Online Banking in Russia: Legal Aspects

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Introduction
Bank business in Russia is increasingly developing. Banks in Russia provide a wide range of services to their customers and constantly launch new banking products and services. Online banking is one of the most advanced services, not only leading banks provide online banking services, the smallest banks in Russia attempt to launch this kind of service. Until a few years ago the legislation that regulates online banking was not so developed. Online banking was subject to the general norms of the Civil Code of the Russian Federation, the Federal Law №1-FZ of January 10, 2002 “On electronic digital signature”, the Federal Law №149-FZ of July 27, 2006 “On information, informational technologies and the protection of information” and some normative legal acts.

Online banking enables Clients to have an access to their accounts at any time, make payments online, review, save and print statements, transfer funds between accounts, make a deposit, an addition to the deposit, pay back a loan and other options. All you need is Internet access. However credit organizations and their Clients shall comply with legal procedures to avoid fraud.

Nowadays online banking regulation is becoming more detailed: it clarifies, protects customers’ interests in the sphere of electronic transmission and electronic transaction. I would like to express obligatory requirements and legal problems that could arise while a bank provides online banking service.

1. A short overview of the new regulation regarding online banking in Russia
Until very recently credit organizations were bearing the burden of online banking regulation. Online banking agreements between banks and corporate clients or individuals contain the definition of electronic signature or a signature analogue, safety provisions, kinds of orders to transfer funds, instructions, documents and agreements that can be accepted, dispute settlement procedure and other issues.

However in the last two years a number of laws concerning bank account, online banking and bank sphere in general entered into force. The Federal Law №161-FZ of June 27, 2011 “On the national payment system”, Federal Law №63-FZ of April 6, 2011 “On electronic signatures” and Regulations of the Bank of Russia №383-P of June 19, 2012 “On the rules for carrying out the transfer of monetary resources” are the most significant. Russian governors and the Central Bank are bound to update banking legislation, especially those spheres in banking field that were not regulated, for example such issues as transfer of funds in electronic form, security of such transactions and establishing a stricter control by the Central Bank of Russia over funds transfer. These are really positive amendments for bona fide customers, overcomplicated for banks and more problematic for illicit business.

As of July 01, 2013 online banking is subject to the Civil Code of the Russian Federation, the Federal Law №63-FZ of April 6, 2011 “On electronic signatures”, the Federal Law №161-FZ of June 27, 2011 “On the national payment system” (hereinafter referred to as
2. Legal status of online banking system, orders of a client, electronic documents, electronic accounting (payment) records according to the Russian legislation

The part 19 of the article 3 of the Federal Law №161-FZ of June 27, 2011 “On the national payment system” establishes a new legal notion - electronic means of payment that is the means and (or) a method that allows a client of the bank to make, certify and transfer orders with a view to the performance of the transfer of funds in the framework of the applied forms of cashless settlements with the use of the information and communication technologies, electronic information media, including payment cards, as well as other technical devices.

Due to the Information of the Central Bank of the Russian Federation concerning the Law on national payment system the part 19 of the article 3 of the Law on the national payment system qualifies bank cards as electronic means of payment. Also the online banking system is an electronic means of payment, if that allows a client of the bank to make, certify and transfer orders with a view to the performance of the transfer of funds in the framework of the applied forms of cashless settlements.

The Online banking system allows clients to send electronic documents, transfer funds in electronic form, send accounting (payment) records in electronic form, accept bank confirmation and also enter into an agreement. In order to perform acts in electronic form participants of online banking system shall realize a legal status of electronic documents, accounting (payment) records and orders of a client.


Under the item 11.1 of the article 2 of the Federal Law №149-FZ of July 27, 2006 “On information, informational technologies and the protection of information” electronic document means documented information presented in electronic form, that is, in a form which fits human perception with the use of computers, as well as for transmittance via information telecommunication networks or for processing in information systems.

Concerning the legal status of electronic accounting (payment) records the Civil Law stipulates the general rule according to which the agreement may provide the certification of rights of disposing of cash placed on the account by the electronic means of payment and by other documents with the use in them of the signature analogues, codes, passwords and other means confirming that instructions have been given by the person authorized therefore (item 3 of article 847 of the Civil Code of the Russian Federation). This article makes it possible to transfer funds in electronic form, however it was uncertain in which cases banks could accept orders of clients in electronic form or in hard copy. Regulatory agencies might request orders of clients in hard copy. Thus sometimes banks and clients should duplicate electronic documents, i.e. accounting (payment) records, in hard copy.

