



# REVISTA INCLUSIONES

HOMENAJE A JAQUELINE VASSALLO

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Julio / Septiembre

2020

ISSN 0719-4706

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**THE FRAMEWORK AGREEMENT IN ORGANIZATIONAL BUSINESS LEGAL RELATIONSS**

**Ph. D. (C) Vadim Grigorievich Golyshev**

Moscow City Pedagogical University, Russia

ORCID ID: 0000-0001-5029-6688

GolyshevVG@mgpu.ru

**Ph. D. (C) Antonina Golysheva**

Moscow City Pedagogical University, Russia

ORCID ID: 0000-0001-5366-7202

privatpravo@rambler.ru

**Ph. D. (C) Olga Vladimirovna Efimova**

Moscow City Pedagogical University, Russia

ORCID ID: 0000-0002-1133-9398

alisa03@mail.ru

**Ph. D. Elena Vadimovna Pitko**

Moscow City Pedagogical University, Russia

ORCID ID: 0000-0002-0319-4328

PitkoEV@mgpu.ru

**Dr. Anatoly Nikolaevich Levushkin**

Moscow City Pedagogical University, Russia

ORCID ID: 0000-0002-5646-888X

LevushkinAN@mgpu.ru

**Fecha de Recepción:** 05 de enero de 2020 – **Fecha Revisión:** 21 de marzo de 2020  
**Fecha de Aceptación:** 02 de junio de 2020 – **Fecha de Publicación:** 01 de julio de 2020

**Abstract**

During the reform of the legislation governing business and commercial relations, rules on several new special contractual structures were developed. The authors analyze the framework agreement and formulate conclusions regarding the current regulatory framework. The paper discusses the theory and practice of applying the framework agreement in organizational business relations. In law enforcement, certain results of the reform aimed at applying framework agreements have become evident. This contractual structure allows determining the standard conditions included in the content of agreements and establishing general rules for contractual cooperation between the parties in the future. However, there are some difficulties in qualifying some property and organizational agreements and determining the legal nature of the framework agreement and the procedure for its performance. The authors show that the introduction of the framework agreement institution in business activities should have a positive effect on the development of contractual business relations, as well as on the participants in organizational business legal relations.

**Keywords**

Business legal relations – Framework agreement – Contractual constructions

**Para Citar este Artículo:**

Golyshev, Vadim Grigorievich; Golysheva, Antonina; Efimova, Olga Vladimirovna; Pitko, Elena Vadimovna y Levushkin, Anatoly. The framework agreement in organizational business legal relations. Revista Inclusiones Vol: 7 num Especial (2020): 229-239.

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## Introduction

In modern society, most spheres of life are based on contractual relations that have a business nature (including organizational agreements). The agreement is one of the main, most important regulators of civil and legal, business, organizational, and other public relations that exist between business entities.

"Economic activity includes the organization, provision, management, and direct implementation of production"<sup>1</sup>. This activity is usually organized on a contractual basis. Often, modern participants in civil transactions and business activities do not notice how they enter into contractual legal relations due to the performance of everyday actions that are a common part of their normal life.

The legal nature of the agreement often attracts the attention of scholars and practitioners. At the same time, even a quick analysis of literary sources and judicial acts allows us to note that the meanings in which the category "legal nature of the agreement" is used are diverse and highly dependent on the context of the publication itself or the judicial act<sup>2</sup>.

Starting from June 1, 2015, a new contractual design has been legally defined in the Civil Code of the Russian Federation (CC RF)<sup>3</sup>, namely, the framework agreement. Under paragraph 1 of Art. 429.1 of the CC RF a framework agreement (an agreement with open terms) is recognized as an agreement that defines the general conditions for the obligatory relations of the parties, which can be specified and clarified by the parties by concluding separate agreements, filing applications by one of the parties or otherwise based on or according to a framework agreement. From a doctrinal point of view, a framework agreement is a form of organizational agreement.

If we talk about new agreements introduced into legal practice by the current legislation, then the issue of determining the purpose of such an agreement can be complicated by the need for a multi-aspect assessment of its result<sup>4,5</sup>. Indeed, framework agreements are widespread in business, and the scope of their application is quite wide. Framework agreements are applied, in particular, by owners of engineering infrastructure facilities for emergency recovery work, and framework agreements are also widely used in banking activities when opening a credit line. Separately, it should be noted that even before

<sup>1</sup> I. V. Ershova, "Ekonomicheskaya deyatelnost: ponyatie i sootnoshenie so smezhnymi kategoriyami", Lex russica num 9 (2016): 46 - 61.

