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Improvement of legal regulation of foreign economic transactions in the Republic of Uzbekistan

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ABSTRACT

The article deals with issues related to improving the legal regulation of foreign economic transactions in the Republic of Uzbekistan. It is determined that foreign economic transaction is a transaction in which one party is a foreign company or a commercial enterprise located in another state, the trade focused on the import or export abroad and to use in settlements with counterparty foreign currency. It was found out that some types of foreign economic transactions are not reflected in the national legislation of the Republic of Uzbekistan, namely distribute and forfeiting contracts.

The article notes that there are various problems associated with the incorrect formation of the terms of foreign economic transactions, their content and requirements, in particular when reflecting the applicable law, the arbitration clause, determining the advantages of the contract language, the application of non-state regulation.

It is concluded that it is necessary to regulate the definition of applicable law in relation to certain types of foreign economic transactions that are not reflected in the Civil code of the Republic of Uzbekistan, namely, in relation to distribution and forfeiting contracts, certain types of foreign economic transactions, internet auctions, internet contests or internet exchanges.

Based on the study of foreign experience and scientific and theoretical views, ways to improve legislation in the field of settlement of certain types of foreign economic transactions were investigated. Based on the results of the analysis, relevant conclusions were drawn and proposals were developed for the current legislation.

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Ўзбекистон Республикасида ташқи иқтисодий битимларни ҳуқуқий тартибга солишни такомиллаштириш

Калит сўзлар:
дистрибьютор шартномаси
форфейтинг шартнома
ҳуқуқни қўллаш
интернет-кимошди
интернет-танлов
интернет-биржа
инкотермс
нодавлат тартибга солиш.

АННОТАЦИЯ

Мақолада Ўзбекистон Республикасида ташқи иқтисодий битимларни ҳуқуқий тартибга солишни такомиллаштириш билан боғлиқ масалалар ёритилган. Ташқи иқтисодий битим – бу бир тарафи чет эл контрагент ёки бошка давлатда жойлашган тижорат корхонаси бўлган, битим харакати чет элга чиқариш ёки чет элдан олиб киришга каратилган, контрагент билан хисоб-китобларда чет эл валютасидан фойдаланиладиган битим тушунилади. Ташқи иқтисодий битимнингнинг айрим турлари Ўзбекистон Республикасининг миллий қонунчилигида, яъни дистрибьютор ва форфейтинг шартномалари акс еттирилмаганлиги аниқланди.

Мақола ташқи иқтисодий битимлар шартлари, уларнинг мазмуни ва талаблари, хусусан, ҳуқуқни қўллаш, арбитраж келишуви бандини акс еттириш, шартнома тилининг афзалликларини аниқлаш, нодавлат тартибга солиш меъёрларини қўллаш пайтида нотўғри шаклланиши билан боғлиқ турли хил муаммолар мавжудлиги қайд етилган.

Ўзбекистон Республикаси Фуқаролик кодексида акс еттирилмаган ташқи иқтисодий битимларнинг айрим турларига, яъни дистрибьютор ва форфейтинг шартномага, ташқи иқтисодий битимларнинг айрим турларига, интернет- кимошдиларга, интернет-танловларга ёки интернет-биржаларга нисбатан ҳуқуқни қўллаш амалдаги қонун таърифини тартибга солиш зарур, деган хулосага келинади.

Хорижий тажриба ва илмий-назарий қарашларни ўрганиш асосида ташқи иқтисодий битимларнинг айрим турларини тартибга солиш соҳасидаги қонунчиликни такомиллаштириш йўллари ўрганилди. Таҳлил натижалари асосида тегишли хулосалар чиқарилиб, амалдаги қонунчиликка оид таклифлар ишлаб чиқилди.

