

APPROVAL CONTRACT

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Abstract. This scientific article is aimed at studying the features and legal nature of the approval contract. It is established that the approval contract is a mixed contract, including elements of other civil law contracts. The author gives the notion of approval contract, which is referred to as a test contract in foreign law. The general methodological basis was the general scientific (dialectical) method of cognition, comparative legal, logical methods that allowed us considering the problems of development of approval relations in the system of civil contracts. The theoretical provisions formulated in the article can be used in law enforcement practice, generalization of judicial practice, as well as in training courses "Civil Law" and "Contract Law".

Keywords: approval contract, transaction, mixed contract, contract law, civil law, Civil Code of the Russian Federation.

1 Introduction

A characteristic feature of the Russian contractual system is that it does not stand still, but is constantly expanding, adding new contractual structures to its structure, therefore some completely new types of civil law contracts arise. Such improvement is associated primarily with the development of the economy and the business sector, with general technological progress, as well as with the development of information and telecommunication technologies.

The approval contract has been formed relatively recently and just begins to go through its own way of historical and legal development as an independent type of contractual relationship.

The contract is presented by one of the main institutions of civil law, which, in accordance with the Civil Code of the Russian Federation (hereinafter - the CC RF), is understood as "an agreement of two or more persons on the establishment, amendment or termination of civil rights and obligations". Binding rules, the violation of which leads to the invalidity of the concluded contract, are established for all the contracts by the peremptory norms of civil law. At the same time, civil law to a greater extent provides for freedom of behavior of the subjects of civil legal relations, and the contract in this sense may provide for a number of conditions and provisions that the parties have the right to establish independently.

As one of the principles of a civil law contract is its freedom. As we know, the principle of freedom is quite extensive, and is represented by:

- the possibility of choosing the opposite subject of contractual relations;
- the ability to choose the conditions for conclusion, execution, as well as termination of the contract;
- the impossibility of exerting pressure on the counterparty and coercion to conclude a contract;
- the ability of the parties to choose the place, as well as the time when the contract conclusion will occur;
- the possibility of choosing the contract's form;
- the possibility to choose any contractual design, including the possibility of concluding a mixed or unnamed contract, etc (Bondarenko, 2016).

2 Methods

An approval contract may be considered a mixed contract, which contains elements of several contracts stipulated by law or other regulatory legal acts. Contracts, the constituent part of which are elements of other contracts, shall not be qualified as named but as mixed contractual structures (Chelyshev & Ogorodov, 2007).

Another characteristic feature of a mixed contract is that it provides for several obligations inherent in different contracts.

In most cases, the approval contract is concluded on the buyer's part in order to verify in practice the quality of the goods sold by a particular organization, determine the effectiveness of its use in the framework of economic activity, and finally establish itself in its choice. On the seller's part, this contract is concluded in order to increase sales by transferring equipment to its potential customers, for the so-called demo use for a short period, with its subsequent sale.

The most common sub-type of the approval contract is approval of medical equipment. Health facilities have the right to conclude an approval contract for medical equipment. The issue of concluding a contract is not associated with contract law, because the purchase of goods, performance of works or provision of services under the contract does not occur. That is, this contract will be concluded in accordance with the general civil order (Liles, 2013).

According to the approval contract, the contractor undertakes, on the customer's instructions, to carry out approval (testing) of the equipment specified in the contract at a specific place and time, and the customer undertakes to create conditions for approval (testing), accept and pay for the work results.

Based on the above concept of the contract, we can determine its subjective composition. Thus, taking into account the absence of any restrictions in the current legislation, any subject of civil legal relations can be a contractor and a customer. It can be both individuals and legal entities, as well as public law entities. The only limitation of the approval contract regarding its subject composition may be stipulated in the contract itself.

Thus, the approval contract is a relatively new, but extremely multifaceted type of contractual relationship; therefore it is necessary to conduct scientific research related to the conclusion and execution of this contract.

3 Results and Discussion

By its legal nature, the approval contract is bilateral, gratuitous or onerous, consensual, as well as synallagmatic.

Contracts concluded between two parties are called bilateral, and, as a rule, after conclusion, each of the parties has corresponding mutual rights and obligations (Dolinskaya, 2017). A bilateral contract implies that it contains only one obligation that applies to the rights and obligations of the parties to this contract.

Thus, the totality of rights and obligations is mutual in nature, and satisfaction by the judicial authorities of the applicant's requirements is possible only when the plaintiff fulfills his/her/its obligations and the defendant does not fulfill or improperly fulfills them.

The gratuitousness of this contract consists in the performance by one party of the equipment test without a fee specified in the contract (Braginsky & Vitryansky, 2009). However, there is a difference in the fact that the provided goods are transferred for

familiarization with them and their functional component - with a further possibility of their sale.

Approval involves the operation by the contractor of the equipment that is the subject of the contract, and the further receipt by the customer of the contractor's conclusion on the equipment operation results, which is another confirmation of non-gratuitous nature.

In addition, the non-gratuitous nature of the approval contract may occur in cases where the parties to the contract are the parties engaged in entrepreneurial activities (Savelyev, 2017). Given the likelihood of acquiring the goods by the customer in the future (the occurrence of legal relationship for the purchase and sale), this contract is automatically made non-gratuitous.

The consensus nature of an approval contract means its conclusion after agreement and achievement of all essential conditions, and preparation in the form prescribed by law for this contract.

The vast majority of civil contracts in the Russian Federation are of a consensual nature. The main requirement for the conclusion of a consensual contract is the consent to its conclusion by both parties to these contractual relations.

