Types of International Commercial Agreements and Their Legal Regulation

Associate professor **Olga TATAR**[1]

Abstract

The purpose of writing this article is to classify international commercial contracts on various grounds. First, depending on the subject of the international contract: 1) specific contracts for international investments; 2) international contracts for the sale of goods;3) international lease agreements; 4) international financial leasing agreements; 5) international factoring agreements; and 6) international contracts, etc. Secondly, we can distinguish simple international agreements (for example, an international sale and purchase agreement), as well as complex (mixed and unnamed). The latter are becoming more widespread in international trade. European countries carry out legal regulation of this kind of contracts both within the framework of civil law, trade law, tax law, as well as special legislation. So, among the most common in practice mixed (complex) foreign economic agreements are international leasing, franchising, distribution, factoring agreements, investment agreements, etc. Depending on the nature of the delivery and the specifics of the relationship between counterparties: 1) an international (cross-border) contract with a one-time delivery of goods, after the execution of which legal relations between the parties to the transaction terminate; 2) an international (cross-border) contract with a periodic regular supply of goods from the seller to the buyer within a certain period. The methods used in this article were: comparative legal, logical, historical, didactic, imperial.

Keywords: *classification of international commercial contracts, international investments, international regulations, obligations, contract structure, contract specifics*.

JEL Classification: K15, P45

1. Introduction. Types of international commercial agreements

The following classification of international commercial agreements can be made. First, depending on the subject of the international contract: 1) specific contracts for international investments; 2) international contracts for the sale of goods; 3) international lease agreements; 4) international financial leasing agreements; 5) international factoring agreements; and 6) international contracts, etc. Secondly, we can distinguish simple international agreements (for example, an international sale and purchase agreement), as well as complex (mixed and unnamed). The latter are becoming more widespread in international trade. European countries carry out legal regulation of this kind of contracts both within the framework of civil law, trade law, tax law, as well as special legislation[2]. So, among the most common in practice mixed (complex) foreign economic agreements are international leasing, franchising, distribution, factoring

[1] Olga Tatar - Faculty of Law, Comrat State University, Republic of Moldova, oleatatar@mail.ru. ORCID ID: 0000-0003-2158-006X.

[2] Tatar, O., *Historical and Theoretical Aspects of Unnamed Contracts*. Monograph. Chisinau: T. Print. 2019. p. 152.

agreements, investment agreements, etc[3].

S. V. Nikolyukin[4] distinguishes the following types of contracts for foreign trade purchase and sale:

Depending on *the nature of the delivery* and *the specifics of the relationship between counterparties:*

- an international (cross-border) contract with a one-time delivery of goods, after the execution of which legal relations between the parties to the transaction terminate;

- an international (cross-border) contract with a periodic regular supply of goods from the seller to the buyer within a certain period.

These types of contracts can have both short and long term of execution, and their main difference lies in the specifics of the relationship between the participants;

Depending on *the form of payment*.

- an international (cross-border) contract with payment in cash, which provides for settlements in a certain currency agreed by the parties using the payment method and form of payment specified in the contract;

- an international (cross-border) contract with payment in commodity form, which provides for the sale of one or more goods with the simultaneous purchase of another goods from a counterparty. It is important to note that settlements in foreign currency are not performed. Such contracts include commodity exchange and compensation agreements;

- international (cross-border) contract with payment in mixed form. In such contracts, payment can occur partly in cash, partly in commodity form. For example, in such complex contracts as turnkey construction, where the supplier's obligations can combine a variety of supplies and services, and also include the fulfillment of obligations after the completion of the object, such as personnel training, maintenance and supervision of the operation of the object;

Depending on *the nature of the delivery:*

- an international (cross-border) contract with a one-time supply, providing for the delivery by one party to the other of the amount of goods agreed between them by a certain date specified in the contract. Most often, after the parties have fulfilled their obligations, the legal relationship between them terminates;

- an international (cross-border) contract with periodic delivery, providing for the regular periodic delivery of the agreed quantity of goods within a specified period. This period can be short (usually one year) and long, averaging 10 years, and sometimes 20-30 years;

Depending on *regulation*:

- contracts of international sale and purchase, governed by the Vienna

[3] For some details regarding the development of international investment paths, see Popa Tache, C. E., *Individualization and development of international investment law as the third millennium law field*, "Juridical Tribune - Tribuna Juridică", Volume 9, Issue 3, December 2019, pp. 583-588. See also William Valletta, *The Investment Contract as a mechanism of urban development in the Russian Federation*, „European Planning Studies", 13:3, 2005, pp.435-448. According to this study: "according to the body of international research, the investment contract would be an effective tool if it is able to provide developers and their creditors with increased security and reduce the risk of arbitrary actions by municipal and state agencies. According to the principles of Russian theorists, the investment contract should achieve a fair balance of interests between the developer and the needs of the public and the state".

[4] Nikolyukin, S. V., *Purchase and Sale of Goods in Foreign Trade*. Tutorial. Moscow: Justicinform. 2010, p. 154.

Convention 1980;

- contracts of international sale and purchase, to which it is not applicable. The latter include not only transactions between counterparties whose commercial enterprises are located in countries that have not joined the Vienna Convention of 1980, but also, for example, contracts for the sale and purchase of electricity, securities, ships and aircraft, which are quite common in foreign trade, etc.

