КОНТРАКТНЫЕ ОБЯЗАТЕЛЬСТВА И ОСНОВНЫЕ ТИПЫ МЕЖДУНАРОДНЫХ КОНТРАКТОВ*

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При решении договорных отношений главный принцип для определения действующего закона в споре - принцип автономии сторон. Это означает, что стороны контракта могут сразу в контракте или в последующем избрать по взаимному соглашению право, которое должно быть применено к их правам и обязательствам.

Ключевые слова: применимый закон, автономность сторон, покупатель, продавец, подрядчик, поставщик.

Under Russian law, the choice of applicable law by the parties, made after the conclusion of the contract shall be retroactive and shall be valid, without prejudice to the rights of third parties. Parties to the contract may choose a law to be applied to the contract as a whole or to its parts. Using the splitting of autonomy will not lead to contradictory results: for example, the use of one system of law to the rights and obligations of the Seller and the other legal system - to the rights and obligations of the Buyer (the collision of legal regulation). There are some limitations of autonomy of the will: the choice of the parties can not override the mandatory rules of law of the country with which the contract is actually connected (Section 5, Art. 1210 of the Civil Code). This provision is intended to prevent the circumvention of mandatory national law by choosing the law of another state.

The principle of autonomy of the parties is reflected in the number of universal and regional international agreements. These include the Hague Convention on the law applicable to international sales of goods in 1955[1], the Hague Convention on the law applicable to the agency in 1978[2], the Rome Convention on the law applicable to contractual obligations in 1980[3], and others.

If the parties have not chosen the applicable law, by contract, the law of the country with which it is most closely connected is applied, that is, the right of the country where the place of residence or principal place of business of the parties, which provides a performance of a crucial importance for the content of the contract (Art. 1211 Civil Code). Russian law provides for in paragraph 3 of Art. 1211 of the Civil Code special connecting factors for the main types of foreign trade transactions (eg, the Seller - in the sales contract, the law of the carrier - in a contract of carriage, the donor - in the donation contract, etc.). However, it should be said that the presumption set forth in this paragraph is refutable in the case, unless the circumstances indicate otherwise.

Currently, the principle of "closest connection" refers to a flexible conflict of principle, which became widespread in the second half of the twentieth century. Finding the law of the country with which the contract is actually connected is a difficult task. V.P. Zvekov notes that in many countries today, this rule "is given the" status "of a fundamental conflict of principles"[4].

Art. 1215 of the Civil Code defines the scope of the law applicable to the contract. These are interpretation of the contract, the rights and obligations of the parties, the execution of the contract, the consequences of non-performance or improper performance, the termination of the contract, the consequences of the invalidity of the contract and other matters determined by law, the parties or selected on the basis of the principle of closest connection.

Multiple contracts are used in foreign trade, such as contract of sale, contract of the exclusive sale of goods, franchise agreement, factoring agreement, the contract of tenancy, lease agreement, contract of storage, contract agreement, agency agreement, commission agreement, agency agreement, insurance contract, etc. Let's have a closer look at some of them.

Contracts of International Sale of Goods is central to other agreements and covers the most significant part of foreign trade.

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Feature of the legal regulation of the international sale of goods is the availability of unified substantive law. The main international agreement in this area is the United Nations Convention on Contracts for the International Sale of Goods, 1980, developed by the UN Commission on International Trade Law (UNCITRAL) and adopted at the conference in Vienna (Vienna Convention 1980)[5].

Upon accession to the Vienna Convention, September 1, 1991 the Soviet Union made a statement that the relevant provisions of the Convention, allowing the conclusion, modification or termination of the contract of sale of goods are not applied if at least one party has its place of business in the USSR.

The Convention was adopted in order to unite the principles of Roman-German and Anglo-American legal systems and the creation of uniform rules and regulations in the purchase and sale of goods. Convention governs only the formation of the contract and the rights and obligations of the parties arising from such a contract. The Convention does not concern the validity of the contract or of any of its provisions, as well as the consequences that the contract may have on the property of the goods.

Parties of the Agreement may exclude the application of the Convention, to withdraw from any of its provisions or vary the effect of.

The Convention is applied to contracts of sale of goods between parties whose places of business are in different countries.

The Convention is not applied to the following contracts for sale:

- of goods bought for personal, family or household use;
- at auction;
- by execution or otherwise by authority of law;
- stocks, shares, investment securities, negotiable instruments or money;
- ship water and air transport, as well as hovercraft;
- electricity.

The Convention regulates in detail issues related to the contract, the requirements for the form of contract, the rights and duties of the responsible party for any failure to perform the contract.

As a general rule, the Convention governs cases where the conclusion of contracts for the international sale of goods takes place between the "absence"[6] of the parties by the exchange of offer and acceptance (eg, an exchange of letters, telegrams, faxes, etc.). Most difficult in this case is the question of determining the date of the contract, that is the time when the obligations of the parties for them acquire legal force. A contract is concluded with the receipt of the acceptance of the offer (the theory of receipt). Legal systems of the Roman-Germanic legal systems adhere to the "theory of receipt" (the entry into force of acceptance associated with obtaining it offeror), and the Anglo-American system of law - the "theory of the mailbox" (for the acceptance of the entry into force just enough to send)[7].

Obligations of the parties are provided in the contract. The questions not included in the contract shall be governed by the Convention. The main obligation of the Seller under the Convention - to deliver the goods, and the responsibility of the Buyer - to pay the price.

Cancellation of contract is subject to material breach of contract by any of the parties, that is, when one party is deprived of what it was entitled to expect under the contract because of the actions of the other party .

The Convention provides sanctions and operational responsibility in case the contract is breached. Operational sanctions include requirements to reduce the purchase price of the replacement goods of improper quality, etc. Measuring liability in the strict sense, the Convention classifies penalty and damages, including lost profits.

