

# Prospects for the Development of Legislation in the Field of Bank Secrecy as an Information Security Institution at the Stage of the Digital Economy

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**Abstract**—The article discusses the legal aspects of bank secrecy as the information security institution in the Russian Federation. The author explores the problems of determining the composition of information constituting bank secrets, the problem of determining the procedure for securing information constituting bank secrets by commercial banks, and also studies the ways of forming the development of Russian legislation in the field of bank secrecy provided that the national digital economy and the digitalization of the Russian legal system are established. The study uses an integrated approach. Issues are considered in the ratio of material and procedural aspects. The methodology of this study is a comparative analysis, a formal logical method, the principle of unity of the concrete and abstract, the ratio of actual and legal material and procedural, form and content. The novelty of the study is to identify the problems of legal regulation of bank secrecy, as well as to determine the prospects for the development of legislation in the field of bank secrecy at the stage of formation of the digital economy.

**Keywords**—banking secrecy, digital economy, legal regulation, legislation in the field of banking secrecy, 'digitalization' of the legal system.

## I. INTRODUCTION

At present, at the stage of formation of the digital economy, the main vector of Russia's development is the digitalization of economic and legal systems. Banks play an important role in these processes. Historically, banks in Russia have been among the first to introduce innovative technologies. Thus the basic factor of digital economy, the basis of business model of commercial banks is the information, and, first of all, the information making bank secret. Hence, legal regulation of bank secret at the present stage is rather actual. In this regard, the objective of this study is to consider the legal aspects of the banking secrecy institution in the Russian Federation and to determine the main directions of development of the Russian legislation in the field of banking secrecy, subject to the establishment of the national digital economy and "digitalization" of the Russian legal system.

## II. RESEARCH METHODOLOGY

The study uses a comprehensive approach. The problems are considered in the ratio of material and procedural aspects. The method of this study is a comparative analysis, formal and logical method, the principle of unity of concrete and abstract, the ratio of actual and legal, material and procedural, form and content.

## III. LITERATURE REVIEW

The Bank secrecy institution in Russia has existed since the 19th century. The Charter of the State Bank of the Russian Empire of 1894 stipulated: "to keep secret everything concerning private commercial affairs and accounts entrusted to the bank" [1].

As noted by K.A. Markelova, "In the Soviet Union, the banking secrecy regime applied only to the deposits of citizens in savings institutions and was presented as a privilege" [2].

In modern Russian law, banking secrecy has a wider meaning and is also linked to other types of secrets in civil law.

The study of banking secrecy in modern Russia is carried out in the works of many Russian scientists. In particular, we can note the works of I. B. Kazakova and I. P. Voronyuk [3], A.S. Selivanovsky [4], S. V. Vorontsova and A. Y. Zolotareva [5], R. A. Mayorova [6], A. I. Samsonova [7], I. V. Fatkina [8-9] and others. In study A. M. Pleshakova [10] considered in detail the general issues of legal regulation of banking in the USSR. The work of I. A. Makeeva and K. P. Indyk [11] covers the collision issues of legal regulation of banking secrecy. In particular, the works of these authors cover the question of whether banking secrecy is an independent institution, or it is part of a variety of other secrets, devoted to the research of many scientists. K.P. Indyk, I.A. Makeeva consider bank secrecy to be a specific type of commercial secret [12]. However, there are different points of view on this problem. Other authors define banking secrecy as a separate type of secrecy. For example, S. V. Sarbash [13] is initiated to the study of banking secrecy as a separate type of secrecy in civil law. S. V. Sarbash writes: "Banking secrecy rules complement the legal regime of commercial and official secrecy rather than being absorbed by the latter" [14].

P. A. Mayorov [15] studies in detail the problem of banking secrecy as a primary secret. He believes that bank secrecy is derived from personal secrecy, which is protected by the Constitution of the Russian Federation [16].

H. G. Tolochkova in her studies considers the problem of providing information constituting a bank secret to the state structures. The author states that the data constituting banking secrecy are provided to "courts and arbitration courts (judges), the Audit Chamber of the Russian Federation, tax

authorities, the Pension Fund of the Russian Federation, the Social Insurance Fund of the Russian Federation and the bodies of enforcement of judicial acts; heads (officials) of federal state bodies, the list of which is determined by the President of the Russian Federation, the Chairman of the Central Bank of the Russian Federation and senior officials of the subjects of the Russian Federation (heads of the supreme executive bodies of state power of the subjects of the Russian Federation); the Federal Council of the Russian Federation, the Federal Assembly of the Russian Federation, the Federal Assembly of the Russian Federation and the Federal Assembly of the Russian Federation [17].