N. Yu. Erpyleva[5] identifies the types of international contracts, depending on the types of contracts provided for in INCOTERMS: ex-works, free carrier, free along the side of the ship, free on board, cost and freight, cost of insurance and freight and others.

Of particular interest is the allocation of international contracts in English law. For example, A.A. Dubinchin distinguishes the following types of contracts in English law:

- unilateral contracts;
- bilateral contracts;
- informal contracts;
- formal contracts.

2. The essence and content of the international leasing agreement

In modern conditions of the development of the world economy, financial leasing has become widespread, since it is associated with the attraction of economic entities from different countries of additional sources of financing in production and other areas.

The term "***leasing***" (orig. English *leasing*, derived from *lease*) means a long-term lease of machinery, equipment, vehicles and other production facilities. In the educational literature it was noted that in international contractual practice, financial leasing has developed as a special type of the institution of lease. In the legislation of individual countries, it is also traditionally considered as a special type of lease, which is a commercial activity for the acquisition at its own expense (or at the expense of credit funds) of property by one person (lessor) in order to lease it to another person (lessee) and generate income from this activity in the form of receiving rent payments.

The peculiarity of the lease agreement is that the leasing provider (which is often played by commercial banks, investment funds, insurance companies, as well as specialized leasing companies) transfers the property specially acquired under a sale and purchase agreement for the use of the lessee without using it himself. This allows us to consider leasing not only as a type of lease, but also as a kind of long-term lending ("investment"), in which the lessee repays the "loan funds" (that is, the money spent on the purchase of equipment) by regular payments to the lessor in an agreed between them the amount of rent payments. The amount of these payments consists of the cost of the equipment (as a rule, corresponding to its full depreciation), the lessor's expenses related to the purchase of equipment (for example, in the case of using credit funds), as well as the amount that is directly the lessor's profit. Thus, in the event of the conclusion of a lease agreement, mutually interconnected tripartite relations arise.

The main act governing leasing relations in international trade practice is the

[5] Erpyleva, N.Yu. *International Banking Law. Theory and practice of application*. Moscow: Publishing House of the Higher School of Economics, 2012. p. 342.

UNIDROIT Convention on International Financial Leasing[6], which was signed in 1988 in Ottawa (therefore, in the literature it is often referred to as the Ottawa Convention). In addition to the draft of this UNIDROIT Convention, containing primarily unified norms, this international organization has also prepared a model leasing agreement. The parties to the convention are France, Italy, Spain, Hungary, Panama, Latvia, Russia (from January 1, 1999), Belarus (from March 1, 1999), Uzbekistan (from February 1, 2001) and other states.

The 1988 Ottawa Convention applies to leasing participants when the business of the lessor (lessor) and the lessee (lessee) are located in different states. The state of the commercial enterprise of the supplier of the equipment being leased must also be a party to the Convention. From the Ottawa Convention, it follows that financial leasing is a transaction executed in two types of contracts: a sale and purchase (supply) agreement between the lessor and a supplier of equipment selected according to the lessee's specification, and a lease agreement between the lessor and the lessee, on the basis of which the lessee uses the equipment in return for the payment of periodic payments.

Financial leasing is characterized as a type of activity, in the implementation of which:

a) the lessee himself determines the equipment and chooses a supplier, not relying on "the experience and judgment of the lessor";

b) the leased equipment is purchased by the lessor only in connection with the lease agreement, about which he must notify the seller;

c) periodic payments payable under a lease agreement are calculated taking into account the amortization of all or a significant part of the cost of the equipment.

The subject of financial leasing is, as a rule, movable property (equipment): production equipment, including component equipment and means of production. In addition, they can be vehicles of all kinds, as well as equipment closely related to real estate and belonging to the land plot or property attached to the land plot (for example, a drilling rig). During the term of the financial lease agreement, the owner of the leased property remains the lessor, whose rights are protected in the event of the lessee's bankruptcy. This property cannot be foreclosed on the claims of the lessee's creditors.

Under ***a financial lease agreement,*** the lessor is obliged to acquire ownership of the property for leasing, as well as to ensure its transfer to the lessee in a condition that complies with the terms of the agreement and the purpose of the property. Since the choice of the supplier and equipment under this agreement lies with the user of the equipment (lessee), and not with the purchaser (lessor), the Convention, as a general rule, provides for the exemption of the lessor from liability to the lessee with respect to the equipment sold. In this case, the lessee has the right to address claims related to the main characteristics of the equipment (quality, equipment completeness, etc.), which he himself chose, not to the lessor, but directly to the equipment supplier. This, however, does not relieve the lessor of the obligation to ensure that the equipment is transferred to the lessee.

If the equipment is not delivered or delivered late, or does not comply with the terms of the supply agreement, the lessee is entitled to:

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[6] UNIDROIT, *Convention on International Financial Leasing* of May 28, 1998 [date of visit 25.08.2022]. Available at: https://docs.cntd.ru/document/901721704.

a) refuse from the leased equipment or terminate the lease agreement;

b) suspend periodic payments due under the lease agreement until the lessor ensures proper performance by offering the lessee the appropriate equipment.

