

Cross-border contracts Civil and Criminal aspects

Russian Perspective

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I. Legal Regulation of cross-border contracts

1. International Agreements

- Hague Convention on law applicable to the international sales of goods of 1986
- Vienna Convention on Contracts for the International Sale of Goods of 1980
- Unidroit Principles of international commercial agreements of 1994

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2. Common Practice

- Incoterms (recent edition of 2010)

3. National Legislation

- Civil Code of the Russian Federation of 1996
- Federal Laws regulating different types of agreements
- Customs Code of the Customs Union of 2009
- Tax Code of 1998
- Law on foreign currency regulation and foreign currency control of 2003

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II. Definition, forms and types of cross-border contracts

1. Definition

Civil agreement between two or more parties located in different jurisdictions

- One of the parties is not a resident of the Russian Federation
- Object is located on the foreign territory

2. Forms

- Written
- Oral

3. Types

- Main / Supporting contracts
- Conditional / Unconditional contracts
- Contracts with remuneration/without remuneration

III. Essential Provisions for cross-border contracts

- Subject matter
- Rights and obligations
- Transfer of property rights (if applicable)
- Applicable law
- Arbitration clause
- Payment
- Liability
- Force-majore provisions

IV. Most criminological areas of cross-border contracts

- Sales of goods
- Registering property
- Leasing
- IP law, license agreements, franchising
- Bank sphere
- Investment sphere

V. Cross-border Crimes

1. International Crimes

- Committed by the state, officials
- Infringe upon International security and peace (aggression, genocide, slavery...)

2. Crimes of international character

- Committed by Physical persons
- Infringe upon rights and interests of one or more states, organizations, persons and legal entities

VI. Crimes of international Character

- Crimes against stability of international relations (terrorism, drug traffic, illegal emigration etc.)
- **Economical crimes (cross-border contracts)**
- Human Rights crimes
- Military crimes
- Crimes in the sea

VII. Legal Regulation of International Economic Crimes

1. International Conventions, Agreements

- Council of Europe Convention On Laundering, Search, Seizure and Confiscation of Proceeds from Crime of 1990
- UN Convention against Transnational Organized Crime of 2000
- UN Convention Against Corruption of 2003
- Agreements on legal support in civil, family and criminal cases (with Bulgaria of 1975, with Greece of 1981, with Cyprus of 1984, with Korea of 1957)

2. National law

- Criminal Code of the Russian Federation of 1996
Crimes in the sphere of economics (Section VIII)
- Law On measures against money laundering received from criminal sources and financing of terrorism of 2001
- Federal Law 376 On amendments to the Tax Code - "Anti-offshore law"

VIII. Economic Crimes

- **Crimes Against Property** (Chapter 21 of the Criminal Code of the Russian Federation)
- **Crimes in the Sphere of Economic Activity** (Chapter 22 of the Criminal Code of the Russian Federation)
- **Crimes Against the Interests of Service in Profit-making and Other Organizations** (Chapter 23 of the Criminal Code of the Russian Federation)
- **IP Crimes** (Chapter 19 of the Criminal Code of the Russian Federation. Crimes Against the Constitutional Rights and Freedoms of Man and Citizen)

IX. Offshore Jurisdictions

Definition

Financial Center attracting foreign capital through its tax and other privileges

X. Types of offshore jurisdictions

1. Jurisdictions with no taxes

- British Virgin Islands (BVI)
- Belize
- Seychelles
- Nevis Island

2. Jurisdictions with minimal or low taxes

- Cyprus

- 90% of large scale businesses and fleet in Russia have off-shores structure
- 80% of contracts with securities are done through off-shores
- Analysis of Boston Consulting Group:
For 2015 private finances raised to 24% in Russia (2 tril. \$) and $\frac{1}{4}$ of these finances are in off-shores

XI. What makes offshores attractive

- No or low taxes
- Secrecy of beneficial owners
- Easy to register a company

	Russia	Cyprus	BVI
Corporate Tax	20 %	10%	Annual charge 650 USD
Dividends	13%	5% (to pay in RF)	
Info on owners	disclosed	Not disclosed	Not disclosed
Registration of company	1 month	1-4 weeks/ buy in 1 hr	1-4 weeks/ buy in 1 hr
Bookkeeping & Financial Control	yes	yes	no

XII. Disadvantages of offshores

- In many jurisdictions with no taxes there are no agreements on double taxation
- Many of the offshores are in “black lists” of the Russian Federation and International Organizations (FATF, OESR) – special control

XIV. Anti offshore law 376 FZ of 2014

1. Definition of Controlled Foreign Companies

Art 25.13 of the tax code of the RF

- Non-resident company
- Controlled by persons or legal entities-residents

2. Obligation to declare existence of Controlled foreign Companies

3. Obligation to declare foreign income

Income of foreign controlled companies is excluded from taxation if:

- It is a non-profit organization
- There are agreements on avoiding double taxation between Russia and offshore country
- Located on the territory of the Eurasia Economic Union

XV. Most common economic crimes in offshores

- 1. Customs crimes** (Art 193-194 of the Criminal Code of the RF)
- 2. Tax crimes** (Art 198-199 of the Criminal code of the RF)
- 3. Money laundering** (Art 174, 174.1 of the Criminal code of the RF)
- 4. Illegal Enterprise** (Art 171 of the Criminal Code of the RF)
- 5. Illegal Bank activities** (Art 172 of the Criminal Code of the RF);
- 6. Swindling using offshore structures** (Art 159 of the Criminal Code of the RF).

1. Customs Crimes

Article 193 of the Criminal Code of the RF.

Non-return of Funds in Foreign Currency from Abroad

- Non-return from abroad of funds in foreign currency in large scale amount (>6 mln Rub = 97 K USD in 1 year)
- by the manager of an organization,
- required to be transferred without fail to accounts in the authorized banks of the Russian Federation

Sanction:

- restraint of liberty - up to 3 years
- compulsory labor - up to 3 years
- deprivation of liberty - 3 years.

Article 194 of the Criminal Code of the RF.
Evasion of Customs Payments Collected from Organizations or Natural Person

- evasion of customs payments collected from organizations or natural person
- committed on a large scale

Sanction:

- fine 100 -500 K Rub
- wage/salary (other income) 1 year - 3 years,
- obligatory labor - up to 480 hrs
- compulsory labor - up to 2 years
- deprivation of liberty - 2 years.

2. Tax crimes

Articles 198, 199 of the Criminal code of the RF **Evasion by a Natural Person/Organization of Paying a Tax and (or) a Fee**

- The evasion of taxes by organizations/physical persons
- False data in accounting documents on incomes and expenses
- committed on a large scale (>2 Million Rub for legal entities/600K for persons in 3 years period) –

3. Legalization (laundering) of criminal income using offshore jurisdictions

Articles 174, 174.1 of the Criminal code of the Russian Federation

- Funds and Other Property Acquired by Other Persons in an Illegal Way
- purpose of bringing the appearance of legality to the possession
- by this Person himself if a financial transactions is large-scale
(6 million RUB=98 K USD)
- **Sanction**
- fine - up to 120 K Rub
- wage or salary (other income)- up to 1 year

Thank you for your attention!

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