Совершенствование правового регулирования внешнеэкономических сделок в Республике Узбекистан

Ключевые слова:
дистрибьюторский договор
договор форфейтинга
применимое право
интернет-аукцион
интернет-конкурс

АННОТАЦИЯ

В статье рассмотрены вопросы, связанные с совершенствованием правового регулирования внешнеэкономических сделок в Республике Узбекистан. Определено, что внешнеэкономическая сделка представляет собой сделку, в которой одной из сторон является иностранный контрагент или коммерческое

интернет-биржа
ИНКОТЕРМС
негосударственное регулирование

предприятие, находящееся в другом государстве, действия сделки направлены на ввоз или вывоз за границу и использование при расчетах с контрагентом иностранной валюты. Выяснено, что некоторые виды внешнеэкономических сделок не нашли отражение в национальном законодательстве Республики Узбекистан, а именно дистрибьюторский и форфейтинговый договор.

В статье отмечается, что существует различные проблемы, связанные с неправильным формированием условий внешнеэкономических сделок, к их содержанию и требования, в особенностях при отражении применимого права, арбитражной оговорки, определения преимущества языка контракта, применение норма негосударственного регулирования.

Делается вывод о том, что необходимо урегулировать определение применимого право в отношения некоторых видов внешнеэкономических сделок не нашедшие свое отражение в Гражданском кодексе Республики Узбекистан, а именно в отношении дистрибьюторского и форфейтингового договора, некоторые виды внешнеэкономических сделок, интернет-аукциона, интернет-конкурса или интернет-биржи.

На основе изучения зарубежного опыта и научно-теоретических взглядов были исследованы пути совершенствования законодательства в области урегулирование некоторых видов внешнеэкономических сделок. По итогам анализа были сделаны соответствующие выводы и разработаны предложения в действующее законодательство.

INTRODUCTION.

Recently, in the process of globalization of international trade and economic cooperation, an increase in imports and exports based on concluded foreign economic transactions plays an increasing role in the development of foreign economic relations all over the world. In this regard, the number of exports is growing in the world according to statistics in the total volume of foreign trade of goods of the EEC member states with third countries for January – December 2019 it amounted to $ 733.1 billion, including exports of goods – $ 459.3 billion, imports – $ 273.8 billion and in mutual trade, it amounted to 61 billion us dollars [1]. In Uzbekistan, in January-December 2019, foreign trade turnover amounted to 42 billion 178 million dollars, and compared to the same indicator in 2018, it showed an increase of 26.2% [2]. Trade among developing countries represents a significant portion of international trade in goods, accounting for $ 5.5 trillion in 2018, or 28 percent of world trade [4]. For example, according to the Unified information system for foreign trade operations database in the Republic of Uzbekistan, such contracts as export, import, centralized export contract, exchange contract for import and export, consignment export contract were registered for the period 2016 – 41,857 contracts, in 2017 – 48,206 contracts, in 2018 – more than 64,000 contracts have been registered [11], i.e. we can see an increase in the number of different types of foreign economic contracts.

Despite the fact that COVID-19 coronavirus infections were spread all over the world at the beginning of 2020, foreign economic contracts have not stopped, but their volume has decreased. Although there were problems associated with the inability to fulfill obligations under previously concluded foreign economic contracts. This, in turn, has also had a significant impact on the foreign economic relations of many countries due to the established internal restrictions. All this demonstrates the need to pay special attention to the conclusion of foreign economic transactions and improvement of legal regulation in this sphere.

Particular attention is paid to research on the expansion and deepening of international economic relations, which is one of the main directions of development of the state's economy, as well as the requirements of clear legal regulation of foreign economic transactions as a legal form of foreign economic activity. In particular, it is important to unify national and international legislation, eliminate existing contradictions, it would be more appropriate to regulate through the legal definition and significance of foreign economic transactions, improve the legal regulation of foreign economic transactions in international trade turnover and the influence of non-governmental regulators.

The issues of legal regulation of foreign trade transactions have become even more relevant in our country, namely, in terms of requirements to foreign trade contracts, such as import and export contracts. The strategic importance of ensuring the country's economic growth is to strengthen the work on reforming and liberalizing the economy. Modernizing the sectors and areas, increasing the level of their competitiveness and developing their export potential should constantly be in the focus of our attention [3]. In turn, Uzbekistan seeks to most clearly regulate foreign economic activity, which is associated with the differences in approaches to the conflict of laws regulation of obligations arising from foreign economic transactions and the settlement of certain types of foreign economic transactions on the basis of the adopted Concept of improving the civil legislation of the Republic of Uzbekistan, approved by the President of the Republic of Uzbekistan on April 5, 2019 № 5464, which provide for the elimination of legal gaps and conflicts in the legislation of the Republic of Uzbekistan.

