

LEGAL BASIS FOR INTRODUCING NEW TYPES OF LEASING SERVICES

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Abstract.

This article is devoted to the study and analysis of the legal regulation of leasing activity based on national and foreign experience. The comparative legal analysis of regulation of leasing activity in such countries as USA, Japan, England, Germany and France is made. Based on progressive foreign experience, proposals have been developed to improve legislation in the area of implementation of new types of leasing operations such as secondary and operating leasing, auto leasing for individuals, international leasing.

The purpose of the study: The purpose of this study is a comprehensive study of the legal regulation of leasing activity based on national and foreign experience and the development of proposals to introduce new types of leasing services in the Republic of Uzbekistan in this area.

Keywords: leasing, leasing activity, lessor, lessee, leasing company, object of leasing, subject of leasing, operating leasing, secondary leasing, investment and consumer leasing.

INTRODUCTION

LEGAL BASE FOR NEW TYPES OF LEASING OPERATIONS

The clause 3.1. of the Action Strategy on further developing of the Republic of Uzbekistan in 2017-2021 approved by Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No. 4947 provides for the expansion of the volume of leasing services through the introduction of their new types and improving the quality.[1] Recognizing the importance of leasing for the economic development of the republic, the country's leadership in such an important document for the country as

the Action Strategy, determined the need to expand the market for leasing services through the introduction of their new, modern types.

For introducing new types of leasing, it is necessary to analyze both the situation in our country regarding the regulation of certain types of leasing, and the world practice of the full range of leasing operations offered by leasing companies especially in developed countries. The experience of such CIS countries as the Russian Federation, Ukraine, Belarus, and Kazakhstan is also of some interest in this sense.

For improving the legal regulation of leasing activity, it is important not only summarizing of the theory and practice accumulated in our country, but also a comprehensive analysis of the regulation of leasing activities in such developed countries as USA, Japan, Germany, England, etc.

Among scientists from the CIS countries, the most profound analysis of foreign experience in legal regulation of leasing relations was carried out by Russian legal scholar E.V. Kabatova. Based on the results of such analysis and depending on the availability of special leasing legislation the author proposed a certain systematization of countries using leasing. Depending on various approaches to the legal regulation of leasing relations, E.V. Kabatov grouped developed countries into three main groups:

1. Continental countries of Western Europe (France, Belgium, Italy) with special laws governing leasing operations.
2. Countries with special legislation (so called countries of "common law" - England, Austria, New Zealand).
3. Leading developed countries that do not have special laws and regulations (USA, Germany, Japan) [2].

The special legislative acts of the countries of the first group define the leasing, list the signs the presence of which indicate the conclusion of a leasing agreement, form the requirements that the lessor must meet, as well as the relationship between the lease term and the life of the property, regulate the relationship between lessor, lessee and seller of property.

Legislators in these countries seek to combine the desire to resolve the full range of tripartite property relations arising from leasing. They regulate the relationship not only between the two main categories (lessor and lessee), but also between the leasing company and the supplier.[3]

The second group of countries regulate leasing on the basis of two principles - depending on the

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value of the property transferred for temporary use, and depending on the subjects of the leasing relationship. For example, in the legislative practice of England, the provisions of the Rental and Sale Act of 1965 apply when the value of the leased object exceeds £ 2,000 and the user is a legal entity.[4]

The third group of countries is characterized by the absence of special legislation; it does not impede the development of leasing, a vivid example of which is the United States. This is due to the fact that until recently in the USA depreciation and tax benefits were the main motive for applying to leasing. They, in turn, were regulated in legislative acts on taxation issues. In countries of this group the general provisions of civil and commercial law are also widely used for leasing transactions.[5]

The widespread use of leasing in developed countries is explained by more favorable economic conditions, since in these countries (starting from the 50s of XX century in the USA and Western Europe) significant support is provided to the entrepreneurial business, which mainly develops through the leasing mechanism and for use leasing is not necessary to provide separate tax benefits, it is quite enough of the benefits that are dictated by the mechanism itself. Thus, the possibility of attributing leasing payments to the cost of production has an advantage over other forms of production investment.[6]

Summing up the review of the legal regulation of leasing in developed countries, it can be stated that in developed countries leasing was in demand due to the sharply increased investment needs of the economy, due to the prevailing high rates of technological progress, which could no longer be satisfied through exclusively traditional financing channels. Leasing could be rapidly developed in these countries only thanks to a targeted state influence on the subjects of leasing relations, as well as timely and efficient regulation of leasing activities.

It should also be noted that as a result of studying the features of the legal regulation of leasing relations in developed countries, it can be concluded that the leasing legislation of the Republic of Uzbekistan is most closely related to the Belgian legislation on leasing, which is followed by most CIS countries (Russia, Ukraine, Belarus, Kazakhstan, etc.).

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It should be noted that the inclusion in the Law on leasing of the definition of certain types of leasing not only creates a legal basis for the practical implementation of these types of leasing, but also creates the basis for their legal qualification for tax, fiscal and other legally significant purposes.

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In the world legal and economic literature on leasing, it is usually to subdivide leasing into many varieties based on certain criteria. Traditionally, on the set of economic and legal criteria the leasing are divided into financial and operational (operational) leasing.

