

ARTICLES

FINTECH & NEW DIGITAL INSTRUMENTS. POST-CRISIS DEVELOPMENTS: RUSSIA AND EUROPE

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Abstract

The article examines 2020 post-crisis results and 2021 trends in FinTech regulation development. FinTech, being a relatively new term, has become a completely new industry, which combines rapidly developing technologies and financial products (including digital assets) or services. The year 2020, despite the pandemic and localization (and maybe even more so), seems as significant, if not more so, for market change and further development. The world has changed, and new technologies are vital for successful competition among financial players and even for their survival. Most of the leading international financial centers have focused on regulating FinTech and the use of innovations in classic highly regulated areas. In the article we address the pros and cons of technology regulation and make a comparative analysis of the leading revolutionary trends.

The most revolutionary developments have appeared in smaller European countries, which the leaders are forced to follow. Law harmonization has become a natural step forward for Europe to regulate blockchain businesses and to agree on terminology and risk prevention measures for innovation support. The research examines the development and regulation of FinTech in such jurisdictions as Switzerland, Malta, Liechtenstein, Gibraltar and the United States. The approach is interdisciplinary, linking Russian legal norms, applicable rules, and expected results. The main methods used in the research are analysis, comparative-legal, and formal-legal methods.

Keywords

FinTech, post-crisis regulation, financial sector, blockchain, digital assets, Russia, EU, Switzerland

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СТАТЬИ

FINTECH И НОВЫЕ ЦИФРОВЫЕ СРЕДСТВА. ПОСТКРИЗИСНОЕ РАЗВИТИЕ: РОССИЯ И ЕВРОПА

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Аннотация

В статье исследуются последствия кризиса 2020 года и тенденции развития регулирования FinTech 2021 года. FinTech, являясь относительно новым термином, стал совершенно новой отраслью, которая сочетает в себе быстро развивающиеся технологии и финансовые продукты (в том числе цифровые активы) или услуги. 2020 год, несмотря на пандемию и локализацию (а может быть благодаря пандемии), представляется столь же значительным, если не более значительным, для изменения рынка и его дальнейшего развития. Мир изменился, и новые технологии имеют жизненно важное значение для успешной конкуренции между финансовыми игроками, и даже для их выживания. Большинство ведущих международных финансовых центров сосредоточилось на регулировании FinTech и использовании инноваций в классических высоко регулируемых областях. В статье мы рассматриваем плюсы и минусы регулирования технологий и проводим сравнительный анализ развивающихся тенденций.

Наиболее революционные тенденции проявились в небольших европейских странах, за которыми лидеры вынуждены следовать. Гармонизация законодательства стала для Европы естественным шагом вперед в регулировании блокчейн бизнеса, и согласовании терминологии и мер по предотвращению рисков для поддержки инноваций. В статье рассматривается развитие и регулирование FinTech в таких юрисдикциях, как Швейцария, Мальта, Лихтенштейн, Гибралтар и Соединенные Штаты.

Подход является междисциплинарным, увязывающим российские правовые нормы, применимые правила и ожидаемые результаты. Основными методами, используемыми в исследовании, являются аналитический, сравнительно-правовой и формально-юридический методы.

Ключевые слова

FinTech, посткризисное регулирование, финансовый сектор, блокчейн, цифровые активы, Россия, ЕС, Швейцария

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Introduction

FinTech, being a relatively new term, has become a whole new industry that combines rapidly developing technology (blockchain, artificial intelligence (AI) and machine learning, Internet of things (IoT), big data, etc.) and financial products (including digital assets) or services. Considering this issue in the context of the current situation and post-crisis results analysis, it would be useful to revert to previous experience, specifically the year 2008. Apparently, the crisis then gave rise to new FinTech products and projects, an innovation initiative, and the renewal of banking, insurance, payment systems, lending, and other activities in the financial world (Arner et al., 2016).

2020, despite (or maybe even more due to) the pandemic and lockdown, seems to be as significant – if not even more so – for the market change and further development. The world has changed, and new technologies are vital for successful competition between and even the survival of financial players.

Most leading international financial centers have paid a lot of attention to regulation of FinTech, largely as a special block – blockchain and digital assets, accordingly, and the use of innovation in the classic highly regulated areas. The regulatory update has been welcomed in light of the social and economic impact of the financial crisis. The experiences of reasonable regulators over recent years (2017–2020) support legal improvements in this regards; for example, blockchain related projects in Switzerland or Singapore have resulted in the market revival, new local and foreign investments, and new international collaboration opportunities too.

