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Form of exchange transactions. Object and participants of the transactions.

Exchange contracts concluded during the bidding process are called exchange contracts. Exchange contracts take effect from the moment of signing by the parties and registration on the exchange and are in effect until the parties fully fulfill their obligations. However, the exchange contract is drawn up on the basis of an oral agreement fixed by the broker in the course of exchange trades and the parties' liability for the exchange transaction occurs before the contract is signed on the basis of the trading rules established by the exchange.¹

Exchange contracts are made in triplicate, having equal legal force and distributed in the following way: one for the buyer, one for the seller and one retained in the affairs of the exchange. The contract cannot be unilaterally unavailable, except in cases stipulated by the current legislation and in the cases stipulated by the contract.²

Exchange contracts consist of several articles containing all the basic conditions for the seller to transfer the goods to the buyer.

The contract specifies the full name of the parties involved in the exchange transaction, specifying the country of registration, a conditional definition of the parties (for example - "Buyer", "Seller") and documents on the basis of which counterparties have the right to conclude a deal and execute an exchange contract (company charter, power of attorney).

To enter into an exchange contract, it must be adhered to the essential conditions. In the exchange contract, the basic terms of the sale are determined: the quality of the goods, the basis of supply, the currency of the contract and other conditions. The terms and conditions for the delivery of exchange commodities,

¹ Фабощи, Ф. Финансовые инструменты (The Handbook of Financial Instruments) /Пер. Е. Вострикова, Д. Ковалевский, М. Орлов - М.: Изд-во: Эксмо серия: Финансовая энциклопедия, 2012. - 246 с.

² Абраменкова И.Г. Заключение биржевых сделок с ценными бумагами. Биржевая оферта и биржевой акцепт // Законодательство. - М., 2012. - № 7.

accompanying documentation, specify the delivery time, delivery conditions, specify the allowable limits for the fluctuation in the scope of supply. The documents on the basis of which the goods are transferred from the seller to the buyer are determined.

The terms of the exchange contract determine the detailed procedure for settlements under exchange contracts, depending on the conditions of the exchange transaction.

Payment for the value of the exchange commodity is carried out by the Buyer at a certain time in any of the following orders:

directly to the Seller's account;

to the account of the exchange in the settlement currency with a full one-time payment;

to the account of the exchange in the contract currency by payments, in accordance with the payment schedule agreed by the Parties in the settlement currency, with the total amount equal to the value of the exchange commodity;

payment for the value of an exchange commodity - by counter delivery of goods equivalent in value.

The deal concluded on the exchange trades must be registered and executed as an exchange contract. The basis for registration of exchange transactions is only the oral consent of brokers, achieved as a result of publicly held trades and fixed by the exchange.³

The exchange contract may include provisions on rights, duties and responsibilities for customs clearance of export of products that do not conflict with the brokerage service of the seller of this product concluded by the exchange intermediary member of the exchange. These provisions can also be stated in a separate protocol as an annex to the contract. The data of the signed trade sheets are compared with the registrar's data on the buyer, the seller, the quantity of the goods and the price of the concluded transactions. In case of discrepancy between the data

³ Walmsly Julian. The New Financial Instruments. New York, John Willey & Sons, 1992

of the trade list and the data of the registrar, the decision on the terms of the transaction is made by the broker who conducted the trades.

Brokers are required to sign a contract, and the stock exchange to register it no later than the next business day after the conclusion of the transaction. When signing a contract, the broker is obliged to provide contracts, on the basis of which he acted in the interests of third parties. The untimely signing of a contract is defined as a refusal to execute a transaction.

The stock exchange contract is assigned a registration number, its form and content are approved by the exchange. The contract is signed by brokers, authorized persons of the exchange and certified by the seal of the exchange. For registration of the concluded transaction, the exchange may establish a registration fee that cannot exceed 0.5 percent of the transaction amount from two sides, including all taxes. The Exchange independently determines the party or parties that pay the state fee for the registration of the transaction. In the absence of information on the rights, duties and responsibilities of customs clearance of export of goods in the exchange contract, only the seller of these products can declare by himself or through a customs broker.

The essence of the contract is the description of the transaction or series of transactions. Usually such contracts are drafted in writing, although in practice participants of western exchanges, trusting each other and saving time, often use oral agreements. In this section, we will mainly discuss written contracts, bearing in mind that the general principles of their drafting are equally applicable to oral agreements.⁴

The need for contracts, therefore, arises together with the need for precise and unambiguous wording that will enable each participant in the transaction to accurately understand the essence of the contract. A well-written contract must also be easily understood by an unbiased third party - the arbitration commission or the judge - in the event of disputes between the parties to the contract.