Among the works of foreign authors we can mention the works devoted to the study of the banking secrecy regime in Western countries: L. Browning [18], R. U. Vogler [19].

#### IV. RESEARCH RESULTS

As a result of the study of legal regulation of banking secrecy in the context of the establishment of the national digital economy and the "digitalization" of the Russian legal system, a number of problems were identified. Some of them are identified below.

1. The modern banking system is undergoing significant changes due to the high level of development of information technologies. This requires radical changes in the legal regulation of banks' activities related to the receipt, storage, processing and provision of information. All areas of banking activity in this area are subject to updating and improvement. For such transformations, it is necessary to clearly define and formalize the essence of the legal category "banking secrecy" at the legislative level, taking into account the modern information environment. To date, civil legislation is far from perfect in this area.

Thus, in the Federal Law of 02.12.1990 N 395-1 "On Banks and Banking" in Article 26 "Banking Secrecy" it is stipulated that the banking secrecy includes "information on transactions, accounts and deposits of clients and correspondents. The credit organization, the Bank of Russia, the organization performing functions on mandatory insurance of deposits, guarantee secrecy about operations, accounts and deposits of its clients and correspondents. All employees of a credit organization are obliged to keep secrecy about transactions, accounts and deposits of its clients and correspondents, as well as other information established by the credit organization, if it does not contradict the federal law" [20].

Article 857 "Bank Secrecy" of the Civil Code of the Russian Federation (Part Two) of 26.01.1996 N 14-FZ states: "The Bank guarantees the secrecy of the bank account and bank deposit, account transactions and information about the client. Information constituting bank secrecy may be provided only to the clients or their representatives, as well as submitted to the credit bureau on the grounds and in the manner prescribed by law. State bodies and their officials, as well as other persons, may be provided with such information only in cases and according to the procedure stipulated by law. In the event of disclosure by the bank of information constituting bank secrecy, the client whose rights have been violated shall have the right to demand from the bank compensation for losses incurred [21].

It is obvious that civil legislation does not provide a single clear definition of banking secrecy.

In addition, there is no legal provision on whether banking secrecy is one of the separate categories of secrets in civil law or a type of other types of secrets: commercial, professional or official.

In author's opinion, banking secrecy should be considered as a separate category. In support of author's opinion, it may be noted that, for example, the legislator gives the right to determine the list of information constituting commercial information to the subject, while the list of information constituting bank secrecy is clearly defined in regulatory legal acts.

The author believes that bank secrecy is a separate type of primary secrecy, and it has common features with commercial, official and professional secrets. The Civil Code of the Russian Federation stipulates that information possessing certain characteristics (commercial value; protection by its owner and some others) constitutes official secrecy. Thus, bank secrecy may also be an official secret if, for example, information constituting a secret has been obtained by public officials (or vice versa), each subject will have its own legal regime for protecting information.

To sum up, it should be noted that the concept of bank secrecy is one of the separate types of legal regimes for information with limited access. This regime corresponds to the regimes of other types of secrecy: commercial, official, professional and personal, and has general rules and procedures regulated at the legislative level.

Thus, in the author's opinion, it should be considered that "bank secrecy" is an independent secrecy regime, acting as one of the main institutions of information protection, possessing some common features with the institute of commercial secrecy, typical for commercial credit institutions, including all information about the relations between clients and banks, which are not subject to disclosure, except for the cases - the request of law enforcement agencies, which do not contradict the laws of the Russian Federation.

2. Considering the regulation of banking secrecy in the Russian Federation, it should be noted that information constituting banking secrecy is formed in credit institutions as a result of opening accounts and deposits, as a result of credit scoring, to determine the level of solvency of the client, as well as the formation of the loan portfolio and portfolio of bank liabilities.

Article 857 of the Civil Code of the Russian Federation [22] establishes, as noted above, that the bank guarantees the secrecy of the bank account and bank deposit, account transactions and client information.

Access to this information is restricted to employees of the respective business lines, security services, as well as board members and business owners. In addition to the above persons, a number of Russian Federation authorities may have access to personal data containing bank secrecy. Information constituting bank secrecy may also be provided to clients or their representatives.

State bodies and their officials may be provided with such information only in cases and according to the procedure provided for by law.

