В окончание необходимо отметить, что санация — это новелла для российского законодательства, активно набирающая обороты. Представляется очевидным, что санационные процедуры являются достойной заменой конкурсному производству в случае, когда такие меры могут эффективно справиться с временной неплатежеспособностью участников гражданских правоотношений.

Общая концепция законодательства о несостоятельности стремиться к досудебному урегулированию данных правоотношений, применяя конкурсное производство лишь в крайнем случае.

Развитие института санации поспособствует оздоровлению всего сегмента экономики в целом, а так же повысит добросовестность предпринимателей и снизит вероятность преднамеренной несостоятельности.

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EXTRINSIC FACTORS OF CONTRACT LAW INTERNATIONAL ATTRACTIVNESS

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The contract of international sale is the most common legal form of foreign trade. Its conclusion, development and implementation require special knowledge, skills and awareness of the world market specific characteristics. No matter how tense the world situation is, trade has always been an important part of international relations with its diversity and peculiarities in many fields starting with different currencies to different legal norms.

International contracts are connected with the law of many states, and for this reason their legal base has graduallybecomequite complicated. Significant differences between legal systems predetermine the preference of the international transactions regulation by international contracts of sale. Parties to business transactions may freely choose the law governing their contract. Particularly in the context of international commercial arbitration, parties' freedom of choice is not limited by a requirement that the chosen law be connected to the transaction or, for that matter, to the parties themselves. As a result, parties are free to choose a contract law that suits their needs in the best way, irrespective of its connection to the particular transaction. Accordingly, more attractive laws might frequently be chosen, bringing additional business to the lawyers trained in that particular law.

For a long time quite a number of researchers (Sir Roy Goode, Avery Katz, Stefan Vogenauer, Laurent Hirsch, George Bermann, Joshua Fischman) were dealing with the matter of legal system attractiveness both theoretically and empirically. The issue of criteria for these measurements proved to be complex and contradictory. Having considered numerous works and publications in this area we distinguished However, five common points are usually distinguished in this respect: seat of arbitration, language, neutrality, model contracts and jurisdictions of former colonies.

An important factor potentially impacting the parties' choice of law is the seat of the arbitration. The main offices of the International Chamber of Commerce (ICC) are based in Paris, France. However, this is not to say that arbitrations conducted under the aegis of the ICC are necessarily located in Paris. The parties may choose the seat of the arbitration, and most often do. The ICC reported in 2011 that parties to its arbitrations selected seats in 63 different countries. The two countries that have been selected the most frequently over the last decade, are France and Switzerland. The United Kingdom, the United States, and Germany follow.

The seat of the arbitration does not directly influence the law applied by arbitrators to decide disputes on their merits. Under most international arbitration laws, the real consequence of designating the seat of the arbitration is to determine the law applicable to the arbitration itself and the courts that will have jurisdiction to review the validity of the arbitral award [2]. Virtually all national arbitration laws provide that parties have the freedom to choose which law governs the substance of the dispute and, if such a choice has been made, which law should be applied by the arbitrators to resolve the dispute [4]. As a result, parties often select one jurisdiction as the seat of the arbitration while choosing the law of another jurisdiction to govern the contract or dispute.

This makes perfect sense, as the rationales for choosing the arbitration's seat and the law governing the contract is quite different. On the one hand, the arbitration's seat should be chosen to ensure that the applicable national arbitration law favors international commercial arbitration and its national courts adhere to such law.

The arbitration's seat has no direct impact on the nationality— or background—of the arbitrators. Under most national arbitration laws, the parties are free to appoint whomever they choose as an arbitrator; arbitrators need not be lawyers particularly lawyers trained in the law of the jurisdiction in which the arbitration is seated. If a dispute under the contract containing an arbitration clause arises, the agreed upon seat of the arbitration will often have little significance when appointing the arbitrators.

Another important factor in the international success of various contract laws should be the language in which they are available. One can assume that international parties speak the language of their jurisdiction. They will also typically speak at least one language that is used in international commerce, which is currently dominated by English. Other languages might be widely used at a regional level, for instance French in Western Africa or Spanish in Latin America. If international transaction parties are to consider applying third-state law, then it is logical to assume they prefer laws available in a language they understand.

