

New crowdfunding platform regulations

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AUTHOR

[Ilya Goryachev](#)



In August 2019 the president signed Federal Law 259-FZ of 2 August 2019 on Raising Investments via Investment Platforms and on Amending Certain Legislative Acts of the Russian Federation (Crowdfunding Law). The Crowdfunding Law, which is set to take effect from 1 January 2020, reflects the growing trend in Russia of increased regulation of digital economy issues.

Legislative history

The draft law – originally named the Federal Law on Alternative Ways to Raise Investments (Crowdfunding) – was introduced in Parliament in March 2018. The explanatory note highlighted that the law was drafted in line with the government-approved strategy for developing small and medium-sized businesses, which calls for alternative ways in which to invest in start-ups, particularly in the IT industry. The explanatory note also discussed other jurisdictions which regulate crowdfunding only insofar as it relates to profit (and not crowdfunding that relates to donations).

Key provisions

The Crowdfunding Law includes a number of key provisions. For example, the law:

- introduces the concepts of contracts for rendering services to raise investment capital and contracts for rendering services to facilitate investments. It also amends the current regulations on depositary agreements;
- sets out terms for using investment platforms, as well as the requirements for investment platforms and their operators and persons that raise investments;
- sets out the requirements concerning the disclosure of information;
- sets out the ways in which investment capital can be raised;
- sets out restrictions on raising investment capital;
- sets out special provisions for individual investors (physical persons);
- introduces digital certificates as a type of non-issue security;
- sets out liability provisions that require operators to reimburse damages for indicated breaches;
- bestows new powers on the Russian Central Bank, which is responsible for enforcing the law (including with regard to the registration of investment platforms);
- sets out particular provisions for offering securities via an investment platform;
- extends Russia's anti-money laundering legislation; and
- includes other amendments (eg, with regard to advertising (see below)).

Investment (crowdfunding) platforms

An 'investment platform' under the Crowdfunding Law is an information system that is used to conclude investment contracts with the use of information technology. Access to the system is provided by the operator, which must meet the requirements set out in the law.

The law applies only to the following types of investment made via an investment platform:

- loan grants;
- the purchase of issue securities offered via an investment platform, excluding securities offered by credit organisations and non-credit financial organisations and structural bonds

- and securities for qualified investors; and
- the purchase of utility digital rights.

Other investment activities fall outside the scope of the Crowdfunding Law.

Utility digital rights and new tools in IP transactions

The law introduces the concept of 'utility digital rights'. Notably, the general concept of digital rights has existed since 1 October 2019 following the previous amendments to the Civil Code, which inserted the following wording into the code:

the rights that are named by law as 'obligations and other rights, named by law 'digital', the content and terms of using which are determined in accordance with rules of an information system meeting the requirements established by law.

Under the Crowdfunding Law, 'utility digital rights' are more specific and cover:

- the right to transfer property;
- the right to transfer an exclusive right to the results of intellectual activities and to use such results; and
- the right to perform work or render services.

In this regard, transactions involving, for instance, exclusive rights to software solutions, databases and other copyrightable assets may feature in investment activities undertaken via an investment platform.

Notably, the law expressly excludes from the definition of utility digital rights the right to claim property which is subject to state recordation or registration requirements (as well as transactions subject to state registration or notary certification).

Advertising requirements

The Crowdfunding Law has amended Federal Law 38-FZ of 13 March 2006 on Advertising by requiring the following information to be included in ads for services which facilitate crowdfunding investments:

- the website on which disclosure of the information is made by the operator of the crowdfunding platform; and
- a warning that the use of a crowdfunding platform is high risk and may result in a total loss of investment.

Further, the law bans advertising which relates to the following ways of raising investment capital through crowdfunding platforms:

- loan grants;
- the purchase of shares in non-public joint stock companies and equity securities converting into shares of non-public joint stock companies; and
- the purchase of utility digital rights.

Comment

The Crowdfunding Law reflects the current trend of providing investors in Russia with additional tools that reflect emerging digital technologies. Prior to the law's introduction, there was a lack of legislative certainty surrounding the use of such tools.

Although the law has yet to take effect, IT and investment companies should familiarise themselves with its background and key provisions.

Further, the Crowdfunding Law provides additional tools which can be used in various transactions, including IP assets. Thus, companies engaged in other commercial activities should pay attention to the upcoming changes to the crowdfunding platform landscape.

For further information on this topic please contact [Ilya Goryachev](#) at Gorodissky & Partners by telephone (+7 495 937 6116) or email (goryachevi@gorodissky.ru). The Gorodissky & Partners website can be accessed at www.gorodissky.com.