

GENERAL CHARACTERISTICS OF CONTRACTS WITH A FOREIGN ELEMENT

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Introduction

Civil law establishes certain rules applied to relations with the participation of a foreign element (citizens, stateless persons and foreign legal entities).

At the same time, the national legislation has the highest legal force, but it should not contradict the international treaties of the Russian Federation (par. 4 art. 15 Constitution of the Russian Federation).

It should be noted, that there are many problems, which consist in determining the legal status of representatives of other states participating in civil circulation.

As is known, the source of legal personality is Russian law, if a stateless person or a foreign citizen resides in the territory of Russia.

In other cases, the law of that country must be a personal law, because this is related to the place of residence or primary residence (art. 20 Civil code of the Russian Federation).

Methodology

Analysis of legislative acts of the Russian Federation and of international organizations is used.

Main problems and tasks

1. Agreements with a foreign element are contracts with the participation of foreign individuals, organization, foreign states.
2. Agreements that are concluded with foreign counterparties are regulated by the rules of law of different countries. The law applicable to them is determined by agreement of the parties.

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For a refugee according to par. 6 of Art. 1195 Civil Code of the Russian Federation personal law is determined by the law of the country granting asylum.

In this connection, two problems arise:

At first, the right of which country will be the personal law of a foreign citizen or stateless persons, who have a residence in several states, including in Russia.

Secondly, a refugee is a foreign citizen. The question arises, the right of which state will be his personal law, if the place of residence is in Russia, and asylum is granted by another state?

Russian law will be a personal law for a refugee in the following cases:

- official refugee status, provided by the Russian Federation
- living place, available to a foreigner in Russia.

If the refugee status of a foreign citizen, who lives in Russia, is given by another state, then civil legal relations with the participation of a Russian citizen and such person should be regulated by the rules of Russian civil law [3].

1. According to Art. 1210 of the Civil Code of the Russian Federation, the parties to the contract are free to choose the applicable law. But at the same time, there are differences in the solution of the same issues in different countries, as well as in the practice of their application.
2. The parties can agree on the inclusion of certain conditions in the future, but if the agreement is not reached, then the applicable law is determined in accordance with the conflict of laws rules.

The conflict of laws indicates the law of which state should govern the relations of the parties to a transaction with a foreign element [2,4].

It should be noted, that the conflict rules in the law of different countries do not coincide in content. There are international conventions that unify the conflict of laws rules applicable, in particular, to the contract of international sale of goods.

As an example of an international convention, the United Nations Convention on Contracts for the International Sale of Goods [1].

According to paragraph 1 of Art. 7 of the Convention, in the interpretation the international character of the convention and the need to promote [1].

The term «conscientiousness» is not separately formulated in the Convention, but it seems, that it should include:

- reliable information about the parties that conclude the contract;
- reliable information about the goods being the subject of the transaction;
- goods must be free from any rights of third parties;
- the exercise of rights must be without violating the interests of other persons protected by law;
- rules of business ethics must be observed.

Conclusion

Thus, in order to more effectively fulfill the obligations under the contract, it is necessary:

First of all, a representative can request a charter and information on the registration of his firm in response to the transfer of his own charter and information about the registration of his company.

To verify the solvency, you can resort to the help of the same audit or information firms, which often have their offices in many countries around the world.

It should be during the conclusion of the contract to test a proper fulfill the obligations.

According to Art. 71, 72 of the Convention, the counterparty has the right to suspend the performance of its duties, if, after of the contract conclusion, it becomes clear that the other party will not fulfill a significant part of its obligations.

In accordance with Art. 328 of the Civil Code of the Russian Federation the party on the obligation has the right to suspend the performance of the obligation, if the other party fails to fulfill its obligation [2,5].

This means that the conclusion of a contract without the confidence for its execution can lead to serious material losses [4].

So, in order to avoid possible material losses, one should have reliable information about the prospective counterparty and take appropriate measures to fulfill the contractual conditions.

Notes:

[1] United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11.04.1980) In the edition of 17.05.2016 // <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=2648&rnd=0.7500545523245166&div=LAW#0>

[2] Civil code of the Russian Federation (part three) от 26.11.2001, № 146 FZ In the edition of 28.03.2017 No. 39 FZ // <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=214559&rnd=290511.946121683#0>

[3] Новиков В. В. (2009), Правоотношения с участием иностранных физических лиц в России: цивилистические аспекты // "Гражданское право". 2009. № 1 // Справочно-правовая система Консультант (дата обращения 04.03.2018)

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Abstract

In the theses we analyze some legal rules provisions cconclusion of a contract with a foreign element. The author examines the general characteristics of contracts with a foreign element and makes suggestions on the procedure for concluding agreements.

Key words: contracts with a foreign element, conflict rule, international convention, interpretation, discharge of an obligation.

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