assets and digital currency (cryptocurrency). At the moment, it is quite obvious that digital financial assets and cryptocurrencies represent a relatively new tool of the financial market, because their value does not depend on the amount of labor invested, as is typical for traditional goods and services. Moreover, since digital assets and cryptocurrencies are still new phenomena in the world of finance, their interpretation often causes some difficulties. These terms are often confused, considering, for example, cryptocurrency as a digital asset, although these products have significant differences. In particular, digital rights may apply to monetary claims, equity securities, and participation in legal entities. The main advantage of a digital financial asset is that all operations with them can be carried out remotely. A digital currency is a set of electronic data (a digital code or designation) in an information system. An important and significant aspect of the functioning of all digital assets and currencies is their legal regulation, the lack of the ability of states to control the circulation and storage of cryptocurrency, making it part of the shadow economy. It is used as a mean for money laundering, terrorism financing, illegal business activities and other crimes. In early 2021, a law will come into force that will legalize transactions with digital financial assets and partially legalize operations with cryptocurrency.

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1. Introduction

Federal Law of 31 July 2020 N 259-FZ "On Digital Financial Assets, Digital Currency and on Amending Certain Legislative Acts of the Russian Federation" recognizes digital financial assets as digital rights, including cash requirements, the possibility of exercising the rights on securities, rights of participation in the capital of private joint-stock companies, the right to demand transfer of securities provided for by the decision on issue of digital financial assets, issue, registration and circulation of which is possible only by making (changes) of records in an information system based on a distributed registry as well as in other information systems.

Digital currency is a set of electronic data (or digital code) contained in the information system offered and (or) possibly adopted as a means of payment, which is non-monetary unit of the Russian Federation, the monetary unit of a foreign state and (or) international monetary or charge unit, and (or) as an investments and against which there is no person who is required in front of each owner of such electronic data. Except for the operator and (or) knots of the information system obliged to only ensure the order of release of electronic data and implementation in their relation of action for the introduction (change) of records in an information system by its rules.

Digital financial assets are subject to accounting in the information system in which they are issued. The operator of the information system in which the issue of digital financial assets is carried out may be a legal entity whose personal law is Russian law, including credit institutions, a person who has the right to carry out depository activities, as well as a person who has a license of a trade organizer.

The operator of the information system in which the issue of digital financial assets is carried out is obliged to provide:

- the possibility of restoring the access of the owner of digital financial assets to the records of the information system at the request of the owner of digital financial assets, if such access was lost by them;
- uninterrupted and continuous operation of the information system, including the availability and proper functioning of redundant (backup) technological and operational means that ensure the uninterrupted and continuous operation of the information system;
- integrity and reliability of information about digital financial assets contained in the records of the information system;
- the correctness of the implementation in the information system of established by the operator information system algorithm (algorithms) to create, store and update information contained in a distributed registry, and the algorithm (algorithms), providing the identity of the specified information of all databases that comprise a distributed registry, and the impossibility of any change in the established by the operator the information system algorithm (algorithms) by other persons – for information systems based on a distributed registry.

The operator of the information system in which the issue of digital financial assets is carried out is obliged, in accordance with civil law, to compensate for losses to users of this information system that have arisen as a result of:

- loss of information stored in the information system about the volume of digital financial assets owned by their owners, and (or) about the owners of digital financial assets themselves;

- failures in the operation of information technologies and technical means of the information system;
- providing users of the information system with unreliable, incomplete and (or) misleading information about the information system, about the rules of operation of the information system and about the operator of the information system;
- violation by the operator of the information system of information system operating rules, including violations of the requirements of the smooth and uninterrupted functioning of the information system.

