

## TOPICAL ISSUES OF INHERITANCE OF DIGITAL ASSETS

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**Abstract.** The article considers current problems of inheritance of digital assets and their legal nature. The author analyzes the procedures for inheritance of digital financial assets, such as WebMoney, Yumani and cryptocurrency electronic wallets, as well as the mechanism for inheritance of accounts in social networks and rights to an Internet site and domain name.

**Keywords:** digital assets, digital financial assets, inheritance of digital assets, inheritance of cryptocurrency.

A derivative of the digitalization process of modern society is the development of the digital economy and the emergence of digital property, including digital assets. O.V. Loseva understands a digital asset as a special “type of economic assets that are intangible in nature and in digital form, created using digital technology, exhibiting their value (cost) in the information system and capable of civil (property) circulation” [3].

In foreign studies, the term “virtual asset” is more common, which refers to “intangible things that are either part of the “environment” or created by users from available resources and materials” [8]. Thus, a digital asset is a particular form of expressing digital property in economic discourse. Currently, digital property is recognized in Hong Kong, the European Union, Kazakhstan, Russia, the USA, and Taiwan.

From a legal point of view, the definition of “digital property” is more controversial. For example, in Taiwan it is movable property, in the Russian Federation – other property or obligatory digital right. The ECHR defined digital property and, accordingly, digital assets as a property right [1]. One way or another, the legal status of digital assets is also a subject of inheritance law, as evidenced by legal practice. It should be noted that the profitability of digital assets can be quite high, exceeding the profitability of real estate and many traditional forms of business, which leads to the actualization of the problem of their inheritance.

1. Currently, there is no uniform law enforcement practice regarding the inheritance of digital assets. Judicial precedents and the positions of information intermediaries have a significant influence, especially abroad. For example, the issue

of inheriting an account on a social network largely depends on the internal policy of the social network. We should also note the international nature of many appeals related to the right to inherit digital property, since, for example, the heir and the information intermediary who owns the testator's digital asset may be located in different countries and, accordingly, their activities will be regulated by different legal norms. Let us consider some current inheritance issues in relation to the main categories of digital assets: Digital financial assets: electronic wallets. The most common appeals are related to the receipt by heirs of electronic money (EMS) stored in electronic wallets. The international payment system WebMoney Transfer has developed a regulation regulating the procedure for transferring rights to own a WM identifier by inheritance [6]. The heir must apply to the notary with a petition to obtain information from the owner of the System on the volume of property rights that are in the electronic wallets of the testator. The System notifies the notary and after 6 months the heir receives a certificate of inheritance rights, which will indicate, among other things, the EMS. The WebMoney System transfers to the heir the right to manage the electronic wallet, namely the right to transfer funds. If there are several heirs, then all heirs receive access with a limitation on the withdrawal of funds in the amount specified in the certificate [6].

2. However, there are a number of difficulties associated with the implementation of inheritance rights. Firstly, the heir may not know that the testator has electronic wallets. Secondly, the electronic wallet can be registered under a fictitious name, and the WebMoney system itself does not guarantee that the heir will receive the testator's funds: the final decision is made by the system's arbitration [6].

3. The procedure for inheriting funds from the wallets of OOO NPO "Yumani" is in many ways identical to WebMoney: a notary's request at the request of the heir and the transfer of funds by the system based on a certificate of inheritance [4]. If the heir or testator are foreigners, the rules of inheritance are determined by the laws of the testator's state. Note that in the case of electronic wallets, the funds stored on them are inherited, but not the rights to the wallet itself: an electronic wallet cannot be transferred from the testator to the heir.

4. Digital financial assets: cryptocurrency. The greatest legal and organizational technological difficulties are associated with the implementation of the right of inheritance of cryptocurrency. Due to the lack of an unambiguous legal status of cryptocurrency, there is also no regulatory framework governing the inheritance of cryptocurrency, since most crypto wallets are anonymous, the only way of

inheritance is inheritance by will, and the testator must indicate in the will not only the name of the heir and the amount of cryptocurrency, but also identification data: login and password of the crypto wallet, otherwise the assets will be lost irretrievably [5].

However, the very fact of transferring the login and password allows you to exercise the inheritance right only if the cryptocurrency is stored on a flash card. If the cryptocurrency is stored on an exchange, the situation is significantly complicated by the internal rules of the exchange itself. In particular, for security purposes, to gain access to the funds stored on the exchange, the heir will need to not only enter the login and password, but also a code word, go through two-factor identification, for example, using security keys (Google Authenticator). There are a number of exchanges with a developed procedure for inheriting digital assets, for example, the Coinbase exchange transfers the rights to the account to the heirs, but if the heirs do not declare their rights within the specified time, the cryptocurrency becomes ownerless property and is transferred to the state [5]. A pressing problem of inheriting cryptocurrency is the complexity of its taxation; there are countries where the ownership of cryptocurrency and its circulation are illegal. It should also be noted that the testator bears high risks when drawing up a will if he specifies wallet data that can be used improperly. In this regard, it is recommended to use safe deposit boxes when bequeathing cryptocurrency, in which the access data will be stored.

5. Social media accounts and websites as digital assets. The procedure for inheriting accounts in social networks is also not regulated by law, however, commercial accounts and accounts with a large number of subscribers are an expensive digital asset. When deciding on the inheritance of an account, the heir will have to rely on the internal rules of the social network. For example, the VKontakte social network does not provide access to the accounts of the deceased. However, if the heirs have the relevant documents, it can delete the testator's profile or restrict access to it. In some social networks, the user can independently decide what will happen to his account in the event of death. In many ways, the caution of social networks in terms of providing access to an account to heirs is associated with the effect of Article 138 of the Criminal Code of the Russian Federation on violation of the secrecy of correspondence. Such an approach seems justified, since social networks are, first and foremost, a means of communication, and only their derivatives (linked public pages, subscribers, etc.) are a digital asset. Regarding the inheritance of domain names, we also observe gaps in legislative regulation [2]. The order of inheritance is regulated by the internal policy of the domain zone registrar.

The registrar of the ru domain zone (OOO "Registrar of the domain name "REG.RU"), on the basis of a certificate of inheritance rights, can transfer the rights and obligations for website administration to the testator [2]. However, when the domain is transferred to the heir, the full application of the inheritance law is impossible: a service agreement is concluded between the registrar and the testator, which, on the basis of Article 1112 and Article 128 of the Civil Code of the Russian Federation is not included in the estate. Thus, at present, the quasi-inheritance mechanism is applied to most digital assets, in which legal entities acting as information intermediaries independently regulate the procedure for inheriting digital assets placed on their platforms, thus replacing the functions of the legislative body. To implement the right to inherit digital assets, the participation of a notary is mandatory. However, a significant problem is the very fact of the heir and the notary being aware of the presence of digital assets, especially if the testator placed the assets while maintaining anonymity. In turn, for the testator, the only way to reliably transfer digital assets to the heirs is to draw up a will with a reference to a bank cell that stores access to digital assets.

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