⁴ 8. Abramenkova I.G. Conclusion of stock exchange transactions with securities. Exchange Offer and Exchange Acceptance // Legislation. - M., 2002. - № 7.

Further, the exact wording of the contract must be considered final, starting at a certain point in time agreed by all participants. In the case of a written contract, this moment is the time of signing the contract, unless further provisions or changes are permitted by the terms of the contract. Neither party is allowed to amend the contract after it is signed without the consent of the others, unless such right is contained in the contract itself.

Exchange deal - a mutual agreement on the transfer of rights and obligations in respect of exchange commodities, which is reached by bidders in the course of exchange trading, is registered on the exchange in the established manner and is reflected in the exchange contract.⁵

If we resort to an extensive interpretation of the main features, we can distinguish the following distinguishing features of the exchange transactions:

a) the place of execution of exchange transactions is the stock exchange, which performs the functions of the auction organizer;

b) exchange transactions can be concluded only during the trading (exchange) session, that is, during the period when the exchange holds trades;

c) exchange transactions are made by participants of exchange trades (for a stock exchange, the necessary quality of a participant is obtaining a license of a professional participant in the securities market);

d) exchange transactions are depersonalized, that is, sellers and buyers do not come into direct contact with each other, but deal with the clearing house or the center operating under the exchange;

e) a certain list of objects of exchange transactions (currency, things, securities, property rights, etc.) admitted to circulation on the exchange and standardized on quantitative and qualitative characteristics;

f) Exchange transactions are concluded in simple written form by exchange of documents, both documentary and electronic; the transaction protocol drawn up by the exchange is an indispensable element of the form of the exchange transaction;

⁵ Petrosyan E. The concept and classification of exchange transactions // Law and Economics. - M .; Jurid. House "Justicinform", 2003. - № 8.

g) exchange transactions take effect only after their registration by the exchange;

h) the time, place, procedure and method of execution of the transaction are standard;

i) execution of exchange transactions takes place outside the exchange through the authorized structure of the exchange (a credit institution, a depository, etc.) on the basis of the transaction register;

j) the proper execution of transactions is guaranteed by the exchange;

l) disputes arising between participants and the exchange in the course of exchange trade are usually considered by the exchange arbitration commission, other arbitration court.⁶

The day of execution of the transaction is fixed at the conclusion of the transaction. Moreover, all cash transactions concluded on the stock exchange within one day must be executed also on the same day.

So, any transaction must end with the delivery of securities to the buyer and transfer of money to the seller's account. Execution of the transaction involves counter-fulfillment of obligations by the seller and the buyer. But if one of the parties does not fulfill its obligation, the other will incur losses. Therefore, the principle of "delivery versus payment" usually exists on stock exchanges and clearing organizations, although the specific forms of organization of this system in different countries may be different. The delivery of sold and bought securities can be carried out by transferring them from the seller's hands to the buyer's hands. However, securities of large companies that have a large secondary market are usually stored in specially created depositories for these purposes.⁷

A distinction is made between the subject and the object of the exchange transaction. Under the subject should be understood the actions of the parties, and under the object then, about what the deal is. The subject of stock exchange transactions in the stock market are the actions of the parties aimed at obtaining

⁶ 11. Safonova T.Yu. Exchange trade in derivatives. - M., 2000.

exchange values, profits, insurance (hedging) of exchange risks. Under the object of the exchange transaction, one should understand property of a certain kind and quality, admitted to circulation on the exchange in the manner established by the exchange legislation and internal documents of the exchange. Objects of exchange transactions in the stock market are property rights, expressed in special documents - securities.⁸

Under the commodity in the Law "On Commodity Exchange" is understood not withdrawn from the turnover of goods of a certain kind and quality, including a standard contract and a bill of lading for the said goods. The definition reflects three features that distinguish the exchange commodity from the over-the-counter.

First, the exchange commodity is a commodity not withdrawn from circulation. At the same time, by withdrawal from circulation, it is necessary to mean a complete withdrawal, when a thing cannot be alienated altogether. Meanwhile, the purity of terminology used by law is of paramount importance here. In modern conditions, when everything is exchanged on the stock exchange or practically all of them are not, it is advisable to adhere to the fact that the exchange commodity is not considered to be only the goods completely withdrawn from the turnover. Things that are limited in turnover, in principle, can be objects of exchange trading. In this case, the buyer or seller must assume the responsibility to overcome the restriction established for the turnover of this exchange commodity. When the parties to the exchange transaction forgot to decide the issue of the fate of such a duty, it must be considered lying on the seller, unless the law or the substance of the emerging relationship does not imply otherwise. Of course, in the future, limited items in the turnover of objects of exchange trading should, in principle, not be. This contradicts the nature of the exchange as an organization whose main goal is to rationally organize the flows of goods that make up the basis of the economy by large-lot lots.

