TITU MAIORESCU UNIVERSITY

DOCTORAL SCHOOL OF LAW

DOCTORAL THESIS

SPECIFIC CHARACTERISTICS OF OUTSOURCING AGREEMENTS BETWEEN PROFESSIONALS

(SUMMARY)

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The present paper aims at an in-depth analysis of the legal regime applicable to outsourcing contracts in the field of information technology, with a focus on the qualification of the obligations of the contracting parties as obligations of means or obligations of result. In the context of a market characterized by technological dynamism, contractual volatility and internationalization of services, the thesis critically explores the current regulatory framework and identifies the limits of its applicability in relation to the realities of the IT industry.

The scientific approach is based on a multidisciplinary methodology, using historical-legal, comparative, economic and logical-deductive methods, accompanied by a qualitative and quantitative analysis of case law and contractual practices in continental and common law systems. In this framework, the economic perspectives of transaction cost theory (TCE) and the resource-based approach (RBV) are exploited to demonstrate the influence of the technical and operational content of the service on the legal qualification of the obligation.

The paper distinguishes between contractual forms in which continuous services are delivered, characterized by flexibility, lack of a defined outcome and a lower intensity of liability, and contracts in which individually defined software products are delivered, with well-delineated functionalities, story points, agreed methodologies and an explicitly or implicitly committed outcome standard. The thesis argues that, in the absence of explicit clauses and a detailed description of professional conduct and standards, the IT supplier may be subject to a performance obligation by virtue of the specific subject matter of the performance.

The legal regime of limitation of liability clauses, warranties as to latent defects, acceptance of deliverables, and the implications that these contractual elements have on the demarcation between obligations of means and obligations of result are also analyzed. Essential distinctions are made between the provision of services, in the classical sense, and outsourcing with IT product delivery, as well as the legal implications of the influence of the beneficiary on the execution process.

Finally, the paper formulates proposals of lege ferenda, including the need for a specific regulatory framework for IT contracts, the insertion of rules on the delimitation of technical obligations according to the nature of the result sought, and the strengthening of protection mechanisms for beneficiaries in the face of contractual imbalances. The conclusions emphasize the hybrid and nuanced nature of the IT outsourcing contract, highlighting the need for a legal instrument adapted to the technical and economic realities of this strategic field.

Justification of the Research Topic and Its Relevance

The choice of the outsourcing contract, especially in the field of information technology, as the object of the doctoral research is based on the growing importance of this phenomenon in current economic practice and on its legal complexity, which is insufficiently explored in the specialized literature, especially in the context of Romanian law.

The paper is of an applied nature, being inspired by the author's direct professional experience in the IT industry, an experience that has highlighted the difficulties of qualifying and negotiating contractual obligations, as well as the legal effects of ambiguous drafting of outsourced service contracts. At the same time, the research has a pronounced innovative character in the Romanian legal context, in which there are no express regulations on outsourcing contracts, although it is intensively used in practice and frequently raises problems of legal qualification and interpretation.

In addition to the doctrinal contribution, the thesis provides a comparative analysis between continental and common law systems, illustrating the divergences in the interpretation of contractual obligations and in the approach to liability in unnamed contracts. In particular, the distinction between services delivered in the form of specified results (usually obligations of result) and continuous, repetitive services without clearly defined deliverables (obligations of means) is addressed.

The thesis offers a valuable contribution both in theoretical terms, by clarifying some essential legal concepts, and in practical terms, by formulating proposals applicable to the drafting, negotiation and execution of outsourcing contracts. At a time when outsourcing is becoming a common mechanism in all economic sectors, including Romania, this research responds to a real need for legal clarification and the outlining of a balanced contractual framework between supplier and client.

Research Methodology

The scientific approach adopted in this thesis is based on a pluralist methodology tailored to the complexity of the chosen topic—namely, the legal analysis of contractual obligations in outsourcing agreements, with particular emphasis on the distinction between obligations of means and obligations of result. The research integrates classical legal methods—historical-dogmatic, comparative, and logical—with modern empirical and economic analysis tools.

The historical method was employed to trace the evolution of relevant legal concepts and to contextualize contractual obligations across different legal traditions and eras. The comparative method played a central role in highlighting structural differences between civil law and common law systems, with special attention to the increasing cross-influence of contractual clauses originating from Anglo-Saxon practice. Concurrently, the logical method was used to clarify the normative reasoning underlying the interpretation of contractual provisions.

Quantitative analysis also supported the research, particularly through the review of relevant case law, allowing for an empirical assessment of how interpretative rules and contractual clauses are applied in judicial practice. Moreover, elements of law and economics were introduced to evaluate the normative efficiency of legal solutions and their implications for contractual risk allocation.

A significant contribution of this thesis lies in its case study analysis, primarily focused on the IT sector and extended to other industries, illustrating the real-world impact of theoretical distinctions. This interdisciplinary perspective ensures that the findings are not only theoretically robust but also practically relevant.

By combining doctrinal, comparative, empirical, and economic approaches, the methodology provides a comprehensive analytical framework for understanding the nature of the main obligation in outsourcing contracts. The thesis proposes both theoretical clarifications and practical guidance, aiming to support legal professionals, judges, and commercial actors in managing and interpreting complex contractual relationships in an increasingly global and digitalized environment.

The present doctoral thesis is organized into six chapters, each designed to fulfill specific research objectives and to contribute both theoretically and practically to the legal understanding of outsourcing contracts in the field of information technology, with particular focus on the legal qualification of the supplier's main obligation.

The first chapter offers an introductory framework, presenting the socio-economic and legal context that justifies the relevance and timeliness of the research. It outlines the emergence of outsourcing practices, the growing digital transformation of economic activities, and the increasing contractual complexity in client-supplier relations in IT services.

The second chapter is devoted to the legal regime of unnamed and professional contracts, both in Romanian law and from a comparative law perspective. It examines the formal and substantive requirements for contract validity and the interpretive methods applicable to outsourcing contracts, highlighting differences between civil law and common law systems.

The third chapter forms the descriptive core of the research. It addresses outsourcing as an autonomous contractual category, particularly within IT services. It discusses the legal nature of outsourced services, the juridical structure of outsourcing agreements, and the influence of market practices such as Agile or Waterfall methodologies. Special attention is paid to the use of technical documentation, service levels, and standard contractual clauses in the IT industry.

The fourth chapter provides an in-depth legal analysis of contractual obligations, focusing on the distinction between obligations of means and obligations of result. This section explores the legal criteria for classifying the supplier's main obligation, the effects on liability and damages, and the common contractual mechanisms used to limit or exclude liability. The analysis is supported by relevant jurisprudential examples from national and international practice.

The fifth chapter outlines the main conclusions of the research, both de lege lata and de lege ferenda. It proposes specific legislative amendments to the Romanian Civil Code aimed at regulating IT outsourcing contracts more explicitly, including the need to address their unique features within the general framework of civil obligations.

The final chapter includes the bibliography, which brings together the academic, legal, and jurisprudential sources used throughout the research.

This structure ensures a logical progression from general theoretical considerations to the applied legal issues specific to IT outsourcing contracts. It enables a nuanced understanding of the civil

law mechanisms governing performance, liability, and contractual risk in a sector undergoing constant transformation and increasing juridical relevance.

Chapter I. Preliminary considerations

This section substantiates the theoretical and practical necessity of analyzing IT outsourcing contracts in a socio-economic context marked by rapid transformation, accelerated digitalization and increased global interdependencies. First, the transition of outsourcing from a cost-cutting strategy to an essential tool for innovation, agility and strategic adaptability is highlighted. Global or high-impact phenomena, including the COVID-19 pandemic and the advance of artificial intelligence, have emphasized the importance of resilient digital infrastructures and flexible contractual frameworks that respond to sudden changes in the economic and social environment.

From an economic perspective, IT outsourcing is approached as a strategy to optimize performance by delegating critical activities to specialized providers able to offer expertise, scalability and innovation. At the same time, the risks associated with these partnerships are analyzed, including those related to business relocation or exposure to unfair contractual practices.

The social context discusses the implications of outsourcing for the workforce, digital equity and the cultural transformations brought about by remote work. The essential role of inclusion, social responsibility and ethical regulation in managing the impact of outsourcing on individuals and communities is highlighted.

At the legal level, there is a lack of specific regulation of the outsourcing contract in Romanian law, which generates uncertainty and imposes the need to adapt the regulatory framework. Both the contribution of the Civil Code and the influence of European regulations and case law, which indirectly shape the obligations of the parties involved in IT contracts with a cross-border dimension, are discussed.

The section concludes with the formulation of a key desideratum: the establishment of an adaptable, coherent and ethical legal framework capable of managing the complexity of IT outsourcing relationships, supporting innovation and balanced legal protection for all parties involved. It proposes an integrative approach in which unnamed contractual instruments and professional rules are harmonized with the values of justice, dignity and solidarity.

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Chapter II. Unnamed contracts and professional contracts. Regulation. Aspects of comparative law

This chapter deals with the legal nature of the outsourcing contract, highlighting the tensions between the monistic conception adopted by the new Romanian Civil Code and the need to recognize distinct commercial features of this type of contract. The doctrinal debate on the elimination of the autonomy of commercial law in favor of a unitary system of private law is analyzed, highlighting the persistence of a de facto dualism, through the survival of special commercial rules and the importance of these regulations in the national economy.

It details the application of general principles of contract law, such as freedom of contract, consensualism, binding force, good faith, relativity and enforceability of effects, as well as modern principles of a rather doctrinal nature, such as contractual solidarity, proportionality, contractual coherence and loyalty between the parties. Their implications for the structure and execution of IT outsourcing contracts are explained, with an emphasis on maintaining contractual balance in the face of technological and economic risks.

