

Chapter 20

Features of the Legal Infrastructure of the Turnover of Investment Objects in the Russian Federation



Denis E. Matytsin 

Abstract The relevance of the research presented in this chapter of the monograph is due to the urgent need for the development of legal regulation of the turnover of non-documentary securities and digital objects in modern Russia, which determines the purpose of this scientific work. Millions of Russians, in the face of declining returns on traditional banking products, direct their investments to the stock market, making both independently and through the mediation of professional market participants exchange deals with securities. The study, based on the study of the regulatory framework for regulating the procedure for circulation of equity securities, substantiates the conclusion that in practice, there are three types of legal gaps when transferring ownership rights to shares and bonds. First, there is the potential for falsification of material documents that mediate the transfer of shares from one person's account to another person's account. Secondly, there is uncertainty about the qualification of actions as unilateral or bilateral transactions in some cases related to the disposal of non-documentary securities. Third, there is a lack of interaction between the register of notarized transactions on the alienation of securities and the databases of organizations that maintain the depot account and the register of shareholders. In modern Russia, the development of Industry 4.0 technologies is a challenge to legal science to a new understanding of the state of security on digital investment platforms, to a new view of the legal nature of undocumented securities and related legal phenomena that arise as a result of scientific and technological progress. Based on the identification of three types of legal gaps, the conclusion is justified that to eliminate them, there is a need to improve the legislative tools of the system of accounting and registration of the transfer of ownership rights to non-documentary securities. The author proposes to fix the rules on the mandatory registration of purchase and sale transactions and other transactions that mediate a change of ownership in the distributed registry system, which should be accessible to all entities involved in deals. The

D. E. Matytsin (✉)

Department of Business Law, Arbitration and Civil Procedure, Institute of Law, Volgograd State University, Volgograd, Russia

e-mail: Dmatytsin@ya.ru; ppagp@volsu.ru

Department of Civil Law and Procedure, Volga Branch of the International Law Institute, Volgograd, Russia

recommendation is justified to verify the authority of a person to dispose of security by activating an electronic digital signature or to use cryptographic protection tools, which will increase the level of law and order and the volume of securities turnover on the market.

Keywords The Constitution of the Russian Federation · Shares · Equity securities · Non-documentary securities · Register of shareholders · Civil Code of the Russian Federation · Multifunctional exchange trading platform · Investments · Securities turnover

JEL Codes G18 · G24 · K12 · K15 · L14 · L24 · L86 · O16

20.1 Introduction

The legal basis for the circulation of non-documentary securities is a set of regulatory legal acts that include the norms of various branches of law. The fundamental ideas come from the constitutional provisions on which civil legislation is based. According to Part 1 and Part 2 of Article 8 of the Constitution of the Russian Federation, freedom of economic space, and freedom of economic activity are guaranteed in the state, and private, municipal, state, and other forms of property are recognized and protected equally. Article 34 of the Constitution of the Russian Federation establishes the right of everyone to freely use their abilities and property for carrying out entrepreneurial and other non-prohibited economic activities. Following paragraph “g” of Article 71 of the Constitution of the Russian Federation, the establishment of the legal basis of the single market is the responsibility of the Russian Federation. In addition, the Russian Federation is responsible for the adoption and amendment of acts of civil, civil procedure, and arbitration procedure federal legislation (The Constitution of the Russian, 2014). It follows that the establishment of the legal basis for the circulation of non-documentary securities is the responsibility of the federal center.

20.2 Materials and Methods

The scientific development of the material is carried out based on a set of normative and doctrinal sources. The article uses federal laws and other normative acts of the Russian Federation. In particular, the following federal laws were studied. The Constitution of the Russian Federation. Civil Code of the Russian Federation. Federal Law No. 142-FZ of 02.07.2013 “On Amendments to Subsection 3 of Section I of Part One of the Civil Code of the Russian Federation.” Federal Law No. 514-FZ of 27.12.2018 “On Amendments to the Federal Law on the Securities Market and Certain Legislative Acts of the Russian Federation in Terms of Improving the legal

regulation of the issue of Securities.” Federal Law No. 39-FZ of 22.04.1996 (as amended on 27.12.2019) “On the Securities Market” and other regulatory legal acts.

