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Business Contracts in Russia – Part 1

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This article is the first part of a three articles work that handles business contracts in Russia on a general level. As a business or entrepreneurial contract is regarded in the Russian legal doctrine a contract, in which at least one party is a subject of the enterprise activities and by which the rights and duties connected with the enterprise activities have arisen, changed, or terminated. As being the civil law contract, a business contract is subject to the application of the general rules and principles of the civil law regulation. However, its specific nature must be observed, which is transpired through the Civil Code norms concerning the subjects, objects, contracting procedure and content, as well as liability. The specific nature of an entrepreneurial contract is particularly apparent in accepting a commercial custom as a general legal source applicable to it, as well as in special proceedings for resolving disputes between the parties of entrepreneurial contracts, which are regarded as economic disputes to be handled in the arbitrazh court. Business contract regulation in Russia is characterised by growing significance of the judiciary in it and by enlarged dispositivity of the regulative rules. This article will be continued by the presentations on disturbances related to contracting and their consequences (including invalidity of conract) interpretation and fulfilment of contract as well as change and rescission of contract.

Keywords: *contract; entrepreneurial contract; business contract; civil code; dispositivity; commercial custom*

Introduction

The Russian business contract law regulation is the subject of this writing, and it is aimed at updating the text of the chapter that handled the Russian contract law in my book *Introduction to Business Law in Russia* published in England in 2011[1].

Since that, and, particularly in 2012–2015, the Russian business law, including regulation of business contracts, has become at least partly the subject of the intensive legal development, aimed at its further internalisation. Thus, my presentation on the subject, in particular, the occurred amendments to the Russian Civil Code due to their both doctrinal and practical significance for the present development of the Russian legal system has become deserved updating, though the fact that both the legal doctrine and legal practice are still in search of their distinctive shape in Russia.

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[1]For more on the issue *see*, for instance Orlov (2011) at 139-129. The present state of the Russian contract law regulation is introduced, for instance, in Komarov (2022) at 135–185. *See* also, in Russian, Stepanov (2021) and Shablova (2023).

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Legal Sources[2]

Contracts, including business contracts, are generally subject to the civil law regulation. The Russian Civil Code that is the main legal civil law source in Russia contains the provisions on how contracts are concluded, on how the obligations arisen on the contract are performed, and on what remedies are to be used in the event of contractual disturbance, including contractual liability rules. In addition to these provisions contained mainly in the Civil Code, and also other federative laws, applicable are in certain cases international law norms. Contract law provisions are sometimes included in other normative acts that are usually called in Russian law substatutory legal acts. Russian contract law is also acquainted with customs (of trade) and the use of standard contract conditions; and application of analogy is also known in Russian civil law[3]. Also, terms (conditions) of contracts are sources of civil law regulation in Russia.

Judicial practice is not regarded (at least traditionally) as a proper legal source, although the decrees of supreme judicial bodies are recognised as having precedential value in Russia; actually, the instructions of the Supreme Court are normative by their nature. In other words, a certain generality and binding force is characteristic of them but, as a matter of fact, only in the circle of its own system. However, the interpretative acts of the Constitution by the Constitutional Court are used to amend and even to abolish the norms that are contradictory with the Constitution wherefor the have to some extend the effect of a legal source. The civil law regulation in Russia is realised also on the non-normative level, for instance, by single law-application acts and usage, course of dealing and course of performance.

Civil law provisions that form the law-based regulation are usually applied voluntarily by the parties of a civil law relation. However, following the law belongs also to the tasks of officials, and law application bodies are obliged to apply legal norms in the event a dispute arises between the parties. The question how obligatory is to follow the concrete legal provision in the contract relation, and particularly in the resolution of the dispute arisen between the parties depends on the character of the provision. The norms that form the basis of the contract law regulation in Russian law are mainly imperative or dispositive.

The concepts of imperative and dispositive norms[4] are well-established in Russian law, and they are used in the Civil Code. According to the rules enforcing the principle of freedom of contract, in the events when a term of contract is provided by a norm which is to be applied as long as the parties have not reached an agreement to the contrary (a dispositive norm), the parties may by their agreement exclude its application or establish a term different from that provided in it, and in the absence of such an agreement the term of the contract is to be determined by the

[2]For more on the issue *see*, for instance, Sergeev (2021) at 30–47.

[3]The analogy of the legal rule and the analogy of the law is applicable in Russia, if the law, contract or custom regulating the relation in case is missing. In applying the norm or law by analogy attention should be paid to the requirements of good faith, reasonableness and justice (Article 6 of the Civil Code)

[4]For more on the issue *see*, for instance, Orlov (2024a) at 29–44.

dispositive norm[5]. In turn, the rules on imperative norms are included in the norm of the Civil Code concerning relation between contract and law, according to which a contract must comply with rules obligatory for the parties established by a law and other legal acts (imperative norms), which are in effect at the time of its conclusion.

The dispositiveness of a legal norm is determined in Russian law in a traditional way, which means that the norm itself expresses the application of it, unless otherwise provided by a contract[6]; such a provision could also cover a number of rules. In the event the expressed provision of the dispositivity or imperativity of the norm that determines the rights and obligations of contractual parties is not contained in it, such a norm ought to be recognised[7] as dispositive or imperative in accordance with the interpretation of its aims[8].

Civil law regulation is performed in Russia also by facultative norms. These mean norms, the application of which requires that parties have agreed on their application, and such an agreement must be expressed in a positive way. Furthermore, also reference norms are known in Russian civil law. By using them generally in contract regulation, the rule regulating certain legal relation (contract) is to be applied to the other, usually similar ones.

In respect of contracts, the provisions of the Civil Code, containing imperative (compulsory) and dispositive legal rules may be generally hierarchised, in accordance with the Civil Code, as follows: the first are imperative norms of the law, and the second are the terms of the contract agreed upon by the contracting parties. The third in contract regulation are dispositive norms which shall be applied in default of the contractual terms, and the fourth are customs (business customs) that are applicable in default of both contractual terms and dispositive norms. In the event a commercial custom or dispositive norm is included in the terms of the contract, it is regarded as a condition of this.[9]

General Principles of Civil Law[10]

The general (basic) principles of the Russian civil law, that form the platform for the contract law regulation are presented in the Russian civil law literature and grounded on the respective rules of the Civil Code[11]. They include the basics of the Russian civil legislation:

- civil law equality,[12]

[5]Article 421.4.

[6]Thus, the application of a dispositive legal norm may be excluded, or it may be deviated by them.

[7]According to the Ruling of the Plenum of the Supreme *Arbitrazh* Court no 16 of 14. March 2014 on freedom of contract (Ruling 16).