In the author's opinion, the list of bodies with access to banking secrecy should be limited to two bodies - the Federal Security Service of Russia and the Judicial System of the

Russian Federation, which will allow preserving the principles of market economy, as well as exercising control in order to prevent crime and combat corruption.

3. Bank secrecy is a legal principle in the laws of some countries of the world, according to which banks and other credit institutions protect information about deposits and accounts of their clients and correspondents, banking operations on accounts and transactions in the interests of the client, as well as information of clients, disclosure of which may violate the right to privacy of the latter [23].

The presented elements represent the aggregate of the main blocks of information used by the banking sector. It is on the basis of this information that a credit institution builds its business model and determines the nature and direction of its business processes.

This underscores the urgency of identifying the problem of determining the composition of information constituting bank secrecy, since at the legislative level it is determined that commercial banks have the right to establish an additional list of information subject to bank secrecy. However, there is no legislative procedure for fixing these data, while the definition of the composition of such data is extremely important, as their disclosure is a legal responsibility.

This problem can be solved by issuing a legal act of the Central Bank of the Russian Federation. In the opinion of the author, the existing types of legal acts of the Central Bank of the Russian Federation should be chosen as the publication of the Instruction of the Central Bank of the Russian Federation "On Determining the List of Information Constituting Bank Secrecy". The text of this instruction shall contain the procedure of fixing by the commercial bank of information constituting bank secrecy. For example, it can be fixed in the charter of a commercial bank. Thus, a commercial bank retains the right to determine the composition of information, as well as a legal possibility to apply regulation in case of violation of the banking secrecy regime.

## V. PRACTICAL SIGNIFICANCE

The practical significance of the study is to identify problems of legal regulation of banking secrecy, as well as in the formation of ways of development of Russian legislation in the field of banking secrecy, subject to the establishment of a national digital economy in the Russian Federation.

## VI. CONCLUSIONS

Summarizing all the conclusions of the work, the author notes that at the current stage of formation of the digital economy it is important to minimize the loss of information data. These losses can occur as a result of software risks (hacker attacks, technical failures, etc.), as well as due to the actions of employees of the organization, disclosing bank secrets.

Commercial banks carry out a set of measures to ensure compliance with the requirements of the legislation of the Russian Federation and internal regulations aimed at protecting banking secrecy in order to minimize commercial and reputational risks. However, the number of cases of bank secrecy violations is increasing every year.

In the course of the research on this topic, a number of problems that are currently topical, as well as proposals to improve the Russian legislation in the field of banking

secrecy, developed on the basis of analysis of the legislation on banking secrecy, conducted in order to obtain practical confirmation of the presence of identified problems, were identified.

The introduction of modern technologies in the bank's work qualitatively changes the business processes, which, in turn, radically change the current business model. All this is happening within the framework of the development of the digital economy in the Russian Federation, which is based on information. In today's reality, it is necessary to form a number of changes and additions to the articles of the Civil Code of the Russian Federation, which relate specifically to information and digital space.

Changes can be made in two scenarios. The first is the introduction of amendments to the current version of the articles of the Civil Code of the Russian Federation. The second is to create a "new part" The Civil Code of the Russian Federation, dedicated to the regulation of digital law.

The Code of Administrative Offences of the Russian Federation provides for the liability of officials with regard to the disclosure of information containing bank secrets that became known to them in the course of their professional activities. In order to prevent administrative violations in terms of disclosure of bank secrecy it is necessary to increase the amount of administrative fines up to 100 thousand rubles. This measure will help to prevent such violations, as well as crimes that in some cases are the result of a number of administrative offences.

The Criminal Code of the Russian Federation establishes criminal liability of individuals for the collection of information constituting commercial or banking secrets by means of theft of documents, bribery or threats, as well as by other illegal means for the purpose of disclosure or illegal use of such information. Changes should also be made to the Criminal Code of the Russian Federation. In particular, article 183, paragraph 1, of the Criminal Code requires that the penalty be amended to include deprivation of the right to hold certain posts or engage in certain activities for up to two years.

In addition to changes in legislation, it is necessary to make changes in the training programs for legal professionals, adding a course on "Digital Law", in the course of which future lawyers can develop digital competencies necessary for professional activities at the current stage of development of the digital economy in the conditions of "digitalization" of the legal system [24].

Introduction of the proposed amendments to the Russian system of regulatory legal acts, as well as to the system of training of professional lawyers, will allow to solve the current problems, as well as to prepare the legislation for the current "digital changes".

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