

Impact of Opportunistic Behavior in Contractual Relations on Risk Management in the Modern Russian Economy

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Abstract. One of the key problems in risk management planning in Russian business is the widely practiced opportunism in contractual relations. Within the last 10-15 years the opportunistic contract has become one of the stable business patterns in the Russian economy. The article dedicated to the study of the most typical forms of opportunistic contracts is based on the data from the personal business experience of the author as well as the practice of interaction of economic entities in Tyumen region. By an opportunistic contract we mean the written procedure of economic agents interaction stipulating terms and conditions of a contract that are not evident at first glance, but when subsequently realized (or under a certain combination of external factors) can significantly change the economic effect of the contract execution without benefit of one of the parties involved. The role of specific institutional and psychological factors of behavior typical to the Russian economy and business culture is extremely important in the implementation of the opportunistic contract. The fundamental condition making possible the widespread practice of the institution of an opportunistic contract is the lack of efficiency of the judicial system and mechanisms in protection of the violated rights of economic agents. The manifestations of opportunistic behavior in terms of contract relationship may be implemented with the involvement of third parties. Widespread opportunistic contracts in the Russian economy caused a reaction from the management of Russian companies in the form of wide use of arbitration mediators as a mechanism of risk control implementation of the contracts. Such a large influence of intermediaries on economic processes has led to a significant increase in transaction costs and has become an independent economic problem.

1. Introduction

One of the key problems in risk management planning in Russian business is the widely practiced opportunism in contractual relations. Within the last 10-15 years the opportunistic contract has become one of the stable business patterns in the Russian economy.

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Behavioral uncertainty is an important factor in building the contractual relationship. Opportunism is one of the key assumptions for the existence of transactional costs, risks of opportunism are taken into account when making decisions on carrying out investment [3] (Kundakchyan, R. M.; Grigoryeva, N. S. 2016). The methodological basis for the analysis, trends and prospects of the impact of opportunistic contracts on risk-management in Russia was the work of foreign and domestic authors such

as Antonenko, E.V. [1], Benzl D., Kozlova E., Silova E. [2], Kundakchyan, R. M.; Grigoryeva, N. S. [3], Lumineau F., Quelin B. [4], Hodaka Morita, Maroš Servátka [5], Huoa B., Wangb Z., Tian Y [6], Lui S., Wong Y-y, Liu S. [7], Cordes C. Richerson P. McElreath R. Strimling P. [8], Lu W., Zhang L. [9], Lan Sun, Subhrendu Rath [10].

However, cause-effect relation between the scope of opportunistic behavior and characteristics of the implementation of contractual relations requires further proof [3].

The article dedicated to the study of the most typical forms of opportunistic contracts is based on the data from the personal business experience of the author as well as the practice of interaction of economic entities in Tyumen region of Russian Federation. The concept and essential features of an opportunistic contract

2. The concept and essential features of an opportunistic contract

By an opportunistic contract we mean the written procedure of economic agents interaction stipulating terms and conditions of a contract that are not evident at first glance, but when subsequently realized (or under a certain combination of external factors) can significantly change the economic effect of the contract execution without benefit of one of the parties involved.

In Russian business practice we frequently use the term "mined" contract, while the non-obvious terms and conditions distorting the economic meaning of the contract and transforming it into an opportunistic one are called "the mine" of the contract.

The typical features of an opportunistic contract are:

1) Misleading of one of the parties about both the material terms of the contract and the true intention of the other party.

2) Incompleteness and asymmetry in the provision of information about the terms of the transaction.

3) Lack of the trustworthy information about the actual behavior of one of the parties after conclusion of a contract. (As a rule, it is significantly different from the expected).

4) Increasing asymmetry of risks in realization of the contract. (Risks for one of the parties are increasing all the time during the contract execution).

5) Availability of certain conditions (intentions of one of the parties, environmental factors) contributing to the transformation of the contract into an opportunistic one.

The role of specific institutional and psychological factors of behavior typical to the Russian economy and business culture is extremely important in the implementation of the opportunistic contract.

The fundamental condition making possible the widespread practice of the institution of an opportunistic contract is the lack of efficiency of the judicial system and mechanisms in protection of the violated rights of economic agents.

3. Examples of opportunistic contracts implementation

The most widely spread opportunistic contract is the contract for the supply of goods/ services, that allows one of the parties to the contract (the buyer of goods/services) to obtain additional financial benefits by maximizing the extension of the terms of the actual performance of obligations under the contract (payments for the delivered goods or services rendered). To achieve this, the following condition is included into the standard contract text: "In case of failure to fulfill the obligations by one of the parties under the contract, it is subject to penalties of 0.01% of the amount of outstanding obligations for each calendar day of delay". The opportunistic pattern is based on the slowness and inefficiency of the judicial system as well as the low level of legal culture of Russian businessmen and is as follows: a simple calculation shows, that in case of failure to fulfill the contract, the guilty party shall be subject to sanctions in the amount of 3.65% per annum, which is significantly less than the refinancing rate of the Central Bank of Russia (7.25% as of 27.07.2018]). In this case, the opportunistic strategy to implement the contract is as follows: after having received goods/services, the buyer informs of the impossibility to fulfill payment obligations due to the unfavorable financial situation. In case of disagreement, the supplier of goods/services is proposed to apply to the court. In court pro-

