FORM, DATE AND SUBJECT OF OUTSOURCING CONTRACT

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Annotation: This article includes the basis of the above indicators, the subject of the outsourcing agreements, their forms and conditions are commented on, scientific research and the opinions of scientists are studied, various aspects of the paid service are highlighted. Based on this, reasonable proposals have been developed for the inclusion of outsourcing contracts in our legislation and detailed study.

Key words: contract, outsourcing, outsourcing contract, civil code, obligation, subject of the contract, outsourcing organization, action, activity.

The terms of the contract are divided into important, normal and random terms. The terms on the thing of the contract are the conditions in the legislation that are marked as important or necessary for such types of contracts, as well as all the conditions that must be agreed upon on the application of one of the parties, are important terms.

Today, the exact list of important terms of the outsourcing agreement is not indicated. However, as a result of the analysis of the current civil legislation, it is possible to highlight the important terms of the outsourcing agreement.

First of all, according to the direct instruction of the legislative act (Part 2 of Article 364 of the OOR FK), one such important condition is the condition on the subject (thing) of the contract. A contract is considered not concluded if the contract does not contain a condition on its subject (thing) or if the parties have not reached an agreement on the subject (thing) of the contract.

The origin of the outsourcing agreement is foreign, which is understood as a bilateral agreement that provides for the transfer of certain functions of the customer organization to an external executive with high qualifications in a specific activity. Hence, the subject of this contract also follows from this.

It should be noted that civil law did not reveal the concept of the subject (thing)of the contract. In addition, O'R FK uses the phrase along with another phrase, "object of contract". For example, Article 537 of the OIR FK is called "objects of property rental", according to which plots of land, plots with underground assets and other separate natural objects, enterprises and other property complexes, buildings, structures, equipment, vehicles and other objects (non-consumable objects) that do not lose their natural properties in the process of use can be transferred to the.[1]

The belonging of the object of the contract will be inappropriate as an important classifier character when assigning it to species. For example, the relevance of the object plays an important role in the separation of the types of a purchase and sale contract: contractation, energy supply, sale of real estate and sale of an enterprise.

[1] https://lex.uz/docs/180552#184363

The different interpretations of certain phrases do not yet reveal its meaning. In particular, since the condition on the subject is inappropriate as a component of the contract-agreement, it represents the content of certain information and information in itself.[2] This information should be complete to one degree or another, depending on the type of data contract. For example, in the contract of purchase and sale, it is considered sufficient for the parties to reach an agreement on the name and quantity of the goods (O'R FK part 387).

In the theory of civil law, there are different approaches to understanding the subject of a contract. In Particular, D.I.Meyer believes that the subject of the contract is always expressed as a right to the behavior of foreign persons.[3] O.S.Ioffe argues ,however, that " the subject of obligation contains two types of object. In this case, as a legal object of obligation, a certain behavior of the person to whom the obligation is imposed is recognized, as in any civil legal relationship. In addition, when both participants in the obligation simultaneously participate as both creditors and debtors, two legal objects arise, that is, behaviors carried out by both participants in the process of performing the debtor's function. If we dwell on material objects, then in some obligations it does not exist at all. For example, in certain contractual obligations for the performance of works and the provision of services, the material object will not be available. There are also obligations in which, in accordance with two legal objects, there will also be two material objects. For example, in a purchase and sale agreement, the seller's act on the transfer of property and the buyer's act on filling out money is considered a legal object, while the property itself and the amount of money paid are the material objects of legal relations"[4].