The text provides an extensive comparative analysis, including perspectives from French, UK, Italian, Dutch and Quebec law, highlighting that the regime of unnamed contracts, including outsourcing, is approached in a flexible and functional way, complementing the general rules with the specific rules of similar contracts. The relevance of employment law and tax issues in outsourcing is also highlighted, including in relation to European legislation (TUPE 2006, GDPR, Acquired Rights Directives).

At the same time, the hybrid nature of the outsourcing contract in Romanian law - an unnamed contract with professional features - is affirmed and the need for clearer, de lege ferenda regulation is emphasized, taking into account the complexity and economic impact of these contracts in practice. The text substantiates the proposal to include a regulation on outsourcing contracts in the Civil Code, in line with European trends.

It further analyzes the legal regime applicable to unnamed contracts and professional contracts in the context of Romanian civil law, with emphasis on their relevance in the field of IT outsourcing. The unnamed contract is defined as a contractual agreement without express regulation in law, governed mainly by the general rules of the Civil Code (art. 1166-1323), and in addition, by the rules applicable to named contracts with which it has the greatest similarity (art. 1168 and 1.168 Civil Code).

It emphasizes the role of the principle of freedom of contract in the configuration of these contracts, as well as the difficulties of legal qualification generated by their hybrid character, often combining elements from multiple typical contracts. The new Civil Code expressly accepts the application by analogy of special non-derogatory rules, without infringing the prohibitions of Article 10 of the Civil Code, and in the absence of legal rules, professional custom and practice become relevant sources of suppletive law in determining the content of agreements (Articles 1 and 1272 of the Civil Code).

Outsourcing contracts are presented as typical forms of unnamed contracts, tailored to the specific needs of the parties, particularly in regulated and dynamic industries such as IT. The need to distinguish between obligations of means and obligations of result is emphasized, with direct implications for the liability regime. In the absence of express stipulation, the obligation of means is presumed in Romanian law. At the same time, outsourcing contracts in technical fields raise requirements of diligence and professionalism, being assimilated to professional contracts.

The usual clauses on contractual liability, risk allocation, confidentiality and protection of personal data are also analyzed, in particular in the context of compliance with the GDPR Regulation. Professional contracts, although not specific in the Code, entail increased obligations due to the specialized nature of the services and the high standards of competence, which often justify the qualification of the obligations as result-oriented.

This chapter highlights, among other things, the convergences between the Romanian legal regime and trends in comparative law (France, Italy, the Netherlands, Quebec), where a flexible regulation of unnamed contracts is increasingly accepted, accompanied by additional protections depending on the professional nature of the services. The need for legislative development de lege ferenda to explicitly regulate outsourcing contracts and to recognize their professional nature where the nature of the obligations and the scope so require is highlighted.

The section also provides an in-depth comparative analysis of the regulation of unnamed contracts in different civil law systems, highlighting the convergences and particularities of each jurisdiction in the context of freedom of contract and the applicability of general rules. At the heart of this analysis is the widely accepted international view that unnamed contracts - although not expressly regulated - are valid and enforceable, provided that the general rules of the law of obligations and the fundamental principles of legality, equity and morality are respected.

The relevant rules in France (Art. 1105 Civil Code), Italy (Art. 1322-1323 Civil Code), the Netherlands (Art. 6:215 BW), Quebec (Art. 1377 C.C.Q.), Brazil (Art. 425 Civil Code) and the Republic of Moldova (Art. 994 and Art. 774 Civil Code) are presented, all recognizing the legitimacy of unnamed contracts and the applicability of general rules in the absence of special regulation. A common feature of these systems is emphasized: the principle of autonomy of will and the possibility for the parties to devise atypical contractual arrangements tailored to their needs, while respecting the general legal framework.

In particular, the analysis highlights the usefulness of unnamed contracts in dynamic areas, such as outsourcing or professional services, where standardized contractual structures are not always appropriate. Unnamed contracts allow greater flexibility but also impose clear obligations of good faith and professional diligence in line with national laws and international standards.

Concrete examples from case law and doctrine, such as athlete transfer contracts, agreements for the use of structural components for advertising, are given to illustrate the concrete application of these types of agreements. It reveals the difficulties of legal qualification and the risks of contractual abuse, particularly in the absence of clear normative benchmarks, as well as the role played by custom and professional practice in filling the legislative gaps.

Thus, this part of the paper argues for the need for a flexible and adaptive approach to contractual matters, without neglecting the requirements of legal compliance, contractual balance and the protection of the parties' legitimate interests. The regulation of unnamed contracts in comparative law provides a sound theoretical and practical framework for the analysis of outsourcing contracts and other emerging contractual forms, whose legal regime derives from general principles rather than special rules.

The chapter dedicated to unnamed and professional contracts, with a focus on outsourcing contracts, underpins a sound legal and comparative analysis, focusing on the regime applicable to them in Romanian law and in the relevant legal systems.

In Romanian law, outsourcing contracts are characteristically unnamed contracts - atypical agreements, lacking express regulation, but fully admitted by virtue of the principle of autonomy of will, enshrined in Article 1.169 of the Civil Code. The application of the general rules (Articles 1.166-1.323 of the Civil Code) and, in the alternative, of the provisions specific to the contract most closely related to the contract (Article 1.168 of the Civil Code) constitute the normative frame of reference. This flexible legal architecture, although advantageous in terms of adapting to current

economic needs, in practice generates challenges in terms of the classification of contractual obligations - in particular the distinction between obligations of means and obligations of result.

The outsourcing of IT services highlights these difficulties, as the deliverables often require a high level of customization and technical expertise. In the absence of specific rules, clear and rigorous contract drafting is essential, in particular as regards the nature of the supplier's obligation, the structure of intellectual property rights, the allocation of risks and the liability regime.

The comparative analysis shows that most European countries of continental inspiration (France, Italy, Netherlands, Quebec, Moldova) recognize unnamed contracts and subject them to the general rules of contract law. In Anglo-Saxon law, the approach is functional: the common law of contract prevails, supplemented by special rules. Although Romania has formally adopted a monistic system, it retains elements of regulatory dualism, in particular through special laws on commercial matters (companies, insolvency, securities).

At European level, EU law has a significant influence on the structuring of outsourcing contracts, in particular through the General Data Protection Regulation (GDPR) and Directive 2001/23/EC on the transfer of undertakings, which impose mandatory standards in terms of data protection and employees' rights.

Chapter III Outsourcing from an economic perspective. Introduction to the study of the Outsourcing Contract

Outsourcing, understood as an economic and contractual phenomenon, can be explained by two fundamental theoretical paradigms: transaction cost economics (TCE) and the resource-based perspective (RBV). The first of these, formulated in the works of Ronald Coase and Oliver Williamson, starts from the premise that firms exist to minimize the transaction costs involved in market relationships, such as those of negotiation, monitoring and enforcement. In this context, outsourcing is seen as a rational economic decision, which is only justified when the costs of external transactions are lower than those of internal management. The ECA draws attention to the risks of opportunistic behavior, especially under conditions of uncertainty and asset specificity, and recommends contractual structures capable of reducing these vulnerabilities.

RBV, on the other hand, interprets outsourcing not only as a matter of economic efficiency, but also as a strategic choice involving a clear delineation between core and peripheral resources of the firm. According to this perspective, activities that directly contribute to competitive

advantage should be kept in-house, while ancillary activities can be outsourced, provided they do not negatively affect the firm's market positioning. While TCE focuses on governance and costs, RBV emphasizes organizational identity and the protection of critical resources, stressing the importance of retaining control over distinctive knowledge, technologies and skills.

The integration of the two paradigms provides a comprehensive framework for the legal and contractual analysis of outsourcing. A sound outsourcing contract, in this sense, is not merely a legal covenant, but becomes a tool for managing risk and enhancing strategic advantage. From a TCE perspective, the contract should include clear clauses on performance, penalties, termination and dispute resolution mechanisms. From a RBV perspective, it must ensure the protection of intellectual property rights, know-how and information essential to the firm's competitive position. This two-pronged approach requires careful drafting in which the parties anticipate possible imbalances and risks while protecting their strategic interests.

The main conclusion to be drawn from the analysis of these two theoretical foundations is that outsourcing decisions should not be treated in isolation or only from an immediate cost perspective. They must reflect a thorough understanding of the critical functions of the organization and the balance between operational efficiency and protecting long-term value. Outsourcing thus becomes a decision of a mixed nature, economic and strategic, but also legal in terms of the obligations assumed and the risks contractually shared. For this reason, outsourcing contracts must be constructed in a way that simultaneously reflects the logic of TCE and the requirements of RBV, thus guaranteeing not only efficiency but also sustainability and competitiveness. This balance is essential in a globalized and volatile economy, where competitive advantages are increasingly fragile and contractual relationships need to be increasingly robust.

Outsourcing is a complex contractual practice at the intersection of economics, managerial strategy and law, and is today legally treated as a variety of unnamed contracts. The origins of the phenomenon can be traced back to Eastman Kodak's historic decision in 1989 to outsource the IT function to external suppliers, marking a paradigm shift in the organization of corporate activities. Although present in practice for a long time, outsourcing has been conceptualized and analyzed relatively recently in the literature, and is often equated with the transfer to third parties of activities previously performed in-house, in order to streamline costs, focus on core activities or integrate external knowledge.

