
PROJECT CIVIL CODE OF THE REPUBLIC OF UZBEKISTAN: TOKEN, BLOCKCHAIN AND SMART CONTRACTS

Otabek Bakhrom Ogli Mutalov*

*Doctoral Student,
Higher School of Judges under the Supreme Judicial Council,
Republic of UZBEKISTAN
Email id: mutalovotabek1995@gmail.com

DOI: **10.5958/2249-7315.2022.00059.4**

ABSTRACT

This article researches the content of the draft Civil Code of the Republic of Uzbekistan and the issue of smart contracts. The study also analyzes the issue of defining smart contracts as a written form of agreement and contract. The disadvantages of concluding a will agreement through smart contracts are justified. The article explores the basics of using smart contracts as a way to fulfill an obligation.

KEYWORDS: *Draft Civil Code of the Republic Of Uzbekistan, Discussion of the Draft Civil Code of the Republic of Uzbekistan, Smart contracts, Written Form Of The Agreement, Written Form Of The Contract, Method Of performance of the Obligation, Performance Of the obligation through Smart contracts.*

I. INTRODUCTION

The development of electronic technology is creating new opportunities for merchants and consumers, including in the area of transactions. Execution is not even at the click of a computer mouse, but offline, without human involvement. Thus, smart contracts allow to partially automate the process of occurrence and execution of obligations. In this article we will tell about the concept of smart contracts, legal regulation, law enforcement practice, as well as about their application in consumer legal relations.

II. MAIN PART

The new stage in the development of the Republic of Uzbekistan has identified priority tasks for further liberalization of the economy, reducing the presence of the state in the regulation of economic relations, strengthening the protection of private property guarantees, as well as stimulating the development of entrepreneurship and actively attracting foreign investment. Achieving these objectives is impossible without the formation of modern direct action civil legislation that meets the requirements of a real market economy and advanced international standards. The Civil Code of the Republic of Uzbekistan occupies the central place in the system of civil legislation acts, which is a codified legislative act that defines the most important rules of civil law regulation. The Concept of Improvement of Civil Legislation of the Republic of Uzbekistan was approved by the Decree of the President of the Republic of Uzbekistan No. F-5464 of April 5, 2019 "On measures to improve the civil legislation of the Republic of Uzbekistan"[1]. The decree instructed to develop anew version of the draft Civil Code. The first discussion of the draft law was held in October-November 2020 on the portal discussion of draft regulations (regulation.gov.uz) [2].

Based on the received proposals, the improved project was submitted for a second discussion in February 2021 [3]. Modern trends in the development of law show that the process of automation of law is accelerating. Automation of civil-contractual relations, in which the use of electronic technologies plays a key role in smart contracts. According to the project, the written form of the

agreement has been supplemented in a new way. In the Civil Code of the Republic of Uzbekistan, agreements concluded in two ways are considered concluded in writing: 1) The parties may conclude the agreement in the form of a single document; 2) The parties may conclude an agreement through the exchange of documents [4]. The requirements for the written form of agreements are regulated by Article 92 of the draft Civil Code of the Republic of Uzbekistan. Part 2 of this article states the following norm: A agreement concluded by means of electronic or other technical means that allows to express the content of the agreement without change in the material means is considered concluded in accordance with the written form. In this case, the requirement for the presence of the signature is considered fulfilled if any method is used that allows to reliably identify the person who expressed his will. The law and the agreement of the parties may provide for special methods of reliable identification of the person expressing the will [3].

This norm also equates agreements made through smart contracts to the written form of the agreements. That is, smart contracts determine that they are a form of contract, not a type of civil contract. According to the order of the President of the Republic of Uzbekistan No. F-5464 dated April 5, 2019, One of the shortcomings identified as the need to improve the civil legislation of the Republic of Uzbekistan is that in the civil code of the Republic of Uzbekistan certain forms of civil law contracts and relationships required in modern market conditions, including public-private partnerships, dealership agreements, equity construction, cluster development, e-commerce, cryptocurrency exchange and private exchange is not regulated.