MATERIAL AND RESEARCH METHODS.

In order to solve the tasks, we used scientific and special methods of scientific cognition: historical, systematic, specific sociological, comparative-legal, analytical, content analysis, logical-legal, technical-legal and others. Taken together, all these methods allowed to ensure, to a certain extent, the reliability and credibility of the research results in a scientific article. The analysis of norms of legislation of the Republic of Uzbekistan and practice of a number of foreign countries, doctrinal works, scientific articles in the field of private international law and contract law were used as empirical basis.

RESULTS AND ITS DISCUSSION.

In the development of international economic and trade relations for each state and international community is important to improve the legal regulation of foreign economic transactions in national legislation and international contract.

In turn, differences in the norms of national legal systems applicable to foreign economic transactions complicate the process of their conclusion and execution. Removal of these obstacles by creating a uniform legal regime will contribute to the successful development of international trade. International organizations (UNCITRAL, UNIDROIT, ICC, etc.) play an enormous role in this regard.

Despite the fact that many international legal instruments have been adopted and ratified fully or with reservation by not all countries, this gap is partially filled by the development and adoption of such non-government regulators (sometimes called unofficial codifications), which are not authorized by the state, but can operate within the established legal order only because the state allows the use of such rules within its jurisdiction.

It should be noted that the conclusion of various types of foreign economic transactions is facilitated by the submission of proposals for their conclusion through an offer and acceptance of the offer. This procedure is reflected not only in the national laws of many countries, but also in international treaties and non-state regulators. Therefore, special attention should be paid to the pre-contractual process when parties to foreign economic transactions are parties to different legal systems. In this case, counterparties may invest different content in concepts related to the contracting procedure based on the concepts developed by their legal systems.

Certain difficulties arise in the conclusion of contracts to which the counterparties from different countries are parties, but it should be remembered that in foreign economic transactions with countries that provide for the theory of «mailbox» (sending an electronic message of acceptance of the offer and the place of transaction is the place of acceptance), provide for the sending of acceptance in writing and the place of conclusion is considered the place of acceptance. However, if the acceptance is made under the condition that the offeror must agree to different or additional conditions contained in the acceptance, then the contract is considered not concluded. Depending on how the issue of form conflict is resolved and whether the terms and conditions contained in the acceptance must be different or additional to the offer, it is common practice in legal doctrine to distinguish three theories.

The theory of «last shot» (last word – last shot rule), according to which the conditions of the last form are applied [6, 102-103], has a positive effect. It consists in the fact that the theory is easy to apply in practice, because it shows the actual result of the will of the parties, recognizing the conditions of the last form of the conditions included in the contract. However, this situation often leads to a «ping-pong» effect, because each of the parties, knowing this rule, tries to make it the last proforma, as a result, it causes a large flow of documentation between the parties.

The theory of the «first shot» (first word – first shot rule), according to which the conditions of the first proforma are applied [5], is embodied in particular in § 2-207 para. 1 of the UCC USA, according to which a contract is not considered concluded «if the acceptance is subject to the condition that the provider must agree to additional or different conditions contained in the acceptance».

The «knock-out rule» theory assumes that conflicting proforma provisions are excluded and the contract is deemed to have been concluded under identical conditions

[6,103]. In the UCC USA, the theory of knock-out is mostly accepted, but with its own peculiarities (unlike, for example, the Vienna Convention, 1980).

The theory of «knock-out» has disadvantages, because conflicting conditions are not included in the contract, and the parties, determining the content of the contract, choose the most favorable conditions for themselves; in case of conflict between them, the counterparties will be forced to follow undesirable or minimum (in most cases) requirements provided by the rules of applicable law; for example, in case of conflict between arbitration clauses, it may turn out that the dispute will be subject to review by a state court.

