

## LEGAL REGULATION OF DIGITAL FINANCIAL ASSETS – REQUIREMENTS FOR THE TRANSFER OF SECURITIES OF A BUSINESS ENTITY

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Introduction. In modern Russia, digital investment technologies are actively developing and legitimized at the level of law enforcement, including for such an economic entity as a non-public joint-stock company. For example, Federal Law “On Digital Financial Assets” establishes several types of digital rights; one of them is the requirement to transfer equity securities. The owner of digital financial assets has the right to demand the transfer of securities to him, which are provided for in the Decision on the issue of digital financial assets acquired earlier. The decision sets the deadline for the transfer of securities to him. The operator of the information system in which digital financial assets were issued provides access to the document on the issue of the relevant securities, as well as information on the pre-emptive right to purchase them, and the procedure for exercising such right. There is also a special feature that digital financial assets can certify the requirement to transfer not any equity securities. As such, only shares of a non-public joint-stock company and equity securities of the same company convertible into its shares are allowed.

Purpose. To investigate the algorithm of legal regulation of digital financial assets certifying the requirement to transfer shares of a non-public joint-stock company, to identify the cause-and-effect relationships of the lack of turnover of these digital requirements in Russia.

Methodology. On the ideological basis of materialistic positivism, general scientific, private scientific, special methods of cognition are used in combination: logic, analysis and synthesis, abstraction, modeling, analogy, induction and deduction, comparison, statistical, formal legal, hermeneutic, etc.

Results. The legislator has identified a type of digital financial assets – digital rights, which simultaneously combine a digital object for investment and a digital certificate of the special rights of their owner (investor) to demand shares of a non-public joint stock company in the future. A particular difficulty lies in the fact that digital financial assets themselves certify the requirements for the counter-provision of equity securities, which in turn certify other rights; an overly cumbersome construction of “rights to rights” is being built. The lack of demand for the design was proved in the course of research, as well as by actual investment practice and the absence of at least one issue of digital financial assets of this type in the 4th year of the said Federal Law. The improvement of investment tools, in its particular case, the studied variety of digital financial assets, should, together with the deep modernization of the domestic financial market, enter into the anti-sanctions legislation emerging in the Russian Federation.

## 1. Introduction

In 2025, non–public joint–stock companies in the Russian Federation, compared with limited liability companies (as of 01.01.2025 – 2544111 persons), operate in 68 times fewer numbers (as of 01.01.2025 – 36965 persons).<sup>1</sup> The absolute accuracy of this information is of little importance for our research, because we agree with Gabov A.V. that there is a problem of timely failure to bring information included in the Unified State Register of Legal Entities in line with actual (changed) life circumstances [1, p. 226]. Also, as noted by the author, we do not include organizations that are formally represented in the register but have ceased their activities in the specified number of companies. [2]

Federal Law No. 208-FZ dated December 26, 1995 "On Joint Stock Companies" (hereinafter referred to as Law No. 208–FZ)<sup>2</sup> in article 7 defines that, provided that non-publicity is reflected in the text of the charter and shares and equity securities convertible into its shares are not placed by open subscription, such a company will be a non–public joint stock company (hereinafter – NPJSC). There are quite wide dispositive possibilities for the formation of the provisions of the articles of association of a NPJSC and the conditions for the adoption of these provisions. In particular, on the pre-emptive right of its shareholders to acquire shares alienated by other shareholders in paid transactions, and on the procedure for exercising such a right; about the price of shares; about the types of transactions for the alienation of these shares; about the proportions when shareholders acquire the alienated shares. The articles of association allows

a NPJSC itself to be given the pre-emptive right to purchase alienated shares if its shareholders have not used this right. The articles of association of a NPJSC may provide for obtaining the consent of shareholders to alienate shares to third parties. The aforementioned law also provides for the legal consequences of failure to obtain consent from shareholders. [3].

