Data of 28 January 1981 // http://www.businesspravo.ru/Docum/DocumShow_DocumID_33361.html
[19] See: E-commerce security // http://www.studfiles.ru/preview/1671669/
[20] See: Technology of information security in the network, Lectures // http://www.pandia.ru/text/77/365/9698-8.php

**Smolyakov A.N.**

# THE APPLICATION OF LETTERS OF CREDIT IN THE FIELD OF INTERNATIONAL E-COMMERCE

**Smolyakov A. N., Russian Federation, Demidov Yaroslavl State University, The Faculty of Law, graduate students**

**Abstract**

The prospects of the use of the letter of credit in electronic commerce are analyzed in this scientific article with the support of the current legislation and jurisprudence. The author gives an exhaustive analysis of modern provision of the legislation on electronic commerce. Suggestions for improvement of this institution are made as an improvement of the current legislation, and development of essentially new provisions concerning electronic money, the activity of the operator of electronic currency and its legal status. The conclusion regarding almost complete integration of institute of the letter of credit into the sphere of electronic commerce is drawn and further steps are offered with an aim to achieving the mentioned purpose.

**Keywords:** letter of credit, electronic commerce, electronic currency, authentication, digital signature, economic-torrent.

## Introduction

It is well known in modern law literature, both in Russia and abroad, that letter of credit remains one of the main ways of accounting in international trade. Also this method is well supported either in judicial practice in Russian courts [1] and international courts [2]. Still have been significant changes in this field of law since the revolution in IT technology and it is this exact issue which will be analyzed in this particular research paper. Nevertheless, according to our opinion, it is methodically right to start with the definition of letter of credit itself and its judicial nature. In Russian civil law the definition itself is found in the art. 867 of Civil Code of Russian Federation 1996 [3] and by which we should understand "account method in the international commercial law at which the bank operating at the request of the payer about opening of the letter of credit and according to its instruction (bank issuer) undertakes to make payments to the recipient of means either to pay, accept or consider the translated bill or to confer power to other bank (the executing bank) to make payments to the recipient of means or to pay, accept or consider the translated bill". Existing today and fixed in hl. 46 Civil Code of the Russian Federation system of calculations does not quite meet the modern requirements the economic development and the developing market legal relationship. Of course, the means of payment named in the Civil Code of the Russian Federation now are applied in full in the implementation of calculations by legal entities and individuals. For example for payment orders, letters of credit are mostly still the main settlement tools in the relationship between legal entities. At the same time technical development has caused the emergence of new means of payment (credit and debit cards, etc.) and ways of calculations (electronic money, electronic purses, smart cards, etc.). In the works of the lawyers investigating a subject of clearing settlements and also in the "Law on payment system" there were new concepts - "electronic money", "electronic money", "non-cash money", etc. All this is justified and meets the requirements of time, but, considering a variety of means and ways of implementation of calculations, it is represented, as the Law declared as the statutory act of system level which must be define conceptually and institutionally to fix the existing payment system of the Russian Federation including both traditional, and new means and ways of calculations. It should be noted here that the practice of application of the letter of credit testifies that this form of calculations in an intra-national payment turn is not used often. The specified circumstance is connected with the imperfection of the legal regulation of the relations which arose

in connection with the use of a letter of credit form of calculations, the discrepancy of the Russian precepts of law to the international customs, and the lack of uniform jurisprudence on the category of affairs connected with this form of calculations. If earlier the letter of credit was applied generally in commercial contracts, today it is applied either in expensive single contracts, or in the contracts which don't have enterprise character (it is possible to give contract of purchase and sale of real estate as a shining example). This position is well-supported in significant amount of Russian lawyers' publications [4]. But in international trade it remains a very popular method of transactions. It is still suspected that there is still room for improvement for it. Karashev K.V.[5] allows to consider the letter of credit as one of traditional forms of calculations by the current legislation which, in his opinion, is an independent method of execution by the manager of liabilities before the beneficiary who isn't brought together to clear settlements. We can't agree with his position. With improvement of the positions of e-commerce in international trade letters of credit's future is situated.

