



## CIVIL LAW SPECIFICS OF TRANSACTIONS IN E-COMMERCE

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**Annotation:** *the essence and significance of transactions in electronic commerce are characterized, the features and the order of their conclusion are shown, problems and legal conflicts arising during electronic data exchange are revealed*

**Keywords:** *e-commerce, transactions, contracts, electronic data interchange, digital signature, authentication, transaction forms, innovations, information society*

**Аннотация:** *ушбу мақолада электрон тижорат операцияларининг моҳияти ва аҳамияти тавсифланган, хусусиятлари ва уларни тузиш тартиби кўрсатилган, электрон ахборот алмашинуви вақтида юзага келадиган муаммолар ва ҳуқуқий низолар аниқланган.*

**Калим сўзлар:** *электрон тижорат, битимлар, шартномалар, электрон маълумотлар алмашинуви, рақамли имзо, аутентификация, ахборот жамияти.*

**Аннотация:** *характеризуются суть и значение сделок в электронной коммерции, показаны особенности и порядок их заключения, раскрыты проблемы и правовые коллизии, возникающие при электронном обмене данных.*

**Ключевые слова:** *электронная коммерция, электронная торговля, сделки, договора, электронный обмен данных, электронно-цифровая подпись, аутентификация, формы сделки, инновации, информационное общество*

The progressive development of economic turnover and the diversity of social relations contribute to the creation of new types of contracts. The system of civil contracts is constantly developing, since most of them do not contradict the law, the question arises as to what legal norms can be used to regulate them.

The answer to this question shall be sought in the system of contract law. Any new type of contract is characterized not only by a new feature not reflected in the Civil Code of the Republic of Uzbekistan, but also by features that have already caused legal regulation. Therefore, on the basis of a systematic analysis of such contracts, it is necessary to identify these features and consider the application of the legal norms that they entail.

The system of contracts in the field of e-commerce has features, on the one hand, distinguishing it from other subsystems of Civil Law, and on the other hand, characteristic of any contractual relationship. These features form the basis for the formulation of uniform rules applicable to all civil contracts. In addition, the system of contracts in the field of e-commerce consists of many elements (types and varieties of contracts), each of which, having common features of a civil contract, is characterized by the specificity that necessitates special legal regulation.

Let us consider these aspects in more detail. Thus, the traditional understanding of e-commerce in the legal aspect is to consider it as the conclusion of various types of transactions using electronic data interchange (EDI).

In accordance with the established practice, we can say that there are the following ways of concluding electronic contracts [1]:

– To conclude a contract, the Offeror places a public offer on a server connected to the Internet. Any person wishing to enter into such a contract on the proposed terms shall accept the offer by filling out the contract form and signing it. If the subject of the contract will be services, property or non-property benefits that have age restrictions, the Offeror warns that the contract will be concluded only with persons who have reached a certain age.

– After negotiations, the parties sign the contract through EDI. In this case, the contract exists only as a record on the computer. In this case, the parties usually use an electronic signature or its functional equivalents to sign the contract.

– Users of a specialized information network enter into contracts with each other in accordance with the rules established by the owner of the network.

As you know, one of the conditions for the validity of transactions is the form of the transaction, as an important feature of the transaction is the will of its participants, aimed at the emergence, change or termination of civil rights and obligations, and the form of the transaction is the way of expressing this will.

Transactions are made in two forms: oral or written. Each of them has a variety. Varieties of oral forms are the following: actually oral, conclusive action, silence. Varieties of written transaction are simple written and written notarized.

Electronic-digital form is a type of written transaction. It meets all its features, taking into account the specifics of the Internet [2], as Part 4 of Article 107 of the Civil Code of the Republic of Uzbekistan equates the exchange of letters, telegrams, telephone messages, teletypograms, faxes or other documents, defining the subjects and the content of their will, to the transaction in writing. The transaction in writing shall be made by drawing up a document expressing its content and signed by the person or persons making the transaction, or by persons duly authorized by them.

To comply with all formal requirements of the law to the written form, the contract shall be, first, a document; second, signed by the parties; third, shall be subject to authentication, i.e. the procedure for the reliable establishment of the contracting party.

The contract is a document. The Civil Law does not contain a legal interpretation of the concept of "document". It is a material carrier with the signs fixed on it, transmitting thought. The data in the present form have a material carrier. Data are plotted in the form of special signs, along in accordance with special algorithm (orderly, systemically). These data can be read using a special device and presented in an understandable form for human perception (image on the screen of an electronic device or printed version).

