

Digital rights as a consequence of the digital transformation of law

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Abstract. The article focuses on digital law and its analysis, as well as discloses its properties, features of the origin and growth of digital financial assets. Herewith, the author draws attention to the following. He believes that the fundamental legislative component today is the introduction of digital rights, presented in the form of a new object of civil law. In the author's work, attention is paid to various theoretical legal and civil law nuances of the innovation under consideration. Moreover, the author comes to the conclusion that digital rights are a different way of realizing current rights, which open up new boundaries for individuals and legal entities. However, they require more detailed legislative regulation.

1 Introduction

The rapid strengthening of digital products, their proliferation in everyday life and business have led to the irrelevance of the current civil legislation, which does not correspond to economic realities, especially in the digital environment. The global network is gradually strengthening the marketplace for digital objects: trading in digital currencies, accounts, etc. Blockchain technologies, digital investment platforms, smart contracts, and other rapidly developing new products and the associated economic impacts have not been so large-scale until today, and their control was carried out selectively and chaotically, i.e. there is currently soil for the development of some risks [1, p. 4-18].

Large-scale changes have affected both the legal and economic spheres. Thus, the state began to support the digitalization of the economy, and businessmen and experts use the term "digitalization of an enterprise". In addition, citizens do not miss the opportunity to use digital public services. That is, the society is gradually "digitized".

Consequently, the use of a new term in civil law becomes a criterion for the inevitable involvement of digital products in the economic industry, as well as in state and social life. Thus, the legislation, as a regulator of social relations, has to regulate these relations, which have stepped far ahead [2, p. 103-109].

Therefore, the addition of one of the important state documents of the Civil Code of the Russian Federation has become an important action in the current law enforcement practice. This action makes it possible to establish a fundamental framework that also ensures the

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implementation of state priorities in the direction of digitalization, economic informatization and public administration. Taking into account these innovations, the term "digital rights" is also being considered, as well as the changes that are associated with them.

2 Material and methods

Since the beginning of October 2019, Federal Law No. 34-FZ "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation", drawn up on March 18, 2019 (hereinafter - Federal Law 34-FZ, Civil Code of the Russian Federation, respectively) has gained legal force ... The term "digital rights" acquires a special role for the Civil Code.

These rights, pursuant to Article 1 (paragraph 2) of Federal Law 34-FZ, supplementing Article 128 of the Russian Civil Code, have become a type of property rights. The term itself is described in article 141.1 of the Civil Code of Russia.

Digital rights mean the named obligations or other rights to digital assets, the conditions and essence of which are determined pursuant to the requirements of an information system that meets the characteristics established by law.

The rules applied to digital rights are similar to the rules prescribed for the parties to civil legal relations (e.g., they are alienated, transferred to other persons in the order of succession). In addition, these rights prove the right to property objects and at the same time are a set of digital data. Violated civil rights and interests that are the subject of a digital rights agreement are subject to judicial protection.

To date, there are:

- Utilitarian digital rights. The term was introduced by Federal Law No. 259-FZ dated 02.08.2019 "On attracting investments using investment platforms ..." (hereinafter - the Federal Law "On attracting investments using investment platforms ..."), which is effective from 01.01.2020.

- Other digital rights.

Within the framework of the information system, without the involvement of third parties, the rights of individuals to digital rights are implemented, including a pledge, encumbrances of these rights in other ways, the transfer of these rights or the establishment of any restrictions on their disposal.

The owner of a digital right is considered to be a subject that has the right to dispose of this right within the information system. In addition, for other reasons (specified in legislative acts), the owner of the digital right may be another person.

The contractual transfer of this right does not require the approval of the person obligated under such digital right.

Consequently, the new term was legislatively enshrined "obligations and other rights", which are associated with the regulations of the information system. Moreover, digital rights received legislative regulation in a separate regulatory legal act.

3 Results

Pursuant to the Federal Law "On attracting investments using investment platforms ...", in particular, in Art. 8 describes some "utilitarian digital rights":

- the right to demand the transfer of a thing (things);
- the right to demand the transfer of exclusive rights to the results of intellectual activity and/or the rights to use the results of intellectual activity;
- the right to demand the performance of work and/or the provision of services.

