European Proceedings of
Social and Behavioural Sciences
EpSBS

www.europeanproceedings.com
e-ISSN: 2357-1330

DOI: 10.15405/epsbs.2022.01.53

SLCMC 2021
International conference «State and law in the context of modern challenges»

ON CIVIL LAW ASPECTS OF REGISTERING TRANSACTIONS MADE THROUGH DIGITAL PLATFORMS

Grigori V. Kolodub (a)*, Olga M. Rodionova (b)
*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, kolodub-ssla@yandex.ru
(b) Kutafin Moscow State Law University, 9, Sadovaya-Kudrunskaya Str., Moscow, 125993, Russia, omrodionova2014@yandex.ru

Abstract

The effect of transactions is dependable on the proper expression of the will of the parties, i.e. on the form of transactions. In transactions made through digital platforms, the will of the parties cannot be expressed otherwise than using the same digital platform technologies. This fact raises the question of the legal value of the will expressed digitally. In modern Russian legislation, the issue of the civil law aspects of registering digital transactions is partially covered. It says that it is permitted to make a transaction through electronic or other technical means, which make it possible to record the content of the transaction in a physical medium and keep it unchanged. The aforementioned technical means should also make it possible to reliably identify the person who expressed his/her will in a legally recognizable way. Thus, from the legal viewpoint, there is a general rule, under which the expression of the will through digital technologies should resemble a transaction in writing as much as possible. The same paragraph says that it is permissible to make a law, other legal instruments, or an agreement between the parties, providing for a special method to reliably identify the person who expressed the will thereof. So far, however, Russia has no special regulatory legal instruments of that type. However, we need to acknowledge that such an approach, in general, cannot be a basis for civil law effect on persons who make electronic transactions, first of all, through digital platforms.

Keywords: Electronic and digital technologies, legal classification, transactions, transaction registry

https://doi.org/10.15405/epsbs.2022.01.53
Corresponding Author: Grigori V. Kolodub
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

1. Introduction

When public relations are mediated by electronic devices and digital platforms, the will of individuals is recorded not by the individuals themselves, but by third-party actors (digital platform operators) who use special computer programs. Accordingly, a person, making a digital transaction, cannot be sure that a digital platform operator is going to meet the written form transaction requirement stipulated in Article 160 of the Russian Civil Code. If the transaction in question turns out to be not equal to a transaction in writing, it is viewed as invalid. Then, in accordance with the provisions of Article 164 of the Russian Civil Code, in case of a dispute, the transactor loses his/her right to refer to the evidence in support of the transaction and its terms. These un-pleasant consequences are supposed to be a sanction against the transactor for not expressing his\her will in a way that is obvious to everyone, including the court. The negative consequences for a person who failed to fulfil the requirements would not mean that he/she would be kind of “forgiven”. The sanction in the form of negative legal consequences does not amount to compliance with the requirements. Therefore, it seems that the extension of coverage of the transaction-in-writing requirements to electronic transactions does not ensure the interests of the persons who make these transactions. It is necessary to introduce special rules on the registration of transactions by those who fix the will of the persons making the transactions through electronic and digital tools.

The issue is urgent because it is generally agreed that electronic and digital records of transactions make the process of their execution more transparent and, if necessary, publicly reliable. Electronic and digital recording of transactions is a tool that meets the current circumstances of legal reality. Such records make it possible to obtain information about completed transactions and about the persons involved. The purpose of electronic and digital recording of transactions is to ensure public awareness for an indefinite number of persons. An effectively organized system of electronic and digital recording of transactions has a positive impact on the development of civil law relations.

To a large extent, this particular fact encourages individuals and government agencies to use blockchain technologies for making contracts, and, prospectively, other deals (Shakhnazarov, 2019). That is because a blockchain is a cryptographically secure digital ledger that maintains a chronological record of all transactions that occur on the network (Rule of Law Versus Rule of Code).

