

Legal status of e-documents in Ukraine

Today, in light of the continuous expansion of international relations (international sale / purchase of goods, works and services) the issue of electronic document, including emails, and its validity in Ukraine is a question of present interest.

Electronic document management

Generally the use of e-document in civil relations is carried out in accordance with the general requirements of juristic acts established by the civil law.

According to the Law "On Electronic Documents and Electronic Documents Circulation" e-document is defined as a document in which information is fixed in the form of electronic data, including mandatory requisites of the document.

Content of and procedure for placement of mandatory requisites of electronic documents shall be determined by the legislation. On the analogy with the requirements for primary documents provided by the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" and Provisions on documentation of accounting records, approved by the Order No.88 of the Ministry of Finance of Ukraine on 24.05.1995, mandatory details of the document shall be as follows:

- Ukrainian language. In addition to Ukrainian the document can be made in other language. If the document is made in foreign language it must have well-ordered authentic translation into the specified language;
- name of the company, institution on whose name the document is drawn up;
- name of document (form);
- date and place of the document;
- content;
- positions and family names of the responsible (authorized) persons;
- personal or electronic signature made according to the legislation on electronic documents and electronic documents circulation.

According to Part 1 of Art. 6 of the Law "On Electronic Digital Signature" to identify the author of electronic document electronic signature can be used. Thus, Article 6 of Part 2 of this Law states that application of electronic signature completes the creation of electronic document.

Digital signature

Digital Signature is the type of electronic signature formed from cryptographic transformation of electronic data included to this set of data or logically combined with it and makes it possible to verify its integrity and identify signatory. Electronic digital signature is applied using the private key and verified using the public key.

Electronic digital signature is equaled to own signature (seal) by its legal status when keeping legislation requirements.

Under the law electronic digital signature is intended for ensuring activity of natural persons and legal entities, which is carried out using electronic documents, identifying signatory and verifying integrity of data in electronic form.

At the same time the use of digital signature does not change the order of signing contracts and other documents provided by the legislation to commit juristic acts in writing.

Thus, based on the foregoing provisions electronic document must contain a number of mandatory details, including digital signature being mandatory for the validity of this document.

In view of the above mentioned legislative provisions and format of emails which usually do not contain name of the company, institution on whose behalf the document drawn up, but only the name of the responsible (authorized) person, the document title, place, electronic signature; e-mails correspondence itself is not recognized by current legislation of Ukraine and jurisdiction.

As a way out of this situation it is to scan paper documents and send them in electronic form via email to the recipient.

If you are using this option of sending documents it is necessary to add condition to the agreement with the counterparty that the documents sent via email are valid until the original documents in paper form which shall be provided by the Party within a specified period are received.

In addition, the agreement shall contain the email address the documents sent from which will be valid for the parties. It is worthwhile also to add the provision specifying when a document is considered to be sent / received by the parties.

The legislation stipulates that if the author and the recipient have not previously agreed in writing otherwise, the date and time of sending an electronic document shall be considered the date and time when electronic document mailing cannot be canceled by the person who sent it.

Electronic document is considered to have been received by the addressee of the time when the author of the e-document received from the addressee notification about receipt of this e-documents unless otherwise provided by law or prior agreed by the parties.

If prior the parties of electronic document circulation have not agreed procedure for confirmation of receipt of an electronic document, such confirmation can be done in any way automatically or otherwise electronically or in paper form document. The above mentioned confirmation shall contain data on fact and time of receipt of an electronic document and the data on sender of this acknowledgement.

If the author does not receive the confirmation on receipt of this electronic document it shall be considered that an electronic document has not been received by the addressee.

However, we should not forget that the law defines the legal status of electronic documents and provides that the legal validity of electronic document and its admissibility as evidence cannot be denied based solely on the fact that it has an electronic form.

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