



Aspects Of Legal Regulation Of Electronic Document And Electronic Document Circulation In Business

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ABSTRACT

This article discusses the provisions of the current legislation of the Republic of Kazakhstan and the Republic of Uzbekistan, regulating the field of electronic document management. The article considered the regulatory legal acts of the Republic of Kazakhstan and the Republic of Uzbekistan, regulating the issues of drawing up an electronic document and implementing electronic document management, such as: the Law of the Republic of Kazakhstan "On electronic documents and electronic digital signature" dated January 7, 2003; The Law of the Republic of Uzbekistan "On Electronic Document Management"; Law of the Republic of Kazakhstan "On Informatization" dated November 24, 2015 No. 418; Law of the Republic of Uzbekistan "On informatization" dated December 11, 2003 No. 560; Law of the Republic of Kazakhstan dated July 26, 2016 No. 11 "On payments and payment systems"; Law of the Republic of Uzbekistan dated November 1, 2019 No. 578 "On payments and payment systems". When considering the issue of drawing up an electronic document in electronic document management systems, it is clear that the issue of certifying an electronic document with a seal in the necessary cases has not been settled. For a document to be considered signed and certified with a seal, it is necessary that such a signature and seal be included in the electronic document. Today there is a formal obstacle to the electronic document flow of documents, the creation of which is carried out on special paper forms with coats of arms or emblems. This requirement applies to certain types of statutory, financial documents, notarized documents, etc. In connection with the widespread use of information communications, the problem of information security, the existing systems for storing, transferring and processing information, becomes very important for society. Currently, the prevailing epidemiological situation in the country and in the world has significantly accelerated the exchange of data in electronic form in all spheres of society. Almost all activities of the society have switched to the electronic format of information exchange, including entrepreneurship. We hope that in the Republic of Kazakhstan and in the Republic of

Uzbekistan, the development of the digital economy model will have a productive effect on the development of entrepreneurship and help overcome the problems existing in business.

KEYWORDS

Telecommunications network, law, electronic document, electronic document flow, entrepreneurship, entrepreneurial activity, legal relations, digital economy, information security, electronic digital signature.

INTRODUCTION

The development of the telecommunication network has made it possible to exchange data and information through high-speed communication. Around the world, the use of a telecommunications network has begun, allowing its users to exchange data in electronic form. Currently, the prevailing epidemiological situation in the country and in the world has significantly accelerated the exchange of data in electronic form in all spheres of society. Almost all activities of the society have switched to the electronic format of information exchange, including entrepreneurship. According to experts' forecasts, the existing epidemiological situation will persist for a long time, in connection with which all participants in entrepreneurial activity need to organize their work using documents in electronic form, firstly, this will affect time savings, and secondly, on the safety of people.

Regulation of relations arising from the creation and use of electronic documents, certified by electronic digital signatures, providing for the establishment, change or termination of legal relations, as well as the rights and obligations of participants in legal relations arising in the field of circulation of electronic documents, including the commission of civil law in the Republic of

Kazakhstan, is provided for by the Law RK "On electronic document and electronic digital signature" [1] and the Republic of Uzbekistan by the Law of the Republic of Uzbekistan "On electronic document management" [2]. When considering the issues of legal regulation of electronic document management, many unresolved issues are revealed that require their elaboration.

When writing this article, we considered the provisions of the current legislation of the Republic of Kazakhstan, the Republic of Uzbekistan and the Russian Federation, regulating the field of electronic document management.

In the process of studying regulatory 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 and comparative.

When considering the issue of drawing up an electronic document in electronic document management systems, it is clear that the issue of certifying an electronic document with a seal in the necessary cases has not been settled. For a document to be considered signed and certified with a seal, it is necessary that such a

signature and seal be included in the electronic document. In our opinion, it is possible to provide for the use of an electronic digital signature key, which provides for the signing of a document with its certification with the seal of a business entity in cases when this is required by the legislation of the Republic of Kazakhstan and the Republic of Uzbekistan.

Also, in our opinion, it is necessary to supplement paragraph 1 of Article 7 of the Law of the Republic of Kazakhstan "On an electronic document and electronic digital signature" and state it as follows: An electronic document that meets the requirements of the Law of the Republic of Kazakhstan "On an electronic document and electronic digital signature" and certified by means of an electronic digital the signature of a person authorized to sign it is equivalent to a signed document on paper. In cases established by the legislation of the Republic of Kazakhstan or in accordance with the customs of business turnover, when a document must be certified with a seal, an electronic document signed with an electronic digital signature is recognized as equivalent to a document signed with a handwritten signature and certified by the seal.

Also, in our opinion, it is necessary to supplement article 6 of the Law of the Republic of Uzbekistan "On electronic document management" and set out in the following edition: a signature is recognized as equivalent to a document signed with a handwritten signature and certified by the seal.

