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On 8 March 2015 the President of the Russian Federation signed Federal Law No. 42-FZ “On amending the first part of the Civil code of the Russian Federation” (hereinafter – the Law), which will come into effect on 1 June 2015.

The Law amends the Civil code of the Russian Federation (hereinafter – Civil Code).

In this article, we will review the amendments, which introduce two important types of contracts into the Civil Code: the option for the conclusion of contract and the option contract.

Option for the conclusion of contract

The Law introduces a separate type of contract – the option for the conclusion of contract, according to which, one party grants an irrevocable offer, through the acceptance of which, the other party assumes the right to conclude one or several contracts (for example share purchase contracts) within the terms and according to the provisions prescribed by the option.

The option for the conclusion of contract must contain all the essential conditions of the main contract including the subject matter of the contract, which can be identified at the moment of acceptance. Also, the option for the conclusion of contract

contains the terms for acceptance. In case the term is not mentioned, it equals one year.

These provisions are, to a certain degree, similar to the concept of the preliminary contract, however the Law states the principal difference between the option for the conclusion of contract and the preliminary contract.

Thus, the preliminary contract obliges both parties to conclude the main contract and in case one of the parties refuses to conclude the main contract, the other party has the right to file a lawsuit to force the other party to conclude the main contract. According to the option for the conclusion of contract, after it is accepted, the party has the right to conclude the main contract without the need to use compulsion.

The option for the conclusion of contract provides the possibility to assign the right under the option to the third party, if the option does not stipulate the contrary.

The option for the conclusion of contract also allows the designation of option premiums as payment for the right to acceptance, which can be placed under certain conditions, including conditions which are dependent on the will of one of the parties.

In our opinion, this provision makes the option for the conclusion of contract useful for drafting and

implementing option programs for the acquisition of shares by the key employees of the companies as it allows the placement of the conclusion of the contract for the sale of shares under the condition of the achievement of certain indicators (KPI, valid labor agreement, etc.), which usually depend on the will of one of the parties.

Option contract

Unlike the option for the conclusion of contract, the option contract constitutes a separate type of contract model under which one party receives the right to claim fulfilment of the obligations (to perform the particular actions) under a contract which is already concluded, but not the right to conclude the contract.

Thus, according to the option contract, one party is entitled, within the specified period of time established by this contract, to demand that the other party fulfil the obligation (to pay money, transfer or accept property). In case of non-statement of the demand to fulfil the obligation within the specified term, the authorized party loses the right to claim, and the option contract is considered to be terminated.

The option contract, like the option for the conclusion of the contract, is non-gratuitous, unless otherwise specified by the parties. However, there is an issue which remains unclear with regard to the conclusion of a gratuitous option contract between commercial entities, taking into account the prohibition of gifts between them.

It can be stipulated within the option contract that the demand to fulfil an obligation under the option contract is considered to have been stated upon the occurrence of the particular circumstances established by the contract.

From our point of view, such a provision allows the further elimination of future risks connected with the earlier use of the concept of an "option contract" as a deal which was understood to be a conditional share purchase agreement, or a preliminary sale purchase

agreement within the framework of the implementation of stock option programs, prescribed acquisition of shares by the key employees of the company, which were concluded under condition of fulfilment of certain indicators (KPI, valid labor agreement, etc.), which usually depend on the will of one of the parties.

Thus, the inclusion of such contract models as the option for the conclusion of the contract and the option contract will provide legal recognition for the existing de facto relations of the parties to business transactions. There will also be the possibility to obtain the enforceability of the parties' rights under such contracts in the future.

We hope that you will find the information in this issue both interesting and useful. Our specialists are prepared to answer any questions you may have with regard to the contents of this issue.

Contacts

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