From a legal point of view, outsourcing is relevant in so far as it involves the conclusion of contracts which are not expressly governed by the Civil Code, but are subject to the general rules of the law of obligations, in particular unnamed contracts. They must be drafted with the utmost care to reflect the specific nature of the business relationship, the distribution of risks, the obligations of the parties and the control and sanction mechanisms. From a theoretical point of view, outsourcing is explained by two broad paradigms: transaction cost theory (TCE) and the resource-based perspective (RBV), both of which have important implications for contract structure and strategies for regulating the relationship between the client and the provider.

According to TCE, the firm resorts to outsourcing when market transaction costs are lower than those of in-house organization, but this choice depends on the degree of uncertainty, the specificity of the assets involved and the frequency of interactions. Thus, the higher the risks of opportunism, renegotiation and loss of control, the more likely the option of in-house integration becomes. In this sense, the outsourcing contract should include clauses that limit these risks: penalties, KPIs, SLAs and controlled termination mechanisms.

RBV adds a strategic dimension, arguing that outsourcing is only acceptable for non-core activities, and that those essential for competitive advantage - scarce, valuable, hard-to-imitate resources - should be kept in-house. This theory justifies the inclusion in outsourcing contracts of clauses on extended confidentiality, non-use of know-how in favor of competitors, and prohibiting the takeover of key human resources. In addition, RBV provides a legal justification for non-solicitation clauses and the exclusive allocation of critical specialists to dedicated projects.

Empirically, research shows that, in practice, firms do not choose outsourcing solely to save money, but also to learn, adapt to uncertainty and access innovation by working with specialized suppliers. In an unstable economic environment with rapid technological progress, outsourcing becomes a vehicle for organizational learning and renewal. From this perspective, the contract should encourage knowledge sharing, facilitate skills transfer and prevent the adverse effects of insufficient 'unlearning', which can occur when firms lose control over outsourced activities.

In conclusion, outsourcing cannot be placed within a rigid contractual framework, but must be analyzed as a flexible contractual category, governed by contractual autonomy but subject to the general rules of civil and commercial law. It entails a series of risks and benefits that must be carefully assessed both economically and legally, depending on the nature of the activity, the level

of uncertainty, the specific nature of the resources involved and the client's strategic objectives. The outsourcing contract becomes, in this context, not only a legal instrument for the provision of services, but also a means of achieving a complex partnership in which the law must ensure a balance between efficiency, protection of critical resources and adaptability to change.

Information technology (IT) outsourcing contracts are an evolved and sophisticated form of unnamed contracts, adapted to the digital demands and profound transformations in the modern organizational structure. From the traditional forms of IT infrastructure outsourcing - where a single provider took over the client's equipment and staff - to today's fragmented models, IT outsourcing has transformed from a simple cost-cutting solution into a key strategic tool for innovation, digitization and security.

At the same time, IT outsourcing is characterized by increased contractual diversity. This requires the structuring of agreements that accurately reflect the nature of the services provided, the responsibilities assumed, performance metrics and associated business models. Whether it is Business Process Outsourcing (BPO), Infrastructure as a Service (IaaS), Software as a Service (SaaS) or hybrid and multi-sourcing models, each type of contractual relationship requires specific regulation of obligations, guarantees, risks and termination arrangements.

As digitization has advanced, vendors have begun to take on integrated responsibilities, covering not only technical aspects, but also essential business process components. Modern IT outsourcing contracts are no longer just about delegating a technical task, but include business objectives, strategic alignment, risk-sharing and mechanisms to incentivize innovation. From this perspective, contracts need to be drafted with greater care, including clauses on deliverables, service level agreements (SLAs), key performance indicators (KPIs), penalties, confidentiality obligations, data protection and compliance with international security standards.

The emergence of models such as multi-sourcing and hybrid outsourcing highlights a clear trend towards contractual specialization and fragmentation, which poses additional challenges in terms of coordination, interdependencies and legal liability. In these contexts, clear delineation of service towers and the boundaries of each provider becomes essential to avoid disputes. In fact, many legal disputes in IT outsourcing are based on ambiguities about agreed services, performance levels or pricing.

From a commercial point of view, pricing models range from recurring monthly fees specific to cloud services, to staged payments or fixed rates for deliverables, to pricing models

based on outcomes and units of resources. This flexibility requires, at the contractual level, careful clarification of valuation metrics, cost adjustment thresholds and conditions for adapting to technological or organizational changes.

Thus, IT outsourcing contracts, in their contemporary form, call for an inter- and multidisciplinary legal approach, combining a deep understanding of the technology with the rigor of the law of obligations. Beyond the mere outsourcing of certain functions, they constitute genuine contractual architectures designed to ensure a balance between performance, security, adaptability and the protection of the parties' legitimate interests. For this reason, IT outsourcing must be treated, in legal terms, as a distinct professional contractual category that requires regulatory instruments appropriate to its complexity and impact in the digital economy.

The outsourcing of IT services by contract, with a focus on the development of customizable software products, involves increasing legal and operational complexity, reflecting both technological transformations and the sophistication of organizational requirements. In today's context, IT outsourcing contracts are no longer just about delivering infrastructure or standardized services, but increasingly include elements of software development, strategic deliverables, cloud solutions, multi-vendor collaboration and digital transformation responsibilities.

From a legal point of view, this diversification entails the conclusion of so-called complex contracts, in which clauses on deliverables, quality standards, privacy, confidentiality, intellectual property, data protection and contractual governance play a central role. Practice shows that these contracts need to be both flexible and rigorous: flexible to allow adaptation to rapid technological change and contextual variations, but rigorous to ensure a balance of obligations, risk management and faithful execution of agreed services.

Software development outsourcing involves extensive collaboration between client and supplier, which can be affected by many variables: geography, organizational culture, work methodology, process maturity and level of standardization. These issues are directly reflected in the contractual construction, in particular in terms of assumed responsibilities, acceptance tests, success criteria and possible penalty or gain-sharing mechanisms.

Typical contracting models include, in addition to the main outsourcing contract, sub-contracting arrangements, where the final legal responsibility lies with the main contractor. This structure creates a contractual network that needs to be precisely governed so that the obligations

towards the client are properly reflected in the relationships with subcontractors. This calls for greater contractual diligence in drafting risk transfer clauses, determining limits of liability, correlating tariffs and implementing compliance requirements.

An essential aspect for the validity and effectiveness of these contracts is the ability of the parties to anticipate and operationalize the meaning and application of the clauses in practice. While contracts cannot exhaustively cover all future circumstances, they must provide sufficient mechanisms for adaptation, governance and dispute resolution. In this respect, the integration of procedures for monitoring, reporting, escalation of disputes and adjustment of obligations becomes indispensable to ensure fair and efficient contract performance.

Last but not least, the outsourcing of IT services, particularly in the area of custom software development, requires a carefully calibrated legal approach, integrating not only civil law rules but also best practices in commercial law, data protection, employment law and intellectual property law. A regulation tailored to the specific nature of these unnamed and professional contracts is needed to enable them to be treated as strategic tools in the digital evolution of businesses.

The outsourcing contract, especially in the field of information technology, is an unnamed, synallagmatic, onerous, commutative, consensual, usually with successive performance, and in most cases negotiated. These legal features can be deduced both from the doctrinal analysis of contractual categories and from the specific features of outsourcing relationships as they are developed in practice.

First of all, the synallagmatic nature of the contract is determined by the reciprocity and interdependence of the obligations: the IT service provider undertakes to provide specific services (such as development, maintenance, systems integration, technical consultancy), while the beneficiary undertakes to pay a price in exchange for these services. This also gives rise to the legal effects specific to synallagmatic contracts, such as the non-performance exception and the legal regime of risk.

Secondly, an outsourcing contract is a contract for consideration and usually commutative. Both parties aim to obtain a clearly determinable economic benefit at the time the contract is concluded - the beneficiary aims to acquire an IT service or software product and the supplier aims to pay the negotiated price. Even if the nature of the deliverable may sometimes involve a margin for variation (e.g. in application development), the contract is usually based on firm quantitative and qualitative estimates, which puts it in the commutative category.

From a formal point of view, outsourcing contracts are usually consensual: they are validly concluded by simple agreement of the parties, without any special formalities being necessary for their validity. However, in practice, especially in complex professional relationships, the parties may agree on additional formal requirements (e.g. signature in writing, authentication, inclusion of standard annexes or references).

The unnamed nature of the contract results from the absence of an express regulation in the Romanian Civil Code or related legislation. Although similar in certain respects to a service or supply contract, the outsourcing contract is an atypical contractual construct, shaped by the economic needs of the parties and the specifics of the technology sector. The legal rules are therefore applied in a suppletive manner, by recourse to the general rules of obligations and, in the alternative, by analogy with so-called similar contracts.

As regards freedom to negotiate, outsourcing contracts are usually negotiated, especially in the case of transactions between economically equal professionals. However, in some cases - especially in relation to large "hyperscaler" suppliers - the parties are faced with adhesion contracts, where the beneficiary has limited room for negotiation.

Lastly, depending on the subject matter and contractual structure, outsourcing contracts can be executed either all at once (e.g. delivery of finished software) or successively (e.g. maintenance, technical support or cloud services contracts extended over time). This aspect is decisive for the application of the rules on non-performance, termination or adjustment of the contract.

With all these features, the outsourcing contract is a multi-purpose, adaptable but complex legal instrument which requires rigorous analysis and careful drafting in order to correctly reflect the economic and legal balance between the parties. In the absence of express regulation, conceptual rigor and clarity of obligations are essential to the validity and effectiveness of the contractual relationship.

The IT outsourcing contract, described as an unnamed contract, is legally valid as long as it complies with the general conditions of civil law: valid consent, capacity of the parties, a specific subject-matter and a lawful cause. Although not expressly regulated by the Civil Code, this contract is fully admissible by virtue of freedom of contract and is adapted to contemporary economic needs and developments in the technology sector.

