

***Contract Law in Russia* by Maria Yefremova, Svetlana Yakovleva and Jane Henderson, Hart Publishing, 2014, 304pp, £25, ISBN: 978-1849462990.**

The number of disputes involving Russian parties, and Russian law, has been steadily increasing in domestic courts and arbitration tribunals outside Russia.¹ Most of these disputes involve issues of Russian corporate law. A book on Russian contract law in English was long overdue, and *Contract Law in Russia* authored by Maria Yefremova, Svetlana Yakovleva and Jane Henderson has filled this gap. Two Russian practitioners and a British academic give a comprehensive overview of Russian contract law. The book also marks a new trend of Russian authors writing about Russian law in English.² In the past, most books in English were actually written by non-native Russian speakers with limited practical experience of Russian law.³

The book follows a rather unusual approach. Not only does it explain various rules of Russian contract law, it also provides examples from the practice of Russian courts. It also offers comparative insights, by showing how certain concepts in Russian law differ from English law. Unlike traditional textbooks on Russian law, this book includes summaries of cases decided primarily by Russian commercial courts relevant to Russian contract law. This enables the reader to learn about statutory norms and to understand how Russian courts apply them in practice.

The book starts with an introduction to the history of Russian contract law. Although there is a brief subsection dealing with the pre-1917 period, most of the history section deals with the Soviet period. It introduces important concepts such as the sources of law and gives an overview of the court system and the legal profession in Russia.

Common law lawyers will find the section on the role of precedent in Russian law particularly useful (26–30). On the one hand, as in any other civil law jurisdiction, the role of precedent is secondary to other sources of law and case law is not regarded as a primary source of law. On the other hand, precedent plays an increasingly important role in the Russian legal system. For instance, the Constitutional Court of the Russian Federation plays an important role by giving binding interpretations of the Constitution.⁴ Some state agencies also have a right to request an interpretation of specific legislation and interpretations are equally authoritative when they are made in a specific case (28–29). The Supreme Court and the Supreme Commercial Court have authority to give explanations regarding judicial practice, which lower courts follow. Commercial

¹ See eg Yaraslau Kryvoi and Noah Rubins, 'Zabluzhdenia o mezhdunarodnom kommerchskom arbitrazhe' (Misconceptions about International Arbitration) (2011) 56 *Corporate Lawyer* 56.

² See also Vladimir Orlov, *Introduction to Business Law in Russia* (Ashgate, 2013).

³ See eg William Butler, *Russian Law* (Oxford University Press, 2009); Hiroshi Oda, *Russian Commercial Law* (Martinus Nijhoff, 2007); William Bradford Simons, *Private and Civil Law in the Russian Federation: Essays in Honor of FJM Feldbrugge* (Brill, 2009).

⁴ Art 125(5) of the Constitution of the Russian Federation (1993).

courts became particularly active in strengthening the role of precedent under Justice Anton Ivanov following his appointment in 2005. In 2010, the Constitutional Court approved the approach according to which not only the explanations of the Supreme Court but also its decisions in concrete cases are binding. This became a milestone in strengthening the role of precedent in Russian law.⁵

Chapter II of the book deals with the terms of contracts. It also covers various important classifications under Russian law such as express, implied, material and unfair terms. It explains the mechanism of incorporation of terms into the contract and interpretation.

It is useful for common law lawyers to know that requirements of form under Russian law differ significantly from those in common law jurisdictions. In Russia, contracts have to be in writing if at least one of the parties is a legal entity or the amount exceeds a certain sum and in other cases specifically provided by law.⁶ Failure to respect the requirements of form may lead to non-conclusion of the contract or its invalidity.

The book also explains how contracts form under Russian law—what it takes to have a valid offer and a valid acceptance and the moment from which the contract is deemed to be concluded (86–107). As Russian contract law has its roots in Roman law, many of its concepts come from there. For instance, it draws a distinction between real (*realnye*) contracts and consensual (*konsensualnye*) contracts, which makes a difference not only in theory but also in practice. Real contracts are concluded from the moment of transfer of property and are valid only from that moment, while consensual contracts are binding from the moment the parties reach an agreement.

One of the central concepts of contract law in common law jurisdictions is consideration. It does not have a direct equivalent in Russian law but several concepts, such as counter-performance and counter-giving for performance, resemble it. The book explains the role of consideration in Russian law. It also analyses factors that may defeat contractual liability (126–60). They include various grounds for invalidity and there is a distinction between void and contested contracts. In addition, in certain situations, contracts may be deemed not concluded.

Chapter 7 deals with the rights and obligations of third parties to contracts and rules applicable to assignment. A separate chapter is devoted to performance of obligations, including methods of ensuring performance. The authors devote the final two chapters to remedies for breach of contract and discharge of the contract. The remedies chapter deals with types of damages awarded under Russian law, various penalties and other measures.

