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**DIGITAL NOTARY AS A NECESSARY ELEMENT OF DIGITAL
ECONOMY: INTERNATIONAL EXPERIENCE**

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Abstract

This article covers the issues of informatization of notarial procedures, which are caused by the development of the Russian digital economy. The substantiation of the notarial element participation in electronic civil circulation is given as it explains the need confer authenticity of the actions and transactions of economic relations participants. In this regard, electronic instruments of notarial activity are studied and an attempt is made to study the digitalization of notarial and other legal procedures from the position of the personal participation principle. In this paper certain benefits and shortcomings of informatization of notarial systems in both Russia and some foreign countries of the world community are identified. The authors conclude that the current trend of informatization of various spheres of state activity, economic and civil life of society should develop in close consideration with minimizing its shortcomings. The scientific significance of the study is in the substantiation of the digital notary institution role as of a necessary element in the development of digital economic relations based on an analysis of Russian and foreign experience. The practical significance of the study is to identify the most acute problems and formulate general directions for the development of legal regulation of electronic notarial activities.

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Keywords: Electronic notarial system, informatization of the notarial process, identification of personality, digital economy.



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1. Introduction

The development of the digital economy in Russia is a priority area of state policy. Until 2018 regulation in this area was carried out within the framework of the Digital Economy of the Russian Federation Government Program, at present, the Government's Digital Economy Program 2024 defines prospects for the development of digitalization of the economy (The National Program "Digital Economy of the Russian Federation", 2019). The state pays considerable attention to the development of information and communication technologies in the economy and public administration. The informatization of many areas of public life led to the emergence of "digital government", "digital justice", "digital transactions" and "digital notary." Historically, one of the legal institutions ensuring the reliability of civil rights and obligations is the institution of notarial authentication of acts. The role of notarial information technology as a necessary element of the digital economy has been actively discussed recently at the highest level. So, the debatable issues of the development of the legal regulation of notarial information technologies become the subject of regular discussions by the notarial community and the government. It becomes obvious that the new modern format of economic relations requires a similar format of guarantees of stability of civil turnover. Notary's confer of authenticity of acts is one of the necessary conditions for protecting the civil rights of individuals and legal entities as well as preventing the emergence of controversial situations in commercial practice.

2. Problem Statement

The subject of the study is information technology in the system of notarial activities of Russia. This study aims not only to determine the term "digital notary" based on an analysis of Russian and foreign practice, yet also to trace the advantages of digital instruments of the notarial system in the development of digital relations.

3. Research Questions

The following issues are subject to study in accordance with the aim of the research:

1. Substantiate the need for the participation of the notarial system in economic development and ensuring legal security, as well as determine the legal content of the concept of "digital notary".
- 2 Based on foreign and Russian notarial practice, analyze the usefulness and effectiveness of using notarial instruments in the commercial practice of economic entities.
3. To highlight the existing both theoretical and practical problems in relation to the problem of electronic notary
4. Formulate general recommendations on the prospects for the development of legal regulation of notarial informatization in Russia.

4. Purpose of the Study

The purpose of the study in accordance with the research questions in this article is to build the concept of digital notary of Russia as a legal institution that ensures the authenticity of actions,

transactions, acts of economic relations subjects. Defining the content of "digital notary" term, the identification of difficulties in the process of digitalization of the notarial system make it possible to formulate general recommendations for improving the legal regulation of notarial activities.

5. Research Methods

The research methodology consists in applying both general theoretical methods of cognition and special ones. For example, the use of the dialectic method allows to draw an analogy of the notarial process with jurisdictional types of the legal process. The system method makes it possible to present "digital notary" as a collection of certain elements. Comparative legal and logical methods are indispensable in the analysis of legislation and practical notarial material of foreign states.

6. Findings

Many foreign authors study the importance of the notarial institution in economic relations, preserving legal security and cultural heritage (Pavic, Gagro, & Balatinac, 2019); ensuring the legality of decision-making procedures in companies of Hortvatia (Gargo, Ljustina, & Baran, 2018).

