

## RUSSIAN COURT ISSUED THE FIRST EVER DECREE RECOGNISING CRYPTOCURRENCY AS PROPERTY

On 15 May 2018, the full text of a decree issued by the 9<sup>th</sup> Arbitrazh Appellate Court (the "**Court of Appeal**") in relation to case No. A40-124668/2017 (the "**Decree**") was published. According to the Decree, cryptocurrency is recognised as property within the meaning of the Russian civil law. Thus, while special regulations concerning token and cryptocurrency are still being considered by the Russian State Duma, there is already court practice in place that recognises, based on the general principles and scope of the Russian civil legislation, cryptocurrency as an independent class of assets.

### SUBJECT MATTER OF THE DISPUTE

As part of the proceedings in question (case No. A40-124668/2017), which relate to the bankruptcy of an individual debtor (the "**Debtor**"), the financial administrator has requested that:

- the content of the cryptocurrency wallet (BTC and ETH) is included in the bankruptcy estate of the Debtor; and
- the Debtor provides access to the cryptocurrency wallet to the financial administrator (i.e. provides the password).

### POSITION OF THE COURT OF FIRST INSTANCE

These claims were dismissed under a ruling of the Arbitrazh Court of the City of Moscow (the "**First Instance Court**") dated 5 March 2018 (the "**Ruling**").

When dismissing the claims of the financial administrator, the First Instance Court ruled that:

- Russian law does not provide for a definition, or identify the legal nature, of cryptocurrency and there are no special requirements related to its circulation, which would not allow the provisions that regulate analogous relationships to be applied to cryptocurrency;

- cryptocurrency, according to the First Instance Court, is not an object of civil rights, and it falls beyond the legal framework of the Russian Federation and cryptocurrency transactions cannot be enforced by the state; and
- in the absence of a controlling centre in the cryptocurrency system and given the anonymity around cryptocurrency owners, it is not possible to conclude with certainty that the cryptocurrency in the named wallet belongs to the Debtor.

### POSITION OF THE COURT OF APPEAL

Reversing the Ruling, the Court of Appeal cited the following:

- given the nature of provisions contained in the Civil Code of the Russian Federation (the "**Civil Code**"), the list of objects of civil rights is not exhaustive;
- given the current economic environment and the advancement of technology, the term "other property" referred to in Art. 128 of the Civil Code may be interpreted broadly and may include cryptocurrency as well;
- arguments made by the First Instance Court, namely that provisions regulating analogous relationships cannot be applied to cryptocurrency, contradict Art. 6 of the Civil Code, which provides that where no

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analogous provision can be applied, rights and obligations of the parties shall be determined on the basis of the general principles and scope of the civil legislation (legal analogy) as well as the requirements of good faith, common sense and equity;

- at the time of the hearing, the Russian State Duma was considering a draft law "On Amendments to Part I, Part II and Part IV of the Civil Code of the Russian Federation", which would provide for the introduction of "the Digital Rights" concept in Art. 128 of the Civil Code;
- the case materials prove that the Debtor may, at his own discretion, own, use and dispose of the content of the cryptocurrency wallet as his own property, i.e. may exercise powers similar to those of a property owner, as provided by p. 2, Art. 35 of the Russian Constitution and Art. 209 of the Civil Code; and
- any property of the Debtor of any commercial value to creditors (including cryptocurrency) may not be arbitrarily excluded from the bankruptcy estate, unless otherwise provided by law.

Based on the above, the Court of Appeal held that the content of the cryptocurrency wallet shall be included in the bankruptcy estate of the Debtor and the Debtor shall be bound to provide the financial administrator with access to the wallet (i.e. by providing the password).

## CONCLUSION

This Decree is a landmark case in establishing the status of cryptocurrency amongst objects of civil rights under the Civil Code. For the first time, the Russian court has expressly confirmed that cryptocurrency shall be treated as "other property" within the meaning of Art.128 of the Civil Code, which should remove the uncertainty around its status pending the adoption of special regulations concerning digital financial assets in the Russian Federation. Conclusions made in the Decree may influence both legal relationships in the area of cryptocurrency circulation and other related matters, including taxation of cryptocurrency and its recognition for accounting purposes.

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