<sup>2</sup> V. G. Golyshev y A. V. Golysheva, "Pravovaya priroda dogovora kak faktor, opredelyayushchii osobennosti kvalifikatsii voznikayushchikh iz nego obyazatelstvennykh pravootnoshenii", Yurist num 6 (2019): 4 - 9.

<sup>3</sup> Grazhdanskii kodeks Rossiiskoi Federatsii (chast pervaya) № 51-FZ [Civil Code of the Russian Federation (Part One)]. Collection of legislation of the Russian Federation (CL RF) No. 32. Art. 3301. November 30, 2011.

<sup>4</sup> V. G. Golyshev; A. V. Golysheva y I. V. Golyshev, "Dogovor o setevoi forme realizatsii obrazovatelnoi programmy kak pravovoi sposob organizatsii obucheniya", Yuridicheskoe obrazovanie i nauka num 3 (2017): 18.

<sup>5</sup> V. G. Golyshev y A. V. Golysheva, K voprosu o setevoi forme realizatsii obrazovatelnykh programm kak pravovom sposobe organizatsii obucheniya. Nauchno-metodicheskie podkhody k formirovaniyu obrazovatelnykh programm podgotovki kadrov v sovremennykh usloviyakh: Sb. st. po itogam IV Mezhdunarodnoi nauchno-prakticheskoi konferentsii (8 - 9 dekabrya 2016 g., Moskva) (Moscow: IJU MGOU, 2017), 190.

the introduction of the relevant norm in the CC RF, framework agreements in business were used as an unnamed category, and the "Principles of international commercial agreements (UNIDROIT Principles)" (1994) relating to framework agreements and the ISDA regarding derivative financial instruments were also applied in the Russian Federation.

It seems that the main advantage of the framework agreement is that it allows the parties to be flexible in their relations. In particular, at first, the parties discuss the general conditions of their deliveries or services, enter into a framework agreement, which may reflect such provisions as the rights of the parties, the obligations of the parties, the terms of the framework agreement, and the terms of fulfillment of obligations, cases of default, liability for default, applicable law, and judicial or arbitration clauses<sup>6</sup>.

The essential conditions of the framework agreement in both civil and business law, in addition to the scope of the framework agreement, are the duration of the framework agreement, and such a characteristic of the scope of the principal agreement as to the key action of the party to its performance. An essential condition of a framework agreement in business law is the fact of registration of one of the parties as a legal entity having the right to engage in business activities or as a citizen in the capacity of an individual entrepreneur.

It should be noted that the only essential condition that is the same for all agreements is the scope of the agreement. Broadly speaking, the expression "scope of agreement" includes the entire set of indicators defining the purpose of the agreement. Perhaps such a definition of the scope is least disputed in the scientific literature. However, such a broad statement of the question is unlikely to contribute to a clear qualification of a particular legal relationship, within the framework of which a discussion will most likely arise about whether to consider a specific, individualizable object or certain actions of the parties to the agreement regarding this object as pertaining to the scope of the agreement<sup>7</sup>.

It should be noted that the practice of applying framework agreements in organizational business legal relations is very diverse, and their application in each particular case is objective, which is confirmed by the point of view of D. O. Schniger who states: "For example, for the owner of engineering infrastructure facilities, a framework agreement for emergency recovery repair is practically the only legal form for taking operational measures to prevent or eliminate the consequences of a violation of the supply of public utilities to the customers".<sup>8</sup> It is of no small importance that the framework agreement is such a legal structure that allows persons engaged in business activities to fulfill a wish for a product, work, or service of one party in exchange for receiving material benefits for the other party, while this need does not have any exact parameters at the time of the conclusion of such an agreement. It is important that the main, principal, basic parameters of the interaction between the parties can be agreed simultaneously and, at the same, time they will have legal force throughout the entire period of interaction between the parties. Such an agreement allows calculating one's budget for a significant period in the future, reducing costs, and is also the main component of the interaction between the parties.

<sup>6</sup> A. N. Levushkin, "Spetsialnye dogovornye konstruktsii: ramochnyi, optsiionnyi i abonentskii dogovory", Aktualnye problemy rossiiskogo prava num 2 (2018): 19 - 26.