It is not difficult to see that this piece of legislation assigns utilitarian rights to rights of claim. If certain rights arose within the framework of digital rights under the initial transaction for the acquisition of utilitarian digital rights carried out using an investment platform (information system pursuant to the terminology of Act 34-FZ), then these rights are also recognized as utilitarian digital rights.

An important characteristic of digital rights under Federal Law 34-FZ can be considered that their implementation, as well as the restriction of the order, is carried out only in the information system without the involvement of third parties. Ultimately, the exercise of digital rights is directly related to the use by the parties of such rights of the information system (i.e. the corresponding investment platform) [3, p. 123-127].

Federal Law 34-FZ on digital rights, supplementing Art. 141.1 of the Civil Code of Russia, regulated that the implementation of these rights, their area of distribution and traffic features are regulated by the relevant federal laws.

Digital rights operate within an information platform (the so-called distributed ledger). That is, their transition (transfer, exchange, transition in the order of succession and other status changes) is made only by making entries in the information system (a kind of digital rights center).

Digital law, we correspond to the concept of "token", is a code, the possession of which creates specified opportunities on network platforms and is determined by the following features (Article 141.1 of the Civil Code of Russia):

- the owner of a digital right is a subject who has the ability to exercise them and dispose of them, unless another rule is established by law;
- these rights are specified in the law as digital rights;
- disposal of rights (transfer, pledge, encumbrance, etc.) is possible only within the framework of the information system;
- the debtor's consent to the transfer of digital rights under the transaction is not required;
- the criterion of the negotiability of digital rights is applied (i.e. they are similar to the rules for buying and selling) [4, p. 35-49].

The United States is the first country to actively use digital rights, tokens and cryptocurrency. During the next wave of the 2008 economic crisis, the banking system began to lose its credibility and, as a result, many American banks went bankrupt. So, the population has a need to turn to non-bank storage facilities for accumulated funds. It was at that time that the technology "BlockChain" and the digital currency "Bitcoin" appeared [5, p. 36]. "BlockChain" includes a special register of information flows intended for accounting of assets, recording transactions and control of units of account (cryptocurrency, tokens). The existence of a technological product is done through mining. This process is understood as the reproduction of transactional chains that are closely interconnected and dependent on each other. These chains of transactions are able to move, duplicate within the blockchain mechanism. The above register operates on the principle of Excel tables (moving from where to where, indicators of quantity, volume and other data). It is within the mining systems that such registries are distributed, and their owners (miners) receive compensation in the form of cryptocurrency for supporting the performance of BlockChain.

Bitcoin (BTC) is the first digital currency. At first, bitcoins were not backed by anything. Users understood by Bitcoin certain digital pseudo-money that could not be used as a payment instrument. Along with this, the demand for this cryptocurrency began to appear. Thus, a new direction of the digital economy began to emerge, where digital currency was used for the functioning of blockchain networks with the signing of smart contracts, as well as the creation of investment flows, on line lending, etc. The described technological products created a stable demand for a new cryptocurrency, while Bitcoin began to gain popularity among users of digital technologies [6, p. 77].

The relevance of the cryptocurrency was due to the fact that individuals and legal entities had a dilemma of choosing between fiat money controlled by the state and a new digital currency limited only by Blockchain technology. Interest in digital currency has provoked the growth of cryptocurrency exchanges and the emergence of other cryptocurrencies. In the future, a favorable environment is created for the digital currency to become a means of payment. Herewith, the token also consolidates its position - a special type of innovative digital asset, secured by a tangible asset and sold through the ICO (Initial Coin Offering) [7, p. 330]. There is a similarity here with IPO (Initial Publishing Offering) - increasing investment resources through the sale of shares. Today, tokens exist in a special digital format of absolute rights, so they are able to require the issuing party to fulfill their obligations. From the perspective of the legislator, tokens are similar to digital rights [8, p. 11]. Token (as a type of cryptocurrency) is not a form of fiat money, but rather a method of securing absolute rights to force issuers to fulfill their obligations.

Token properties are similar to bill of exchange properties. However, one should point out their main differences:

- the form of the token is always digital, and the form of the bill is material, i.e. the paper medium is meant;

- the drawer should pay a certain amount through the period specified in the bill; in the case of a token, a fixed amount should be paid or an alternative option should be chosen. This can be the transfer of rights to property, the provision of certain works or services, the right to vote, etc.

- currently, a token is considered more convenient, reliable and practical than a bill of exchange.

