
REVIEW ARTICLES

The Civil Law Regime of an Electronic Document in Business Activity in the Regions of Central Asia

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Abstract

This article discusses issues relating to electronic documents in business activities, taking into account the trend in the development of civil legislation and law enforcement practice of Uzbekistan and Kazakhstan. Currently, special attention is paid to international requirements and recommendations on procedures and rules of electronic document management. In particular, the study of mutual recognition between different jurisdictions of electronic digital signatures, the expansion of mutually beneficial cooperation in the field of electronic document management between countries, the creation of unified rules for the recognition of electronic documents, the expansion of the scope of electronic document management, including in the business environment, the widespread use of smart contracts, the use of alternatives to electronic digital signatures (such as QR codes, fingerprints, scanned version of a handwritten signature and others), ensure a level of protection of electronic documents.

In Uzbekistan and Kazakhstan, uniform document management standards have not yet been defined. In practice, companies, as well as state institutions, use both options – document management using paper and electronic media. That is, both countries are characterized by a hybrid format of office work, which creates inconveniences and unnecessary red tape for processing and forwarding documents, and after receiving an electronic document, it becomes necessary to save a copy of it on paper. Therefore, the reasonable use of an electronic document in business activity is one of priority in civil law research.

Keywords: Law, Civil law regime, Electronic document, Internet, e-commerce, Contract.

Introduction

Due to the COVID-19 coronavirus pandemic, there arose an objective need for the effective use of an electronic document, which gave a powerful impetus to the development of entrepreneurship in the digital reality. The epidemiological situation in the world has significantly accelerated the development of electronic document management in all spheres of public life. Therefore, the reasonable use of an electronic document in business activity is one of important priority.

In the modern digital transformation stage of information, technologies are an integral part of social and economic progress. Digital ways of transferring and storing information using computer technologies and the Internet have served as the basis for the socio-economic transformation of the state and society. Electronic document management has become an important information tool for digital civil circulation.

In legal literature, it is noted that electronic document management and its legal regulation are recognized as rapidly developing areas [1]. In many ways, the experience of developed countries in the legal regulation of electronic document management influences the development of the national legal framework [2]. This experience is useful only if the direction of the country's development coincides with the direction of the development of the countries studied [3].

Methods

This review used statistical analysis, comparative studies and formal interpretation of law, to describe and analyse the unexplored and unresolved legal problems in the area of modern digital transformation of civil science, with a focus on electronic document management.

Definitions and Concepts

Modern civil law distinguishes the following positions in determining the substantive nature of legally significant messages [4].

Firstly, these messages, based on their inherent characteristics, refer to volitional legal acts containing signs of transaction-like actions [5]. Secondly, these messages are defined as legal acts [6].

Article 10 of the UN Convention “*On the Use of Electronic Communications in International Contracts*” states that if the message was received at another addressee's address, then the moment of receipt is associated with the moment of its notification or the moment when the addressee receives the opportunity to retrieve it [7].

According to O. Makarov [8], an electronic document cannot be perceived by a person without special technical means and special knowledge. A.A. Kosovets [9] notes that an electronic document is a set of computer symbols for which it is possible to reflect the contents of the document on paper. The approval of this process must be

certified by the participants of the electronic document management system by drawing up an ordinary (written) document, or such a process must be authorized by a state body with such authority.

The “Concept of improving the civil legislation of the Republic of Uzbekistan” [10] specifies the formation of the legal basis for the use of information and communication technologies in civil legal relations. This includes the development of the circulation of crypto assets, legal regulation of the collection and processing of significant amounts of information (Big Data), the expansion of opportunities for the use of e-commerce, and procurement through electronic platforms.

The actuality of the problem of concluding contracts in the business sphere through the exchange of electronic data is due to the economic significance and technological novelty of concluding contracts in the virtual space [11].

International Norms

It should be emphasized that the leading role in the development of electronic document management rules has historically belonged to UNCITRAL and the European Council. According to the data (May 2022) of the Statista Research Department, the electronic document management market in 2023 will grow by 2 times compared to 2017 (from 3.59 billion US dollars to 6.78 billion US dollars).

The main authorized bodies in this area are the Commission on Entrepreneurship, Business Facilitation and Development within the framework of the UN Conference on Trade and Development, the UN Commission on International Trade Law and the Center for the Simplification of International Trade Procedures within the Economic Commission for Europe, the International Telecommunication Union, which is a specialized telecommunications agency at the UN.

The development of technology required the creation of a legal framework for regulating relations in this environment. As a result, in 1990, the UN Rules on Electronic Data Exchange in the Field of Management, Trade and Transport (EDEFMTT) were adopted. In addition to EDEFMTT, the UN Trade Data Exchange Handbook contains Unified Rules for the Exchange of Trade Data via Teletransmission [12].

Countries where electronic document management is regulated can be divided into three blocks [13]. Each block has its own model of legal regulation of electronic document flow [14]. The first block is the American model of electronic document management, which is used in the USA, Canada and other countries. The second block is the European model – the EU member states. The third block – the post-Soviet model of electronic document management [15] is used in Uzbekistan and in Kazakhstan.