In our opinion, O.S.Ioffe's comments are appropriate and concurring. In Particular, M.I.In support of this argument, Braginsky notes: "one of the signs that unites contracts is that they can have a complex subject. That is, it includes the behavior of the parties to which the obligation is imposed, including the actions aimed at the transfer and acceptance of property (object of the first type), as well as the property itself (object of the second type)".[5]

Thus, it can be concluded on the basis of the analysis made to reveal the content and essence of the subject of the contract, that the correct definition of the category of the subject of the contract is of great importance not only in theory, but also in practical terms. Because this thing makes it possible to establish the scope of application of the contract, the set of rights

[2] Ибораларнинг бундай қўлланилиши шартнома-битим ва шартномавий-ҳуқуқий муносабатлар (шартномавий мажбуриятлар)ни бир-биридан ажратишда қийинчилик туғдиради. Хусусан, В.В.Витрянский “предмет” иборасини шартнома-битим мазмунига нисбатан ҳам, шатномадан келиб чиқадиган мажбуриятлар тавсифига нисабатан ҳам қўллайди. Масалан, унинг фикрига кўра, айирбошлаш шартномасининг предмети икки турдаги объектни ўз ичига олади: биринчи турдаги объектга мажбурият юкланган шахсларнинг бир-бирига айирбошланаётган товарларни топширишга қаратилган хатти-ҳаракатлари кирса; иккинчи турдаги объектга айирбошланаётган товарларнинг ўзи киради. Қаранг: Брагинский М.И., Витрянский В.В. Договорное право. Книга вторая: Договоры о передаче имущества. М.: Статут, 2017. -С. 22, 263. А.Н.Обыденное фикрича, “объектни ажратиш орқали аниқ бир шартнома бўйича амалга оширилиши лозим бўлган ижрони индивидуаллаштириш қийин (аниқ бир ашёни топшириш, аниқ бир топшириқ бўйича ишларни бажариш). Бунинг учун шартнома предмети категориясини қўллаш мақулроқ”. Батафсил қаранг: Обыденное А.Н. Предмет и объект как существенные условия гражданско-правового договора // Журнал российского права. 2003. № 8. С. 64-65.

[3] Мейер Д.И. Русское гражданское право (в 2-х ч. Часть 2). М.: Статут, 1997. -С. 161.

[4] Иоффе О.С. Обязательственное право // Иоффе О. С. Избранные труды: В 4 т. Т. III. Обязательственное право. - СПб.: Изд-во «Юридический центр Пресс», 2004. -С. 62-63.

[5] Брагинский М.И., Витрянский В.В. Договорное право. Книга вторая: Договоры о передаче имущества. М.: Статут, 2017. -С. 6.

and obligations of the parties, the limit of the liability of the parties for violation of the terms of the contract.

In essence, the subject of the contract is the main goal pursued by the parties to the transaction. The subsequent execution of the contract depends on how clearly and fully the subject is expressed. The set of rights and obligations of the parties to the contract directly depends on its subject.[6]

The outsourcing agreement is no exception. Today, in the theory of civil law, a single opinion has not been formed regarding the concept of the subject of an outsourcing contract.

I.S. Shitkina by the subject of the outsourcing agreement, understands that an organization assigns specialists with the necessary qualifications and specialization to a second organization to perform certain functions in its interests. In his opinion, an outsourcing contract should be distinguished from a service contract for a fee. Because, he says, the organization providing employees does not undertake to provide services of some kind (for example, in Management, Production, Construction, Information Communication and other areas), but its only obligation is to provide a certain number of employees who meet the requirements for qualifications and specialization.[7]

G.A.Korniychuk solved the issue of the subject of the outsourcing contract a little differently. In his opinion, the subject of the outsourcing agreement consists in the transfer of a type of activity that is not inherent in the company itself to a professional-company, the performance by another organization of certain tasks, business functions or business processes that are not usually part of the main activities of the organization, but are necessary for the full functioning of.[8]

L.V.Sannikova noted that the object of the commitment to the provision of personnel is organized by measures aimed at satisfying the user's need for an employee of a particular specialty.[9]

