



Aspects Of Legal Regulation Of Electronic Transactions Carried Out By Business Entities

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ABSTRACT

This article discusses the provisions of the legislation of the Republic of Kazakhstan, the Republic of Uzbekistan and foreign states that regulate relations between business participants in the implementation of transactions in electronic form. Currently, all over the world, there is a development of electronic commerce, using "electronic transactions", defined in business by "electronic contracts". When considering the legal regulation of "electronic contracts", it should be noted that the legislation governing the field of electronic document management in business activities needs to be finalized taking into account the requirements of the time and the emerging practice of using "electronic contracts". It should be noted that e-commerce has the potential to become a leading type of entrepreneurial activity in the future. It should be emphasized that the Republic of Kazakhstan does not have a Law on Electronic Commerce. In our opinion, such a law is necessary in the Republic of Kazakhstan, since at present there is a widespread digitalization of civil circulation. The adoption in the Republic of Kazakhstan of the Law "On Electronic Commerce" will provide an opportunity for a more complete regulation of legal relations of business entities on the conclusion of contracts in electronic form.

KEYWORDS

Law, Electronic Document, Electronic Transaction, Will, Expression Of Will, Electronic Agreement, Electronic Contract, Business, Legal Relations, E-Commerce.

INTRODUCTION

Currently, all over the world, there is a development of electronic commerce, using "electronic transactions", defined in business by "electronic contracts". When considering the legal regulation of "electronic contracts", it should be noted that the legislation governing the field of electronic document management in business activities needs to be finalized taking into account the requirements of the time and the emerging practice of using "electronic contracts". It should be noted that e-commerce has the potential to become a leading type of entrepreneurial activity in the future.

Considering the question of what should be understood by "electronic transactions" and "e-commerce" I would like to start with a quote from K.G. Borisova: "the use by states of the achievements of scientific and technical development ... Is pushing out traditional forms of trade" [1].

When writing the article, we considered the provisions of the legislation of the Republic of Kazakhstan, the Republic of Uzbekistan and foreign states that regulate relations between business participants in the implementation of transactions in electronic form.

In the process of researching normative legal acts, we applied general scientific methods and specific scientific methods. General scientific methods of cognition: analysis and synthesis, induction and deduction, analogy and modeling. Private scientific methods: formal - logical, comparative.

In our opinion, first of all, it is necessary to consider the essence of the transaction itself, disclose it as a legal fact and also determine its

location in the system of legal facts according to the formed classification.

O.A. Krasavchikov proposed to divide legal facts into events and actions; actions - on lawful and illegal; lawful actions - on legal acts and legal acts; at the same time, transactions were considered as a kind of legal acts [2].

From the fundamental provisions of the theory of transactions, it follows that the will and expression of the will when concluding a certain transaction must coincide. Article 102 of the Civil Code of the Republic of Uzbekistan and Article 148 of the Civil Code of the Republic of Kazakhstan stipulate that, upon the expression of the will of the party or parties, a certain transaction is made.

Will and expression of will must necessarily coincide. This point of view is substantiated by such scientists as O.A. Krasavchikov, M.M. Agarkov, V.A. Musin, O.S. Ioffe, F.S. Heifetz, A.M. Belyakov. They point out that the main condition for the validity of a transaction is that legislation implies the coincidence of will and will, it follows that in cases of discrepancy between the will of the parties and their expression of will, it becomes necessary to recognize a certain transaction as invalid. "Both of these elements are absolutely necessary and equal. The essence of the deal lies only in their unity. Absence of any of these elements means the absence of a deal" [3].

As a basic provision, Article 107 of the Civil Code of the Republic of Uzbekistan and Article 152 of the Civil Code of the Republic of Uzbekistan provide that a certain transaction in writing must be carried out by drawing up a written document showing its necessary content and

must be signed by the person or persons carrying out the transaction, and in the necessary cases by persons duly authorized by them. The document can be paper or electronic, since both options for its design represent a certain verbal expression of the will of all parties.

According to Article 101 of the Civil Code of the Republic of Uzbekistan and Article 147 of the Civil Code of the Republic of Kazakhstan, any actions of citizens and legal entities that are aimed at the emergence, certain change or complete termination of civil rights and their obligations are considered transactions. A transaction is considered a certain lawful action, a legal fact. It follows from this that the concept of "electronic transaction" has a conditional meaning, showing the specifics of the form of being a transaction. In view of this, the following conclusions are determined: firstly: such a concept as an "electronic transaction" very harmoniously combines two meanings, on the one hand, it is an "electronic document", and on the other hand, it is a civil law transaction; secondly, there is a need for a legal definition of the concept of "electronic transaction".