The obligations of the lessee to the lessor under a finance lease are the same as the ordinary obligations of a lessee under a lease. He is obliged to make the agreed periodic payments (lease payments), take proper care of the equipment, use it in a reasonable way and maintain it in the condition in which it received, taking into account normal wear and tear and those changes that are agreed by the parties, in accordance with paragraph (1) and (2) Art. 1314 of the Civil Code of the Republic of Moldova. Upon the expiration of the lease agreement, the lessee is obliged to return the property in the specified state, unless he has exercised the right to purchase or continue its lease for a subsequent period.

Matters that are not directly regulated by the Ottawa Convention shall be resolved in accordance with the general principles on which it is based, and in the absence of such, in accordance with the law applicable by virtue of the rules of private international law. The Convention itself provides for separate conflict of laws rules, with the help of which the applicable legal rules governing property rights to various types of property are determined. In particular, in cases where the subject of leasing is equipment attached to a land plot or becoming a property of a land plot, the question of whether or not the specified equipment has become such an accessory (or was attached to a land plot), and the resulting legal consequences for the lessor and the owner of property rights to this land plot are determined by the law of the state of location of this land plot[7].

Depending on the type of equipment that is the subject of leasing, the issue of the choice of legal norms for the recognition of real rights for the lessor, the bankruptcy administrator ("trustee") or creditors in the event of the lessee's bankruptcy is being decided. So, in relation to a registered sea or aircraft in this case, the law of the state of their registration shall apply; in relation to equipment that is usually moved from one country to another, including aircraft engines, - the law of the state in which the main business of the lessee is located; with respect to other equipment, the law of the state of the location of that equipment.

3. The essence and content of the international refit contract

Contracts for the performance of construction work by foreign contractors, mainly for the construction of large industrial and domestic facilities or for their overhaul, are now widespread. Based on the provisions of the civil legislation of the Republic of Moldova, but directly from Art. 1352 of the Civil Code of the Republic of Moldova: “Under the work contract, one party (the contractor) undertakes at its own risk to perform certain work for the other party (the customer), and the customer undertakes to accept the work and pay the agreed price”.

The conclusion of large contracting agreements may be preceded by tenders to determine the most reliable contractor and the most favorable conditions for the future contract by the customer on a competitive basis. The bidding procedure is determined by the conditions that are developed in advance by their organizers, taking into account the norms of national law and the specifics of the planned construction and other works.

[7] Gazman, V.D., *Financial Leasing*: Study Guide. Moscow: SU HSE. 2003, p. 114.

When providing technical assistance in the construction of enterprises and other facilities abroad, in the performance of exploration, geological exploration and other works, a civil contract (agreement) is concluded. In our training manual, it was noted that a contract for the provision of technical assistance in its content is a complex type of contract, including the purchase and sale of goods (foreign trade supply of machines, materials, mechanisms and equipment), contracts of assignment (agency), order, performance of work, provision of services and contract. However, in practice, the parties in such complex contracts continue to be referred to as contractors (suppliers) and customers.

An integral feature of the provision of technical assistance, which determines its specificity, is the secondment of specialists and training of the customer's personnel, both at the site of the object and in the partner's country. The secondment and training of specialists may be part of the contract as part of the obligations. In many other cases, it is the subject of a separate contract. Technology transfer clauses can be an essential element of a technical assistance contract. Contract agreements concluded by foreign trade organizations with foreign counterparties provide for the production of either certain types or a whole range of works, for example, related to the construction of industrial objects abroad[8].

An idea of the complexity of contracts concluded in practice gives the following list: for example, the obligations of the contractor (supplier) include:

- preparation of a detailed work schedule for the implementation of the project;
- performance of geological surveys for raw materials by our own specialists;
- development and preparation of all technical documentation for the project and its implementation, including schedules, drawings, specifications, etc.;
- submission for approval to the customer and/or his experts, prior to the start of production of materials and equipment, all the necessary documentation on which they will be produced;
- supply of machine materials, equipment and technical documentation in accordance with the schedules approved by the partners;
- provision of secondment of technical personnel to carry out field supervision over the construction, installation and equipment of the facility;
- training of the customer's specialists so that the personnel are able to independently operate the facility.

In turn, the customer's obligations include:

- making payments in accordance with the prices and payment terms stipulated in the contract;
- provision of infrastructure at its own expense (roads, bridges, temporary buildings and structures, housing for specialists, energy supply, water supply, construction sites, etc.);
- implementation of general construction and installation works under the supervision of the supplier; provision of the necessary personnel for training both on-site and for training abroad in the supplier's country;
- provision of living conditions for the supplier's personnel;
- supply of raw materials and other materials of the local market, necessary for

[8] Dmitrieva, G. K., *International Private Law*: Textbook. Moscow: Prospect. 2018, p. 543.

the implementation of the project[9].

Contracts concluded by foreign trade organizations with organizations and firms of other countries, depending on the nature of the work, can be of various types:

- contracts for the conduct of exploration and exploration works;
- contracts for design work;
- contracts for the performance of installation work;
- contracts for construction works;
- contracts for the maintenance of machinery and equipment, etc.

When performing construction work with the participation of Russian organizations, legal relations of two kinds may arise. With one type of legal relationship, construction work is carried out by organizations and firms of the country to which technical assistance is provided. The association (as a contractor) performs certain types of construction work under a contract with foreign firms and organizations (the customer).

