



PROBLEMS OF DEVELOPMENT OF THE ELECTRONIC PAYMENT SYSTEM AS AN INSTRUMENT TO DECREASE SHADOW ECONOMY IN KAZAKHSTAN: CURRENT STATE AND LEGAL REGULATION

УДК 3407



D.M. Tokpayeva

*Chief of Social-Economic Research
Centre of Academy
of Law Enforcement Agencies
of the General Prosecutor Office
of the Republic of Kazakhstan*



B.S. Kushbasov

*Regional director at LLP "QIWI
Kazakhstan"*

Түйін

Мақалада авторлар заңдылық актілерді талдау негізінде электрондық төлем ұғымына анықтама беруге талпыныс жасаған. Бұндай анықтаманың заңнамада бекуі Қазақстанда жүзеге асырылатын электрондық төлем ұғымын бірізді түсінуге, Қазақстанда көлеңкелі экономиканың төмендеуіне, электронды сауданың дамуына және елдің инвестициялық тартымдылығын арттыруға үлкен үлесін қосады.

Түйінді сөздер: электрондық төлем, электрондық сауда, көлеңкі экономика, инвестициялық тартымдылық, Қазақстанның экономикасын дамыту.

Резюме

В настоящей статье авторы предпринимают попытку на основании анализа законодательных актов дать определение электронным платежам. Закрепление такого определения в законодательстве позволит выработать единый подход к пониманию электронных платежей, осуществляемых в Казахстане, что послужит развитию электронной торговли, снижению теневой экономики в Казахстане и увеличению инвестиционной привлекательности страны.

Ключевые слова: электронные платежи, электронная торговля, теневая экономика, инвестиционная привлекательность, развитие экономики Казахстана.

Summary

In this article authors makes a trial on a base of analysis of legal acts to give an electronic payment conception. This conception will give an opportunity to make unique approach in electronic payments in Kazakhstan. It helps to improve electronic commerce, reduce shadow economics in Kazakhstan and increase country's investment attraction.

Key words: electronic payments, electronic commerce, shadow economy, investment attractiveness, development of Kazakhstan economy.

“Industrialization and economic growth” - one of the five constitutional reforms announced by the Head of the Republic of Kazakhstan (*hereinafter* – RK) N.A. Nazarbayev in the “100 Steps-Plan of the nation” in May 2015 [1]. In this context improving the system of electronic payments is essential for development of electronic commerce, reduction of the shadow economy in Kazakhstan and improvement of the country’s investment attractiveness. All these factors play a positive role for the entire economy of the country.

The President of Kazakhstan in his address to people “Kazakhstan in the new global reality: growth, reform and development” on November 30, 2015 pointed out that “... it’s important today to free up internal resources as much as possible to ensure sustainable economic growth.” [2]

Currently, the volume of electronic commerce in Kazakhstan is only 0.45% [3]. In 2013, Kazakhstan made online purchases for the \$ 1.5 billion: transactions for \$ 60 million had been committed in the domestic market and the rest transactions in foreign markets. In general, it’s a good progress, but at the same time, 9 out of 10 electronic transactions committed by foreign issuers. For comparison: the total trade volume of electronic commerce of some countries is: 6.5% in the US, in the EU of 5.7%, Russia 4% [3].

The development of electronic commerce and electronic payments in Kazakhstan is a positive factor for a substantial reduction in the volume of the shadow economy. According to the USAID report the 15% increase of the using of electronic payments leads to a 7% reduction of illegal transactions in the volume of the shadow economy [4].

President Nursultan Nazarbayev, speaking in 2013 at the Business Council, noted that it’s important for development of electronic commerce to use actively such resource as electronic transactions. President said that “... I am confident that electronic commerce is a future type of trade. It should be specially elaborated and until the end of the year a draft law on electronic commerce should be developed, as well as the plan for the development of electronic commerce.” [5]. The reasons are for the slow development of electronic commerce in Kazakhstan the President called: firstly, a poor development of Internet resources; secondly, the absence of a law on electronic commerce [5].