The unnamed nature of the contract reflects its innovative nature, with a flexible and configurable structure according to the specifics of each commercial relationship. This flexibility,

although beneficial in practical terms, creates difficulties of interpretation in court, especially in the absence of clear legal or doctrinal guidance. The parties may take advantage of atypicality to influence the legal relationship in their favor by invoking usages or the closeness of a named contract to justify certain clauses or practices.

The content of the contract is determined by all the rights and obligations assumed by the parties, who are in a synallagmatic relationship of interdependence. In IT sector practice, the clauses cover issues such as deliverables (documentation, source code, prototypes, etc.), team structure, project milestones, and conditions for the protection of personal data, where processing is necessary.

Although the information obligation is not expressly provided for contracts between professionals, it may arise in good faith, especially in cases where one party has a dominant or expert position (e.g. auditor, medical provider). Transparency and cooperation therefore become essential in the pre-contractual phase and during performance.

The contractual structure is usually complex and includes a framework collaboration contract, complemented by annexes, specific contracts for individual projects, quality plans, commercial offers and working documents. In case of contradictions, the legally superior document prevails, in the order agreed by the parties.

Contractual management is often facilitated by a steering committee made up of representatives of both parties, who decide on the organizational or technical adjustments needed to implement the project. This approach, common in the IT sector, reflects a practical reality that requires quick decisions and constant collaboration, in contrast to the rigidity of formal regulations.

The IT outsourcing contract is a dynamic, adaptable and fundamentally consensual contractual form, in which the elements of validity must be carefully calibrated to its non-numerary nature, the specific nature of the commercial relationship and the risks associated with a constantly changing field.

The object of the IT outsourcing contract is individualized by its complexity and can cover both the provision of IT services and the delivery of customized software, depending on the contractual model chosen and the nature of the agreed service. Whether it involves the sale of a license, the granting of a right to use or the custom development of a software product, the contractual object remains software - as an intangible good - either in the form of a finished product or as a computer service.

In the case of custom software development contracts, the parties frequently choose between two models: the fixed-price contract, which involves a clearly defined performance obligation, and the time & materials (T&M) contract, which is characterized by an obligation of means and flexibility in defining requirements during the course of the project. From a legal perspective, the difference between these models is not limited to the method of payment, but has implications for liability, the structure of obligations and contractual risk.

Although sometimes referred to generically as "service contracts", in reality, many of these legal relationships have the characteristics of a sale-purchase contract or even a contract of entrepreneurship, since they involve the creation and delivery of an individual, specific good (customized software), with transfer of intellectual property. Thus, the legal nature of the contract cannot be determined solely on the basis of the terminology used by the parties, but must be analyzed in the light of the actual services undertaken.

It is important to note that in the development of customizable software, the good (the computer program) is, in most cases, a future good, the ownership of which is transferred only after testing and acceptance. Contractual clauses often make the transfer of intellectual property rights conditional on full payment for the services rendered, reflecting a mechanism to protect the supplier.

Likewise, where software development is subcontracted, the invalidity of the contract cannot be invoked on the grounds that the original supplier is not the owner, since subcontracting is often known and accepted by the beneficiary. Practice allows the conclusion of contracts for future goods, including in the field of IT, as long as the substantive requirements for the validity of the legal act are respected.

The contractual structure established in practice - by means of a Master Service Agreement (MSA) and subsequent documents (Statement of Work/Mission Statements) - allows for a clear definition of projects, deliverables, deadlines and teams involved. It also specifies the appointment of a project manager and the active involvement of the client in the supervision of the activities, which gives the contract a collaborative character, but also a certain functional rigidity, close to entrepreneurship.

This structure and content reveal an obligation of result rather than an obligation of means, and in so far as the parties aim to deliver functional, customized software, it follows that we are

either in the presence of a mixed contract or an unnamed contract with dominant elements of sale and purchase or of a contract of enterprise, rather than simply a supply of services.

The legal consequences are important: in these circumstances, the provider could be held liable for hidden defects or non-conformity under the rules applicable to contracts for the transfer of ownership. Thus, the correct characterization of the subject matter of the contract has direct implications for the extent of contractual liability and the legal protection available to the beneficiary in the event of breach of the obligations undertaken.

In the information technology outsourcing contract, the rights and obligations of the parties are structured on a synallagmatic and interdependent logic, and are essential for the balance and functionality of the contractual relationship.

The beneficiary has, first and foremost, the obligation to pay, which implies payment of the invoices issued by the service provider, within the agreed deadline, in the absence of a justified dispute. Late payment usually results in the debt becoming due.

In addition to this financial obligation, the client has an active involvement in the performance of the services. They must designate a contact person, ensure efficient cooperation and provide the service provider with all necessary information, resources and infrastructure. This also includes the obligation to comply with safety, hygiene and internal regulations and rules relevant to the provision of services at his premises.

A common clause concerns the supervision and direction of the work by the client, which may appear to be a transfer of responsibility from the provider to the beneficiary. However, from a legal point of view, even in this context, the service provider is not exempt from liability: he remains obliged to carry out the services with professional diligence and in accordance with IT standards. Such a clause, if not drafted in a balanced way, can be characterized as abusive or unenforceable, especially if the client has relied on the provider's expertise in making technical decisions.

The service provider assumes a general duty of professional diligence under Article 1480 of the Civil Code and is required to provide services in accordance with good practice in the field. This is usually an obligation of means, but may evolve into an obligation of result depending on the nature of the service, especially in the case of the delivery of customized software.

As far as human resources are concerned, the provider has the exclusive obligation to manage the staff assigned, to ensure their competence and to maintain the agreed level of

qualification for the duration of the contract. Replacing a specialist with a lower profile without the agreement of the beneficiary entails contractual liability. This creates an indirect obligation of result, in terms of the quality of the human resources involved.

The provider is also under an obligation to notify staff of professional developments and, under certain conditions, to adjust the rates. If the client does not accept the change, the provider must replace the resource and ensure the continuity of the project - a dual obligation of information and result.

In IT outsourcing, the non-compete clause is often introduced to prevent the provider from contacting the client's direct competitors or customers. It is legally admissible if it meets strict criteria of proportionality, limited duration, territorial delimitation and justification by a legitimate interest.

In Romanian and common law, excessive or vague clauses can be declared null and void. For example, a generalized prohibition to operate in an entire industry without time limit is invalid. By contrast, a clause prohibiting the same employees from working on competing projects or from reproducing protected elements of a product may be acceptable and legally effective.

The IT outsourcing contract involves a complex legal relationship characterized by balance and interdependence of obligations. The beneficiary is not a mere recipient of the service but an active contractual partner. In turn, the service provider is subject to high standards of professionalism and transparency, assuming obligations not only of means but also of result. Special clauses, such as the non-compete clause, must be carefully calibrated to comply with the requirements of legality and proportionality imposed by national and comparative law.

In IT outsourcing contracts, price is an essential element, both from a legal and practical perspective. The price must be expressed in money, determined or determinable, real and serious, as required by the Civil Code. As a rule, the parties opt for the value to be expressed in euros or dollars, in view of the transnational nature of the services. Depending on the nature of the obligations assumed, the contract may provide for a fixed price (in the case of an individually determined good, such as customized software) or a variable price, calculated on a time and materials (T&M) basis, in the case of continuous or non-individualized services from the outset.

The clear determination of the price or the method of calculation is indispensable for the legal and economic security of the contractual relationship, and failure to do so may call into question the validity of the contract. In practice, even in the absence of a final fixed price,

reasonable estimates and adjustment mechanisms are accepted, as long as they reflect the parties' common will and do not contravene the principle of good faith.

The legal analysis of the usages and customs in IT outsourcing contracts reveals an evolution of these practices from mere technical conventions to true normative standards, capable of influencing the interpretation and execution of contractual obligations. In a field characterized by continuous innovation and operational adaptability, methods such as Agile, DevOps or the use of collaboration and technical assessment tools are becoming fundamental elements in the contractual process. These practices, although not always expressly stipulated in contracts, may acquire legal force under Art. 1 para. (2) and Art. 1272 of the Civil Code, which enshrine customary usages as suppletive sources of law, relevant in interpreting and supplementing the will of the parties.

In the practice of outsourcing relationships, these customs are directly manifested in the organization of the collaboration between client and supplier, in the definition of delivery stages, in the establishment of performance criteria and in the shaping of the applicable standard of care. The obligation to act in a professional manner can no longer be assessed in the abstract, but must be linked to the current technological and organizational level of the industry. Lack of widely accepted practices such as the use of version control, continuous testing, regular feedback or code documentation can be a clear indication of culpable non-performance, especially if these standards are internationally recognized and both parties are professionals.

Regarding the structure of the contractual relationship, the active participation of the client in monitoring and coordinating the project does not alter the legal nature of the provider's obligations but indicates a collaborative contractual model, in which professional responsibility is not diluted. On the contrary, the provider remains liable for the conformity of the deliverables, including in the context of constant involvement from the beneficiary. At the same time, the customs concerning transparent communication, keeping the client informed, and justifying delays align with the good faith requirement provided by Article 14 of the Civil Code and, if not observed, may constitute a legitimate basis for sanctioning abusive or negligent behavior.

It must be emphasized that the legal applicability of these usages is conditioned by the knowledge or, at least, the reasonableness of the parties' knowledge of them. If one of the parties lacks technical expertise or has not been sufficiently informed about the applied practices, fault cannot be exclusively based on professional customs. However, when both parties are specialized

actors in the IT field or have benefited from legal and technical assistance during contract drafting, ignoring these standards may entail direct legal consequences, including in terms of contractual liability.