Let’s consider what the order of client and accounting (payment) records are.

A Bank shall transfer funds executed in the framework of the applied form of cashless settlements (hereinafter - order of the client) under the order of a client (a payer or a transferee of means). The order of a client shall contain the information allowing for the transfer of funds to be performed in the framework of the applied forms of cashless settlements. The order of the client may be transferred, accepted for execution, be executed and stored in electronic form unless otherwise provided (the item 1 of the article 5 and items 1, 2 of the article 8 of the Law on the national payment system).

According to the Regulations of the Bank of Russia № 383-P of June 19, 2012 “On the rules for carrying out the transfer of funds” the actions of the organizations that according to the legislation of the Russian Federation shall be empowered to transfer funds in the framework of the applied forms of cashless settlements on the presentation to the transferee of the means of the funds of the payer.

Accounting (payment) records shall be signed by electronic signature, the signature analogue and (or) certified by codes, passwords and other means enabling confirmation that the order (register) has been compiled by the ordering customer, the recipient of means, collector of means or the authorised person. During the reproduction of orders in electronic form the possibility of establishing the person signed accounting (payment) records should be provided (clause 1.24. of Regulations of the Bank of Russia № 383-P of June 19, 2012 “On the rules for carrying out the transfer of funds”).

The certificate on the right of disposal of funds during the receipt for the performance of the order in electronic form shall be carried out by the bank through a check of electronic signature, analogue of the autographic signature and (or) codes, passwords, other means allowing to confirm that the order in electronic form was made by the person (persons) signed instructions.

The verification of the right to use the electronic means of payment shall be carried out by the bank by checking the number, code and (or) another identifier of the electronic means of payment (clause 2.3. of Regulations of the Bank of Russia № 383-P of June 19, 2012 “On the rules for carrying out the transfer of funds”).

If legal entities and individual entrepreneurs are considered, a transfer of funds in electronic form shall comply with the requirements of the Federal Law №402-FZ of December 6, 2011 “On accounting”. According to article 9 of the Federal Law №402-FZ

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1 According to Federal Law №161-FZ of June 27, 2011 “On the national payment system“ transfer of funds - the actions of the organizations that according to the legislation of the Russian Federation shall be empowered to transfer funds in the framework of the applied forms of cashless settlements on the presentation to the transferee of the means of the funds of the payer.
of December 6, 2011 “On accounting” every fact of economic life\textsuperscript{2} shall be formalised in a source accounting document. Whereas accounting (payment) record is a type of source accounting document it shall comply with obligatory requisites of a source accounting document. One of the obligatory requisites of a source accounting document is signatures of persons with an indication of their surnames and initials, or of other requisites, necessary for identifying these persons. A source accounting document is compiled on a paper and (or) in the form of an electronic document signed by an electronic signature.

If the legislation of the Russian Federation or a contract stipulates presentation of a source accounting document to another person or to the state body in hard copy, the economic subject is obliged at the demand of this other person or state body to manufacture at his own expense the paper copies of the source accounting document compiled as an electronic document.

3. What kind of electronic signature could be applicable for payments made by electronic transmission?

Until April 08, 2011 electronic signatures and electronic documents were subject to such laws as Civil Law (160, 847) and Federal Law №1-FZ of January 10, 2002 “On electronic digital signature”. Actually for signing documents an electronic digital signature, a signature analogue, codes and passwords were used. In practice corporate clients who used online banking system signed all their documents by electronic digital signature and individuals signed their documents by a signature analogue as for individuals using electronic digital signature was overcomplicated and expensive.


\textsuperscript{2} Fact of economic life - a deal, an event or operation, which is rendering or is capable of rendering an impact on the financial status of an economic subject, on the financial result of its activity and (or) on the flow of monetary funds (item 8 of article 3 of the Federal Law №402-FZ of December 6, 2011 “On accounting”).
The table below illustrates the similarities and differences of electronic signatures.

