

Newsletter

The Supreme Court of the Russian Federation clarified application of general provisions of the Russian Civil Code on contract

February 22, 2019

Dear Ladies and Gentlemen,

At the end of the last year, the Plenum of the Supreme Court of the Russian Federation (the "**Supreme Court**") adopted the Ruling dated December 25, 2018 No. 49 "On some issues on application of general provisions of the Civil Code of the Russian Federation (the "**Civil Code**") on entering into and interpreting the contract" (the "**Ruling**") clarifying the general provisions of the Civil Code in relation to entering into a contract, its content, and interpretation.

This Ruling highlights essential practical issues on entering into a contract when making offer and acceptance, concluding a contract in legal proceedings as well as clarifies application of rules on public offer and preliminary contracts and representations. The Ruling maintains an approach to saving legal force of a contract when interpreting it. These rules have a practical use and will be useful for entrepreneurs in conclusion and performance of various contracts. In this regard, we would like to inform you of the key points of the Ruling.

1. Entering into a contract

The Supreme Court has confirmed the absence of necessity to perform all conditions of the offer before performance of the contract to recognize such actions as acceptance. Thus, the offer shall be treated as accepted in case of availability of the offer and commencement of performance of its conditions within the period specified in the offer.

2. Public offer contract

The Supreme Court clarified that loan agreements and voluntary property insurance contracts are not included in the scope of public offer contracts regulation.

Moreover, it has been noted that the contractor of a public offer contract is entitled to categorize consumers for establishing different

prices, in particular, based on objective personal characteristics. However, this categorization shall be introduced to consumers (for example, via a website).

The Ruling also covers the possibility of termination of a public offer contract unilaterally. A party is entitled to terminate or refuse to perform a public offer contract if the consumer violated its terms and there is a legal provision allowing such termination. Similar regulation is related to public offer agreements between entrepreneurs.

3. Preliminary contracts

The Supreme Court has divided preliminary contracts and sales agreements with a prepayment clause. Thus, if a contract includes a clause on payment of the whole price or its significant part before entering into a principal contract, it shall be qualified as a sales agreement with a prepayment clause. If there is no such clause, the contract shall be treated as preliminary contract.

Besides, a preliminary contract should not be registered even if the principal agreement requires such state registration.

4. Representations

The Supreme Court has determined that if representations have a direct link with a subject matter of the agreement, such representations shall be governed by the rules on representations and the respective type of contract. However, if representations do not have such link (for example, representations on the status of a party), they should be regulated by the rules on representations and liabilities for breach of obligations.

Moreover, the Ruling clarifies that a third party is entitled to provide representations if such person has an interest in the conclusion of a

contract. The third party's interest is presumed.

A witness cannot prove existence or contents of representations.

5. Entering into a contract in legal proceedings

Solving the gap in legislation, the Supreme Court explained that if a court rules to force the parties to enter into a contract, it shall state the terms and conditions of such contract in the ruling. The contract shall be entered into from the effective date of the court ruling without any additional actions (signing a contract, exchange of documents, etc.).

Besides, the Supreme Court determined the revision limits of terms and conditions of a dis-

puted contract by court. Thus, a court is entitled to amend and add terms of a contract, in particular, if there are case special circumstances.

6. Interpretation of contract

The Supreme Court eliminated an ambiguity regarding preferred interpretation of contracts. In particular, a priority of interpretation in favor of saving a contract has been fixed (if it possible to save the contract).

The Supreme Court has also outlined the need to interpret a contract in favor of a party who drafted provisions of the contract. Therefore, the Supreme Court presumes that such party is a person engaged in business activities that require specialized knowledge (for example, a bank in a loan agreement).

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If you have any questions, please, do not hesitate to contact ALRUD Partner



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Sincerely,
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