Today there is a formal obstacle to the electronic document flow of documents, the creation of which is carried out on special paper forms with coats of arms or emblems. This requirement applies to certain types of statutory, financial documents, notarized documents, etc.

When considering the content of the Law of the Republic of Kazakhstan "On an electronic document and electronic digital signature" and the Law of the Republic of Uzbekistan "On electronic document management", the question arises about the powers of persons signing an electronic document. The content of the Law of the Republic of Kazakhstan "On Electronic Document and Electronic Digital Signature" defines the concept of "signatory", which has the right to sign electronic documents, which includes individuals and legal entities. In the content of part 2 and 3 of article 10, there is the concept of "person", which means "signer" and consideration of other participants, such as employees of this "signer". In our opinion, there is a need to accurately identify all participants in the use of electronic digital signatures. The content of the Law of the Republic of Uzbekistan "On electronic document flow" provides for participants in electronic document flow, such as: sender; recipient and information intermediaries. Also, the Law of the Republic of Uzbekistan "On Electronic Document Management" provides only for the definition of these participants. In our opinion, there is also a need to accurately identify all participants in the use of electronic digital signature.

I would like to note that in the Federal Law of the Russian Federation "On Electronic Signature" clause 4 of Article 2 there is the following definition, the owner of the electronic signature verification key certificate is a person who, in accordance with the procedure established by this Federal Law, was issued a certificate of the electronic signature verification key [3].

For an unambiguous understanding of the concept of "person", we propose paragraph 6 of Article 1 of the Law of the Republic of Kazakhstan "On an electronic document and

electronic digital signature" to be stated as follows: the owner of the electronic signature verification key certificate is a person who, in accordance with the Law of the Republic of Kazakhstan "On an electronic document and electronic digital signature" order issued a key certificate for verification of electronic signature.

Also, part 3 of article 10 of the Law of the Republic of Kazakhstan "On an electronic document and electronic digital signature" shall be stated as follows: The owner of the registration certificate of the electronic digital signature of a legal entity - the head of the legal entity or an employee replacing him, has the right to delegate to the employees of this legal entity the authority to use electronic digital signature on behalf of this legal entity.

We also offer Art. 10 to the Law of the Republic of Uzbekistan "On electronic document management" add the following text: owner of the electronic signature verification key certificate - a person who, in accordance with the procedure established by the Law of the Republic of Uzbekistan "On electronic document management", has been issued a certificate of the electronic signature verification key.

Since the Law of the Republic of Kazakhstan "On Electronic Document and Electronic Digital Signature" provides for the transfer of powers, the registration of this transfer of powers must also be provided in electronic form by drawing up an electronic power of attorney. Part 2 of Article 12 of the Law of the Republic of Kazakhstan "On Electronic Document and Electronic Digital Signature" establishes the right of participants in electronic document flow to use digital electronic signatures in non-state systems. This provision provides an opportunity for business participants to issue a power of attorney in electronic form. If we

consider a power of attorney on behalf of a legal entity and a power of attorney that requires notarization, then today these types of electronic documents are not used by participants in entrepreneurial activity, due to the lack of a procedure for their registration and application in electronic document flow.

I would like to note the absence of this provision in the Law of the Republic of Uzbekistan "On electronic document management".

According to the current legislation of the Republic of Kazakhstan and the Republic of Uzbekistan as an electronic document, a document is recognized that meets certain legislative requirements, while it is mandatory, certified by an electronic digital signature is recognized as equivalent to a signed document on paper. For widespread introduction of electronic document management between business entities, it is necessary to resolve the issues of confirming the authenticity of the information contained in electronic documents and excluding the possibility of unauthorized persons access to familiarization with their content. Thus, electronic document management implies the rapid receipt of the necessary information facilitates the activities of entrepreneurs, on the other hand, there is a threat of cyber attacks. If the databank is received by unauthorized persons, the owners of certain data may suffer. With the development of computer technologies, new terms appear, such as "cybersecurity" and "cybersecurity" for which there is currently no legislative definition, as a result of which there are some gaps in the current legislation of the Republic of Kazakhstan and the Republic of Uzbekistan. The Law of the Republic of Kazakhstan "On informatization" [4] defines the concept of "protection of objects of informatization", which contains a set of

measures to preserve objects of informatization.

According to paragraph 1 of Art. 53 of the Law of the Republic of Kazakhstan "On Informatization" "protection of objects of informatization", the protection of objects of informatization is the implementation of a complex of legal, organizational and technical measures aimed at the safety of objects of informatization, prevention of illegal and (or) unintentional access and (or) impact on them [4].

According to Article 19 of the Law of the Republic of Uzbekistan "On Informatization", the protection of information resources and information systems is carried out in order to: ensure information security of the individual, society and other unauthorized access to them; prevention of unauthorized actions to destroy, block, copy, distort information and other forms of interference with information resources and information systems; preservation of state secrets and confidential information contained in information resources [5].