<table>
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<th>Type of signers in practice</th>
<th>Simple electronic signature</th>
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<td>Regulation</td>
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<td>Definition</td>
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<td>Necessity of certification authority</td>
<td>no</td>
<td>As a general rule it is obligatory, but there are some exceptions.</td>
<td>obligatory</td>
</tr>
<tr>
<td>Type of certification authority</td>
<td>Any certification authority</td>
<td>Only accredit certification authority.</td>
<td>The List of accredit certification authorities is published on the website of the Ministry of Communications and Media. A certification authority cannot be a bank.</td>
</tr>
<tr>
<td>Legal status of documents signed by electronic signature</td>
<td>Electronic document signed by a simple electronic signature shall be deemed as equivalent to the document in hard copy signed by handwritten signature, if it is established:  - by federal laws, by regulatory legal acts adopted in compliance with them;  - by an agreement made by electronic interaction participants. These regulatory legal acts and the agreement must provide for the following:  1) the rules for identifying the person who has signed an electronic document on the basis of the simple electronic signature thereof;  2) the duty of the person creating and/or using the key of a simple electronic signature to observe its confidentiality.</td>
<td>Electronic document signed by a non-qualified electronic signature shall be deemed as equivalent to the document in hard copy signed by handwritten signature, if it is established:  - by federal laws, by regulatory legal acts adopted in compliance with them;  - by an agreement made by electronic interaction participants. These regulatory legal acts and the agreement must provide for the procedure for the electronic signature's verification.</td>
<td>Electronic document signed by a qualified electronic signature shall be deemed as equivalent to the document in hard copy signed by handwritten signature, except when federal laws or regulatory legal acts adopted in compliance with them demand making a document in hard copy carrier solely.</td>
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If a document must be certified by a seal, an electronic document signed by a reinforced electronic signature (qualified or non-qualified) and declared as equivalent to the document made in hard copy and signed by handwritten signature shall be deemed as equivalent to the document made in hard copy, signed by handwritten signature and certified by a seal.
The general trend of using electronic signatures will be the same. Simple electronic signatures are more appropriate for Online banking with individuals, and reinforced electronic signatures are more acceptable for corporate clients. This is due to the fact that reinforced electronic signature (non-qualified or qualified) perform additional function of providing electronic document security.

In order to create and check an electronic signature, to create the key of an electronic signature and the verification key of an electronic signature the facilities of an electronic signature which:

1) allows establishing the fact of making amendments in a signed electronic document after the time of signing it;
2) excludes the feasibility of computing the key of the electronic signature relying on the electronic signature or on the verification key thereof must be used.

When creating an electronic signature, the facilities of the electronic signature must:

1) show to the person signing an electronic document and the content of the information to be signed by him/her;
2) create the electronic signature solely after confirming by the person signing an electronic document the operation of creating the electronic signature;
3) show unambiguously that the electronic signature has been created.

When verifying an electronic signature, the facilities of the electronic signature must:

1) show the content of an electronic document which the electronic signature is affixed to;
2) show information about the amendments made in a document bearing the electronic signature;
3) cite the person whose electronic signature's key has been used in signing electronic documents (Article 12 of the Law on electronic signature).

Facilities of an electronic signature are belong to the encryption (cryptographic) devices (devices for the cryptographic protection of information), including the documentation on these devices, that are subject to licensing in compliance with Federal Law №99-FZ of May 4, 2011 “On licensing individual kinds of activity”.

Under item 5 of article 8 of Law on electronic signature the Federal Security Service of Russia in charge of security shall:

1) establish the requirements for the form of the qualification certificate;
2) establish the requirements for the facilities of an electronic signature and the facilities of certificatory centre;
3) confirm the compliance of the facilities of an electronic signature and the facilities of a certificatory centre with the requirements established in compliance with this Federal Law and publish a list of such facilities.

