

Civil Law Issues in Rendering Consulting Services in the Field of Investment Activity

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Abstract—The article considers one of the relevant issues in civil law, namely, the problem of consulting services in the domain of investment activities. There are specific differences between consulting and information services, which are analyzed with identifying their distinctive features from the point of view of the civil law theory. The author proposes an original term of *consulting services in the domain of investment activities*, assuming that an important moment in consulting services is that information, unlike in the information services, is created by the service provider. All the while, the result of the information services is not necessarily produced by the service provider; provision of information takes place within the framework of governmental program aimed at improvement of investment attractiveness.

Keywords—*consulting; investment; information; service; consulting services; information services*

I. INTRODUCTION

As a rule, the theoretical legal science has certain discrepancies with regard to the concepts of consulting and information services. It means, there is an opinion on a necessity to distinguish information and consulting services, which are performed in either oral or written form (or any other form). For example, A.N. Medvedev is of opinion that the objective of consulting services is referencing the information to a certain object, explanation of existing norms with respect to the given object, development of recommendations for the object, etc. [1].

There is also another opinion that stipulates the unity of consulting and information services, holding consulting services as a type of information services.

In the law enforcement practice, there are multiple disputes where a service provider has to prove the fact of actually rendering the services, at that, the court usually insists on producing written supporting documents, especially Delivery and Acceptance Certificates for the rendered services. For the avoidance of possible misunderstanding, a contract for compensated rendering of information services shall define a specific list of documents and other proofs supporting the fact of rendering the information service, as well as the procedure for signing the Delivery and Acceptance Certificates, etc.

In the academic literature, there are various and often opposing opinions on the scope of contracts for compensated rendering of information and consulting services, which is supported by both subjective and objective factors. The objective factors include such an unquestionable fact as listing of information and consulting services separated by comma in Article 798 of the Civil Code of the Republic of Tajikistan, thus positioning them as equal with respect to each other.

The arguments of other nature include such interpretation of the terms *information* and *consultancy* that makes them either identical, or different.

There are arguments that significantly influence the subsequent conclusions with respect to the question under consideration. For example, we cannot compare the terms *information* and *consultancy*, if only because the first one is static, while the second one assumes an active action. It means, that a more correct comparison would be one between the concepts of *information service* and *consulting service*.

II. LITERATURE REVIEW

M.I. Knysh stipulates that the majority of scholars define consulting as an activity performed by professional consultants and aimed at serving the needs of commercial and non-commercial organizations, private individuals in consultation, training, research in the problems connected to their functioning and development [2].

There are also opinions voiced that a) consulting is an information service; b) consulting is a scientifically justified piece of advice given by a specialist [3]; c) consulting is a process of interaction between a lawyer and their client about a problem of the latter with the aim to identify possible legal solutions and their consequences, understanding the ways and methods for implementation of the selected solution for the given problem.

L.B. Sitdikova believes, that during the process of consulting, information is used that the consultant (renderer of the service) references, and from the data available to them, various conclusions are made with the help of logical inference. The result of consulting is transformed information: knowledge obtained by the customer, at that, the knowledge is appreciated information.

R.N. Morodumov notes the following attribute distinguishing consulting and information services: when a contract for compensated rendering of information services is concluded, information that is the subject of the contract is already available to the service provider, thus, the already existing information is transferred to the customer, while in case of consulting services, the information that is the subject of the contract is produced after concluding the contract [4].

G. Lobanov, who takes a similar point of view, thinks that distinguishing attribute between consulting and information services is documented nature of the information as a result of consulting service: this information is transferred to the customer as a single object [5].

Analysis of the point of view of G. Lobanov in the context of forms and practice of consulting services shows, that Lobanov's opinion on documented nature of information obtained as a result of consulting services is in contradiction with the practice of rendering such services.

Ye.N. Shablova, unlike the abovementioned researchers of consulting and information services, sees the information services as independent with respect to the consulting services [6]. L.V. Sannikova raises objections, believing that consulting, auditing, marketing and appraisal services may be brought together under the attribute of the object of influence, which in all cases is information [7].

T.I. Ilyina considers consulting as a type of information, at that, she describes consulting services as a legal category that also includes "drafting a legal document - a contract, opinion, etc.", "as drafting such a document is a description of rights and obligations of parties in legal terms basing on a real life situation" [8].