[8]as an exception to the objective interpretation that is the main rule in Russian law.

[9]Orlov (2024a) at 39–40.

[10]For more on the subject *see,* for instance, Orlov (2011) at 19–23; Shablova (2023) at 19–22 and Butler (2009) at 394–396.

[11]Article 1.

[12]The parties in civil law relation are equal.

- inviolability of ownership,[13]
- impermissibility of arbitrary interference in private affairs,[14]
- unhindered exercise of civil rights,[15] and
- restoration of violated rights and judicial protection of civil rights,[16] as well as
- freedom of contract[17].[18]

The principle of freedom of contract reflects the principle of dispositiveness that is characteristic particularly for the civil law regulation. According to the Civil Code[19], the subjects of civil law relations acquire and exercise their rights of their own will and in their own interests (at their own discretion). The Civil Code provides directly, based on the Constitution[20], that civil law rights may be limited by the (federal) law to the extent to which it is necessary to protect the constitutional order and public morality, defend the rights and legal interests of citizens and other persons as well as human life and health, and ensure the national defence and security[21]. Thus, no one could be obliged by the law to use his rights. Also, the refusal of a physical or juristic person to exercise his rights is not to entail the termination of these rights, unless otherwise provided by the law[22]. Furthermore, the Civil Code directly obliges the civil law subjects to act (in establishing, exercising, and protecting civil law rights and in performing civil law duties) reasonably and fairly and prohibits the abuse of civil law rights[23].

Related to civil law the principle of dispositivity is implied in freedom of contract grounded on the freedom of the parties' will. The principle generally connotes the liberty of the parties to the contract to define the content of their agreement at their discretion and determine the courts before which and the law according to which any disputes should be governed. In turn, in the Russian international private law, the principle of autonomy of will is expressed in the basic rule regarding the law applicable to the issues belonging to the contract statute. According to Article 1210

[13]No one can be deprived of his property otherwise than by a court decision and on legal grounds.
[14]The ability to interfere in private affairs, including economic activities of civil law subjects, is restricted only to cases provided by the law.
[15]The restrictions in respect of the free circulation of goods, services, and financial assets, may be imposed only by the federal law if this is necessary to ensure safety, the defence of human life and health, or the protection of nature and cultural values.
[16]The possibilities for subjects of civil law relations to defend their rights and legal interests in court procedure, including demands to revoke the meeting's decision; they may also use self-defence and other lawful protection means.
[17]he subjects of civil law have free power to conclude a contract to choose the contracting party and determine the conditions of the contract (Article 421 of the Civil Code).
[18]The general principles of the Russian civil law related to contract relations also include prohibition of abuse of rights and fairness requirements as well as prohibition to benefit from unlawful or unfair behaviour, that are to be considered as the exceptions to the application of general principles.
[19]Articles 1.2 and 9.1.
[20]Article 55.3.
[21]Article 1.2. The Civil Code also includes other instances where the state is empowered to intervene into contract relations.
[22]Article 9.2.
[23]Article 10.

of the Civil Code on the choice-of-law-clause, the contracting parties may, at the conclusion of the contract (of international character) or thereafter, choose by agreement the law that will govern their rights and duties under the contract. The principle of party autonomy has also been recognised in Russian law of arbitration – where parties may similarly choose the law according to which their arbitration agreement and its procedure (curial law) should be governed.[24]

Subjects of Entrepreneurship[25]

The subjects of entrepreneurship in Russia are defined in the Civil Code, in which also their legal status is determined. They can be divided into individual and collective. Collective subjects practicing business activities or corporations are in general juristic persons, among which are distinct commercial organisations established for business purposes. Enterprise activities are allowed also to non-commercial organisations, however with restrictions. Enterprise activities may be practised also by subjects who are not juristic persons. They include individual entrepreneurs or physical persons as well as certain collective subjects, as for instance, farms. Non-juristic persons are in the Russian law also representative offices and branches of enterprises. Furthermore, the list of participants in business activities in Russia includes also public law subjects.

Objects of Enterprise Activities[26]

The civil law objects and respectively objects of enterprise activities are listed directly in the Civil Code[27], and they are things, including money and securities (commercial papers), other kinds of property such as property rights; works and services; protected results of intellectual activity and means of individualization equated to them (intellectual property); and nonmaterial values.

The civil law objects are divided, according to the Civil Code, into freely alienable, those with restricted alienation, and those which are excluded from circulation. In general, the objects of civil law rights may be freely alienated or transferred from one person to another by way of universal legal succession (inheritance, reorganization of a juristic person), or in another way, unless they are excluded from circulation or limited in this[28]. Among the civil law objects, subject to general alienability strengthened by the law explicitly, are, in accordance with the Civil Code, above mentioned things, other property, works and services, results of intellectual activity and nonmaterial values.

As the objects of civil law are recognised in Russia also property complexes which can consist of immovables and movables and are purported to be used be in

[24]Orlov (2024b) at 72.
[25]For more on the subject *see* Orlov (2015) at 413–414, and Shablova (2023) at 81–90.
[26]For more on the subject *see* Shabolova (2023) at 97–108.
[27]Article 128.
[28]Article 129.1.

whole. These include enterprises and jointly owned dwellings which are considered as immovable property.

Enterprise as a complex of property used for the performance of business activities comprises under Article 132.1 of the Civil Code of all the property (assets) purported for the activities and include things usually regarded as immovables: land parcels, buildings and structures, and as movables: equipment, implements, raw materials, products, choses in action, debts, and also rights to designations individualizing enterprise, its products, works and services (such as firm name, trade and service marks), as well as other exclusive rights, unless otherwise provided by the law or agreement. An enterprise, but also a part of enterprise, may be the object of sale, lease, pledge or other commercial transaction. Enterprise as a complex of property is considered in Russia as immovable property.

Concept of Contract[29]

Contract[30] is understood in the Russian contract law provisions and legal literature, as elsewhere, to mean not only:

- a legal fact which acts as the grounds for an obligation, but also
- a contracting obligation itself and
- a document in which the contracting obligation is reinforced.

As a legal fact which forms the grounds for the obligation law relation, contract is understood as an integration of the expressions of the wills of the parties, alias an agreement on establishing, changing, or terminating civil law relations, together with the rights and duties of their participants. It is expressly provided in the rule of the Civil Code defining obligation and grounds for its origin that obligations arise from contract[31]. As a legal fact contract comprehends a transaction[32] on which obligations are based. In the rule of the Civil Code containing the definition of transaction, it is expressly provided that contract is bilateral or multilateral transaction[33]. Since the concept of contract rests on the concept of transaction, contract is, according to Article 420.2 of the Civil Code, subject to the application of the rules regulating bilateral or multilateral transactions, including the provisions on form and validity of transaction.

