

Preliminary agreement under the legislation of the Republic of Uzbekistan

Mekhmonov Kambariddin Miradkhamovich,

PhD, associated professor Researcher at Tashkent State University of Law,

E-mail: q.mehmonov@tsul.uz

Abstract: The interpretation of the preliminary contract is connected with the understanding of the essence and principles of the rules associated with it. The article analyzes the essence and necessity of a preliminary contract. The proposed study allows you to get complete information about the emergence of a preliminary agreement, its necessity, areas of application, conflict situations in legislation, judicial and law enforcement practice, and trends in problem solving. In recent years, approaches to the drafting and interpretation of a preliminary agreement have been studied in Uzbekistan and the world, forcing the conclusion of a main agreement on the basis of a preliminary agreement. At the same time, the necessity of adapting the legislation of Uzbekistan to the international requirements of the legal regulation of contractual relations is shown. The article studied in detail the scientific views of scientists, the legislation of the Republic of Uzbekistan during the period of the development strategy. The author puts forward certain suggestions and ideas.

Keywords: contract, preliminary contract, pre-contractual negotiations, option, subject of the contract, essential conditions, improvement of legislation.

Usually, subjects of a legal relationship enter into a contractual relationship in order to exercise their rights and interests, and sometimes even to defend them (for example, to participate in court as a lawyer). At this point, it is important to determine the legal force and necessity of any contract, including the original contract.

Civil behavior requires the participants of the relationship to act conscientiously and honestly. This aspect is especially evident in the preliminary contract, which is incomplete and intended to serve as a kind of cornerstone of the main contract.

The Civil Code establishes a rule on the preliminary contract, according to which the parties under the preliminary contract are obliged to conclude a contract (main contract) on the basis of the terms stipulated in the preliminary contract on the provision of property, performance of works or provision of services in the future (Article 361 of the Civil Code) [1].

First of all, it will be appropriate to pay attention to where and how the original contract originated. *Pactum de contrahendo* – a construction existing in Roman law was also known in German law in the 19th century [2]. A pre-contractual negotiation is considered as a preliminary agreement [3]. It means that the parties voluntarily compel each other to perform a certain action. Informal, unclaimed legal construction. *Stipulatio* is secured by a claim when it takes the form of a real contract. That is, delivery of goods, payment of money, etc.

What is the need for a preliminary agreement?

First, the parties have not yet decided to enter into a basic contract, but if one of the parties so requests, they would like to be bound by a legal relationship.

Second, it wants to be bound by a preliminary contract, but there is no formal basis for a main contract. Cannot conclude the main contract. One of the parties has not received a license, the building has not been commissioned, property rights have not been registered, etc. In some cases, of course, there is a potential possibility of a preliminary agreement.

Usually, initial contracts are concluded as pre-sale, lease. Couldn't it be possible to conclude the main contract without concluding the initial contract and impose the obligation to perform or to conclude with the condition of delay? a reasonable question arises.

First, it is impossible to conclude the main contract due to the fact that the object does not exist in the possession of the party.

Second, it is not possible to identify the property in the main contract with a sequence of algorithms instead of identification.

Regarding the validity of deferred conditions, it should be noted that if the parties make the origin of rights and obligations dependent on a situation that is unknown whether or not it will occur, the transaction is considered to be concluded with a deferred condition. If the parties make the annulment of rights and obligations dependent on an unknown situation, such an agreement is considered an agreement concluded with the condition of annulment (Article 104 of the Civil Code).

In relation to an object of intellectual property, the owner of a patent can transfer its exclusive right in full to another person in accordance with the agreement on the disposal of intellectual property. According to Article 1084 of the Civil Code, the right to obtain a patent, the rights arising from the registration of an application, the right to own a patent and the rights arising from a patent can be fully or partially transferred to another person. Here we can also talk about the initial contract.

What is the ratio of initial contract to contract negotiation?