For financial leasing the lessee, through the payment of leasing payments, fully covers its expenses for the purchase of the leased asset and ensures that it receives a fee for the rendered leasing service, therefore, after the completion of the leasing agreement, the leased object is transferred to the lessee. In the leasing legislation of our country the implementation of financial leasing is provided

In case of operational (operational) leasing, the term of the contract is much shorter than the period during which the paid leasing payments do not cover the lessor's expenses and after its completion the leasing object must be returned to the lessor so that it can provide the leased object to other persons. However, in Uzbekistan it will only be possible to rent the received leased asset, since for the implementation of a new leasing operation one of its main elements is missing - the acquisition of a leased object from a third party.

Neither the Civil Code of the Republic of Uzbekistan [7] nor the Law of the Republic of Uzbekistan «On leasing» [8] provide for the possibility of operational leasing in our country, although article 5 of the Law on leasing, before amending in 2007, determined that if the leasing does not meet any of the criteria listed for financial leasing, such leasing will be considered as operational. However, after the relevant amendments to the Law on leasing were introduced, the concept of operational leasing disappeared from the legislation and now leasing companies do not offer operational leasing services to their clients.

According to the author, the introduction of operational (operational) leasing again would have a positive impact on the dynamics of the development of the leasing market. In developed countries, operational leasing makes a significant share in the total volume of leasing operations. Particularly often operational leasing is used when leasing aircraft, rail and water transport, the payback periods of which are very long and lessees usually do not have time to reimburse lessors for their costs of acquiring these types of vehicles.

The current legislation of Uzbekistan does not contain prohibitions on the implementation of operational leasing. The problem is the impossibility of further transfer of the leased asset received after the expiration of the operational leasing term to a third party once again leasing due to the above

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reasons.

To solve this problem, the author proposes the introduction of such a type of modern leasing as secondary leasing, when the lessor, having received the leased object back for various reasons (including after the expiration of the operational leasing period), can again lease it. In this case, the lessor will be the party to the leasing responsible for choosing the seller of the leasing asset with all the legal consequences arising from this. Thus, the introduction of secondary leasing will entail a more active use of operating leasing.

To introduce secondary leasing, the author proposes to introduce the definition of secondary leasing into the Law as follows:

“Types of leasing are:

- secondary leasing, in which the leased asset remaining in the lessor’s property in the event of termination or termination of the leasing agreement is leased to another lessee”.

The most important is the introduction in our country of such type of leasing as leasing to individuals. Article 588 of the Civil Code and Article 3 of the Law regarding the establishment of the requirement to use the leased asset for business purposes, together with Article 7 of the Law on leasing imposing the requirement to record the leased asset with the lessee, create an insurmountable legal obstacle to leasing individuals, even for private entrepreneurs who do not conduct balance sheet and which for this reason leasing companies refuse to provide leasing services.

Exclusion of the above provisions from leasing legislation will create possibility:

- for car leasing to individuals, which is very important for a country with a developed automotive industry, such as the Republic of Uzbekistan. In developed countries, car leasing to individuals is one of the fastest growing and significant segments of the leasing market;

- for housing leasing, which could, in addition to the mortgage, play an important role in solving the social issue of providing housing for the citizens;

- for leasing of equipment, vehicles, real estate and other property for private entrepreneurs, which would greatly increase the efficiency of their activities, and in general would contribute to the development of entrepreneurship of individuals.

In addition, these suggestions would open the possibility for the provision of leasing services to numerous non-profit entities (political parties, social movements, unions, associations, foundations,

religious institutions, etc.), which, although not engaged in entrepreneurial activity, have sufficient income from its founders and membership fees, allowing timely pay lease payments.

For the effective implementation of leasing services to individuals and non-profit organizations, the author proposes to include in the Law a definition for such terms as investment and consumer leasing in the following edition:

“Types of leasing are:

- investment leasing, in which the lessee uses the received leased asset in entrepreneurial activity;
- consumer leasing, in which the lessee uses the received leased asset to meet their requirements not related to entrepreneurial activity.”

The author also proposes the introduction in our country of this type of leasing as international. International leasing provides for the implementation of a leasing transaction when one of the parties to the leasing agreement is a non-resident. The introduction of international leasing would expand the ability of domestic manufacturers, especially vehicle manufacturers, to sell their products in neighboring countries. In particular, uzbek cars and trucks are in certain demand in almost all neighboring republics of Central Asia. Leasing domestic production vehicles to these countries would expand the production capabilities of the domestic automobile industry, ensure the expansion of export potential and increase additional customs payments to the state budget.

The author proposes to introduce into the Law on leasing the term of international leasing and, as the opposite, domestic leasing in the following version:

“Types of leasing are:

- domestic leasing when the lessor and the lessee are residents of the Republic of Uzbekistan;
- international leasing, when the lessor or lessee is a non-resident of the Republic of Uzbekistan.”

CONCLUSION

As a result of the study of the peculiarities of the legal regulation of leasing relations in developed countries, it can be concluded that the leasing legislation of the Republic of Uzbekistan is most closely related to the Belgian leasing legislation, which is followed by most CIS countries (Russia, Ukraine, Belarus, Kazakhstan, etc.).

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The introduction of new types of leasing such as operational, consumer, secondary and international leasing meets the requirements for the development of a modern leasing market in our republic, and will significantly expand the volume and range of leasing services offered.

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