Despite the importance of the digital component of the notarial system and the widely used term "digital notary", it should be noted that there is no legal ascertainment of the "digital notary" concept. And therefore, this term currently refers to the totality of all "information technologies" from the inclusion in this concept of digital registers, digital signatures of notaries, ending with electronic document management and the performance of notarial acts in digital form. It seems that the essence of "digital notary" is to perform notarial acts in electronic form and to organize electronic notarial workflow. Here you can draw an analogy with e-justice "digital proceedings" organized in China: the online court Hangzhou Internet Court accepts claims for infringement of intellectual rights on the Internet, and the trial is fully carried out in real time on the court's website.

And speaking of e-government and the digital economy, electronic commercial activity is developing not only within countries but at the level of international relations. The experience of Estonia is noteworthy here, for example, Sullivan and Burger (2017) note: "Estonia in December 2014 became the first country to open its digital borders. So that any person anywhere in the world could apply for digital resident status" (p. 479). This provides an opportunity for residents to enter commercial relations with private and state companies using ID.

It is necessary to consider specific elements of digital notary that reduce time and money costs and can affect the efficiency of commercial activities as well as ensure the legal security of economic relations subjects:

1. In corporate relations, notary actions aimed at protecting the rights of business owners are highly important. For example, both in Russian and in worldwide practice it is mandatory to confer authenticity of corporate body meetings records. In Germany, Austria, all actions that relate to structural changes of companies require mandatory notarial authentication which ensures stability and security of the economic situation in the country and reflectively increases investment attractiveness of the state. In Russia mandatory notarial form of transactions with shares was introduced in 2009, that ensured the

protection of the rights of business owners in raider attacks. The development of digital exchange between notaries and state registrars has made popular the digital registration of a legal entity service as it is carried out by a notary public (in 2017 more than 140 000 entrepreneurs used it). It is noted from legal regulation of this procedure in foreign countries that to make it possible to introduce online registration of companies as mandatory, states should establish both electronic means of identification and the participation of a notary public, which ensures the authenticity of the applicant's personal participation in signing applications by digital signature.

2. The set up of the unified digital notarial system (UDNS) finally made it possible to solve the problem of determining the validity of powers of attorney for actions subject to state registration. The UDNS of Russia contains electronic registers, among which the most popular in commercial practice is the register of powers of attorney (entrepreneurs and citizens have used it over 1.6 million times) and the register of notifications of pledges of movable property.

3. The transition of paper form documents into electronic and vice versa is simply necessary in the modern rhythm of life for the frequent and remote adduce of documents when committing legally significant actions and transactions. In 2018, both business entities and citizens used it 50 percent more often - more than one million times. More and more often people come to a notary public to immediately create a document in electronic form to conveniently and quickly operate it in any number of copies of the file.

4. Digital admission of money, securities on the performance of monetary contractual obligations in a notary's deposit can become a useful digital notarial instrument. Russian legislator considers it possible to perform this action in electronic form in future.

5. Remote notarial authentication of real estate transactions. We probably came to the most demanded digital tool of Russian notaries, and the demand for it rises to the needs of developing digital commercial relations. (Draft Federal Law No 750699-7 "On Amending the Fundamentals of the Legislation of the Russian Federation on Notarial system", 2019). In addition to the authentication of real estate transactions in electronic form, the specified project sets out a list of notarial acts that can be performed remotely in electronic form as a prospect, e.g. a notary can confer authenticity on such without the personal appearance of the person who turned to the notary, thus can be ensured on the following procedures: authentication of the correctness of the translation of documents from one language into another, the transfer of documents, the recovery of money or the recovery of property from the debtor according to the notary's executive endorsement.

6. Creation of electronic medical records can be an effective way of transferring organization data to employees in cases of mandatory periodic medical examinations. Thus, in some countries, authentication and authorization mechanisms have been developed with the participation of a notary public for electronic management of medical records (Lo, Wu, & Chuang, 2017).

One of the promising measures of legal regulation that removes obstacles to the development of commercial international relations is the unification of electronic document circulation formats not only within the country between state bodies, but its unification on an international scale. So, in the framework of creating an integrated electronic space of trust in the territory of the EAEU member states, the institution of electronic notaries should ensure the exchange of electronic notarial acts.