Doctrinal sources are represented by scientific publications of domestic lawyers and economists. The works of Russian and foreign authors were used, including Agnessa Inshakova, Goncharov, Elena Inshakova, Ryzhenkov, Sevostyanov, Lungu, Brylyakov, Matytsin, Mariola, Urbano, Bustos, Sady-Kimbaya, Huang, Yuan, Nikiforov, Bogustov, Pochezhertseva, Sukhanov, Tarakanov, Lubyagina, Borodkin, Zenin, and others.

The content of this chapter of the monograph is developed based on the materialist worldview and the general scientific method of historical materialism. General scientific methods of cognition are applied: dialectical, hypothetical-deductive method, generalization, induction, and deduction, analysis and synthesis, empirical description. The study also uses private scientific methods: normative-dogmatic, comparative-legal, structural–functional, etc.

20.3 Results

The main body of legal norms regulating public relations in the field of non-documentary securities, of course, is concentrated within the framework of civil legislation and federal laws adopted following it (Inshakova & Goncharov, 2017). The key category of civil law is the object of civil rights. The term “object of civil rights” should be understood as ‘a legally passive material or ideal phenomenon, in respect of which unilateral legally significant actions can be committed’ (Objects of Civil Rights, 2019), since there is no legal definition in the current legislation. We also agree with the position of scientists regarding the fact that the objects of civil legal relations are concretized and detailed objects of constitutional legal relations (Lungu & Brylyakova, 2018).

According to Article 128 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation), undocumented securities are classified as property rights that are part of a group of other property that forms one of the groups of objects of civil rights (Civil Code of the Russian Federation, 1994). Unlike documentary securities, which relate to things and represent a material phenomenon (the object of the material world), due to the absence of a materialized document, non-documentary securities form an ideal phenomenon, as well as non-cash funds and the novel of Russian civil legislation-digital rights (Inshakova et al., 2020).

The generic identity of non-documentary securities is determined by Article 142 of the Civil Code of the Russian Federation from which it follows that the following investment objects are securities. First, documents certifying obligations and other rights, the implementation and transfer of this are possible only upon presentation of such documents. Secondly, the rights of obligations and other rights stipulated in the relevant decision or act of the issuer, the implementation and transfer of which is possible in compliance with the rules and requirements established by Article 149 of

the Civil Code of the Russian Federation. Thus, this norm contains the basic generic concept of documentary securities (the first) and non-documentary securities (the second).

The norm of Part 1 of Article 149 of the Civil Code of the Russian Federation reflects the theory of unilateral will, we note only the essence of the concept—the responsibility for the execution of undocumented security lies with the person who issued it. The current rule of law (Part 1 of Article 149 of the Civil Code of the Russian Federation) also applies to persons who have provided security for the performance of obligations under the relevant security. In addition, it should be noted that the Federal Law of 02.07.2013 No. 142-FZ (Federal Law, 2013) Chap. 7 of the Civil Code of the Russian Federation “Securities” was supplemented with the third paragraph. This section highlights the rules governing the main provisions of non-documentary securities: enforcement, transfer of rights, protection of violated rights, consequences of reclamation, and consequences of loss of accounts. Thus the rules on non-documentary securities were separated and placed in a separate pedagogical institute within the broader legal institution of securities.

Further regulation of the circulation of non-documentary securities, as well as the use of the rights that they certify, is carried out by federal laws adopted following the Civil Code of the Russian Federation. From 01.01.2020, Federal Law No. 514-FZ of 27.12.2018 (Federal Law, 2018) introduced amendments to Federal Law No. 39-FZ of 22.04.1996 “On the Securities Market” (hereinafter referred to as the Law on the Securities Market), regulating the direct circulation of securities (Federal Law, 1996).

Among the amendments, it should be noted that non-documentary securities have ceased to be registered. The Law names four equity securities: shares, bonds, an issuer’s option, and Russian depository receipts. According to paragraph 1, part 1 of Article 2 of the Law on the Securities Market, equity securities are characterized simultaneously by the following characteristics: (1) fix the totality of property and non-property rights; (2) are placed in issues or additional issues; (3) have an equal volume and terms of implementation within one issue.

These features allow us to conclude that the characteristic feature of securities in circulation is their issue, i.e., issue. The issuing procedure is a sequence of actions established by the legislation of the issuer for the placement of equity securities (Article 2 of the Law on the Securities Market). Moreover, the issue of equity securities must be registered following the established procedure. Currently, the registration authority is the Bank of Russia, which is guided in this matter by the relevant Regulation (Bank of Russia Ordinance, 2017).