Secondly, the stock exchange is considered a "commodity of a certain kind." Does this mean that the trade on the exchange is possible only by things that are

⁸ Бердникова Т. Б. Рынок ценных бумаг и биржевое дело Учебное пособие. М.: Изд-во ИНФРА-М, 2000.

determined by generic characteristics? From the point of view of the Western practice of exchange trade that is the main way of trading. But our exchanges also sell individually-specific items. The volume of OTC⁹ transactions will increase, and not always in the direction of a completely legal turnover. The literal interpretation of the phrase "commodity of a certain kind", as an object of exchange transactions, leads to the conclusion that we are talking about things that have birthmarks. However, real estate and objects of intellectual property, i.e., the most typical individual-defined property, are excluded from the number of exchange commodities. An individual-specific thing is only within a particular relationship. Since the choice of one side or all of the participants at once fell on this subject, it becomes legally irreplaceable, and therefore individually indeterminate. Within the framework of one relationship, an identical thing is individually defined, within another - no (it is regarded as an element of some kind). Only a unique thing is always individually identified. Here it can never be the object of exchange trade, for the alienation of such a thing implies acquaintance with its distinctive features. Exchange trade is in absentia: it involves standardization or (at the first stage of its development) the study of samples. From here we can conclude - individually-defined things, properties of each of which are essential for buyers (unique objects), cannot be considered exchange commodities. As for the other individually-defined (within the framework of a specific relationship) things, they can be classified as commodities. After all, the law gives an abstract definition of an exchange commodity, which is abstracted from concrete relationships. Within the framework of this transaction, this product will be individually defined, but will retain the quality of "a certain kind of product" in relation to stock trading as a whole.

As a result, non-exchange goods should include real estate, objects of intellectual property (works of literature, science and art, inventions, industrial designs, trademarks) and other unique things.

Thirdly, the object of the exchange transaction - exchange commodity must have "a certain quality". This attribute is formulated unsuccessfully. Quality, even if

⁹ Over-The-Counter (OTC) <https://www.investopedia.com/terms/o/otc.asp#ixzz5FSPDepBO>

certain, has any product. Clearly, what was meant here was something different, namely: the standardization of quality requirements in order to equate close to each other and therefore interchangeable goods (to expand the scope of exchange trade). When wheat of different quality is evaluated in the same quantitative indicators, the kind of trade that is being bargained for, the procedure is simplified, competition grows, prices are more accurately determined, and so on.¹⁰

The definition of an exchange commodity includes both the standard contract and the bill of lading for the goods admitted to the exchange trade. These documents fall into the exchange turnover not as such, but as a special kind of goods becoming the subject of sale and purchase.¹¹

Exchange trade in contracts is analyzed in more detail below, in relation to futures and options transactions. As for the bill of lading, it is the only security allowed for trading on the commodity exchange. The reason is simple: a bill of lading, being a document of title, symbolizes the goods; its transfer is equivalent to the transfer of the real goods. The remaining securities (including commodity bonds) can be quoted only on the stock exchange or in the stock section of the commodity exchange. We also note that contracts and bills of lading can be used on a commodity exchange for such a real commodity, which in accordance with the Law may be subject to exchange trading. As a result, the exchange commodity can be defined as not withdrawn from circulation and is not a unique commodity, but also a standard contract and a bill of lading for such goods. Real property and objects of intellectual property cannot be traded on the exchange.¹²

When classifying exchange transactions for transactions with real goods and stock transactions for a period, the term of the transaction and the object of the transaction must be considered in their totality, while giving priority to the object of the transaction as the main criterion of classification. At the same time, there are two main types - transactions with real exchange values, where payment for an exchange transaction occurs immediately or within the next 2-3 days and which necessarily

¹⁰ Алексеев М. Ю. Рынок ценных бумаг. – М.: Финансы и статистика. 2001г.

¹¹ Галанова В.С., Рынок ценных бумаг.- М.: Финансы и статистика, 2005г.

¹² Окунев В. “Руководство по биржевым операциям” М. 2000 г. с.-180

ends with the transfer of real exchange values, and futures deals without real exchange values.

With the latter, the object of the transaction is not real values, but contracts for their supply, futures, options, etc. When making this type of transaction, the contract is bought and sold at the price indicated in it. If the transaction is executed in the future, final settlements will be made. In this case, final settlements can be made at a fixed price in the contract or with an amendment, depending on the fluctuations in prices. This type of transaction does not always imply the mandatory transfer of the transaction objects provided for in the contract.¹³

In a single stock transaction involved three parties - the seller, the buyer, the intermediary. At the initial stages the model is extremely simple - one intermediary reduces the seller to the buyer. With the growth of the scale of stock transactions, a second model appears, and there are already two middlemen: the buyer turns to one, the seller to the other and the probability of coincidence is small. With even greater intensity of stock transactions, a third model is formed: now the mediators themselves need help, and another appears between them.