Because English is currently the dominant language in international commerce, laws available in English should enjoy a clear advantage over laws written in other languages: English law and the U.S. State laws should, therefore, benefit from the language in which they are written, and part of their success may be explained by their availability in English. When English attorneys market their legal services abroad, the first argument that they put forward is that English law is in English, which is "one of the most widely spoken languages in the world." [3].

It would be tempting to argue that the lesser attractiveness of French and German laws can be explained by the fact that neither French nor German is used as widely as English. This is clearly true for German, which is spoken by few people outside of central Europe, less so for French, which is spoken in many of its former colonies and remains the second language in international diplomacy. The success of Swiss law, however, suggests that the importance of language might be limited or that the impact of languages on the attractiveness of laws is a more complex phenomenon. There are three official languages in Switzerland: German, French, and Italian. As a consequence, Swiss law is available in three languages: all statutes, codes, and cases can be found in each of the three languages. Treatises on Swiss law are also available in each language.

One of the most common arguments made in favor of choosing Swiss law to govern international contracts is its alleged neutrality. Swiss practitioners invariably insist on it in their writings. The Swiss Arbitration Association's Web site also states that "many international contracts referring to arbitration in Switzerland are governed by Swiss substantive law, as a neutral law." The proposition was even endorsed by arbitral tribunals. The arbitral tribunals explained that the application of Swiss law clauses are intended to ensure the application of a neutral law.

The argument of Swiss law's neutrality, however, is quite puzzling. As pointed out by Christiana Fountoulakis, [1] a professor of international business law at a Swiss university, the claim seems to be built on two misunderstandings.

The first misunderstanding confounds political neutrality with the "neutrality" of a particular contract law. Political neutrality is a concept of public international law that applies to states. States that are neutral, willingly or not, do not take part in any war and remain neutral towards belligerents. Switzerland has been a neutral state since 1815. Switzerland's neutrality as a state, however, has no impact on the content of its contract law, which belongs to private law. Private law is not concerned with wars, but rather with disputes between private individuals. Rules of private law create rights and obligations for such individuals. Typically, a private law, such as contract law, establishes the duties and obligations owed by one party to another, as well as the rights one party has against another, in a particular type of situation. In other words, private law typically creates an obligor and an oblige and, thus, a potential winner and loser. Rules of private law are not neutral and Swiss private law (e.g., its contract law) is no exception.

The second misconception confounds Switzerland's neutrality as a dispute resolution venue with the neutrality of its contract law. As mentioned above, Switzerland is a leading arbitration venue. One reason commercial actors choose Geneva or Zürich as the seat for arbitration is that neither the Swiss courts, nor any other arm of the Swiss government, are likely to interfere in the arbitration proceedings. Thus, locating an arbitration in Switzerland guarantees neutrality of dispute resolution (provided Swiss parties are not involved) as neither party enjoys a home-court advantage and neither can use political connections to have a local court or any other authority interfere with the proceeding. That neutrality, however, has no impact whatsoever on the content of the law applied by the arbitrators. Neutral arbitrators—applying private law rules—must still determine which party is the obligor and which party is the oblige in the particular circumstances and then determine whether or not all of the obligations have been fulfilled. The distinction between the forum and the applicable law is often difficult to grasp for non-lawyers, however, which might explain why a number of international contracts include jurisdiction clauses, including arbitration clauses, but no choice of applicable law. Moreover, a claim that Swiss law is neutral could be understood in a more sophisticated manner. Swiss lawyers regularly argue that Swiss law has borrowed from a variety of legal traditions. For instance, they insist that the Swiss Code of Obligations integrates concepts from several legal systems and is, thus, suitable for cross-cultural relations. Swiss law could, therefore, be presented as culturally neutral. As its rules and concepts come from different traditions, one might argue that Swiss law always has aspects somewhat familiar to virtually any party, regardless of their background. French or German parties might find familiar rules and concepts in Swiss law.

Nevertheless, regardless of the accuracy of the claim that Swiss contract law might be culturally neutral, the argument that cultural neutrality is a decisive factor for parties to choose Swiss law is unconvincing. One would think that sophisticated parties would carefully assess the content of a foreign law before deciding to subject their contract to it, to ensure that the rules of the relevant law are efficient and tailored to their needs.