The Civil Code defines the initial contract as an obligation. That is, it is stipulated that it should be executed at the request of one of the parties. However, the Civil Code does not specify special rules regarding pre-contract negotiations. Only when interpreting the terms of the contract, the true meaning of the words and phrases contained in it is not sufficient to interpret and determine the content by comparing it with other terms and the meaning of the entire contract, the true common will of the parties should be determined taking into account the purpose of the contract. All relevant circumstances, including the negotiations and correspondence conducted before the conclusion of the contract, the practice established in the mutual relations of the parties, business practices, and how the parties subsequently behaved (Article 363 of the Civil Code) are taken into account.

Can the pre-contract negotiation be called the ethical relationship of the parties to the contract? Yes. Negotiations perform a psychological function. The initial contract creates a full obligation legal relationship. Later, there is a right to compel through the court, to compensate for the damage caused by the breach of obligation.

A preliminary contract and similar legal constructions are distinguished from preliminary negotiations, options, preemptive rights, etc. Negotiating is a behavioral obligation. For example, not to conduct parallel negotiations with a competitor, reimbursement of costs for negotiations, etc. Sets the standard for being honest. Another difference is that it does not create an obligation to conclude a contract at the request of the other party. The worst consequence is limited to compensation for the damage caused.

Among the cases discussed are the boundary between accepted negotiation tactics and the duty to disclose relevant information or provide truthful information, the boundary between the transfer or use of information obtained during negotiations, and whether a preliminary agreement is relevant to acceptable conduct [4].

In contrast, a preliminary contract establishes a firm bond. If one of the parties does not agree, it will be forced in court (Article 377 of the Civil Code). Additional damages are also covered.

What is the effect of the collective agreement? Tasks in the field of selling goods, performing works or providing services (retail trade, passenger transportation in public transport, communication service, energy supply, medical service, hotel service, etc.) is called a public contract. Such an organization does not have the right to give preference to one person over another when concluding a public contract, except for the cases provided for by law (Article 368 of the Civil Code).

Preliminary contract and option

A forward contract is different from an option. According to Article 23 of the Law of the Republic of Uzbekistan "On Stock Exchanges and Stock Exchange Activities", option contracts can be concluded for the right to buy or sell goods or goods supply contracts in the future at a fixed price [5].

Is the obligation a legal relationship or a secondary right? The initial contract creates an obligation to conclude the main contract in the future. Option is a secondary right. Due to the free will of one of the parties (acceptance), the main contract is implemented. Although similar, it is a different legal phenomenon.

In an option, the will of one party is sufficient to enforce the underlying contract. In the initial contract, the will of one party will not be enough. If there is no agreement, the dispute will be resolved in court. So, an option is a convenient construction in a certain sense.

In the practice of law enforcement, there may be cases where a preliminary lease or real estate purchase agreement was concluded, but the real estate was not transferred. What action will be taken? According to the original contract, a claim is filed to compel the conclusion of the main contract, and after the claim is satisfied, the main contract comes into force. Then, a claim for transfer of immovable property is filed. Sometimes the claim can be consolidated. After that, the intended purpose and benefit of the original contract will be achieved.

Option - the main contract is concluded. Only the primary obligation is deferred until required. Naturally, it is not necessary to go to trial twice, as in the case of the original contract.

What are the basic contract options based on the preliminary contract? The Civil Code provides specific instructions for concluding a contract for the provision of property, performance of works or provision of services. However, this does not prohibit the conclusion of contracts that are not otherwise provided for. In particular, there is a possibility to conclude a binding legal or material legal contract. Shareholders' agreement, general partnership, confidentiality agreement, license agreement, etc. - if the obligation is a legal agreement, in the future, establishing a servitude, mortgage will be considered as a material legal contract. Therefore, the scope of the main contract that can be concluded on the basis of the initial contract is not limited.