According to Article 7 of Law No. 208-FZ, the articles of association of a NPJSC may not include provisions on the pre-emptive right of shareholders to purchase additional shares to be placed or equity securities convertible into its shares. According to article 11 of the said law, the articles of association of a NPJSC allows limiting the number of shares owned by one shareholder, their total nominal value may be limited, and the maximum number of votes granted to one shareholder may be set. The articles of association of a NPJSC may provide for one or more types of preferred shares that grant voting rights on all or some issues within the competence of the general meeting of shareholders (Article 32). In this regard, Gabov A.V. quite rightly notes that the content of a stock as a security is very difficult. [4, p. 411]. The legislator has referred more than 50 times to the statutory possibilities for regulating the corporate structure and activities of a NPJSC. We believe that the legal regime of a NPJSC in the current state of legislation is quite flexible and dispositive-variable, but this does not detract from the corporate responsibility of the shareholders themselves [5].

## 2. Requirements for the transfer of equity securities of non-public joint-stock companies in the form of digital financial assets: the problem of lack of turnover

### *Legislative interpretation and model of issuing digital financial assets for a NPJSC*

<sup>1</sup> Report on form No. 1-Legal Entity (2025). Federal Tax Service of Russia: official website. URL [https://www.nalog.gov.ru/rn77/related\\_activities/statistics\\_and\\_analytics/forms/14414858/](https://www.nalog.gov.ru/rn77/related_activities/statistics_and_analytics/forms/14414858/) (date of access 16.01.2025).

<sup>2</sup> Federal Law No. 208-FZ dated December 26, 1995 "On Joint-Stock Companies". Collection of Legislation of the Russian Federation. 1996. No. 1. Art. 1.  
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In modern Russia, digital investment technologies are actively developing and legitimized at the law enforcement level, including for such a business entity as NPJSC. For example, the legislative innovation of 2020 was the adjustment of Article 12 (paragraph 7) of Law No. 208-FZ. It was found that when the company was established, the articles of association could include an indication of the issue of shares of NPJSC in the form of digital financial assets (hereinafter referred to as DFAs). Then (Article 25) all non-documentary shares of a joint-stock company must be issued taking into account the specifics and conditions defined by Federal Law No. 259-FZ of July 31, 2020 "On digital financial assets, digital currency and amendments to certain legislative acts of the Russian Federation"<sup>3</sup> (hereinafter referred to as Law No. 259-FZ). Gabov A.V. correctly points out that the situation with the implementation of electronic forms of interaction of those shareholders who own shares of NPJSC in the form of DFAs certifying the rights to participate in the capital of NPJSC requires separate regulation [6, p. 60].

According to Article 1 (paragraph 2) of Law No. 259-FZ, DFAs are digital rights that include (among other things) the right to demand the transfer of equity securities provided for by the decision to issue these DFAs; several types of the mentioned digital rights are fixed, the fourth of them is the requirement to transfer equity securities. We agree with Rozhdestvenskaya T.E. and Guznov A.G. that digital law always presupposes an obligated person who issues this right (either in the form of a utilitarian digital right or in the form of a DFA) [7, p. 61]. At the same time, it should be clarified that DFAs (requirements for the transfer of equity securities)

have nothing to do with derivative financial instruments. [8], [9]. The definitive interpretation of digital rights is enshrined in the Civil Code of the Russian Federation in a controversial formulation (Article 141.1), in this regard, we are impressed by the position of understanding digital rights, justified by the team of authors in the work [10].

On the one hand, tokenization of the economy gives access to resources to a wide range of businesses, and allows to minimize the consequences of economic crises to some extent [11]. However, none of the issuers (business entities) is interested in this legitimate opportunity. The specifics of the issue and placement of DFAs certifying the right to demand the transfer of equity securities are regulated in Article 12 of Law No. 259-FZ. The holder of the specified type of DFAs has the right to demand the transfer to him of the securities provided for in the Decision on the issue of these DFAs acquired by the investor. The Decision sets a deadline or event that determines the transfer of securities to him. The document on the issue of the relevant securities is provided with access by the operator of the information system, in which the DFAs were issued. These assets may not certify the requirement to transfer any equity securities: only shares of a NPJSC and equity securities of a NPJSC that are convertible into its shares are allowed. The procedure for their issuance fully complies with the norms of Federal Law No. 39-FZ of April 22, 1996 "On the Securities Market"<sup>4</sup>.