The procedure for issuing securities is divided into the following stages:

1. A decision is made on the placement of securities. As a rule, such a decision is within the competence of the general meeting of shareholders.
2. The decision on the placement of securities is approved by the Board of Directors (Supervisory Board). Or another competent management organ no later than six months from the date of the relevant decision, except in cases when the

- placement takes place during the establishment of the company or during the reorganization.
3. The state registration of the issue (additional issue) is carried out by the registering organ. Since 01.01.2020, in addition to the Bank of Russia, the registrar, the exchange, or the central securities depository have the right to register issues in the cases provided for in Article 20.1 of the Securities Market Law. When applying for state registration of an issue, the issuer is obliged to provide a list of the necessary documents specified in Chap. 5 of the Regulation. In addition, these documents can be sent in electronic form on the website of the Bank of Russia or the registering organization using the Internet information and telecommunications network, including through access to the personal account.
 4. After the registration of the issue, securities are placed, which consists of transactions aimed at transferring ownership rights to the first owners, making accounting entries on the personal accounts of the first owners.
 5. The issuing procedure is completed by the state registration of the report on the results of the issue, which reflects all the necessary information about the placement of securities; the response is submitted no later than 30 days after the end of the placement period.

After the issue has passed, the securities go into circulation. The circulation of securities of the Law on the Securities Market is understood as the commission of several civil transactions aimed at the transfer of the right to securities. The circulation of securities before the registration of their issue as well as before their full payment is prohibited (Article 27.6 of the Law on the Securities Market). At the same time, the moment of transfer of rights depends on whether they are recorded in the register or the depository. In the first case, from the date of making a receipt entry on the personal account of the acquirer, and in the second, from the date of making a receipt entry on the depot account (Article 29).

Currently, the only multifunctional exchange trading platform in Russia is the Moscow Exchange Group. The group includes the central securities depository non-bank credit institution joint-stock company “National Settlement Depository,” as well as the non-bank credit institution-central counterparty “National Clearing Center” (Joint-stock Company), which allow for a full cycle of investment services. Individuals are allowed to participate in trading on the exchange by entering into a contract for the provision of brokerage services or opening an account with a brokerage company. Limits on transactions are set and professional and property requirements are imposed on individuals when they are recognized as qualified investors who can independently make exchange deals. These restrictions are established by the state to ensure the safety of citizens from significant property losses. Since civil transactions on the exchange are subject to an increased degree of risk and an uncertain degree of confidence in the issuer. Securities are purchased primarily to improve their financial condition by regularly receiving an increase. That is the mathematical difference between the purchase and sale price, the interest, and the dividends due (Bustos & Pomares-Quimbaya, 2020). As a rule, the purchase price and, accordingly, the sale price at organized auctions are directly proportional to the amount of income

received on them. In other words, if there is an increase in the yield on security, then the market price increases, and if it decreases, it decreases (Inshakova & Goncharov, 2017).

The legal regulation of the market and its functioning in modern Russia is quite automated and optimal. At the same time, the development of Industry 4.0 technologies inclines legal science to a new understanding of the state of security in digital investment markets (Sánchez & Urbano, 2019) and also to understand the legal nature of non-documentary securities and, most importantly, related phenomena (from the point of view of law) that arise as a result of scientific and technological progress (Tarakanov et al., 2019).

Here, of course, we are talking about cryptocurrency, tokens (Huang & Zhao, 2017), or using the terminology of the latest Russian legislation—digital financial assets.

In legal science, scientists have repeatedly noted that there is a change in the form and leveling of the signs of a thing in the classical sense. Non-documentary securities, however, have retained the legal regime associated with the exercise of certifiable rights (“rights from the paper”), which are the subject of the law of obligations and corporate law. Accordingly, the provisions of property law as an object of civil rights apply to “rights to paper” (Nikiforov, 2010). However, some researchers believe that non-documentary securities do not fit into the traditional understanding of securities, justifying this by the lack of properties of public credibility, formalism, presentation, and constitutive value (Bogustov, 2012). In this regard, others explained the peculiarity of the non-documentary form as follows: non-documentary security originally appeared as a set of legal facts, forming a complex composition these facts are characterized by different legal nature—binding and public law. Therefore, this composition, for example, according to Z. A. Pochezhertseva, should not be called “the emergence of rights to an undocumented security,” but “the emergence of an undocumented security.” It follows from this that the special regulation of such a complex composition of legal facts in the market is due to the solution of two sets of tasks by the regulator. The first—a relatively “conceptual” block is associated with maintaining the balance of state regulation and self-regulation. The second conditionally “instrumental” block includes a combination (convergence) of private and public legal means of legal regulation (Pochezhertseva, 2013). However, it should be noted that the legislator chose a completely different approach, reducing the powers of, for example, self-regulatory organizations (SROs), transferring most of the powers to the regulator—the Bank of Russia. Currently, SROs have the right only to train citizens in professional activities in the securities market and take exams, if they are accredited by the Central Bank of the Russian Federation (Article 49 of the Law on the Securities Market).

