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*Research Article*

## CIVIL LIABILITY FOR FAILURE TO FULFILL OBLIGATIONS IN THE PROVISION OF PAYMENT SERVICES

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*This study aims to analyze civil liability for breach of obligations in payment services amid the digital transformation of the financial sector. The research employs methods of comparative legal analysis, formal legal interpretation of Uzbek legislation, and examination of judicial practice. Particular attention is paid to critical analysis of Art. 795 of the Civil Code of Uzbekistan regulating banks' liability for improper execution of payment orders. The study reveals significant gaps in legal regulation, including the lack of a clear definition of payment systems, insufficient regulation of payment system operators' liability, and the mismatch between bank liability norms and modern challenges of the digital economy. The author proposes specific measures for legislative improvement, including: 1) development of comprehensive regulatory framework for payment system participants' protection; 2) implementation of banking risk control mechanisms; 3) legislative establishment of payment instruments security standards; 4) harmonization of liability provisions with international standards. The key conclusion emphasizes the need to revise Art. 795 of the Civil Code to strengthen banks' civil liability, introduce client compensation mechanisms, and establish clear criteria for liability in payment services. The research findings can be used for further reform of payment legislation in Uzbekistan.*

**Keywords:** *payment services, consumer rights, consumer protection, payment legislation, refund, payment systems, payment control, payment services regulation, financial losses of consumers*

## ГРАЖДАНСКО-ПРАВОВАЯ ОТВЕТСТВЕННОСТЬ ЗА НЕИСПОЛНЕНИЕ ОБЯЗАТЕЛЬСТВ ПО ОКАЗАНИЮ ПЛАТЕЖНЫХ УСЛУГ

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*Данное исследование направлено на анализ гражданско-правовой ответственности за нарушение обязательств при оказании платежных услуг в условиях цифровой трансформации финансового сектора. В работе применяются методы сравнительно-правового анализа, формально-юридической интерпретации законодательства Узбекистана и изучения судебной практики. Особое внимание уделяется критическому анализу ст. 795 Гражданского кодекса Республики Узбекистан, регуливающей ответственность банков за ненадлежащее исполнение платежных поручений. Исследование выявляет существенные пробелы в правовом регулировании, включая отсутствие четкого определения платежных систем, недостаточную регламентацию ответственности операторов платежных систем, а также несоответствие норм об ответственности банков современным вызовам цифровой экономики. Автор предлагает конкретные меры по совершенствованию законодательства, включая: 1) разработку комплексной нормативной базы для защиты участников платежных систем; 2) внедрение механизмов контроля банковских рисков; 3) законодательное закрепление стандартов безопасности платежных инструментов; 4) гармонизацию норм об ответственности с международными стандартами. Ключевой вывод подчеркивает необходимость пересмотра ст. 795 Гражданского кодекса с целью усиления гражданско-правовой ответственности банков, внедрения механизмов компенсации клиентам и установления четких критериев ответственности при оказании платежных услуг. Результаты исследования могут быть использованы для дальнейшей реформы платежного законодательства в Узбекистане.*

**Ключевые слова:** *платежные услуги, права потребителей, защита потребителей, платежное законодательство, возврат средств, платежные системы, контроль платежей, регулирование платежных услуг, финансовые потери потребителей*

### Introduction

The concept of a 'payment system' is actively forming in the context of digitalization of society and automation of banking activities, yet it still lacks a definitive definition. Nevertheless, the critical role of payment systems in the economy is clear, as is the need to define contemporary requirements for such systems. In the literature, a payment system is understood as a set of relationships between payment organizations and participants in the payment system during the transfer of funds. For instance, according to A. M. Moroz, a payment system in a broad sense represents a set of payment instruments, norms, rules, mechanisms, and procedures for their application by all subjects of monetary circulation.

The prevailing theory emphasizes that payment systems must ensure continuity, security, and timeliness of money transfers, which is crucial for the stability of any country's financial system. Studies, such as those by V. D. Chernadchuk, focus on legal

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responsibility for violations of payment system rules, highlighting the need for financial, organizational, or managerial sanctions.

Other theories offer more detailed approaches to legal regulation and responsibility in the realm of payment systems. For example, M. I. Tripolskaya points out that enforcement measures for violations of banking legislation, such as restricting specific operations or revoking banking licenses, are applied in cases of systematic violations and aim to prevent serious breaches of the interests of depositors and the state.