In another type of legal relationship, the association assumes the construction of an enterprise or the construction of an object as a whole, up to its commissioning. This work is called turnkey construction. The association can carry out these works on its own behalf, attracting Russian construction organizations for this. As subcontractors, it has the right to involve local organizations, as well as in compliance with the legislation of the customer country, counterparties from third countries.

The turnkey construction practice is widespread.

International practice also applies the Model Terms of the Construction Contract, which were developed by the International Federation of Design Engineers (as revised in 1987), as well as the Legal Guidelines for the Drafting of International Contracts for the Construction of Industrial Facilities, prepared by the UNCITRAL working group. Both of these documents, which are of a recommendatory nature, are designed for use in construction with foreign participation.

4. The essence and content of the international contract for outsourcing and outstaffing

Recently, cross-border relations of outstaffing and outsourcing have become very popular[10]. We are talking about a relationship in which a foreign company hires a domestic company to implement projects, solve certain problems, and perform certain functions. Highly qualified and relatively inexpensive domestic specialists, especially in the IT field, are attracting more and more companies from the USA, EU and Russian Federation.

Staffing services first appeared in the United States in the first half of the last century. At that time, the recruiting of the provided personnel was carried out by American unions working in industries where the demand for labor was determined by seasonal cycles. The demand for fruit pickers and agricultural workers fluctuated depending on the yield in a given state. In order to provide enough workers during

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[9] Kanashevsky, V. A., *International Transactions: Legal Regulation*. Moscow: International Relations. 2016, p. 342.

[10] Anikin, B. A., Rudaya, I. L., *Outsourcing and Outstaffing: High Management Technologies*. Moscow: INFRA-M. 2009, p. 176.

seasonal peak periods, unions made agreements with farmers, and during the downturn they paid their members benefits. The first private employment agencies hired low-skilled workers and trained them in basic skills of salesman profession. Agencies entered into contracts for the marketing of non-demanded products that trained workers sold in the provinces.

In 1946, William Kelly founded *Kelly Services*, which recruited, trained and provided office workers (secretaries, typists, etc.). The American corporation Manpower, founded in 1948 by two lawyers, began to provide personnel as the main activity. She selected and hired office workers for the subsequent provision of their labor to third parties. Today these companies are world leaders in the personnel industry[11].

In modern domestic literature and business practice, the relationship with the provision of personnel is often referred to as "agency labor" or "personnel leasing." The first term is a literal translation of the German *Leiharbeit*, and the second is the English *personnel leasing*. Apparently, the need for a literal translation was largely due to the lack of analogues of these terms. However, the results of such a translation are somewhat inconsistent with the domestic legal terminology. So, in accordance with Article 1242 of the Civil Code of the Republic of Moldova, the subject of a loan agreement may be money or other things defined by generic characteristics. Obviously, labor cannot be the subject of a loan agreement. In addition, loan relations have a sign of repayment: upon the expiration of the loan term, the borrower undertakes to return the same amount of money or an equal amount of things of the same kind and quality to the lender after the expiration of the period for which the loan agreement was concluded. Labor, being a process, cannot be returned. Therefore, the term “agency work” may not be the most appropriate one. English folk wisdom says: "If a bird flies like a duck, swims like a duck, quacks like a duck, then most likely it is a duck." If the essence of the contract is the provision of personnel, then why should it be called something else?

Differences between outsourcing and outstaffing from the point of view of a non-resident customer and a resident contractor. By their legal nature, outsourcing and outstaffing agreements are: contract or service agreement. Such contracts are regulated by the Civil legislation of the Republic of Moldova, namely by Articles 1329-1410 of the Civil Code of the Republic of Moldova. But, unlike usual contracts for the provision of services, outsourcing and outstaffing contracts are concluded on a long-term basis, and not for the provision of a one-time service. With outsourcing, a function is delegated (business process, individual systems and infrastructure elements of the company), and with outstaffing, it is different.

However, in the context of foreign economic activity, these two concepts are not so different, the line between them is rather imaginary than real.

Thus, a non-resident company, which acts as a customer under an outsourcing agreement, entrusts a Ukrainian company to perform work (provision of services), but at the same time the executor, that is, a legal entity, is responsible for their direct implementation. In other words, the customer does not exercise direct operational control over the process of performing work, but simply accepts or does not accept the results of the work.

In outstaffing, the customer also pursues the goal of obtaining an execution

[11] Isavnin, A. G., Farkhutdinov, I. I., *Features of the Use of Production Outsourcing*. Moscow: Statute. 2013, p. 165.

service. After all, he hires employees of the executing company who will directly carry out his tasks. That is, even with outstaffing, personnel are always hired for specific functions, tasks, projects (development of specific software, marketing research, etc.), just like with outsourcing. Thus, in fact, the main difference between outstaffing and outsourcing is the level of control over the performance of work/provision of services by the customer and the flexibility of the contractor.

Therefore, if a foreign company wishes to entrust a project (all or part of it) to a Ukrainian company, then the outstaffing option will be much safer for it. However, there are many other control tools that can be provided for in an outsourcing agreement. Thus, it is more correct to define outstaffing agreements as a kind of outsourcing agreement[12].

