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# LEGAL FOUNDATIONS FOR THE FORMATION OF TELECOMMUNICATIONS SERVICE AGREEMENTS

Khursanov Rustam Kholmuratovich  
First Deputy Director for Academic Affairs  
at Training institute for Lawyers  
Doctor of Science in Law  
e-mail: hursanov.rustam75@gmail.com

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## Abstract

This article examines the legal foundations governing the formation of telecommunications service agreements within the framework of contemporary civil and regulatory law. The study analyzes the contractual nature of telecommunications services, identifying their specific legal characteristics as public, consensual, and remunerative agreements. Particular attention is paid to the essential terms of the contract, the procedure for its conclusion, and the legal status of the parties, including service providers and consumers.

The article further explores the interaction between civil law principles—such as freedom of contract, equality of parties, and good faith—and sector-specific regulatory requirements established in the field of telecommunications. It assesses mandatory provisions relating to licensing, consumer protection, data confidentiality, and universal service obligations. Special emphasis is placed on electronic contract formation, standard-form agreements, and the legal implications of digital acceptance mechanisms in modern telecommunications markets.

The research concludes by outlining existing doctrinal debates and practical challenges in ensuring legal certainty, balance of interests, and effective protection of subscriber rights in the process of concluding telecommunications service agreements.



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**Keywords:** Telecommunications services, service agreement, contract formation, civil law regulation, regulatory framework, freedom of contract, public contract, standard-form contract, electronic contract, consumer protection, licensing requirements, universal service obligation, digital acceptance, subscriber rights.

### **Introduction**

The conclusion of any contract represents a specific system of actions. In civil law, contract formation is considered a process of offer and acceptance. These traditional actions of contract formation and the processes for their implementation date back to ancient Roman law. Until the end of the last century, this traditional procedure for contract formation was understood and applied in theory and practice as an unchangeable axiom. However, in recent years, the rapid development of the internet and the significant influence of information technologies and tools on the processes of creating social relations, along with traditional approaches to contract formation, have given rise to processes such as remote contracting and contract formation in virtual space. Telecommunication technologies have to some extent facilitated the establishment of legal relations between parties to a contract as a means of establishing relationships related to the purchase and sale of goods, performance of work, and provision of services. The fact that parties to a contract conduct negotiations in the virtual world (for example, using Zoom) and the ability to communicate through various social networks have led to the "reunification" of distant counterparties. The procedure, stages, and requirements for concluding contracts for the provision of telecommunications services are governed by the rules established by the Civil Code and legislation in the field of telecommunications. Thus, concluding a contract for the provision of telecommunications services requires, first and foremost, mutual agreement of the parties to the main terms of the contract. Article 364 of the Civil Code states that the conclusion of a contract means the parties' agreement on the essential terms in the prescribed form. This means that the parties' agreement on the essential terms required for the contract must be expressed in a specific form. As a rule, there are oral and written (simple, notarized, and state-registered)



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forms of contracts. Although the law does not establish requirements for written form and formality, such an agreement may be concluded orally if it is formalized as a contract. However, oral form cannot be used for contracts for the provision of telecommunications services. This is because telecommunications services require subscriber identification and the conclusion of a written agreement with them. Article 366 of the Civil Code stipulates that if legislation does not establish a specific contract form, contracts are concluded based on the rules on contract forms. In this case, contracts for the provision of telecommunications services may be concluded in simple written form.

The legislation lacks clear provisions regarding the essential terms of contracts for the provision of telecommunications services. Only the second part of Article 364 of the Civil Code establishes the rule that the essential terms of a contract are its subject matter and the terms and conditions that must be reflected in a specific contract. Furthermore, this rule reflects the fact that a provision that must be included in a contract at the request of one of the parties is also an essential term of the contract.

Legal literature expresses a number of opinions regarding the important terms of contracts. In particular, according to H. Rakhmonkulov, “every contract includes a number of terms, some of which are found in all contracts concluded in a particular area of relations and constitute their content, while others are specific terms and characteristic of a particular type of contract or a particular type of contract” [1].

According to N. Imomov, “various spheres of human activity or the performance of certain actions in favor of the counterparty can also be included as a condition of the subject of the contract” [2].

In our opinion, the subject of a telecommunications service agreement, considered an essential term, is the activity of the telecommunications operator or provider. This activity is aimed at enabling the client to receive, transmit, process, and store information via telecommunications networks. This activity, which is the subject of the agreement, is carried out by operators and providers holding the appropriate license.