Therefore the reinforced signature (qualified or non-qualified) shall apply with GOST Russia Certificate of Conformity P 34.10-2012 according to I. 20 of the Order of FSB of

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3 Decision of the Government of the Russian Federation №313 of April 16, 2012 “On the approval of regulations on licensing the activity on the elaboration, production and promulgation of ciphering (cryptographic) devices, information systems and telecommunication systems, protected with the use of ciphering (cryptographic) devices on the performance of works and rendering services in the area of ciphering information and of the technical servicing of ciphering (cryptographic) devices, information systems and telecommunication systems, protected with the use of ciphering (cryptographic) devices (with the exception of the case, when the ciphering (cryptographic) devices information systems and telecommunication systems, protected with the use of ciphering (cryptographic) devices are technically serviced to provide for the own needs of a legal entity or of an individual businessman)”
the Russian Federation № 796 dd. December, 27 2011 “Concerning approval of requirements to the facilities of an electronic signature and requirements to the facilities of a certificatory centre”. That is unacceptable for individuals because it’s too expensive and you need to follow special rules.


It is clear that according to 383-P a bank may accept accounting (payment) records in electronic form and signed by simple electronic signature and non-qualified electronic signature. For tax reasons accounting (payment) records such as source accounting documents shall be signed by qualified electronic signature. The Ministry of Finance considers that (Letters N 03-03-06/1/24 dd. January 23, 2013, N 03-03-06/2/85 dd. July 31, 2012, N 03-03-06/2/67 May 28, 2012) for tax purposes an electronic document signed by non-qualified electronic signature is not equal to the document in hard copy signed by handwritten signature. As a consequence such document cannot be considered as supporting documents.

Perhaps in these letters the Ministry of Finance responded to a definite question but there is no such condition that information in electronic form signed by a simple electronic signature or by a non-qualified electronic signature shall be deemed as an electronic document equivalent to the document made in hard copy which is signed by handwritten signature, where it is established by an agreement made by electronic interaction participants. The agreement made by electronic interaction participants which establishes the instances when electronic documents signed by a non-qualified electronic signature are deemed as equivalent to the documents made in hard copy signed by handwritten signature must provide for the procedure for the electronic signature's verification. If such condition is performed source accounting documents signed by simple electronic signature or non-qualified electronic signature may be deemed as supporting documents (Letter of the Federal Tax Service of Russia N ED-4-3/19693@ dd. November 24, 2011). But at the same time such letters of tax authorities are confusing, and it is a risky situation when documents are signed by simple electronic signature or non-qualified electronic signature.

4. How can a customer enter into electronic agreements by using the online banking system?

Due to online banking system customers and banks may enter into an agreement in electronic form, for instance deposit agreements, additional agreements to loan agreements and etc. For conclusion an agreement in electronic form must be consistent with the requirements set forth in:

1) The use in effecting the deals of a facsimile reproduction of the signature, made with the assistance of the means of the mechanical or the other kind of copying, of the electronic signature or of another signature analogue shall be admitted in the cases and in the order, stipulated by the law and by the other legal acts, or by the agreement of the parties (item 2 of article 160 of the Civil Code of the Russian Federation).

2) The contract in written form shall be concluded by compiling one document, signed by the parties, and also by way of exchanging the documents by mail, telegraph, teletype, telephone, by the electronic or any other type of the means of communication, which makes it possible to establish for certain that the document comes from the party by the contract (item 3 of article 434 of the Civil Code of the Russian Federation).
Banks are recommended to have a framework agreement if they are going to conclude agreements signed by simple electronic signature or non-qualified electronic signature with a client on a regular basis. Just an Online banking agreement may be such a framework agreement. It is one more reason to use online banking by banks and their clients and enter into any necessary agreements in electronic form.

5. New obligatory requirements regarding customer rights protection.
As previously stated according to the Russian legislation online banking is considered as electronic means of payment that is the means and (or) a method that allows the client of the bank to make, certify and transfer orders with a view to the performance of the transfer of funds in the framework of the applied forms of cashless settlements with the use of the information and communication technologies, electronic information media, including payment cards, as well as other technical devices.

Electronic means of payments is subject to special procedure for the employment stipulated in the article 9 of the Law on the national payment system.

Since January 01, 2014 the article 9 of the Law on the national payment system shall come into operation that stipulates obligatory requirements for banks providing online banking system. Banks shall be obligated to:

1) Inform the client on the fulfilment of each operation with the employment of the electronic means of payment by directing to the client a corresponding notice according to the procedure laid down in the contract with the client.