Practical Issues

In Uzbekistan and Kazakhstan, the development of electronic document management is also associated with the development of information technologies. In both

republics, the rapid development of electronic document management began in the 2000s. In 2003, “On Electronic Digital Signature Law” [16] was adopted in Uzbekistan. To improve their place in international rankings and indices, the strategic state programs “Digital Uzbekistan-2030” [17] and “Digital Kazakhstan” [18] are being implemented in Uzbekistan and Kazakhstan.

In 2004, Uzbekistan adopted the “On Electronic Document Management” law [19]. The definition of an electronic document is reflected in article 5 of the Law. In Kazakhstan, in 2003, the Law “On Electronic Document and Electronic Digital Signature” was adopted [20]. Unlike the legislation of Uzbekistan, the legislation of Kazakhstan regulates relations in the field of electronic document management by a single legal act. In Uzbekistan and Kazakhstan, both options are used – document management using paper and electronic media. That is, both countries are characterized by a hybrid format.

It is worth noting that, the current legislation of Uzbekistan and Kazakhstan do not reflect the legal nature of the category of legally significant messages. The legal doctrine suggests that a legally significant message should be understood as the substantive part of a legal document through which an indicative action (behavior) of a person can be established [21].

The enforcement practice of foreign countries defines legally significant messages as information generating civil consequences (paragraph 1 of Article 165.1 of the Civil Code of the Russian Federation). Thus, according to article 2 of the 2004 Electronic Conditions of the International Chamber of Commerce (ICC eTerms 2004), the moment of receipt of an electronic message occurs when the information system recognizes it as received [22].

Recommendations

In our opinion, a more acceptable definition should be specified in the Law of Uzbekistan “On Electronic Document Management” and in the Law of Kazakhstan “On Electronic Document and Electronic Digital Signature” as follows:

“An electronic document is digital documentary information that has the characteristics of a digital asset, recorded in an online format, confirmed by an electronic digital signature, and having other necessary and reasonable digital details of such a document, allowing it to be identified, or signed, printed, notarized or passed virtual state registration using an information communication system in accordance with the procedure established by law”.

We also propose the following definition of “electronic document management in business”: *“Electronic document management in entrepreneurial activity is the exchange of documents recorded in electronic form, confirmed by an electronic (digital) signature and having other details of an entrepreneurial electronic document produced between participants in entrepreneurial activity”.*

Furthermore, to ensure the security of electronic document management, rules should be introduced into the electronic records system, as follows:

1. Restriction of access to equipment or parts of it using magnetic cards, passwords, fingerprints, etc.;
2. Development of a control log in an electronic system so that any access to the system and its consequences (for example, record modification, deletion, addition) can be documented as they occur [23].

Thus, it is important, firstly, to determine for each type of electronic record produced by an organization, the components that ensure its authenticity over time; secondly, to assess whether those that are not visible to the user can be made visible and stabilized by their inseparable connection with the intellectual form of the record; thirdly, to determine whether it is possible and advisable, in cases where this operation is not feasible, to translate the records in question into a non-digital form; and, fourthly, to adopt self-identifiable and well-documented migration procedures. According to researchers [24], the latter is undoubtedly the most reliable method for verifying authenticity in the long term.

The first measure to ensure the reliability of electronic documents is embedding the procedural rules for the creation of electronic documents in the departmental centralized system of electronic documents [25]. The second measure [26] to ensure the reliability of electronic documents is to introduce procedures to strengthen their relationships and the links they have with non-electronic documents created by the same organization. The third and final measure to ensure the reliability of electronic documents is the integration of management of electronic and non-electronic documents related to a hybrid document management system. As mentioned earlier, this integration can be implemented by creating an electronic profile for each document, by creating a repository for these profiles [27].

It is necessary to clarify the regulatory legal acts regulating these types of activities. The following is proposed:

1. Supplement article 110 of the Civil Code of Uzbekistan with part three and article 154 of the Civil Code of Kazakhstan stating the following:

“Persons carrying out notarization of transactions are required to obtain certificates of electronic digital signature in accordance with the procedure established by law”;

2. Supplement Article 111 of the Civil Code of Uzbekistan with part four and Article 155 of the Civil Code of Kazakhstan, stating in the following:

“Persons carrying out state registration of transactions are required to receive certificates of electronic digital signature in accordance with the procedure established by law”.

The presence of contradictions and inaccuracies in the legislation and regulation of entrepreneurial activity often plays into the hands of government officials. For

this reason, article 18 of the Law of Uzbekistan “On Electronic Document Management” and Article 25 of the Law of Kazakhstan “On Electronic Document and Electronic Digital Signature” should be supplemented with the following content:

“All irreconcilable contradictions and ambiguities of legislation in the field of electronic document management related to the invalidation of digital decisions, actions (inactions) of state bodies and their officials are interpreted in favor of business entities”.

Conclusion

In an era of transformation of the socio-economic progress of the state and society, the creation of a purposeful strategic prerequisite for the functioning of the digital ecosystem for business entities is crucial. The digital theoretical and methodological postulate “document management” requires its own purpose, principles, functions, structural elements, signs and features of legal regulation. An electronic document is equated with the written form of any legal document. The category of “electronic document management” has become quite widespread not only in the public legal sphere, but also in private legal doctrine. In our opinion, the pandemic has given a powerful digital impetus to the use of electronic document management in the field of entrepreneurship.

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