2. Problem Statement

In the context of the technical possibility to make transactions through electronic and digital technologies, questions arise as to whether the civil law classification of people’s actions is going to change. Though the technologies do not change the legal purpose of the parties’ efforts, they do affect the way the expression of the will is recorded.

3. Research Questions

In this article, we are going to highlight the following questions:

1. How are digital transaction registries covered in Russian legislation?
2. What are the legal effects of recording a transaction in the state registry?

https://doi.org/10.15405/epsbs.2022.01.53
Corresponding Author: Grigori V. Kolodub
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

3. What transactions can be made in writing without any digital technologies, but only by making an entry in special registries?
4. What exactly should a person, responsible for registering transactions through electronic and digital means, do after he/she gets information about a legitimate transaction?

4. Purpose of the Study

One of the main goals of our article is to answer the question as to whether it is really effective to extend the requirements typical of written transactions to digital transactions. The question is viewed in the context of ensuring the private legal interests of the people who make digital transactions.

5. Research Methods

While doing this research, we applied a dialectical method, a method of formal logic, and a method of formal jurisprudence. The dialectical method was used to examine the social relations that are developing in the context of the existing civil law regulation models applicable to the forms of transactions in Russia. The method of formal logic allowed us to identify the main categories of our research. The method of formal jurisprudence made it possible to phrase the intermediate and final conclusions of the research.

6. Findings

To register non-digital written transactions is possible in the state registry (official state registration) and other registries (Lomnicka, 2018).

The state registry of transactions is necessary because legislators are willing to better protect the rights of the parties in socially significant cases, which involve the creation of real property and transactions with real property, mediated by different types of contract, e.g. tenancy agreements (Article 609, paragraph 2 of the Russian Civil Code). These may be at least one-year tenancy agreements on various buildings, structures, non-residential premises, and land. Russian legislation also allows making at least one-year financial lease agreements, participatory share construction agreements, and gratuitous loan agreements on land plots (Article 26 (2) of the Russian Land Code). Moreover, there are assignment agreements that require state registration (Article 389 (2) of the Russian Civil Code) and assumption agreements, which are also subjects to state registration (Articles 391 (4) and 389 (2) of the Russian Civil Code). Keeping registries also helps to better protect a weaker party to a transaction in high-risk situations, since it gives the opportunity to record the fact that there has been a transaction not only in documents but also in a registry maintained by an independent person. The most vivid example is the registries that are kept on trading floors (Zavyalova et al., 2019).

Making an entry about a concluded contract in the state registry is an integral part of contract formation since there is a legal requirement for the third party to make such an entry. Without state registration, the contract does not generate all the legal effects that the parties are seeking. Thus, state registration makes transactions “stronger” and affects their execution. Making a record of a transaction in the state registry is an administrative act aimed at the public legalization of the legal fact (the transaction).

https://doi.org/10.15405/epsbs.2022.01.53
Corresponding Author: Grigori V. Kolodub
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

Accordingly, contracts that are subject to state registration, like other transactions of this type, are differentiated as a separate group of transactions.

However, under the current Russian legislation, the record of transactions in other (non-state) registries does not affect their execution. Thus, Article 4 (1) of the Federal Russian Law "On Procurement of Goods, Works, and Services by Certain Types of Legal Entities" of July 18, 2011 (hereinafter referred to as the Law on Procurement by Legal Entities) has the provisions on the registry of contracts, under which there is a special federal executive body. This body is in charge of law enforcement functions within the treasury services for the implementation of Russian budgets. It ensures that the registry of contracts is maintained in the unified information system. At the same time, under Article 4 (2) of the Law on Procurement by Legal Entities, within three working days from the date of conclusion of the contract, including the contract concluded by the customer, it is based on the results of the purchase of goods, works, and services from the only supplier (a contractor). And their cost exceeds the amounts established in the law, the customer shall enter information and documents into the registry of contracts. However, the legal value of this registry is not specified. But if a party to a registered contract does not fulfil a specified obligation, administrative responsibility can be imposed (Part 4 of Article 7.32.3 of the Russian Code of Administrative Offences). This fact shows that the registry in question is publicly significant.