As with any other major writing project, the book contains a number of debatable statements. For instance, the authors state that ‘under Russian law it is not possible to have incorporation of terms by notice’ (67). Although there is no direct equivalent of

⁵ Resolution of Constitutional Court of the Russian Federation of 21 January 2010, No 1-P, para 4.

⁶ Art 161(1) of the Civil Code of the Russian Federation (1996).

incorporation of terms by notice in Russian law, in certain cases silence can mean acceptance of an offer if it follows 'from a law, custom of business turnover, or former business relations of the parties'.⁷ In practice this means that, although the general presumption is that incorporation of terms is not possible by notice, in certain situations it is permitted. This issue is discussed in detail elsewhere in the book (98–100).

On one occasion, the book creates a feeling of being not very consistent with its genre. While, for the most part, it follows a dry, black letter law approach, at times it makes rather sweeping generalisations—for example, that 'in contemporary Russia, unitary enterprises often work not to achieve their statutory goals but rather to enrich their management ...' (20). Some other statements would also require references to Russian law on which they are based. For example, the authors explain the hierarchy of various sources of Russian law without giving any indication as to where the rules on hierarchy come from (31–32).

It is also difficult to agree that 'disputes over property rights cannot be resolved through arbitration' (23). In fact, most disputes related to property, and even many disputes related to immovable property, can be resolved through arbitration.⁸ The authors suggest that 'obtaining a decision against a Russian party in a foreign jurisdiction is rather pointless because it is very hard to predict whether a Russian Court would be willing or not to enforce it' (36). According to the book, Russian courts 'regard all foreign law as contradicting the cornerstone principles of Russian law and consequently cancel the arbitration award' (23). In practice, however, the situation is not so grim. In most cases, Russian courts enforce foreign arbitral awards in accordance with the 1959 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.⁹ They can also enforce awards in accordance with various international agreements, such as the Kiev Agreement on Settlement of Disputes Relating to Economic Activities, dated 20 March 1992. Moreover, in certain cases, Russian courts enforce foreign judgments even in the absence of any special treaty.¹⁰ In addition, they fulfill requests of other foreign courts.¹¹

Elsewhere in the book, the authors note that 'neither intention to be legally bound nor consideration have any legal significance for the conclusion of a contract in Russia'

⁷ Art 438(2) of the Civil Code of the Russian Federation (1996).

⁸ See eg Sergey Strembelev, 'Kompetencia treteiskich sudov po rassmotreniu sporov ob investiciach v sozdanie nedvizhimosti v Rossii' (Arbitrability of disputes about investment in the construction of real estate in Russia) [2010] *Zakon*, Issue 11.

⁹ In 2012 commercial courts received 211 applications. See 'Analytical note to the Statistical Report about Activities of Russian Commercial Courts in the Russian Federation in 2013', p 3, available at www.arbitr.ru (all websites accessed November 2014).

¹⁰ Andrey Kalamonov, 'Russian Court Recognises Northern Ireland Judgment in the Absence of Special Treaty', www.cisarbitration.com/2013/11/05/russian-court-recognised-northern-ireland-judgment-in-the-absence-of-special-treaty. In one study, out of 11 available decisions regarding the enforcement of foreign judgments (not arbitral awards) during the period 2006–8, enforcement was granted seven times. See Patricia Nacimiento and Alexey Barnashov, 'Recognition and Enforcement of Arbitral Awards in Russia' (September 2010), www.whitecase.com.

¹¹ In 2013 they fulfilled 764 such requests: see above, n 9.

(86). Although, as previously noted, the concept of consideration is foreign to Russian commercial law, there are concepts which resemble it. But it appears that the intention to be bound under English law has its equivalent in Russian law. Article 352(1) of the Civil Code provides that an important requirement of an offer is that it 'expresses the intention of the person who has made the proposal to consider themselves to have concluded a contract', which seems like almost an exact equivalent of the intention to be bound.

The authors also suggest that 'simple agreement-acceptance of an offer is not the only method under Russian law to conclude a contract' (87). It is likely that the authors mean that there are different ways to conclude a contract (auction, adhesion to a standard form contract etc). Nevertheless, for any contract to be concluded, there must be an offer and an acceptance.

In addition to giving citations to primary sources (such as the Civil Code), the book also gives references to English translations of legal texts published by Western authors. While this is unusual, it could serve a useful purpose given the great number of unofficial translations of Russian legislation. The book gives plenty of references, primarily to articles of the Civil Code and to secondary literature in English, but very few to articles and books written in Russian. However, given that the main readership of this book cannot read Russian, such an approach could be justified.

Overall, the book serves a very useful purpose by giving practitioners and academics who cannot read Russian the most detailed and coherent analysis of Russian contract law available in English today.

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