A NPJSC has the right to issue DFAs in the information system of one of the operators (as of July 22, 2025, there are 15 of them in the Russian Federation) and immediately offer them to investors in July 2025. Financial platform

<sup>3</sup> Federal Law No. 259-FZ of July 31, 2020 "On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation"/ Collection of Legislation of the Russian Federation. 2020 No. 31 (Part I). Article 5018.

<sup>4</sup> Federal Law No. 39-FZ of April 22, 1996 "On the Securities Market". Collection of Legislation of the Russian Federation. 1996. Art. 1918.

operators (11 persons) and digital financial asset exchange operators (2 persons) are also entitled to issue DFAs. Investors will be interested if these investment properties have returns significantly higher than the percentage on traditional bank deposits and other familiar investment assets [12]. In addition, the investor must clearly understand the degree of DFAs liquidity, the procedure and methods for receiving periodic income payments, as well as guarantees for the timely return of their investments. For example, the Decision to issue them will indicate that an investor has the right to demand six months later, in January 2026, to receive bonds convertible into ordinary shares of this NPJSC in return for those submitted by the DFAs. If the investor does not exercise his right, the NPJSC will pay the investor the income due and the entire amount invested in July 2025 in the DFAs. If the investor exercises his right, the NPJSC transfers the above-mentioned bonds to him. Let's assume that the document on the issue of bonds by this NPJSC, convertible into its ordinary shares, establishes that in a year's time – in January 2027 – the bondholder will receive a certain number of ordinary shares of NPJSC on a set date as a result of the conversion of the bonds held by the investor. During the one-year term of holding the bonds, the investor should also receive regular income that corresponds to his financial interests.

By acquiring DFAs (requirements for the transfer of equity securities of a NPJSC), an investor invests his capital "in a place in the queue" to receive equity securities of a NPJSC at a certain date in the future. The money enters the issuer's household at a time, remains a working asset all the time, and after a certain period of time, the requirements corresponding to the investments are transformed into shares of the authorized capital. A NPJSC is non-public, and it is difficult for an investor to obtain information about the state of its financial and economic

activities. A NPJSC is not responsible for providing information in this situation. But then one of the goals of the existence of this institution is not achieved – minimizing the information asymmetry of various market participants, so that their decision-making is determined solely by economic factors, and not by priority access to information. [13, p. 1164].

We believe that, firstly, the legislator intended to use this digital investment tool to help NPJSC obtain financial resources before the company issues equity securities in order to launch money into economic activity as soon as possible. When the money has already been invested in the business, you can simultaneously issue shares of a NPJSC and (or) equity securities of the same company that can be converted into its shares. Secondly, it is established by law that NPJSC is deprived of the right to publicly offer its shares to a wide range of investors. However, there is no prohibition on personal interaction with individual investors; it is obvious that DFAs (requirements for the transfer of equity securities) are a legitimate way to attract third-party investors, non-shareholders, and their subsequent involvement in the business of this NPJSC on a long-term basis through the deferred sale of shares to them. Thus, the DFAs, figuratively speaking, allows you to "open a closed subscription" to NPJSC shares and form a public offer for a limited number of people.

### ***The cumbersomeness of digital financial assets - the requirements for the transfer of equity securities of a NPJSC***