The positive aspects in the digitalization of notarial procedures are certainly obvious and consistent with social needs in modern information conditions. Yet there are some concerns that are primarily associated with the relationship of "electronic identification" with individual rights. It is thought that legal regulation should limit the mandatory inclusion in electronic systems, the mandatory identification of a person in a strictly limited range of cases, generally allowing a person to be identified or not at their own free discretion. Another aspect that needs attention is the limitation of the right to personal participation. The right to personal participation in the proceedings is subject to transformation in litigation as a result of the use of digital technologies (Pavlushina & Skachkova, 2014). One must note the positive practice of China - the consideration of cases in the Internet court takes place only if the parties confirm the identity to a single identification platform using face recognition and real-name authentication technologies. The principle of personal participation is also being modified in notarial activities. It has become possible to carry out certain notarial acts in electronic form, the ownership of the signature to a person in modern times is verified by checking the digital signature. But, nevertheless, this principle (of personal participation) in its implementation in the notarial process should not be leveled to such actions where the notary needs to ascertain the will of the party and verify the legal capacity of the person. Issues of verification of legal capacity, identification of the person using digital signatures in cases of possible fraud, use without the knowledge of the owner or by way of misleading, falsification of a digital signature require special attention. A development prospect is the provision of access to biometric data, which will help to establish an identity, and access to information on court decisions on limiting the legal capacity of a person. It is proposed to solve the problem of using digital signatures and personal identification when using a mobile identifier (Husni, 2017.)

The problem of not only Russian notaries, but also foreign systems is the organization of information storage, ensuring the security of the notarial archive. In the United States, for example, there is a return to storing important paperwork. The Russian state allocates considerable funds for the development of information security technologies, for the implementation of the Information Security project of the Digital Economy program, the goal of which is to create a safe and sustainable information infrastructure for citizens and business representatives and the state in the digital space. It seems this project needs to include a solution to the problem of organizing notarial archives, since notaries perform public functions of authenticating documents on behalf of the state and the storage of such documents clearly requires the participation of the state. So far, the Federal Notary Chamber maintains these archives at its own expense. The notary community of Russia has yet to organize and carry out substantial work on the conversion of archival documents into electronic form. One of the solutions for the long-term storage of electronic documents is the use of microfilming (Kurcer, 2015). German notaries are already actively working on developing a central electronic archive by 2020, which is to be equipped with a four-level security system. And in France such archive is to come into function in 2021.

One of the pressing issues requiring a joint study of the notarial community and IT industry experts is the use of distributed registry technology (Blockchain) in notarial activities. This problem is caused by the development of services, mobile applications that allow identification, automation of video interviews (Interview service); store, add, view and print documents whose records are encrypted cryptographically and protected by the blockchain from editing or extermination (BLOCKNOTARY Timestamp, Journal

services); to produce “notarization”, i.e. fixing and recording phone calls to save unchanged with confirmation of the date and time (SilentNotaru). We can already observe the practice of using such services in the activities of notaries, for example, digital notarization in Italy based on the blockchain is positioned as a promising service, digital notarial solutions with additional security are being developed (Meneghetti, Quintavalle, Sala, & Tomasi, 2019). In October of 2017 at the Italian National Notarial Congress the creation of a network of notaries Notarchain was announced, it was put into practice at the end of 2018. This young notary practice of Italian colleagues is nonetheless quite intriguing.

Such automation of blockchains given the trend of their recognition as digital evidence (in September 2018, the Supreme People's Court of the People's Republic of China ordered Internet courts to consider digital blockchain records as evidence when considering cases involving the use of the Internet; in 2017 in the USA, the states of Arizona, Delaware recognized blockchain as legal evidence) can oust the human factor (a notary) out of the authentication procedure of a document let alone any other notarial action. The advantages and difficulties of using blockchain in electronic notarial procedures are a matter of interest to the world community. Lasmoles (2018) notes that blockchain contributes to the development of smart contracts, but raises many questions about the integrity of obligations, protection of personal data. Estonia's experience in this matter is positive: the provision of notary services as part of Estonia's e-residency activities is based on blockchain, which changes the way information is authenticated (Sullivan & Burger, 2017). Chinese IoT scientists offer new improvements to the blockchain consortium in building an electronic access gateway model using confirmation through a notary mechanism (Jiang, Wang, Huang, Long, & Huo, 2018).

7. Conclusion

The scientific significance of the study is in the substantiation of the digital notary institution role as of a necessary element in the development of digital economic relations based on an analysis of Russian and foreign experience. The practical significance of the study is to identify the most acute problems and formulate general directions for the development of legal regulation of electronic notarial activities.

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