The main basis of consensual contracts is the mutual trusting relationships of its parties, which is expressed in the fact that they promise each other to carry out certain actions, rely on each other, and hope that their counterparty will show honesty (Dung & Thang, 2009).

As it was already established earlier, the establishment in the contract of the terms and conditions for the provision of goods for approval makes it mixed (including the elements of other civil law contracts): preliminary - in terms of purchase and sale, and main - in terms of approval. It is important to indicate that the ownership of the goods is not transferred during approval in such a contract. It is advisable to formalize the transfer of goods for approval by an acceptance certificate, the form of which shall be approved in annex to the contract.

Having gathered judicial practice at that time, the judicial board for civil cases of the Supreme Court of the Russian Federation concluded that the courts, as part of their activities for the consideration and resolution of disputes, shall primarily consider the content and nature of the contract, and not its name.

4 Summary

To determine the place of the approval contract, it is necessary to distinguish it from other civil law contracts, such as: loan contract; lease contract; sales contract; contract agreement; copyright contract; contract for research work.

Comparing the approval contract with the above contractual structures, we note that the approval contract is quite close to the loan contract in its essence.

These contracts are similar within their facilities, which are individually defined things that are not consumed during their operation. In addition, both contracts are aimed at transferring the property for temporary use to the second party to the contract.

They are similar in many aspects of the legal nature, but there is one significant difference between them: on the basis of the definition, a loan contract is a contract providing for the gratuitous use of property, and its characteristic feature is that the lender transfers the thing without receiving any consideration from the borrower. Therefore, a loan contract is mainly used in areas not related to the commercial and entrepreneurial activities of different entities.

In turn, the approval contract, as we have already noted, may be non-gratuitous.

In case of lease contract, such questions do not arise, because the concept itself refers to the lessee's obligation to pay for temporary possession and use, i.e. it is non-gratuitous.

But, despite the possibility of an approval contract being reimbursable, the non-gratuitous nature is different for this contract (Whittaker, 2001). In the first case, non-gratuitous nature implies that the lessor receives payment for the thing transferred to the lessee; and in the second case, the contractor agrees to transfer the work results to the customer, and the customer agrees to pay the contractor for the works performed and accept their result.

As part of the approval contract, the contractor has the possibility of subsequent equipment acquisition, which makes it similar to the sales contract. However, the significant difference lies in the fact that under the sales contract the thing is transferred to the other party on the basis of ownership, and a certain amount is paid for it, which is not stipulated in the approval contract. Compared to other contracts, the main feature is the equipment test; however, clauses on the possibility of further acquisition of approved equipment may be added to it by agreement of the parties. By the way, these items are not binding, because the equipment may not suit the contractor after testing.

Consequently, the sales contract and the approval contract shall not be equated with each other, even though there are certain similarities between them

Approval has a special similarity to the contractual design with the contractual agreement, according to which the contractor has an obligation to perform certain work on the basis of the task provided by the customer, and the customer, in turn, has a counter obligation to accept the work results and pay for it (Panova, 2016).

If we turn to the legal nature of this contract, we will see that it, like the approval contract, is bilateral, onerous, consensual, as well as synagogmatic. However, among all the similarities, the distinguishing features of the contract agreement are as follows:

- firstly, work performance by the contractor is associated with the occurrence of a materialized result determined by the contract, which may not be stipulated in the approval contract;

- secondly, upon completion of work, the contractor shall transfer to the customer the work results, as well as all rights to it, and in case of approval contract, information on the tests performed can remain with the contractor and be used at its own discretion.

The characteristic of the copyright contract allows finding features that are distinctive from the approval contract. Thus, its subject is a certain work created by the author and transferred to the customer, while the subject of the approval contract is the equipment testing, and transfer of its results to the customer, in cases established by agreement of the parties.

And finally, we can find certain elements of the contract for the implementation of research work in the approval contract; for example, conducting research work for the customer's needs, accepting the work results and their subsequent payment.

However, when the contractor carries out approval for its own needs, the contract for the implementation of research work cannot be applied (Lepekhova, 2018).

Thus, while studying the concept and the distinctive features of the approval contract, we raised some controversial issues. For example, it is still not entirely clear whether the approval contract is a new isolated type of contract or not.

The approval contract may include a number of contractual constructions that regulate copyright relations, legal relations arising from research and development activities, legal relations for gratuitous use, rent, sale, contract, etc.

The above analysis of the relationship of the approval contract with a certain circle of contract, most similar in terms of legal regulation, convinces us that this contract and its terms and conditions for the most part cannot be settled by any specific contract known to us and contained in the CC RF.

Therefore, the most faithful are the positions that recognize the approval contract as an independent type of civil law contract.

5 Conclusions

The contract, under which the contractor undertakes, on the customer's instructions, to carry out approval (testing) of the equipment specified in the contract at a specific place and time, and the customer undertakes to create conditions for approval (testing), accept and pay for the work results, is called the approval contract.

By its legal nature, the approval contract is bilateral, gratuitous or onerous, consensual, as well as synallagmatic. Characteristic features include its mixed character. The contract elements are as follows: object, subjects, form of the contract, material and other conditions.

The most important source of legal regulation of the approval contract is the CC RF. It contains general provisions on this contract, and it is possible to determine the concept, terms of conclusion, execution and termination, rights, obligations and responsibilities of the parties, etc. based on its norms.

Thus, the regulation of approval relations is of a general nature, and no legislative act contains clear regulation of these relations, which indicates the need to create an extensive regulatory framework that would cover the contractual approval relations as fully as possible.

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