In 2013 the number of electronic transactions increased by 70%. During 2014 on the territory of Kazakhstan has been made 7.9 million electronic transactions in the entire amount of 21.0 billion tenge electronic transactions made by Kazakhstan issuers. According to the National Bank the average of quarterly growth of electronic transactions in 2015 is 65 percent [6]. According to the data on January 1, 2015 in the country’s circulation 18.7 billion tenge of electronic money were issued on the territory of Kazakhstan and their figure is 949.8 million tenge. However, in general, approximately only 10 percent of Kazakhstan’s population has mastered the use of electronic money. The number of owners of electronic money in Kazakhstan are 1,783,546 people; 295 935 active people [7].

Speaking about electronic market we can notice that currently, there are 8 domestic electronic money systems are operating on the Kazakhstan market. Their issuers are 6 banks. This tool should be using for the development of banking and financial services in the country [8]. These electronic systems are: «Visa Qiwi Wallet», the issuer - JSC «Asia Credit Bank»; issuers - JSC “Eximbank Kazakhstan” and SB JSC “Bank Home Credit”; «E-kzt», operated by RSE “Kazakhstan Interbank Settlement Centre NBK” issuer - JSC “Eurasian Bank”; system “Personal Cashier” issuer - JSC “Tsesnabank”; system “EPS KZM”, the system «Woopay», the issuer - JSC “Alliance Bank”; three systems, issued by advocates of JSC «Eximbank Kazakhstan» - «Tau - tenge», «TV - Money» and «Paypoint». Two more systems are planning to launch in Kazakhstan in a close future. This data shows that the number of users of electronic money is constantly growing and is beginning to replace the traditional payment instruments.

In order to promote electronic commerce in Kazakhstan it’s advisable to provide some legislative preferences for electronic merchants. Taking into account that today the volume of electronic commerce in Kazakhstan is only 0.45% of the total retail market, the introduction of tax preferences for electronic merchants will not be negatively affecting on the revenues in the budget in a large amount, and the Kazakh market will become more competitive and attractive to business investors.

The legal basis for electronic payments in Kazakhstan is the Civil Code of RK, Tax Code of RK, the Laws of RK “On regulation of the trading activity” dated on 12 April 2004; “On payments and money transfers” dated on 29 June 1998; “On Protection of Consumers’ Rights” dated on 4 May 2010; “On electronic document and electronic digital signature” dated on January 7, 2003; “On personal data and



protection” dated May 21, 2013; “Rules of electronic commerce in the RK”, approved by Decree of the Government of the RK dated on September 10, 2007; “Rules, use and repayment of electronic money” and “Requirements for issuers of electronic money and electronic money systems in the RK”, approved by Resolution of the Board of the National Bank of RK dated on August 26, 2011.

At the international level, the order of the electronic commerce regulates the Model Law UNCITRAL “On Electronic Commerce” dated on 1996 [9].

What are “electronic payments”? Analysis of Kazakhstan legislation about trading activities shows that the direct concept of “electronic payment” is not enshrined in the statutes. Thus, in the part 3 of Article 127 of the Civil Code of RK devoted to the concept of “money” is fixed that the payments on the territory of the RK carried out in the form of cash and non-cash payments [10].

In the Law of RK “On payments and money transfers” dated on June 29, 1998 provides that the payment is the implementation of a monetary obligation with or without cash by money transfer or issuance of a payment document containing a pecuniary obligation or an order for payment of money or the transfer of electronic money (Article 3 paragraph 17 of the named Law). Payments are made on the basis and in accordance with the terms of civil law transactions and should be carried out on a voluntary basis. On a coercive basis the payments are possible only in accordance with the law and court decisions [11].

Lawmaker allocates 2 payments category: cash payments and non-cash payments. For the purposes of this article we will focus only on non-cash payments. According to the legislation non-cash payments on the territory of Kazakhstan are made by: 1) the issuance of a payment document containing a pecuniary obligation or an indication of the money payment or the transfer of electronic money; 2) presentation of the payment document containing a pecuniary obligation or an indication of the money payment; 3) transmission of payment document or e-mail message containing an indication of the money payment (Article 22 of the Law “On payments and money transfers” dated on 29 June 1998) [11].