Examining the legal nature of undocumented securities, E.A. Sukhanov notes that the Law on the Securities Market very unsuccessfully fixed in the domestic legal order an extremely controversial category of “undocumented securities.” The Law is subject only to equity securities (shares and bonds) and does not in any way extend its effect to documentary securities. Therefore, the institution of “undocumented securities” is not directly related to the traditional civil law institution of securities:

we are talking about the civil law regime of two different types of objects of civil rights (Russian Civil Law, 2015). We should agree with this point of view, and therefore, in our opinion, the amendment to Article 128 of the Civil Code of the Russian Federation regarding the determination of the place of undocumented securities in the system of objects of civil rights is positive in this regard. Unfortunately, the Law on the Securities Market is still terminologically different from the Civil Code of the Russian Federation, despite significant changes in recent years.

On the other hand, most scientists agree that with the “loss” of shares and bonds of the documentary form, only the way of legitimizing the rights they secure has changed. And the introduction of such a form into circulation is primarily due to the need for economic turnover. According to D. V. Lubyagina, this circumstance, on the contrary, emphasizes the decisive importance of the rights contained in them. Therefore, the development of various structures due to the movement of scientific and technological progress not only does not detract from but also does not change the main function of securities (Lubyagina, 2017). This approach allows us to draw an unambiguous conclusion that in the case of non-documentary securities, the content prevails over the form. Because, first, as historical retrospect shows, securities arose as a result of simplifying the turnover of the obligations enshrined in them. Secondly, the objects of the material world have long ceased to be the only source and repository of information.

The position that not only things are recognized as objects of property rights but also binding rights and disembodied things has long been heard in the literature. The reason for this recognition, as already noted, is technological progress, thanks to which fundamentally new objects begin to exist in civil circulation, including three types of ideal phenomena: undocumented securities, non-cash funds, and digital rights (Borodkin, 2018). However, it should be noted that common law countries are characterized by a proprietary concept of the interpretation of objects of property rights. Thus, intangible objects of intellectual property are objects of real rights. According to I.A. Zenin, the attribution of intellectual property to the result of intellectual activity is due to many historical, economic, psychological, and legal factors (Zenin, 2005).

20.4 Conclusions

Thus, based on the study of the regulatory framework for regulating the procedure for circulation of equity securities, the following conclusion is justified. In the implementation of the transfer of ownership of shares and bonds in practice, there are three types of legal gaps. First, there is the potential for falsification of material documents that mediate the transfer of shares from one person’s account to another person’s account. Second, there is uncertainty about the qualification of actions as unilateral or bilateral transactions in some cases related to the disposal of non-documentary securities. Third, the lack of interaction between the register of notarized transactions on the alienation of securities and the databases of organizations that maintain

the depot account and the register of shareholders. To eliminate these problems, the author substantiates the need to improve the legal instruments of the system of accounting and registration of the facts of the transfer of ownership rights to non-documentary securities. This is achieved by establishing a rule on the mandatory registration of purchase and sale transactions and other transactions that mediate a change of ownership in a distributed registry system, to which all entities involved in transactions must have access. At the same time, it is proposed to verify the authority of a person to dispose of security by activating an electronic digital signature or using cryptographic protection tools. This will increase the level of law and order and the volume of securities turnover on the market.

Acknowledgements The work was supported by Russian Science Foundation (project No. 20-18-00314).

