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Russia takes step towards international electronic document flow

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According to available data, in 2022 the volume of electronic document flow in Russia increased by 22% compared to 2021, with a record number of electronic signatures issued in January and February 2023 (over 2 million). Despite the effective development of electronic document flow within the country, Russia has had difficulties with the recognition and use of foreign electronic signatures. However, amendments to the Electronic Signature Law, which came into force on 4 August 2023, may change this situation.

Types of e-signatures

E-signatures are legally recognised in Russia and are regulated by the Federal law No. 63-FZ on Electronic Signatures dated 6 April 2011 (the Electronic Signature Law). There are three types of e-signatures in accordance with the Electronic Signature Law:

- simple electronic signatures;
- enhanced qualified signature; and
- enhanced unqualified signature.

The main difference between enhanced e-signatures and simple signatures is that enhanced signatures are created using certain cryptographic means. This makes it possible not only to identify the person who signed the document, but also to detect when changes are made to the document after it was signed.

The use of simple and enhanced unqualified e-signatures is limited. A document signed with these signatures is legally equivalent to a paper document signed with a wet ink signature only in cases specifically provided for by law or by prior agreement between the parties. At the same time, a document signed with an enhanced qualified signature is legally equivalent to a standard paper document signed with a wet ink signature by default.

Legal recognition of foreign e-signatures

The Russian legislation contains basic provisions allowing for the recognition of foreign e-signatures:

- The mere fact that a certificate for the verification key of an e-signature was issued in accordance with foreign law cannot be reason to conclude that the e-signature and the document signed with it are invalid (article 7, paragraph 2, of the Electronic Signature Law).
- E-signatures created in accordance with foreign law and international standards shall be recognised as e-signatures of a particular type in accordance with the Electronic Signature Law, depending on the characteristics they meet (article 7, paragraph 1, of the Electronic Signature Law).

However, before 4 August 2023 there had been difficulties with recognising foreign enhanced e-signatures. According to article 7, paragraph 3, of the Electronic Signature Law these signatures must comply with the requirements of international treaties and such compliance must be confirmed by an accredited certification center (or other person prescribed by the international treaty). The problem is that until now there has been no such international treaty, so the procedure of recognition of these foreign signatures has not been put into practice.

To overcome the difficulties, Federal Law No. 457-FZ on Amendments to Certain Legislative Acts of the Russian Federation, dated of 4 August 2023, amended article 7 of the Electronic Signature Law. The new provisions in article 7, paragraph 4, indicate the following:

- Even in the absence of an international treaty, foreign e-signatures may be recognised based on an agreement between the parties to a cross-border transaction.
- To confirm that the e-signature meets the requirements of the agreement, the parties must obtain confirmation from a trusted third party or accredited certification centre.

Before the amendments came into force, Russian and foreign companies tested the technological basis and successfully implemented cross-border electronic document flow projects. For example, pilot projects between participants from Russia and Kazakhstan, as well as Russia and China, have already been successfully implemented. The Federal Tax Service of Russia and the Ministry of Taxes and Fees of the Republic of Belarus have developed guidelines for participants in cross-border electronic document flow. The guidelines are based on the results of a pilot project on the exchange of electronic shipping documents in cross-border trade between Russian and Belarusian business entities using a trusted third-party mechanism.

Therefore, the technical side of the issue had already been resolved, and the participants in the turnover had been waiting for a law that would allow full implementation of the mechanism.

Comment

Even though the proposed mechanism for the recognition of foreign e-signatures is not universal and requires concluding certain agreements between Russian and foreign companies, it will be widely realised in practice. Therefore, these amendments are a step towards simplifying international electronic document flow, helping businesses and states to get rid of paper documents, and reduce costs associated with their execution.

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