Electronic commerce has certainly become an integral part of modern economy. More and more consumers acquire goods by online shopping, and commercial organizations take advantage of the chance of the given network at the implementation of business activity. The general world sales volume in only one consumer segment of electronic commerce exceeded a mark of 1 trillion dollars in 2012 and is characterized by steady growth [6]. The market of electronic commerce in Europe reached 312 billion euros, in 2012 Russia took the fifth place in e-commerce market size after Great Britain, Germany, France and Spain, thus Russia's share made about 10,3 billion euros in 2012 with a gain of 35% in comparison with 2011 [7]. These figures show us that the phenomenon of electronic commerce has very bright prospects from an economic point of view and consequently, questions of its legal regulation gain special relevance. Nevertheless the rapid development of this phenomenon in domestic legal literature [8] is obviously at an insufficient level.

## Results and discussion

Many works on this subject are also, despite the undoubted scientific value of some of them, either outdated, or fragmentary, or descriptive. And though can't be denied its methodological value, the modern level of development of this institute of the right unambiguously demands more detailed scientific research which will allow to be more precisely transferred their legal nature and a place in the modern legislation and jurisprudence. It is known that the

legislation [9] in this sphere develops rather dynamically, and that what is taking place now, essentially differs from that which took place 5 and especially 10 years ago. If the cross-border character of the Internet, and together with it and nature of electronic commerce were to be considered, it becomes obvious that in a separation from provisions of the foreign legislation in the specified sphere, and also the analysis of the accompanying jurisdictional problems it is impossible to paint a more or less accurate picture of the legal regulation in the specified sphere. In our previous works we not only criticize the current model of e-commerce in Russian [10], but also hypothesize that the current practice of nation's legislative branches [11] is far below the required level to comprehend the rapid speed of evolution in this particular field of economy which inevitably will lead to violations of the current rules in tax and tort law by the organizations which works in this area. The axiom example, of the point specified by us earlier, is the case connected with the Bitcoin service, concerning the website SilkRoad (one of the largest sites connected with drug traffic kings): as a result of the large-scale operation performed by FBI [12], with the assistance of intelligence services from other countries, they could roll servers of the site and recall about 110 thousand bitcoins. However, this operation can hardly be considered a success since almost all the of the participants avoided expose. The only thing which was achieved by the FBI was breaking a number of drug transactions that, figuratively speaking, could be compared to a situation where the police surrounded the bar in which criminals usually gathered, and found a case with their money, which they left to be able to ran away, i.e. the only losses by the drug cartels appeared to be material - 110000 bitcoins approximately at the time of arrest, which equaled to 10 million dollars, which can hardly be called a serious blow to drug trafficking positions. At the same time, the Bitcoin service executed its task – retained the anonymity of the participants of the transaction. As we can see, the specified problem is very serious and demands active steps for its resolution. Nevertheless, a solution has not yet been found. The aforementioned example clearly showed that law regulation of e-commerce is far from ideal, and has often been used for money laundering and tax dodging. Nonetheless, we defended the position that e-commerce is not the "outlaw den", but with the required changes in modern legislatives and law regulations I could become a new way of accounting and an alternative to the banks. It is well known for now that electronic money represents the payment tool focused only on the relations with participation of natural persons (B2C-and C2C-segments of electronic commerce). The implementation of calculations by electronic money between legal

entities and individual entrepreneurs is inadmissible under the laws existing in Russia [13], however as for foreign and international practice[14], it is not excluded, but unambiguously has a small percent of application. In this particular case we are not talking about the e-commerce of banks, which cannot be considered as innovation. The essence of electronic banking commerce consists in providing banking services on the Internet, the use of digital transmission of data. Mobile banking is the service allowing the client to operate by means of a mobile terminal, to pay for goods and services, and also to make transfers from their bank account by mobile phone or by SMS teams (SMS banking), or special applications for smartphones using the Internet for data transmission [15]. We wholeheartedly support the idea that not banks, but e-currency operators are the future of e-commerce. Issuers of electronic money admit the bank organizations are reluctant confer to bank organization about certain requirement the certain requirements concerning the minimum capital, a ban on implementation of a certain activity, for example on crediting, licensing of their activity in supervisory authorities and so on and so forth. These provisions were reflected in both directives of the EU in 2000[16] and 2009 [17]. This approach, in our opinion, is not ideal as, since they are less subject to supervision from supervisory authorities; similar services have started up on various shifts in attempts to bypass the law. In a parallel collaboration by us and Malkov A.V. [18] it was offered to define category of operators of electronic money through the category "virtual organization of bank type", developing [19] concept "virtual bank" used by us in earlier works. In this case we do not completely identify this organization with the bank, but through indications of a bank component in its activity it will not only allow for the distribution of provisions of currency and partial bank right for an activity by this sort of the organization, but also will a result in need for these organizations to obtain the license for the implementation of such activities. We believe that it should be determinate as “universal virtual monetary substitute representing quasi-currency containing in a digital form on any electronic medium or server which is established through the exchange rate and can be exchanged and be expressed in any currency or conventional unit”. Also, assuming the current corruption of most of legislatives and scientific research, we formulated and defended the brand new understanding of the definition of electronic currency. But as we said before, we strongly believe, that there is a future for e-commerce not only for ordinary citizens, but also for firms and organizations.