As a type of contract for the provision of services for a fee, not only the subject of the agreement but also other terms may be considered essential terms of



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telecommunications service agreements. Specifically, T. Muminov lists the essential terms of such an agreement in the following order: terms for the parties to the agreement, the price of the agreement, the rights and obligations of the parties, and civil liability for breach of the agreement [3].

In our opinion, the essential terms of telecommunications service contracts, along with requirements common to paid service contracts, also include requirements specific to a particular type of telecommunications service. For example, Section 3 of the Rules provides for "special terms of a mobile communications service contract." These terms include technical issues, such as the requirement to present a civil passport to conclude a mobile communications service contract, the requirement to conclude a contract only at the operator's office, and the requirement to conclude a contract with foreigners. Of course, these requirements reflect technical issues related to contract conclusion. However, the telecommunications sector is inextricably linked to technical issues. After all, connecting the subscriber to the operator's and provider's servers, providing network access, and installing the appropriate mobile device or SIM card into the network, as well as similar operations, can all be performed at the operator's or provider's office.

One of the essential terms of a telecommunications service contract can be considered a condition imposed on the parties to the contract. As noted above, the mandatory parties to a telecommunications service contract are the "telecommunications operator" and the "telecommunications service provider." The Law "On Telecommunications" stipulates that both of these entities are legal entities and carry out activities related to the provision of telecommunications services. The difference between an operator and a provider is that, according to the law, an operator is the entity that owns telecommunications networks, while a provider is the organization that provides services through these networks. According to Article 9 of the Law, certain types of telecommunications activities are carried out under a license. This means that not all areas of telecommunications activity are subject to licensing. As a result, as of January 2022, the volume of telecommunications services amounted to 1.1 trillion soums, an increase of 21.2% compared to the same period last year [4].



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Today, telecommunications activities are carried out based on specific requirements and conditions. However, current legislation does not establish the fundamental rules, or principles, that must be observed in the telecommunications sector. Such principles are established in the legislation of a number of foreign countries. For example, countries such as Ukraine (Article 6 of the Law “On Telecommunications”), Estonia (Article 3 of the Law “On Telecommunications”), and Azerbaijan (Article 7 of the Law “On Telecommunications”) list the principles of telecommunications activities.

In the contract, users of telecommunications services are referred to as subscribers. If the subscriber is an individual, they have the status of consumer. As consumers, citizens have the right to use telecommunications services, receive information about them, and demand the quality and level of service. Furthermore, in accordance with the law, subscribers must be provided with services in a timely manner and in the manner established by the contract. A citizen who is a user of telecommunications services must have the appropriate passport information and be over 18 years of age. To enter into contracts for the provision of certain types of telecommunications services, the subscriber must have a device capable of receiving the services and exchanging information through them. In other words, to enter into a contract for the provision of certain types of telecommunications services, the subscriber must have a specific device (e.g., a mobile phone, various technical equipment, Wi-Fi equipment, etc.), and this is one of the conditions for concluding the contract. In this regard, it is worth noting the similarities between contracts for the provision of telecommunications services and energy supply contracts, as provided for in Article 468 of the Civil Code. As stated in Article 469 of the Civil Code, an energy supply contract is concluded with “a subscriber who has an energy device, as well as equipment and devices for measuring energy consumption”. The Rules for the Provision of Telecommunications Services stipulate that a subscriber device is “a technical device connected to telecommunications networks, designed to generate, convert, and process signals transmitted or received via telecommunications networks”.

O.V. Zhevnyak stated that "an operator's refusal to provide a service due to the client's lack of the necessary equipment is justified. If a communications service



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is not provided or is provided improperly due to the user's lack of the necessary equipment, the operator is relieved of liability” [5]. S.V. Tichinin and A.A. Vasilchenko analyze the relationships within the framework of a contract for the provision of mobile communications services and put forward the following observation: “in these legal relations, equipment consisting of various independent elements and necessary for the provision of mobile communications services is considered necessary: a mobile telephone, a subscriber identification card, and a mobile communications network” [6]. According to O.A. Kuznetsova, “to obtain information, signals must be directly converted into messages, or data. This conversion of signals into messages is accomplished using specialized receiving equipment (phone, computer, tablet, etc.) available to the telecommunications user. In this case, the subscriber device receives messages transmitted over telecommunications networks in the form of physical signals” [7].

