



Subtleties in Concluding and Executing Contracts in E-Commerce in the Republic of Uzbekistan

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ABSTRACT

This article is devoted to the study of the difficulties associated with the conclusion and execution of contracts in the field of e-commerce. The article considers the main aspects for concluding contracts in e-commerce, including performance and validity conditions. In addition, she examines the legal framework governing the conclusion of contracts and the possibility of using electronic contracts. In addition, the article discusses the importance of the procedures for concluding contracts in the context of electronic interaction. The purpose of this article is to provide a comprehensive understanding of the important points associated with the conclusion and execution of contracts in e-commerce.

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The growth of e-commerce during the formation developed without any stagnation and signs of slowing down. Considering the gradual digitalization of all spheres of human activity, as well as the improvement and increase in the availability of high-speed Internet, it has contributed to the growth of e-commerce. It should be noted that the formation of e-commerce relies on traditional commerce and the digitalization of commerce in general.

At the end of the 20th century, a large number of commercial transactions in international trade, which were concluded using electronic data interchange and other data transfers that equated to traditional paper documents, bypassed the alternative form of concluding transactions in accordance with UN General Assembly Resolution No. A / 51/628 dated December 16, 1996¹. Also, in the 2001 E-commerce and Development Report, it is predicted that the growth of the world economy will gradually develop through the introduction of information technology and the increase in the availability of high-speed Internet, thereby attracting new users to the electronic platform.

In the process of formation of managerial decisions of the state, the role and importance of digitalization is increasing. The essence of this phenomenon is to increase the efficiency of adopted strategies. It is worth noting that the conclusion of a transaction is one of the important aspects in civil law². In addition, in the course of the will of the parties today, everything and often and often accepted transactions and contracts concluded in electronic form.

In addition, in the course of the will of the parties today, everything and often and often accepted transactions and contracts concluded in electronic form. According to article 105 of the Civil Code of the Republic of Uzbekistan, transactions are made orally or in writing (simple or notarial), and also according to article 105, part 2, it is indicated that silence is recognized as an expression of will to make a transaction in cases provided for by law or by agreement of the parties. Transactions that are signed in writing must be signed by the parties to the transaction or their representatives, who were entrusted with the performance of the relevant obligations. According to the Civil Code of the Republic of Uzbekistan³ 107, paragraph 2-3, it is allowed to use facsimile copying of a signature when making a transaction, if this does not contradict the law or the requirement of one of the participants, as well as bilateral transactions can be made by exchanging documents, each of which is signed by the party from which it is comes out. In addition, when concluding an electronic type of transaction or contract, according to the Civil Code of the Republic of Uzbekistan, all subjects of civil law relations, that is, legal entities and individuals, can participate.

In the Message of the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis, it was instructed that: «... in the near future, a single platform should be created on the Internet for all public procurement and the sale of state property»⁴. The implementation of these messages will reduce costs by increasing the efficiency of state property management. To fulfill these goals, a system for the sale of state assets through electronic trading platforms will be created from 2018. It is worth considering, studying the Civil Codes of regional states, it was revealed that in the Code of many countries the formation and conclusion of transactions and contracts in electronic form is not directly indicated, but electronic means are indicated that contribute to the conclusion of transactions and contracts. For example, according to the Civil Code of the Republic of Kazakhstan, article 152 and the Civil Code of the Russian Federation, article 158, including according to the Civil Code of the Republic of Belarus, article 160, transactions are made orally or in writing (simple or notarial). When making a transaction, it is allowed to use the means of facsimile copying of a signature, an electronic digital signature, if this does not contradict the law or the requirement of one of the participants. The

¹ UN Resolution N A/51/628 of 1. UN General Assembly [1996]

² Mansell R.P, Political, Economy, power and new media. SAGE Publications London, 2004, vol. 6, no. 1, pp. 96-105. doi: 10.1177/1461444804039910

³ Civil Code of the Republic of Uzbekistan dated 01.03.1997 National Legislative Base, 10.01.2018, No. 03/18/459/0536. Article 366

⁴ Message from the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis. <http://uza.uz/ru/politics/poslanie-prezidenta-respubliki-uzbekistan-shavkata-mirziyeev-23-12-2017>

Government of the Republic of Uzbekistan should modernize the Civil Code by establishing clear rules for concluding contracts in electronic form, or it should formulate the expected Entrepreneurial Code of the Republic of Uzbekistan based on the Entrepreneurial Code of the Republic of Kazakhstan and the Economic Code of Ukraine. The Entrepreneurial Code of the Republic of Kazakhstan and the Economic Code of Ukraine are legislative acts regulating entrepreneurial activity in the respective countries.