There is the following structure of the electronic document:

1. The general part of the document, which shall contain information that makes up the content of the document, information about the addressee. According to some authors, in order to have legal force, such a document shall have the necessary details (name of the organization, name of the creator of the document, the location of the organization, the date of the document, the code of the person responsible for the document, the code of the person who approved the document).

2. A special part of the document consists of one or more electronic signatures.

The requirement of a form understandable for human perception dictates the need to classify the form of information. There are two forms of expression: internal and external. The form of internal representation of the electronic document is a record of information representing the electronic document on the media, i.e. the computer (here and hereinafter, other electronic devices that allow to record, store, process, reproduce and transmit information are also assumed under the computer), expressed in the form of binary numbers. The form of external representation of an electronic document is the reproduction of an electronic document on the display screen, on paper or other material object separated from the machine medium in an accessible form for visual inspection (without additional technical devices) and in a form understandable for human perception.

Message authentication is a vital factor for all subscribers of both commercial and secret communication systems. For example, people who accept a check usually insist on confirming the identity of the information source or transmitter issuing the check, and the person writing the check puts down the amount not only in figures but also in words. These are the simplest ways to authenticate transmitted information or messages. In other words, authentication is the determination by the receiver and possibly the arbitrator that, under the existing protocol (rules), the message is sent by an authorized (legitimate) transmitter and that it is not replaced or distorted. Most methods of authentication of electronic messages are based on certain cryptographic algorithms. Such methods of authentication of electronic messages have existed for a long time, but only with the advent of a new direction in cryptography, they began to meet all the requirements that apply to a digital signature [3].

Next, the contract shall be signed by the parties and authenticated. Based on the specifics of the electronic document, it is impossible to sign it in the usual sense of the word (i.e. to put a handwritten signature on it). For an electronic document, an electronic-digital signature (EDS) is more appropriate, the use of which shall be allowed as an analogue of a handwritten signature [4].

Reliability and resistance to forgery in the EDS is much higher than that of a handwritten signature.

One of the problems on the way of spreading e-commerce is distrust to it, so the importance of authentication as a process in which the identity of the user of the computer or network is verified and which actually confirms that the user is the person for whom he/she pretends to be. This procedure shall be distinguished from identification (which determines whether a particular user is known to the system) and authorization (which gives a particular user access to certain system resources) [5].

Two types of authentication shall be distinguished – formal and informal. If the first is usually prescribed in cases requiring a high degree of confidence in the transaction (e.g. real estate) through the participation of a notary or public official in the certification of documents, which can then affect the evidentiary value of the document, the second lies within the contractual relationship of the parties choosing a particular authentication procedure [6]. An example of an informal authentication is given in the book of the UNCITRAL Model Law "On international credit transfers", 1992 (Article 2), division 4A "Transfer of funds" of the Uniform Commercial Code (UCC) of Washington State, and Article 9 "Ratification of the payment order" of the law of the Republic of Armenia "On transfer of funds by payment order", 1997 (developed on the basis of division 4A of UCC of the USA) [7].

The UNCITRAL Model Law contains the term "authentication", which means a procedure established by agreement of the parties to determine whether a payment order has been issued by a person designated as the sender. The broader meaning of the term is used in the UCC of Washington State, namely, the "security procedure" (Article 4A-201), which is also established by contractual means (agreement of the customer and the Bank) in order to: 1) verify the ownership of the payment order to the customer – the element of reliability (validity of the order) arises here in the application of the security procedure [8]; 2) detect errors in the transfer or in the content of the payment order – it contains an indirect reference to the integrity check. The example of UCC well illustrates the fact that authentication does not always mean a guarantee of the integrity (immutability) of an electronic contract (communication), as specifically mentioned in the UNCITRAL Legal Guide on electronic transfer of funds, 1987.

Authentication using EDS refers to authentication on a real basis, i.e. its means is a certain thing that belongs to the user (signature key, smart card, etc.). It is also possible to authenticate on a memorable feature on the basis of information known to the user (one-time or reusable password, passphrase, personal ID, etc.), or on a personal feature on the basis of characteristics that depend on the physical properties or qualities of the user (biometric characteristics), which include fingerprints, retinal image, hand geometry, voice, facial features, the manner of typing and dynamic characteristics of the signature [9].

The above suggests that digital signature simultaneously solves the problem of signing and authentication of an electronic document.

In connection with all these circumstances, it is possible to distinguish a number of advantages that the parties receive when making a transaction in electronic form [10].

First, mobility. Negotiations and transfer of the contract are carried out through information networks, which significantly save time and costs of the parties.