In our opinion, the subscriber's possession of devices and equipment for concluding a telecommunications service agreement is one of the distinctive features of this type of service. After all, the service is received not in a traditional manner, but through a device that converts signals into a specific message, i.e., one capable of reading electromagnetic signals. This, in turn, requires the user of telecommunications services to have an electronic device capable of reading the signals. In this type of service, it is not enough for the service provider to simply perform an action on behalf of the client; the client requires a specific technical device to understand, perceive, and accept this action. Furthermore, telecommunications services manifest themselves as a complex algorithm, and for the average consumer to understand this algorithm, a device that assists them is necessary: a computer, tablet, mobile phone, smartphone, smartwatch, or other similar device.

As a rule, before concluding any contract, the parties negotiate. As a result of the negotiations, the parties reach a specific agreement and sign the contract on this basis. Negotiations are considered a stage preceding the conclusion of the contract. During the negotiations, the parties mutually clarify the rights and obligations under the contract, as well as the specific actions to be taken by each



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party. In addition, during the negotiations, the proposal of one of the parties is also discussed.

Negotiations play a crucial role when operators and providers enter into telecommunications contracts with various legal entities. During negotiations, the technical specifications of servers, equipment, and devices for receiving telecommunications services belonging to the legal entity, their capacity to handle a certain amount of traffic or load, the number of recipients of telecommunications services, the data transfer rate, and other issues are agreed upon. The rules for conducting the negotiation process, as well as the obligations imposed on the parties involved, must have a legal basis. However, national legislation does not establish specific rules for negotiating contracts. To prevent this process from becoming a joke, it is advisable to include specific rules for negotiating contracts in the Civil Code to ensure a serious approach by the parties to the negotiation process. Such rules are reflected in Article 434.1 of the Civil Code of the Russian Federation.

Without identifying the consumer value of an asset, not every object, even if it falls under the signs of digital assets, may require the creation of a special civil law regime for it. What is connected with the material world, as it seems, has already received legal regulation. Thus, entries in registers of various kinds as such cannot be considered digital assets. At the same time, the issue of standardization of information placed in distributed registries is being solved in practice today, depending on the goals of creating a registry. And although it will be necessary to develop standards for the description of registered objects that would allow for the initial verification of ownership of rights, as well as further transactions regarding the transfer of rights to the corresponding objects in a publicly accessible manner [8], the functional purpose of the registry will not change. The commercial turnover of digital assets may require special regulation precisely due to the impossibility of solving emerging issues at the level of the available regulatory material.

At the same time, it should be emphasized that it is not the code entry itself that has the value, but the right certified by it to the object encrypted in it, including the right to access the code (login, password, crypto wallet, etc.) and to dispose of the digital asset.



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Consequently, digital assets with economic value and capable of turnover can be recognized as objects of civil rights. However, the recognition of digital assets as objects of civil rights does not mean that they receive adequate legal regulation, since their specifics do not allow them to be fully covered by the current civil legislation. To create a special legal regime, it is necessary to identify the distinctive features of such objects as objects of civil rights. We believe that the following constitutive features of digital assets can be considered as such:

- they are immaterial and do not need to be materialized in the real world;
- exist only in digital, not electronic form;
- presented as records (code), created by encoding using cryptography and can only be reproduced using special technical devices.

Digital assets are intangible and do not need to be materialized in the real world. Historically, property turnover was dominated by things, i.e. objects of the material world. With the development of technology, new material goods have appeared, the materiality of which is rather conditional, such as gas or electricity. The appearance of an electronic form for some traditional objects of civil rights, such as money, securities, and the results of intellectual activity, did not lead to a revolution in law, although it gave rise to a number of problems. Nevertheless, the legal regulation of such objects was built by analogy with the regulation of objects having a similar legal nature and having the characteristics of a thing.

This became possible because such objects, despite their shape, are closely connected with the material world. They can be material in nature, like gas and electricity, or they can be easily transferred from electronic (digital) form to material and vice versa. Thus, photographs are created in digital form, but can be objectified when they are printed on a material medium (paper, photo paper, wallpaper, fabric, etc.). Books printed before the end of the XX century can exist not only in paper version, but also in electronic form when they are digitized. It should be particularly noted that most films, music and literary works that exist in the form of video and audio files, text files, can be fixed on a separate material carrier (for example, a flash card).