Thus, drawing the ratio of the studied terms in the legislation of the Republic of Kazakhstan and the Republic of Uzbekistan, we can only focus on the definition of "protection of objects of informatization" and the Republic of Uzbekistan "protection of information resources and information systems" in the legislation of the Republic of Kazakhstan. The absence of the terms "cybersecurity" and "cybersecurity" in the legislation of the Republic of Kazakhstan and the Republic of Uzbekistan, in turn, creates some problems in the legal regulation of public relations related to the use of information and cyberspace.

In our opinion, the definition of "cybersecurity" is more precisely indicated in the Free Encyclopedia Wikipedia, "cybersecurity" is a

section of information security, within which the processes of formation, functioning and evolution of cyber objects are studied, in order to identify the sources of cybersecurity resulting from this, determine their characteristics, as well as their classification and the formation of regulatory documents, the implementation of which should guarantee the protection of cyber objects from all identified and studied sources of cyber security. Also, the definition of "cyber protection", "cyber protection" is the protection of computing devices and computer networks from cyber attacks [6].

For a uniform understanding of the definition of "cybersecurity", we propose to supplement article 1 of the Law of the Republic of Kazakhstan "On informatization" and article 3 of the Law of the Republic of Uzbekistan "On informatization" with the following text: "cybersecurity" is a section of information security, within which the processes of formation, functioning and the evolution of cyber objects, in order to identify the sources of cyber danger resulting from this, determine their characteristics, as well as their classification and the formation of regulatory documents, the implementation of which should guarantee the protection of cyber objects from all identified and studied sources of cyber threat. Also add the definition of "cyber defense" is the protection of computing devices and computer networks from cyber attacks.

When considering electronic document management in practice, it can be said that the use of an electronic document with a short shelf life is already sufficiently regulated in the banking sector. When making money transfers in money transfer systems, the procedure for authenticating an electronic document using a digital signature is carried out.

So, according to clause 12 of Article 25 of the Law of the Republic of Kazakhstan "On Payments and Payment Systems", money transfer in favor of the beneficiary can be carried out by a bank, an organization carrying out certain types of banking operations, in national or foreign currency through the use of money transfer systems.

A bank, an organization that carries out certain types of banking operations, must ensure the transfer of money in favor of the beneficiary in accordance with the formats and rules of the money transfer system [7].

Since in the Republic of Uzbekistan, banks also carry out money transfers through the use of money transfer systems. We suggest that Article 32 of the Law of the Republic of Uzbekistan "On Payments and Payment Systems" be supplemented with the following text: money transfer in favor of the beneficiary can be carried out by a bank, an organization carrying out certain types of banking operations, in national or foreign currency through the use of money transfer systems.

A bank, an organization that carries out certain types of banking operations, must ensure the transfer of money in favor of the beneficiary in accordance with the formats and rules of the money transfer system.

At present, the entire world community is interested in the restoration and further development of the economy, which has suffered greatly due to recent events. One of the ways of its development is the widespread use of electronic documents and electronic document management in business. I would like to note that in the Republic of Kazakhstan and the Republic of Uzbekistan, work on the implementation of digital economies is being actively carried out in accordance with the programs adopted by these countries.

Thus, the Republic of Kazakhstan adopted the state program "Digital Kazakhstan", which was developed according to the message to the people of Kazakhstan "New opportunities for development in the context of the fourth industrial revolution" by the first president of the Republic of Kazakhstan, N.A. Nazarbayev. dated January 10, 2018 The objectives of the state program "Digital Kazakhstan" are to accelerate the pace of development of the economy of the Republic of Kazakhstan and improve the quality of life of the population through the use of digital technologies in the medium term, as well as create conditions for the transition of the economy of Kazakhstan to a fundamentally new development trajectory, ensuring the creation of the digital economy of the future in the long term. [eight].

In the Republic of Uzbekistan, the President of Uzbekistan Mirziyoyev Sh.M. January 24, 2020 made an annual message to the Parliament of the country. In his speech, he outlined three priorities in the development of the country - science, education and the digital economy. So the President of Uzbekistan Mirziyoyev Sh.M. it was said that a radical turn is outlined in the development of the country's digital economy. In construction, energy, agriculture and water management, transport, geology, healthcare, education, cadastral and archival affairs - full digitalization. The "Electronic government" system will be critically reviewed. Following the example of the capital, IT-parks will open in Nukus, Bukhara, Namangan, Samarkand, Gulistan and Urgench. In the near future, the development of the Digital Uzbekistan-2030 program will be completed [9].

We hope that in the Republic of Kazakhstan and in the Republic of Uzbekistan, the development of the digital economy model will have a productive effect on the development of entrepreneurship and help to overcome the problems existing in entrepreneurial activity.

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