As a contracting obligation itself, contract stands for the obligation law relation which arises because of the conclusion of the contract (transaction). The question is of the civil law obligations based on the agreement and it is a continuous and relative relation between the debtor and creditor in which the (subjective) rights and duties of

[29]For more on the subject *see* Orlov (2011) at 19–23 and Shablova (2023) at 203–205.
[30]In Russian law, the legal instruments for providing business or private commercial activities are *сделка* that is ordinarily translated as transaction, *договор*, ordinarily translated as contract, and *соглашение*, ordinarily translated as agreement. Also, the term *контракт* is in Russia used generally to mean contract but often with nuances—related, for instance, international sale or public supplies.
[31]Article 307.
[32]About contract as a transaction *see* Braginsky & Vitryansky (1999):146–152.
[33]Article 154.

the contracting parties exist and are fulfilled. In this sense contract comprehends contract obligations including the contract relation itself and performance of the contract[34]. Contract in this sense comprises the obligations arising from it, and is subject, in accordance with the Civil Code[35], to the application of the general rules regulating obligations.

As a document in which the contracting obligation is reinforced, contract stands for the form of agreement or transaction, in other words a document into which the rights and duties of the parties are written. This concept is, however, rather relative, since the parties' agreement does not necessarily require a single document. However, if such a document is prepared, and in certain cases it must be prepared, it is always named as a contract. In the form of a document, a contract serves as evidence that it has arisen, and at the same as a fixation of its content, in which case the observance of the form requirements is important[36].

The legal definition of contract is contained in Article 420.1 of the Civil Code. It is recognised as an agreement of two or several persons on establishing, changing, or terminating civil law rights and duties. Thus, the legal definition of a contract in the Russian contract law is based on the concept of transaction and comprehends that the contract arises upon the consent of the contracting parties, and that there are the actions mutually agreed by the parties in which their reciprocal and congruent expressions of the will have transpired. Since the concept of contract rests on the concept of transaction, contract is, according to Article 420.2 of the Civil Code, subject to the application of the rules regulating bilateral or multilateral transactions, unless otherwise follows from Civil Code.

Freedom of Contract and Binding Force of Contract[37]

The recognition of contract as the primary ground for the origin of obligations is based on the notion that contractual self-regulation or realization of the autonomy of intention is allowed and its legal force is recognised by the state. In that case the economic content of a commodity exchange act or transaction obtains the necessary legal form for it and its confirmation as well.[38] The allowing of contracting regulation also means the acceptance of the principle of freedom of contract, which transpires in sanctifying that the rights and duties are determined by contract in which the contracting parties have realised their dispositive powers. Freedom of contract is expressly confirmed as a starting point of the civil legislation in the Civil Code[39] and belongs therefore to general principles of Russian contract law. Furthermore, Article 421 of the Civil Code contains the rules directly devoted to freedom of contract in

[34]About contract as a legal relation *see* Beklenischeva (2006) at 65.
[35]Article 420.3.
[36]Sergeev (2009) at 838–839.
[37]For more on the subject *see*, for instance, Shablova (2023) at 209–213.
[37]For more on the subject *see*, for instance, Orlov (2011) at 19–23 and Shablova (2023) at 209–215.
[38]Suhanov (2008) at 174–178.
[39]Article 1.1.

which the concept is clarified. According to the definition of freedom of contract included into Article 421, it comprehends freedom to:

- conclude contract
- determine the character of the contract to be concluded, and
- determine its conditions or content[40].

According to Article 421.1 of the Civil Code, physical persons and juristic persons are recognised as free to conclude contracts. In the first place, this means that both physical persons and juristic persons choose themselves the party with whom they enter into a contract, which means freedom of choice. It also means that compulsion to conclude a contract is not allowed, except in those cases where the obligation to conclude a contract is established in law or by agreement of the parties. The question is of freedom of decision, according to which the contracting parties make their decisions independently of each other if they establish the contract relation between themselves or not. Freedom of decision is confirmed in Russia in the rules of the Civil Code regulating legal capacity of physical persons[41], which contain the list of the civil law rights belonging to them. In respect of juristic persons, and particularly those who practice commercial activity, freedom of decision is presumed without any conditions.

Freedom of contract transpires, according to the Civil Code[42], also in that the parties are free to determine the character of the contract they conclude or to conclude any contract which is provided by the law or not. This means freedom of content and includes freedom of type. Thus, the contracting parties may use any contract model as well as create a new one, if it is not contrary to the law. The parties have the right to conclude a contract, both stipulated[43] or nominate and non-stipulated[44] or innominate (sui generis) by the law or by the other legal acts[45]. However, the rules that regulate individual kinds of (nominate) contracts are not applicable to a contract which is not stipulated by law or other legal acts except for the case where the rules on mixed contracts are applicable. In the absence of such possibility the rules that allow analogy of the legal rule may be applied to individual relations of the parties to a contract[46]. However, it does not concern the imperative rules of the applicable nominate norms, the application of which is necessary for public order reasons (provided that the protected interest is indicated).[47]

According to the legal definition of freedom of contract contained in the Civil Code, the contracting parties are also free to determine the conditions of the contract they conclude. Hence the conditions of the contract are to be defined at the discretion of the contracting parties. This rule is also extended to concern a contract which is

[40]The concept of contract in the Civil Code may be regarded as based on the freedom of choice and decision as well as the freedom of type and content.
[41]Article 18.
[42]Article 421.2.
[43]or regulated.
[44]or non-regulated.
[45]Article 421.2.
[46]Article 6.1.
[47]*See* Commentary at https://www.zakonrf.info/gk/421/

based on the model prescribed by the law as well as a mixed contract or mixed type contract containing the elements of different types of contracts. The rule according to which the content of the contract conditions is to be defined at the discretion of the contracting parties is extended to the extent that the application of the dispositive (discretionary) legal norm may be excluded or deviated, as well as that the legal force of the contract could be extended to concern the relations before the conclusion of it[48]. But if a condition of a contract is not determined by the parties or a dispositive norm, the condition ought to be determined by the customs[49], unless the content of a condition is determined by the law or other legal act[50]. The only limitation to freedom of content imposed in Russian contract law is that the condition which the contracting parties have chosen or defined may not be contrary to the law or other legal act. Thus, the discretion of the contracting parties in respect of the contract conditions is excluded where the content of the respective condition is determined as obligatory in the law or other legal acts[51]. Also, the provisions, that, although not directly contain prohibitions, are aimed to protect important values and interests (the weaker or third party, or of the society directly). as well as balance of contract interests referring to the requirements of reasonableness and fairness.[52]

The general limits of freedom of contract are contained in the rules of the Civil Code on freedom of contract[53], public contract[54], and contract of adhesion (Article 428). These limitations restrict freedom to conclude a contract (freedom of decision and freedom of choice) and determine its content (freedom of content, including freedom of type).

