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Contract structures for environmentally sustainable development of enterprises in the investment and construction sector

Striving to create a business environment that forms socially responsible business functioning is especially important in the spheres of activity related to satisfaction of basic needs in housing, work, medicine, recreation, etc. Investment and construction activities carried out by various contractors are characterized by a high level of economic, social and environmental risks. Their neutralization in the format of practical implementation of ESG principles for the implementation of real estate creation and management projects is primarily related to the initial phases of the project and taking into account socio-environmental requirements in contracts for the performance of works, supplies, financing, equity participation, provision of services, etc. Contracts that take into account the requirements of sustainable development in practice form a family of “sustainable contracts”. They are distinguished by the unity of economic, social and environmental requirements. The latter reflect the norms of national regulation and are aimed at creating a legal environment of corporate responsibility of the construction business for sustainable development. Based on international practice, the authors proposed the structure of the Concept of a “sustainable contract” in construction. It covered both the system of sustainable development standards and the need to develop and harmonize the Code of Sustainable Corporate Governance in Construction. The organization of activities in this direction is seen in the interconnected joint aspiration of sectoral and territorial governing bodies, corporate and public organizations, scientific and educational institutions to standardize investment and construction activities, develop standard “sustainable contracts”, use out-of-court dispute resolution methods in terms of fulfilling obligations to implement ESG principles, as well as the adoption of sectorial code of corporate construction management.
Keywords: *sustainable development, sustainable development standards, investment and construction business, corporate governance code, organizational activity tracks, coordination center*

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INTRODUCTION

The semantic colonization of the future is fundamentally based on mandatory compliance with environmental requirements of sustainable development. The concept of sustainable development is creating not only new international relations, but also new business models, prompting a rethink of the goals and objectives of development institutions. The declared ESG principles are reshaping many types of activities, including the design, construction and operation of real estate. The international practice of using reduced credit rates or subsidizing them, methods of guaranteed sales and promotion of products of environmentally oriented manufacturers are currently being actively analyzed and developed by enterprises of the investment and construction sector. In this regard, there are many tasks at the sectoral level of regulation, both in terms of the norms recommended by the Ministry of Construction of the Russian Federation, and in the contractual format of interaction between members of public associations (NOSTROI, NOTIM, etc.). At the same time, the analysis of practice shows that the participation of economic entities of the industry pool remains beyond the active discussion of the implementation of the principles of sustainable development in the investment and construction sector. This requires a detailed analysis and search for mechanisms for implementing ESG principles for investment and construction activities.

MATERIALS AND METHODS

The evolution of the idea of sustainable development, declared and researched initially by business at the beginning of the XVIII century[1], was fully developed in the late 80’s and early 90’s of the last century. The report “Our Common Future”, prepared by the UN World Commission on Environment and Development, fixed certain limitations in the exploitation of natural resources, affirming the need to support the ability of the biosphere to cope with the consequences of human activity. Already in 2005, the sustainable development agenda was formulated until 2030. The transformation plan included 17 goals and 169 tasks[2, 3]. In the field of specific economic activity, the basic principles of sustainable development are modified into the principles of sustainable innovative and environmentally safe activities[4]. Back in 2004, UN Secretary-General Kofi Annan formulated the ESG

1 Groschopf W., Dobrovnik M., Herneth C. *Smart Contracts for Sustainable Supply Chain Management: Conceptual Frameworks for Supply Chain Maturity Evaluation and Smart Contract Sustainability Assessment*. URL: https://www.researchgate.net/publication/350763462_Smart_Contracts_for_Sustainable_Supply_Chain_Management

2 Report “Our common future”. URL: https://www.un.org/ru/ga/pdf/brundtland.pdf

3 Who Cares Wins: connecting financial markets to a changing world. URL: https://www.unepfi.org/fileadmin/events/2004/stocks/who_cares_wins_global_compact_2004.pdf

4 Evolution, basic concepts and experience of ESG regulation. URL: https://www.nifi.ru/images/FILES/Reports/НИФИ_Экологические_социальные_управленческие_факторы_ESG.pdf

Main types of regulatory documents and initiatives in the world and in the Russian Federation

