

FORMATION OF LEASING RELATIONS UNDER THE CIVIL LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

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This article discusses the legal framework for leasing relations under the civil legislation of the Republic of Kazakhstan. A brief analysis of the features of the conclusion of a leasing agreement is carried out.

Keywords: leasing, lessor, lessee, seller, contract, object, deadline.

Aristotle already noted in his Rhetoric that wealth is not the ownership of property based on the right of ownership, but its (property's) use. The English author T. Clarke claims that leasing was known long before Aristotle lived: he finds several provisions on leasing in the Code of Hammurabi, adopted around 1760 BC.

The Roman Empire also did not remain aloof from the problems of leasing - they were reflected in the Institutes of Justinian. So, the idea of separating the right of ownership and the right of property and of benefiting from ownership has been known since time immemorial, and the birth and spread of modern leasing once again confirms that the new is a well-forgotten old. One of the first laws on leasing was the Law of Wales of 1284 [4]. The formation of leasing structures in the domestic market of Kazakhstan began in the second half of 1989, and in general, 5 stages of development can be distinguished here:

Stage I (1989–1992) – the stage of the emergence of the leasing business in the Republic. During this period, the first leasing companies were created, and some commercial banks carried out one-time and small-scale leasing operations.

Stage II (1992–1994) – the stage of suppression of the leasing business as a result of the developing unfavorable economic situation.

Stage III (1995–2000) – agrarian or revival stage, a turn to state support and stimulation of the leasing business in Kazakhstan. At this time, a number of regulatory legal acts were developed and approved regulating leasing operations in the agricultural sector, this provided the necessary conditions for the development of leasing, primarily in this sector.

Stage IV (2000–2003) – «Banking» stage of

formation of commercial leasing after the entry into force of the Law of the Republic of Kazakhstan «On financial leasing». The law defines in sufficient detail the rights and obligations of the lessor, lessee and seller of the leased item, and in Kazakhstani legislation a lot of attention is paid to the protection of the rights of the lessee.

Stage V (from 2004 to the present) is the stage of comprehensive revision and improvement of leasing legislation, as well as the expected «leasing boom» in Kazakhstan, when the number of leasing companies operating in the market and the volume of leasing services will sharply increase [2].

Leasing is a word of English origin, derived from the verb «to lease» – to take and hand over property for temporary use. In my opinion, the following definition most accurately reflects the essence of the term «leasing»: leasing is an investment of temporarily available or attracted financial resources, in which the lessor undertakes to acquire ownership of the property stipulated by the contract from a certain seller and provide this property to the lessee for a fee for temporary use with the right to subsequent purchase.

A leasing transaction, in turn, is a set of agreements necessary for the implementation of a leasing agreement between the lessor, the lessee and the seller (supplier) of the leased asset [5]. The subject of leasing may be buildings, structures, machines, equipment, inventory, vehicles, land plots and any other non-consumable things. The subject of leasing may not be securities and natural resources.

A typical leasing transaction looks like this.

1. The user (after entering into a leasing rela-

tionship, the lessee) informs the leasing company what equipment he needs.

2. The leasing company, having verified the liquidity of the project, purchases this equipment from the manufacturer or another legal entity or individual selling the property that is the subject of the lease.

3. The leasing company (lessor), having become the owner of the equipment, transfers it for temporary use with the right of subsequent purchase (determined by the agreement) to the lessee, receiving leasing payments in return.

According to Article 565 of the Civil Code of the Republic of Kazakhstan, under a leasing agreement, the lessor undertakes to acquire the property specified by the lessee from the seller and provide the lessee with this property for temporary possession and use for entrepreneurial purposes for a fee [1].

Thus, at present in Kazakhstan the Civil Code regulates the leasing agreement as a type of property lease agreement, and the Law «On Financial Leasing» is devoted to the regulation of financial leasing as a type of investment activity, which in turn is one of the types of entrepreneurial activity [3].

According to Article 567 of the Civil Code of the Republic of Kazakhstan, the essential terms of a leasing agreement (as well as any civil law agreement) include the terms of the subject of the

agreement, the terms that are named in the law or other legal acts as essential or necessary for the agreement of this type, as well as all those terms regarding which, at the request of one of the parties, an agreement must be reached.

In addition to the conditions specified in Article 542 of the Civil Code of the Republic of Kazakhstan, the leasing agreement must contain the following conditions:

- 1) the name of the seller of the property;
- 2) the conditions and term of transfer of the property to the lessee;
- 3) the amount and frequency of payments;
- 4) the term of the contract;
- 5) the conditions for the transfer of property to the ownership of the lessee, if such transfer is provided for by the contract;
- 6) the presence of encumbrances [4].

To sum up the study, we can conclude that a leasing agreement can be classified as bilateral, mutual, consensual, onerous and fixed-term. A leasing agreement is a relatively independent type of rental agreement.

Leasing is an investment of temporarily free or attracted financial resources, in the process of which the lessor undertakes to acquire the property specified in the agreement from a specific seller and provide this property to the lessee for a fee for temporary use with the right to subsequent redemption.

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ФОРМИРОВАНИЕ ЛИЗИНГОВЫХ ОТНОШЕНИЙ ПО ГРАЖДАНСКОМУ ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ КАЗАХСТАН

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В данной статье рассматриваются правовые основы лизинговых отношений по гражданскому законодательству Республики Казахстан. Проведен краткий анализ особенностей заключений договора лизинга.

Ключевые слова: лизинг, лизингодатель, лизингополучатель, продавец, договор, предмет, срок.