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FIXED PRICE ESTIMATES IN RUSSIAN LAW AND LUMP-SUM CONTRACTS IN SINGAPORE LAW: A COMPARATIVE LEGAL ANALYSIS IN THE CONTEXT OF PUBLIC PROCUREMENT

ORÇAMENTOS A PREÇO FIXO NO DIREITO RUSSO E CONTRATOS LUMP-SUM NO DIREITO DE SINGAPURA: UMA ANÁLISE JURÍDICA COMPARADA NO CONTEXTO DAS CONTRATAÇÕES PÚBLICAS

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ABSTRACT

The objective of this research is to conduct a comparative legal analysis of fixed price estimate concepts in Russian law and lump--sum contracts in Singapore's legal system as applied to public procurement of construction works. The presented study is based on comprehensive application of comparative law methods, functional analysis of legal institutions, and examination of judicial and arbitration practice in Russia, Singapore, and international arbitrations. As a result of the conducted work, fundamental differences between these legal constructions have been identified, affecting core issues of risk distribution, pricing, and legal regulation. The authors have demonstrated that mechanical translation of the term "lump-sum" into Russian as "fixed estimate" creates false perceptions about the legal nature of these institutions. It appears that the research results can be utilized in preparing international construction contracts, resolving disputes in international arbitration, and improving national legislation on public procurement.

KEYWORDS: fixed price estimate. lump-sum contract. comparative law. public procurement. construction contracts. international contracts.

RESUMO

O objetivo desta pesquisa é realizar uma análise jurídica comparada dos conceitos de orçamento a preço fixo no direito russo e dos contratos lump-sum (empreitada por preço global) no sistema jurídico de Singapura, aplicados às contratações públicas de obras de construção civil. O estudo apresentado baseia-se na aplicação abrangente de métodos de direito comparado, na análise funcional de institutos jurídicos e no exame da prática judicial e arbitral na Rússia, em Singapura e em arbitragens internacionais. Como resultado do trabalho, foram identificadas diferenças fundamentais entre essas construções jurídicas, as quais afetam questões centrais de distribuição de riscos, precificação e regulamentação jurídica. Os autores demonstraram que a tradução mecânica do termo "lump-sum" para o russo como "orçamento fixo" cria falsas percepções sobre a natureza jurídica desses institutos. Entende-se que os resultados da pesquisa podem ser utilizados na elaboração de contratos internacionais de construção, na resolução de controvérsias em arbitragem internacional e no aprimoramento da legislação nacional sobre contratações públicas.

PALAVRAS-CHAVE*: orçamento a preço fixo. contrato lump-sum. direito comparado. contratações públicas. contratos de construção. contratos internacionais.*

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INTRODUCTION

In the context of developing international trade and increasingly complex transboundary economic relations, studies conducted using comparative law methods acquire particular relevance. The globalization of the construction industry and the growth of international public-private partnership projects necessitate in-depth analysis of differences between national legal traditions in the sphere of contractual regulation.

The problem of interpreting the lump-sum category, traditionally applied in construction contracts structured under English law, has come into the focus of scholarly attention. The literal translation of this term as "fixed estimate" creates an erroneous impression about the essence of the agreement between parties and fails to account for conceptual differences between continental and Anglo-Saxon legal traditions.

English construction contracts typically provide for one of three different types of pricing conditions: lump-sum (the contractor undertakes to perform works for a pre-agreed fixed sum regardless of actual costs), cost-plus (the client reimburses the contractor for incurred expenses plus additional remuneration), and remeasurement contract (payment according to pre-agreed rates with subsequent confirmation by actual volumes).

The Russian fixed estimate corresponds more closely to the third variant of price agreement, where the initially established price is subject to confirmation by actual expenses, which in turn are subject to payment.

The classical fixed estimate in relations between private parties, when applied to construction for state needs, receives substantial supplementation in the form of requirements under Federal Law No. 44-FZ of April 5, 2013 "On the Contract System in the Procurement of Goods, Works, and Services to Meet State and Municipal Needs".

According to Article 709 of the Civil Code of the Russian Federation, the price of work to be performed is established in a construction contract. The price may be approximate or fixed, with the Civil Code establishing a presumption of fixed price.

Under Article 710 of the Civil Code of the Russian Federation, in cases where the contractor's actual expenses proved to be less than those considered in determining the work price, the contractor retains the right to payment for works at the price provided for in the construction contract, unless the client proves that the contractor's savings affected the quality of the performed works.