Therefore, in IT outsourcing contracts, usages and customs acquire substantive legal relevance, influencing not only the interpretation of obligations but also how courts or third parties assess diligence and good faith in the execution of the contract. They may serve as objective benchmarks in evaluating the parties' conduct and may supplement, where necessary, omissions in the contractual text. In this regard, the law should not adopt a rigid or formalistic approach but should reflect the concrete realities of a continuously evolving sector, where unwritten rules may be more relevant than expressly stipulated ones. Accepting this evolving nature of professional normativity is essential for maintaining contractual balance and ensuring legal certainty in the field of information technology.

In IT outsourcing contracts, the parties assume a series of rights and obligations that go beyond the traditional framework of a simple service provision relationship. The contractual relationship is governed by specific legal mechanisms intended to protect the economic balance, know-how, and stability of the involved team. A frequently used clause is the non-solicitation clause, by which the direct recruitment of the provider's personnel by the beneficiary is prohibited, both during the performance of the contract and for a reasonable subsequent period. This prohibition is recognized as valid under Romanian law and in common law systems, provided that it is justified by a legitimate interest and does not infringe upon the principles of proportionality and freedom to work.

Contracts often also include provisions regarding subcontracting, under which the provider may delegate the performance of certain obligations to third parties, subject to a framework of procedural transparency and full assumption of liability for their performance. Thus, subcontracting is permitted, but it does not release the provider from liability for the quality and conformity of the deliverables. At the same time, the contract enshrines the obligation of transparency and continuous cooperation between the parties, derived from the general principle of good faith regulated by Article 14 of the Civil Code. This obligation entails not only loyal conduct, but also prompt and complete disclosure of any difficulties that may affect the proper performance of the obligations.

Also of major legal importance is the warranty clause against eviction, under which the provider undertakes to protect the beneficiary against any third-party claims over the software deliverables. In this regard, the warranty is not merely one of diligence, but entails a genuine obligation of result in favor of the client, in accordance with the general regime of warranty against eviction under the Civil Code. Similarly, the clause on intellectual property expressly regulates the assignment of patrimonial rights over the delivered software in favor of the client. The transfer of these rights is conditional upon full payment of the price, in accordance with the provisions of Law no. 8/1996 and international practices. Rights over pre-existing creations and those over newly developed deliverables are clearly delineated, thus ensuring the protection of both the client's interests and the provider's know-how.

Another essential element of the outsourcing contract is the quality plan, an annexed document that details the concrete implementation of projects, validation stages, team structure, and decision-making procedures. Although apparently technical, this plan acquires legal value and becomes binding between the parties, being capable of producing direct contractual effects, including in the context of establishing possible culpable non-performance. The organization of the team and the obligation to maintain the level of competence also reflect the client's expectations regarding resource stability and continuity of execution, which brings this type of contract closer to the legal construct of a works contract rather than a simple service relationship.

Therefore, the entirety of these clauses confers upon the IT outsourcing contract a complex and balanced legal character, in which the provider is often bound not merely by an obligation of means, but by an obligation of result. This orientation leads to the application of legal norms concerning contractual liability, warranties for eviction and conformity, as well as the protection of intellectual property rights, within a framework that reflects high professional standards and the demands of the contemporary IT market.

The effects of the outsourcing contract, particularly in the context of delivering a future individually determined good, such as a software product, closely resemble the legal regime of a sale-purchase agreement. In such a framework, the correlated obligations of the parties — the provider and the beneficiary — must be interpreted in light of the Civil Code provisions regarding delivery of the good, transfer of ownership, and assumption of contractual risks. Although ownership may be transferred by mere agreement of the parties, in practice, the transfer is often

conditional upon full payment of the price, based on the default clauses permitted by law, especially in the case of future goods.

Delivery in the case of software products developed in stages cannot be carried out according to traditional rules, which presume an existing good delivered in a fixed form. Instead, deliveries are fragmented, accompanied by deliverables and successive testing phases, which require an adapted delivery regime, with direct relevance to the moment of risk transfer and the triggering of warranties. Moreover, the delivery obligation implicitly includes the provision of technical and operational documentation, without which the software cannot be used according to its intended purpose, these materials being considered essential accessories of the good.

In the event of disputes, courts must analyze not only the formal moment of delivery but also the conformity of the good, in relation to the agreed technical and functional criteria. This aspect is essential in evaluating the quality of the software product, which can only be verified by specialists with access to the source code and relevant experience. Thus, the conformity check cannot take place through a summary procedure, but requires in-depth analysis, often incompatible with the procedural regime of urgent measures provided by the Civil Code.

The warranty obligation applies equally in this context, whether it concerns a warranty against eviction or a warranty for hidden defects. The provider is therefore obliged not only to deliver a product that functions according to the agreed requirements, but also to ensure its peaceful use, in the sense of excluding any third-party claims over the code, functionalities, or other delivered components. Furthermore, in the event of hidden defects, the client has the right to request their removal, which constitutes a specific form of performance in kind adapted to the IT field. This solution addresses the client's legitimate interest, who, following a substantial investment of time and resources, seeks to obtain a functional product, not a refund of the price or initiation of a new project.

As for the exception of non-performance, although recognized by the Civil Code, in outsourcing contracts it has limited applicability, since deliveries and payments are generally fragmented and successive. Thus, neither party may effectively invoke total non-performance before a delay becomes significant, which reflects a natural adaptation of this exception to the complex structure of the outsourcing contract. In parallel, the right to specific performance or to terminate the contract remains in force, with particularities depending on the nature of the obligations — of means or of result — and the specific configuration of the contract.

Therefore, the effects of the outsourcing contract in the field of software development cannot be analyzed solely through the lens of the general regime of sale-purchase agreements but require a contextual adaptation that takes into account the specific nature of the delivered product, the method of delivery, the staged character of the performance, as well as the relevance of intellectual property rules and the associated technical-legal risks. In this framework, the provider is not limited to a simple obligation of diligence but is often bound by obligations of result, especially regarding the conformity and functionality of the product, as these were mutually defined during the initial phase of the contract.

Disputes in IT outsourcing generally involve the interpretation of contractual clauses and the identification of the parties' fundamental obligations, often arising from disagreements over technical requirements, failure to meet delivery deadlines, defects in software deliverables, or lack of cooperation between the parties. In practice, courts assess the existence and validity of the contract, including the effects of preliminary documentation (ITT, letters of intent, offers), as well as the legal conditions for the formation of the agreement. The existence of a binding contract may result not only from the formal signature of the parties but also from their conduct and prior documentation, especially if the provider commenced work without the final version of the contract being agreed upon. In this context, disputes require a detailed chronological analysis of all relevant documents and correspondence.

Courts approach with caution the estimates regarding the duration and costs of IT projects, as these may be qualified as pre-contractual statements likely to be considered inaccurate or misleading. "Entire agreement" clauses do not automatically exclude liability for negligent misstatements, and courts may award remedies based on tort liability. Additionally, contracts drafted on the basis of unilaterally imposed general terms risk being deemed unbalanced and abusive, particularly if they include broad exclusions of liability that are disproportionate to the object and complexity of the delivered services, as illustrated in the case of *Kingsway Hall v Red Sky*.

IT work methodologies profoundly influence contractual structure: traditional "waterfall" approaches allow for clearer drafting of obligations and phases, while the "agile" methodology, due to its iterative and flexible nature, generates difficulties in defining obligations of result and determining the exact moment of contractual breach. In the case of *De Beers v Atos*, the court emphasized the importance of defining client requirements and precisely delineating the

contractual scope in agile projects, noting that technical or organizational uncertainties may lead to disputes over assumed obligations and potential delays or additional costs.

In addition to express obligations, courts have accepted the introduction of implied clauses of cooperation and good faith, particularly in contracts where proper execution depends on continuous interaction and communication between the parties. In the cases of *Saphena Computing* and *Sanderson v Simtom*, the courts confirmed that the lack of cooperation may constitute a repudiatory breach of contract, and in the absence of such collaboration, the contractual result cannot be achieved. It was also affirmed that both the client and the provider must communicate their requirements and limitations openly, especially in projects where testing and adjustment of functionalities are essential to successful delivery.

With regard to good faith clauses, recent case law shows that such clauses may be implied in relational contracts—that is, agreements that involve ongoing collaboration and mutual trust. Although the definition of such contracts is restrictive, courts have acknowledged that good faith implies transparency, honesty, and the avoidance of abusive or unfair conduct. However, to imply such clauses, courts apply strict criteria established in case law, requiring that they be essential to contractual efficiency and that they do not contradict express terms.

Thus, IT outsourcing contracts require increased attention both in the negotiation phase and in drafting, as any ambiguity may lead to costly and difficult disputes. The scope of obligations, the moment of contract formation, implied clauses, and cooperation mechanisms must be clearly defined, and the parties must anticipate the risks generated by technological complexity and the collaborative nature of the projects. In this context, alternative dispute resolution remains a viable option, but it does not replace the need for rigorous contract drafting tailored to the methodological specifics of each project.

The conclusions of this chapter highlight the complex, multidimensional, and highly adaptable nature of outsourcing contracts in the field of information technology, analyzed from economic, strategic, and legal perspectives. Two fundamental theories—Transaction Cost Economics (TCE) and the Resource-Based View (RBV)—have been used as conceptual benchmarks to justify firms' choice to outsource, the first focusing on the optimization of transactional costs, and the second on the protection of strategic resources. The integration of these approaches allows for well-balanced decisions regarding which activities can be outsourced and

under what contractual conditions, so that legal, commercial, and organizational risks are efficiently managed.