The limits of freedom of contract are also implied by the rules of the Civil Code on restrictions of use of the civil law rights[55]. According to them civil law protection is dependent on the civil rights being exercised reasonably and in good faith. The rules also include the prohibition of the abuse of civil law rights (prohibition of chicanery). In case of failure to observe these requirements, the court may, according to the Civil Code[56] refuse to give legal protection.

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[48]Restrictions to freedom of contract are imposed by the interests of other subjects of law and of society. In addition, the protection of security as well as natural and cultural objects also provides necessary reasons for such limitations. Freedom of contract is restricted in Russia in the provisions contained in the general rules of the Civil Code (Articles 1, 10 and 422). The limitations to freedom of contract are included also in the rules of the Civil Code regulating different types of contracts. In accordance with the Civil Code, freedom of contract is restricted by prohibitions of certain acts as well as legally prescribed conditions and obligation to contract which may be based on the law or merely agreement. In general, limitations of freedom of contract transpire in the mandatory or imperative norms; the imperative norms known in the Civil Code are the antimonopoly legislation and the norms on consumer protection and price control.

[49]Article 421.5.

[50]Article 422.

[51]Article 421.4.

[52]*See* Stepanov (2021) at 636.

[53]Article 421.

[54]Article 426.

[55]Article 10.

[56]Article 10.2.

The recognition of the legal force of the contractual regulation means the acceptance of the principle not only of freedom of contract, but also of binding force of contract, which comprehends the binding effect of contract or the principle *pacta sunt servanda* that means the observance of the contract. In Russian contract law, this principle transpires in the first place in the rules of the Civil Code regulating the performance of obligations, including the means for safeguarding obligations and the obligation to compensate for damages, as well as in the rules on change and rescission of contract, the purport of which is to compel the contractual parties to observe the contract. Binding force of contract is confirmed in the general rule of the Civil Code concerning the performance of obligations, including contract obligation[57], by the requirements that obligations must be performed in a proper manner in accordance with their conditions and the requirements of the law and other legal acts. It is also confirmed in Article 310 of the Civil Code regulating performance of obligations, by the rule according to which unilateral refusal to perform an obligation and unilateral change of its conditions is not in principle allowed. In the event the obligation of contract is not performed properly, or in the case the breach of contract has occurred, the means for safeguarding of obligations may be applied to the violator of the contract. In Russian obligation law, they include securing measures for fulfilling obligations, operative safeguards, such as withholding right, real performance, including contracting out, as well as price reduction, premature performance, change and rescission of contract and compensation for damages as well.

The contract observance means that the contract conditions, in a large sense, are to be followed, which are generally be placed in the following hierarchy:

1) the imperative norms of the law,
2) the imperative norms of the other legal (normative) acts,
3) the terms of the contract agreed upon by the contracting parties,
4) the dispositive norms that are to be applied in default of the contractual terms,
5) the commercial customs (customs of trade) that are to be applied in default of both contractual terms and dispositive norms.

The significance of binding force of contract transpires particularly in that contract conditions are purported to stand unchanged. So, according to the Civil Code, changes in the civil legislation after the parties have concluded the contract, even if they are mandatory, do not have a direct effect on their contract unless it is provided by the law that its effect extends to relations arising from the previously concluded contracts[58]. Russian contract law is also otherwise based on a particularly high threshold for the change of the contract[59], considering it as exceptional measure.

[57] Article 309.

[58] Article 422.2.

[59] Articles 450–453.

Classification of Contracts[60]

Contracts are distinguished in Russian civil law in many ways depending on the aims of classification or on what features of contract are to be clarified. A part of criteria for classification of contracts is linked to its content[61], whereas the other part is concentrated on its formal aspects. Formal aspects are important in considering a contract in the capacity of a transaction, in which case the main question is to clarify whether the valid contract is concluded or not.

In the capacity of a transaction, contracts may be distinguished into real and consensual[62] and compensated and non-compensated contracts[63] as well as causal and abstract ones[64]. Compensated contracts may be divided, in turn, into exchange and risk or aleatory ones[65]. Distinct as transactions are also fiduciary contracts which are regarded often in Russian legal doctrine as a *sui generis* group[66].[67] In this connection, noteworthy is that the classification of contracts does not always correspond unambiguously with the reality. So, for instance, a storage, loan and delegation contract may be depending on its conditions compensated or non-compensated, whereas gift and storage contract as well as contract of uncompensated use may occur both as real and consensual one.

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[60]Shablova (2023) at 209–213.

[61]In the aspect of obligations, contracts are classified in the provisions on types of contract (obligation) in the special part of the Civil Code (Articles 454–1054).

[62]The distinction between consensual and real contracts is grounded on the rules of the Civil Code defining the moment of the conclusion of a contract (Article 433) consisting of the general rule concerning consensual contracts and the special one purposed for real contracts. According to the rule on consensual contracts (Article 433.1) a contract is to be considered as concluded at the moment, when the person, who has sent an offer, has received its acceptance. In turn, the special rule concerning real contracts provides that in the event the conclusion of a contract requires under the law also the transfer of property, the contract is to be considered as concluded at the moment of transfer of the property at issue (Article 433.2).

[63]Russian law knows main or basic contract and supplementary contract, preliminary and basic contracts as well as mutually agreed contracts and contracts of adhesion. Furthermore, duty to contract and public contracts are distinct from freely agreed contracts in Russian contract law. Also fixed term contracts and contracts with undetermined term (or for the time being) and conditional contracts as well as contracts for the benefit of a third person are known in Russian contract law.

[64]Causal contract stands for a contract, in which the aim of the contracting parties is obvious, and its validity depends on the presence of the ground for concluding it (*causa*) which means the existence of the legally acceptable and achievable aim. Respectively, abstract contract comprehends a contract which is independent of its ground or contractual aim, like, for instance, bill of exchange.

[65]Specific for such contracts in Russia is that, according to the Civil Code (Article 1062), claims connected with the organization of games and wagers or with participation in them are subject to judicial protection only in exceptional cases. On the other hand, the Civil Code (Article 429^4) contains provisions on contract with performance on demand (subscriber contract). Although such contracts are based on risk, they enjoy legal protection.

