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**COMPARATIVE ANALYSIS OF RULES ON CONCLUSION
OF COMMERCIAL CONTRACTS. RUSSIAN CIVIL CODE
AND THE UNITED NATIONS CONVENTION ON CONTRACTS
FOR THE INTERNATIONAL SALE OF GOODS**

Abstract: *this article deals with comparative analysis of rules on formation of commercial contracts under Russian Civil Code and The United Nations Convention on Contracts for the International Sale of Goods. This article covers conclusion of commercial contracts by means of offer and acceptance including acceptance by conduct. The article also illustrates the issue of form of commercial contracts.*

Keywords: *Civil law, International private law, commercial law, contract law, conclusion of contracts.*

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**СРАВНИТЕЛЬНЫЙ АНАЛИЗ ПРАВИЛ ЗАКЛЮЧЕНИЯ
КОММЕРЧЕСКИХ КОНТРАКТОВ. ГРАЖДАНСКИЙ КОДЕКС РФ**

И КОНВЕНЦИЯ ООН О ДОГОВОРАХ МЕЖДУНАРОДНОЙ КУПЛИ-ПРОДАЖИ ТОВАРОВ

Аннотация: статья посвящена сравнительному анализу положений о заключении коммерческих договоров Гражданского кодекса Российской Федерации и Конвенции Организации Объединенных Наций о договорах международной купли-продажи товаров. В работе анализируются правила заключения коммерческих договоров посредством оферты и акцепта включая акцепт совершением действиями, а также исследуются требования к форме коммерческих договоров.

Ключевые слова: гражданское право, международное частное право, договорное право, заключение договоров.

The comparative analysis of rules on formation of commercial contracts will be based on comparison between provisions of Russian Civil Code and The United Nations Convention on International Sale of Goods, or the CISG.

The reason to choose the CISG for comparison is that this convention is considered as one of the most frequently applicable treaties in international private law. Drafters of the CISG had taken into account opinions of states from common law and civil law jurisdictions and reflected different approaches on sales law in its provisions. As a result, the CISG became one most successful instruments of harmonization in international private law [1, p. 27].

The CISG governs contracts for sale of goods if both parties to contract are from contracting states. Presently, there are 94 contracting states of the CISG [2] and there are thousands of cases when CISG was applied [1, p. 28]. That makes the CISG one of the most successful conventions governing conclusion international contracts for sale of goods. Therefore, comparative analysis of Russian Civil Code and CISG will allow to establish comprehensive research on legal aspects of conclusion of commercial contracts on domestic level in Russia and on international level.

Basically, in every jurisdiction, a procedure of conclusion of a contract includes one person's proposal to conclude a contract and other persons agreement to that

proposal. The proposal to conclude a contract is called an offer and agreement to the offer is an acceptance [3, p. 80].

It is provided in Article 432 of Russian Civil code that the contract shall be concluded by way of forwarding the offer and of its acceptance by the other party. It should be noted that a validly made offer binds offeror to conclude a contract with person that gives a valid acceptance.

Pursuant to Art. 435 of the Russian Civil code not every proposal to conclude a contract would be considered as an offer and thus binding for the offeror. Such proposal should be directed to one or more specific persons, it should reflect the intention of the offeror to be bound in case of acceptance and it also should contain substantial terms of a contract [4, art. 435].

Art. 14 of the CISG contains identical requirements for the offer. In addition, the CISG states that the offer should contain the goods and expressly or implicitly fix or make provision for determining the quantity and the price. These conditions considered as a substantial for contracts for sale of goods and Russian civil code provides identical requirements for this type of contracts. Thus, both Russian Civil Code and CISG stipulates that indication of goods and the price should be included in offer [5].

The acceptance under Russian civil code is the response of the person, to whom the offer has been addressed, about its being accepted [3, p. 81]. Pursuant to Art. 18 CISG, acceptance is a statement of the offeree indicating its assent to an offer. The provisions on both sources of law on acceptance are very similar.

Acceptance generally understood as being communicated to the offeror in written form or orally. Moreover, both Russian Civil Code and the CISG recognize acceptance by conduct. If an offeree does not communicate its acceptance to the offeror but instead initiates performance of the conditions indicated in the offer, such conduct should constitute acceptance [6, p. 157]. Acceptance by conduct may include dispatching of goods, performance of services or payment of the price, etc.

It is a general requirement that a contract should be made in written form. However, there are some exceptions from this rule.

As for the contracts between legal entities and between individuals and legal entities, such contracts should be concluded in written form [4, Art. 161].

In case of a dispute concerning conclusion of a contract, a party claiming its existence loses rights to provide witness statements to prove its existence but may rely on documents and other evidence [4, Art. 162].

Russian civil code also stipulates, that for a certain type of contracts, if parties fail to conclude a contract in written form, this would lead to invalidity of the entire deal. That means that parties would not be bound by any provisions of contract concluded orally at all. This would be true for a contract for sale of real estate [4, Art. 550].

The CISG was drafted with purpose to stimulate and to simplify international trade. For that purpose, it does not provide such strict requirements on form of the contract.

Under CISG, a contract may be concluded orally. And in case of a dispute, a party requesting declaration of conclusion of a contract may use a wide list of evidences proving conclusion of a contract. This may include email exchanges between the parties, witness statements, references to conduct of parties and different documents, including invoices, letters of credit, bills of landing, etc [7, p. 19].

This indicates that the CISG follows a less strict approach towards form requirements, while Russian Civil Code requires all commercial contracts to be in written form.

Therefore, the rules on formation of commercial contracts of Russian Civil Code and of the CISG are considerably similar. Both sources of law stipulate that the contract is being concluded by means of offer and acceptance. Acceptance may be communicated or may occur by performance of the contract. However, while CISG does not require written form for contracts, under Russian civil code, all commercial contracts should be in written form. In some cases, failure to conclude a contract in written form would lead to its invalidity.

This difference is explained by the fact that CISG is an international instrument focused on stimulation of international trade between commercial entities, while

Russian Civil Code is a domestic source of law which reflects public policy of Russian federation towards strict requirements for operation of commercial entities.

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