The use of certain contract laws in widely used model contracts could contribute to these laws' international success. It could be expected that parties to such contracts would not amend them with respect to choice of law and thus endorse this clause as they endorse others. This would increase the number of contracts governed by the relevant laws. It is doubtful, however, that such choices should be regarded as revealing the international attractiveness of these laws. It seems clear that parties resorting to model contracts do not review all clauses. They simply endorse most of them, which should not, therefore, be considered positive choices.

Trade associations produce many model contracts. These contracts often provide for the application of a particular contract law. For example, the model contracts issued by both the Grain and Feed Trade Association and the Refined Sugar Association, which are widely used in each of these industries, provide for the application of English law. However, these associations have also very often established their own dispute resolution center. This means that disputes arising out of such model contracts will typically not be resolved through ICC arbitration, but rather by the arbitration center of the relevant trade association.

In theory, some widely used model contracts could have a huge impact on parties' choice with respect to the applicable law, and thus explain part of the ICC Data, but not all researchers believe in their existence.

A final factor in the international success of certain contract laws could be that a number of jurisdictions are former colonies of two European countries. As such, their laws will often closely follow the laws of the country that once occupied them. The law of the former colonial power will thus be at least familiar to any actor originating from one of these colonies. So it could be predicted that those parties would view the law of the former colonial power as not truly foreign, and would thus be happy to provide for its application.

The two biggest colonial empires in recent history were the British and the French empires. Part of their legacy has been that most of their former colonies have indeed closely followed their legal systems and laws. Former British colonies not only became common law jurisdictions, but also still consider the Common Law as one single set of rules administered from different jurisdictions. Former French colonies have similarly followed the French model: they became civil law jurisdictions, adopted French codes and, for many of them, have cited judgments from French highest courts as authoritative.

The international attractiveness of both English and French laws could therefore owe a great deal to the fact that many countries in the world have laws, which were modeled on either English or French law. Commercial actors from former English or French colonies could perceive the law of their former colonial power as not foreign to them, and could thus be more than happy to concede its application as a third law. The attraction of the law of the former colonial should logically be strongest when both parties would originate from former colonies. But even if one of the parties only was from a former colony, the choice of the law of its former colonial power could still be more satisfactory for both parties than the law of origin of any of them.

The main conclusion to be drawn from this analysis is that English and Swiss laws are around three times more attractive to international commercial actors than U.S., French, or German contract laws.

Thus, we think it would be wise that in the cases, when international partners refuse to apply the Russian legal norms and insist on choosing alternative legal systems, we should use the English and Swiss laws since they proved to be the best for such needs.

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ПУБЛИЧНЫЙ ПРИЗЫВ К ОСУЩЕСТВЛЕНИЮ ЭКСТРЕМИСТСКОЙ И СЕПАРАТИСТСКОЙ ДЕЯТЕЛЬНОСТИ

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В рамках исследования было рассмотрено такое правовое явление как сепаратизм и экстремизм. Раскрыты понятие, отмечены различные виды сепаратизма и экстремизма, а также предложено унифицировать ст. 280 и 280.1 УК РФ.

Сепаратизм. Сепаратизм от «séparatisme» и от латинского «separatus», что означает отделения. В юридической науке понимается стремления отделиться, обособиться движения за отдельные части государство и создания нового государственного образования или за представления части страны автономии.

Сепаратизм является особой формой политико-правовой девиации, поскольку представляет собой поведение, отклоняющееся от общепринятой правовой нормы. Его девиантный характер в юридическом аспекте выражается в его свойствах, таких как нелигитимность и противоправность [6].

Его нелигитимность заключается неприятием ценностных детерминант и целевых установок сепаратистского характера большей частью населения страны. А противоправность сепаратизма предполагает отклоняющейся поведения от действующих юридических норм.

Юридический аспект рассматривает сепаратизм, как определенной целенаправленной юридически значимой деятельностью, который подпадает под правовое регулирование.

Сепаратизм в России одна из самых актуальных проблем, как в незапамятные времена. Сейчас конкурируют два сопоставимых по иррациональности подхода. Первый исходит из того, что почвы для сепаратизма в России нет, а лозунги