There is no concept of electronic payments in the Law of RK “On regulation of the trading activity” dated on April 12, 2004 [12]. At the same time the concept of electronic commerce is written in article 29 of the named law: the electronic commerce refers to the conclusion of trade deals on the basis of an agreement (contract) members of electronic commerce for the sale of goods by using electronic means of communication [12].

It should be noted that the field of electronic payments, is inextricably linked to the electronic document turnover. Its order is written on the Kazakhstan legislation. Thus, in Article 6 of the Law of RK “On electronic document and electronic digital signature” dated on January 7, 2003 is fixed that the electronic document is provided by public and private information systems by using electronic documents in any areas of using information technologies for the creation, processing, storage and transmission of data [13].

Thus, under the electronic payments must be understood fulfillment of a monetary obligation in the application of electronic communications by transferring non-cash payment or the issuance of a document containing a pecuniary obligation or an order for the payment or transfer of electronic money.

The absence of a special law devoted to electronic commerce; absence of the legislative embodiment of the essence, the concept and procedure of electronic payments in Kazakhstan is the limiting factor for the development of electronic commerce in Kazakhstan.

In the conclusion it should be noted that the domestic market for electronic payments is growing rapidly in many respects. Developing a common approach to the understanding of electronic payments with consolidating its definition in the specific legislation will promote the development of electronic commerce, reduction of the shadow economy in Kazakhstan and will be helpful to increase the country’s investment attractiveness.

BIBLIOGRAPHY:

1. Plan nacji- 100 shagovporealizaciiipyatiinstitucionalnih reform N.Nazarbaeva [http:// www.inform.kz/rus/article/2777943](http://www.inform.kz/rus/article/2777943)
2. Poslanie Prezidenta Respubliki Kazahstan N. Nazarbaeva narodu Kazahstana. 30 noyabrya 2015 g. <http://www.akorda.kz/ru/addresses/poslanie-prezidenta-respubliki-kazahstan-nnazarbaeva-narodu-kazahstana-30-noyabrya-2015-g>

3. Nursultan Nazarbaev vozmuschen nizkimi tempami razvitiya v RK elektronnoi trgovli [http: // www.bnews.kz/ru/news/post/132985/](http://www.bnews.kz/ru/news/post/132985/)
4. V Kazahstane razvivaetsya rinok elektronnih deneg <http://profit.kz/news/23237/V-Kazahstane-razvivaetsya-rinok-elektronnih-deneg/>
5. Prezident Kazahstana poruchil Pravitelstvu razrabotat otraslevoi plan razvitiyainternet_torgovli <http://www.inform.kz/rus/article/2549450>
6. National Bank of the Republic of Kazakhstan. Official internet resource <http://www.nationalbank.kz/?docid=275&switch=russian>
7. Nursultan Nazarbaev vozmuschen nizkimi tempami razvitiya v RK elektronnoi trgovli [http: // www.bnews.kz/ru/news/post/132985/](http://www.bnews.kz/ru/news/post/132985/)
8. National Bank of the Republic of Kazakhstan. Official internet resource <http://www.nationalbank.kz/?docid=275&switch=russian>
9. UNCITRAL Model Law on Electronic Commerce (1996)with additional article 5 bis as adopted in 1998http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html
10. Civil code of the Republic of Kazakhstan http://adilet.zan.kz/eng/docs/K940001000_
11. Law of the Republic of Kazakhstan dated on 29 June 1998 “On payments and money transfer”
12. Law of the Republic of Kazakhstan “On regulation of the trading activity” dated on April 12, 2004 http://adilet.zan.kz/eng/docs/Z040000544_
13. Law of the Republic of Kazakhstan “On electronic document and electronic digital signature” dated on January 7, 2003 <http://adilet.zan.kz/rus/docs/Z030000370>