The Entrepreneurial Code of the Republic of Kazakhstan⁵ was adopted in 2015, in 2004 the Commercial Code of Ukraine⁶ came into force. The above Codes contain all the rules governing the creation, registration, operation and liquidation of enterprises, as well as the rights and obligations of business entities, considering such legal relations as: balance of interests of consumers of business entities and the state, general provisions on business entities, including the rules for concluding contracts, protection of the rights of consumers and entrepreneurs in contractual relations, including the rules for concluding contracts, provisions on competition. Both codes have common features of entrepreneurial activity, but they also have their own specific features related to specific conditions and requirements in a particular country. But at the same time, it is important that the above Codes regulate the conditions and obligations quite clearly.

It is worth noting that, in accordance with the Civil Code of the Republic of Uzbekistan, article 366, an agreement can be concluded in any form provided for transactions, unless a specific form is established by law for an agreement of this type. In accordance with this article, an agreement subject to notarization or state registration is considered concluded from the moment of notarization or registration, if the parties agreed to conclude an agreement in a certain form, it is considered concluded after giving it the established form, although such a form was not required by law for agreements of this type. An agreement in writing can be concluded by drawing up one document signed by the parties, as well as by exchanging documents by postal, telegraph, teletype, telephone, electronic or other communication, which makes it possible to reliably establish that the document comes from the party under the agreement and the written form of the agreement is considered complied with, if the written proposal to conclude an agreement is accepted in the manner prescribed by part four of Article 370 of this Code. In addition, non-compliance with the simple form of the transaction was indicated in Article 109, the Civil Code of the Republic of Uzbekistan. According to this article, non-observance of a simple written form of a transaction does not entail its invalidity, but deprives the parties of the right, in the event of a dispute, to confirm its commission, content or execution by witness testimony. It was also pointed out that non-compliance with the simple form of the transaction entails an invalid character in the implementation of this transaction. In addition, it is worth considering the fact that the new version of the Law of the Republic of Uzbekistan «On Electronic Commerce»⁷ regulates the legal significance of the contract concluded in electronic form. In accordance with this Law, electronic contracts in e-commerce are equated to documents on paper and, in accordance with Article 15, electronic documents, as well as information recorded in electronic form, which allows to identify its sender (hereinafter - electronic messages), in e-commerce are equated to documents on paper, signed with one's own hand, and can be used as evidence of transactions, as well as in accordance with article 15 of paragraph 2: an agreement in electronic commerce cannot be invalidated only on the grounds that it was concluded using information systems. An agreement in electronic commerce can be concluded on the basis that the agreed parties provide an acceptance for the offer as follows: acceptance in the form of an electronic

⁵ Code of the Republic of Kazakhstan. https://adilet.zan.kz/eng/docs/K940001000_

⁶ Commercial Code of Ukraine. <https://www.global-regulation.com/translation/ukraine/570919/commercial-code-of-ukraine.html>

⁷ Law of the Republic of Uzbekistan «On Electronic Commerce» dated 29.09.2022 №--792.

document; acceptance in the form of an electronic message; performing actions under the conditions specified in the contract. It is worth noting that electronic contracts concluded in the field of online commerce are considered concluded at the time of receipt of acceptance by the participant who sent the offer to the applicant of acceptance. In addition, documents that are related to the performance of the obligations of a participant can be issued in the form of an electronic document, as well as in the traditional form of a document, that is, in the form of a paper carrier. The offer specified in the agreement in the field of electronic commerce must include such basic details of the parties as: the full name (surname, first name and patronymic of the self-employed person) of the online trade participant who sends the offer; postal and electronic address, telephone number of the person who sent the offer; in cases provided for by law, information on the availability of a license or a permit document (number of a license or permit document, validity period, name of a specially authorized body licensing certain types of activities or issuing a permit document); the procedure for concluding an agreement, as well as the procedure for sending and withdrawing an acceptance; the possibility and procedure for making changes and additions to the contract when agreeing on its terms; certain conditions for the supply of goods and services, certain prices and tariffs for them; indication of the conditions included in the contract by linking to an electronic document posted in a public information resource.

