Overview of the application of the UNIDROIT Principles of International Commercial Contracts in national courts of the Russian Federation

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The nature of the UNIDROIT Principles of International Commercial Contracts

• are the international uniform law instrument which contains provisions reflecting usages and customs of international trade
• set forth rules advisory in nature
• are gaining in importance since state courts and arbitration tribunals make reference to the Principles in various ways: as an express choice by the parties as well as by court or tribunal in absence of such choice
• can serve a means of interpreting and supplementing international uniform law instruments and domestic law
• underlie drafting contracts
Application of the UNIDROIT Principles in the Russian Federation

- The arbitrazh courts of the Russian Federation have held over 300 decisions, containing references to the UNIDROIT Principles of International Commercial Contracts in the editions of 1994, 2004 and 2010 years
- The Supreme arbitrazh court - 7 decisions
- The Federal arbitrazh courts - 11 cases, 5 of which adjudicated by the courts of the East-Siberian circuit
- The arbitrazh courts of appeals - 119 cases
- The arbitrazh courts - 177 decisions
The analyses of the practice

• The Principles mostly touch upon the cases of formation and performance of the contract: issues of entering into a contract, its content, due performance, assignment of the rights and obligations

• The Principles are coupled with the analogous provisions of other codifications such as Draft of common frame of reference, the Principles of the European contract law and domestic law of Russia, France, Germany, Kazakhstan

• Courts frequently apply them with the United Nations Convention on Contracts for the International Sale of Goods 1980
Conclusion of the Contract

• Art. 2.1.11 – modified acceptance, acceptance by conduct

• Right of the buyer to receive an adequate information about the goods subject to delivery

• Right of the seller to demand the elimination of his infringed rights when the quality of goods delivered does not correspond to the quality of the goods initially presumed

• Freedom of contract
Construction, performance of the Contract

• Ambiguous terms – contra proferentem construction

• Performance of the contract: to achieve a specific result or to make best efforts?

• Art. 7.1.7 - Force majeure

• Chapter 26 of Civil Code of the RF - Financial or economic crises is not force majeure – no unavoidance

• Art. 7.4.4 - Foreseeability of harm
Non-performance or undue performance

- Art. 7.4.1 of the UNIDROIT Principles
- Art 393 of the Civil Code of the RF

DAMAGES

estimated by the court on the principles of justice and the proportionality of responsibility
Monetary obligation

The redemption priority

- Art. 6.1.12 (1) of the UNIDROIT Principles
- Art. 7:109 (4) of the Principles of European contract law
- Art. 367 of German Civil Code
- Art. 1154 of French Civil Code
- Art. 319 of Russian Civil Code

set forth the redemption priority: expenses, interest, payment to the principal
Monetary obligation

Place and time of performance

• Place of performance – the location of the creditor – Art. 316 of the FR, Art. 281 of Civil Code of Kazakhstan

• Time of payment – aggrieved party is entitled to interest upon the sum from the time when the payment is due to the time when the payment is executed – P. 1 of Art. 7.4.9 of the UNIDROIT Principles
Termination of the Contract

• Takes place in case of material breach
• Before the Termination of the Contract party shall make effort o change the Contract under the Convention on Contracts for the international sale of goods 1980 and Principles of the European contract law
Advantages of the Principles and obstacles to use the Principles

• Advantage: “user-friendly” character: they are neutral, short, concise, clearly arranged and written in simple language”

• Obstacles: “ideal” nature and legal complexity in the view of businessman

• Problem of some Russian state courts: the refusal to recognize the possibility of choosing non-national sources as applicable law
Conclusion

• Being a young legal instrument of solving trans-border trade disputes, the UNIDROIT Principles managed to be quite often applied by Russian tribunal of arbitrators and by state judges

• Proof of lex mercatoria

• The character of international trade custom

• The question may arise about the probable applicability of the Principles to cover activities of arbitration institutions aimed at arranging arbitration proceedings and of activities of the panels of arbitrators