<sup>7</sup> V. G. Golyshev y A. V. Golysheva, "Pravovaya priroda dogovora kak faktor, opredelyayushchii osobennosti kvalifikatsii voznikayushchikh iz nego obyazatelstvennykh pravootnoshenii", Yurist num 6 (2019): 4 - 9.

<sup>8</sup> D. O. Shniger, "Ramochnyi dogovor kak osnovanie vozniknoveniya obyazatelstva, ili Kritika kontseptsii stati 429.1 Grazhdanskogo kodeksa Rossiiskoi Federatsii", Zhurnal rossiiskogo prava num 12 (2016): 69 - 78.

Framework agreements create a relationship between the parties engaging in business. Moreover, it is the framework agreement that makes it possible in the future to conclude the principal agreement, or in any case, it significantly simplifies the conclusion of the latter.

The framework agreement has the widest scope of application, for example, in the provision of tourism-related and excursion services. The legal relations that arise in the provision of excursion services or facilities, of course, have several specific features that distinguish them in the group of tourism-related legal relations. However, the excursion, as part of the tourism product, defines the relationship of excursions as a type of tourism, which makes it necessary to extend the general provisions of the legislation on tourism to excursion services, considering the aforementioned features<sup>9</sup>.

Let us look at another example of a framework agreement. In the banking sector, a variety of a loan agreement is widely used as a credit line agreement, based on which the borrower acquires the right to receive and use funds for a specified period, provided that the total amount of funds provided to the borrower does not exceed the maximum amount stipulated by the agreement (the "issuance limit") or the size of the borrower's aggregate debt does not exceed the limits stipulated by the agreement (the "debt limit"<sup>10</sup>).

This type of agreement was recognized in judicial practice as well<sup>11</sup>. Thus, the Presidium of the Supreme Arbitration Court of the Russian Federation (paragraph 9 of information letter No. 165<sup>12</sup>) before the abolition of the Supreme Arbitration Court of the Russian Federation cited an example of one of the cases considered by the arbitration courts of the first and appeal instances. The plot of this case is that the parties had entered into a supply agreement for one year, under which each specific delivery was formalized in a separate agreement. At the same time, the supplier's liability for delay in the delivery of goods was established only by the framework supply agreement, and in some agreements the corresponding conditions were absent. The Supreme Arbitration Court of the Russian Federation upheld the position of the appeal court that satisfied the buyer's demand for a penalty for late delivery of goods under a separate supply agreement, stating that the parties, having concluded a separate supply agreement, also had in mind the extension of the conditions contained in the framework agreement to it. Consequently, not only the terms of a separate agreement for a specific supply but also the general terms of the framework agreement apply to the relations of the parties to the disputed delivery.

Thus, the position of the Supreme Arbitration Court of the Russian Federation states such that the terms of the organizational (framework) agreement are part of the agreement unless otherwise specified by the parties and such an agreement as a whole corresponds to their intention expressed in the agreement. If the supply agreement between the parties does not contain a condition on the penalty or a reference to the organizational (framework) agreement, however, the nature of this agreement indicates that the parties have extended

<sup>9</sup> O. V. Efimova, "Pravovoe regulirovanie osushchestvleniya ekskursionnoi deyatel'nosti", Turizm: pravo i ekonomika num 3 (2015): 6 - 8.

<sup>10</sup> A. N. Levushkin, "Spetsialnye dogovornye konstruktsii: ramochnyi, optsiionnyi i abonentskii dogovory", Aktualnye problemy rossiiskogo prava num 2 (2018): 19 - 26.

<sup>11</sup> Postanovlenie Arbitrazhnogo suda Zapadno-Sibirskogo okruga po delu № 04-16395/2015. April 14, 2015.

<sup>12</sup> Informatsionnoe pismo Prezidiuma Vysshego Arbitrazhnogo Suda RF № 165 "Obzor sudebnoi praktiki po sporam, svyazannym s priznaniem dogovorov nezaklyuchennymi", Vestnik Vysshego Arbitrazhnogo Suda RF num 4 (2014).

the terms of the framework agreement to it, then having established the condition on the penalty in such an agreement, the parties provided for a penalty in case the buyer does not fulfill the obligation to pay for the goods arising from the supply agreement.