The process of concluding a contract consists of two stages: the first stage is called an offer, the second is an acceptance⁸. A contract in writing may be concluded by exchanging documents by postal, telegraph, telephone, electronic and other communication, which makes it possible to reliably establish that the document comes from a party to the contract. It is important to highlight the process of regulating the conclusion of an electronic contract. The process of concluding and drawing up a contract in electronic commerce activities may differ depending on the situation and type of contract between the participants in these ratios. But in general, the process of concluding a contract in online commerce has a number of similarities with the terms of a traditional contract, the purpose of both types of contract is to carry out certain business activities on a legal basis by agreeing and signing a contract. The first prerequisite for concluding a contract in online commercial activity is the provision of an offer in the form of an offer. For example, one of the parties makes an offer to conclude a contract with the acceptor, after the offer of the specified party, the other party accepts the offer, expressing its consent, or has the right to terminate the contract.

It is also important to take into account that the conclusion of a certain contract based on business models of e-commerce activities may require additional requirements, that is, the provision of offline negotiations, the study of drawing up additional terms of the contract. In addition, certain requirements may be established from the type of electronic contract in online commerce in accordance with the law, for example, the need for notarization of the contract may be established. To conclude electronic contracts in e-commerce, it is necessary to fulfill the conditions that are agreed between the participants before signing the contract. In the conclusion of a certain type of contract in electronic commerce, the party to whom the electronic contracts are sent must accept the offer, sending the applicant his intention to accept all the terms of the contract. Acceptance of the agreed terms is considered concluded if both parties have accepted the terms of the contract, together with this signed the contract using an electronic digital signature.

In addition, the terms of validity of the contract are the main aspect when concluding an electronic contract. Contracts concluded in the conditions of electronic interaction are considered valid if the parties are legally capable of entering into contractual relations in accordance with the Civil Code of the

⁸ Nanekaran Y.A. An Introduction To Electronic Commerce. International journal of scientific & technology research, 2013, vol. 2, no 4, pp. 926-936. ISSN: 2277-8616

Republic of Uzbekistan, Article 17; Also, between the parties, the possession of the consonant will in a certain form (words, letters, sometimes silence), strict adherence to the form of contracts that have been agreed between the parties in the form of an expression of will (mancipation, stipulation, oral, made by a simple transfer of a thing), as well as contracts concluded in electronic form must be drawn up on the basis of the legality of the content of the contracts, so that the presence of essential conditions and an indication of the purpose in the contract ensures the validity of the concluded contract.

It is worth considering that the general provision for the execution of the contract follows from the Civil Code of the Republic of Uzbekistan, it indicates the agreed obligations under the contract must be fulfilled properly in accordance with the terms of the obligation and the requirements of the law, in the absence of these conditions - in accordance with the principles of business turnover. It should be noted that the method of fulfillment of the obligation, if it does not follow from the essence of the obligation and is not established by law, must be stipulated in the contract. In addition, the Law of the Republic of Uzbekistan "On the legal framework for the activities of economic entities" establishes that a business contract must be executed properly in accordance with its terms and requirements of the law, and in the absence of such conditions and requirements - in accordance with the customs of business turnover, along with this, the execution of a business contract can be ensured by a penalty, pledge, retention of the debtor's property, surety, guarantee, deposit and in other ways provided for by law or contract.

In this regard, we think that in order to improve the current legislation, it is necessary to take into account some norms of international treaties⁹. In particular, Article 14 of the UN Convention on the Use of Electronic Communications in International Contracts provides that in cases where an individual makes a mistake when entering information into an electronic communication that is the subject of an exchange with an automated message system of another party and this automated message system does not provide that person with the opportunity to correct the error, such person or party on whose behalf this person acted, has the right to withdraw that part of the electronic communication in which an error was made in the entry of information, if this person or the party on whose behalf this person acted notifies the other party of the error as soon as possible after the discovery of the error and indicates that an error has been made in the electronic communication¹⁰.

Based on the research work of Professor Sh. Ruzinazorov, it can be formulated that in order to ensure the pleasing use and implementation of information technologies in electronic document management, it is necessary to carefully study international agreements, including the UN Convention on the Use of Electronic Communications in International Contracts. In addition, to analyze the legislative acts of the Republic of Uzbekistan regulating relations regarding electronic document management and at the same time to identify the norms and articles that need to be improved on the basis of international agreements.

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⁹ Ruzinazarov Sh.N., Okyulov O., Inoyatova S.F., Musaev E.T., Achilova L.I. Modern trends in the development of civil thought. Tashkent: TSLUU, 2019. – 356 p.

¹⁰ https://www.un.org/ru/documents/decl_conv/conventions/elect_com.shtml

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