Analysis of the Current FinTech State. The “Pulse of FinTech” Trends

This year’s crisis has shown the great need for cooperation and the legal grounds for this, as well as a harmonization of standards and procedures in the financial world, alongside other such matters. The European Union Commission has recently announced its goal to complete its work on digital finance, in particular, to introduce a clear definition for cryptocurrency into European law. As the Commission Executive Vice President Valdis Dombrovskis highlighted

this June, a “lack of legal certainty is often cited as the main barrier to developing a sound crypto-asset market in the EU. This is a good chance for Europe to strengthen its international standing and to become a global standard-setter, with European companies leading new technologies for digital finance”¹

The outcome of the 2019 consultation held by the Commission for experts around Europe was a “non-paper”² with clear priorities:

- Definitions for all types of crypto, including stablecoins and security tokens.
- Changes to the markets in Financial Instruments Directive II (“MiFID II” Directive 2014/65/EU)³ to include crypto assets.
- A regime for blockchain-based platforms.

Many important players, such as PayPal or Google, have made their contributions. Bruno Schneider Le-Saout, the President of the Blockchain Federation (Brussels), has named the upcoming legislation as “historic”⁴

Among the pioneers of new local regulatory developments within the EU have been Malta and Liechtenstein, as examples, but the rules then were valid only for a single country territory; now, the whole EU market should be covered. The pandemic outburst has only proven the importance of new efficient cross-border mechanisms, new technology implementation, and common international standards and rules. The regulation of financial markets is probably one of the most difficult to change, especially requiring various considerations of political and economic interests. Some retrospective references to previous post-crisis measures have been used to understand the efficiency of the new measures to be taken. The cross-jurisdictional comparative analysis may demonstrate the most successful regulatory solutions in specific FinTech areas or mechanisms for the general development of the economy, e.g., sandboxes and experimental legal regimes (Allen, 2020). Such work may assist in the unification and harmonization of international approaches and the setting of the best practices and common standards for financial technology regulation that can “open a new era in FinTech” (Arner et al., 2016).

Russia has been comparatively active in FinTech and the digitalization of its economy (though the success in different financial spheres of technology application is not the same). The National Digital Economy Programme⁵ has been introduced, covering the main goals for several years. The crisis has definitely had a serious impact on these plans. The state and regional budgets for new technology projects are being cut and the resources redistributed to healthcare and support of the most affected businesses. Together with that, enhancing and updating the legal framework becomes even more important for the economic recovery and new investments in technology. Such work will

¹ European Commission. (2020, June 23). *Speech by Executive Vice-President Valdis Dombrovskis at the Digital Finance Outreach 2020 closing conference*. https://ec.europa.eu/commission/commissioners/2019-2024/dombrovskis/announcements/speech-executive-vice-president-valdis-dombrovskis-digital-finance-outreach-2020-closing-conference_en

² For more information see: Houben, R., & Snyers, A. (2020). *Crypto-assets. Key developments, regulatory concerns and responses (Study)*. Luxembourg: European Parliament. [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648779/IPOL_STU\(2020\)648779_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/648779/IPOL_STU(2020)648779_EN.pdf)

³ European Commission. (2014). *Markets in financial instruments directive (MiFID II)*. https://ec.europa.eu/info/law/markets-financial-instruments-mifid-ii-directive-2014-65-eu_en

⁴ Reynaldo, M. (2020, August 20). *Europe to introduce “historic” legislation for Bitcoin and cryptocurrencies in autumn*. <https://www.crypto-news-flash.com/europe-to-introduce-historic-legislation-for-bitcoin-and-cryptocurrencies-in-autumn/>

⁵ *Natsional'naya programma “Tsfrovaya ekonomika Rossiyskoy Federatsii” [The National Digital Economy Program of the Russian Federation]*. (2019). This includes the current normative regulation of digital industry.

be continued intensively in 2020 and beyond. Three important acts regulating blockchain related matters and new financial assets have been a subject of debate for at least a couple of years, and this year has brought the long-awaited results. The new, and as-yet outstanding, regulation will be discussed further.

The main part of this article addresses in more detail the specific area of financial sector regulation — blockchain based or digital financial assets, crypto currencies, and new investment platforms involving digital assets — and the impact of new regulation on the market development (based on the Russian example).