It must be emphasized that the framework agreement can be specified not only by agreement of the parties but also based on unilateral applications. This is significant for practice, since often the general agreement on opening a credit line is built on this model: under a framework agreement, the bank is obliged to issue loans, if required by the borrower. That is, the bank assumes a kind of loan on demand obligation, and the final formation of the obligation for a specific loan does not occur by an additional agreement of the parties, but by a unilateral application of the borrower, the party having the second right to demand as much as it needs (usually within the limits stated in the framework agreement). The economic logic of this model leads to the fact that in banking practice the bank often agrees to such an agreement only on the condition that it will be guaranteed a certain income, regardless of whether the borrower requires credit funds or not<sup>13</sup>.

In another case, the court, analyzing the provisions of paragraphs 1 and 2 of Art. 429.1 of the CC RF, concluded that in the case under consideration the framework agreement was not a direct basis for the occurrence of delivery obligations. These obligations arose due to the agreement by the parties of the essential terms of the supply agreement (name and quantity of goods) with the application of the terms of the framework agreement to such relations<sup>14</sup>.

We should join the position expressed in the doctrine of D.O. Schniger, that the framework agreement is aimed at organizing the relations of the parties to conclude another agreement (one or more principal agreement(s)) in the future, which does not contain at least one essential condition of the principal agreement and does not create an obligation to deliver goods, perform work, provide services or the commission of other actions, except for actions aimed at concluding a specific agreement and expressed in the form of:

a) consideration by the party of an application, order or other similar document emanating from the other party, and (or) signing of an application, order, additional agreement, annex, or any other similar document containing in aggregate with the framework agreement all essential conditions of the principal agreement;

b) the supply of goods, the performance of work, the provision of services or the performance of other actions to fulfill the principal agreement based on an application, order or other similar document coming from the other party, containing in aggregate with the framework agreement all the essential conditions of the principal agreement<sup>15</sup>.

## Results and discussion

Some problems and shortcomings of the legislation in the performance of the framework agreement need to be mentioned here.

<sup>13</sup> Opredelenie Vysshego Arbitrazhnogo Suda RF № BAC-10206/12. August 27, 2012.

<sup>14</sup> Postanovlenie Pyatnadtsatogo arbitrazhnogo apellyatsionnogo suda № 15АП-8420/2016 po delu № A53-4443/2016 October 27, 2016.

<sup>15</sup> D. O. Shniger, "Ramochnyi dogovor kak osnovanie vozniknoveniya obyazatelstva, ili Kritika kontseptsii stati 429.1 Grazhdanskogo kodeksa Rossiiskoi Federatsii", Zhurnal rossiiskogo prava num 12 (2016): 69 - 78.

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Based on the provisions of Art. 429.1 of the CC RF, one cannot understand exactly what kind of obligation arises from the conclusion of a framework agreement. This can be either an obligation to conclude a principal agreement in the future or fulfillment of a "basic" obligation. However, the fulfillment of the "main" obligation is impossible without specifying what the obligation is. As a result, the following question arises: how should one apply the general conditions if there are no separate agreements, applications, etc.

Here we can say that the performing party will have an obligation to fulfill the content of the concretizing document as soon as a unilateral application or other unilateral specifying action of the other party appears. It should be noted that this statement in this article is not clear at all, which raises the question of the nature of this obligation arising from the framework agreement. We need to indicate here that the conclusion of the principal agreement is an alternative to filing a unilateral application.

Of course, the framework agreement is a legal action; however, it is not clear to what extent this action is an agreement, and the theory of law has not completely studied the question of what type of legal actions it can be attributed to.

Unfortunately, Art. 429.1 of the CC RF leaves it quite unclear what exactly is understood under the "general obligatory relations of the parties" that arise from the conclusion of the framework agreement and which exactly rights and obligations of the parties they result in, without further clarification of the conditions of this agreement.

The framework agreement also takes place after agreements during tenders.

Based on the norms of Art. 447-449.1 of the CC RF, an agreement to conduct tenders is a framework agreement for tendering aimed at determining the essential conditions of the principal agreement by determining of the tender winner by the organizer and containing the obligation to conclude the principal agreement with this winner. The parties to this framework agreement are the trade organizer, which may be: 1) the owner of the property right to an object, 2) another person interested in entering into an agreement with the winner of the tender; 3) a person acting based on an agreement with the above persons and speaking on their behalf or their own behalf unless otherwise specified by law (a notary public, a specialized organization, etc.) and a bidder. A specialized organization can be any legal entity that has the technical capabilities to organize tenders.