As it is known, consulting services are about consulting. Thus, we assume it is arguable to hold the terms *consulting services* and *consulting* as synonymous. From the point of view of the economic science, consulting is a partial or complete transfer of non-key functions to external provider (outsourcing) in the field of client's intellectual activity [9].

In the consulting market, characteristics of providers often uses such terms as consulting company, consulting agency, consulting services.

Consulting services have some economic features differing them from other types of services: they are B2B services, purchased not to fulfill one's need, but rather to make one's business more profitable.

The concept of the modern consulting includes many existing types of consulting services. Consulting firms may specialize based on regional, sectoral or other principles.

Economists are of the opinion that the range of services in audit and consulting is the same and pertains to a common financial-intellectual market: customer purchases the results of spiritual, cognitive, intellectual activity [10].

III. RESULTS AND DISCUSSION

From the aforementioned, one may conclude that information includes only concepts (messages, data), while

consultancy consists in developing and transferral of knowledge, thus witnessing to consulting not being identical with information.

From this foundation, it is possible to define consulting as an activity incidental to a professional specialist. Unfortunately, this feature of consulting is, on the one hand, left unmentioned anywhere in the legislation, on the other hand, consulting may then include activities of public defenders and persons representing the interests in court on the basis of contract of delegation and a letter of attorney, where the professional component is not mandatory.

Besides, reference to exclusively professional person as a subject of consulting is in breach of the freedom of contract, meaning reduction of the range of subjects available for consultation.

Existing opinions that knowledge is the appreciated information meets no objections. However, if it is so, then transferral of knowledge is impossible, as it will become such only after personal appreciation. Thus, it is not the knowledge, but the information that is transferred by means of rendering the information services. The main difference of consulting with respect to information service lies in the fact that consulting is primarily a personal contact of concerned parties on the subject of search, processing and transferral of information from provider to customer. That is, consulting services are just a component of information services.

Contracts of compensated rendering of information services and those of compensated rendering of consulting services are often not exclusive in having their subject as provision of information (for example, in a contract of compensated rendering of legal services, or a contract of teaching services, information may serve as a component of the subject of the contract).

As it has already been stated, consulting services may be rendered in two main forms: oral and written. If the case is consulting services in written form, then, G. Lobanov is correct that the result of the consulting services is the documented information. However, if the case is the consulting services in oral form, then the results of rendering the services cannot be documented.

With respect to the information services, it should be noted that the information might be provided to the customer as a set of data collected by the service provider under the contract.

The fact that the information resulting from rendering the compensated service is not always produced by the provider (e.g., information services about existing benefits for foreign investors, or about current regulatory documents) may serve as a feature to distinguish between consulting and information services. When consulting services are rendered, the resulting information is created by the provider or provider's employee, if the provider is a legal person.

A vivid example here may be the position of R.N. Morodumov, who understands information service as

“providing customer with a certain amount of information obtained by collection, elaboration, analysis, synthesis of public domain information” [11].

Simultaneously, this definition contains a disputable separation of information and consulting services, and justification for selecting these exact characteristics of information activity are not clear. Besides, legislation allows not only public domain information, but also limited access information as a subject of information services. The legal regime of commercial confidentiality allows extending it onto any information, including public domain, which does not prevent introduction of such limited access information as a subject of information services on behalf of the rights holder.

The legal nature of consulting services relates to the method of rendering information services.

Consulting services are listed in Article 798 of the Civil Code of the Republic of Tajikistan in the same range with information and audit services, while their contrasting is a questionable matter.

Thus, in the economic literature we may find a conclusion that the concept of *consulting* is broader than the concept of *auditing activities* and includes a multitude of consulting services in various fields of scientific and technical knowledge.

We believe that the concept of *consulting services* in economics and jurisprudence is not the same. From the positions of jurisprudence, including marketing, legal, auditing, recruiting, research and training services with the consulting is incorrect. For example, information is the object of the consulting services as advice and recommendations, that of auditing services as financial conclusion; in recruiting services it appears as search and provision of data on a candidate. Application of economic concepts would break the very system of legal regulation.

As a method of rendering information services, consulting services are important in investment activities. During the investment activities, a need arises not only in the information services in a strict sense, but in a loose sense as well, including consulting services.