New FinTech & Blockchain Related Country Regulation: Licensing Regimes

After the financial crisis of 2008, banks were also forced to comply with the Basel III⁶, the Dodd-Frank Act⁷, and other similar requirements, which led to increased costs. Competition with efficient FinTech firms has forced banks to go online, introducing different services to their customers and trying to reduce high operational expenses to cope with payment startups. Slow regulatory changes and huge institutional players with internal procedures and rules are unable to regulate this promptly changing area with a lot of relatively small players. Accordingly, this has been an obstacle for development and raising investment for technology and FinTech startups. From an industry perspective and from a regulatory perspective alike, a change in attitude is needed towards how FinTech should be regulated. From this point of view, the examples of Switzerland, Liechtenstein, Gibraltar, and Malta are remarkably interesting.

Often, new FinTech regulation concerns the use of DLT or new financial assets built on and transferred via blockchain. In this article we are only giving a couple of examples and will be following up with further articles and a more in-depth comparative analysis of all leading jurisdictions (UK or the USA, Singapore, some CIS countries, and more).

Gibraltar

Gibraltar, a British overseas territory, was the first jurisdiction that implemented special FinTech regulatory legislation. By passing the Financial Services (Distributed Ledger Technology or DLT) Regulations 2017⁸, entered into force from 01 January 2018, the Gibraltar Financial Services Commission (GFSC) became the standard-setter body, licensing any person (legal entity), in or from Gibraltar, that uses DLT for storing or transmitting value belonging to others (Lifshits, 2016). There are three classes of DLT licenses in Gibraltar, based on the complexity of the matter — Malta came out later, but has gone further with a more structured approach to legislation (as described below).

The Republic of Malta

The Maltese legal framework governing the FinTech industry consists of three main laws, namely:

⁶ Basel III is a global regulatory framework on bank capital adequacy, liquidity risks, stress testing. (2019, November 19). <https://www.bis.org/bcbs/basel3.htm>

⁷ The Dodd-Frank Act is a complex bill that put strict regulation on the US financial industry and created programs to stop mortgage companies and lenders from taking advantage of consumers. (2010). <https://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm>

⁸ HM Government of Gibraltar. (2020, September 17). *The British Overseas Territory Gibraltar. Distributed ledger technology regulations — 631/2020*. <https://www.gibraltar.gov.gi/press-releases/gibraltar-regulator-refreshes-jurisdictions-distributed-ledger-technology-regulation-6312020-6206>

- The Innovative Technology Arrangements and Services Act (ITAS)⁹;
- The Malta Digital Innovation Authority Act (MDIA)¹⁰;
- The Virtual Financial Assets Act (VFAA).¹¹

It has to be mentioned that the Malta Financial Services Authority plays a significant role in the process of “lawmaking” by issuing its FinTech guidelines.

Licensing issues are regulated by the VFAA. One of the salient features which determines the applicability of the VFAA is the *type of asset* which the operator would be dealing with. Through the application of the Financial Instrument Test, a DLT asset (i.e. a cryptocurrency) will be classified as either a virtual token, a financial instrument, e-money, or a virtual financial asset. In this regard, it has to be mentioned that the EU Directives and Regulations on markets in financial instruments, e-money, payment services, and anti-money laundering are additionally applicable; this, despite Maltese laws not applying and local licenses not being valid throughout the EU. The same applies, for example, to Gibraltar (not being formally part of the EU).

The provision of the following services in or from within Malta, in relation to a DLT asset which has been determined to be a virtual financial asset in terms of VFAA, requires a license to regulate one of the following services: the reception & transmission of orders; the execution of orders on behalf of other persons; custody or nominee services; portfolio management; dealing on one’s own account; investment advice; placing virtual financial assets; operations of a VFA exchange. In order to provide these services, it is needed to obtain a license. There are four types of “FinTech licenses”: *VFAA Class 1 to 4* (depending on the activity itself).

The Virtual Financial Assets Act establishes the application procedure and the requirements that the service providers shall meet in order to be granted a license, including – but not limited to – organizational requirements, financial requirements, operational requirements and anti-money laundering (AML), combating the financing of terrorism (CFT), and cybersecurity related requirements.¹² The VFAA license will only cover services with respect to virtual financial assets. If a particular asset is classified as a financial instrument, then any service provided in relation thereto would require prior authorization under traditional financial services legislation (including placement).