These guidelines of the legislator would have practical results and would be in demand by NPJSCs. If the issue of digital financial assets in the information system (requirements for the transfer of equity securities of a NPJSC) were significantly simpler, cheaper and faster than the issue of additional shares of a NPJSC, which are

the purpose of this digital-legal investment structure. We believe that the release of DFAs of this type is not difficult. According to Article 2 of Law No. 259-FZ, both the release and termination of DFAs are provided for in the same closed loop – in the information system, without contacting the exchange operator. The release of DFAs, the emergence of the rights certified by them, is expressed by an entry in the information system about their enrollment to the first holder; the operator himself usually makes the entry. DFAs can be credited by the operator to a depository that takes into account the rights to these assets owned by other persons. According to article 3 of the law, at least 12 mandatory provisions are included in the Decision on the Issue (drawn up in electronic form) [14]. In particular, the type and scope of the rights certified by the DFAs of this issue: as part of our study, this is the asset holder's requirement to transfer to him, for example, in January 2027, 50 ordinary shares of NPJSC. The law allows for the certification of several types of rights issued by the DFAs. The holder of the DFAs has the right to implement one of them at his choice according to the Decision [15]. It is mandatory to make the Solution publicly available on Internet sites, firstly, of the person issuing the assets, and secondly, of the information system operator. Such a document is recognized as a public offer. As part of our study, the Decision to issue DFAs certifying the right to request the transfer of ordinary shares of NPJSC will provide that it be addressed to a certain circle of people.

The modern regulatory algorithm for issuing NPJSC shares is a simple and cumbersome mechanism.<sup>5</sup> The Regulation of the Bank of Russia

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<sup>5</sup> Federal Law No. 514-FZ dated December 27, 2018 "On Amendments to the Federal Law "On the Securities Market" and Certain Legislative Acts of the Russian Federation in Terms of Improving the Legal Regulation of the Issue of Securities". Collection of Legislation of the Russian Federation. 2018. No. 53 (Part I). Article 8440.

dated December 19, 2019 No. 706-P "On Standards for the Issue of Securities" <sup>6</sup> (hereinafter referred to as the Standards for the Issue) regulates in detail: general requirements for the procedure for the issue of securities; implementation of state registration of securities issues, when required; features of the issue of securities placed by subscription; features of the issue of securities placed by converting convertible securities into them. The total term of the placement of shares is the same (no more than 1 year), it is possible to extend this period up to 3 years.

If the shareholders of a NPJSC have signed a corporate agreement, the placement of shares of a NPJSC may depend on its provisions. First, the sequence of exercising the pre-emptive right to purchase shares. Secondly, the procedure for the placement of shares (securities convertible into shares), in the event that, according to the articles of association of a NPJSC or a corporate agreement, this procedure differs from that established by Law No. 208-FZ and the Standards of the issue. An investor who intends to invest money in DFAs in order to purchase shares of a NPJSC in the future faces the task of studying the provisions of the charter and the corporate agreement of this company. There is also legal uncertainty because there is no prohibition on adjustments to the articles of association and (or) the corporate agreement of the NPJSC in the period after the date of issue by the DFAs company and before the date of issue by the company of shares (securities convertible into shares). Law No. 208-FZ establishes the rules for increasing the authorized capital of a NPJSC (Article 28) and realizing the benefits of acquiring additional shares (Article 40). As part of these

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<sup>6</sup> Regulation of the Bank of Russia dated December 19, 2019 No. 706-P "On Standards for the Issuance of Securities". Bulletin of the Bank of Russia. 2020. № 37-38.

procedures, it is necessary to interact with the registry holder (registrar), who is authorized to register an additional issue of NPJSC shares; it is not necessary to contact the Bank of Russia for this (paragraph 1.8 of the Standards of the issue). Registrars have the right to register issues of shares, including those placed on investment platforms. Initially, as Andreev V.K. correctly notes, investment platforms had narrower powers [16]; In this regard, we support the definitive characterization of investment platforms by Gabov A.V. [17, p. 47].

Perhaps, at some stages, the procedure for issuing additional shares of a NPJSC may be characterized as difficult, but its relative difficulty still does not cancel out its additional aggravating and preceding DFAs issue. Moreover, if, after the CFA issue, it is necessary to issue intermediate securities first, which are later converted into shares of NPJSC. Consequently, the DFAs, as requirements for the transfer of shares of a NPJSC and equity securities convertible into its shares, may not be of interest to these business entities, as well as their potential investors. DFAs will not be in demand due to the excessive number of procedures involving the issuance and circulation of intermediate assets in order to achieve the goal of investing capital in shares of NPJSC. At the same time, we share the opinion of the authors who claim that the result of the digital transformation of management tools for modern corporations will be an increase in business profitability and competitiveness in the market [18, p. 240].