T.Yu.Korshunova noted that the forms of labor in the performance of work on the terms of the contract are very diverse. In particular, we can talk about such a contract when any function that is not a company specialty is transferred by its professional employees to an external company that performs this function. For example, these functions can be cleaning the premises, ensuring safety, IT support. The company involved in the implementation of these functions is considered to be a specialized organization that provides such services according to its charter and purpose of activity. In international practice, such an activity is also called outsourcing.[10]

In this case, a civil-legal contract is concluded between the two organizations. Employees will be in the state of the service organization and will carry out their labor activities (cleaning the building, guarding it, installing a computer network on it and providing services) in the receiving (customer) organization of services. The peculiarity of the implementation of labor activities by employees is that, although they are in the account of the state of the service

[6] https://www.norma.uz/uz/bizning_sharhlar/shartnoma_tuzamiz_nimaga_etibor_qaratish_lozim
[7] Шиткина И. Договор предоставления персонала: что это такое? // Хозяйство и право. - 2014. - № 1. - С. 98-100.
[8] Корнийчук Г.А. Прием и увольнение работников: подбор и оценка персонала, оформление трудовых отношений. - М.: «Омега-Л», 2007. --С. 37.
[9] Санникова Л.В. Обязательства об оказании услуг в российском гражданском праве. -М.: Вольтерс Клувер. 2007. -С. 99.
[10] Коршунова Т.Ю. Правовое регулирование отношений, связанных с направлением работников для выполнения работ в других организациях (заемный труд) // Трудовое право. 2005. № 6. -С. 17.

organization, in practice they perform work in another organization and follow its requirements and internal rules.

In the views of special literature and specialists, one can find views confirming the above points. In particular, according to them, the subject of the outsourcing agreement is the provision of services on one or more functions of the organization (for example, software, Personnel Management, etc.). There will be only one condition in this, that is, the state of the organization will not have its own specialists in the field of Service, and the functions in question will be fully assigned to the outsourcer.[11]

Speaking about the subject of the outsourcing agreement, it should be borne in mind that in most cases this agreement includes elements of a contract of contract and a contract of service for a fee, which is regulated by the norms of or CC 37 and 38. Together with this, it can also include elements of contracts that are not provided for and are not provided for in the UR CC (for example, elements of an employment contract).

Taking into account these features of the contract in question, it can be said that the subject of the outsourcing contract has a complex (complex) content, which, as a rule, includes the provision of outsourcing-Organization employees who meet the required qualification requirements for the implementation of certain functions or certain activities (participation in the production process, production management or other tasks related to the production

Another feature of an outsourcing contract is that the letter-actions of a person with an obligation are individualized by the activities (actions) of outsourcing employees, their professional qualities (special information, activity productivity, work experience, etc.).

On this basis, the services provided under the outsourcing agreement will be the services provided by the outsourcer-qualified employees of the organization, which will be aimed at meeting the customer's needs in the production process, production management or in the performance of other tasks related to the production and (or) sale of the customer's goods.

In our national practice, these contracts began to be concluded relatively recently, while they were generally recognized as a supply contract with qualified employees.

The subject of the outsourcing agreement is the service provided by the executive. Often in relation to such contracts, the contract provisions of the SCU apply. However, there are also norms that directly regulate the outsourcing agreement, which is considered a type of service for a fee. The service provided by the executive is mentioned in Part 1 of Article 703 of the OOR FC, according to which the executive will be required to perform a service (perform certain actions or perform certain activities) that is not in the material form by the order of the customer. It can be seen from this that the concept of service in O'R FK is partially revealed.

Thus, in order for the conditions on its subject to be fully agreed in the outsourcing agreement, the contract must clearly indicate a certain action or activity that the executive must carry out. In practice, this is done by defining the list of services (types) of the parties as well as the service charge. A service location and facilities are also provided if necessary.