Some cases of preliminary contract conclusion, for example, can an artist be forced to play a role in a movie? - No. However, there is an opportunity to enter into a preliminary agreement on the main contract for the development of the film. The result can be beneficial for the parties. In this case, if the artist refuses to conclude the main contract, compensation for the damage caused is required.

Another natural question arises at this point: What is the object of the original contract? According to Article 364 of the Civil code, conditions on the object of the contract, conditions that are considered important or necessary for this type of contract in the legislation, as well as all conditions that need to be agreed upon by the application of one of the parties are considered important conditions.

In our opinion, the object of the initial contract is the demand, initiative, offer agreed upon in the initial contract issued by the other party. For example, an offer to conclude the main contract was issued. After receiving the offer, the second party concludes (accepts) the main contract. This will achieve the goal of the original contract.

If in the initial contract it was agreed to draw up a basic contract of sale or lease, then the property to be alienated should be described. What if the contract object does not yet exist and cannot be individualized? For example, the object has not yet been completed, there is no cadastral data. In this case, there must be a description of the future object.

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Additional obligations in the initial contract

What are the terms of the initial contract? The following are the obligations of the parties in the initial contract:

- a) one of the parties to the contract ensures the occurrence of a deferred condition or creates conditions for it;
- b) provides information about the occurrence of a certain situation (for example, changes in the company's financial indicators, etc.).
- c) the negative obligation is fulfilled and it is envisaged to refrain until the conclusion of the main contract (for example, not to conclude a collateral contract);

g) it is necessary to agree on actions (for example, repair works) with the other party.

d) elimination of restrictions as a contractual obligation (for example, release from mortgage);

e) obtaining consent from a third party to conclude the main contract (for example, the consent of one of the spouses in the case of common property).

If the above obligations are not fulfilled by the parties, the initial contract can be canceled in case of damage and/or penalty, serious violation.

One of the most pressing issues in law enforcement today is the issue of pre-contractual fees. For example, is it necessary to pay the main part of the fee or 15%, 25%, 50% according to the initial contract? - Of course not. If payment is made, what should be the court's interpretation? In our opinion, the judicial practice in this case should not consider the contract as a preliminary contract. In this case, the main contract is concluded, because the payment of the initial payment (advance) is provided, and the counterparty also fulfills the obligation when an alternative obligation is required. The request to conclude the main contract at the request of the party who made the payment should be considered as an alternative obligation on his part, as an obligation for which he has been paid accordingly.

What if the original contract is interpreted by the court as the main contract, but its essential terms are not defined? For example, the price of the future real estate sale contract was not shown. Is an Civil code demand assessment a prerequisite? - Yes. The price of this property should be stipulated in the real estate sale contract. If the contract does not contain a provision on the price of the real estate agreed upon in writing by the parties, the contract for its sale shall not be concluded. In this case, the assessment rule provided for in the fourth part of Article 356 of the Civil Code does not apply (Article 485 of the Civil Code). Furthermore, according to the principle of favor contractus, the contract should be interpreted as remaining valid in case of dispute.

What is the procedure in cases where the period of conclusion of the main contract is not specified in the initial contract? The initial contract specifies the period of time in which the parties undertake to conclude the main contract. If such a period is not specified in the preliminary contract, the main contract must be concluded within one year from the moment of conclusion of the preliminary contract. Reference is made to Article 377 of the Civil Code. However, how long does a party have to sue? Unlike our national legislation, Article 429 of the Civil Code of the Russian Federation specifies a six-month period in this regard [6]. In Civil code, the time limit for a claim regarding the subject matter of the contract is one year. Is there a statute of limitations on a claim for enforcement? - No. In this case, the issue of the application of the general limitation period may also arise. However, in accordance with the requirements of Article 377 of the Civil code, in cases where it is mandatory for the party to whom the offer (draft contract) is sent in accordance with this Code or other laws (in the initial contract, this is mandatory - the author), this party must notify the other party of acceptance within thirty days from the date of receipt of the

offer. or must send a notice of refusal to accept or acceptance of the offer under other conditions (statement of disagreements to the draft contract) [7].