International rules for the interpretation of trade terms (INCOTERMS 2000), which is a unified international custom are important in regulating the international sale of goods. INCOTERMS rules are used by the parties in any of the existing drafts.

INCOTERMS regulates certain obligations of the parties, for example, the Seller's obligation to transfer the goods to the Buyer, or pass it to the carrier to deliver to destination, the allocation of risk between the parties. Rules regulate the duties of the parties concerning clearance of goods, packaging, the Buyer's obligation to take delivery of and confirm the Seller's obligations. The rules contain delivery basis, issued 13 kinds of contracts. The specific of this paper is that they are non-binding and will only apply if the parties have expressly agreed to use them.

Another example of informal codifying of the rules of international trade is the Principles of International Commercial Contracts UNIDROIT 2004 UNIDROIT Principles, as well as the INCOTERMS which can be used by the parties when concluding an international contract by reference to their use in the text. They contain the basic rules on the proce-

dure for the conclusion of the contract, its validity, content and interpretation, as well as the performance of the contract and the consequences of failure.

"Nowadays more widespread norms of international commercial law is the system of non-state regulation of foreign trade, which is based on the resolutions and recommendations of the international organizations on trade (general conditions of supply contracts of adhesion, standard contracts, regulations, etc.)…"[8]

Let us consider such type of contract as a financial lease. The term "lease" means a long-term lease of machinery, equipment, vehicles and other industrial applications. In the laws of individual countries leasing is traditionally regarded as a kind of rent, which is a commercial activity on the acquisition for its own account (or credit funds) of property from one person (the Lessor) to its lease of another person (the Lessee) and income from this activity in the form of receiving lease payments.

The law governing the relations of capital leases, is the Convention on International Financial Leasing, adopted in Ottawa in 1988[9] (Russian Federation involved).

Under the Convention, the financial leasing is mediated by the conclusion of two agreements: the agreement with the supplier of the Lessor (or the seller of the equipment) and the Lessor's agreement with the user. The terms of the first contract should be approved before the supplier shall be informed of the conclusion of the second contract.

An important provision of the Convention, is that it characterizes the tripartite lease transaction that involves hardware vendor (or seller), the lessor (customer equipment to the user) and the lessee (the user).

The responsibility of all three parties of the leasing transaction is described in detail. The user can make claims not only to the lessor, but to the hardware vendor. In this case, the Convention stipulates that the supplier shall not be liable to both the lessor and the user for the same damage.

Russia has a Leasing Law dated of 1998[10] that stipulates that the issue of the applicable law is decided upon by the parties in accordance with the Convention on International Financial Leasing.

Currently construction contracts are widely used, i.e. contracts of foreign contractors for the construction of large industrial and household objects, or for their overhaul. The scope of the contract also includes various technical services rendered in connection with the supply of machinery and equipment for industrial and other facilities that are constructed by the supplier; works, research and design work, consulting and information services in the field of scientific organization and management.

According to the contract, one party (the Contractor) undertakes to perform some work on the instructions of the other party (the Customer), which, in turn, should take the job and pay the agreed price.

"The countries of the Roman-Germanic system, consider a row as an independent contract. In the Anglo-American legal system contractor relations have traditionally been considered as a type of labor contract, but the important feature is to recognize the independence of the performer, who, in this context, is called independent contractor"[11].

Contract of work and labour conflict regulation is carried out (in the absence of autonomy of the will) by legislation contractor, the contract for construction work - by the law of the country where most of the results are under the contract (paragraph 4 of Art. 1211 of the Civil Code).

Another common contract is a contract of tenancy. The contract of tenancy is an agreement under which one party (the Lessor or Landlord) shall provide the other party (the Lessee or Tenant) property for temporary use for a specified fee, which the other party is obliged to pay.

Romano-German and Anglo-American legal systems consider a contract of tenancy as a bilateral, onerous and consensual. Its subject is a non-consumable thing, movable or immovable. This contract is widely used to regulate relations in land use, trade, industry, buildings, vehicles, etc.

In some countries, the Roman-Germanic legal system (Germany, Switzerland) distinguish the tenancy and its variety - rent.

Anglo-American law depending on the nature of the subject distinguish hiring real estate and hiring of movables. When hiring a real estate tenant has limited real rights, while hiring movables - only contractual rights that can not be provided to third parties.

Tenancy relations are governed exclusively by national legislation, because in this area there are no international uniform rules.

According to the Civil Code to the lease, complicated by a foreign element, the law of the country where the place of residence or principal place of business of the landlord is used if the parties in their agreement did not specify a right (not the autonomy of the will).

"In international practice there are different types of insurance, which is carried out on the basis of a contract concluded national of an insurance organization"[12].

According to the contract of insurance the insurer undertakes to pay due (premium) upon the occurrence of an insured event under the contract to compensate the loss to the insured or any other person to whom such contract is concluded (the beneficiary).

"Numerous insurance contracts, depending on the subject can be divided into a contract of property, moral and personal insurance. By their nature, property insurance is designed to compensate losses due to the loss of or damage to property. Property insurance includes marine insurance, investment insurance, property insurance against fire, theft and other "non-property insurance to include coverage of such objects as the civil liability of the insured, the risk of business, etc. In case of personal insurance (life, accident insurance, sickness) the amount of compensation does not depend on whether the insured suffered any property damage, and is determined by a fixed contract sum"[13].

In the insurance business there are widely used standard (standard) contract forms, which contain the basic rights and obligations of the parties. Conflict regulation provides for application of the law of the country of the insurer, in the absence of agreement between the parties on the applicable law. Only entities that have the appropriate license (Article 938 of the Civil Code) may conclude insurance contracts.

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