When entering into foreign economic transactions with foreign partners, you should know what theory is applicable in that country to determine the terms and timing of the other party's consent to the foreign economic transaction.

There is a way of entering into foreign economic transactions through *auctions, tenders or exchanges* through which certain types of goods are acquired or works (services) are performed, but there is no unified international legal regulation, but only partially national legal regulation reflected in individual legal acts of the country. It is proposed to develop an international legal act regulating issues related to conclusion of such types of foreign economic transactions.

In accordance with the legislation of the Republic of Uzbekistan minimal requirements to foreign trade contracts and invoices are provided for in the following legal acts:

– Regulation on registration of export contracts approved by the Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated 21 December 2017 № 1006;

– Regulation on the order of carrying out expertise and registration of contracts (Annex № 3 to the Decree of the President of the Republic of Uzbekistan dated February 20, 2018 № PP-3550 «On measures to improve the order of carrying out expertise of pre-project, project, tender documentation and contracts»);

– Regulation on order of exporting fruit and vegetable products, approved by the Decree of the Cabinet of Ministers of the Republic of Uzbekistan dated February 23, 2019, № 163;

– Regulation on the order of monitoring foreign trade operations (Appendix № 1), approved by the Decree of the Cabinet of Ministers of the Republic of Uzbekistan № 283 of May 14, 2020.

When drafting and concluding foreign trade transactions, the parties should first study not only national legal regulation, but also international legal regulation, and in the absence of their legal regulation, use the norms of non-state regulation, i.e. international trade customs developed by authoritative international organizations and recognized throughout the world. When drafting foreign economic transactions, the use of template contracts should be avoided as far as possible, and if they are used, the necessary clarifications, changes, additions, adjustments to the terms of the contract, the definition of the applicable law, arbitration clause, the language of the contract, the correct application and reflection of non-state regulators, such as, for example, INCOTERMS, UNIDROIT Principles, Uniform Customs and Practices for Documentary Credits –UCP, Uniformed Rules for Collection –URC with edition and etc.

Some types of foreign economic transactions, which do not have a unified international legal regulation, relate to franchising, distribution and forfeiting contract.

So far there is no unified international legal regulation of this type of distribution contract, as well as its unified international definition. In addition, under the laws of many countries, a distribution contract is not subject to special legal regulation. Thus, this type of foreign trade transaction is widely used by manufacturers (suppliers) to organize the sale of their goods in a certain territory, in particular, when for some reason it is difficult to establish a branch network in that region. For example, distributorship in the USA gives a distributor the right to enter into a relationship with several manufacturers (suppliers) of similar goods, which is considered a convenient alternative to franchising and agency contracts [10, 81].

In the United Kingdom, in practice, a distribution contract is referred to as a sole right of sale agreement, which provides that the seller (English manufacturing or trading firm) grants the buyer (foreign firm) sole rights to trade in a limited area in goods of a certain kind [15,132].

In the Netherlands, a distribution contract is a contract whereby one party (distributor) acquires goods from a manufacturer or other supplier under a contract of sale and undertakes to distribute and resell those goods to third parties on its own behalf and at its own expense.

In France, a distributor contract takes the form of an agreement between a supplier and a distributor, whereby the supplier delivers the goods and services to the distributor and the distributor promotes them within a certain territory [14, 37].

In countries where there is no specific regulation of distribution contracts (which is the case in most countries including the United Kingdom, United States, France, Netherlands, and Germany), their regulation is based on general rules of obligation and contract law. According to Romanova, for example, in France, where there is no national regulation of distribution contracts, the general rule is that distribution contracts should not contradict the basic principles of the contract, especially the principle of freedom of contract, according to which the parties are free to assume any obligations (Articles 1101 - 1369 of the French Civil Code) [14, 38]. In some countries, distributors are protected by jurisprudence by analogy or general principles of law [7, 388].