The Principality of Liechtenstein

Liechtenstein is also amongst the world’s first jurisdictions to pass a specialized “Blockchain Act”¹³ The new Blockchain Act applies to all trustworthy technology service providers (instead of just using the term “blockchain” or “distributed ledger technology”, the term “trustworthy technology or TT” is used). From 01 January 2020 (from the date when this law entered into force) the following services on a professional basis in Liechtenstein must register with the Financial Market Authority of Liechtenstein (FMA): *token issuers; token generators; TT Key Depositaries and TT Token Depositaries*.

Generally, the law clearly defines the end scope of services that should be registered (licensed) by the Liechtenstein’s FMA. In addition to the aforementioned services, other TT services can be

⁹ The Innovative Technology Arrangements and Services Act (ITAS). (2018).

¹⁰ The Malta Digital Innovation Authority Act (MDIA). (2018).

¹¹ The Virtual Financial Assets Act (VFAA). (2018).

¹² Malta Financial Services Authority. (n.d.). *Virtual Financial Assets*. <https://www.mfsa.mt/fintech/virtual-financial-assets/#legislativeRegulatoryFramework>

¹³ Originally, the Token and TT-Service Provider Act (the so-called Blockchain Act) was adopted by the Liechtenstein’s Parliament on October 3, 2019. https://www.regierung.li/media/medienarchiv/950_6_04_11_2019_TVTVG_english.pdf?t=1

mentioned: TT Protectors and Physical Validators; TT Exchange Service Providers; TT Verifying Authorities; and TT Price and Identity Service Providers.¹⁴ The Blockchain Act aims to improve investor protection, combat money laundering, and establish legal certainty in regulating blockchain projects.

The Swiss Confederation

The Swiss legal framework governing the activities of traditional banking (financial) services and FinTech firms consists of federal acts, implementing ordinances, a number of circulars, and guidance from the Financial Market Supervisory Authority (FINMA). More specifically, under the recent amendments to the Banking Act 2019, a new “FinTech license” has entered into force.¹⁵ FinTech related companies came into conflict with the Banking Act, as the acceptance of deposits from the public requires a banking license. Since the Banking Act places high demands regarding the granting of licenses, the banking license is a considerable barrier to market entry for FinTech companies.

The Swiss FinTech model now creates opportunities for all market participants, whether established financial service providers or startup companies. FINMA takes a fundamentally neutral stance towards new business models and technologies, and considers innovation as an important factor for the competitiveness of the Swiss financial market. At the same time, the Swiss standard-setter pays close attention to prudential and conduct supervision.¹⁶ Switzerland’s model is based on several core elements that are briefly described below.

- A FinTech license allows non-banking companies to accept deposits from the public and not conduct any lending business with maturity transformation or interest payments.
- The conditions to be fulfilled for obtaining a FinTech license are lower than for traditional banks¹⁷; deposits may not exceed a value of CHF 100 mln. and may not be reinvested; the minimum capital shall always be 3 % of the total amount of deposits held, but not less than CHF 300 000.
- A legal entity pursuant to Art. 1b of the Banking Act 2019 is subject to supervision by FINMA and must have certain requirements audited by an auditing company.

These requirements allow FinTech firms to successfully set up and compete with classic banks. Indeed, as of 21 April 2020, there is now a registered entity licensed by FINMA pursuant to Art. 1b of the Banking Act 2019¹⁸: Yapeal AG (<https://yapeal.ch/#intro>), the “neobank” registered in Zurich. Yapeal will offer accounts with Swiss IBAN without being tied to an offline bank payment system. With FINMA banking and securities dealer licenses, Sygnum and SEBA (<https://www.seba.swiss/>) banks are other examples of how traditional and innovative banking services can be combined. These “crypto banks” enable professional individuals and companies as well as institutional clients to invest, safely keep, trade, and borrow against digital and traditional assets, all in one space. For Swiss Blockchain companies they provide accounts and custody for fiat and digital assets. In addition, they are trying to issue their own digital currencies (e.g. Sygnum).

In this regard it is interesting how FinTech is regulated in Russia; Accordingly in the following paragraph we will analyze current trends and regulations of FinTech in Russia.

¹⁴ For more details see: Liechtenstein’s FMA. <https://www.fma-li.li/en/fintech-and-tvtg.html>

¹⁵ The Swiss Banking Act. (2019).