Supranational regulation	National regulation
1. UN Sustainable Development Goals until 2030 2. G20 Corporate Governance Principles 3. OECD Guidelines (for multinational enterprises) 4. Directive 2014/95/EU on non-financial reporting 5. Roadmap for the development of a set of standards, etc. 6. Voluntary disclosure initiatives	1. National codes of sustainable development management 2. National Corporate Governance Codes 3. Orders of the Government of the Russian Federation dated 14.07.2021 (defined the goals and main directions of sustainable development, including green, in the Russian Federation)[5] 4. Decree of the Government of the Russian Federation No. 1587 of 21.09.2021 “On approval of criteria for sustainable development projects”[6] 5. IRIIS and CLEVER Assessment Systems

Developed by the authors on the basis of

principles of business in his report “Caring Wins”. He addressed them mainly to large companies, calling for voluntary compliance with environmental requirements (E), social responsibility (S), corporate governance (G), that is, compliance with ESG principles of sustainable development. Industry ESG standards were rapidly formed on their basis. Table shows the main types of regulatory documents and initiatives in the world and in the Russian Federation.

As noted in[7], there are already more than 400 different indexes that disclose the requirements of the ESG principles[8]. At the same time, their composition varies, forming the basis of *decentralized information control*. The latter can significantly affect both stock and bond quotes, as well as the investment attractiveness of a particular company, region and country as a whole.

Responsible business conduct is increasingly becoming the norm even in the absence of unified approaches and unifor. rules. We are certainly talking about large companies with more than 500 employees. They are of the greatest interest to society. Currently, large companies include environmental indicators, social indicators and employment dynamics indicators in the annual report in accordance with the EU Directive 2014/95/EU. The framework approach to the report is set out in the White Paper[9].

Analyzing the actively emerging approaches to modelling the environmentally sustainable development of territories, we note that they are inextricably linked with the development of the concept of a “sustainable contract”. The latter mediates relations between government and business, as well as business entities among themselves. The problem is structured in the following main aspects:

1) adjustment of the pre-contractual stages of agreeing on the terms of interaction of the parties;

2) formation and evaluation of value-added chains;

3) conditions for disclosure of non-financial information;

4) the study of the increasing risks of activity in the context of the emergence of new environmental requirements;

5) methods of out-of-court dispute resolution and search for consensus on the ESG agenda.

The presented aspects are updated in practice, based on the need for risk management to ensure sustainable development, taking into account environmental requirements. Thus, one of the most common trends of our time has become the commitment of companies to minimize their carbon footprint. Despite the difficulties of implementing the hydrocarbon agenda, switching to renewable energy sources, reducing greenhouse gas emissions are increasingly becoming publicly verifiable commitments. The global practice of extending ESG-principles compliance assessments to all participants in supply chains, and in the investment and construction sector to contractors and subcontractors, implies the company's desire to expand the range of business entities whose activities should be examined for compliance with the requirements of sustainable development. At the same time, the control of the reliability of ESG reporting is not only strengthened, but also practices of influencing the investment, financial, and transactional policies of companies, as well as their communication formats, are being formed. An analysis of international practice shows that the ESG principles apply to investment contracts, loan agreements, joint venture agreements, mergers and acquisitions [1, 2]. The use of ESG conditions/clauses in contracts is essentially becoming an actual method of managing the risks of sustainable development. Therefore, it requires the development of the concept of a “sustainable contract”.

RESULTS

It is obvious that the concept of a “sustainable contract” should reflect the essence of the concept of sustainable development and fix its goals and norms in the concluded contracts, step by step and consistently forming the legal environment for the functioning of a socially responsible business. Synthesizing the most common views in international practice on the essence of a “sustainable contract”[10], its concept implements the principle of trinity in the evaluation of business activities.These are compliance with social criteria, compliance with environmental requirements and economic efficiency of activities (Fig.).