Nevertheless, as the international arbitration practice shows, as well as separate decisions, within English vessels [20],

distribution of institute of electronic commerce on legal relationship on implementation of business activity, requires two additional conditions: 1) to bring into accord with provisions of the contract law activities for electronic commerce; 2) a detailed reflection of acts of procedure for the authentication of the will of the parties with their expression by means of coordination on the Internet, as well as identification of participants, for the purpose of avoiding the possible activity under an assumed name. These solutions of these problems is very important for the future development of electronic commerce but before starting their direct analysis, in our opinion, it is necessary to focus on one question, and it is a question of the definition of electronic commerce. Despite universal and widespread use of this term, in domestic literature its definition does not often match to its worth. However, without representing the complexity regarding signs, from the point of view of patrimonial correlation this term is very curious. Precisely for this aim, we will address to English literature [21] in which this patrimonial relation is defined most successfully. This phenomenon in it is represented through a ratio of two terminological categories: electronic commerce (Electronic commerce) and electronic data exchange (Electronic data interchange or EDI) in which the second acts as a generic term in relation to the first. Under electronic data exchange (a comment of the author: further EDI) in scientific literature is understood as any mean of transferring electronic information, whether it be on the Internet or by e-mail, electronic commerce is understood as one of the types of EDI at which there is an administrative transfer of either business information or its exchange by use of information or communication technologies. The given correlation not only defines patrimonial access of the institute of electronic commerce, but also allows the actions to be extended to it a number of international acts in the sphere of an exchange of electronic information of the accepted various international organizations.

Now, that we have defined patrimonial accessory and the concept of electronic commerce, we will turn to those problematic questions specified by us earlier. As we have already repeatedly noted, provisions of the contract law has little or no application to this sphere a process of the conclusion of the contract in this case doesn't assume both its direct signing and existence of the contract in material form. Regardless, judicial and arbitration practice, as well as scientific research [22], case in point recognizes the distribution of the regulations of the acceptance and the offer of contracts in the sphere of electronic commerce. Also, courts in Russia had for a long time refused to recognize similar contracts as valid, so the last arbitration practice allows the conclusion of possibility to close up

contracts by e-mails and the Internet correspondence [23] that it is necessary, in our opinion, as a positive step in development of institute of the conclusion of contracts that also entirely correspond to the international practice of arbitration courts. Nevertheless, assuming the fact that Russia is being the country of Romano-German legal family in the Russian Federation judicial precedent, as well as law-interpretative acts of the highest judicial authorities aren't considered as sources of law, though admitting by scientific community and consideration of law-enforcement practice. The similar duality of a situation, especially in the course of carrying out judicial reform, can hardly be a positive aspect for the law enforcement official, keeping his situation in a condition of uncertainty. The uncertain destiny of the future of arbitration practice owing the merger of the Supreme Court of Russian Federation and Highest Arbitration Court of Russian Federation, as well as ambiguous practice, in the introduction of precedent in the system of the arbitration law which was analyzed in details in our earlier work [24], has certainly, negatively affected development of a civil law, and, in our opinion the only decision to be make in this case is to put corresponding changes into the Civil Code of the Russian Federation which will allow for opportunities for this sort of contract to resolve not through broad interpretation of the legislation, counting upon compliance of this interpretation by individual legal views of the judge of arbitration court, but through directly recorded regulations on an electronic form of the contract in the Civil Code of the Russian Federation will be resolved. As we can see, in this case, judicial and arbitration practice actually met the existing lack in the legislation, therefore we can solve a set of problems for law-enforcement practice, simply by making corresponding changes to the Civil Code of the Russian Federation, which will once and for all close the matter for disputes and ambiguous interpretation of standards of the current legislation.