It has been shown that outsourcing is no longer merely a means of cost reduction, but a sophisticated strategic tool intended to support the digital transformation of organizations. For this reason, outsourcing contracts have evolved from simple forms, close to service provision agreements, to complex legal structures of a partnership nature, where contractual clauses acquire decisive importance. These clauses address not only the performance of main obligations, but also the protection of know-how, the management of contractual risk, and the assurance of a sustainable balance between the parties. The contract is thus shaped as a synallagmatic, consensual, onerous, and often commutative agreement, even if it remains an innominate contract, with features derived from sale-purchase, service, or works contracts.

From the perspective of its object, IT outsourcing—particularly that involving the development of customized software—tends to generate obligations of result, even in situations where the provider seeks to classify them as obligations of means. In practice, the delivery of functional software in accordance with the beneficiary's requirements implies an implicit commitment to a concrete result, which entails a specific legal regime, including in terms of contractual liability. This phenomenon is amplified by the transfer of intellectual property rights, which often involves complete delivery accompanied by technical documentation, warranties, and compliance with specifications.

The essential role of special clauses—non-competition, non-solicitation, subcontracting, and IP transfer—has also been highlighted, all serving to protect the resources, know-how, and interests of the parties involved. These clauses are designed not only to prevent losses but also to clearly define the scope of obligations and liability, avoiding legal interpretations that could lead to a requalification of the contractual relationship or the imposition of excessive liability.

On a technical and operational level, the major influence of professional customs and practices in the IT field has been emphasized. Methodologies such as Agile or DevOps and specific work tools become relevant elements in legal analysis, influencing the applicable standard of diligence and the criteria for performance conformity. To the extent that the parties are professionals in the field, these practices may acquire normative value, being capable of supplementing the contract and even forming a basis for contractual liability.

Regarding the legal effects, it has been found that the moment of transfer of ownership and delivery of software cannot be determined according to the classical rules of the Civil Code, but requires adaptation to the phased reality of software development. Likewise, the obligations concerning the preservation of the good and the regime of risk of loss are largely inadequate, as the digital environment allows for easy replication and restoration of the product through technical measures. By contrast, the importance of the warranty against eviction and hidden defects remains, though it must be interpreted in a manner adapted to the specific nature of software, particularly concerning functional flaws or structural limitations in the source code.

Disputes in the field of IT outsourcing reflect the technological and legal particularities of these contracts. Common causes arise from delays, technical non-conformities, misunderstandings regarding requirements, or interpretation of clauses. It has been observed that even in the absence of a formal contract, execution may produce legal effects based on pre-contractual documentation and the conduct of the parties. Issues related to work methodology (agile vs. waterfall), changes in requirements during the course of the project, or the use of unadapted standard clauses are frequent and may generate interpretative conflicts.

In practice, courts have recognized implied obligations of cooperation and good faith in the performance of the contract, as these are essential to the success of IT projects. A growing trend has also been noted in the use of alternative dispute resolution (ADR), in response to the technical complexity of disputes and the need for flexibility and confidentiality. Arbitration and mediation clauses thus become essential components of the contractual architecture, contributing to the efficiency and stability of the legal relationship.

In conclusion, IT outsourcing represents an emerging contractual domain that requires a sophisticated and adapted legal approach, capable of combining economic analysis, strategic interpretation, and technical-legal regulation. Outsourcing contracts in the field of information technology call for clear, flexible, and coherent regulation, in which industry practices, technical specificities, and commercial interests converge toward the creation of a solid normative and contractual framework.

Chapter IV. Obligations arising from the performance of unnamed Outsourcing contracts

The study of obligations arising from the performance of unnamed outsourcing contracts requires an in-depth analysis of the concept of obligation from both a historical and legal perspective, starting with its development in Roman law and continuing with modern adaptations within the current framework of the Civil Code. In its primitive form, the obligation represented a literal physical bond between the creditor and the debtor, whereas in the classical era, it evolved into a legal bond over the debtor's patrimony. This evolution is essential for understanding the legal foundations of current obligations, which, although they have lost their physical coercive aspect, retain their patrimonial enforcement function for the purpose of satisfying the creditor's interests.

In contemporary law, a civil obligation is viewed both in a narrow sense—as the debtor's duty to perform a specific act—and in a broader sense—as a legal duty imposed by law, independent of the will of the parties. This duality allows for flexible applicability, adaptable to the context in which the analyzed obligation arises, whether it be contractual, tortious, or of another nature.

Contractual relationships in the field of information technology, especially those involving IT service outsourcing, raise specific issues regarding the classification of obligations. These contracts often involve obligations to do and to give, and sometimes obligations not to do—particularly in the case of confidentiality or non-compete clauses. Specifically, the obligation to give may concern the transfer of intellectual property rights over a software product, while the obligation to do may involve the actual development of that product based on contractually agreed specifications.

The distinction between obligations of means and obligations of result becomes crucial in such situations, as it directly affects the scope of contractual liability. In the case of obligations of result, the debtor is required to achieve a specific, concrete outcome, and failure to do so automatically triggers liability. Conversely, in the case of obligations of means, performance is considered proper as long as the debtor proves that they acted with diligence, even if the intended result was not achieved.

The Romanian Civil Code introduces a rebuttable presumption of fault on the part of the debtor in the event of non-performance but does not distinguish between the two types of

obligations. This lack of differentiation may lead to inconsistent interpretations, especially in technical fields where performance does not always guarantee a determined outcome. Therefore, the application of Article 1548 of the Civil Code must be carried out with caution, considering the actual nature of the assumed performance.

The qualification of an obligation as one of means or result cannot be determined solely by the text of the contract but must be inferred from the overall contractual context, the parties' intent, the nature of the performance, and the applied working methodology. In practice, many obligations fall into an intermediate zone, bearing characteristics of both categories, which calls for a nuanced analysis based on criteria such as contractual wording, the value of the service, the risk undertaken, and the degree of control exercised by the creditor over performance. Consequently, a contextual evaluation of these elements is essential for the fair application of the legal regime of liability in IT outsourcing contracts, respecting contractual balance and the specificity of technological services.

In comparative law, the notion of obligation has been interpreted variably, influenced both by local doctrinal traditions and by the nature of civil law and common law systems. In the context of IT outsourcing contracts, this conceptual diversity leads to different approaches regarding the nature and content of contractual obligations. In both scholarly literature and international case law, the contractual obligation is no longer regarded as a mere technical duty to perform, but as an essential component of the contractual relationship, one that involves active collaboration, professional diligence, balance, and adaptability.

At the theoretical level, four major doctrinal approaches to the concept of obligation have been outlined: monistic, dualistic, subjective, and objective. The monistic view considers the obligation as a unitary legal relationship between the creditor and the debtor, in which the debtor is bound to fulfill a specific performance. In contrast, the dualistic conception distinguishes between the substantive obligation and the procedural mechanisms through which it is enforced. At the same time, the subjective approach emphasizes the personalized nature of the obligational relationship, while the objective perspective depersonalizes it, analyzing the obligation as a patrimonial expression that reflects the balance between the creditor’s assets and the debtor’s liabilities.

This plurality of views is reflected in the regulations of modern civil codes. For example, the French Civil Code retains the influence of the Romanist tradition, emphasizing good faith,

consensualism, and the binding force of agreements. The Philippine Civil Code enshrines an integrative approach, defining the obligation as a legal necessity to give, to do, or not to do, explicitly regulating the sources of obligations and offering a coherent vision of the essential elements of the obligational relationship. The same trend is observed in other systems, such as German law, where the distinction between a service contract and a contract for work is clearly drawn: the former involves an obligation of means, while the latter implies an obligation of result.

Similarly, in French and Italian law, the distinction between obligations of means and obligations of result is not only recognized but also forms the basis of the legal regime of liability. In France, case law and doctrine have developed this differentiation within service contracts, while in Italy it is linked to the standard of diligence, depending on the nature of the profession involved. Spanish law operates with the same distinction between the lease of services and the lease of work, emphasizing the character of the commitment with respect to achieving a result.

At the European level, instruments such as the UNIDROIT Principles or the DCFR propose criteria for classifying obligations, including contractual wording, the value of the consideration, the risks assumed, and the influence of the creditor on the mode of execution. All of these are reflected in provisions that distinguish between commitments aimed at achieving a specific result and those that require only reasonable efforts.

In conclusion, comparative analysis reveals a doctrinal and normative convergence toward a functional and equitable distinction between obligations of means and obligations of result, with direct applicability in the field of IT outsourcing contracts. These contracts, by their technical and collaborative nature, call for a contextualized interpretation of the assumed obligation, in which professional standards, best practices, and agreed working methods become defining elements for legal qualification and the regime of contractual liability.

In the analysis of the nature of the provider's main obligation in IT outsourcing contracts, it is essential to apply the qualification criteria established by Romanian doctrine and legislation, especially Article 1481 of the Civil Code. Although many of these obligations are formally expressed as obligations of means, detailed analysis of contractual performances, technical documentation, and validation mechanisms frequently indicates a commitment aimed at achieving a concrete and determined result. This observation is based on the fact that, in most outsourcing projects, the client does not merely request professional efforts, but the delivery of a functional

software product, tested and tailored to the requirements clearly expressed through tools such as Agile methodologies, SLAs, or technical documentation.

Moreover, the substantial value of the consideration, as well as the existence of financial penalties linked to non-compliance with delivery deadlines or specifications, highlights the creditor's reasonable expectation that the result will be delivered, not merely pursued. The result-oriented nature of the obligation is also supported by the absence of an objective and external risk in the execution of software projects, since these projects depend on the provider's technical and organizational competence, not on unforeseeable or uncontrollable random factors. In this context, the control exercised by the client does not affect the nature of the obligation but rather reflects a natural collaboration specific to Agile methodologies, without transferring responsibility for the actual performance to the beneficiary.