The practical implementation of the principle of the trinity of economic, social and environmental projection of investment and construction activities involves:

1) development of judicial and non–judicial practice of resolving economic disputes in the direction of providing judges, arbitrators, mediators, consultants and experts with the possibility of accurate qualification of the contract in the context of compliance with ESG principles;

5 Decree of the Government of the Russian Federation dated 07/14/2021 No. 1912-r “On approval of the goals and main directions of sustainable (including green) development of the Russian Federation”. URL: https://cloud.consultant.ru/cloud/cgi/online.cgi?req=doc&base=LAW &n=390943#4U1ZtZTvJhflgkLA

6 Decree of the Government of the Russian Federation No. 1587 dated 09/21/2021 (ed. dated 03/11/2023) “On Approval of criteria for Sustainable (including Green) Development Projects in the Russian Federation and requirements for the Verification System of Sustainable Development Financing Instruments in the Russian Federation”. URL: https://cloud.consultant.ru/cloud/cgi/online.cgi?req=doc&ts=xRLZtZTWGWgStpdp1&cacheid=F4732F717A4C56819784484654B6D707&mode=splus&rnd=dP1ZtZTVZXoDkVSC&base=LAW&n=442110&dst=1000000001#7UNZtZTqYSrxLHMB1

7 International experience in the application of ESG standards (“Environmental, Social, Governance”) and the possibility of its use in Russia. Analytical report. URL: https://mfc-moscow.com/assets/files/analytics/doklad_ESG_june_2020.pdf

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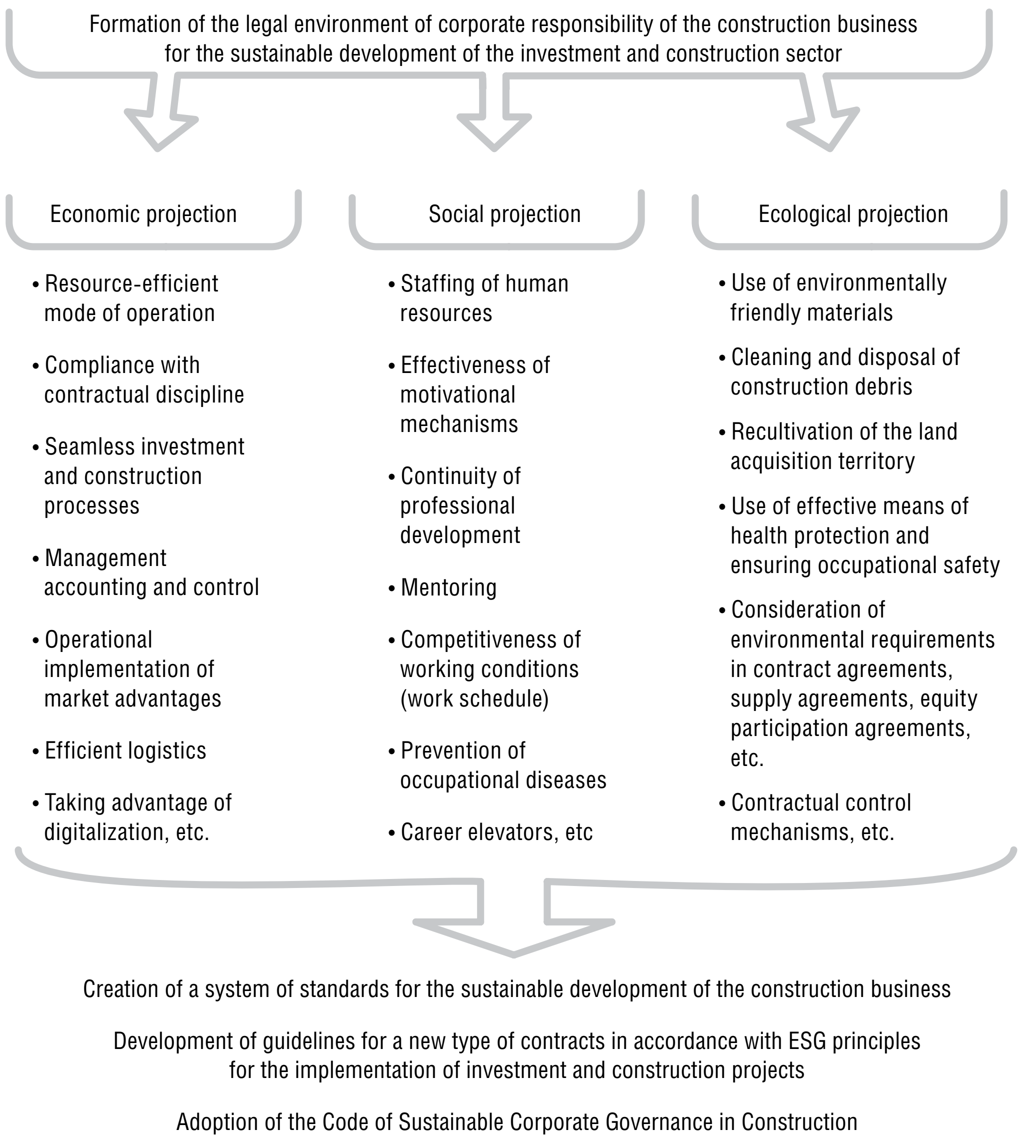
9 Talking the Human Rights Walk. URL: https://www.nestle.com/sites/default/files/asset-library/documents/library/documents/corporate_social_responsibility/nestle-hria-white-paper.pdf

