

Regulation of cross-border payments that use cryptocurrencies and Russian or foreign digital financial assets

For the attention of those involved in foreign trade activity and professional players of the market of digital financial assets

Pepeliaev Group advises that regulation has changed of digital currencies¹, and of digital financial assets (DFAs), and that experimental legal regimes have been established in the area of digital innovations in the financial market.

The Russian President has signed laws which amend certain items of Russian legislation on matters connected with the regulation of digital currencies and experimental legal regimes being established in the area of digital innovations in the financial market².

These laws (except for certain provisions) should come into effect on 1 September 2024 and 19 August 2024 respectively.

Payments using cryptocurrencies³

Similarly to the rule which was previously established for Russian DFAs, it is directly provided that it will be possible to use digital ("crypto") currencies as a payment instrument in foreign trade transactions, but only if the Bank of Russia establishes a corresponding experimental legal regime (an "ELR"). Such transactions do not include loan agreements.

¹ So-called cryptocurrencies.

² Federal Law No. 223-FZ "On amending certain items of the legislation of the Russian Federation" dated 8 August 2024 and Federal Law No. 221-FZ "On amending certain items of the legislation of the Russian Federation" dated 8 August 2024.

³ The amended items include Federal Law No. 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia)" dated 10 July 2002, Federal Law No. 173-FZ "On currency regulation and control" dated 10 December 2003, Federal Law No. 161-FZ "On the national payment system" dated 27 June 2011, Federal Law No. 325-FZ "On organised bidding" dated 21 November 2011, Federal Law No. 258-FZ "On experimental legal regimes in the area of digital innovations in the Russian Federation" dated 31 July 2020 and Federal Law No. 259-FZ "On digital financial assets, digital currencies and on amending certain items of Russian legislation" dated 31 July 2020.

Pepeliaev Group's Comment

Please be reminded that an ELR is a regime introduced by an authorised body for a specific area of digital innovations which dismisses the general rules of regulation and replaces them with special rules⁴. In particular, an ELR may be introduced for the financial market, including for the use of digital currencies.

The Bank of Russia should determine the conditions for the corresponding ELR to operate, including the number of participants, rights and obligations of the participants, the authorised organisation through which payments will be effected⁵, limits on the amounts of transactions and so on. The Bank of Russia must agree the conditions of the ELR with the Ministry of Finance, the FSB and the Russian Federal Financial Monitoring Service.

Additionally, in the framework of an ELR, possibilities are created for:

- exchange trading of digital currencies as a commodity. In particular, compliance criteria are defined for organisers of such trading;
- the application being changed or cancelled of certain provisions of Federal Law No. 173-FZ "On currency regulation and currency control" dated 10 December 2003;
- special regulation in the framework of legislation on the national payment system which differs from the regulation provided for by the corresponding Federal Law⁶. Also, requirements are established for how the operator of an electronic platform provides services connected with payments under transactions effected using the electronic platform.

Payments in digital currencies under transactions between residents remain restricted.

The application of the new regulation in cross-border payments is pending the Bank of Russia's issuance of the corresponding regulatory acts.

Circulation of DFAs⁷

⁴ Federal Law No. 258-FZ "On experimental legal regimes in the area of digital innovations in the Russian Federation" dated 31 July 2020.

⁵ No such organisation has yet been appointed.

⁶ Federal Law No. 161-FZ "On the national payment system" dated 27 June 2011.

⁷ The amended item is Federal Law No. 259-FZ "On digital financial assets, digital currencies and on amending certain items of Russian legislation" dated 31 July 2020.

The concept has been introduced of “foreign digital rights” which includes rights under an obligation and other rights (other than foreign securities) which are issued, recorded and circulated in any information system organised under any law other than Russian law.

Foreign digital rights are permitted to circulate in Russia as DFAs, including any digital rights that include both DFAs and other digital rights (“hybrid” digital rights), provided that the operator of the information system in which DFAs are issued classifies the foreign digital rights as such.

Under the general rule, foreign DFAs may not be bought by individuals who are Russian citizens unless a regulatory instrument of the Bank of Russia provides otherwise.

Pepeliaev Group's Comment

We believe that the restriction on Russian nationals buying foreign DFAs applies to purchases of them in the Russian information system in which DFAs are issued. The extension of such restriction to the possibility of buying foreign DFAs in the corresponding foreign digital systems is a subject for discussion and may require additional clarifications of the regulator.

Also, a possibility is provided for Russian DFAs to be credited to an account of a foreign nominal holder which would be obliged to disclose to the operator of the information system information about the clients it provides services to. DFAs that belong to a foreign nominal holder are protected from forfeiture under its liabilities.

The Bank of Russia may establish additional restrictions and requirements for the circulation of foreign DFAs in Russia and Russian DFAs abroad.

The Bank of Russia has published⁸ a draft instruction where it sets out its requirements for foreign companies that may operate as nominal holders of digital financial assets. Among other things, a foreign nominal holder should have, under its personal law, a right to perform, for the benefit of third parties, record keeping and the transfer of rights to securities and/or property which are/is issued, recorded and/or circulated using an information system

⁸ <https://cbr.ru/Queries/XsltBlock/File/90538/5310>

organised based on blockchain technology, or should have a right to dispose of such assets for the benefit of third parties.

What to think about and what to do

We recommend all those involved in foreign trade to stay updated on what regulatory instruments the Bank of Russia issues.

The possibility should be considered of becoming a participant in an ELR to use digital currencies in cross-border payments. If you already use digital currencies and DFAs in payments, this should be made consistent with the new regulation.

Help from your adviser

Pepeliaev Group's experts have deep expertise in different matters connected with the regulation of digital financial assets, digital currencies and international payments that use them, including currency regulation and currency control aspects.

We will be happy to provide comprehensive legal assistance with any matters connected with the purchase and use of digital rights and DFAs in your business activity.

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