IV. CONCLUSION

Thus, the following conclusions may be made from the foregoing:

1) Many investment projects may be successfully performed if the implementation would involve experienced consultants who are to structure the investment projects in accordance with the requirements of international standards and provide selection of potential investors.

Consulting service, being a separate form of service, has a virtually unlimited domain. In this direction, according to data provided by expert-analytic and information-rating company UNIPRAVEX, there are vastly different consulting services –

the services mainly provided by professionals, covering the broadest areas of investment activities.

Such consulting services include the following: development and analysis of investment projects: preparation of preliminary conclusion for the project, development of investment memo, drafting an investment business plan; production of decision-making recommendations for investment project implementation with the aim of acquiring an enterprise with core assets, investment project maintenance: development of procedures and technologies to formalize business documentation for a land plot, description of the process agreement procedure with the municipal services and authorities of the federal subject of the Russian Federation, etc.

2) Within the framework of rendering the consulting services, investors are provided with information that, being developed, is justified by various opinions selected on the basis of investors' requirements. In such cases, it is not about provision of certain information (e.g., on tax benefits), regulatory and legislative bases, investment attractiveness, etc. Here, the case is such information that is provided on the bases of solution development and implementation recommendations for the customer.

This is where the difference is between the consulting services and information services. While under the information services investors obtain only existing information without solutions and developed recommendation for application, under the consulting services the key role is with the development of such solutions and recommendations for subsequent implementation. Besides, within the framework of consulting services, the consultant may directly participate in the implementation of previously developed information, e.g., while working to obtain subsidies, subventions, benefits and other forms of governmental support with mandatory expertise of economic and budgetary efficiency of candidate enterprises.

The consultant, providing consulting services to investor customers at the same time supplements their services with additional services. As such additional services, we may list appraisal, auditing activities, etc. As a result, the consultant while consulting their investor client transfers scientifically justified information, which has been primarily developed by a specialist in the economic sector.

That is why, L.B. Sitdikova is correct in her opinion that during the process of consulting, information is used that the consultant (renderer of the service) references, and from the data available to them, various conclusions are made with the help of logical inference. The result of consulting is processed information: knowledge, obtained by the customer.

3) An important moment in consulting services is that information, unlike in the information services, is created by the service provider; all the while, the result of the information services is not necessarily produced by the service provider; (e.g., provision of information takes place within the

framework of governmental program aimed at improvement of investment attractiveness in natural resource management in the Republic of Tajikistan in 2012-2015). In such cases, ready-made information developed by other subjects (such as government's ministries and departments) is transferred to customer.

4) and, finally: In consulting service, the service provider working in close contact with the customer selects necessary information taking the client's opinion into account. Rendering a consulting service assumes using methods of expert consulting, process consulting, training consulting, which are usually used in complex. Expert consulting involves a consulting firm performing diagnostics with subsequent development of solutions and recommendations for their implementation on behalf of the client. The role of the client is usually reduced to providing the consultant with information and evaluation of the results of the consultant's activities [12].

Studying the issues of various services in investment activities revealed gaps and contradictions in the scholarship and legislative concept, as well as presence of other issues requiring a complex approach for their solution. The conducted research allows formulating theoretic conclusions and making practical suggestions for improvement of the civil legislation of the Republic of Tajikistan.

The legal envelope of such economic relations for influx of funds is intrinsically a certain type of contractual relations. Thus, it is undoubted that the central core of the investment activity is the civil law aspect.

Usually, investment activity is implemented in legal envelopes corresponding to capital contractor's agreement, design contract, sales contract, supply agreement, etc.. Besides, investment may be implemented by purchasing a patent or a right of use under a licensing agreement, trademark, shares, entering into partnership with investing, etc.

Additionally, investment is placement of tangible and non-tangible means in the form of private property that the investors holds under a certain title (property, etc.), if such

properties are not made prohibited or controlled items under law, including securities (in foreign currency or in the currency of the Republic of Tajikistan), other property, property rights with monetary evaluation, exclusive rights to the results of intellectual activities (intellectual properties), etc., as well as information services. Thus, implementation of civil law mechanism to regulate the investment activity into the domestic legislation is objectively necessary.

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