Outstaffing. In the context of outstaffing agreements, a company that leases its personnel is actually a "private employment agency". Certain requirements are established for such agencies by national and international legislation. The use of this service at the global level is governed by the Private Employment Agencies Convention No. 181, which was adopted on June 19, 1997.

According to the Convention, the term "private employment agency" means any natural or legal person that does not depend on government authorities and provides one or more services in the labor market, in particular, services for the recruitment of workers with the intention of making them available to a third party - an individual or legal entity (user enterprise), which defines work tasks and monitors their implementation.

Legal regulation of the provision of personnel. World practice has a significant number of regulations in the field of personnel provision. First of all, it should be noted the ILO Convention No. 181 "On Private Employment Agencies"[13], As well as ILO Recommendation No. 188 on Private Employment Agencies, adopted in 1997. National Majority Legislation Western European countries contain regulations governing the provision of personnel. Practice, including judicial practice, follows the path of recognizing contracts for the provision of personnel as civil law contracts for the provision of services.

Under the contract for the provision of personnel, the recruiting agency provides its employees to a third party. At the same time, employees continue their labor relations with the agency, however, they carry out their labor function in favor of a third party - the user. The contract for the provision of personnel is concluded between two legal entities.

By concluding a contract, the user pursues the goal of obtaining personnel. The user needs it so that he can conduct his business. For example, a foreign trading company plans to enter the Russian market. The Russian branch was instructed to provide the shopping facilities with the necessary personnel. To solve the problem, the management of the branch engages a recruiting agency, which searches for the required number of employees (sales managers, trade consultants), concludes employment contracts with them with the subsequent provision of employees to the branch of the trading company. The latter pays the agency a contractual fee. The relationship between a recruiting agency and a branch of a trading company has the features of a civil law contract for the

[12] Vitko, V. S., Tsaturyan, Ye. A. *The Legal Nature of Outsourcing and Outstaffing Contracts.* Moscow: Statute, 2012. p. 76.

[13] ILO Convention No. 181 *On Private Employment Agencies* of June 19, 1997 [date visited 25.08.2022]. Available at: https://hr-best.su/info/vse-o-kadrovom-agenstve/konvenciya-181/.

provision of paid services. According to Articles 1329-1330 of the Civil Code of the Republic of Moldova: "The contractor or performer is free to choose the method of performing work or rendering services. There is no reporting relationship between the contractor or performer and the customer. The parties shall be deemed to have reached an agreement on default remuneration if, in accordance with the circumstances, such work or services are performed or are provided only for remuneration." The provision of services can be considered the actions of a recruiting agency for the selection of personnel.

In practice, such services are called "recruiting" (from the English. Recruit - to hire, recruit)[14]. Recruiting can include the following services:

- creation of an information base (information about applicants);
- conducting interviews, psychological testing, trainings;
- providing the employer with candidates that meet his requirements.

After providing the customer company with information about the applicants (usually in the form of a report), the service agreement is considered fulfilled, and the relationship between the recruiting agency and the customer is terminated. However, the fundamental differences between the situation described in the example and the contract for the provision of recruiting services are two circumstances:

- firstly, labor relations have arisen between the recruiting agency and the selected employees on the basis of concluded labor contracts;
- secondly, the relationship between the recruiting agency and the representative office of the trading company continues under the personnel agreement.

At the same time, ongoing relationships by their nature will be services of a slightly different kind. In our opinion, the content of these services will be assistance in organizing the activities of the customer company, and this assistance will consist in providing the recruiting agency with its own personnel who have certain knowledge, skills, experience that are of certain value for the customer company. Recently, companies are increasingly resorting to concluding contracts for the provision of services, which cannot be provided otherwise than by providing in one form or another the work of the service provider's employees. As examples of this kind of services, one can cite services for legal support of the company's activities by external consultants, for accounting by a third-party organization, for providing technical support for users of office equipment.

In the first of these examples, the consulting company may send an employee to the client's organization, where he will advise on all arising legal issues during, for example, the period of a tax audit or a specific project. In the second case, the service worker - the accountant - performs all the necessary steps to prepare the financial statements of the organization - the service recipient, so that the manager only needs to sign it and submit it to the tax office. However, each of these services is mediated by the labor activity of employees of the organization - the service provider.

The provision of personnel can be considered a way of legalizing the phenomenon that has recently become very widespread - *outsourcing* (from the English *out sourcing* - a source from outside, at the expense of an external source). Outsourcing is nothing more than "the performance of individual functions or business processes by an external organization, which has the necessary resources for this, through a long-term

[14] Lunts, L.A., *Private International Law Course*. Moscow: Spark. 2002. p. 499.

agreement"[15]. The main conceptual provision of outsourcing can be formulated as follows: the company focuses on the implementation of the main activity, transferring all non-core functions to external performers. Today, the removal of non-core functions outside the company and their transfer to specialized performers is a global trend. This approach makes it possible to significantly increase the efficiency of the company by concentrating on the main type of activity while "delegating" all non-core activities (accounting, IT services, legal support, courier service) to companies specializing in this.

The provision of personnel mediates the transfer of the functions of the internal HR service to an external company, which takes on the search for candidates for the necessary positions, hires employees for its own staff, deals with the preparation of all documents (employment contracts, hiring orders, job descriptions, work books, etc.), pays wages to employees, calculates and pays the necessary taxes and contributions to off-budget funds, ensures compliance with labor protection requirements, in a word, fulfills all the obligations imposed by labor legislation on the employer.