¹⁶ Swiss Financial Market Supervisory Authority (FINMA). (n.d.). Reports on key financial market issues. Supervisory reports. <https://www.finma.ch/en/documentation/finma-publications/reports/supervisory-reports/>

¹⁷ The Swiss Banking Act. (2019).

¹⁸ The list of persons licensed by FINMA (FinTech License) can be found on FINMA’s webpage. <https://www.finma.ch/en/search/>

Russian Trends and Regulations

The Russian FinTech market has been growing significantly for the past several years in terms of both the number of deals and the volume of investment.¹⁹ The Central Bank of Russia (CBR) issued “The Main Directions of Financial Technology Development for the Period 2018–2020” (the “Main Directions”) and the road map naming the key technologies. In particular, a blockchain-based platform is envisaged, with the corresponding marketplace having been set up. Various projects have been launched, and several documents enacted accordingly.

The regulation of payment systems has been updated; some examples of this would be Federal Law “On the National Payment System” No. 161-FZ of 27 June 2011 (the “NPS Law”), and Federal Law “On the Central Bank of the Russian Federation” No. 86-FZ of 10 July 2002 (the “CBR Law”), concerning relations between local money transfer operators and international payment services providers, anti-money laundering and some other matters. The localization of foreign services for GDPR reasons remains a hot topic (not all providers may extend their services to Russia properly — e.g. PayPal).

The progress is significant, though the legislation is yet to be updated in order to cope with technological development. The amendments are not always sufficient, and the regulator often takes a conservative approach. Regions are also participating in regulatory development and adopting new acts within the scope of competence. Some regions are very progressive (e.g. Tatarstan, the Moscow Oblast (Region), Kaliningrad), while others are much behind.

Digital Assets, Blockchain

There are three “blockchain” acts regulating this new technology application and use in the financial sector:

- The “*Digital Rights Act*” — Federal Law No. 34-FZ of 18 March 2019 “On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation” (in force as of 01 October 2019);
- The “*Crowdfunding Act*” — Federal Law No. 259-FZ of 02 August 2019 “On Raising Investments Using Investment Platforms and Amendments to Certain Legislative Acts of the Russian Federation” (in force as of 01 January 2020);
- The “*DFA Act*” — Federal Law of 31.07.2020 Nr.259-FZ “On Digital Financial Assets, Cryptocurrency and Amendment of Separate Legal Acts of the Russian Federation (in force as of 01 January 2021).

Existing legal acts relating to issues such as securities markets (most significantly), banking and payment services, advertisement, consumer rights protection, information security, cyber security, and more still apply, working together with the above specific acts. Russia is surprisingly far behind regarding cryptocurrency and digital asset regulation. The first two acts have finally entered into force, but the main act regulating DFA issue and exchange, the DFA Act, governing digital tokens, cryptocurrencies, the circulation of crypto-assets, and market participant activities enters into force on 01 January 2021.

The legal grounds for the regulation of digital or blockchain based assets have been introduced step by step. The first important acknowledgement of a concept of “digital rights” was introduced in spring 2019 by an amendment of the Civil Code. The New Clause 141.1 “Digital Rights” has been introduced. The digital rights definition acknowledged some rights (rights of claim and other rights named in the law as such), if their content and terms of execution were determined by the rules

¹⁹ Agranovskaya, M. (2020, March 2). *FinTech law and practice in Russia*. In *FinTech 2020. Global practice guide*. Cambers and Partners. <https://practiceguides.chambers.com/practice-guides/fintech-2020/russia>

of an information system subject to characteristics provided for in the legislation. Operations and transactions with digital rights are only possible within the information system.

From that point on, reference was even given to the legal act from which the information system definition should be taken (there is more than one such act). The DFA Act has clarified that the definition of information shall be referred to the Federal Law of 27 July 2006 Nr. 149-FZ “On information, information technology and information protection”, just as the “information system operator”. It has to be noted that the definition of “*information*” is very broad, thus giving rise to a collision of the existing term of “digital currency” (limited in turnover as a mean of payment for goods and services) with bonuses, award miles, and the like.

The regulated area will cover only the DFA issue and exchange, and potential candidates may apply for licenses as of next year (with the Central Bank). No cryptocurrency exchanges, nor traders or depositaries, may be regulated yet. What is more, no payments are allowed for now in crypto for goods and services: this remains one of the most disputed areas of the business and the lawmakers.