The second question which we raised up here is much more disputable, and the proposed solutions in our opinion do not differ in a sufficient practicality and efficiency as that is demanded by a trade turnover. Authentications of the will of the parties, as well as identification of participants of the concluded bargain is one of many key controversial issues, both in domestic and in foreign literature in the sphere of electronic commerce. In view of the known anonymity of Internet users, and in case of using specialized programs it is possible to speak about actual full anonymity - identification of contractors under the contract is a paramount task. Nevertheless, the solution proposed in the majority of works on the matter in the form of a digital signature can be very doubtfully used as a solution to the

existing problem, first of all in communication, as with the complexity of the procedure, and relative safety of its use. In our opinion, from the accounting of development of IT technologies and expansion of the Internet, this way should sink into oblivion, having given a way to more effective model. Without applying for its full development which demands involvement of experts in the sphere of IT technology and economists for carrying out research of the market, within this research by us was created 2 models of the mechanism which from our point of view, will allow the system of electronic commerce to come to a new level - both due to expansion of potential participants of the market and at the expense of increase in its safety from alien interventions, at the same time leaving behind control bodies in case of the need to interfere with development of a situation preventing and promoting detection of violations and abuses by participants of the market. Both models are constructed on the basis of the general principle, with the difference only in the method of their realization, for this reason methodologically true is to begin our analysis with the general understanding of the solutions of the existing problem. We have already in earlier works spoken about such concept as economic-torrent, recognizing not only the efficiency, but also safety of such model. And nevertheless the practice existing in this sphere allows us to draw a conclusion that these programs are used only in semi-lawful and even illegal activity. We don't see the reasons why the principle of work of the torrents can't be postponed for functioning of quite lawful institute allowing carrying out an exchange of electronic data and electronic documents via its servers. Taking into account the already available experience of functioning of similar models in the DarkNet, it would be possible to create system in which the participant’s identification number going to be provided to each firm for authentication. The information and confidentiality of operations are going to be provided with the main principle of a torrent – "the more computers are connected to a network – the safer the network". Through given institute also settlement process could be carried out, at its investment with its status of the issuer of electronic currency. As for a question of control of activity of the companies the cut of this operator, the decision can be presented by analogy with accounting reports – granting tax authorities the list of the carried-out transactions, their size and dates. Document flow would remain confidential, for the account transferred electronic files in the form of the coded units access to which has only the recipient and the sender, and in case of the corresponding inquiry of control body, in the presence of a judgment, can ask the operator for verification of the specified data. There is only one unresolved question – what

organization will act as the operator of this system? And here we will return to the models already mentioned by us. On the first model we offer reference to this activity in the private sector and, as a result of that create either a natural monopoly in this sphere or the free market of the competition. The problem of this model consists in the increased responsibility of the operator who being at the same time the credit organization and special type of organization for storage of confidential documents of these legal persons users. It is represented also ambiguous to us limits of control and supervising activity concerning this operator which, from our point of view, has to be limited in case of need to concern only about the carried-out transactions, and in general on this operator's type the mode of bank secrecy has to be extended. As for the second model, realizing that there is inexpedient to create such operator as the state institute within separately taken country not only by its original nature, but also calls into question into confidentiality of data. Therefore their creation only at the interstate level is reasonable; its creation at the level of UN institutes is represented to us the most rational. At preservation of the same principles of activity, as the private legal entity, the main problem of this organization remains a certain threat of confidentiality on an equal basis with preventing of the competition in this sphere of IT services. Nevertheless the second model can be, in our opinion, used as experimental model of activity of the operator before fully referring the matter in a field of activity of the private companies.