[66]Such contracts are based on the special relations requiring personal confidence, and in failure of it, each of the contracting parties has the right to withdraw from the contract performance.

[67]Russian law knows main or basic contract and supplementary contract, preliminary and basic contracts as well as mutually agreed contracts and contracts of adhesion. Furthermore, duty to contract and public contracts are distinct from freely agreed contracts in Russian contract law. Also fixed term contracts and contracts with undetermined term (or for the time being) and conditional contracts as well as contracts for the benefit of a third person are known in Russian contract law.

According to their content contracts are distinguished into property contracts (obligations) that are aimed at the fulfilment of the agreed obligation,[68] and form the main part of the contracts in Russian law, and organisational arrangements.

Entrepreneurial Contracts

Business (or entrepreneurial) contracts have peculiarities although they are not defined in the Russian Civil Code that is the main legal civil law source in Russia. Entrepreneurial (or related to entrepreneurial activities) obligations are, however, mentioned in the provisions on obligations of the Civil Code, and they are doctrinally known as commercial transactions which form the specific group of the civil law contracts[69].

In the Russian legal doctrine, as entrepreneurial or business contract is regarded a contract, in which at least one party is a subject of the enterprise activities and by which the rights and duties connected with the enterprise activities have arisen, changed, or terminated. As being the civil law contract, an entrepreneurial contract is subject to the application of the general principles of the civil law regulation. However, its specific nature must be observed, which is transpired through the Civil Code norms concerning the subjects, objects, contracting procedure and content, as well as liability. The specific nature of an entrepreneurial contract is particularly apparent in accepting a commercial custom as a general legal source applicable to it, as well as in special proceedings for resolving disputes between the parties of entrepreneurial contracts, which are regarded as economic disputes to be handled in the arbitrazh court. Furthermore, international business contracts may be handled in international commercial arbitration proceedings and are subject to the application of the choice-of-law rules.[70]

[68]to transfer property, perform work, render service.

[69]Commercial transaction, through which contracts used in enterprise activities are characterised, is generally understood as a transaction which is regarded in the law as commercial irrespective of by whom it is made (objective criterion), or a transaction the party of which is an entrepreneur pursuing or realizing commercial goal (subjective criterion). It is presumed that any transaction made by the entrepreneur is related to commercial activities. So, the starting point is the subjective criterion of the commercial transaction. Also, what is the aim of the transaction is important and in respect of the commercial transaction it means profit seeking. In general, a commercial transaction is presumed as compensated in Russian contract law.

[70]At present, business contract regulation in Russia is characterised by growing significance of the judiciary in it and by enlarged dispositivity of the regulative rules.

Organisational Arrangements[71]

The purpose of organisational arrangements (agreements, contracts) is to create the framework for the future business relation that will be concretised in the property contract (or another establishment). Organisational arrangements in Russian law (recognised in the Civil Code) include preliminary contract[72] and framework agreement[73], as well as option for conclusion of contract[74] and option contract[75], and agreement with performance upon request (subscriber agreement)[76].

Preliminary Contract

Preliminary contract is, according to the Civil Code[77], a contract under which the parties are obligated to conclude in the future a (main) contract on the transfer of the property, on the performance of works or on rendering services (the basic or main contract) on the terms, provided by the preliminary contract. The preliminary contract must contain terms sufficient enough to determine the subject matter of the main contract as well as the terms which one of the parties had requested to agree upon at the time of concluding the preliminary contract[78]. In the event the other (contracting) party refuses from concluding the main contract, the rules on compulsory contracting are applicable and the court may compel the refusing party to enter into the main contract[79]. The preliminary contract must meet, according to the Civil Code[80], the same form requirements as the basic contract, and, if those are not established, it must be done in written form; nonobservance of the rules on the form of a preliminary contract entails its invalidity (nullity).

Framework Agreement

Framework agreement is understood, under the Civil Code[81], as an agreement with terms left open. It contains general conditions of the future obligations that are to be specified throughout the performance of the agreement by concluding separate contracts, submitting requests by one of the parties, etc. The general conditions are to be applied directly to the relations that are uncovered by separate contracts, including cases where the contract is not concluded, unless otherwise provided in separate contracts or follows from the nature of the obligation[82].

[71]For more on the issue *see* Kurbatov (2021) at 3-17.
[72]Article 429.
[73]Article 429.1.
[74]Article 429.2.
[75]Article 429.3.
[76]Article 429.4.
[77]Article 429.
[78]Article 429.3.
[79]Article 429[5].
[80]Article 429[2]
[81]Article 429[1].
[82]Article 429[2]

Option for Conclusion of Contract

Option for conclusion of contract stands, according to the Civil Code[83], for the case where the contracting parties agree on granting option for conclusion of contract. In accordance with such an agreement one party by virtue of irrevocable offer entitles another party to make one or several contracts subject to conditions provided by the option. By accepting such an offer in the procedure, at the time and under the terms provided for by an option, the other party is entitled to conclude a contract. An option to conclude a contract may provide that the acceptance is only possible in the event of occurrence of the condition defined by such option, including one which is dependent on the will of one of the parties. Where the term for acceptance of an irrevocable offer is not determined, it ought to be made within one year, unless otherwise follows from the essence of a contract or customs[84].

An option to conclude a contract is to contain the provisions that enable determination of the subject and other essential conditions of the contract; the subject of the contract to be concluded may be described in any way enabling its identification at the moment of acceptance of an irrevocable offer[85]. The option to conclude a contract is to be made in the same form as the contract to be concluded[86], and it may be included into another agreement unless otherwise follows from the essence of such agreement[87]. An option to conclude a contract shall be granted for payment or other consideration, unless otherwise is agreed between the parties, including commercial organisations. Unless otherwise provided for by an option to conclude a contract, payment related to it is to be counted against payments under the contract based on an irrevocable offer and it is not subject to repayment in the event of nonacceptance of the offer[88]. The rights under an option to conclude a contract may be assigned to another person unless otherwise provided for by the agreement or follows from its essence[89].[90]

Option Contract

In the case of an option contract, it is provided under the Civil Code[91] that either party under the terms provided for by the contract is entitled to demand within the time specified in the contract that the other party take the actions provided for by the option contract (including pecuniary payment, transfer and receipt of property), and, in the event the authorised party does not demand it at the cited time, the option contract is to be terminated. An option contract may provide that the demand under