Indeed, works in digital form change, as V.L. Entin puts it, the nature of the application of copyright to them in comparison with works in analog form.



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Digital technologies are changing the nature of interaction between the participants of the turnover: 1) digital content cannot be read without a communication device; 2) machines read and transmit digital content by copying it. In this case, any use of the file entails copying it, even when such copies are temporary or side-effect [9]. The same applies to the so-called digital cultural heritage. The Charter "On the Preservation of Digital Heritage" [10], adopted in October 2003, defines a new concept of "digital heritage" at the legislative level: These are information resources formed under the auspices of UNESCO (libraries, museums, archives, etc.) and various media resources that are created, distributed and stored in digital form and are intended to disseminate information about objects existing in the real world. The connection with the material world can also manifest itself in the fact that such objects are recognized as direct analogues of certain things, for example money.

In cases where such a connection is not obvious or absent, problems arise with their legal regulation. Thus, an attempt to extend the legal regime of securities to non-documentary securities was unsuccessful.

Digital assets exist only in digital form, while the concept of the latter does not coincide with the concept of electronic form. Despite the complexity of determining the nature of digital assets, the question of the form of existence of this type of objects comes to the fore in discussions with the participation of legislators and scientists. Therefore, it is necessary to focus separately on the problem of defining the electronic form and its relationship with the concept of a digital asset.

Thus, when we consider the nature of a digital asset, the code itself becomes the focus of our attention. At the same time, we must make a reservation that today such objects are created using cryptography, but this circumstance may change with the development of technology. If technically not a cryptographic encryption method is used, but some other one, this will not affect the nature of the object called digital.

It seems that the need to create a new legal regulation of relations with the use of digital assets arises in cases when digital assets have an exclusive digital essence, i.e. they are created and exist only in a digital, virtual environment.



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The specifics of a digital asset can be called its existence in a kind of environment of trust between anonymous counterparties, which (trust) is formed based on the use of algorithms [11]. A kind of trust in the algorithm in an untrusted environment determines the peculiarities of the turnover of digital assets. In the corresponding ecosystems that technologically provide access to the digital asset market, a special environment of trust is created between anonymous counterparties, the transfer, creation and introduction of assets into circulation are facilitated and do not require the participation of intermediaries, it becomes possible to use self-executing contracts to a certain extent, etc.

The conducted research has shown that today the number of digital assets with economic value and exclusively digital essence can include: tokens, cryptocurrencies, big data, domain names, accounts. It is possible that with the development of technology, other types of digital assets will appear.

The identified specific features of the listed digital assets as objects of civil rights allow us to conclude that the formation of special legal regimes for them is inevitable. Unlike traditional objects of civil rights, they are subject primarily to technological patterns of turnover, which should be reflected in the legal regulation of these relations.

It seems that at this stage, the necessary body of knowledge about new digital assets has not yet been accumulated, which would make it possible to develop a common concept and a common legal regime for them. It is necessary to follow the path of creating separate legal regimes based on the functional purpose of certain types of digital assets, thereby determining their legal nature.

In our opinion, the subject of a telecommunications services agreement, which is considered a material term of the agreement, is the activities of the telecommunications operator or provider. These activities are aimed at providing the client with the ability to receive, transmit, process, and store information via telecommunications networks. These activities, which are the subject of the agreement, are carried out by operators and providers holding the appropriate license.

In our opinion, the subscriber's possession of devices and equipment for concluding a telecommunications service agreement is one of the distinctive features of this type of service. This type of service is received not through



traditional means, but through a device that converts signals into a specific message, i.e., one capable of reading electromagnetic signals. This, in turn, requires the user of telecommunications services to have an electronic device capable of reading the signals.

Negotiations are important when concluding telecommunications terms with various legal entities, including telecommunications operators and providers. During negotiations, the technical specifications of the servers, equipment, and devices for receiving telecommunications services owned by the legal entity, their ability to handle a certain traffic or load, the number of recipients of telecommunications services, the data transfer rate, and other issues are agreed upon. The rules governing the negotiation process, including the obligations imposed on the parties involved, must have a legal basis. However, national legislation does not provide for specific rules for contractual negotiations. It would be advisable for the FC to develop specific rules for contract negotiations to ensure that parties do not engage in the process simply for fun and that the negotiation process is taken seriously.

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