The positive aspects of staffing are most clearly manifested when it is necessary to attract staff for a short time, for example, during peak sales or when carrying out temporary or seasonal work. Of course, the current labor legislation provides for the possibility of concluding a fixed-term employment contract, and also regulates the specifics of the work of workers employed in seasonal work. However, these methods of formalizing relations with employees provide for the conclusion of labor contracts, which means that they lead to the emergence of labor relations with employees.

Here, one more positive side of the personnel provision technology for the company is especially clearly manifested - the minimization of the employer's risks. By not entering into an employment relationship with the employee, the company deprives itself of the need to take care of the availability of sufficient funds for regular payment of wages - the company providing personnel should take care of this. In this case, the responsibility for the failure to fulfill the employer's obligations will be assigned to the company providing the personnel. In this regard, the reliability of the partner company providing personnel, its business reputation and financial stability are of great importance.

It should be noted that there are responsibilities, the distribution of which may be provided for in the contract for the provision of personnel. These obligations include, in particular, the obligation to ensure labor protection requirements. In practice, a recruiting agency, as a rule, sends a representative to the company in order to check compliance with labor protection requirements. At the same time, non-compliance with the labor protection requirements at the enterprise may serve as a basis for refusing to conclude an agreement. If the representative of the agency makes sure that the labor protection requirements at the enterprise are observed, the agency sends workers there and conducts initial safety training. Further ensuring compliance with labor protection requirements is the responsibility of the enterprise - user[16].

For an employee, work on the terms of providing personnel can have certain positive features. Thus, young specialists who have no practical experience, working for various users, have the opportunity to acquire a significant amount of useful skills and

[15] Isavnin, A. G., Farkhutdinov, I. I., *op. cit.*, p. 184.

[16] Getman-Pavlova, I. V., *International Private Law: a Textbook for Masters Students*, Moscow: Yurayt Publishing House. 2013, p. 122.

abilities in a short time, to evaluate the organization of the labor process in various companies. This circumstance makes this type of employment very attractive in the eyes of graduates of educational institutions and novice specialists.

Providing staff can carry some potential risks. For example, the relationship between the user organization and the contributor can be recognized as labour. There are formal legal prerequisites for this. These contracts must contain clear indications that the employee is in labor relations only with a recruiting agency, is sent to the address of the organization - the user only within the framework of the personnel agreement; its direction does not entail the emergence of an employment relationship with the user organization, and the employee gives his consent to this.

Another potential risk of using staffing technology can be the risk of leakage of confidential information in cases where the provided workers, by the nature of their work, will have access to it. To minimize this risk, the contract for the provision of personnel and the employment contract with the provided employee must contain confidentiality clauses. Recruitment agency and organization - the user should designate a list of information related to the category of confidential information.

The foregoing indicates that the user of personnel provision services must pay close attention not only to the content of the contract with the recruiting agency, but also to the terms of the employment contract that formalizes the relationship between the recruiting agency and its employees.

The world practice of recent years shows that the technology of providing personnel with its effective use can become a very useful personnel solution to the mutual benefit of the company and personnel.

5. The essence and content of the international license agreement

Types and content of international licensing agreements.

- ***International license agreement***. The object of a license agreement may be a license for an invention, as well as know-how and a trademark.

- ***International purchase and sale agreement***, including the supply of equipment. The contract may provide for a concomitant license with the provision of additional information about the technological process in which this equipment participates, part of the design documentation for the possible manufacture of spare parts, equipment repair[17].

- ***Combined international agreements*** o***n the sale of licenses and the supply of equipment.*** When purchasing a license for the production of complex machines, the licensee, along with technical documentation and training of specialists for a better mastering of production, sets a condition for the supply of a number of complex units, first in a finished form, in order to then gradually switch to their independent production.

- ***International agreements on the design and construction of industrial facilities.*** When carrying out the design and construction of industrial facilities abroad, an integral part of the general agreement (contract) or an addendum to it may be the licensing part concerning the transfer of patent rights and know-how included in the project, construction object, technology and equipment of this industrial enterprise (accompanying license) and carrying out design work such as engineering.

[17] Trunina, E. V., Fedasova, Yu. V., *Commercial Law. Textbook*. Moscow: Yurayt. 2009, p. 304.

- ***International agreements on scientific and technical cooperation.*** Scientific and technical cooperation, as a rule, provides for the exchange of information on scientific and technical achievements, inventions, scientific and technical knowledge, etc., therefore, these agreements often stipulate accompanying licenses. If there is a mutual exchange of these materials, licenses can be in the form of cross-licenses, i.e. mutual licenses. Cross-licenses do not necessarily involve mutual monetary settlement. In some cases, the parties are interested in receiving equivalent information.

- ***International agreements on industrial cooperation.*** They may apply different combinations of terms for the grant of licenses, the supply of goods, or the provision of services. Often the basis of industrial cooperation is made up of licensing agreements, extended by agreements on production cooperation[18].

Content of international licensing agreements. The content of international licensing agreements is the establishment of scientific and technical ties aimed at introducing the results of scientific research and development into production. Licensing agreements usually mediate a whole complex of relationships ultimately associated with the organization of production of licensed products or using a licensed process. This complex, along with scientific and technical relations, includes financial relations, industrial relations associated with the sale of products, management of enterprises, etc.