[83]Article 429^2
[84]Article 429^2.2.
[85]Article 429^2.4.
[86]Article 429^2.5.
[87]Article 429^2.6.
[88]Article 429^2.3.
[89]Article 429^2.7.
[90]The features of individual kinds of options to conclude a contract may be established by law. Article 429^2.8.
[91]Article 429^3.1.

the option contract is to be considered as made in case of the occurrence of circumstances defined by such a contract. For the right to present a demand under an option contract a party is to pay the monetary sum provided for by such contract, except for the cases where an option contract, including one made between commercial organisations, provides for its gratuitousness or if the conclusion of such contract is caused by another obligation or another interest protected by law, that are related to the parties' relations[92]. In the event of termination of an option contract, the payment provided for presenting the demand under the option contract, is not subject to repayment, unless otherwise provided for by the contract.[93]

Agreement with Performance upon Request (subscriber agreement)

Agreement with performance upon request or subscriber agreement is recognised, under the Civil Code[94], as an agreement, according to which, one party (the subscriber) provides definite, including periodical, payments or some other compensation for the right to demand from the other party (the executor) the performance in the required number or extent or under other terms defined by the subscriber. The subscriber must pay a subscription fee or provide other performance under the agreement irrespective of whether the performance was requested from the contractor or not, unless otherwise provided for by law or contract[95].

Limited Freedom Contracts

Russian law knows in addition to general freely agreed contracts also contracting arrangements that do not represent the principle of freedom of contract. Among such limited freedom contracts are contracts of adhesion and public contracts.

Contract of adhesion is[96] defined the Civil Code[97] of as a contract, the conditions of which are determined by one of the parties in printed forms or other standard forms, and which may be adopted by the other party only by adhering to the proposed contract as a whole. The purport of the legal regulation of contracts of adhesion is to protect the party who has accepted the standard conditions or adhered to the contract.

In the rules regulating contracts of adhesion of the Civil Code, it is expressly provided that the party adhering to the contract has the right to demand the rescission or change of the contract[98]. The application of these measures, however, require according to the Civil Code the circumstances when the contract of adhesion,

[92]Article 429^3.2.

[93]The features of individual kinds of option contracts may be established by law or in the procedure established by it (Article 429^3.4).

[94]Article 429^4.

[95]Article 429^4.2

[96]For more on the subject see, for instance, Sergeev (2009) at 849–850, Suhanov (2008) at 186–187 and Braginsky & Vitryansky (1999) at 258–266.

[97]Article 428.1.

[98]Article 428.2.

although does not contradict the law or other legal acts, deprives the party adhered to the contract of the rights usually granted under contracts of the given type, excludes or limits the liability of the other party for the violation of obligations, or contains other conditions clearly burdensome for the adhered party which he, on the basis of his reasonably understood interests, would not have accepted, if he had the possibility of participating in the determination of the conditions of the contract[99]. The rules on contract of adhesion are applicable also to the cases of contracting that is not to be recognised as a contract of adhesion, if the conditions of the contract are defined by either party, while the other party due to the evident disparity of negotiating power is in a position substantially complicating agreement of a different content of individual conditions of a contract[100].

Public contract is defined in the Civil Code[101] as a contract, concluded by a person who exercises business or other profitable activity, and establishes its obligations for the sale of goods, performance of works, or rendering of services, which this organization by the nature of its activity must exercise with respect to everyone who turns to it (retail trade, carriage by transport for common use, communications services, energy supply, medicine, hotel service, etc.) Such a person has no right not only to refuse from making contract but also to show a preference to some persons as compared to others as concerns the conclusion of a public contract, except for the cases established by law or other legal acts[102]. In the event of the groundless refusal to conclude a public contract the consumer the corresponding commodities and services may demand the application of the obligatory contracting procedure[103], provided for by the rules on precontractual disputes that are contained in Article 446 of the Civil Cod Furthermore, The conditions of the public contract that does not correspond to the established public contract requirements are null and void[104].

Conclusion of Contract[105]

According to the basic rules on conclusion of contract, which is contained in Article 432 of the Civil Code, a contract is to be considered concluded if an agreement has been reached on all essential conditions of the contract among the parties in the form required in appropriate cases[106].

[99]Unless otherwise established by law or follows from the essence of an obligation, in the event of amendments or termination of a contract by a court at the demand of a party that has joined the contract, the contract is to be deemed valid in the amended wording or, accordingly, invalid from the moment of its conclusion (Article 428.2).

[100]Article 428.3

[101]Article 426

[102]Article 426.1

[103]Article 426.3.

[104]Article 426.5.

[105]Shablova (2023) at 215–216.

[106]Article 432.1

Essential Conditions[107]

The concept of essential condition is contained in the rules of the Civil Code regulating conclusion of contract[108]. According to it essential are conditions on the object of the contract; the conditions defined as essential or necessary for contracts of the given type in the law[109] or in other legal normative acts; and, also, all the conditions about which agreement must be reached according to the statement of one of the parties, or dispositive contract provisions. The reached agreement on essential conditions means that the contract has arisen, and that, on the contrary, if the other contracting party has failed to accept even one of them, a contract is not regarded as having been concluded. However, in the Russian judicial practice it is established that a claim of a contract being left unconcluded is to be recognised as invalid in the event the contract performance is executed and accepted or if there are other evidence that the contract is to be regarded as binding.[110]

Formal Requirements

The rules on the forms of contract are contained in the norms of the Civil Code regulating not only transactions[111] and conclusion of contract[112] but also different types of contracts. The rules on the form requirements may be represented also in the other laws concerning concrete type or specie of a contract. The norms regulating forms of contract contain not only form requirements but also the rules on the consequences for no observance of them. The form requirements concerning contracts are significantly important in respect of the transactions between enterprises which must be done, excluding certain exceptions, in written (and signed). In certain cases, contracts (transactions) are under Russian law also subject to registration requirements.

Transactions are divided in the Civil Code on the ground of the form requirements that concern them, into oral and written, and written transactions (contracts) are divided, in turn, into those which must be concluded in simple written form, and transactions which require notarial authentication or must be done in notarial form. This division reflects the hierarchy of the form requirements concerning transactions (contracts) in Russian law: the simplest form of them is oral, next is the simple written form and the most qualified form is the notarial form.

[107]For more on the issue *see*, for instance Orlov (2011) at 144–148 and the material cited therein as well as Gruzdev (2019) at 86–97 and https://zakon.ru/blog/2016/06/28/suschestvennyeusloviyadogovora

[108]Article 432.1

[109]In certain cases, although the condition is established as essential for the contract, it is unnecessary to include it in the contract because its content is defined in accordance with the dispositive norm provided by the law. So, if the parties have not included the condition on price into their contract, then the general rules on price contained in Article 424.3 of the Civil Code are applied. The essentiality of such condition is, however, evident, since if the parties have not reached the agreement on it, the contract is considered unconcluded.