Recent studies, including works published in the Law of the Republic of Uzbekistan 'On Payments and Payment Systems', indicate the necessity of improving legal regulations to ensure adequate protection for participants in payment systems. Specifically, Art. 58 of the law outlines the liability for payment delays, including penalties for each day of delay.

The current state of legal regulation of payment systems requires improvement and alignment with international legal principles. This is driven by the development of information and technological society, the emergence of new types of cybercrimes, and the need to enhance the level of protection for participants in payment systems. It is important to consider the foreign experience of countries with advanced financial and legal systems when developing national legislation.

Based on the analyzed scientific works and foreign experience, this paper proposes measures to improve legal regulation and strengthen the legal responsibility of participants in payment systems. This includes the development of a regulatory framework, the establishment of internal controls, the introduction of new forms of plastic cards, and the enhancement of criminal liability for banking fraud. Enhancing the responsibility of banks for violating the rules of payment orders is also considered a crucial step in ensuring the stability and development of payment systems.

Thus, the protection of the rights and interests of payment service participants is crucial for ensuring the reliability, security, and fairness of payment systems, underscoring the necessity for further improvement of legal regulation in this area.

To analyze the legal regulation of payment systems and legal liability, methods of legal analysis and comparative study of legislation were used. The focus was on laws and regulations concerning payment systems and the practice of applying sanctions for violations in this area. International principles and practices of legal regulation of payment systems were also considered.

This is because payment service providers play a crucial role in facilitating transactions between buyers and sellers, and any failure in the payment system on their part can lead to significant financial losses for consumers.

The methodology of the article is based on a comprehensive approach to the legal regulation and protection of participants in payment systems. The key stages are:

- 1) analyzing current legislation, assessing existing norms, and identifying gaps in the legal regulation of payment systems. International practices and standards should be taken into account for harmonizing legislation;

- 2) developing regulatory acts, creating, and implementing new norms and rules to ensure the protection of participants, prevent cybercrimes, and improve control mechanisms;

- 3) strengthening liability measures, introducing strict sanctions and obligations for violators, including criminal, administrative, and civil liability. Implementing clear rules on compensation for damages and lost profits;

- 4) developing internal controls, establishing internal security and control standards for banks and payment organizations to minimize risks and ensure proper client protection.

These steps will help create a more stable and secure payment system that meets modern requirements and international standards.

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### Main text

The concept of a 'payment system' has evolved alongside the active digitalization of society and the automation of banking activities, but it still lacks a clear definition. Nonetheless, the crucial role of payment systems in the economy and the need to define modern requirements for such systems are universally understood.

According to the 'Law on Payments and Payment Systems', a payment system is a set of relationships between payment organizations and payment system participants when transferring funds. The execution of transfers is an obligatory function that a payment system must perform. According to A. M. Moroz, a payment system in a broad sense represents a combination of payment means, norms, rules, as well as mechanisms and procedures for their application by all subjects of monetary circulation [Moroz, Savluk, Pukhovkina, et al., 2002: 70]. It is worth noting that, depending on whether we consider the concept of 'payment system' in a broad or narrow sense, there are multi-level tasks of legal regulation of relations related to the functioning and use of payment systems.

The effective operation of payment systems, which allows its participants-business entities to continuously, safely and timely carry out money transfer activities, is very important for the financial system of any country [Ganiev, 2023a]. Legal regulation in the field of payment systems is currently one of the main tasks of the state, ensuring the stability and development of the state's payment system as a whole, as well as the stability of the entire financial system, further development of individual payment systems, and the payment services market, which contributes to creating a competitive environment within it. It is also necessary to define general requirements for payment systems, rules for their operation, and conditions for the activities of economic entities providing relevant services. The current state of legal regulation of payment systems is clearly formed but requires improvement and maximum alignment with European practice and international legal principles in the field of payment systems functioning [Ondrus, Lyytinen, Pigneur, 2009].

Protecting the participants of payment organizations and ensuring the proper functioning of payment systems within the state entail legal liability for violations of payment systems legislation. V. D. Chernadchuk defines sanctions for violations of banking legislation by the state bank as financial, organizational, or managerial restrictions or encumbrances, the content and application of which are regulated by banking legislation norms.