The process of mediation is tend to be one of the significant moment when we considering exchange transactions from a different point of view. The mediator can act in two ways. First, at his own expense, becoming a holder of securities for the time being and earning income as the difference between buying and selling. On the American over-the-counter market, such intermediaries, as already mentioned, are called dealers. Secondly, he can work for a certain percentage of the transaction amount, that is, for a commission, simply by accepting from his clients orders for the purchase and sale of shares.

On the developed stock market uniformity in intermediary operations is not present, - all three models coexist, the "stock niche" is for each. Suppose a broker with an extensive clientele receives, among others, two orders, and the rate and size of the offer to sell coincides with the parameters of the purchase order. The broker

¹³ 4. Дегтярева О.И. Биржевое дело. – М.: ЮНИТИ-ДАНА, 2001. – 680 с.

can only formalize the transaction, with which he safely manages alone, without the need for the services of other intermediaries.

Pairs of "self-fulfilling" orders can be formed in the exchange crowd, when one broker announces about the offer available to him, and the other immediately responds - he has a paired order (mediation for the second model). But many assignments are formulated as conditional.

Our exchanges in the development of intermediary services require a strategy that includes the development of regulations: what minimum capital should a dealer have, what are the limits of loans that he can take, etc. Licensing of brokerage and dealer activities, establishment of standards for their reporting are required. And, of course, it would be good to decide: on which intermediary - broker or dealer - to focus? It is not ruled out that at the initial stage there will be no objective mediators who are ready to assume the functions of dealers. In the center of mediation, therefore, at the beginning it is advisable to place a broker, applying simultaneously maximum efforts to ensure the concentration of demand and supply of stock values. Gradually it becomes clear who of the brokers is able to take on the role of the dealer.¹⁴

The transaction concluded at the exchange auctions must be registered and formalized as an exchange contract. The only ground for registration of exchange transactions is the oral agreement of brokers, achieved as a result of publicly held trades and fixed by the stockbroker.

The exchange contract may include provisions on rights, duties and responsibilities for customs clearance of export of products that do not conflict with the brokerage service of the seller of this product concluded by the exchange intermediary member of the exchange. These provisions can also be stated in a separate protocol as an annex to the contract. The data of the signed trade sheets are compared with the registrar's data on the buyer, the seller, the quantity of the goods and the price of the concluded transactions. In case of discrepancy between the data

¹⁴ Петросян Э. Правовое положение субъектов биржевых сделок. (Окончание) // Право и экономика. - М.; Юрид. Дом «Юстицинформ», 2011. - № 5

of the trade list and the data of the registrar, the decision on the terms of the transaction is made by the broker who conducted the trades. Brokers are required to sign a contract, and the stock exchange to register it no later than the next business day after the conclusion of the transaction. When signing the contract, the broker is obliged to provide the contracts on the basis of which he acted in the interests of third parties. The untimely signing of a contract is defined as a refusal to execute a transaction.

The stock exchange contract is assigned a registration number, its form and content are approved by the exchange. The contract is signed by brokers, authorized persons of the exchange and certified by the seal of the exchange. The contract is executed in three copies: one for each party to the transaction and one for archival storage on the exchange. At the request of the parties, the exchange may issue certified copies of the contract. The basis for the customs clearance of the export of products is only the original of the buyer. Information on the executed contracts is entered in the register of contracts.¹⁵

In the absence of provisions for the customs clearance of exports of products in the contract for brokerage services to the seller of agricultural products, if the seller refuses to take part in the foreign economic registration, the intermediary is responsible for the consequences, which concluded a contract for brokerage of the seller.

If the buyer refuses to pay or terminates the contract, the guarantee fee, except for obligatory payments to the exchange, is sent to the seller. A broker-participant in a tender who has not entered into a transaction for a security deposit is paid, he returns by the exchange no later than 3 days after the expiration of the application. Exchange contracts are paid through the exchange. The basis for transferring the value of the contract to the seller is the act of acceptance and transfer of the products specified in the contract, signed by the buyer and the seller, or the written consent of the buyer for an advance payment. In the event that the exchange certificate is not

¹⁵ Правовое регулирование рынка ценных бумаг: Учебное пособие / Тихомирова Ю.С., Килясханов И.Ш.. - М.; Закон и право, ЮНИТИ-ДАНА, 2010.

provided to the exchange in the time specified in the contract, the funds received from the payer are returned to him by the exchange within 2 working days. When an application is received from the seller about a breach by the buyer of the terms of the contract, the exchange may detain a guarantee deposit on its account and take a decision within five working days about the procedure for resolving the dispute.