According to Article 710 of the Civil Code of the Russian Federation, the arithmetic difference between the contract price and the cost of actually performed works, arising from reduced work volumes compared to the contractual volume, use of fewer materials, or replacement of materials and equipment with cheaper analogues, cannot be considered as contractor's savings.

This research is based on comprehensive application of comparative law methods that allow identification of fundamental differences between continental and Anglo-Saxon legal traditions in the sphere of construction contracting.

Comparative analysis of Russian civil law doctrine regarding fixed prices and international standards of lump-sum contracting reveals not only terminological differences, but also profound conceptual divergences in understanding the nature of pricing obligations.

The functional method of comparison, proposed by K. Zweigert and H. Kötz in their classical work "An Introduction to Comparative Law in the Field of Private Law"[3], allows overcoming formal differences in legal constructions and focusing on analysis of mechanisms for achieving economic efficiency and fair risk distribution between parties to international construction contracts.

Interpretation of international contract terms requires application of hermeneutic principles developed in the works of Hans-Georg Gadamer and adapted for legal practice[4]. The meaning of contractual provisions must be revealed not only through literal reading of the text, but also through understanding of the cultural-legal context in which the parties' intentions were formed.

The principle of "horizon of understanding", as applied to international construction contracts, means the necessity of considering both Russian traditions of state control over budget expenditures and Singaporean principles of professional autonomy and self-regulation in the construction industry.

DOCTRINAL FOUNDATIONS OF LEGAL REGULATION

The lump-sum concept is absent in Russian law and has been translated in international contracts as "fixed price" without accounting for conceptual differences in definitions. Analysis of the content of these concepts reveals serious divergences in terms of the sequence of parties' actions during work performance, as well as assessment of the legitimacy of counterparties' actions.

Russian Civil Law Tradition

Historical Development of the Fixed Price Concept

The concept of "fixed price" in Russian law has deep historical roots, tracing back to pre-revolutionary works of G.F. Shershenevich, who in his "Textbook of Commercial Law" (1919) noted that a contract price, once estab-

3 KÖTZ, H.; ZWEIGERT, K. An Introduction to Comparative Law in the Field of Private Law: Foundations. Translated from German. Vol. 1. Moscow: Mezhdunar. otnosheniya, 1995. 480 p.

4 See, for example: GADAMER, H.-G. Truth and Method: Fundamentals of Philosophical Hermeneutics. Moscow: Progress, 1988. 704 p.

lished, cannot be arbitrarily changed by one of the parties[5]. This idea received further development in Soviet civil law through the works of I.B. Novitsky and L.A. Lunts, who laid the foundations for modern understanding of the principle of stability of contractual obligations.

Contemporary Braginskiy-Vitryanskiy Doctrine

The fundamental work of M.I. Braginskiy and V.V. Vitryanskiy "Contract Law"[6] represents not merely a systematization of legal norms, but a philosophy of contractual relations based on the following principles:

- principle of autonomy of will – parties are free to determine contract terms within the framework that does not contradict law and foundations of legal order;
- principle of equivalence – contractual obligations must ensure a fair balance of parties' interests;
- principle of stability – a concluded contract represents "law for the parties," which can be changed only in exceptional cases.

With regard to fixed prices, the Braginskiy-Vitryanskiy doctrine identifies three levels of price stability protection: primary protection – contractual establishment of price immutability (Article 709 of the Civil Code); secondary protection – legally limited exceptions (Article 451 of the Civil Code); tertiary protection – judicial protection from unilateral changes.

It should be noted that mandatory norms serve as limiters of contractual freedom, and their combination with contract provisions may alter the parties' original intentions. Courts and arbitrations typically apply mandatory norms of the country of the court or arbitration, however, application of mandatory norms of contracting parties' countries or third countries is possible depending on the situation.

Development of Doctrine in Works of Contemporary Russian Civil Law Scholars

A.G. Karapetov in his monograph "Freedom of Contract and Its Limits" develops the concept of "economic rationality" of contractual terms, according to which fixed price performs the function of incentivizing contractors toward efficient resource management and innovative activity[7].

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5 SHERSHENEVICH, G. F. Textbook of Commercial Law. Moscow, 1994.

6 BRAGINSKIY, M. I., VITRYANSKIY, V. V. Contract Law. General Provisions. 3rd ed., stereotyped. Moscow: Statut, 2001. Book 1. 848 p.; BRAGINSKIY, M. I., VITRYANSKIY, V. V. Contract Law. Contracts for Performance of Works and Provision of Services. Rev. and enl. ed. Moscow: Statut, 2002. Book 3. 1055 p.

