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MONETARY OBLIGATION IN CASHLESS SETTLEMENT IN BANKS

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Abstract

In this article, we study the legal essence of monetary obligation and its role in cashless settlements in the banking system. We describe the features of monetary obligations in the banking payment systems and the obligatory and legal nature of cashless and electronic holdings. We also characterize the relationship between cash, cashless, and electronic money and study the role of the contract of the banking account.

Keywords

monetary obligation – Cash – Cashless and electronic money

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Introduction

In Russia, cashless settlement in banking organizations or lending agencies is based on the Civil Code of the Russian Federation (the CC), federal laws, contracts, bank rules, and legal customs. They ensure cashless settlement by payment order, letter of credit, collection of payments, electronic or other methods of payment and create monetary obligations to perform bank payments and rules. The monetary obligations form the base of the relationships arising under the law of obligation. The objects of these obligations can be as follows: cashless holdings and actions of the obligor (banks and their clients) on the money supply transfer to clients or other subjects according to the law, contract, bank rules, and legal customs. The monetary obligations occur under making the contract of banking account, its validity, and its execution.

Materials and Methods

We used historical and legal methods, analytical method, statistical method, and different methods for research into the empirical basis formed by the court decisions. These combined methods helped define the gaps in the legal regulation and suggest areas for further development¹.

Results Analysis

The notion “obligation” is absent from the Russian Civil Law, and Russian scholars have different views on this subject. According to the CC, under obligation, the obligor must: transfer the property; execute a piece of work; render a service; contribute to the joint activity; pay; or abstain from a certain action, - while the creditor has a right to demand the obligor to comply with the obligations.

There are contractual obligations, tort liability, and restitution obligations. Contractual obligations fall under the general provisions on obligations unless otherwise provided in the norms for certain types of contracts. In non-contractual obligations, the norms prescribed by Ch. 59 of the CC are prioritized as compared with the general provisions on obligations (art. 307, para. 1, para. 2, art. 307.1 of the CC).

Undoubtedly, the notion “monetary obligation” should stem from a more common term “obligation”. Obligations are one of the types of legal civil relationships but differ by their purpose, content, object, origin, execution and termination, and defense. Legal civil relationships ensure the creditor’s rights, accommodation of their legal interests through the obligor’s action (or inaction). The certain actions of transferring the property, paying a particular amount of money, executing a piece of work, rendering service, or abstaining from certain actions can be the object of an obligation. Exercising subjective rights of the creditor is only possible if the obligor acts according to the law, contract, legal customs under the threat of sanctions to be imposed on the breaching party. Obligations can include one or

¹ V. V. Pushkarev; P. V. Fadeev; S. A. Khmelev; N. Van Tien; E. A. Trishkina y A. A. Tsviliy-Buklanova, “Crimes in the Military-Industrial Complex”, *International Journal of Recent Technology and Engineering* Vol: 8 num 3 (2019): 7950-7952 y V. V. Pushkarev; A. Gaevoy; A. V. Skachko y A. Kolchurin, D. N. Lozovsky, “Criminal Prosecution and Qualification of Cybercrime in the Digital Economy”, *Journal of Advanced Research in Dynamical and Control Systems* Vol: 11 num 8 (2019): 2563-2566.

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several legal responsibilities. Obligations do not establish responsibilities for the third parties. On the other hand, in cases within the law, obligations can grant third parties with certain rights with respect to one or both parties of the obligation (art. 308, para. 3 of the CC).

Obligations are characterized by:

- 1) two or more subjects in the legal civil relationship (authorized parties and obligors);
- 2) the relativity of the subjective rights and legal responsibilities;
- 3) the subject of an obligation is the obligor acting according to the law, contract, or other legal grounds;
- 4) these actions can include the transfer of property, execution a piece of work, or rendering a service;
- 5) obligations include the subjective rights of the authorized parties and the correspondent responsibilities of the obligors;
- 6) the obligors must fulfill their responsibilities according to the private and public laws, moral norms, principles of good faith, reasonableness, and fairness;
- 7) the obligors' failure to fulfill their responsibilities will induce protection and responsibility measures;
- 8) the term "obligation" is a category of science and the institute of the law of obligations².

The aforementioned characteristics of the legal civil obligation help determine that the monetary obligation is a property-related relationship of obligation. Its constituents include the creditor's right to have the debt paid and the obligor's legal responsibility to pay the debt according to the contract and law. The main object of the monetary obligation is the obligor's actions to transfer the money to the creditor according to the contract and law. The so-called cashless holdings (cashless currency and electronic money) are the object of cashless payments. In civil law, there is an ongoing debate about the relationship between cash, cashless, and electronic money. In contrast to payments in cash, cashless payments are exercised through specific records in the client's bank account which reflect the amount of the money claimed. When a bank account is opened, there is a relationship of obligation (the right and obligation to transfer cashless holdings) between a client, bank, and the third parties. As a result of bank payments, creditors (clients, the third parties) can receive money in cash.

Korostelev highlights that cashless and electronic money materialize indefinite, unconditional, and abstract legal claims and obey legal obligation order³. According to Khrustaleva, electronic money is money that a payer gives to an operator of electronic

² A. Ju. Prokopiyeu, *Civil Legal Relations: Notion, Elements, and Types* (Moscow: Yurlitinform, 2016).

³ M. A. Korostelev, *Legal Regime for Electronic Money: master's thesis* (Moscow, 2015).

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money to exercise the payer's monetary obligations⁴. Yakubiv discuss tendencies of electronic transaction development⁵. Other authors draw attention to cybercrimes in the electronic banking⁶.