Second, stability. The sending party will not be able to claim in court that the contract was not signed by it, i.e. the transaction was made either with its knowledge or in the presence of a gross violation on its part [11], since the document with the EDS is almost impossible to forge.

However, it is important to understand that a significant part of contracts is concluded by robot programs without human participation. In the material space, it is not uncommon to use vending machines when concluding a public contract (for example, a vending machine for drinks, etc.).

Electronic analogues of automata, i.e. robot programs, are also used on the Internet. They help to draw up, conclude and accept the contract. This in some countries creates uncertainty about the validity of contracts concluded by robot programs without direct human participation, which raises doubts about the will of the subject. These doubts are based on the fact that the robot program could fail; or unauthorized access could be obtained to the robot program, which resulted in the conclusion of the challenged contract is disadvantageous to the owner of the robot program conditions. The actions of a robot program shall be presumed to contain the will of its owner, unless proven otherwise. Unauthorized access can be proved, which means the basis for invalidation of the contract. Therefore, until proven otherwise, the contract shall be recognized as containing the true will of the parties.

The main problems that arise when concluding contracts with EDI are the following:

a) the difficulty of determining the place of conclusion of the contract. This question arises not only when the counterparties are the residents of different states. After all, the Offeror can place the offer not only on the server, which is located on the territory of the state of which he/she is a resident, but also on the server, which is located anywhere in the world connected to the Internet. The Acceptor may also send the acceptance with a portable computer while travelling (airplane, maritime vessel, etc.);

b) provability of the fact of conclusion of the contract, safety and immutability of the data contained in the contract. It is unacceptable that the conclusion of a contract shall be denied by law enforcement authorities simply because it is a computer record. In determining the availability of the contract, in addition to other factors, the following factors shall be taken into account: the complexity of the equipment used by each party; the nature of their commercial activities; the frequency of commercial transactions concluded between these parties; the type and volume of the transaction; signature requirements in a particular legal system; the capabilities of the communication systems; a set of procedures to identify the authenticity of the established intermediaries and their execution by the parties; compliance with trade customs and practice; the availability of insurance against unauthorized messages, etc.;

c) confidentiality of the data contained in the contract. Organizations that own an information network shall establish security standards that the parties shall comply with, otherwise there is a presumption of data integrity and confidentiality.

The contract will be recognized as concluded at the time of receipt by the person, who sent the offer, its acceptance [12]. However, what is the offer and acceptance in the network? The offer itself shall fall within the general definition of the Civil Code [13], and acceptance shall be considered received in three cases if the contract is sent by e-mail: when the Acceptor sent a message from his/her mailbox; when it came to the Offeror's mailbox; and immediately at the time of reading the letter of acceptance.

It is assumed that, by analogy with the ordinary postal communication, in this case, the acceptance is considered to be sent [14], even if the Offeror did not open his/her mailbox and did not read the messages, and the contract concluded [15].

The rules on offer and acceptance shall be applied depending on the nationality of the parties to the transaction; thus, it follows from the General provisions of the continental law system that the person who made the offer, to a certain extent, is bound by it, the notice of the offer withdrawal makes the offer not received only if such notice was received earlier than the offer itself or simultaneously with it [16]. In the Anglo-American system of law, an offer is not binding on the person who made it until it is accepted and can be freely withdrawn until it is accepted.

Frequently, transactions made using electronic data exchange are foreign economic [17] and transnational in nature, respectively, they are governed by the rules of private international law. These relations take place when the electronic transaction is concluded by persons of different states, the damage resulting from the use of the website is caused in the territory of a foreign state, the information posted on the website violates the laws of a foreign state on the protection of intellectual property rights, etc. In addition, the relationship of legal relations in the virtual space with the legal orders of different states may be less obvious. It may indicate, in particular, the location of the server and the nationality of the provider. In fact, any Internet legal relationship has a foreign element and is in one way or another connected with the legal order of different states [18].

When resolving conflicts of applicable law to the procedure for concluding a contract, the concept of place (place of conclusion of the contract, location, place of residence) is often used. This concept of contracts concluded on the Internet presents difficulties: as a rule, the Offeror cannot know where the contract will be concluded [19]. In this case, it is necessary to use standards of Article 376 and Article 1190 of the Civil Code of the Republic of Uzbekistan: "If the contract does not specify the place of its conclusion, the contract is deemed concluded in the place of residence of the citizen or location of the legal entity submitting the offer".