Today there are three types of tokens:

- 1) a token is a stock. In fact, it is no different from a classic stock. Such a token provides its owner with all the rights to participate in the activities of the organization by voting at the meeting, as well as to receive dividends, etc. As an example, we can say that the owner of DigixDao receives funds from transactions in the Digix Network Gold environment;

- 2) utilitarian. This implies that the holder of such a token has the right to demand from the issuer the provision of certain services. He/she is also assigned the right to obtain property rights and access to certain resources. As an example, we can say that the owner of Siacoin can use Sia cloud storage;

- 3) credit. In this case, the owners of such tokens can demand money or generic things, but only on appropriate conditions [9, p. 64].

In modern realities, Blockchain technologies are widely used at the state level. They make it possible to apply modern information technologies in any field of activity. In particular, in the social, economic, regulatory, and security areas. Their implementation is aimed at increasing the level of safety and well-being of the country's citizens, and the efficient development of statehood.

It should be noted that there are countries in which tokens, smart contracts, Blockchain and cryptocurrency are prohibited. These include: China, Germany, Estonia, Nepal and others [10, p. 15]. However, a very positive aspect can be considered the fact that the evolution of the cryptocurrency market in our country makes it possible to effectively resolve issues related to challenging the legality of concluded transactions. Moreover, it allows to provide high protection of token holders from fraud, to prevent various criminal actions during the use of digital rights. It is also planned in the future to replace the material (paper) form of securities with a digital one.

Pursuant to Art. 128 of the Civil Code of the Russian Federation, tokens are property rights. The domestic legislator emphasizes that digital rights are any rights that can be designated using a token. It is a digital code or password that is used and applied at certain investment sites. In other words, digital rights are called tokens in the Blockchain.

The federal law "On attracting investments using investment platforms ..." establishes a number of rules for assets that can be provided with tokens. Before this law was adopted, the issuer was not limited by anything in the methods of collateral. In paragraph 2 of Art. 8 of the Law separately stipulates that not all digital rights are utilitarian. For instance, these do not include: - the right to claim property rights, which are subject to registration in the state register; - the right to claim a property right if transactions with it should be certified by a notary or go through the state registration procedure [11, p. 105].

4 Conclusion

Based on all of the above, we can conclude that recently in modern civil law there is an increasing number of studies devoted to the legal regulation of the digital economy. It is really actively developing. However, the trends and features of its development have not yet been fully studied. At the moment, fundamentally new relationships are being formed in the digital economy that have not been practiced before. Such relationships require appropriate regulation in the legal paradigm, including in the field of digital law. That is, currently it is very important to determine which vectors of development of the legal system will be formed, which sectors and institutions of law can change, and which ones need to be formed. It is also important to predict the priorities of the policy under consideration in this area. The listed vectors will appear in every branch of the legal system, will affect all legal topics, including the digitalization of law.

Among other things, we note that digital technologies are fundamentally changing social institutions, communications, and relationships. They also give impetus to the transition to a digital economy, the emergence of new structures of government. In fact, today it is impossible to imagine planning for economic, cultural and political development apart from digitalization. It is important to take these processes into account in the legal industry as well.

The considered digital rights in civil law create optimal conditions for transactions to be made through the Global Network. They also ensure the security of transactions with digital assets for legal entities and individuals.

Finally, it should be pointed out that digital assets should not be perceived as an unfavorable factor and a threat to the well-established world outlook. They are an efficient alternative to the rights that already exist, while opening up new perspectives for subjects of civil legal relations. In particular, they make it possible to perform money transfers (including interstate ones) in the shortest possible time, with minimal commissions. In addition, such assets provide access to foreign business. They also provide an opportunity to attract foreign investors and receive international loans. All of this remains problematic for the traditional banking system. In other words, digital rights are modern tools that can significantly accelerate globalization processes.

This paper explored the positive aspects of the creation and development of digital rights. Along with this, there are negative aspects from the introduction of such assets into modern entrepreneurship. It should be remembered that a distinctive feature of BlockChain technologies is their decentralization, therefore, it is not possible to restrict the movement of tokens and ensure control by the state. At the moment, there is no answer to the question of how to prevent the leakage of financial assets abroad. Today, domestic civil legislation deals with the regulation of ensuring the protection of property rights of token holders.

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