Now when we have briefly enlightened our main ideas in field of e-commerce, we can return to letter of credit and it position in this field. As with other trade documents, as we mentioned earlier in this particular research paper, an inevitable question is whether there is scope for electronic letters of credit. The issue of paperless letter of credit has been considered in the significant amount of research paper in foreign literature [25] since the IT revolution. In 2002, the ICC produced a supplement to the UCP - the eUCP Version 1 - and this has been replaced with Version 1.1 [26]. The eUCP enables electronic presentation and caters for recognition of electronic documents. A signature in the digital context is addressed and the meaning of an original in the electronic environment is clarified. The requirement of presenting one or more originals or copies is satisfied by an electronic record according to Art e8, and electronic record is defined in Art e3 (b)(i) as: 1) Data created, generated, sent, communicated, received or stored by electronic means; 2) That is capable of being authentically as to the apparent identity of the sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered; 3) Is

capable of being examined for compliance with the terms and conditions of the eUCP credit. The eUPC takes the technology-neutral approach so that an electronic signature is defined in Art e3 (b) (ii)as a data process attached to or logically associated with the an electronic and executed or adopted by a person in order to identify that person and to indicate that person's authentication of the electronic record. Recognizing that electronic data are prone to corruption, Art e11 addresses the issue of a bank's procedure in relation to corrupted electronic records. As with the UCP, the eUCP has to specifically incorporated. It is a supplement the UCP, so the UCP will continue to apply equally to the electronic presentation (Art e1). Although most commercial lawyers are skeptical about the use of the electronic documentary credit, or, for the matter, electronic bill of landing, it must be said that this skepticism is unwarranted, what is supported by some foreign authors [27]. Legal frameworks exist alongside technical means to make paperless document transactions a vital and necessary part of international commercial arena. The recognition of negotiable and non-negotiable transport record is also made possible by the recently adopted Rotterdam Rules [28].

## Findings

As a conclusion of our research we can underline the fact that the recent innovation both on national and international level allows a talk about the integration of the institution of letter of credit into the field of electronic commerce. And keeping in mind the ideas which were formulated and defended in this research paper we are absolutely sure at the coming improvements and expansions in this area of legislation and scientific research in with area by law, economy and programming. Summarizing the key ideas of this research we can make the following conclusions:

1) Although the letter of credit is used now in e-commerce, the level of its regulation is far from ideal;
2) Current legislations should be improved with adding the figures of "virtual organization of bank type", that will determinate the law nature of operators of electronic currency;
3) Russian contract law currently is experiencing a serious void in the field of electronic commerce, which by our understanding should be solved by extending of the chapter of Civil Codex of Russian Federation dedicated to contract law with articles about electronic document's form and e-commerce;

4) The existed definition of electronic currency, neither in Russian or international legislation cannot be comprehended by the law-enforcement practice, that's why we created the following definition that should solve some of the problem in arbitration practice "Electronic money/currency is an universal virtual monetary substitute representing quasi-currency containing in a digital form on an any electronic medium or server which are established through the exchange rate and can be exchanged and expressed in any currency or conventional unit";
5) The existed mechanism of the verification of the participant in transactions in the field of international e-commerce cannot be considered as anything other than imperfect, assuming this idea we developed the new construction of authentication based on economic-torrent of participants which, as we suppose, allow not only natural persons to be involved in e-commerce, but also private firms and organizations.

**References**

[1] Information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation of 15.01.1999 N 39 "The review of practice of consideration of the disputes connected with use of letter of credit and collection forms of calculations".;
[2] Bodil Lindqvist v Kammaraklagaren (C-101/01) [2003] E.C.R. I-12971.;
[3] Civil code of the Russian Federation (part one) of 30.11.1994 N 51-FZ, "Collection of the legislation of the Russian Federation", 05.12.1994, N 32, Art. 3301.;
[4] Lutokhina O. N. Translation of the letter of credit: possibility of regulation by analogy with designs of the Russian civil law//Business, Management and the Right. 2012. N 2. Page 138 - 144.;
[5] Karashev K.V. Features of execution by banks of letter of credit obligations//Legal work in the credit organization. 2013. N 3. Page 50 - 60.;
[6] Ecommerce Sales Topped $ 1 Trillion for First Time in 2012. 05.02.2012 // http://www.emarketer.eom.;
[7] Europe B2C Ecommerce Report 2013. Brussels // https://www.ecommerce-europe.eu.;
[8] Savelyev A.I. Electronic commerce in Russia and abroad: legal regulation. M.: Statute, 2014. 543 pages.