N.S.Jo'raev and S.F.In the opinion of the otakhanovs, the implementation of certain actions in the provision of services for a fee is one-time in nature, while the implementation of a certain activity will be multi-storey or long-term. Of course, this opinion of them is appropriate and is

[11] Қаранг: https://daryo.uz/k/2017/09/13/biznesda-autsorsingdan-foydalaning/; Ефимова С., Пешкова Т., Коник Н., Рытик С. Аутсорсинг. -М.: ООО «Журнал «Управление персоналом», 2006. -С. 49.

important in distinguishing an outsourcing contract from other types of service contract by subject. For example, a single enterprise contracts with another enterprise to provide services to its computer equipment for a longer period of time, and in accordance with this agreement, the Executive Enterprise provides maintenance to the computer equipment of the customer enterprise for a certain period of time. This is exactly what the outsourcing contract is. If an enterprise contracts with another enterprise to provide a one-time service to its computer equipment, and a one-time service is provided, this is considered to be a service contract for a simple fee.

Of course, it is permissible to dwell here on the meaning and essence of the words of action and activity. The Explanatory Dictionary of the Uzbek language gives the following definition of action and activity: "action is the state of activity in the performance of work, the mode of activity of the performer, the path". "Activity - (mobility; effectiveness; efficiency) 1. Work, training, movement carried out in a field. 2. Such work, the process of action". From these definitions, we can conclude that activity has the property of continuity with respect to action.

So, from the above, another important condition for an outsourcing contract is the deadline for fulfilling the contract. In the practice of applying outsourcing contracts, start and end deadlines are often indicated. However, the start and end periods established in the contract are not the term of fulfillment of obligations, but the period of continuous fulfillment of obligations by the outsourcing organization under the outsourcing contract.

A number of researchers argue that in the early stages of cooperation, it is necessary to conclude a short-term contract in order to ensure the possibility of stopping a useless relationship in the event that the outsourcing contract is not fulfilled or must be fulfilled.[12]

However, it should be borne in mind that the long-term validity of an outsourcing contract is its peculiarity, since the general provisions for the parties to the contract establish the right to unilateral shrinkage only on the basis of law or agreement of the parties. In particular, in accordance with article 382 (4) of the UR CC, one party shall refuse to fulfill the contract in full or in part, and if the law is allowed to do so in the agreement of the foreign parties, the contract shall be duly terminated or amended.[13]

Such a provision is also enshrined in Article 707 of the UR CC, according to which the customer has the right to demand the termination of the service contract for a fee, subject to the completion of the fixed price of services, except when the contract is terminated due to the guilty actions of the performer. The performer has the right to demand the termination of the service contract for a fee, provided that he pays all the damage caused to the customer due to the termination of the contract, except when the contract is terminated at the fault of the customer.[14] Since the obligations of the outsourcer-organization are executed in accordance with the order of the customer, the customer must be given the right to check the execution and quality of the obligation by the outsourcer at any time.

Judging from the above points and analyzes, the provision of services for a fee can be one-time or last for a certain period of time. This can also be understood from the content of Article 703, part 1 of UR CC. In particular, according to it, the performance of the service is performed by performing certain actions or performing certain activities. For a fee, it is one-time to make certain actions to perform the service under the contract of Service. The performance of a

[12] Қаранг: Ещенко И.А. Договор аутсорсинга в гражданском праве: Дисс. ... кан. юрид. наук. -М., 2009. -С. 126.
[13] https://lex.uz/docs/111189#155450
[14] https://lex.uz/docs/180552#189524

specific activity for the performance of a contract service, on the other hand, lasts for a certain period of time. It is here that we can talk about the outsourcing agreement. Because under the outsourcing agreement, service is provided for a certain period of time. So, as a kind of service contract for a fee, the term in the outsourcing contract has an important practical significance.