No doubt, the legislators' decision is correct since, within the meaning of the Law on Procurement by Legal Entities, contracts should be made using the personal or electronic signatures of the parties. That is fully consistent with the requirements of civil legislation to make contracts in writing. On top of it, keeping a registry is important from the point of accounting for the expenditure of public funds.

As noted above, registries of contracts are also maintained on organized trading floors. Following paragraph 2 of Article 18 of the Federal Law "On Organized Trading Sessions" of November 21, 2011 (hereinafter referred to as the Law on Organized Trading Sessions), as a general rule, a contract is considered to be concluded at an organized trading session. At the time the organizer of the trade fixes the correspondence of multidirectional bids to each other by making an entry about the conclusion of the corresponding contract in the registry of contracts. At the same time, there is no single document signed by the parties, but the simple written form of the contract is considered to exist. Making an entry in the registry of contracts concluded at organized trading sessions is legally equivalent to compliance with the requirement of the transaction in writing and does not give rise to anything special in the process of its conclusion.

This approach to the definition of a registry entry at an organized trading session is rather logical since in this case, the parties to the contracts are only entrepreneurs and legal entities (Article 16 of the Law on Organized Trading Sessions). They act at their own risk (paragraph 3 and paragraph 1of Article 2 of the Russian Civil Code). At the same time, the use of the aforementioned approaches for defining a registry of contracts made by individuals through electronic and digital technologies, but without a digital signature, can result in a massive violation of the rights of the individuals in question. However, if we examine, for example, the latest legislation on transactions through digital platforms, we can see that the legal value of contract registries is not well determined.

Thus, under Article 11, paragraph 1 of the Federal Law "On Attracting Investments Through Investment Platforms and on Amendments to Certain Legislative Acts of the Russian Federation" of

https://doi.org/10.15405/epsbs.2022.01.53
Corresponding Author: Grigori V. Kolodub
Selection and peer-review under responsibility of the Organizing Committee of the conference
eISSN: 2357-1330

August 2, 2019 (hereinafter referred to as the Law on Investment Platforms), an investment platform must have a registry of contracts made through this investment platform. These are contracts on capital raising services, investment assistance services, and direct investment contracts. Nonetheless, Article 11, paragraph 2 specifies that the registry of contracts must contain information that makes it possible to identify the parties to the contracts, the essential terms of the contracts, and the dates when the contracts were concluded. Information about each agreement must be kept by the operator of the investment platform until the agreement is terminated and for five years from the date of its termination. Contracts concluded through the investment platform must be recorded in the register (Gabov & Khavanova, 2020). However, the legal value of such records is no more than evidential.

Article 13, paragraph 1 of the Law on Investment Platforms stipulates that investment contracts shall be made in writing and with the help of information technologies and technical means of the investment platform. The contracts are made by accepting the investment offer from the person who attracts the investment. Under Article 13, the investors' funds also get transferred to the investment attractor's bank account. The corresponding contract is classified as real (Lapteva, 2014) since the same paragraph says that investment contracts are considered concluded from the moment when investors' funds are received from the nominal account of the investment platform operator to the bank account of the person who attracts the investment. Under Article 13, paragraph 7, an investment contract is confirmed by an extract from the registry of contracts issued by the operator of the investment platform.

Evidentiary value is also given to the entries in the registry of financial transactions made through financial platforms. Article 2, paragraph 8 of Federal Law "On Transitioning Through a Financial Platform" (hereinafter referred to as the Law on Financial Platforms) defines a person who registers transactions on the platforms, i.e., inter alia, keeps a registry of contracts and other information (Article 15.5, paragraph 1 of the Federal Law "On the Securities Market" of April 22, 1996). Contracts made through financial platforms are recorded in a register, but the law does not say whether the registration somehow affects the validity or existence of such contracts.