10 Queinnec Y. *Sustainable Contract: Concept's outlines and exploration tracks*. URL: https://media.business-humanrights.org/media/documents/files/reports-and-materials/Sherpa-on-sustainable-contracts-Jan-2010.pdf



The concept of a "sustainable contract" in construction

2) formation of standards of social and environmental responsibility of the construction business at all stages of its functioning, taking into account the subject binding to the activities of construction contractors (designers, contractors, suppliers, creditors, shareholders, etc.);

3) development of standard contracts in order to ensure mutual compliance of economic, social and environmental consequences of investment and construction activities [3].

The implementation of these directions will require, from the point of view of the authors, the unification of disparate norms and indicators of sustainable development. This means that a "sustainable contract" becomes a kind of tool for evaluating the effectiveness and compliance of investment and construction activities with ESG principles.

Summarizing international experience of the unification of contractual conditions in terms of compliance with the requirements of sustainable development, we note the version of the standard "sustainable contracts" developed by the American Bar Association (MCC 2.0) in 2021. The most important thing for domestic practice is the use of a *contract control*mechanism equally applicable to suppliers/contractors and buyers/users of products or services. Compliance with responsible procurement practices "and due diligence in the field of compliance with the rights of consumers of works and services". This approach in practice implements the principles of responsible contracts[11], contributing to the integration of risk management methods. Their application is associated with the specification of contractual conditions associated with risk neutralization, disclosure of information and the use of a system of special sustainability clauses.

The formation of standard/model "sustainable contracts" will require the organization of systematic analytical work in the field of implementation of corporate, tax, environmental, administrative, labor standards.rules and traditions of business turnover. For the investment and construction sector, reference to ESG principles should occur already at the project initiation stage. The examination of the pre-project,

11 Principles of responsible contracts: integration of risk management related to human rights into the format of negotiations for the purpose of concluding contracts between the state and investors: guidelines for negotiators. URL: https://www.ohchr.org/Documents/Publications/Principles_ResponsibleContracts_HR_PUB_15_1_RU.pdf

project stages should be of the utmost importance. Prevention and prevention of violations in terms of environmental pollution, energy efficiency, etc. it is advisable to carry out already at the stage of preparation of initial permits for construction. The rights and responsibilities of construction participants to comply with ESG principles should be fixed in contracts, taking into account the following requirements:

1) symmetry of rights and responsibilities, ensuring the potential possibility of fulfilling the liability regime;

2) integrity, providing for obligations to follow the provisions taken under the terms of the "sustainable contract";

3) consistency, which involves synchronizing the efforts of counterparties to comply with the principles of sustainable development in the context of the above three main projections.

The declaration of requirements is a necessary but insufficient condition for investment and construction activities carried out in accordance with the concept of sustainable development. We need the will of the authorities and the efforts of the industry management center in terms of *search, development and implementation*:

1) methods of coordination of activities, methods of supervision and control at all stages of implementation of investment and construction projects;

2) standard "sustainable contracts" regulating the entire range of investment and construction processes;

3) forms of liability for breach of obligations;

4) the new functionality of the regulator, taking into account the non-legal nature of industry standards;

5) methods of out-of-court dispute resolution, etc.