There have not been any possibilities to receive a license and become a fully regulated player in the legal field for blockchain related businesses, including cryptocurrency exchanges, depositaries, token issuers, miners, or others, not to mention crypto-banks, crypto-funds, or insurance programs, until the year 2020. Many players have been present at the market (e.g., Huobi) through representative offices or operations involving foreign regulated entities run by Russian beneficiaries.

As regards operators of investment platforms, the CBR has already published Instruction No. 5342-U of 04 December 2019 “On the Way of Record Keeping for the Investment Platforms Operators”²⁰ and Instruction No. 5337-U of 02 December 2019 “On Requirements for the Internal Document(s) for Managing Conflicts of Interest of the Investment Platform Operator”.²¹ The theoretical base is there, but many definitions and explanations are absent.

The DFA Act has been a long-awaited subject of hot discussions. The final variant represents only a partial and incomplete set of solutions; the cryptocurrency market has been left out of its scope for now. This autumn the discussions are continuing, but the only aspect known for now is that crypto will not be allowed freely as a means of payment for goods and services. As has already been mentioned, a proper distinction from the digital miles and bonuses or non-documentary securities is for now absent. Together with that, a huge step forward has been made.

Digital assets classification: for now, they are classified (on the basis of all acts that have been enacted) as follows: *digital financial assets (DFA)*; *digital currency*; *utility digital rights (UDR)*.

DFA resemble security tokens when compared to more common divisions in Switzerland and other European countries, as well as Singapore. Their distinction from non-documentary securities is mainly based on the *technology first* principle (not dissimilarly to Malta). Existing securities laws apply, where applicable: in particular, the limitations relating to issues to be distributed to qualified investors. The Central Bank has wide discretion to expand the list of DFA that may only be issued to such investor community.

Digital currency definition is ambiguous and too broad, thus resulting in problems with award miles and e-commerce. It is defined as electronic data (digital code or reference) in an information system that are offered or may be accepted as means of payment subject to Rubles or foreign

²⁰ Ukazaniye Banka Rossii N 5342-U “O poryadke vedeniya reyestra operatorov investitsionnykh platform” [Bank of Russia Ordinance No. 5342-U “On the Procedure for Maintaining the Register of Investment Platform Operators”] (2019).

²¹ Ukazaniye Banka Rossii N 5337-U “O trebovaniyakh k vnutrennemu dokumentu (dokumentam) po upravleniyu konfliktami interesov operatora investitsionnoy platformy” [Bank of Russia Ordinance No. 5337-U “On Requirements for an Internal Document (Documents) for Managing Conflicts of Interest of an Investment Platform Operator”] (2019).

currency, should a person be absent liable to each owner of such data, except for an operator and (or) nodes of the system that are only responsible for the compliance of an issue of such data and entry of operations in the system according to its rules.

UDR are listed in Clause 8 of the Crowdfunding Act. They shall be circulating within the investment platform (being an information system per se):

- The right to claim vindication.
- The right to claim IP rights title transfer or the rights to use such.
- The right to claim that services are conveyed or works are done.

They have to arise within the platform as a digital right initially. Despite the similarity, they are not in practice utility tokens in the common understanding.

Currently the *regulated payers* include operators of investment platforms based on DLT (the Crowdfunding Act); information systems issuing digital financial assets (DFA Act); DFA exchange (DFA Act).

From 01 January, 2021, the issue of a new financial instrument in digital form (the DFA) or their exchange shall be made via the regulated operator. The conflict of the DFA Act with certain provisions of the Federal Law on the Securities Market²² and the Federal Law on Joint-Stock Companies²³ as well as with the Criminal and the Criminal Procedural Codes is obvious (Shashkova, 2019). The Act creates a kind of a surrogate as well of the digital securities market, and requires additional clarification work from the Central Bank.

In addition, it should be noted that CBR launched a sandbox in April 2018 in accordance with the Main Directions for piloting and modelling processes for new financial services and technologies in case the regulation needs amendment. The sandbox should encourage new financial services and technologies such as a system of fast payments, a unified system of biometric identification, and a financial supermarket. Together with this, the Central Bank is still taking a very rigid position as regards cryptocurrencies and their use in electronic commerce. No special licenses or permits have yet been introduced to allow mining or cryptocurrency exchange for Rubles, and the pending amendments to the legislation in discussion are not at their most positive at the moment.