[9] UNCITRAL Model Law on Electronic Commerce 1996 // http://www.uncitral.org/.;
[10] Smolyakov A.N. Virtual currency: features and prospects of regulating the activities of operators // The Fourth International Conference on Economic Sciences.Proceedings of the Conference (November 20, 2014). Vienna, OR: «East West» Association for Advanced Studies and Higher Education GmbH, Vienna.;
[11] Smolyakov A.N. Bitcoin virtual currency: the question of the legal nature and role in society // The Third International Congress on Social Sciences and Humanities. Proceedings ofthe Congress (November 15, 2014). Volume 2. Vienna, OR: «East West» Association for Advanced Studies and Higher Education GmbH, Vienna.;
[12] Bitcoin Virtual Currency: Intelligence Unique Features Present Distinct Challenges for Deterring Illicit Activity. FBI Report // http://www.wired.com/imagesblogs/threatlevel/2012/05/Bitcoin-FBI.pdf.;
[13] Kharitonov of L. Document flow in the online mode // EZh-Yurist. 2013. N 4. Page 14.;
[14] See Geva “The Law of Electronic Funds Transfers”, 2012.;
[15] The federal law of 06.04.2011 N 63-FZ "About a digital signature".// "Collection of the legislation of the Russian Federation", 11.04.2011, N 15, Art. 2036.;
[16] Directive 2000/46/EC of 18.09.2000 "On the Taking up, Pursuit of and Prudential Supervision of the Business of Electronic Money Institutions" // Official Journal of the European Communities. 2000. L. 275.;
[17] Directive 2009/110/EC of 16.09.2009 "On the Taking up, Pursuit of and Prudential Supervision of the Business of Electronic Money Institutions Amending Directives 2005/60/EC and 2006/48/EC and Repealing Directive 200/46/EC" // Official Journal of the European Communities. 2009. L. 267.;
[18] Malkov A.V., Smolyakov A.N. "To the question of prospects of a development of the institute of electronic commerce", Yaroslavl., 2015. 25 pages
[19] Smolyakov A.N. Risks to economic stability and security of the issuers of virtual currency // The Fourth International Conference on Economic Sciences.Proceedings of the Conference (November 20, 2014). Vienna, OR: «East West» Association for Advanced Studies and Higher Education GmbH, Vienna.;

[20] Twentieth Century Fox Film Corp v British Telecommunications Plc [2011] EWHC 1981 (Ch) at paras 114-148.
[21] The Law and Practice of International Trade // Carole Murray., 2012
[22] Dashyan M. S. Law of information highways: Questions of legal regulation in the sphere the Internet. M.: Volters Kluver, 2007. 288 pages.;
[23] Resolution of the Ninth arbitration appellate court of 27.04.2006 N A40-20963/2005//Law search system ConsultantPlus
[24] Smolyakov A.N. Revision put on new and newly discovered facts. Yaroslavl. 2014. 61 pages.;
[25] Williams and Carr "Crime, risk and computers", 2002.;
[26] ICC Uniform Customs and Practice for Documentary Credits (UCP 600) // http://www.6pl.ru/
[27] International Trade Law // Indira Carr., 2014.;
[28] UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. 2008 // http://unctad.org/.

**Khamzina Zh.A., Buribayev Ye.A., Oryntayev Zh.K.**

# PROBLEMS OF LEGAL GROUNDWORK FOR IMPROVEMENT OF PUBLIC ADMINISTRATION IN SOCIAL SPHERE

**Khamzina Zh.A., Republic of Kazakhstan, Kazakh National Pedagogical University named after Abay**
**Buribayev Ye.A., Republic of Kazakhstan, Kazakh National Pedagogical University named after Abay**
**Oryntayev Zh.K., Republic of Kazakhstan, Kazakh National Pedagogical University named after Abay**

**Abstract**

The article covers problems of improving the legal regulation of controlling mechanisms for social safety net. This work represents analysis and proposal of solutions for problems of legal