Thus, it can be concluded that e-commerce, having the specificity of social relations, forms an independent system of contracts aimed at the organization of electronic trade. This system is a subsystem of the system of trade contracts, which, in turn, forms an element of the system of civil contracts.

The form of the electronic contract shall be referred to in writing. The electronic contract itself is a document on a tangible medium, which is sealed with an electronic digital signature as a means of reliable identification of contractors. The place of conclusion of the Internet contract is established, guided by the General rules of international private law in determining the place of conclusion of foreign economic transactions. This type of contract is concluded at the time of receipt of the electronic message containing the acceptance in the information system of the Offeror.

#### References:

1. Ananko. *Conclusion of contracts by electronic data exchange*. <http://www.russianlaw.net/law/doc/a123.htm>.
2. D.K. Aleksandrov. *Electronic-digital form of the contract*. <http://www.russianlaw.net/law/doc/a111.htm>.
3. A. Ananko. *Electronic form of transaction in international trade*. <http://www.russianlaw.net/law/doc/a124.htm>.
4. *Article 2 of the EU Directive "On electronic signatures", 1999 (DES) defines an electronic signature that shall meet the following requirements: (1) is uniquely associated with the signatory; (2) is sufficient to identify it; (3) is created by means of*

- funds under the sole control of the signatory; (4) is linked to the data to which it relates in such a way that any subsequent change in the data becomes apparent. A "certificate" ("qualified certificate") is used to verify the electronic signature. A certificate is an electronic certificate that links the data for the verification of an electronic signature with a certain person and confirms the identity of that person.*
5. See: Kay R. Authentication // *Computer-World Russia*. – 2000. – April 13.
  6. Classification is given by A.V. Shamraev. *Legal regulation of information technologies (analysis of problems and basic documents)*. – M.: Statut, Intertech, BDC–press, 2003. – P.39–43.
  7. Translation of UCC of the USA. See: *The Uniform Commercial Code of the United States / Edited by S.N. Lebedev*. – M., 1996.
  8. It is important to establish the presumption of the validity of an order in the case of an agreed security procedure, as in the case of forgery of the corresponding means of authentication of one party or access to it by an unauthorized person, the messages contained in the electronic document (s) will be considered by the other party as genuine. See differences between traditional and electronic authentication methods in UNCITRAL Model Law “On international credit transfers” (p. 33–35, division I, Article II).
  9. A.V. Shamraev, *opere citato*. – 2003. p.40.
  10. Many scientists who study the relationship in "e-business", called e-commerce stimulator of competition and identify a number of properties of the Internet that can affect the development of intra-competition. See: Kelly K. *New Rules for the New Economy: 10 Radical Strategies for a Connected World*. – Penguin, 1999.
  11. A. Ananko. *opere citato*. <http://www.russianlaw.net/law/doc/a123.htm>.
  12. Part 1, Article 365 of the Civil Code of the Republic of Uzbekistan.
  13. Article 369 of the Civil Code of the Republic of Uzbekistan states: "Advertising and other proposals addressed to an indefinite number of persons are considered as an invitation to make offers, unless otherwise expressly stated in the proposal, containing all the essential terms of the contract proposal, from which the will of the person making the offer is seen to enter into an agreement on the conditions specified in the proposal, anyone who responds is recognized as an offer (public offer)". The essential terms of the contract are determined taking into account the peculiarities and requirements of the legislation to each specific type of obligation.
  14. A.N. Ivlev. *Law, Internet, reality*. – P. 7-7. – 1998. <http://www.russianlaw.net/law/doc/a69.htm>.
  15. Articles 370 – 373 of the Civil Code of the Republic of Uzbekistan.
  16. Part 4, Article 367 of the Civil Code of the Republic of Uzbekistan.
  17. "Foreign trade transactions include contracts for the sale of goods, as well as contracts, commissions and a number of other contracts concluded between organizations and firms of different states. The most common type of foreign trade transactions is the contract of foreign trade sale". M.M. Boguslavskiy – M.: Lawyer, 2002. – P.222.
  18. E. Leanovich. *Problems of legal regulation of Internet relations with a foreign element*. <http://www.russianlaw.net/law/doc/a102.htm>.
  19. A certain jurisprudence has already formed in the matter of choice of jurisdiction in the countries of the Anglo-Saxon legal system. See: Court cases: *McDonough vs. Fallon McElligott, Benson Restaurant Corp. vs. King, Compuserve, Inc. vs. Patterson, Minnesota vs. Granite Gate Resorts, Inc, Digital Equipment Corp. vs. Altavista Technology, Inc., Maritz, Inc. vs. CyberGold, Inc. Ibid.*