There are practically no provisions in the Civil Code regulating the use of information and communication technologies in civil law relations. However, Article 425, paragraph 4, of the draft Civil Code of the Republic of Uzbekistan stipulates that only a single document or mutual exchange of documents between the parties may be used as a method of concluding a written contract. Contracts made through smart contracts, including filling out a specific template on the Internet, using electronic or other technical means (usually such tools currently work in blockchain technology) are not equated to a written form of contract. It follows that smart contracts can only be used in unilateral agreements, and that their use in contracts is not equated to the written form of a contract. Article 166 of the draft Civil Code stipulates that the free circulation, alienation or other disposal of digital money (cryptocurrency) can be carried out only in the information system, unless otherwise provided by law. Also, according to Article 167, the exercise, disposal of digital rights, including transfer, pledge, other means of prohibition or restriction of digital rights can be carried out only in the information system without consulting third parties. The fourth part of Article 446 stipulates that the provisions of the contract of sale also apply to the sale of digital rights (tokens). According to the norms set out in these three articles, digital tokens can be used almost exclusively in an information system. In the fourth part of Article 425, transactions made in such an information system are not equated to written transactions. The new version of the Civil Code proposes to equate smart contracts to a written form of contract to determine the legal status of contracts, including smart contracts, concluded using electronic or other technical means that allow to increase its content without change, without specifying the mandatory structure of any document. The rule of almost the same content as the norm of concluding a transaction by electronic or other technical means, referred to in the second part of Article 92 of the draft Civil Code, is also provided for in Part 1 of Article 160 of the Civil Code of the Russian Federation. This norm is included in the Civil Code of the Federation by the Federal Law of March 18, 2019 No. 34-FL "On Amendments to the First, Second and Third Parts of Article 1124 of the Civil Code of the Russian Federation".

Also, the Law of the Russian Federation No. 34-FL added to Article 434 (paragraph 2) of the Civil Code, according to which the written form of the contract must be in the form provided for in a single document, the exchange of documents and Article 160, Part 1 of the Code. possible. That is, Article 160, Part 1 of the Civil Code of the Russian Federation stipulates that the rules for

equating transactions with electronic and other technical means (smart contracts) with the written form of the agreement also apply to the written form of the contract. An impressive number of representatives of the legal community equate the concept of smart contract with a type of civil law contract. Thus, A. I. Savelyev defines a smart contract ("smart" contract) as a contract existing in the form of a software code implemented on the blockchain platform, which provides autonomy and self-execution of the terms of such contract upon the occurrence of predetermined circumstances in it. As an argument, the scientist refers to the Civil Code - a contract is an agreement between two or more persons to establish, change or terminate civil rights and obligations (paragraph 1 of Art. 420 of the Civil Code) [5]. It seems that the "smart" contracts quite meet the above definition: They mediate the movement of certain values from one person to another, and therefore mediate economic relations of exchange. The user must express his will to participate in a smart contract in a specified way - for example, by making a certain order signed with his electronic signature. In this case, the terms of such a contract are available to all potential participants in advance, as they are entered into a publicly accessible blockchain. From a civil law perspective, a person, acting of his own free will and in his own interest, joins the terms of a smart contract by performing certain actions. Once joined, a smart contract participant is bound by the terms of such a contract, although the nature of this boundness differs significantly from that arising in traditional contracts. The fact that a certain agreement has been entered into by means of a computer or automatically does not affect the possibility of its qualification as a contract in the civil law sense [6]. Also, Article 1105 of the draft Civil Code stipulates that a will must be made in writing. As discussed above, Article 92 of the draft Civil Code also lists agreements concluded through smart contracts as a written form of agreement. It is well known that allowing a will contract to be concluded electronically or by other technical means will lead to a sharp increase in fraud under this agreement. Therefore, it is expedient to include a provision in Article 1105 of the draft Civil Code of the Republic of Uzbekistan, which reads: "It is not allowed to make a will using electronic or other technical means". Smart contracts can also be seen as a security procedure because coded operations such as its execution and transfer of any value between the parties are strictly performed and cannot be managed because the transaction with specific contract details is stored or distributed in a chain of blocks. This situation is considered as a method of contract performance from the point of civil law.