Violating the requirements of banking legislation and regulatory legal documents of the Central Bank for violations of banking legislation entails responsibility, resulting in the Central Bank holding violators accountable by applying appropriate measures. The Central Bank sends the bank a written warning to rectify the violation of legislation and relevant regulatory legal documents [Chernadchuk, 2014].

As stated by M. I. Tripolskaya, among the measures applied by the state bank for violations of banking legislation are such measures as restricting (suspending) or terminating certain types of banking operations and revoking the banking license aimed at punishment. Both of these sanctions are applied in cases of systematic violations of banking legislation by banks if other, milder measures have not influenced the correction of the situation and have not brought the bank's activities into the legal framework. Furthermore, continuing certain operations amid systemic failures or overall activities may lead to severe violations of the interests of depositors and the state. These measures are aimed not only at punishment but also indirectly affecting the property status of the violator [Tripolskaya, 2013].

Violations of banking legislation entail criminal, administrative, civil, and disciplinary liability. Violating general monitoring parameters to identify incorrect and unjustified transfers using electronic payment means, regulating fund transfers, and failing to account for these transfers for other members/participants in the payment system regulating the transfer of funds.

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Non-cash payments are made following banking rules and business customs adopted in banking practice. However, banking rules cannot contradict the Civil Code and other laws. The rules for regulating non-cash payments are defined in the Law of the Republic of Uzbekistan 'On Payments and Payment Systems' [Ganiev, 2023b]. Legal liability for violating banking legislation, i. e., liability for violating the procedure for transferring money, is defined in Art. 56, 58, and 60 of the Law of the Republic of Uzbekistan 'On Payments and Payment Systems'. If Art. 56 provides 'liability of payment system operators, payment service providers, and initiators for ensuring information protection', Art. 58 provides for liability for 'non-fulfillment of payment obligations', and Art. 60 establishes 'payments and payment systems liability for violating legislation'. This includes the rule that 'if unauthorized payments were made due to fraudulent actions by the initiator or due to their failure to take measures to protect their identification means, the initiator is responsible for the damage caused by unauthorized payments'.

Liability under Art. 58 of the Law directly provides for penalties and their specific amounts as measures of liability for the service provider's violation of deadlines. Specifically, the first part of this article states, 'In case of violation of payment service deadlines by the service provider, they must pay a penalty of 0.1 % of the overdue payment amount for each day of delay, but not more than 10 % of the overdue payment amount'.

Moreover, this provision also establishes liability for incorrect payments due to the payment service provider's fault, specifying that 'the payment service provider must transfer the funds to the recipient's account no later than the next working day after discovering the error'. Simultaneously, this article describes the payer's rights if incorrectly made payments were not paid to the recipient on time due to the payment service provider's fault. According to this provision, 'the payer has the right to demand the return of funds from the payment service provider and the payment of a penalty of 0.1 % of the incorrectly made payment amount for each day of delay, but not more than 10 % of the incorrectly made payment amount'.

Legal liability for violating payment systems legislation is characterized by applying appropriate measures to the violator: written warning, fines, suspension of activities, refusal to provide certain services in payment systems, and other measures. However, legislation in this area requires improvement as the information and technological society develops, new types of cybercrimes emerge, and the state faces them for the first time [Grigorenko, Mizin, 2019]. National legislation should be improved considering the foreign experience and countries with developed financial and legal systems.

In our opinion, this requires further improvement of the legal regulation of legal liability of payment system participants towards their users, approaching global standards. To address this issue, it is primarily necessary to ensure an adequate level of protection in payment systems [Chen, Chang, 2013]. Therefore, based on the analyzed scientific works and foreign experience, the following measures can be proposed: 1) develop the necessary regulatory framework to ensure the security of the banking system and implement its rules in practice to protect payment compliance participants; 2) establish internal control of potential threats by the bank's security service; 3) support the introduction of new, improved, more secure forms of plastic cards at the legislative level; 4) strengthen criminal liability for crimes in this area considering the positive international experience in combating banking fraud.