[110]For more on the issue *see,* for instance Stepanov (2021) at 668–669.

[111]Articles 158–165. A contract ordinarily is a bilateral transaction.

[112]Article 434.

According to the general rule of the Civil Code on the written form of a transaction[113] a written transaction is to be made in Russia by the preparation of a document expressing its content and signed by the person or persons concluding the transaction, or by persons properly authorised by them. The written form of a transaction ought also to be deemed observed, if it is made by a person with the use of electronic or other technical facilities enabling to reproduce the content of the transaction on a material medium unchanged; and, in so doing, the requirement for availability of the signature ought to be deemed satisfied, if any method enabling to reliably determine the person that has expressed the will thereof is used.

According to the general rule of the Civil Code on the forms of contract[114] the contract in written form is to be concluded not only by compiling one document, signed by the parties, but usually also by way of exchanging in the form of letters, telegrams, telex messages, facsimile messages and other documents, including electronic ones, transmitted via communication lines that make it possible to establish for certain that the document comes from the party by the contract. As an electronic document to be transmitted via communication lines shall be deemed the information prepared, sent, received or kept with the help of electronic, magnetic, optical or similar facilities, including the exchange of information in electronic form and electronic mail. A contract may be concluded also by concludent acts in response to the written offer[115].

Contract Conclusion Procedure[116]

Russian law is acquainted with two traditional ways of conclusion of contract, and they are based on the offer-acceptance model. One of them is purported for the situation when contract is concluded between the present parties, whereas the other concerns conclusion of contract between the absent parties. Although each of these ways to conclude a contract is subject to its own rules, common for them is that, in the conclusion process, the offer and acceptance follows each other. Distinct for them is that, in the case of contracting between absent parties, they are relatively far from each other wherefore there is a is a time interruption in their expressions of the wills, whereas present contracting parties are in direct contact between each other. On the other hand, modern technical development has changed the situation, and even in the case the parties are physically far from each other, they have still possibilities for contracting between themselves without significant time interruptions by using, for instance, telephone, fax or e-mail.

According to the general rule of the Civil Code on conclusion of contract, the basic element of a contract is an accepted for its origin offer. The contracting procedure starts with the presentation of the offer.

As an offer is recognised, according to the Civil Code, a proposal addressed to one or several concrete persons, and it must be sufficiently definite and express the

[113]Article 160.

[114]Article 434.2

[115]Article 434.3.

[116]Shablova (2023) at 216–219.

intent of the person who has made it to consider himself having concluded a contract with the addressee by whom the proposal will be accepted[117]. As corresponding to the rules of the Civil Code is regarded also a proposal containing all the essential conditions of the contract from which the will of the person who made the proposal appears to conclude a contract on the terms specified in the proposal with anyone who responds, and it is to be considered an offer or to be exact public offer in accordance with Article 437.2 of the Civil Code concerning offer. On the other hand, the rules on offer of the Civil Code contain a general presumption that advertising and other proposals addressed to an indeterminate group of persons is to be regarded as an invitation to make offers unless otherwise expressly indicated in the proposal[118].

The binding effect of the offer and its irrevocability are regulated in their own rules of the Civil Code[119]. The binding effect of the offer comprehends that if the concrete addressee of the offer inform that he has accepted the offer or is agreed to conclude the contract on the conditions presented in the offer, the contract is to be considered concluded. In turn, the requirement of irrevocability established for the offer[120] means that the offeror may not revoke his offer during the period established for its acceptance.

The binding force of the offer starts, according to the rules of the Civil Code on offer, from the moment it is received by the addressee[121]. Thus, before it, the offer may be revoked by the offeror, and in the event a notice on the revocation of the offer has arrived earlier than or simultaneously with the offer, the offer is to be considered not to have been received[122]. It is not only the binding force of the offer but also the period of its acceptance determined by the offeror which starts from the moment when the addressee has received the offer[123]. The offer expires at the moment, when the offeror receives from the addressee the answer which is negative to or deviating from his offer as well as when the period for its acceptance ends.

As acceptance of the offer (or consent to the contract) is understood, according to Article 438 of the Civil Code, the response of a person, to whom an offer is addressed, on its acceptance. Acceptance is to the same extend as offer an expression of the will, and it must be comprehensive, in other words, accepting all the conditions contained in the offer, and unqualified or without any additional conditions. But the same as for the offer, there is no form requirements concerning the acceptance in the Civil Code. The acceptance must occur, according to the Civil Code[124], within the period established for it in the offer or by the law, or in the absence of it, in the course of time normally necessary for the acceptance, or within a reasonable time, in the case of a written offer, in which the term for the acceptance is not determined.[125] As reasonable is considered the time which is sufficient for the bidirectional

[117]Article 435.1

[118]Article 437.1

[119]Article 435.2 and 436.

[120]Article 436.

[121]Article 435.2.

[122]Article 435.2.

[123]This comprehends the adoption of the reception theory in the Russian contract law.

[124]Article 440 and 441.

[125]Article 441.1.

exchange of the corresponding documents by post. As to the case of an oral offer which does not contain the term for its acceptance, the response to it must be given immediately.[126]

The answer which contains consent to conclude a contract on terms other than those proposed in the offer or on deviating or additional conditions is not considered under Article 443 of the Civil Code as an acceptance. However, it may be regarded as counteroffer on the provision that it corresponds otherwise the characteristics of offer or contains all essential conditions of the future contract. If some essential condition is missing from the answer to the offer, however, it is not even considered counteroffer. Such an answer may be regarded as a refusal from concluding the contract and at the same time as a proposal to conclude another contract.

The rules of the Civil Code on acceptance are partly similar to the provisions on offer. This concerns in particular the revocation of acceptance. Alike in the case of offer, if a notice on the revocation of an acceptance has reached the offeror earlier than the acceptance or simultaneous with it, the acceptance is to be considered not to have been received[127].

The general rules of the Civil Code on conclusion of contract enables acceptance of the offer by concludent acts[128]. This may occur so that the offeree executes, within the period established for the acceptance, the actions in the performance of the terms of a contract indicated in the offer[129]. In turn, silence is not regarded, according to the Civil Code, as acceptance unless otherwise follows from the law, commercial customs or previous business relations of the parties or course of dealing.[130]

Belated acceptance is subject to the provisions of Article 442 of the Civil Code. According to them, in cases when a timely dispatched notification of acceptance has been received late, the acceptance is not be considered late unless the offeror has immediately informed the offeree of the late receipt of the acceptance. Thus, if it transpires from the answer to the offer or otherwise that it has been sent in time, the answer is considered acceptance unless the offeror informs immediately that it has arrived belated. The silence of the offeror effects in this case the conclusion of the contract. But also, in case the answer has been sent (evidently) belated, the contract may, according to the Civil Code, become concluded, if the offeror informs immediately (in written) the other party of the receipt (approval) of his belated acceptance[131].