So, by virtue of Article 151 of the Civil Code of the Republic of Kazakhstan: "transactions are made orally or in writing (simple or notarized)" [4], Article 105 of the Civil Code of the Republic of Uzbekistan: "Transactions are made orally or in writing (simple or notarized)" [5]. We would like to draw your attention to the fact that over time, the differences between simple and electronic digital form may require urgent regulation of these forms of transactions. Currently, there are legal problems in the implementation of the practice of notarization of an "electronic document" in the Republic of

Uzbekistan and the Republic of Kazakhstan. I would like to note that the notarization of the "electronic document" in the territory of the Republic of Uzbekistan and the Republic of Kazakhstan has not yet been carried out and, in our opinion, there is a need for an early solution to this issue.

In our opinion, the definition of "electronic transaction" means a transaction that is made using certain means of communication and computer technology, without any preparation of a document on paper by exchanging "electronic documents" by the parties, or signing an electronic digital signature of one "electronic document ". Each separately of the named types of transactions has its own legal regime. "Electronic transactions" are, first of all, civil transactions regulated by the norms of the Civil Code of the Republic of Uzbekistan and the Civil Code of the Republic of Kazakhstan. In this regard, all subjects of civil law (both individuals and legal entities and public entities) have the opportunity to be the subjects of certain relations when making transactions in electronic digital form, they are not subject to special requirements from a legal point of view and include general provisions , establishing for certain persons, their legal capacity and capacity. An agreement is considered, in accordance with clause 1 of Article 378 of the Civil Code of the Republic of Kazakhstan: "an agreement is recognized as an agreement between two or more persons on the establishment, change or termination of civil rights and obligations" [4], Article 353 of the Civil Code of the Republic of Uzbekistan: "an agreement is recognized as an agreement two or more persons on the establishment, change or termination of civil rights and obligations "[5].

It should be noted that in international and European law governing relations in the field of information technology, the term "electronic agreement" is also used. Based on the legal definition of a civil law contract, it is possible to formulate the question of the relationship between an electronic agreement and an electronic contract. Electronic agreement is a broader concept. At the same time, such a statement does not fit into the provisions (rules) of international law and the law of individual states. Thus, the UN Center for Trade and Electronic Business has adopted the Agreement on Electronic Commerce (Recommendation No. 31, March 2000, Geneva). It says: "electronic agreement" sets out the framework principles for the execution of subsequent "electronic transactions". In some cases, an "electronic agreement" gives the parties a choice between alternatives. Another example: "an electronic agreement can be used to complete one transaction or several transactions. An electronic agreement must be concluded prior to an electronic transaction ... " [6]. In this interpretation, the definition of "electronic agreement" expresses a general agreement, which outlines the range of general rights and general obligations of all parties to this agreement. At the same time, clear obligations of all parties, as well as issues of responsibility for partial and complete failure to comply with the terms of a certain "electronic contract" are determined by its parties in an electronic contract (an electronic transaction).

From the above, it follows that an "electronic transaction" made under the guise of an "electronic agreement" can only be formalized as an "electronic agreement".

When considering the issue of e-commerce, it is necessary to note the statement of M. Boguslavsky: "e-commerce should be considered as a special form of transactions, in which their conclusion and execution is carried out using electronic means of communication. At the same time, the legal nature of the relevant transactions remains unchanged, and they must be regulated by the rules of law designed to regulate relations of a certain type (sale and purchase, transportation, contracting, etc.)" [7].

It should be noted that "e-commerce" is one of the newly formed types of entrepreneurial activity. According to article 3 of the Law of the Republic of Uzbekistan "On e-commerce": "e-commerce is the purchase and sale of goods (works, services) carried out in accordance with an agreement concluded using information systems (hereinafter referred to as an e-commerce agreement)" [8]. From the above definition, it follows that e-commerce is a set of types of electronic civil transactions.

It should be emphasized that there is no such law in the Republic of Kazakhstan. In our opinion, such a law is necessary in the Republic of Kazakhstan, since at present there is a widespread digitalization of civil circulation. In our opinion, the Law of the Republic of Kazakhstan "On Electronic Commerce" should provide for: general provisions that reveal the idea of the essence of the law, its purpose, regulated relations, principles of legal regulation of electronic commerce; legal regime of electronic documents in e-commerce; rights and obligations of information intermediaries; the rights and obligations of persons engaged in electronic commerce; the procedure for concluding and executing electronic contracts in electronic

commerce. The adoption in the Republic of Kazakhstan of the Law "On Electronic Commerce" will provide an opportunity for a more complete regulation of legal relations between business entities on the conclusion of contracts in electronic form.

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