According to the Letter of the Central Bank of Russia №172-T dated December 14, 2012 “On recommendation concerning application” the article 9 of the Federal Law №161-FZ of June 27, 2011 “On the national payment system” does not contain requirements on informing clients on the fulfilment of each operation with the employment of the electronic means of payment in defined mean, therefore a bank may choose any accessible mean of notice in electronic form and (or) in hard copy.

Inter alia a bank may:

- send notice in electronic form on the fulfilment of each operation with the employment of the electronic means of payment before bank direct debit;
- use several means of notice a client on the fulfilment of each operation with the employment of the electronic means of payment.

A bank may stipulate in online banking agreement a term when notice is deemed to be received and also a procedure on confirmation that a notice is received by clients and a bank.

Hence procedure including means (for instance by telephone, sms-messages, emails and etc.) and terms of informing clients are stipulated by banks in online banking agreements.

However in case a bank does not perform the duty of informing the client on the accomplished operation, a bank shall be obligated to compensate to the client the amount of the operation on which the client was not informed and which was carried out without the consent of the client (clause 13 of article 9 of the Federal Law №161-FZ of June 27, 2011 “On the national payment system”).

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In the case where a bank complies with the duty of informing the client about the accomplished operation and the client did not direct to a bank the notice on loss of the electronic means of payment and (or) their use without the client's consent, the bank shall not be obligated to compensate to the client the amount of the operation made without the consent of the client (clause 14 of article 9 of the Federal Law №161-FZ of June 27, 2011 “On the national payment system”).

Thus in fact banks have the responsibility to prove sending notice to clients on the fulfilment of each operation with the employment of the electronic means of payment. And in the case where a bank could not prove that it informed the client on the fulfilment of each operation with the employment of the electronic means of payment a bank shall compensate to the client the amount of the operation on which the client was not informed and which was carried out without the consent of the client. Such provisions may result in client’s abuse because client may say that he did not take any notice but the truth is the client deleted messages from the bank in his email for instance. This issue is discussed by the banking community but there is no simple decision.

2) Provide for the possibility for the client to inform it of the loss of electronic means of payment and (or) of its use without the consent of the client.
3) Register the notices directed to the client and received from the client, as well as to keep the corresponding information for no less than three years.
4) Provide the client with the documents and information that are connected with the employment by the client of its electronic means of payment according to the procedure established by the contract.
5) Examine the client's statements i.e., in case a dispute connected with the employment by the client of its electronic means of payment arises, as well as to provide the client with the possibility to receive information on the results of the examination of the statements, i.e., in written form at the request of the client in the period of time established by the contract but not more than 30 days from the date of receipt of such statements as well as no more than 60 days from the date of the receipt of statements in case of the employment of the electronic means of payment for the performance of a trans-border transfer of the monetary resources.
6) In case of loss of the electronic means of payment and (or) their use without the client's consent, the client shall be obligated without delay to direct the corresponding notice to the bank in the form envisaged by the contract following the discovery of the fact of the loss of electronic means of payment and (or) their use without the client's consent but no later than the day following the day of receipt from the bank of the notice on the accomplished operation. After the receipt by the bank of the client's notice on loss of the electronic means of payment and (or) their use without the client's consent the bank shall be obligated to compensate to the client the amount of the operation made without the consent of the client after the receipt of the aforementioned notice.

And at the moment the provision is an effect that before conclusion of the contract on the employment of the electronic means of payment with the client the bank shall be obligated to inform the client on the conditions of the employment of the electronic means of payment, in particular about any restrictions on the methods and places of the use and the cases of the elevated risk of the employment of the electronic means of payment.
Conclusion
In general amendments in Russian legislation concerning online banking system are positive and will encourage development of online banking. Certainly due to more detailed regulation new issues arise, but the most part of issues is translated into new legislation such as establishing flexible system of electronic signatures, regulation of orders of clients and accounting (payment) records, measures for protection rights of online banking participants.

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Commercial Bank “Garanti Bank - Moscow” (ZAO) was established in Moscow in 1995. CB “Garanti Bank - Moscow” (ZAO) is owned by Turkie Garanti Bankasi AS that is Turkey’s second largest private bank.