References

- Bank of Russia Ordinance No. 4477-U dated 03.08.2017 “On Amendments to the Regulation of the Bank of Russia” 11 August 2014 No. 428-P rev. dated 18.12.2018 “On the standards for the issue of securities, the procedure for state registration of the issue (additional issue) of emissive securities, state registration of reports on the results of the issue (additional issue) of emissive securities and registration of securities prospectuses”. Bulletin of the Bank of Russia, 77.
- Bogustov, A. A. (2012). *Securities as objects of rights in the civil law of the CIS member states. Comparative legal analysis* (Ph.D. thesis). Moscow. 27.
- Borodkin, S. V. (2018). A new approach to the classification of objects of property rights. *Journal of Russian Law*, 2, 6–12.
- Bustos, O., & Pomares-Quimbaya, A. (2020). Stock market movement forecast. A Systematic Review. *Expert Systems with Applications*, 156, 113464.
- Federal Law. (1996, April 22). No. 39-FZ (as amended on 27.12.2019). *On the securities market* (as amended and supplemented, entered into force on 01.01.2020). Collected Legislation of the Russian Federation, No. 17, Art. 1918.
- Federal Law. (2013, July 2). No. 142-FZ *On amendments to subsection 3 of Section 1 of part one of the civil code of the Russian Federation*. Collected Legislation of the Russian Federation, No. 27, Art. 3434.
- Federal Law. (2018, December 27). No. 514-FZ *On Amendments to the Federal ‘On the Securities Market’ and certain legislative acts of the Russian Federation in terms of improving the legal regulation of the issuance of securities*. Collected Legislation of the Russian Federation, 53 (part I), Art. 8440.
- Goncharov, A. I., & Inshakova, A. O. (2019). *Objects of civil rights: textbook for an undergraduate, specialist, and graduate programs* (A. I. Goncharov & A. O. Inshakova, Eds., 2nd ed., pp. 20–23). Yurayt; Publishing House of Volgograd State University.
- Huang, T., & Zhao, Y. (2017). Revolution of securities law in the Internet Age: A review on equity crowd-funding. *Computer Law & Security Review*, 33(6), 808.
- Inshakova, A. O., & Goncharov, A. I. (2017). Securities as a subject of financial and economic interest and object of civil law relations. *Law—Higher School of Economics Journal*, 4, 97–110.
- Inshakova, A. O., Inshakova, E. I., Ryzhenkov, A. J., & Sevostyanov, M. V. (2020). Civil law in the digital economy: Analysis of doctrinal adaptation trends. competitive Russia: Foresight model of economic and legal development in the digital age. In A. O. Inshakova & E. I. Inshakova (Eds.),

- Proceedings of the International Scientific Conference in Memory of Oleg Inshakov (1952–2018)* (pp. 421–429). Springer Nature.
- Lubyagina, D. V. (2017). Influence of the form of security on the content of civil law regulation. *Advocate*, 2, 18–23.
- Lungu, E. V., & Brylyakova, E. S. (2018). Constitutional legal relations, and civil legal relations: A comparative analysis. *State Power and Local Government*, 7, 13–18.
- Nikiforov, A. Y. (2010). *Uncertified securities as objects of civil legal relations* (Ph.D. thesis). Tomsk, 26.
- Pochezhertseva, Z. A. (2013). *Legal regulation of the securities market* (private and public law principles. Ph.D. thesis). Yekaterinburg, 27.
- Sánchez, M., & Urbano, A. (2019). Security in digital markets. *Journal of Business Research*, 101, 487.
- Sukhanov, E. A. (2015). *Russian Civil Law. A common part. Real right. Inheritance law. Intellectual rights. Personal non-property rights* (4th ed.), Moscow: Statut, 331.
- Tarakanov, V. V., Inshakova, A. O., Dolinskaya, V. V. (2019). Information society, digital economy, and law. In E. G. Popkova (Ed.), *Ubiquitous computing and the Internet of Things: Prerequisites for the development of ICT*. Studies in Computational Intelligence (pp. 3–15). Springer Science+Business Media.
- The Civil Code of the Russian Federation (part one), 30 November 1994 No. 51-FZ (as amended on 16 December 2019). Collected Legislation of the Russian Federation, No. 32, Art. 3301.
- The Constitution of the Russian Federation (adopted by popular vote on 12.12.1993) (taking into account the amendments introduced by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation dated 30.12.2008 No. 6-FKZ, dated 30.12.2008 No. 7-FKZ, dated 05.02.2014 No. 2-FKZ, dated 21.07.2014 No. 11-FKZ). Collected Legislation of the Russian Federation, No. 31, Art. 4398.
- Zenin, I. A. (2005). *The civil and commercial law of foreign countries: Textbook*. Allowance. Mossk, 92.