"The exercise of the right to tender indicates the possibility of becoming a new creditor not only to the pledge holder but also to any third party acting as the bidder who has offered the highest price or the best conditions"<sup>16</sup>. The framework legal relations are also formed in the provision of services by collectors. Collection agencies carry out their activities on a contractual basis; as a rule, assignment agreements, agreements for the on-the-spot provision of services, commission agreements, or agency agreements are concluded with the creditors. Besides, an agreement of assignment of the right of claim between the lender and the collection agency, whereby the lender transfers the debtor's existing credit obligations, must be concluded first<sup>17</sup>.

<sup>16</sup> O. V. Efimova, "Sootnoshenie zaloga obyazatelstvennykh prav i faktoringa kak sposoba obespecheniya ispolneniya obyazatelstv", Rossiiskaya yustitsiya num 6 (2016): 16 - 17.

<sup>17</sup> A. N. Levushkin y I. K. Kuzmina, "Kollektorskaya deyatelnost i zashchita prav fizicheskikh lits pri vyzyskanii zadolzhennosti po denezhnym obyazatelstvam", Zakony Rossii: opyt, analiz, praktika num 4 (2019): 42 - 47.

Another important problem is that the procedure for clarifying the general conditions of the obligation in the performance of the framework agreement also carries a certain ambiguity:

1) There is a clear and vain opposition to the conclusion of a "separate agreement" and "filing an application by one of the parties", because submitting an application is an offer (Art. 435 of the CC RF), and the response thereon is acceptance (paragraph 3 of Art. 438 of the CC RF). Also, the application may be an invitation to the offer, from which it follows that there is a disagreement with A.G. Karapetov, who stated in his article "Framework agreement: commentary on a new Art. 429.1 of the CC RF"<sup>18</sup> that an application under a framework agreement was a one-way transaction, which means submitting an application is a legal action to conclude a separate agreement aimed at the performance of the framework agreement;

2) The text of the law does not indicate exactly how the clarification of the terms between the parties to the framework agreement on its basis should differ from the clarification of the general terms of the agreement in its performance. It is logically impossible to imagine actions specifying the terms of the framework agreement and not being related to its performance;

3) The CC RF speaks of further clarification of the general terms and conditions of the obligations of the parties stipulated by the framework agreement, that is, it does not say anything directly about the clarification of any of the essential conditions in the future, which also gives rise to a certain legal ambiguity, because the essence of the framework agreements is partly the possibility of supplementing such an agreement with any of the essential conditions.

It is important to indicate that the conclusion of a framework agreement should not force the parties to agree on any essential conditions of the principal agreement, including the scope. This is precisely its key difference with the preliminary agreement.

The conclusion from the foregoing is that the norms of Art. 429.1 of the CC RF did not fully incorporate scientific justification and do not fully contribute to the completely coherent regulation of organizational legal relations, including organizational and business legal relations. It seems that the use of organizational contractual structures, including a framework agreement in business activities, allows optimizing, simplifying the establishment of business legal relations between business entities, reducing the cost of determining business contractual obligations, and ensuring the fulfillment of obligations assumed by the parties. The establishment of regulation of the general conditions for the obligatory relations of counterparties in certain organizational business agreements does not require the need to repeat these conditions in subsequent contractual obligations concluded by business entities. Moreover, the regulation of such general conditions for business undertakings can be more detailed, defined, and clear and, most importantly, identical for all subsequent business legal relations arising based on an agreement between business entities<sup>19</sup>.

<sup>18</sup> A. G. Karapetov, Framework agreement: commentary on a new Art. 429.1 of the CC RF. Zakon.ru. November 2, 2015. Retrieved from: [https://zakon.ru/blog/2015/11/2/ramochnyj\\_dogovor\\_kommentarij\\_k\\_novoj\\_state\\_4291\\_gk\\_rf](https://zakon.ru/blog/2015/11/2/ramochnyj_dogovor_kommentarij_k_novoj_state_4291_gk_rf)

<sup>19</sup> A. N. Levushkin, "Organizatsionnye predprinimatelskie dogovory v sisteme norm obyazatelstvennogo prava i sudebnoi praktike", Zakony Rossii: opyt, analiz, praktika num 8 (2018): 30 - 35.