7 KARAPETOV, A. G.; SAVELIEV, A. I. Freedom of Contract and Its Limits: in 2 vols.

Contemporary domestic and foreign doctrine emphasizes that the principle of fixed price immutability manifests the broader principle of protecting parties' legitimate expectations, which forms the foundation of civil law stability[8].

International Lump-Sum Doctrine

FIDIC as Architect of International Standards

The International Federation of Consulting Engineers (FIDIC) has been shaping standards of international construction contracting for more than a century. The evolution of FIDIC conditions reflects the development of the global construction industry from simple contracting relationships to complex public-private partnership projects.

The FIDIC Silver Book (Conditions of Contract for EPC/Turnkey Projects) represents the quintessence of international experience in lump-sum contracting. Its philosophy is based on the principle of "single point responsibility", according to which the contractor assumes full responsibility for design, equipment supply, and construction under conditions of guaranteed payment by the client of the price stipulated in the contract.

As key principles of the FIDIC Silver Book, we can identify:

- comprehensive risk allocation – the contractor bears responsibility for all risks, except those expressly stipulated in the contract;
- fixed price certainty – the client receives price certainty when planning financial flows;
- time certainty – clear completion deadlines with a system of liquidated damages for delays;
- performance guarantee – a comprehensive system of quality and performance guarantees.

American Model

The American Institute of Architects (AIA) and the Associated General Contractors of America (AGC) have developed an alternative model of lump-sum contracts based on "design-bid-build" and "design-build" principles. Their approach is characterized by greater flexibility in matters of changing work volumes while maintaining the principle of base price fixity.

Moscow: Statut, 2012. Vol. 2: Limits of Freedom in Determining Contract Terms in Foreign and Russian Law. 453 p.

8 See in more detail: Problems of Construction Law: collection of articles / I.R. Abdullin, L. Oktay-kyzy Alaskarova, G.A. Aleksandrov et al.; comp. and ed. N.B. Shcherbakov. Moscow: Statut, 2022. Issue 1. 330 p.; BAILEY, J. Construction Law. Informa law. Oxon, 2011. 1884 p.

German Tradition

German construction regulations (Vergabe- und Vertragsordnung für Bauleistungen - VOB) represent an example of a highly technological approach to construction pricing. VOB/B establishes a detailed system for calculating price changes when modifying projects, based on the principle of "performance equivalence".

Synthesis of Legal Traditions

Comparative analysis of various legal traditions allows identification of universal principles of lump-sum contracting:

- principle of predictability means that all legal systems strive to provide parties with the ability to forecast financial obligations;
- principle of fair risk distribution – risks should be borne by those parties better able to manage them;
- principle of efficiency implies that contractual mechanisms should stimulate optimal resource utilization;
- principle of protecting the weaker party means the necessity of preventing abuse of contractual freedom.

Analysis of Preconditions for Concluding Lump-Sum Contracts

The main preconditions for parties concluding contracts under lump-sum conditions using the PSSCOC form include the following:

Lump-sum contracts are most widespread in construction in Singapore, using the standard Public Sector Standard Conditions of Contract (PSSCOC) form for government projects;

Lump-sum contracts are the most common form of fixed-price contracts for the volume of work outlined in the client's technical specifications; risks of cost overruns due to changes in work volume and costs of materials, equipment, machinery, and mechanisms are borne by the contractor.

SPECIAL FEATURES OF LEGAL REGULATION IN THE CONTEXT OF PUBLIC PROCUREMENT

Russian Model of State Control

The Russian public procurement system is characterized by a high degree of regulation and centralized control. Federal Law No. 44-FZ establishes strict requirements for supplier determination procedures, technical specification formation, and contract performance monitoring.

A distinctive feature of the Russian approach is the mandatory conduct of state expertise of project documentation, the results of which may significantly affect work costs. However, current legislation does not contain clear mechanisms for coordinating expertise results with the principle of contract fixed price.

Singaporean Model of Professional Self-Regulation

Singapore's public procurement system is built on principles of professional competence and construction industry self-regulation. The Building and Construction Authority (BCA) exercises general regulation but does not interfere in commercial aspects of contractual relations.

The standard PSSCOC form provides parties with significant autonomy in determining contract performance conditions, while state requirements are predominantly technical in nature and do not affect pricing conditions.

INTERNATIONAL ARBITRATION PRACTICE ON LUMP-SUM CONTRACTS

Leading Precedents in Lump-Sum Contracts

The ICSID arbitration award in LSG Building Solutions GmbH and others v. Romania (Case No. ARB/18/19, Award of February 20, 2024)[9] can be considered a precedent in the field of lump-sum contract interpretation. The tribunal formulated the following fundamental principles:

- presumption of risk acceptance (a lump-sum contract creates a presumption that the contractor has assumed the risk of cost changes unless expressly excluded);
- strict interpretation (exceptions from the fixed price principle must be interpreted restrictively);
- commercial reasonableness (any price changes must correspond to principles of commercial reasonableness).