International trade practice has developed numerous options for model licensing agreements, which are used as the basis for the drafting of specific agreements between the parties. Model licensing agreements are developed by various organizations, in particular, UN commissions, industry associations of industrial firms, etc.

The content of international licensing agreements may include the following basic conditions:

- Parties to the agreement.

- Preamble (specifying the numbers and dates of issuance of patents underlying the agreement, the ownership right to them of the licensor and the licensee's intention to use the rights arising from them under license are stipulated.

- Subject of the agreement. The subject of an international license agreement can be a patented invention or technological process, technical knowledge and experience, a trade mark. Know-how transfer is also possible.

Types of licenses. When selling a *non-exclusive license,* the licensor permits the licensee to use the invention or the secret of production on certain conditions, while retaining the right to both use them independently and to issue licenses similar under the terms of the terms to any other interested parties (firms). When selling an *exclusive license,* the licensor grants the licensee the exclusive right to use the invention or production secret within the terms and conditions specified therein and in a certain geographic territory specified in the agreement. At the same time, the licensor refuses to independently use this invention, and even more so from the sale of similar licenses to third parties on the same conditions and in the same territory. When granting an exclusive license, the licensor often introduces various clauses into the agreement that limit the rights of the licensee. Such a license is called a *limited exclusive*[19].

When a *full license* is sold, the licensee is granted exclusive rights to use it during the entire term of the agreement. For this period, the licensor is deprived of the right to

[18] Getman-Pavlova, I. V., *op. cit.*, 2013, p. 217.
[19] Zykin, I. S., *Foreign Economic Transactions: Law and Practice*. Moscow: Statute. 1994. p. 78.

use the invention or production secret both independently and by issuing licenses to other persons (firms).

Payments. As compensation for granting the rights to use the subject of the agreement, the licensee pays a certain fee to the licensor. Depending on the method of calculating remuneration, it can be divided into two groups:

- Remuneration, the amount of which is calculated on the basis of the actual economic result of using the license.

- Remuneration, the amount of which is not directly related to the actual use of the license, but is set in advance and specified in the contract.

Periodic interest payments, or current royalties (set at certain fixed rates in% and paid at certain agreed intervals). They are calculated in various ways: from the cost of products manufactured under license, from the amount of sales, from a unit of manufactured or sold products as a% to the price or cost, on a specially determined basis, etc. Mostly 3-5%.

Lump-sum payment (a certain, firmly fixed amount of remuneration). It is usually practiced when transferring a license with equipment, when selling to a little-known company, to guarantee against losses in case of disclosure, when the licensee does not want to allow the licensee to control the use of the license.

Initial payment in cash (payment by the licensee is set in the agreement of the amount in the form of a one-time payment in installments during the period specified in the agreement, or upon fulfillment of certain conditions).

Transfer of securities (transfer of shares or bonds, basically the licensor receives from 5 to 20% of shares, but in some cases even 40%).

Transfer of technical documentation (mutual provision of licenses in combination with other forms of remuneration).

The terms of payment stipulate in detail the procedure for paying the license fee, namely: currency of payment with the inclusion of a currency clause; form of calculation; the basis for calculating the value of manufactured products or the value of sales (with remuneration in the form of current deductions) and the procedure for calculating them.

Obligations of the licensor under the license agreement. The terms of the agreement determine in detail: the volume, procedure and forms of the provision of scientific and technical assistance by the licensor to the licensee during the entire term of the agreement. The licensor is always responsible for the novelty of the invention. The licensor is responsible for the economic efficiency of the invention within the limits in which he guaranteed certain qualities of the latter in the contract: power, efficiency and other indicators[20].

Obligations of the licensee under the license agreement. The main obligation of the licensee is the timely and correct payment of the remuneration. In order to secure payments due to the licensor, the licensee is obliged to provide the licensor, within a specified period, with a guarantee of a first-class bank. In addition, the license agreement imposes a large number of other obligations on the licensee, the most important of which is the licensee's use of the Subject matter of the license agreement. The licensee is obliged to strictly adhere to the technical and quality standards provided for in the technical documentation to ensure the appropriate quality of the products manufactured

[20] Sukhanova, E.A., *Civil law. Textbook.* Moscow: BEK Publishing House. 1994. p. 354.

under license.

The term of the license. Licensing agreements are usually concluded for a strictly defined period, but they may contain clauses that provide for the possibility of automatic or other extension or renewal of the agreement, or, conversely, its early termination. About 5-10 years

The essence and significance of the international exchange of engineering and technical services.

As an independent type of international commercial transactions, engineering involves the provision, on the basis of an engineering contract, by one party, referred to as a consultant, to the other party, referred to as a customer, a complex or certain types of engineering and technical services related to the design, construction and commissioning of an object, with the development of new technological processes at the customer's enterprise, the improvement of existing production processes up to the introduction of the product into production and even the sale of products.

The provision on the basis of an engineering contract of a full range of services and supplies necessary for the construction of a new facility is called *complex engineering*. It includes three separate types of engineering and technical services, each of which can be the subject of an independent contract[21].

Engineering advisory is associated with intelligent services for the design of facilities, development of construction plans, and oversight of work.