Obviously, the legislators are aware of the risks, which individuals involved in the relations that we are talking about can incur. Thus, the legislators impose liability on the persons who do not keep registries under consideration (Overmyer, 2010). Under Article 12 (1), paragraph 3 of the Law on Investment Platforms, it is said that an operator of an investment platform is liable for losses caused by the fact that the investment platform does not meet the requirements on the aforementioned registry. The legislators confirm that the registries are very important, however, it seems that to prove the suffered losses can be really difficult since the legal value of everything that ends with the entry into the contract registry is not clear.

The effects of an electronic platform operator's activities are functionally close to the effects of a legal representative's activities (a signer or a notary) because they all contribute to the expression of their clients' will when the latter are making transactions. A registry entry is to some extent similar to the actions of the singer who acts according to paragraph 1 of Article 160 (3) of the Russian Civil Code. These actions are probative in nature. However, it is important to carefully note the specifics of the actions in question. Thus, signer's signature, as required by law, must be notarized or certified by another person who is authorized to perform notarial functions. In any case, the notary or other authorized person

describes the reason why the person making the transaction cannot sign it personally. By that, the form of such a transaction gets changed into a notarial one. Failure to adhere to the notarial form of the transaction entails its nullity. (Article 163 (3) of the Russian Civil Code).

The signer provides a written record of the expression of this/her client's will when the latter is making the transaction. The notary certifies that will. The electronic platform operator only fixes the will expressed by the client. The issue of the conformity of the will itself and the expression of that will is not the issue to be resolved by the operator, since such conformity is presumed due to a high degree of confidence in electronic and digital means. To maintain the possibility to identify the actions performed and recorded is up to the electronic platform operator. Ultimately, it is the operator who is responsible not only for recording the will but also for ensuring that it is really the will of the person, making the transaction. It seems that a record of the transaction fixed in the registry by the electronic platform operator should be considered as an independent form of the transaction.

7. Conclusion

Based on the above, for Russian civil law, it would be logical to adopt a provision that would allow making transactions by submitting the relevant information to a person who is responsible for keeping the registries and organizing transactions through electronic and digital means. Violation of this obligation must entail civil liability. In cases directly specified by law or in the agreement of the parties, the refusal of a person to submit information about the transaction and, consequently, the absence of the registration makes the transaction invalid.

In the future, the authors are going to consider the need to adopt special rules on the registration of transactions by those who electronically and digitally fix the will of transactors.

References

Gabov, A. V., & Khavanova, I. A. (2020). Crowdfunding: Legislative Regulation of the Financing Web-Model in the Context of Legal Doctrine and Foreign Experience. *Perm University Herald. Juridical Sciences, 47*, 28–44. https://doi.org/10.17072/1995-4190-2020-47-28-44

Lapteva, A. M. (2014). Notion and types of actors involved in investment activities. *Bulletin of the Saint Petersburg University. Right, 1*, 55–61.

Lomnicka, E. (2018). Private damages claims for breaches of securities regulation law: the U.S. and U.K. Approaches. *Legal History and Comparative Law: Essays in Honour of Albert Kilralfy*, 129–157. https://doi.org/10.4324/9781315035512-8

Overmyer, M. I. (2010). The "foreign private adviser" exemption: A potential gap in the new systemic risk regulatory architecture. *Columbia Law Review, 110*, 2185–2227.

Rule of Law Versus Rule of Code: A Blockchain-Driven Legal World. Retrieved from: https://www.ibanet.org/LPRU/Disruptive-Innovation.aspx

Shakhnazarov, B. A. (2019). Complex Interconnection of Blockchain Technology and Intellectual Property in Cross-Border Private Law Relations. *Pravo. Journal of the Higher School of Economics,* 121–147. https://doi.org/10.17323/2072-8166.2019.5.121.147

Zavyalova, E. B., Tkachev, V. N., Berezko, V. E., & Perepelkin, A. N. (2019). Trends and issues in economic relations of Cyprus and Russia. *Cyprus Review, 31*, 141–153.