The transactions of buy and sell of digital financial assets, other transactions related to digital financial assets, including exchange of digital financial assets of the same kind on digital of financial assets or other kind of digital rights provided by law, including transactions with digital financial assets, issued in an information system, organized in accordance with foreign law, and also deals with digital rights encompassing both digital of financial assets and other digital rights are performed through the exchange operator of digital financial assets, which provides transactions with digital of financial assets through the collection and comparison of divergent applications for these transactions either by participating for its own account in a transaction with digital financial assets as a party to such transaction in the interests of third parties. As for the legal status of the operator of the exchange of digital financial assets, credit organizations, trade organizers, as well as other legal entities that meet the requirements of the law can act as such. The operator of the exchange of digital financial assets has the right to carry out its activities from the moment of inclusion in the register of operators of the exchange of digital financial assets.

The operator of the exchange of digital financial assets should approve the rules for the exchange of digital financial assets, which should be agreed with the Bank of Russia. Rules for the exchange of digital financial assets should contain:

- procedure for making transactions with digital financial assets through the digital financial asset exchange operator,
- types of digital financial assets, digital rights (if any), transactions with which can be made through the operator of the exchange of digital financial assets,
- interaction between exchange operator of digital financial assets with operators of information systems, in which the release of digital financial assets (except for cases of combining the activities of the exchange operator of digital financial assets with the activities of the relevant operator of the information system in which the output of digital financial assets is implemented),
 - requirements for information security and operational reliability,
 - an indication on cases in which obligations under transactions with digital financial assets are fulfilled upon the occurrence of certain circumstances without the separately expressed additional will of its parties aimed at fulfilling the obligations, including the will of the operator of the exchange of digital financial assets.

Organization of issue of digital currency in the Russian Federation is an activity on rendering of services aimed at ensuring the release of the digital currency with the use of domain names and network addresses in the national domain zone, and information systems, technical means which are located on the

territory of the Russian Federation, and complexes of software and hardware means located on the territory of the Russian Federation, i.e. using only objects of the Russian information infrastructure.

The issue of digital currency in the Russian Federation is associated with the implementation of actions using objects of the Russian information infrastructure or user equipment located on the territory of the Russian Federation, which are aimed at providing opportunities for the use of digital currency by third parties. Organization of digital currency circulation in the Russian Federation is an activity related to the provision of services that are aimed at ensuring the execution of civil law transactions or operations that entail the transfer of digital currency from one owner to another, using the objects of the Russian information infrastructure.

Legal entities whose personal law is Russian law, branches, representative offices and other separate subdivisions of international organizations and foreign legal entities, companies and other corporate entities with civil legal capacity established on the territory of the Russian Federation, individuals who are actually in the Russian Federation for at least 183 days within 12 consecutive months, are not entitled to accept digital currency as a counter-provision for goods transferred, works performed, services rendered or any other method that allows them to assume payment of digital currency for goods (works, services). In addition, the Russian Federation prohibits the dissemination of information about the offer and acceptance of digital currency as a counter-provision for goods transferred, works performed, services rendered, or any other method that allows assuming payment in digital currency of goods.

2. Problem Statement

In the current financial and economic conditions of worsening global crisis, when we observe how the population and economic agents lose confidence in traditional bank institutions and in conditions of volatility growth of foreign exchange transactions, increasingly important and popular are the modern electronic monetary system. The most well-known electronic currency bitcoin is protected in a cryptographic coding system, and therefore it has received a common name-cryptocurrency. Bitcoin was launched as the first "cryptocurrency", a term used to refer to a "digital representation of value" working with distributed ledger technology (DLT). Commonly known as "blockchain," DLT has been the subject of study in various legal disciplines that seek to understand its financial and legal consequences (Munoz, 2020).

Cryptocurrency mining is very active and rapidly developing. This area of entrepreneurship attracts more and more modern entrepreneurs, as well as a very large intellectual resource. Innovative and technological financial instruments inspire individuals and experienced investors to explore a wider range of investments and therefore diversify their portfolios. Moving beyond traditional portfolios and developing modern strategies that correspond to ever-changing financial and technological advancements is key to long-term sustainability (Ma et al., 2020). In recent years, the so-called placement of new cryptocurrencies or ICO (Initial Coin Offering) has become particularly popular and widespread as a way of investing. It began to be used by analogy with the IPO (Initial Public Offering). Taking into account the fact that at the moment there is a variety of approaches to new electronic systems in international financial turnover, the author made an attempt to assess the legal status of such elements of the digital economy as digital financial assets and digital currency from the point of view of national legislation.