### 3. Conclusion

Ponomareva K.A. and Simonova A.O. argue that DFAs are digital rights that combine the features of traditional exchange-traded financial instruments confirming corporate rights and obligations with tokenization trends. [19, p. 36]. We believe that the legislator, within the framework of Law No. 259-FZ, legitimized the type

of DFAs – digital rights, which simultaneously combine a digital object for investment and a digital certificate of the special rights of their owner (investor) to demand shares of NPJSC in the future. Because of this, the legal nature of DFAs of this type is complicated by the fact that DFAs themselves certify the requirements for the counter-provision of equity securities, which, in turn, certify other rights; the super-cumbersome construction of the "right to rights to rights" is being built.

Berezina E.A. correctly points out that the main, key criteria for evaluating the effectiveness of legal regulation are the target and effective criteria, while the rest are designed to ensure the achievement of the targets of legal regulation [20, p. 93]. According to the position of the mentioned author, as a result, we get zero effectiveness of regulating DFAs certifying the requirements for the counter-provision of securities of NPJSC. The uselessness of the design was proved during the research process, as well as by actual investment practice – the absence of at least one issue of this type of DFAs in the 5th year of Law No. 259-FZ. At the same time, business companies – monetary claims, quite actively use the simplest (natively digital) type of CFA: during 2023 (for the whole of 2024), operators, for example, Atomize LLC – 152, made issues in information systems (299); ALFA-BANK JSC – 72 (698); Sberbank PJSC – 57 (197) issues.<sup>7</sup> DFAs in the form of monetary claims are quite in demand, since they are the original digital tools, they are easy to use in investment relations, and they are not burdened with a pile of "rights to rights to rights".

As part of the current legislative changes, it is necessary to regulate the legal regime for the transfer of NPJSC securities based on a legal

<sup>7</sup> DFAs information system operators ranking. Cbonds: official website. URL <https://cbonds.ru/dfa/> (date of access 16.01.2025)

fiction – digital investment equivalents (digital equivalents of bonds, shares, issuer's options, Russian depositary receipts, etc.). As Potseluev E.L. notes, there are enough norms in Russian law containing fictions that authorize the use of fiction as a law enforcement device [21, p. 5]. Tanimov O.V. also correctly points out that legal fiction is a universal technical and legal technique for developing and implementing legal norms, consisting in recognizing a non-existent provision as existing... [22, p. 46]. The conclusions formulated by Burkhanova Yu.I., Novokshonova N.A. about digital objects are consistent with our proposals (It is necessary to further develop the concept of digital rights as objects of civil rights, their legal nature, types and legal regime of use in order to develop civil turnover in the digital economy) [23, p. 39].

In general, the identified problems should be solved comprehensively by modernizing the relevant legislation and the regulatory model of the accounting and registration infrastructure of the financial market. In particular, a single platform of digital investment equivalents (analogous to the digital ruble platform) can be created in the structure of the Bank of Russia. On this single platform, all domestic issuers can issue digital investment equivalents according to the centralized prudential blockchain scheme (transactions, accounting, and data storage are also conducted on it), the species diversity of which can be as wide as possible and will make it possible to digitize all existing equity securities by 2030. [24]. At that time, such heaps of "rights to rights" were so difficult for investment practice, including DFAs issued in the form of demands for their transfer to the holder of securities of NPJSC, they will be replaced by native digital investment equivalents that are understandable for use in investment relations – digital stocks.

The improvement of investment

tools, in its particular case, one type of DFAs, should undoubtedly enter into the emerging anti-sanctions legislation in the Russian Federation along with the deep modernization of the financial market, cleansed of unnecessary declarations and illusions, with simple and effective means to solve government tasks [25, p. 132].

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