ceedings, the buyer's lawyers provide suspension of execution and issue of a writ of execution to the Federal bailiff service for the period of 9 months to 1.5 years. Meanwhile, the amount of debt is in commercial circulation and brings to the opportunist a profit much higher than 3.65% per annum (the Russian businesspersons prefer to work from 25% per annum). As a rule, the payments reimbursed on the eve of the decision delivery in the court of appeal, which allows the opportunist to avoid legal costs. No doubt, a thorough analysis of the terms of the contract under a negative scenario of its application easily identifies its opportunistic pattern. However, there are hopes to the weak legal culture of the Russian small and medium –sized businesspersons who do not consider it necessary deeply analyze the terms of contracts, thereby showing a paradoxically high level of trust to contractors in the economy of the unstable fluctuation.

The second type of the opportunistic contract is of a branch nature and is used in the construction of large objects. Being more complicated than the first type opportunistic contracts, it allows an opportunist to gain a significantly more serious economic benefit in the form of a large object construction for half/ two-thirds of the contract value, as well as opportunity to receive a bonus of multi-million penalties from the contractor or the contractor's property complex in case of its bankruptcy. The fundamental factor making it possible to implement the above form of a contract is the low level of the construction culture inherited from the Soviet times, when it is impossible to comply with the exact terms and the proper quality of the stages of construction of large objects. In the example under consideration, a large Federal developer acts as a customer of construction, while a regional developer acts as a contractor. The construction contract includes a number of key terms to be fulfilled:

1) From half to two-thirds of the contract value is paid in the process of construction, the rest after the customer accepts the completed object.

2) The contract execution is rigidly tied to the stages of construction within the prescribed time and quality. In case of failure, penal sanctions are imposed.

3) During the construction process, the customer keeps a careful record of all violations of the contract, but does not show them to the contractor until 95% of the facility is ready. The mechanism of the opportunistic pattern implementation is as follows: Just before the object is almost finished, the customer's lawyers put forward claims to the contractor on the defects and violations regarding the construction period and based on that refuse to pay the contract value and require payment of penal sanctions stipulated by the contract. The contractor loses the court trial and pays sanctions or becomes bankrupt, while his property goes to the customer.

4. Impact of opportunistic contracts on economic risks

Since the processes of economic exchange and interaction are impossible outside the sphere of contractual relations, the spreading of opportunistic contracts leads to a sharp increase in the risk of failure to meet the contract obligations and as a consequence to the increase in transaction costs to ensure the contract fulfillment by the parties of economic relations.

The wide spreading of opportunistic contracts generates a high level of mutual distrust in the economy and negatively provokes the increase in transaction costs to be carried out by the parties of economic relations to comply with the obligations under the contract. Examples of increasing costs are the compulsory requirement of 100% prepayment for the supply of goods and services, the need to duplicate legal support for transactions.

The third-party system to ensure obligations under the contract, where the third party is represented by the administrative or power resource, becomes widely spread. The so-called "reshals" (fixers) – special intermediaries, who benefits from their social communications by ensuring non-legal mechanisms of contracts implementation, also specialize on minimizing of tripartite transaction costs. The main problem facing the honest economic subject of contractual relations is how to achieve the fulfillment of obligations from an opportunistic counterparty. In this case, while forming the risk management system, the two alternatives arise:

1) Creation of an expensive economic security service in the holding structure.

2) Transfer of the function to provide the risk management under opportunistic contracts to an external intermediary (third party) whose activities are often not institutionalized and paid for in cash withdrawn from the official turnover. In the long term there forms a peculiar fixer-economy which is characterized by the two key features:

a) The high level of shadow monetary turnover and the shadow financial flows are not officially reflected in the tax accounting and statistics.

b) The huge concentration of capital in cash is in possession of the social group of arbitrators – intermediaries. For example, the well-known case, when during a search in the apartment of a representative of the law-enforcement agency there was found a sum of money in cash equal to the annual budget of the city with a 600-thousand population (8 billion rubles) [11, 12]. In its turn, the capital concentration in the shadow money turnover of the so-called “reshals” (fixers) leads to a massive withdrawal of investment resources from the real economy. The money withdrawn is spent on personal consumption and is not reinvested in the real economy. In fact, we are dealing with an illegal mechanism to sterilize the monetary stock and this is one of the reasons for the current economic crisis in Russia and should be the subject of a separate study.

5. Conclusion

The manifestations of opportunistic behavior in terms of contract relationship may be implemented with the involvement of third parties widespread opportunistic contracts in the Russian economy caused a reaction from the management of Russian companies in the form of wide use of arbitration mediators as a mechanism of risk control implementation of the contracts. Such a large influence of intermediaries on economic processes has led to a significant increase in transaction costs and has become an independent economic problem.

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