3. Research Questions

The analysis of the impact of digital rights and digital civil turnover on the development of civil and business relations, as well as the development of effective legal mechanisms for the most optimal use of digital technologies in the process of adapting the modern legal system and its institutions to the today needs is one of the most important and urgent tasks of modern science. Within the framework of this global task, it is necessary to study a number of individual issues. Firstly, it is necessary to analyze the features of legal regulation of the sphere of modern digital technologies. Secondly, to consider the features of legal regulation of the emergence and exchange of digital financial assets and digital currency. Thirdly, to study the conditions and procedure for concluding transactions made with the help of electronic and other technical means. Fourthly, it is necessary to study the features of the legal status of entities that have the right to issue and record digital financial assets and digital currency, in particular to the issue operators and exchange operators of these objects. And, fifthly, it is necessary to analyze possible restrictions on the issue of these assets and transactions with them, as well as the reasons for such restrictions.

4. Purpose of the Study

The use of the latest digital technologies in connection with the strategic orientation of the global and domestic development of the digital economy, digitalization of various fields of activity has led to an increasing scientific interest in general theoretical and scientific-practical research. Studies in the field of legal regulation of property turnover, digital technologies and digital rights is no exception. Modern perspectives of law development is largely related to the use of digital technologies in the sphere of property relations and are determined primarily by the realization of the effectiveness of models of legal regulation of digital rights and opportunities for a speedy introduction of digital assets in the economic turnover (Kartskhia, 2019). At the moment, the legal doctrine does not have a single conceptual approach to the legal regulation of property relations arising from the content of digital financial assets and digital currency. As well as legal relations related to the exercise of rights to these objects, methods of disposal, restrictions on turnover, subjects of such legal relations. One of the goals of this paper is to analyze the main features of the legal regulation of digital assets and cryptocurrencies. In addition, the aim was to study the key aspects of the legal regulation of relations connected to the disposal of digital assets, that is, the implementation of the opportunities that they provide.

5. Research Methods

A number of methods have been used in the study and analysis of the research questions. First of all, the method of comparative law was used. The essence of this method is that for the study of this issue, an analysis of the legal regulation of similar legal relations is applied. When applying this method, not only the essence of a certain legal relationship is studied, but first of all, the reasons for its appearance in a certain legal system are analyzed. In addition, this method provides an opportunity to explore forms and stages development of the legal relations under consideration. As a result, we can distinguish common, universal traits, as well as specific characteristic traits of the relations under study. The author also used the method of integrated analysis which allows, in the process of studying a certain legal institution, to be

applied on an equal basis with legal instruments, including others used in other branches of science. This is especially relevant in the light of the study of digital financial assets and digital currency, since these legal relations are inextricably linked with economic science. In addition to special research methods, general formal logical methods were also used. In particular, methods such as analysis, synthesis and generalization were used.

6. Findings

The main difference between transactions with digital financial assets and transactions with ordinary objects is the need to conclude them exclusively through the operator of the exchange of digital financial assets. At the same time, the exchange operator itself has the right to participate in such operations as one of the parties, but acting in the interests of another person. Credit institutions, trade organizers and other legal entities that meet the requirements can obtain the status of an exchange operator. But the operator of the issue of digital assets can only be credit organizations, depositories and trade organizers. An important condition – they must all be included by the Central Bank of the Russian Federation in the relevant registers of operators administered by the Central Bank of the Russian Federation. In addition, the law imposes certain requirements for the qualifications and business reputation of the head and officials of such organizations.

Any transaction related to digital financial assets will be fully converted to electronic format. Therefore, for example, to conclude a contract for the buy and sell of shares, you will need to perform the following legally significant actions:

- to put up an offer, that is, offer the seller to conclude a deal,
- to accept the offer, that is, the buyer must accept the offer to conclude a transaction.

