



# RUSSIAN DESK

## Clarifications by the Supreme Court on the conclusion and interpretation of contracts

This newsletter will be important for the daily work of every company and will be of interest to company executives, lawyers, and the specialists of sales and purchasing departments.

At the end of 2018, the Plenary Session of the Supreme Court issued several rulings at once, among which was the ruling “On Certain Issues Concerning the Application of the General Provisions of the Civil Code of the Russian Federation on Concluding and Interpreting Contracts”.

This ruling contains clarifications on the conclusion of contracts (including through the courts), public contracts, preliminary agreements, framework agreements, subscription agreements, and also in respect of warranties, the interpretation of contracts, and the legal classification of contracts. You will find the most important provisions of this ruling given in this overview.



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### CONCLUSION OF A CONTRACT

In the opinion of the Supreme Court, lack of agreement on a term that is considered material by one of the parties entails the recognition that this contract remains unconcluded until the parties agree on this term or until the party demanding this term repudiates it explicitly or implicitly through its actions.

The following clarifications are given on the form of the contract:

- failure to comply with the form of the contract does not automatically attest to the fact that it has not been concluded,
- only in cases explicitly stated by law does the failure to comply with the form of the contract entail its invalidity,
- failure to comply with requirements on the state registration of a lease agreement for a building or structure does not entail the invalidity of such contract.

The Supreme Court also explained that the parties to a contract no longer have the right to assert that it was never concluded if they have accepted full or partial execution from the other party.

### PUBLIC CONTRACTS

The Supreme Court clarified the range of subjects of public contracts:

- Commercial organisations, non-profit organisations, and individual entrepreneurs may be recognised as parties obligated to conclude a contract,
- For the purposes of a public contract, individuals, individual entrepreneurs, and legal entities are recognised as consumers as relates to consumer rights protection legislation.

The parties obligated to conclude a public contract cannot refuse to conclude it if they have the capability of executing it.

Neither loan agreements nor voluntary property insurance contracts are classified as public contracts.

### PRELIMINARY AGREEMENTS

In order to consider a preliminary agreement to have been concluded, it is essential to agree on the subject of the main contract or the terms that make it possible to define the subject.

The Supreme Court also noted that the preliminary agreement should be concluded using the form established for the main contract (except for contracts that require state registration). In the absence of terms on the form of the main contract, the preliminary agreement is concluded in writing. At the same time, failure to meet requirements on the form of the preliminary agreement does not render it null and void.

The Supreme Court clarified cases in which an agreement concluded by the parties cannot be considered to be a preliminary agreement. If under the agreement the parties undertook to perform obligations characteristic of a main contract (for example,

payment of a purchase price), then this agreement is considered a main contract with a term on advance payment.

### WARRANTIES

In our view, the following is the most important conclusion drawn by the Supreme Court concerning warranties. A party that makes a warranty it knows to be false cannot, to justify an exemption from liability, assert that the other contracting party did not exercise due care and did not itself identify its falseness. Thereby the Court has lowered the standard of due care on the part of the recipient of a warranty, which in our opinion is the correct tendency in balancing liability among the parties.

When making warranties in the course of doing business, liability for an untrue warranty accrues regardless of fault, unless the agreement between the parties stipulates otherwise.

### CONCLUSION OF A CONTRACT IN COURT

When considering a case on compelling parties to conclude a contract, the court has the right to bring into the discussion any material term of the contract, even those not mentioned by the parties, as well as terms on which no conflict arose between the parties.

The entry into lawful force of a court decision compelling parties to conclude a contract is evidence that the contract has been concluded and does not require any additional actions by the parties.

### INTERPRETATION OF A CONTRACT

If the terms of a contract are unclear, the interpretation favours the counterparty to the party that drafted the contract or proposed the wording of the terms.

In the event of a dispute on the validity or conclusion of a contract, priority is given to an interpretation of the contractual terms under which the contract remains in force.

The ruling of the Plenary Session of the Supreme Court contains a number of other important provisions that we would be pleased to explain if necessary.



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