

Legal Regulation of Electronic Contract and General Review

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Abstract

New informational era requires innovative approach to old problems (2). The mankind has entered a new phase of civilization development in XXI century. We live in the information technologies ongoing progress and the so called internet expansion era (3). Nowadays, informational awareness of society has reached the level that we hardly may imagine the field where information and communicational technologies are not applied to some extent. Information and communication technologies constitute quite a significant factor of influence onto society in the twenty-first century. Their innovative influence is related to people's lifestyle, their education and work as well as interrelation between government and civil society. "Information and communication technologies have becoming quickly a stimulus of the vital importance for global economics development" - this is how the Global Informational Society Okinawa Charter starts provisions of which are dedicated to economic and social transformation incitation through information and communication technologies. The President the largest company of information technologies Cisco Systems Inc John Chambers states that "the scales of the outcomes of the social union revolution may supposedly exceed the industrial revolution; it equals conditions and creates unprecedented opportunities for countries, companies and individuals all over the world. Its outcomes may be economics success and survival basic factors of which are response velocity and changeability skills, but not size, geographical location or material resources (5). An electronic contract constitutes a transaction executed in the electronic form which does not apply a written form of any kind except the electronic one and which is signed electronically. For example, if you send such a contract to your business partner who signs it electronically and returns to you, such a contract is valid. An electronic contract may exist in the so called "click-to-accept" form which is mainly applied in relation to programs to be uploaded. In this case a user presses "I Agree" button and a contract is executed (6).

Keywords: Electronical contract; Commercial contract; Electronic signature

Introduction

Participants of civil turnover exercise the freedom of will in the most efficient way when executing contracts.

In the material law, a contract is considered as a classical kind of a bilateral transaction where contracting parties have appropriate rights and commitments in relation to each other. Hundred million contracts are executed in the world each day. People often cannot recognize that they become contracting parties and therefore, they are often engaged in international private law relationships.

Material law determines division of contracts as unilateral and bilateral (multilateral), real and consensus, payable and gratis, etc. The major part of European countries' Civil Codes separately defines the most frequent kinds of contracts. The most noteworthy of them are sale, shipping, gift, loan, lease, demand, bank, insurance, leasing and other contracts. Therefore, international law studies international sale, international shipping, and other contracts (1).

Electronic Contract (Agreement)

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It is noteworthy that electronic agreements may not be executed in relation to all kinds of legal documents. The legislation of the USA establishes certain exclusions for that. Such exclusions are related to wills and apostilles, powers of attorney, court resolutions, petitions and other relevant procedural documentation, eviction and execution orders, insurance compensation documents, divorce, adoption and other marital matters, hazardous and explosive substances and products carriage as well as bankruptcy and related issues.

Subject of the Electronic Contract (Agreement)

Execution of a contract is obligatory to carry out any foreign trade operations, render various services. Basically, a subject matter of a contract is emphasized when executing a contract. In the case of commercial contract, a subject matter of a contract constitutes qualitative and quantitative performances of goods, information about delivery terms, carriage conditions, etc.

Applicable Country Law

The Article 35 of the Georgian Law on International Private Law defines that contracting parties may choose the law, in particular, “Determination of the rights and commitments proceeding from the contractual relationships, in particular, interpretation, fulfillment, termination as well as consequences of annulment, breach of commitments, including violation or pre-contract and post-contract commitments shall be governed by the law chosen by contracting parties”. Chinese Law on Foreign Trade Contracts and the Swiss Law on International Private Law are based on this principle. However, it should be noted that the legislation of China provides maximum interference of the state in private legal relationships: “When selecting the laws, contracting parties shall take in consideration that such laws do not contradict to state and public interests of Chinese Peoples Republic”.

International contract law enables contracting parties to have quite wide right for the applicable laws selection; it includes the right for the third country law selection. Contracting parties apply this principle in practice

quite often. The basic reason of this is that contracting parties prefer to apply “the neutral” country law for the better equality and impartiality. However, in this case, parties should take in account whether laws of such a country completely and impartially govern their contractual relationships as well as whether one of contracting parties may put under question some or another legal norm in future on the grounds of their inconformity to its country public order or imperative norms⁷.

International contract law allows parties to make various articles of a contract conformable to laws of various countries which implies that the form of an agreement may be executed according to the German law, rules of payment may be regulated by the French law, while risk of destruction may be governed by the Austrian law.