Therefore, although the provider may formally present their obligation as one of means, in reality, it tends to acquire the character of an obligation of result, insofar as it involves the delivery of a specific digital product, accompanied by guarantees concerning functionality, testing, and the assignment of intellectual property rights. The resulting conclusion is that, in outsourcing contracts in the field of information technology, the provider's main obligation is generally one of result, even if it is masked under the appearance of a diligence-based obligation, and its correct qualification must consider not only the contractual wording but also the technical and economic context of the assumed performance.

In the context of unnamed outsourcing contracts, the distinction between obligations of means and obligations of result is not merely theoretical, but produces direct legal effects with respect to contractual liability, the structure of the performances, and the distribution of risks between the parties. Although outsourcing contracts may appear to follow a uniform model, particularly regarding service pricing and pricing formulas, this aspect is not relevant for determining the nature of the main obligation. More important is the actual configuration of the performance, the expression of the parties' intent in the contract, and the objectives pursued by the beneficiary, particularly in relation to the product or service delivered.

The presence of elements such as the transfer of intellectual property rights, detailed technical documentation, mutually agreed work methodologies, progress tracking systems, and clearly defined deliverables are strong indicators of an obligation of result. In such cases, the provider is not merely required to exercise diligence but to achieve a clear and verifiable objective.

Conversely, where the performance is repetitive, non-individualized, and does not involve a concrete deliverable, the obligation takes on the character of one of means, and the debtor's liability is subject to proof of fault.

It is not uncommon for both types of obligations to coexist within the same contract, which requires careful drafting of contractual clauses and a clear delineation of responsibilities. Especially in the IT field, where project complexity is high and components are heterogeneous, this differentiation becomes essential for contractual balance. Thus, the development of customized software or the implementation of an IT system naturally takes on the nature of an obligation of result, while support, consulting, or maintenance activities may remain within the sphere of obligations of means.

Moreover, an incorrect qualification of the obligation as one of means may give the provider an unjustified advantage and prejudice the client's position, particularly when the client has contracted for a concrete result and lacks the technical or legal means to evaluate the provider's professional diligence. For this reason, practice and case law tend to analyze the actual content of the performance rather than relying solely on its contractual form. The mere use of "best efforts" clauses does not exonerate the provider when the nature of the activity and the contractual context reveal that the achievement of a specific result was pursued.

Therefore, in the field of outsourcing, the analysis of the nature of the obligation must go beyond formal appearances and be based on an integrated assessment that considers the economic context, the specifics of the project, and the monitoring tools used during execution. Only such an approach can ensure the equitable protection of the parties' legitimate interests and a fair allocation of risks according to the nature of the contracted performance.

The liability of the provider in the event of non-performance or improper performance of the main obligation in an IT outsourcing contract must be assessed in light of the principle of the binding force of contracts, enshrined in Article 1270(1) of the Civil Code, as well as through the classical mechanisms of contractual civil liability. In such a framework, any non-conformity between the expected performance and the one actually delivered constitutes a breach of the contractual commitment and, in the absence of a justified cause, entails the provider's obligation to provide redress. This may take the form of specific performance, compensatory damages, or other equivalent legal remedies.

The specificity of IT outsourcing contracts, particularly with regard to the delivery of customizable software, adds an additional layer of complexity to this analysis. The technical nature of the services, the iterative character of Agile methodologies, the transnational composition of teams, and the geographical distribution of resources generate significant operational risks, often invoked by providers to justify the assumption of an obligation of means. However, the provider's control over teams, tools, methodology, and internal organization suggests that merely invoking these difficulties does not exempt them from contractual liability, especially in the presence of clearly defined, staged, and technically monitored deliverables.

In Romanian law, Articles 1516 and 1350 of the Civil Code enshrine the debtor's obligation to perform the assumed obligation precisely and in full, and, in the event of failure, to compensate the creditor for the damage suffered. Non-performance may be total, partial, or defective, and each form may give rise to liability depending on the nature of the obligation—whether it is one of result or of means. In the case of obligations of result, the mere failure to achieve the agreed purpose triggers the debtor's liability, whereas for obligations of means, the creditor must prove fault, namely a lack of reasonable diligence in the performance of the obligation.

At the same time, it is important to emphasize that, in the absence of actual damage, contractual liability cannot be engaged. The damage must be certain, current, and direct, and in IT outsourcing contracts, it may take the form of loss of the value of the deliverable or disruption of the client's ongoing operations. Limitation or exclusion of liability clauses are common, but they cannot cover fundamental obligations or damages resulting from gross negligence, bad faith, or violations of mandatory rules (such as those relating to data protection, intellectual property, or confidentiality).

Ultimately, practice shows that although providers attempt to shield themselves by qualifying their obligations as obligations of means, the contractual and economic reality of the projects—reflected in precise deliverables, project documentation, acceptance criteria, and progress tracking systems—often points to an obligation of result. In the absence of professional conduct consistent with industry standards, and especially when no concrete results are delivered, the provider cannot avoid contractual liability. Therefore, the qualification of the obligation and the determination of the applicable legal regime must be based on the actual analysis of the performance and the structure of the contract, and not solely on the parties' declarative wording.

In outsourcing contracts, clauses modifying contractual liability serve as a mechanism through which the parties adjust their legal relationship in advance, according to the inherent risks of the outsourced activity. Liability may be modified either indirectly, by redefining the content of the provider's obligations, or directly, by expressly stipulating limits, exclusions, or aggravations of liability, within the boundaries permitted by law. This contractual freedom is, however, tempered by mandatory rules, such as those in Article 1355 of the Civil Code, which strictly prohibit exoneration from liability for damages caused intentionally or through gross negligence, as well as for harm to a person's physical integrity or health.

Romanian case law and legal doctrine emphasize that such clauses must be explicit, known, and accepted by both parties before the damage occurs, and in the absence of informed consent, they are unenforceable. This principle also applies to unilateral notices or risk acceptances, which cannot be interpreted as waivers of the right to compensation. Substantively, the validity of such a clause depends not only on its form but also on the proportionality of its effects. A limitation of liability that, in practice, amounts to a total exoneration may be sanctioned with absolute nullity for violating public order and contractual good faith.

In IT outsourcing contracts, there is a noticeable preference for limiting liability by reference to the value of services rendered during a defined prior period—typically, the last 12 months. This type of cap is considered reasonable insofar as it does not affect the provider's fundamental obligations, such as those related to confidentiality, intellectual property rights, data protection, or information security. On the other hand, in the absence of minimum performance and compliance guarantees, such limitations may become abusive and invalid.

Moreover, clauses that aggravate liability are permitted under Romanian law, but they must be drafted clearly and explicitly, without altering the legal nature of the obligation. Thus, the provider may agree to bear the risk of events that would normally constitute grounds for exoneration, such as force majeure or fortuitous events. However, such an assumption does not convert an obligation of means into one of result, but merely extends the scope of liability in case of non-performance.

A useful distinction in this matter is that between penalty clauses and liability limitation clauses. The former has a coercive character and favors the creditor by allowing the prior establishment of a lump-sum amount for non-performance. The latter is protective of the debtor and sets a maximum ceiling for potential damages, without eliminating the need to prove the

damage. In IT outsourcing, penalty clauses are rarely used, precisely because anticipating the exact value of the damage is difficult, and the client prefers to retain flexibility in the evaluation of damages.

Finally, practice shows that the structure of the performance—continuous service delivery or delivery of specific results (software programs)—significantly influences the nature of the obligation and the applicability of liability modification clauses. In the case of recurring services, the obligation is one of means but with performance standards (SLAs), whereas for software deliverables, the nature of the performance tends toward an obligation of result, accompanied by compliance guarantees. In both cases, liability clauses must be aligned with the nature of the performance, the risks assumed, and the applicable legal limits, in order to avoid contractual imbalances and to ensure real and effective protection for the parties involved.

Recent judicial practice confirms the complexity and importance of correctly qualifying outsourcing contracts, especially in the field of information technology, where the boundaries between service provision, product delivery, and personnel leasing are increasingly subtle. The analyzed decisions reveal that the nature of the contractual relationship is not deduced from the label chosen by the parties, but from the actual content of the performance and the way in which the relationships between the involved actors are organized. For example, in Swiss case law, the Federal Administrative Court held that IT service outsourcing, when it is reduced to making personnel available for a set number of hours under the direct control and coordination of the client, is legally equivalent to personnel leasing—even if the parties formally designated the contract as one for the provision of services.

This qualification entails significant legal consequences, including the provider's obligation to hold a specific authorization for personnel leasing, the assumption of economic risk by the client, and the limitation of the provider's liability to the selection and placement of personnel, without being responsible for the outcome of the work performed. The court held that in such cases there is no direct employment relationship between the client and the leased individual, but the control exercised by the client over the individual reflects a functional integration into its organizational structure, which factually brings this relationship closer to a standard employment relationship governed by special regulations.

In this context, the argument concerning economic risk and the lack of guarantees regarding the quality of services becomes central. Unlike genuine outsourcing contracts, where the provider

assumes liability for delivering a specific result and ensuring its compliance with agreed specifications, personnel leasing involves the transfer of such risks to the beneficiary, who cannot invoke any non-compliance against the provider except in cases of faulty selection or supervision. Swiss case law thus underscores the need to qualify these relationships not according to the expressed intent, but based on the material and organizational realities of the performance.