Technological engineering consists in providing the customer with the technologies necessary for the construction of an industrial facility and its operation, the development of projects for energy supply, water supply, transport, etc.

Construction engineering is mainly the supply of equipment, machinery and/ or installation of installations, including, if necessary, engineering work. Engineering and consulting services are provided in the form of technical documentation, research results, initial data for construction, economic calculations, estimates, recommendations, etc.

The advisory services are directly related to management for the implementation of an industrial project, but do not cover any construction work, licensing or technology transfer.

Engineering consultancy contracts may relate to the entire range of services or specific services, which must be clearly formulated in the contract or in an annex to the contract. Such agreements may be supplemented by the obligations of the parties in connection with the conduct of joint scientific research, the organization of pilot production, marketing with joint technical assistance, and the training of personnel.

Consulting engineering can cover all stages of a project or be limited to some one stage, for example, pre-investment. In this case, the term "project" denotes a general idea ofwork, which should be specified in the contract.

6. The essence and content of international intermediary operations

For the successful sale of goods in foreign markets, it is necessary to know their conjuncture, the regulatory and legal peculiarities of the country, to have connections in the business community, to have a developed sales network and service system. Self-trading in foreign markets is often beyond the capabilities of the producers themselves,

[21] Aristov, O.V., *Quality Control. Textbook*. Moscow: Research Center Infra-M. 2016, p. 98.

and they resort to the use of resellers.

Individual entrepreneurs, specialized firms act as *foreign trade intermediaries*, or mediation is carried out through special forms of sales: tenders, auctions, stock exchanges. Foreign trade intermediaries assist in establishing contacts and concluding foreign trade transactions, contracts between producers and consumers, sellers and buyers of goods and services.

Trade and intermediary foreign economic operations are understood as operations related to the sale and purchase of goods, performed on behalf of the exporter or importer by an intermediary independent of him on the basis of special agreements or separate orders. Trading and intermediary firms are legally independent from producers and consumers of goods. This does not include subsidiaries, branches and representative offices of foreign companies. The functions performed by resellers are very diverse. They are directly related not only to the purchase and sale of goods, but also to a significant range of operations and services for finding foreign partners, market research, transportation and insurance of goods, credit and financial services, execution of documentation for transactions, advertising of goods, after-sales maintenance *et al*[22].

In addition to expanding the functions performed by intermediaries, qualitative shifts in trade and intermediary operations now include:

- creation by intermediaries of production for processing and assembly of products, the purchase and sale of which they are engaged in;

- formation of international consortia for the implementation of large-scale projects;

- the formation of large trade and intermediary monopolies performing a set of operations related to the purchase and sale of goods at their own expense, their transportation, insurance, after-sales service, etc.

The influence of intermediary companies varies greatly across countries and trade flows. They have a significant impact on the export and import of Japan, South Korea, England, Scandinavian countries. For example, in Japan, 8 thousand trading companies control 67% of imports and 60% of exports. The well-known three trading houses in South Korea - Samsung, Hyundai, Daeku - serve about 40% of the country's foreign trade[23].

The main goal in attracting resellers is to ensure the efficiency of foreign trade operations. Conducting transactions through intermediaries has certain drawbacks: it leads to an increase in the cost of imported goods and a decrease in export earnings. part of the proceeds remains with the intermediary. In addition, the exporter does not directly interact with the market, he does not independently study its conjuncture and the needs of his buyer. However, these disadvantages are offset by the advantages of using intermediaries:

- the use of intermediaries makes it possible to attract their capital to carry out transport-forwarding, insurance, sales and service operations, which makes it possible for the exporter to save his own funds invested in transactions;

- intermediaries often take on the responsibilities and risks of delivering goods

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[22] Sidorov, V.P., *Trade and Intermediary Operations in the Foreign Market*. Study Guide. Vladivostok: Publishing House of VSUES, 2005, p. 43.

[23] Nemets, Yu, *Trademarks and the Internet: Judicial Practice and Legislative Regulation*, „Q: Economy and Law", 2002, No. 7, p. 54-62.

to the importing country, preparing them for sale (sorting, packaging, labeling, etc.);

- the involvement of resellers frees the supplier from organizing the sale of goods, since intermediary firms often have their own warehouse, sales network and retail stores;

- intermediaries have the most information about market conditions, have business connections, it is difficult to do without them when direct export is difficult due to import restrictions;

- intermediaries have direct contact with consumers, they respond more quickly to changes in their needs and have information about the competitiveness of products.

In some cases, the use of intermediaries is necessary. This is due, firstly, to the fact that individual markets for goods are monopolized and closed for independent penetration of producers. Secondly, not all enterprises and organizations that have legal rights to conduct foreign trade operations can independently explore foreign markets, look for foreign partners, competently develop the terms of contracts, provide opportunities for the implementation of contracts and, in the event of disagreements, settle them. Thirdly, exporters and importers are forced to act through intermediaries due to established international trade customs, for example, when operating at auctions or when trading on an exchange in legumes, timber, non-ferrous metals, etc. It is commercially viable to act through intermediaries when a manufacturer enters remote and poorly understood markets. This allows you not to spend money on entering a new market and reduce the risk of entrepreneurial activity. It is quite difficult to find a reputable, conscientious intermediary with experience in the foreign market.

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