The most extensive body of distributor regulation legislation has developed in Latin American countries, where distributor regulation can be roughly divided into three groups: 1) States in which the rules governing the distributorship contract are contained in the Civil Code (Federative Republic of Brazil); 2) States in which the distributorship contract is regulated by the Commercial Code (Republic of Guatemala); 3) States in which the distributorship contract is regulated by a special law governing the legal situation of the parties and the relations between them (Republic of Paraguay; Free Associated State of Puerto Rico; Republic of Honduras).

Unlike Latin American countries, this is not the case in the European Union. Only the Kingdom of Belgium has separate legislation governing distributors and manufacturers; other countries of the European Union regulate the agency contract, and there is no separate legal regulation of the distributor contract [8, 15].

Due to the lack of legal regulation of the international distribution contract, problems arise in law enforcement practice. The court's determination of the applicable

rules depends on how it qualifies the relationship between the parties to the dispute. In each case, the court evaluates the distribution contract on the basis of its content, as well as the models of civil law contracts provided by law. Having established the features and elements of such a contract, which are peculiar to one or another contract types, types or subtypes, the court qualifies it in the right way. If the court fails to establish the presence in the contract of elements typical for the contractual constructions named in civil law, the court recognizes a distribution contract as independent, concluded on the basis of the principle of freedom of contract [12, 563-566].

Since there is no international legal regulation of a distribution agreement, the means of regulating it from a non-governmental perspective deserve special attention. These include the ICC International distributor agreement Manual of 1988 and the Model distributor contract of 1993, as well as the Principles of European Law: commercial agent, franchise and distribution and the Model Rules of European Private Law, which are intended to regulate distribution contracts concluded in EU countries.

The legislation of the Republic of Uzbekistan also lacks the legal regulation and definition of the distribution contract, however for the purpose of consolidation and development of the distribution relations we should note that the given agreement represents not automatic mixing of the duties characteristic for some contracts (the contract of compensatory rendering of services, the contract of storage, the agency contract, the contract of delivery and others), but a complex of the elements pursuing the certain purposes: preservation of business reputation of the supplier, strengthening of positions of the supplier on the goods and services.

The legislation of the Republic of Uzbekistan, as well as in many states, also lacks national legal regulation of forfaiting contact, but only provides for non-state regulation, reflected in the Uniform Rules for Forfaiting, developed with the participation of the International Forfaiting Association (IFA), together with model agreements (ICC Uniform Rules for Forfaiting Including Model Agreements, publication № 800 (URF 800), adopted by the International Chamber of Commerce in 2013.

URF 800 is designed for a very wide range of applications, which implies their use for domestic and international forfaiting transactions, both in the primary and secondary markets. The URF 800 sets out a broad approach to understanding forfeiting. According to Art. 2 URF, forfeiting is the sale of the right of payment claim from the importer to the forfeiter without recourse.

With the development of foreign economic and foreign trade relations in the Republic of Uzbekistan, it is important to conclude foreign economic transactions only in the contract for the international sale of goods and apply the international trade rules INCOTERMS. In other types of foreign economic transactions, the rules of INCOTERMS are not applied, but only on the basis of an international contract of sale of goods, based on the trade term chosen by the parties, contracts of carriage and insurance are concluded.

The reference in the contract to INCOTERMS does not mean that their provisions in the interpretation of the contract will take precedence over the conditions expressly stated in the contract. In order to avoid disputes, it is recommended that «the contract should expressly provide that the provisions of INCOTERMS shall apply to the interpretation of the underlying conditions to the extent that the contract does not specify otherwise» [13, 138].

The existing international conventions governing certain types of foreign trade transactions are not ideal, they have flaws that are partly mitigated to the extent possible by non-state regulation. Since the role of international agreements may diminish over time, it is necessary to seek new alternative sources of substantive regulation of foreign economic transactions.

CONCLUSION.

In conclusion it can be argues, that disclosure and investigation of trade secrets is an actual problem of our time. This is due to a number of reasons.

Namely:

1.When drafting foreign economic transactions, it is necessary to correctly apply and reflect the important terms of the contract. Therefore, it is necessary to adopt a special Law of the Republic of Uzbekistan «On foreign economic contracts», providing for the requirement to the content and structure of all types of foreign economic transactions, which will reduce the number of regulatory legal acts, providing for minimal requirements to import and export contracts.