The essential terms of the contract in this case will be the price, name and number of shares, as well as the registration number (a digital code that identifies a specific issue of securities). If the contract will provide for payment by installments, then you should also specify the order, terms and amounts of payments. The law also officially introduces the concept of digital currency – a set of electronic data (digital code or designation) in an information system. That is, de facto, the digital currency will be equated with cryptocurrency, although this term is not used in the law. In this regard, we should note the fact that currently not all states have an officially fixed in their legislation cryptocurrency. And even fewer countries, such as Germany, allow the use of digital currency as a means of payment for goods purchased or services rendered, and completely exempt such transactions from paying taxes.

From January 1, 2021, cryptocurrency in Russia can also act as the subject of transactions. It will be possible to buy, sell, issue, exchange and perform other investment operations with it. But at the same time, the digital currency, as before, will not be recognized as a monetary unit, in other words, it will not be possible to pay for goods or services using it. This ban will apply to both domestic organizations and divisions of foreign companies in Russia and on Russian tax residents, that is, individuals who stay on the territory of the Russian Federation for more than 183 days a year. Also, this law does not allow the dissemination of information that is advertising in nature regarding the offer or purchase of digital currency as a means of payment.

7. Conclusion

So, the law will allow transactions with cryptocurrency, as well as use it for savings and investments. However, it will still not be possible to use it as a payment. Advertising of payments with digital money is also prohibited. These rules will come into force on January 1, 2021. What causes such restrictions? Firstly, traditional means of payment, issued by the Central Bank, are provided with all the assets of the state, are managed by it, and therefore the value of the national currency, as well as its stability and purchasing power, can be predicted. Secondly, it is necessary to take into account the high risks associated with the use of such assets in criminal, primarily fraudulent schemes (Xia et al., 2020). The digital currency, or so-called coins, unfortunately does not have these qualities. This is due to the fact that it does not have an issue center at all, or this center does not have sufficient assets for unconditional liability to any person who presented the coin for payment.

Another important issue is the taxation of transactions with digital assets and digital currency. In particular, it is proposed to impose income tax on: firstly, the income that an individual receives in cryptocurrency and transfers to rubles; secondly, the increase in the value of the cryptocurrency caused by a change in its market rate as a legal payment currency. As for companies operating in the field of mining and turnover of cryptocurrency, this tax can be imposed on mining farms, stock exchanges and investment funds—all business structures that profit from any operations with cryptocurrency (Krivtsov, 2020). Thus, transactions with digital financial assets for legal entities will be subject to income tax of 13% and VAT (value added tax) of 20%, while only 13% of income tax will be applied to individuals. However, there is an exception – these are transactions for the alienation of digital financial assets, in cases where they represent the right to shares in the authorized capital of a joint-stock company, as well as to equity securities and derivative financial instruments (Zubkova, 2021). In the case of such transactions, legal entities and individuals should be spared from the need to pay taxes.

A similar situation will occur in the case of transactions with digital currency. These transactions are subject to taxation - income tax in respect of legal entities and personal income tax, the rate is the same-13%. As for criminal and administrative liability for illegal transactions with digital currency, the current legislation does not contain such norms, however, it is planned to make appropriate changes. Thus, the Ministry of Finance proposed to establish administrative responsibility for illegal actions with digital financial assets (Federal Law (Draft) “On Amendments to the Code of Administrative Offenses of the Russian Federation”), as well as criminal liability for violation of the use of digital financial assets, digital currency and digital rights (Federal Law (Draft) “On Amendments to the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation”). It is assumed that all amendments will also have to come into force on January 1, 2021, simultaneously with the law.

Thus, it should be noted that despite the categorical attitude from the state towards the question of legalization of money substitutes in the form of cryptocurrency in Russia and multiple attempts to ban the functioning of money substitutes such as payment instrument, comprehensive information in regard to the question of the boundaries scale of permitted activities of reporting tool of cash settlement does not exist. Given the above, the problem of functioning of monetary surrogates in the form of cryptocurrency along with eligible means of payment today should be recognized as very relevant (Kuptsova, 2020).

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