Thus, framework agreements concluded for the purpose of conducting of business activities by the parties (or one of the parties) additionally have the following features in comparison with other framework agreements: 1) they are always of a property nature; 2) at the same time, framework agreements themselves, both in business activities and outside them, do not contain a property obligation, but framework agreements in business activities oblige to conclude a principal agreement entailing specific property obligations; 3) are always aimed at the potential earning of profit by at least one of the parties, which follows from the legal definition of business activities given in paragraph 1 of Art. 2 of the CC RF, which states that business activities has the following characteristics: independence; being exercised at one's own risk; focus on regular profit from the use of property, sale of goods, performance of work or the provision of services; 4) also, based on paragraph 1 of Art. 2 Civil Code, Art. 23 of the CC RF, Federal Law No. 14-FZ "On Limited Liability Companies" dated February 8, 1998 (as amended on April 23, 2018)<sup>20</sup>; Federal Law No. 208-FZ "On Joint-Stock Companies" dated December 26, 1995 (as amended on April 15, 2019)<sup>21</sup>, and other regulatory legal acts regulating business activities in the Russian Federation, at least one of the parties to such an agreement is a legal entity or an individual entrepreneur (which is also an essential condition for all framework agreements concluded for the performance of business activities, including all of the above), registered in the manner prescribed by law, (or a citizen who is a member of a farming enterprise), while, as a rule, this party is a party to a decisive performance of the agreement and the recipient of the profit; 5) the principal agreement concluded in pursuance of the framework agreement is any property agreement; 6) in these agreements, adverse consequences for the parties of property or other nature may be provided, including by bringing to civil liability, in case of failure to fulfill or improper performance by one or both parties of property agreements concluded in accordance with the considered organizational agreements, unless otherwise established by property and organizational agreements. Such consequences may include the right of one of the parties to refuse to perform the framework agreement or also the property agreement, depending on which of these interrelated agreements is not implemented; 7) based on the conclusion of these agreements, business legal relations and obligations arise, which distinguishes them from non-property agreements.

## Conclusion

Thus, the framework agreement in both civil and business law has two meanings, namely, a transaction that generates an obligation to conclude a principal agreement or consider an application for a principal agreement, and a document, the provisions of which are applied as conditions of the principal agreement, and where relations regulated by the framework agreement are binding obligations. Concerning the ways to ensure the fulfillment of the obligation to conclude the principal agreement under the framework agreement, the possibility of applying a deposit is controversial. It seems possible to apply a penalty (fine, penalty interest), pledge, surety, and an independent guarantee. It seems impossible to apply security payment and withholding. Suggestions have been formulated to improve the CC RF in terms of ensuring the fulfillment of the obligation to conclude the principal agreement under the framework agreement.

<sup>20</sup> Federalnyi zakon N 14-FZ (red. ot 23.04.2018) "Ob obshchestvakh s ogranichennoi otvetstvennostyu". CL RF, 16.02.1998, No. 7, art. 785, February 8, 1998.

<sup>21</sup> Federalnyi zakon N 208-FZ (red. ot 15.04.2019) "Ob aktsionnykh obshchestvakh". CL RF No. 1, art. 1., December 26, 1995.

The framework agreement, including the one, concluded to carry out business activity by one or more of its parties, may be terminated on general or special grounds, and the liability for non-performance or improper performance may be both of property and non-property nature.

The general grounds for amending and terminating the framework agreement in both civil and business law are the grounds listed in Art. 450-453 of the CC RF. These include 1) termination of the framework agreement by agreement of the parties; 2) termination of the framework agreement by a decision of the court in the event of a significant violation thereof or in other cases provided for by law or by the agreement itself.

Besides, the framework agreement may be amended or terminated in court in the event of a significant change in circumstances.

A special reason for the termination of framework agreements is the expiration of this agreement.

As a measure of responsibility for failure to fulfill the obligation to conclude the principal agreement (consideration of the offer) under the framework agreement, coercion to conclude the principal agreement can be applied in court, and, in this case, its conditions will be contained in the court decision (paragraph 4, Art. 445 of the CC RF). Besides, under this article, a party that unreasonably avoids concluding an agreement (i.e., in the case of a framework agreement, a party to decisive performance) is obliged to compensate the other party (interested party) for losses caused by such avoidance.

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