What is the duration of the main contract in the initial contract? Can the initial contract be set for three years? - Yes. For example, a year later, one of the parties demanded the conclusion of the main contract. The other side says he still has two years left. After that, he thinks it is possible to apply to the court for damages and enforcement. According to Article 242 of the Civil code, if the deadline for the performance of the obligation is not specified or is determined by the time of collection, the creditor has the right to demand performance at any time, and the debtor has the right to perform the performance at any time. If the task of immediate performance of the obligation is not understood by the nature of the law, contract or obligation, the debtor must perform such obligation within seven days from the date of the creditor's request. Therefore, according to Article 377 of the Civil code, a period of one month applies when it is requested to conclude the main contract on the basis of the initial contract.

What is the validity ratio of the original contract and the main contract?

Does invalidity of the original contract render the main contract void? - No. If there was a defect in the will when making the initial and main contract, then it is invalid, that is, the answer can be -Yes.

If the original contract is found to be invalid, the obligation to conclude the main contract is void. If the main contract is concluded, it is not automatically invalid. There must be a defect in the will under the underlying contract to be void.

What is the initial contract form?

The initial contract is drawn up in the form specified for the main contract, and if the form of the main contract has not been determined, then in writing. Non-observance of the rules on the form of the original contract will cause it to be invalid.

Must the initial real estate sales contract be in writing, notarized, or state registered? In this case, a written and notarized confirmation is required. What will be the decision if a claim is filed regarding the conclusion of the main contract without following this form? In that case, the claim will be rejected.

What are the important terms of the initial contract?

The preliminary contract should contain provisions that allow the subject matter of the main contract to be determined, as well as other important terms. If all the essential conditions are met, then is there a need to draw up a main contract? - Yes. In this regard, the Civil Code defines an important condition as mandatory. Are the obligations and conditions agreed upon by the parties insufficient? - For the time being, the above answer, that is, the Civil Code indicates that the primary contract is binding on the essential condition of the main contract.

What if the original contract did not specify non-essential terms of the main contract and the parties could not agree?

For example, the initial purchase agreement for equipment does not specify the price. When forcing the conclusion of the main contract through the court, the court cannot determine its value. Otherwise, it would be interference in private affairs and

restriction of freedom of contract. Because, in this place, the grade is not an important requirement. Article 356 of the Civil Code can be applied.

If the terms of the original contract do not match the terms of the main contract? - The principle of freedom of contract applies.

What are the consequences of breaching the terms of the original contract? - If the party who signed the initial contract refuses to sign the main contract, the provisions stipulated in the sixth and seventh parts of Article 377 of this Code shall be applied.

What is the solution if the consent of a third party is required for the conclusion of the main contract, for example, the consent of the spouses in the joint property, the consent of the mortgagor, and a claim to compel consent in this regard? -A claim of coercion is dismissed in the absence of consent.

Another issue is important from the point of view of law enforcement practice. That is, if the plaintiff is unable to perform the main contract, can it be forced to conclude the main contract? For example, the seller filed a claim on the conclusion of the main contract under the original sales contract, but he himself gave it on the basis of the mortgage contract. Third parties cannot transfer without their rights. - In this case, the claim can be rejected. Otherwise, the essence of concluding a binding contract based on the original contract will be lost.

Cancellation of the original contract

If the main contract is not concluded by the end of the period during which the parties must conclude it, or if none of the parties sends an offer to the other party to conclude such a contract, the obligations stipulated in the initial contract shall be null and void.

CONTRA LEGEM: After the conclusion of the initial contract, it is void if there is no demand for the conclusion of the main contract. that is, the fulfillment of the obligation was not required. Therefore, it is not necessary to conclude a contract within the period specified in the initial contract, but to make an offer. in this case, a lawsuit can be filed even after the initial contract period has expired.

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