In 1926, Lunts concluded that the majority of property obligations are paid with money settlement. Meanwhile, money's physical and value qualities are not considered and are defined numerically through relationship to the numeraire currency unit⁷.

Many Russian scholars adhere to Lunts's concept of the legal and obligation-based nature of money in the process of cashless bank payments. Cashless currency falls under the mixed, property and obligation legal regime. In terms of legal fiction, specific methods of legal regulation are applied to the cashless currency by domestic law. Cashless currency is the remaining amount of money in the bank accounts of bank clients. This approach can help solve many practical problems including the possibility to use cashless currency as a collateral. Yefimova highlights that the legal relationship between the bank and the holder of the bank account includes the characteristics of loan agreements⁸.

Novoselova states that the holdings are the object of the client's in personam rights, namely the abstract right to demand the payment. These rights can be exercised only if the bank acts for the client. Also, Novoselova pinpoints that the money held in the bank accounts have a dual nature. In other words, such property has the characteristics of an in personam right (as related to the bank) and can be used as a means of payment as well as be encashed. The scientist believes that the non-cash money transfers can perform the money obligations though cash has always been used as their object⁹.

According to Belov, the essence of non-cash payments is the lack of cash transfers from one bank to another. Non-cash payments are characterized by the changes in the accounts of the payer, transferee, and the intermediary bank¹⁰.

One of the ways to exercise legal protection and responsibility in case of unjustified withholding of payment, payment evasion, or any delay in payment is the payment of interest (art. 395 of the CC).

According to art. 395 of the CC, the bank shall pay the interest in case the money is credited untimely, the money is wrongly withdrawn, the client's demand to transfer or encash the money is not exercised or is exercised untimely. The bank shall pay the interest irrespectively of the interest payment for the bank's use of the client's holdings (art. 856 of the CC). The Plenary of the Supreme Court of the Russian Federation and the Supreme

⁴ A. V. Khrustaleva, *Electronic Money as an Object of Civil Legal Relations*: master's thesis (Saint-Petersburg, 2018).

⁵ V. Yakubiv; R. Sodoma; O. Hrytsyna; N. Pavlikha; T. Shmatkovska; I. Tsymbaliuk; O. Marcus y I. Brodska, "Development of electronic banking: a case study of Ukraine", *Entrepreneurship and Sustainability Issues Vol: 7 num 1 (2019): 219-232*.

⁶ J. Šimonová, J. Čentěš, A. Beleš. *Financial analysis of innovative forms of money*. *Entrepreneurship and Sustainability Issues Vol: 7 num 1 (2019): 69-80*.

⁷ L. A. Lunts, *Money and Monetary Obligation in Civil Law* (Moscow: Statut, 1999).

⁸ L. G. Yefimova, *Banking Transactions: Law and Practice* (Moscow, 2001).

⁹ L. A. Novoselova, *Problems of Civil and Legal Regulation of Accounting Relations*: Ph.D. thesis (Moscow, 1997).

¹⁰ V. A. Belov, *Denezhnye objazatel'stva* (Moscow, 2001).

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Court of Arbitration of the Russian Federation explained that in cases with improper transactions, the judges shall be aware that the penalty stated in art. 856 of the CC is a legitimate penalty (art. 332 of the CC) and it can be imposed under the contract on the culpable bank¹¹. For the overdue money transfer or encashment (as stated in art. 849 of the CC), the bank shall pay the penalty to the client for the whole period of delay according to the interest rate. According to art. 849 of the CC, the bank shall pay the penalty if in the intra-bank settlements the money was not transferred on time. In the inter-bank settlements, the bank shall pay the penalty if the bank transfer order was not passed to the intermediary bank on time. If the greater amount of money (than that stated in the obligating document) was withdrawn or in case the money was withdrawn without the obligating document (or in any other case of violation), the penalty is calculated according to the interest rate of the Central Bank of Russia from the day of the money withdrawal and until the restoration of account holdings. The interest rate can be defined as of the filing day or as of the decision day.

If the violation of rules for money settlements with payment orders caused wrongful withholding of money, the bank (and the bank responsible for executing the order) shall pay the interest according to art. 395 of the CC based on art. 866 of the CC. wrongful withholding is any delay in the money transfer requested by the payer. The payer has a right to sue the bank to pay the penalty according to art. 856 of the CC or to pay the penalty according to art. 866 of the CC¹².

Conclusions

Monetary obligations in cashless settlements are widespread due to the legal possibilities of the bank account contracts. Chapter 45 “Bank account” of the Civil Code of the Russian Federation stipulates the framework of the bank account contracts. According to this chapter, the bank shall receive and deposit the money to the client’s account, perform the client’s orders to transfer or encash the money, to exercise other bank transactions in terms of the law and contract. The law can prescribe situations when the bank shall refuse to deposit or withdraw the money. The bank cannot control the client’s actions, impose restrictions that are not prescribe by the law or contract. The bank cannot control the client’s management of the bank account except in cases of seizure of the bank holdings or suspension of bank transactions. Seizure of funds of spouses must comply with the Family Law on the foreclosure on the shared obligations of the spouses or one of them (art. 858 and para. 1 of the CC). Rights for the bank holdings belong to the client within the residual amount. Rights for the bank holdings shared by several clients belong to these clients in proportion to the sum deposited by each of them unless other is provided in the contract. Rights for the bank holdings of spouses are considered as their shared rights unless other is provided in the contract.

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¹¹ The Resolution of the Plenum of the Supreme Court of the Russian Federation on “Judicial practice of the Civil Code on interest for using somebody else’s money” of 8 October 1998 (revised on 24 March 2016).

¹² V. A. Belov, Denezhnye objazatel'stva (Moscow, 2001).

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