2.Clarification of the situation may be facilitated by adoption of addition to the Civil Code of the Republic of Uzbekistan in the form of new chapter regulating distribution contracts. It should provide for the concept of a «distribution contract», the specifics of its conclusion, the privileged position of the distributor, restriction of the rights of the supplier and the distributor, performance, sub-distributor, termination and liability of the parties to the distribution agreement, etc. [9, 85-90]

3.Subject to applicable laws and regulations, and the absence of certain definitions of foreign trade transactions, author's definitions of foreign trade transactions, foreign trade contract, international distribution and forfeiting contract have been developed.

4.Due to the absence of legal regulation of the forfeiting contract definition in the legislation of the Republic of Uzbekistan, it is proposed to adopt an addition to the Civil Code of the Republic of Uzbekistan, in particular, to introduce a new chapter regulating forfeiting contract, providing the definition of «forfeiting contract», rights and obligations of its parties, peculiarities of conclusion, liability of the parties under the contract, etc. It should be noted that the contract of financing under assignment of monetary claim, reflected in chapter 42 of the Civil Code of the Republic of Uzbekistan, provides for regulation of factoring contract, but not forfeiting, as they differ from each other.

5.With the development of trade relations and the adoption of a new version of the Rules of INCOTERMS, there is a need to define new terms of delivery of goods and features of their application in foreign trade transactions, as well as their introduction in the norms of domestic legislation. Therefore, we consider it expedient to supplement the provisions of the Civil Code of the Republic of Uzbekistan on sale and purchase of goods with some norms relating to the basis of delivery, similar provisions contained in INCOTERMS 2010: DAT (Delivered at Terminal) – delivery to the terminal (this legal definition is absent in the legislation of Uzbekistan), as well as with other basic conditions of delivery of goods, absent in the legislation of Uzbekistan, taking into consideration the emergence and development of innovative technologies, new types of international transportation.

6.Due to the absence of establishment of conflict of laws regulation at either international or national legal level, namely the definition of applicable law, such types of

transactions as international forfeiting, factoring, franchising and distribution agreement have started to apply. In order to avoid problems of law enforcement it is necessary to regulate the definition of applicable law for these types of contracts, for example, fixing them in Part 1 of Art. 1190 of the Civil Code and adding the following content: «Distributor – in the contract of distribution; financial agent (factor) - in the contract of financing under the assignment of a monetary claim», as well as part 2 of Art. 1190 and adding the following content to the Civil Code: «the forfeiting contract – in the absence of choice of the parties applicable law is governed by the law of the country where the main place of business of the exporter (seller). The right of the forfeiter country in the absence of choice of applicable law by the parties shall be regulated as the relations arising between the forfeiter and the importer (buyer under the original contract), the law of the country of the seller shall also apply to the original contract between the exporter and the importer».

7.The legislation of the Republic of Uzbekistan does not regulate the definition of the country where the Internet auction, Internet competition or Internet exchange is held. Therefore, it is advisable to supplement the provisions of part 1 of this Article. 2, Article 1190 of the Civil Code of the Republic of Uzbekistan, taking into account the right of the country as a place of receiving electronic messages by the organizer of Internet auction, Internet contest or Internet exchange. It is suggested to consider the place of receiving electronic messages by the organizer as the country where the organizer's enterprises are located or incorporated and where the electronic message has got into the information system controlled by the organizer of the Internet auction, Internet contest or Internet exchange.

8.It is recommended to apply the principle of «country-of-origin» for cross-border electronic commerce transactions in the B2B sector, and the principle of «country-of-origin» in the B2C and C2C sectors.

9.In order to improve the legislation of the Republic of Uzbekistan in the sphere of non-state regulation of foreign economic and giving legal effect to the norms of international trade custom, the Article 1190 of the Civil Code of the Republic of Uzbekistan should be supplemented with the part four, which envisages application of business custom, existing in relation to the corresponding trade terms.

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