According to Article 425 of the Civil Code, a contract enters into force and becomes binding for the parties from the moment of its conclusion. A contract is considered concluded, according to Article 433 of the Civil Code, at the moment, when the person, who has sent the offer, has received its acceptance. Exceptionally

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[126]Article 441.2.

[127]Article 439.

[128]Article 434.3 and 438.3.

[129]Article 438.3.

[130]Article 438.2. Silence is subject to the general presumption that it is not a legal fact. This follows from the provision of the Civil Code concerning form of transaction (article 158.3), according to which silence is recognised as an expression of will to make a transaction only in cases provided by the law or agreement of the parties.

[131]In the case the offeror does not respond to the obviously belated acceptance, this ought to be interpreted as the refusal of acceptance.

from the general rule, the time of conclusion of contract is determined in the case of a real contract and a contract requiring registration. A real contract or contract the conclusion of which requires under the law also the transfer of the property is to be considered concluded from the moment of the transfer of the respective property[132]. In turn, a contract subject to State registration is to be considered concluded from the moment of its registration unless otherwise established by the law (GK 433.3)[133].[134]

Obligatory (compulsory) conclusion of contract or obligatory contracting or conclusion of a contract by obligatory procedure is known in Russian contract law as an exception from the general principle of freedom of contract based on the autonomy of the wills of the contracting parties. The rules regulating obligatory contracting are contained in Article 445 of the Civil Code incorporating the general provisions on contract. The article contains only the rules on how a contract is concluded in the obligatory procedure. As to the conditions of a contract to be concluded in the obligatory procedure, their definition occurs mainly in accordance with the principle of freedom of contract. Obligatory conclusion of contract is to be grounded only on the law or legal act and is purported to be used mainly in making public contracts. The rules on obligatory contracting are also applied to the cases when the obligation to conclude a contract is based on a voluntary undertaking like preliminary contract. The rules imposing the obligation to conclude a contract are found also in the other norms of the Civil Code, which concerns particularly norms on supply and work for State needs.

Under the Civil Code, the obligatory procedure on conclusion of contract differs depending on whom the obligation to conclude a contract concerns. It recognises two sets of the rules: one concerning the situation where the obligatory contracting is imposed on the addressee (offeree), and the other applicable to the case when it is the offeror who is subject to the duty to conclude a contract[135].

Where the obligation to conclude a contract concerns the recipient of the offer, or the party who has received the draft contract, the question is of the contracting procedure initiated by the customer (of the organizations subject to obligatory contracting) who is represented as the offeror. In this case the customer who is not subject to obligatory contracting but the counterparty of the party who is subject to obligatory contracting has prepared the offer or the draft contract and sent it to this or to the offeree. On receiving the offer or draft contract the offeree must, according to the Civil Code[136], send to the offeror a notification of acceptance or refusal to accept the offer within thirty days from the receipt of the offer. The offeree may notify the offeror of acceptation of the offer on other terms in which case he prepares a protocol of disagreements with the draft of the contract containing his proposals

[132]Article 433.2.

[133]Additionally, the norms on types of contracts of the Civil Code contain at least one special rule concerning time of conclusion of contract which is divergent from the general rule, and it concerns consumer contracts of energy supply. According to the article 540.1 of the Civil Code, the contract is to be considered concluded from the moment of the first actual connection of the subscriber by the established procedure to the connected network.

[134]*See* Sergeev (2009) at 864.

[135]Article 445.

[136]Article 445.1.

and send it to the offeror. After receiving this, in turn, the offeror notifies the other party about the acceptance of the contract, or he may bring the disagreements to the consideration of a court within thirty days from the day of receipt of the offeree's response or of the expiration of the period established for acceptance[137].

In the case where the obligation to conclude a contract concerns the offeror or the contracting party who has prepared the draft contract, the addressee or the recipient of the offer (customer) may, according to the rules of the Civil Code regulating such cases[138], notify about his acceptance of the offer within thirty days from the receipt of it. He may also notify the offeror of acceptation of the offer on other terms in which case he prepares a protocol of disagreements with the draft of the contract containing his proposals and send it to the offeror. On receiving the protocol of disagreement the offeror must, otherwise than in the case when the conclusion of contract is obligatory for the offeree, send the recipient of the offer a notification of acceptance of the contract in its version or of the rejection of the protocol of disagreements. And in case of rejection of the protocol of disagreements or of nonreceipt of notification concerning this in the established time, the recipient of the offer has the right to bring the disagreements on the conclusion of the contract to the consideration of a court. The disagreements must be brought to the court within thirty days from the day of receipt of the negative response of the offeror or of the expiration of the period established for his response. Thus, the disagreements arising in obligatory contracting in the above presented cases may be brought to the consideration of a court only by the counterparty of the contracting party subject to the obligation to contract, in other words, by the customer.

The rules of the Civil Code regulating obligatory contracting contain in addition to the contracting procedure the rules the purport of which is to secure the fulfilment of obligation to contract[139]; they also protect the customer of the organizations subject to obligatory contracting. The rules expressly provide that if a party for whom in accordance with the Civil Code or other laws the conclusion of a contract is obligatory has refused to conclude it, the other party has the right to apply to a court with a demand for compulsion to conclude a contract. The decision on compulsion to conclude the contract is to contain the conditions on which the contract is concluded, and they are valid from the moment the decision is entered into force. Also, where the court solves the dispute concerning the conditions of the contract[140], they are to be defined in accordance with a decision of the court [141].

Due to the amendments to the Civil Code relating to the contract law rules, the changes, the necessity of which was realised following international practice[142] in legal practice, were legislatively adopted in Russia.

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[137]The term of 30 days imposed for the actions of the obligatory contracting parties is general, and ought to be followed, according to Article 445.3 of the Civil Code, only if other periods have not been established by law, other legal act or agreed upon by the parties. Thus, it is a dispositive rule.

[138]Article 445.2.

[139]Article 445.4.

[140]Such a dispute is to be transferred to a court procedure or is subject to judicial settlement within six months from the moment its arising.

[141]Article 446.

[142]which have been attempted to improve the attractivity of Russian law for big transnational enterprises that are used to the legal conceptions of common law.

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