It is known that Article 259 of the Civil Code establishes general rules for the performance of an obligation. According to him, the obligations must be performed in accordance with the terms of the obligation and the requirements of the law, and in the absence of such conditions and requirements - in accordance with the customs of conduct or other requirements [7]. Smart contracts are used in contractual relations mainly in the conclusion and execution of a contract or in the performance of certain obligations in the performance of a contract by agreement of the parties. As studied above, contracts concluded through smart contracts are equated to a written form of contract. However, the legal status of such a relationship is not specified in the draft if the parties enter into a contract through a single document or exchange of documents, and use smart contracts to automate certain contractual obligations (such as making payments under the contract, receiving delivered goods). It is not necessary to make major changes in civil law for the use of smart contracts, but it is enough to determine the form of the contract and the legal status of smart contracts in the performance of the obligation. Therefore, in order to establish the legal basis for the performance of an obligation using smart contracts without specifying the will of the parties or one of the parties to perform the obligation, it is advisable to add the following to the above article: The terms of the transaction may provide for the fulfillment by its parties of the obligations arising from it upon the occurrence of certain circumstances without the separately expressed additional expression of the will of its parties aimed at fulfilling the obligation through the use of information technologies determined by the terms of the transaction. The essence of the approach is to recognize a smart contract as a kind of contract written in a programming language, at that the fact

of formulation of conditions in a programming language does not distort the contractual essence of the transaction, because a smart contract is not secret, its conditions are simply written in one of the programming languages, in respect of which the same rules should be applied as for other languages. The contract may be concluded in any language, including programming language [8]. Some researchers point to the complex nature of the smart contract, which combines all of these approaches. In their view, the essence of the smart contract should not be reduced only to the "automation of execution" of an obligation. We can distinguish the most common complex ways of implementing smart contracts: computer code; internal model - a combination of a contract in natural language (the language used for human communication (as opposed to formal languages and other types of sign systems)) and code; external model - a contract in natural language, but with fragments of agreement on some aspects, which are executed using a program designed for this purpose (automation of performance in some part [9]. A computer program called "smart contract" in the legal field will perform different functions, depending on the relations in which it is applied. Therefore, in law, the smart contract can be used for different purposes, including for use in contractual practice. The program can be used: as a way to execute a civil law contract concluded in simple written or oral form, or as a way to conclude and execute a contract in electronic form. When using a smart contract as a program for the conclusion of contracts, it is necessary to distinguish between the computer program and the legal relationship itself, i.e. the contract. Law can only regulate contractual relations while taking into account the technical features of the computer program, which inevitably changes the contractual relationship. Therefore, we can conclude that the smart contract in law is a special legal regime of a civil law contract. In this sense, the smart contract becomes a special non-self-standing contractual construction, which cannot be concluded separately from the relevant contractual type. For example, it is not possible to conclude a contract of adhesion as such. However it is possible to conclude a contract as a contract of adhesion [10].

III. CONCLUSION

In conclusion, smart contracts are defined in the draft Civil Code only as a written form of agreement. It is advisable to define smart contracts as a written form of contract and to regulate that a will cannot be made through smart contracts. It is also proposed to regulate smart contracts as a way of fulfilling an obligation.

REFERENCES:

1. Decree of the President of the Republic of Uzbekistan No. F-5464 of April 5, 2019 "On measures to improve the civil legislation of the Republic of Uzbekistan", <https://lex.uz/docs/-4272621>, (last seen date 07.12.2021.)
2. Discussion of the draft Civil Code of the Republic of Uzbekistan, <https://regulation.gov.uz/oz/d/23955>, (last seen date 07.12.2021.)
3. The second discussion of the draft Civil Code of the Republic of Uzbekistan, <https://regulation.gov.uz/oz/d/29059>, (last seen date 07.12.2021.)
4. Team of Authors, Civil Law: Textbook. Part I. /-T.: TSUL press, 2016. -317 p.
5. Savelyev A.I. Contract law 2.0: "Smart" contracts as the beginning of the end of the classical contract law // Bulletin of Civil Law. 2016. № 3. C. 32 - 60.)
6. <https://www.law.ru/article/22127-smart-kontrakty> (last seen date 07.12.2021.)

7. Civil Code of the Republic of Uzbekistan, <https://lex.uz/docs/111189>, (last seen date 07.12.2021.)
8. Fedorov D. V. Tokens, cryptocurrency and smart contracts in domestic draft laws from the position of foreign experience // Vestnik of civil law. 2018. № 2. C. 30 - 74.
8. Khavanova I.A. Smart contracts: the phenomenon of techno-legal 2020. № 3. C. 36 - 38.
9. Efimova L.G., Mikheeva I.E., Chub D.V. Procedural aspects of using smart contracts in civil turnover in the law of Russia and foreign countries // Bulletin of civil procedure. 2020. № 4. C. 235 - 253