The second paragraph of the Article 35 of the Georgian Law on International Private Law provides that by contracting parties’ agreement, applicable law may be changed for another country law after a contract execution, while the paragraph 3 of this Article determines that choice of law is considered nil and void if it does not take account for the imperative norms (8) of the country, which is the most tightly related to the contract.

It also should be noted that the Article 36 of the Georgian Law on International Private Law points out law of which country should be applied. If parties do not selected law of any country, a contract shall be governed by law of the country which is the most tightly related to the contract. Supposedly, a contract is the most tightly related to the country where the contracting party which shall fulfill contractual commitments has got a regular location or administrative residence. In the case, the subject matter of a contract is right for a land plot or right for a land plot usage, it is considered that a contract is the most tightly related to the country where such a land plot is located.

In the case of goods shipping contract execution, it is considered that a contract is the most tightly related to the country where a carrier’s basic office is located if goods loading, uploading place or a consignor’s basic location is in the same country. In other cases, the conditions provided by the first paragraph of this Article are valid. When executing an insurance contract, it is considered that it is the most tightly related to the country where the basic part of risks to be insured exists.

Vienna Convention on Goods International Sale Contracts

Vienna Convention on Goods International Sale, which was passed by the United Nations Organization in 1980, constitutes the most recognized multilateral contract in the international purchase law.

This Convention was passed by the United Nations Organization on 11 April of 1980 (in Georgia the Convention has come in force on the

grounds of Georgian Parliament's resolution adopted 03.02.1994). The Convention is based on the resolution passed by the sixth special session of UN General Assembly according to which, contracting states consider that "development of international trade on the basis of equality and mutually favorable conditions constitutes a very important element, contributing to amicable relationships between states; adoption of similar norms shall regulate goods international sale contracts and contributes to prevention of various social, economic and legal barriers and development of international trade" (9).

The abovementioned Convention regulates execution of a sale contract and rights and commitments of a buyer and a seller arisen out of such a contract. Vienna Convention also contains significant provisions related to a sale contract form. In particular, the Article 11 of the Convention points out that "it is not compulsory a sale contract to be executed or affirmed in writing or to be subject to some other requirements related to its form". It may be certified by any means, including witnesses' evidences.

The second clause of the Convention is entirely dedicated to a contract execution and the offer and acceptance phases based on the legal principles of continental Europe. In particular, the Article 15 states that an offer comes in force when it is accepted by such an offer addressee. For purposes of the Convention clause II an offer - an application for acceptance or intentions statement or any other statement of intentions - is considered accepted by an addressee when an addressee is notified about that orally or it is delivered by hand or sent to an addressee's commercial enterprise or a postal mail; while in the case of commercial enterprise or a postal mail absence, it is sent to an addressee's permanent residence mail. A contract is considered executed from the moment when acceptance comes in force according to the Convention, i.e. pursuant to common rules. It is done when an offerer receives an acceptance.

It is noteworthy that some state parties of the Convention have not adopted that entirely. Many countries ratified the Convention or joined that with certain escalator clauses, having great practical significance.

Conclusion

Despite the fact that the contracts executed in an electronic form greatly accelerate and contribute to efficient business activities, provision of such contracts security is important. Many technical facilities and software may provide that; cryptographic method is one of the most frequent and safe ones.

Cryptography is a science about information security safeguarding. At present, safety experts give priority to the cryptography signature method known as Public Key Infrastructure (PKI). Since adoption of the

abovementioned act in the USA in 2000, many companies dealing with online services have been applying namely this kind of electronic contracts and signatures. This method functions the same way as we use the so called PIN codes for our bank cards.

From the viewpoint of protection of consumers' rights, this law obliges companies to offer consumers usual contracts executed on paper alongside with electronic agreements. This commitment provides possibility of a written contract execution after an electronic contract is done. Besides, an electronic contract and an offer generally shall take into consideration the software and technical facilities which are necessary for online transactions execution. Absence of such information may become grounds for termination of executed electronic contracts (10).

Proceeding from the abovementioned, it is very important to adopt the legislation on electronic agreements in Georgia. Despite the fact that the valid legislation of Georgia does not prohibit execution of electronic contracts for the purpose of protecting consumers' rights, facilitating companies' activities, decreasing expenditures and improving the efficiency of the taxation process, adoption of specialized improved legislation regulating this field is necessary.

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