These actions are possible subject to the involvement of public organizations (NOSTROI, NOTIM, etc.) that are able to organize the online collection of information and systematization of proposals of the business environment. Separately, we note that all organizational work should be based on digital technologies of the distributed registry and blockchain. They will accelerate the processes of contract control, provide an entrance examination of compliance and reduce the risks of unfair performance of contractual obligations. Moreover, the realization of the advantages of digital tools creates conditions for the introduction of promising smart contract tools.

CONCLUSION AND DISCUSSION

The most important conclusion arising from the analysis of emerging contract models that serve the transformation of the relationships of participants in investment and construction activities in the direction of taking into account the requirements of sustainable development is the understanding of the need to switch to new standards of construction and real estate management. "Sustainable contracts" containing socio-environmental conditions and reservations are essentially only the first step towards the implementation of ESG principles in the industry. Obviously, it is not yet mandatory for counterparties. It is also clear that the process of ensuring the implementation of the triune principle of sustainable development requires the attention of not only the industry center, but also public organizations. The adequacy of the formed standards of investment and construction activity depends on their initiatives and consistent actions. In addition, regional authorities are becoming centers for the development of guidelines and models of "sustainable contracts". This activity is particularly active in the areas of sanitary-resort treatment and recreation. Environmental standards of the investment and construction business in such areas are subject to significant correction and tightening [4, 5]. Thus, it is advisable to form three basic tracks to ensure a business environment with corporate responsibility of the construction business for sustainable development in territorial and sectoral formats. The first track will be the initiatives of the industry regulator — the RF Ministry of Construction. According to the authors, its tasks should include:

1) implementation of the sectoral concept of sustainable development of the investment and construction sector;

2) systematization of approaches to the creation of standards for the sustainable development of the construction business;

3) formation of the structure of the construction corporate governance code.

The second track unites the efforts of public organizations and associations initiating public hearings and discussion of methodological approaches to the selection of sustainable development indicators in the context of the implementation of the triune principle of comprehensive assessment of the completeness of the conditions and clauses of "sustainable contracts".

The third track concerns taking into account the territorial features of the investment and construction business. It is also necessary due to the specifics of communication and climatic conditions for the creation of construction products and real estate management.

The tasks and measures of the basic tracks should be mutually consistent in content and linked in time. For these purposes, it is proposed to create a Coordinating Council of representatives of science, industry, enterprises, territories and public associations, subordinating its activities to the regime of joint responsibility for compliance with the schedule of joint events.

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Контрактные конструкции экологически устойчивого развития предприятий инвестиционно-строительной сферы

Стремление к созданию бизнес-среды, формирующей социально ответственное функционирование бизнеса, особенно важно в сферах деятельности, связанных с удовлетворением базовых потребностей в жилье, работе, медицине, отдыхе и др. Инвестиционно-строительная деятельность, осуществляемая различными контрагентами, характеризуется высоким уровнем экономических, социальных и экологических рисков. Их нейтрализация в формате практической реализации ESG-принципов осуществления проектов создания и управления недвижимостью связана, в первую очередь, со стартовыми фазами проекта и учетом социаль-

но-экологических требований в контрактах на выполнение работ, поставок, финансирование, долевое участие, оказание услуг и др. Контракты, учитывающие требования устойчивого развития, на практике формируют семейство «устойчивых контрактов». Их отличает единство экономических, социальных и экологических требований. Последние отражают нормы национального регулирования и направлены на формирование правовой среды корпоративной ответственности строительного бизнеса за устойчивое развитие. Базируясь на международной практике, авторы предложили структуру Концепции «устойчивого контракта» в строительстве. Она охватила и систему стандартов устойчивого развития, и необходимость разработки и согласования Кодекса устойчивого корпоративного управления строительством. Организация деятельности в этом направлении видится во взаимосвязанном совместном устремлении отраслевых и территориальных органов управления, корпоративных и общественных организаций, научных и образовательных учреждений к стандартизации инвестиционно-строительной деятельности, разработке типовых «устойчивых контрактов», использованию внесудебных методов разрешения споров в части выполнения обязательств по реализации ESG-принципов, а также принятию отраслевого кодекса корпоративного управления строительством.

Ключевые слова: *устойчивое развитие, стандарты устойчивого развития, инвестиционно-строительный бизнес, кодекс корпоративного управления, организационные треки деятельности, координационный центр*

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