In Particular, L.M. Burkhanova reflecting on the improvement of Chapter 38 of the UR CC, notes: "Chapter 38 of the Civil Code of the Republic of Uzbekistan expresses in itself the minimum level of articles governing the contract of service for a fee. In addition to Chapter 38 of the Civil Code of the Republic of Uzbekistan, in particular, it is advisable to include the following articles: "services performed under the service contract", "terms of Service Performance", "Service Remuneration procedure", "rights and obligations of the parties", "acceptance of services performed by the customer", "quality of services", "guarantee of customer rights","terms of.[15]

L.M. Burkhanova's in our opinion, adding to opinion, it is advisable to include article 7041 in Chapter 38 of the UR CC, which is called "terms of the contract of service for a fee", and give its content in the following wording:

"A contract of service for a fee may be concluded for one term, one year (short term), or another term provided for by the yohud parties agreement for a period of more than one year (long term).

A contract is considered to be concluded for one year, unless the term of its validity is established in the contract of service for a fee that is executed by carrying out certain activities".

The norm in this content represents the definition of the term of a service contract (including an outsourcing contract) for a fee in a recommendation character and has great practical significance. It is important practical to clearly indicate the term in the contract of service for a fee (in particular, in the outsourcing agreement), which is enforceable through the implementation of certain activities, and the end of the contract determines until what point the parties (especially the executor) must fulfill their obligations.

In addition, the strengthening of the terms of the service contract for a fee in a normative way in Chapter 38 of the UR CC also has practical importance in the separation of its types. In particular, this outsourcing is inappropriate as a separate legal sign in the emergence of contractual relations.

The Civil Code of the Republic of Uzbekistan establishes strict requirements for their form, depending on the type of contracts, the composition and assessment of their subjects. When a form of contract is said it is understood that in civil law the external expression of the will expressed by the parties is understandable.

It is not enough just the mutual agreement of the parties to conclude a contract. This agreement must be formalized in the appropriate form. The corresponding formalization of the contract turns the wishes of the parties into a contract. This helps to externally express the Internal will of the parties in ensuring the implementation of the contract and to inform other persons in an understandable way.

[15] Бурханова Л.М. Правовое регулирование договора о возмездном оказании услуг по гражданскому праву Республики Узбекистан и некоторые вопросы его совершенствования / Вестник Пермского университета 2013, Выпуск 4(22). С. 134.

The form of the contract is of very important legal and practical importance, failure to comply with the form established by law can lead to the invalidity of the contract. To follow the form of the contract prescribed by law, H.Rakhmonkulov noted, during the legal relationship created by the contract, the contract also provides an opportunity to check how much the actions of the parties were in accordance with the law.[16]

Article 366 of the UR CC establishes general requirements for the form of the contract, according to which, if a certain form is not established in the law for certain types of contracts, the contract can be concluded in any form provided for the conclusion of transactions.

Since the outsourcing agreement is part of the category of service contracts for a fee, Chapter 38 of the UR CC, which regulates the contract for services for a fee, does not provide for special requirements for the form of the contract in the norms.

Referring to the general rules of UR CC, it can be said that the parties to the outsourcing contract are always a business entity (legal entity in oddat), considering that these contracts are always concluded in a simple written form.

In particular, in accordance with Article 108 of the UR CC, in addition to transactions that require notarization, the following transactions are concluded in simple written form:

1) agreements of legal entities with each other and with citizens;

2) transactions between citizens in the amount of more than ten times the amount of the established base calculation, and in cases established by law - other transactions, regardless of the amount of the transaction.

The above article reinforces the general signs of transactions that require conclusion in writing. Such signs are the composition of the subjects and the amount of the transaction. Transactions made by legal entities according to the sign of the subject must have a written form. Thus, this form is the norm for them. They are allowed only in cases specified in the law (CC article 106.), guidelines for notarization of certain transactions in which there is no right to choose forms of transaction (CC 110-article.) are allowed to deviate from the established form excluding..

[16] Рахмонқулов Х. Ўзб. Рес. Фуқаролик кодексининг биринчи қисмига умумий тавсиф ва шарҳлар. 1–Жилд . -Т.: Иқтисодиёт ва ҳуқуқ дунёси, 1997. 236-бет.

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