In one case considered by LCIA, governmental expertise demanded reduction of EPC contract price based on "inflated costs". The tribunal, applying English law, ruled:

"Government interference in commercial contracts must be strictly limited to cases explicitly provided for in the contract itself. Unilateral governmental requirements cannot alter contractual price without the contractor's consent, unless such mechanism is clearly contemplated by the parties"[10].

9 Electronic resource. Available at: https://www.italaw.com/sites/default/files/case-documents/italaw182052.pdf (accessed: 27 June 2025).

10 LCIA Case (confidential, 2018) – «Government Expertise Interference» (award on file with

Contemporary Trends in International Arbitration Practice

Contemporary international arbitration practice consistently develops principles of interpreting lump-sum contract conditions in the context of state regulation. The Singapore International Arbitration Centre (SIAC) adheres to the practice that local regulatory requirements cannot automatically change the price agreed upon by parties without their mutual consent, unless such possibility was expressly provided for when concluding the contract.

The Hong Kong International Arbitration Centre (HKIAC) also develops the doctrine of protecting legitimate expectations in international construction contracts. According to established arbitration practice, contractors have the right to expect receipt of the agreed price upon condition of proper performance of obligations.

RUSSIAN JUDICIAL PRACTICE

Information Letter No. 51 of the Presidium of the Higher Arbitration Court of the Russian Federation dated January 24, 2000, "Review of Practice in Resolving Construction Contract Disputes", laid the foundations for contemporary understanding of fixed price in Russian judicial practice. The court established that fixed price represents a special contractual mechanism of risk distribution, whereby the contractor assumes the risk of work cost increases in exchange for guaranteed receipt of agreed remuneration.

Fixed price can be changed only by agreement of the parties or in cases expressly provided by law. Conducting state expertise by itself is not grounds for unilateral change of contract fixed price[11].

In the Decision of the Supreme Court of the Russian Federation No. 308-ES22-12238 dated July 4, 2022, in case No. A53-14770/2020, the Court analyzed questions of the relationship between state expertise and the fixed price principle, concluding that state expertise aims to verify project documentation compliance with technical regulations and may serve as grounds for revising the price agreed upon by parties in the direction of increase. A similar approach is contained in Decisions of the Supreme Court of the Russian Federation No. 304-ES25-1788 dated April 3, 2025, in case No. A45-24995/2023, and No. 303-ES23-5557 dated May 10, 2023, in case No. A51-11703/2022.

the authors).

11 BIRYUKOV, S. N. Contract Practice in the Defense Procurement Sphere. Defense Industrial Complex: Legal Issues, no. 5, 2020, pp. 31-38.

PRACTICAL ASPECTS OF APPLYING DIFFERENT PRICING MODELS

Risk Analysis and Distribution

The main difference between Russian fixed estimates and international lump-sum contracts lies in risk distribution principles. In the Russian model, the contractor bears the risk of work cost increases but retains the right to price adjustment when project solutions or client requirements change. In lump-sum contracts, the contractor assumes practically all commercial risks of the project.

Impact of Regulatory Changes

Different approaches to construction activity regulation create unequal conditions for contract performance. In Russian jurisdiction, changes in technical regulation may serve as grounds for price revision, while in Singaporean practice such changes are considered part of entrepreneurial risk.

CONCLUSION

The conducted comparative legal analysis allows the authors to draw the following conclusions.

First, Russian fixed estimates and international lump-sum contracts represent different legal institutions with fundamentally different approaches to risk distribution and pricing.

Second, mechanical translation of "lump-sum" as "fixed estimate" creates false perceptions about the legal nature of these institutions and may lead to practical problems in implementing international projects.

Third, the Russian model of state control presupposes active interference in pricing, while the Singaporean system is based on principles of professional self-regulation.

Fourth, international arbitrations consistently protect the principle of price immutability in lump-sum contracts, limiting possibilities of governmental interference in commercial relations.

Fifth, when concluding international construction contracts, it is necessary to clearly define applicable law and dispute resolution mechanisms, as well as provide for special procedures for coordinating changes necessitated by national legislation requirements.

It appears that further research in this area should be directed toward developing unified approaches to interpreting pricing conditions in international construction contracts and creating effective mechanisms for protecting the interests of all participants in the construction process.

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