An important new act has been passed: “On Experimental Legal Regimes in the Digital Innovation Field in Russia and on Amendments to Certain Legislative Acts of the Russian Federation”²⁴ (ELD Law). This allows legal sandbox-like exceptions for the new digital technology projects. The CBR is also recognized as the regulatory power for financial innovation. The CBR sandbox and the ELR Law procedures differ; it could be noted that the process and deadlines therein seem rather optimistic (e.g. 85 days for an application processing in general).

The Swiss FINMA example of forming the new legitimate field and attracting investments by reviewing projects on a case-by-case basis could be much more successful for Russia than vertically governed and lengthy legislative processes and their subsequent implementation, especially to cope with rapidly changing technology. Unfortunately, the regulator is not very active in Russia compared to those in Switzerland, Liechtenstein, Singapore, Malta, and other countries.

²² Federal Law on the Securities Market of the Russian Federation. (1996). Retrieved from Bank of Russia website: <https://www.cbr.ru/Content/Document/File/36165/39-FZ.pdf>

²³ Federal Law on Joint-Stock Companies of the Russian Federation. (1995). Retrieved from Bank of Russia website: <http://cbr.ru/Content/Document/File/33657/208-FZ.pdf>

²⁴ Federal'nyy zakon N 258-FZ “Ob eksperimental'nykh pravovykh rezhimakh v sfere tsifrovyykh innovatsiy v Rossiyskoy Federatsii” [Federal Law N 258-FZ “On Experimental Legal Regimes in the Field of Digital Innovation in the Russian Federation”] (2020).

Conclusion

The regulatory field had been poor for good crop until the year 2020. The new area of the financial market has been developing in an almost grey area. Court practice, tax authorities, and regulatory acts have often been contradictory. The regulator has not been actively supporting innovative products and businesses with private addresses for clarification of safe ways to work on the existing legislation basis. FINMA in Switzerland (just to mention the Libra related regulation on stablecoins), FMA in Lichtenstein, MAS in Singapore, and some other regulators have been active in creating the new legal regimes on the basis of the existing acts when working at private addresses: “how to do” approach instead of “we warn you and prohibit it”. In Russia this has not been the case, and few projects have gained support so far, even in the sandbox. Together with that, considering the regulatory sandbox activity and the enactment of new legislation and the active support of the business community, 2021 should prove a breakthrough year. Cryptocurrencies as a method of payment, and the use of DFA in payments as well as mining, however, are (so far) out of the legal field.

The DFA Act has not (as many had expected) created a comprehensive database for the classification and qualification of all digital assets nor a clear system of terminology. The definition of cryptocurrencies referred to above herein allows dangerous terminology competition with air miles, e-commerce certificates, or bonuses. Cryptocurrencies are so far legal but discouraged as a means of payment, while digital financial assets issue and crowdfunding have gained popularity as alternative sources of capital. Some terms do not require extra considerations as they are currently used in international practice. However, other new institutes to be implemented raise conflicts with the currently applied domestic workings — this refers to DFA as a term, for example.

The UDR in the Crowdfunding Act should in theory be commonly accepted utility tokens, but in reality the substance of this is different. Payment tokens do not exist as such; hybrid tokens are only allowed as DFA with other elements. DFA is the security token, whilst some UDRs may also be security tokens as they are described in particular regulations, such as (to give some examples) those issued in the aforementioned countries in Europe, just as in Gibraltar or in Singapore. Integration of this terminology within the global market may be a problem, but, at least, the legal grounds are there to start with.

At the same time, other legal developments relating to digitalization in the Russian Federation are said to be among the highest priorities of the State Duma and the Central Bank, together with other competence centers involved (like Skolkovo). Such directions as new financial instruments, information systems, information security, and transparency of process development are continuing further at full speed in Russia. The COVID-19 crisis — as any other crisis — shall exacerbate the named trends with the facilitation of the Russian political will, which has been highlighted in the Presidential Decree No. 204 of 7 May 2018 “On the National Goals and Strategic Tasks of the Russian Federation Development for the Period until 2024”²⁵, and in the National Digital Economy Programme that includes the current Normative Regulation of the Digital Sphere project. The Central Bank has issued the special road map for these, and the major competence centers, universities, and market players are very enthusiastic supporters of this activity, addressing the State Duma and the House of Parliament Chamber with initiatives via expert groups for specific areas. Political will is expected for further developments.

²⁵ Ukaz Prezidenta Rossiyskoy Federatsii № 204 [The President Decree No. 204] (2018).

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