Additionally, another relevant ruling in British law, issued by the Queen's Bench Division, stated that a government decision to internally deliver a public service previously outsourced does not constitute the conclusion of a new public service contract that would require a public procurement procedure. The court ruled that, in the absence of a genuine outsourcing arrangement, the memorandum of understanding between governmental entities cannot be equated with a procurement contract, even if the effects of the decision impact private operators previously involved in service delivery. This decision highlights the limits of administrative autonomy in the organization of public services in relation to the principles of transparency and competition enshrined in public procurement regulations.

The conclusions drawn from the analyzed case law clearly outline the importance of distinguishing between genuine outsourcing and disguised personnel leasing, as well as between actual outsourcing and internal reorganization of a public service. In both situations, legal interpretation must reflect factual reality, not terminological artifices, and the protection of the parties' interests—particularly those of the service beneficiary—requires clear regulation, effective control mechanisms, and the sanctioning of attempts to circumvent applicable rules. This jurisprudential trend also justifies, within Romanian law, the need for explicit regulation that prohibits the disguised use of personnel leasing in outsourcing contracts and safeguards the honest and fair character of legal relationships in the field of information technology.

The analysis of the conclusions regarding personnel leasing and IT service contracts clearly and convincingly highlights the absence of explicit regulation in Romanian law applicable to this field, which generates systemic risks. The lack of clear legal norms leads to difficulties in interpreting and applying existing legal provisions, particularly with respect to distinguishing between genuine IT outsourcing and personnel leasing operations disguised as service agreements. In the absence of firm legal criteria, the legal qualification of the contract is left to the discretion of the parties or, eventually, the courts, which results in dangerous volatility in legal relationships and negatively affects the legal certainty of economic transactions.

The fiscal implications of such uncertainty are significant, as the absence of a clear boundary between a seconded employee and a contractor under a service agreement creates the risk that the beneficiary may be deemed a de facto employer. This possibility contradicts principles of fairness and tax transparency and allows for divergent interpretations, including regarding the obligation to pay social security contributions. Moreover, the recurrent nature of these ambiguities underscores a systemic dysfunction in the application of labor law and contractual obligations in the context of IT service provision.

It is increasingly evident that this regulatory void favors the consolidation of imbalanced contractual practices, enabling economic operators—particularly large-scale ones—to exploit the incomplete legislative framework to reduce costs and outsource legal responsibilities. The IT outsourcing market thus becomes a ground for structural asymmetries, where providers limit their effective involvement in service delivery, and clients transfer risks to workers lacking adequate contractual protection. Although the chosen contractual form may appear legal at first glance, the substance of the legal relationship often reflects a disguised employment relationship, characterized by subordination and the effective integration of the worker into the client's organization.

At the same time, it must be acknowledged that the dynamics of the IT market require a certain degree of contractual flexibility, driven by demand volatility, the specificity of professional skills, and high labor mobility. However, such flexibility cannot justify derogations from the fundamental principles of contract law and labor law. Personnel leasing practices, when disguised through service agreements, violate economic public policy and may become sources of professional precariousness, unfair competition, and avoidance of social obligations.

In conclusion, the present analysis demonstrates the need for substantial legislative intervention to explicitly clarify the conditions under which an IT outsourcing contract may be concluded, to rigorously distinguish personnel leasing from genuine IT service provision, and to establish sanctions for circumventing these rules. Only such regulation could ensure fairness between the parties, adequate protection for the employees involved, and the coherent functioning of the labour market in the field of information technology.

Chapter V. General conclusions and *lege ferenda* proposals

The present research has analyzed the regime of contractual obligations in IT outsourcing contracts, with a focus on the distinction between obligations of means and obligations of result, as well as the legal framework of contractual liability. In a context where the digital economy drives increased mobility of resources and extensive outsourcing of business processes, IT outsourcing contracts can no longer be interpreted through a formalist lens; they require a functional, contextualized approach tailored to the technical specifics of the field.

The research findings confirm that, in practice, many obligations formally qualified as obligations of means become, by the nature of the performance and the structure of the contract, genuine obligations of result. The use of Agile methodologies, detailed definition of deliverables, organization of sprints and testing sessions, as well as the integration of specific terms from industry practices (story points, demos, releases), demonstrate the parties' shared intent to achieve the concrete goal of developing a functional software product. In this regard, the doctrinal criteria for distinguishing between the two types of obligations remain relevant, but must be interpreted in correlation with the technical and operational realities of the contract.

The analysis of contractual liability has shown that, in the field of IT outsourcing, limitation of liability clauses are common, while full exclusions are rarely accepted, considering the restrictions provided by Article 1355 of the Civil Code and the relevant case law. At the same time, in current practice, the amount of liability is often linked to the value of services delivered over a reference period or to the coverage limits of professional liability insurance policies. However, this risk management technique entails an unequal distribution of obligations, especially in cases where the provider's obligation is, in essence, one of result—even if it is not expressly formulated as such in writing.

An essential element identified in this research is the absence of a clear legal distinction between outsourcing contracts targeting recurring services without defined deliverables and those involving the development of a customized software product. In practice, this omission produces significant negative effects, especially regarding warranties, the moment of intellectual property rights transfer, and the applicability of the legal regime governing defects. Only through a proper and contextual qualification of the contract can the extent of liability and the client's corresponding rights be determined.

Throughout this work, a reconceptualization of the legal framework applicable to these contracts has been advocated, based on the objective realities of the IT industry. It has been shown that not only the content of the clauses but also the working methods adopted—as an expression of professional customs—play a decisive role in determining the parties' true intent. In this interpretative framework, specific working methods such as sprint organization, iterative planning, continuous feedback, and successive demos indicate a clear purpose: the delivery of a defined product tailored to the client's needs. In such a contractual structure, the provider's main obligation must be interpreted as one of result.

Based on these findings, we believe that, *de lege ferenda*, the Civil Code should be supplemented with a distinct section dedicated to information technology. This should include rules on the conclusion of contracts remotely in digital environments, the use of electronic tools for expressing consent, and the legal effects of recurrent digital behavior. Within this section, a specialized subsection on IT-related contracts—whether outsourcing, software development, licensing, or cloud computing—should explicitly regulate the nature of obligations, the moment of rights transfer, the warranty regime, and the possibility of conditioning provider status on specific professional standards or certifications.

In particular, outsourcing contracts for software development should be legislatively recognized as a mixed form in which the provider's obligation is presumed to be one of result, if the performance aims at delivering a customized, tested, and usable software product. Only where the parties consciously opt for a service structure without final deliverables and without intellectual property transfer can the regime of obligations of means be reasonably applied. The legislator should thus provide that courts and arbitral tribunals must consider not only the wording of clauses but also the adopted working methodology in order to determine the legal nature of the main obligation.

In conclusion, this research demonstrates that in the field of IT outsourcing contracts, an integrated approach is necessary—one that combines traditional legal analysis with deep knowledge of technical practices in the industry. Only in this way can a real balance be ensured between contractual protection and the economic freedom of the parties, in a field essential to the functioning of the contemporary digital economy. Adapting the Civil Code to these requirements is no longer a theoretical option, but a practical and systemic necessity.

In light of the detailed analysis presented in Chapter Five, the conclusions emerge coherently from both the perspective of current applicable law (*de lege lata*) and the legislative reform needs (*de lege ferenda*), in an effort to adapt the regime of obligations to the complexity of contracts in the field of information technology.

De lege lata, the current legal framework acknowledges the flexible and supplementary nature of the regime applicable to innominate contracts, based on the principle of contractual freedom and the general rules set out in the Civil Code. Established commercial customs and practices play a significant role in supplementing and interpreting such contracts, especially in technical industries like IT, where delivery standards, working methods, and contractual structures are heavily influenced by international customs and functional models. Non-solicitation clauses, for example, are admissible under the current regime but subject to proportional justification and validity review depending on the legitimate interest pursued, their duration, and scope. In the absence of explicit provisions, domestic case law tends to apply such clauses cautiously, in light of competition protection and the right to work. Likewise, in the absence of dedicated sectoral regulation, the application of rules on delivery obligations, warranties for defects, and the transfer of intellectual property rights in software matters requires a contextual interpretation adapted to digital specificities. Regarding the qualification of obligations as being of means or of result, legal practice remains anchored in a classical model, focused on the wording of clauses, without a functional assessment of the methodology and structure of the performance.

On the other hand, *de lege ferenda*, there is an acute need for legislative intervention to establish a distinct regulatory framework for contracts in the field of information technology. A coherent reform would require, first and foremost, the inclusion of a dedicated chapter in the Civil Code regulating such contracts, explicitly addressing aspects such as: the conditions for the validity of limitation of liability clauses, the characterization of obligations based on the nature of the performance (IT goods versus general services), the regime of deliverables and related warranties, as well as the interpretation of the contract based on the working methodologies employed (e.g., Agile, Scrum). At the same time, there is a need for the normative recognition of the obligation of cooperation in IT outsourcing contracts and the incorporation of a standard of good faith and professional diligence aligned with industry best practices. The specific regulation of the outsourcing contract for the development of customizable IT products, as a mixed contract

with determinable deliverables and presumed obligations of result, would contribute to clarifying the relationship between the parties and reduce jurisprudential uncertainties.

At the institutional and doctrinal level, we consider it necessary to develop a national guide of best practices in the field of IT contracts, validated through collaboration between industry professionals and regulatory authorities, aimed at strengthening the application of customs as auxiliary sources of law. Such a guide could support the development of consistent judicial practice and contribute to increased legal certainty in digital contractual relationships. Finally, the harmonization of domestic regulations with international digital standards, as well as the promotion of alternative dispute resolution through specialized IT arbitration, should be supported both legislatively and institutionally in order to meet the needs of an expanding digital economy.

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