In this case, it is desirable to correct the liability of the Civil Code for violation of the rules for conducting payment transactions. In general, when making payments on payment orders, a certain obligation is imposed on the bank, and the bank's failure to fulfill its financial responsibility establishes liability established by law. In accordance with Part 2



of Art. 795 of the Civil Code, in the event of non-fulfillment or improper fulfillment of the order, the client bank is liable for this liability in accordance with Art. 327 of this Code.

Based on the requirements of Art. 327 of the Civil Code, it can be said that the bank pays interest on the amount of these funds to the client for each day of delay. The amount of the interest rate determined by the bank payment at the place of residence is issued, and if the paid is a legal entity, then due to its location on the day of payment of the amount of money is fair or corresponds to its part.

Banks participating in settlement transactions based on a payment order are jointly and severally liable to the person who issued this order.

It is surprising that the rules on liability for failure to execute or improper execution of a payment order, based on Art. 795 of the Civil Code, are formulated incorrectly and do not comply with the rules on liability of the Civil Code. Since Art. 795 of the Civil Code provides for 'liability for failure to execute an obligation or failure to execute it at the proper level', Part 1 of it contains a reference to Art. 327 of the Civil Code. Article 327 of the Civil Code provides for liability for 'unlawful retention, evasion of their return, other delay in their payment or unjustified receipt or saving at the expense of another person'. This is not liability for 'failure to execute or improper execution of a client's order', but, on the contrary, liability for other actions, namely, for unlawful retention of other people's funds, refusal to issue them, using. In addition, the provisions of Part 2 of Art. 795 of the Civil Code require additional requirements. The phrase 'Banks participate in the scheme of settlement operation...' in this norm created a general view. The fact is that a payment order is usually not applied to banks, but only to the bank servicing the payer, and the client can demand its execution only from his bank. In addition, the joint liability of banks, based on the abstraction of responsibility and liability to banks, denies that a bank, executing a payment order, can bear individual liability, and this can lead to an irresponsible approach to work of the involved bank.

Therefore, the President, put Art. 795 of the Civil Code in this version:

*In the event of failure to execute or improper execution of the client's order, the bank is liable for such a violation in accordance with Article 327 of this Code.*

*If the failure to execute the order or its improper execution is associated with a violation of the rules for conducting settlement transactions involved in the bank involved in the execution of the order, the liability established by the first part of this article may be imposed by the court on this bank.*

*If the violation of the rules for conducting settlement operations by the bank is associated with the illegal retention of funds, the bank is liable in accordance with Article 327 of this Code.*

When including in the current legislation liability for failure to execute or improper execution of an order associated with a violation of the rules for settlement operations by the bank, the legislation not only obliges the bank to pay interest for failure to execute the client's order, but also introduces such measures as compensation for damages and recovery of lost profits. After all, the execution of a payment order is based on a bank account agreement concluded between the client and the bank, and failure to fulfill contractual provisions implies payment of damages, lost profits and non-payments. The current version of Art. 795 of the Civil Code defines only limited liability of banks. This also leads to a violation of the general requirements of equality of the parties and liability violated honestly in civil law.

## Conclusion

In conclusion, protecting the rights and interests of payment service participants is crucial for ensuring the reliability, security, and fairness of payment services. The application of civil liability for non-fulfillment of obligations, providing adequate information to

consumers, complying with legislative requirements, and ensuring data confidentiality and security are key aspects of protecting the rights and interests of payment service participants. Payment service providers should be held accountable for their actions and ensure their services' convenience for consumers, allowing consumers to use payment services confidently, knowing their rights and interests are protected.

One of the main advantages of civil liability is that it provides a legal basis for resolving disputes between payment service providers and consumers. This can help ensure that consumers can seek compensation for any harm or damages they may have suffered due to payment service providers' non-fulfillment of obligations.

Civil liability refers to the legal responsibility of an individual or legal entity to compensate another party for harm or damages caused by a contract breach, negligence, or other wrongful acts. In the context of payment services, civil liability can arise when a payment service provider fails to fulfill its obligations to the consumer, such as not processing a payment or processing a payment incorrectly.

Applying civil liability in such cases can help ensure that payment service providers are held accountable for their actions and that consumers can seek compensation for any harm or damages they may have suffered. This may include compensation for any financial losses, as well as damages for any emotional distress or other harm caused by the failure to comply.

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