

THE CONCEPT AND FEATURES OF THE ENTERPRISE LEASE AGREEMENT

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ABSTRACT

The current Civil Code of the Republic of Uzbekistan defines a lease agreement as a separate type of lease agreement.

Keywords: enterprise, contract, citizenship, lease, rent.

INTRODUCTION

Although the enterprise is recognized as real estate as a property complex in its entirety, the legislation does not apply to enterprises on the lease of a building or structure, but the Civil Code has a separate paragraph on the lease of an enterprise (Paragraph 4 of Chapter 34 of the Civil Code of the Republic of Uzbekistan). This is due to the fact that the lease of the enterprise implies not only the lease of the building or structure to the lessee, but also the transfer of the rights and obligations of the lessor, which depends on the material basis of production.

It should be noted that the legislature has previously treated the enterprise as a specific object of civil law. This is primarily reflected in the fact that the enterprise is provided for in Article 85 of the Civil Code, not to mention Article 83 of the Civil Code, which deals with the division of property into real estate and movable property. Such placement of enterprise norms is also reflected in the third subsection of the second part of the Civil Code, which deals with certain types of obligations. For example, the norms dealing with the characteristics of the sale of the enterprise are placed after the letters on the sale of real property (Chapter 29 of the Civil Code). Chapter 34 of the Civil Code is structured in the same way: the paragraph devoted to the lease of an enterprise is followed by the paragraph on the lease of buildings and structures.

In the legal literature, a specific feature of the legal regulation of the lease of the enterprise is the application of norms for the lease of buildings and structures on a subsidiary basis in relation to the relations regulated by this agreement. As VV Vitryansky points out, "such a method of legislative technique aimed at not repeating the norms of the paragraph on the lease of buildings and structures in the paragraph on the lease of the enterprise does not make the lease of the enterprise a type of lease

of buildings and structures. This is because the legislature has clearly stated its will by recognizing the lease agreement of the enterprise as a type of lease agreement, as well as the lease agreement for buildings and structures".

The concept of a lease agreement is defined in Article 579 of the Civil Code, according to which the lessor undertakes to transfer to the lessee the whole enterprise or part of it as a property complex for temporary possession and use, rights and obligations that the lessor can not transfer to other persons except.

It should be noted that by the above definition, an enterprise is transferred to the lessee for temporary possession and use, whereas, as a general rule, the lessee can only transfer it for use

without granting the right of possession. However, the lessor may not retain the right of ownership of the enterprise, and the lessee of the enterprise may file a material claim to protect his rights as the official owner (Article 232 of the Civil Code).

As S. Bobokulov noted, "as a result of the lease agreement, only two elements of property rights, ownership and use, pass from the lessor to the lessee. The savings will remain in the hands of the owner".

A lease relationship arises as a result of the owner's transfer of the powers of possession and use of his property to another person on a contractual basis. The peculiarity of the lease of the enterprise is related to its separate subject - the enterprise.

An enterprise lease is a separate type of property lease. This was characterized by the fact that the subject of the contract contained an object with two distinctive features. These are:

1. Leasing of an enterprise as a single property complex for carrying out business activities;
2. The lessor's actions aimed at transferring the enterprise to the lessee and the lessee's actions aimed at accepting the enterprise, proper use of the leased property, timely payment of rent and return of the leased property to the lessor at the end of the lease.

In accordance with Part 1 of Article 579 of the Civil Code, the lease is leased to the entire enterprise or part of it as a property complex. From the analysis of this norm, it can be not only the whole enterprise, but also a part of it as the subject of the enterprise lease agreement. A legitimate question arises here: can a part of an enterprise be the subject of an enterprise lease agreement?

In our opinion, in order to clearly define the subject of the lease agreement of the enterprise, it is necessary to proceed from the provisions of Article 85 of the Civil Code. In the legal literature, the definition of civil treatment, in particular, the enterprise as an object of lease, is in accordance with the provisions of Article 85 of the Civil Code, and is generally recognized as a property complex intended for entrepreneurial activities.

According to V.N. Tabashnikov, firstly, the enterprise is a property complex, a set of property intended for a particular activity, secondly, the enterprise is a property complex intended only for business activities, and thirdly, the enterprise as a whole is real estate.

According to H. Rahmonkulov, an enterprise is a specific set of property used to carry out business activities (the first sign). This complex includes the sum of all property intended for the operation of the enterprise (the second sign).

According to T.L. Levshina, the enterprise has four distinctive features. He also considers, as noted by the above scholars, firstly, an enterprise is a property complex consisting of a set of assets intended to carry out a certain activity (first sign), and secondly, it considers this complex to be used to carry out business activities (second sign). In addition to the above features, the author cites the following features: the business activity carried out by the previous owner of the enterprise is not terminated when the contract of sale of the enterprise is concluded, because the property complex, which is its object, is "operating" (third sign); When a property complex of a legal entity (ie, an enterprise) is managed, the activity of this legal entity as a subject of civil law is not terminated (fourth sign).

I.V. Eliseev describes the enterprise as "a single and complex property complex that is recognized as real property and belongs to the entrepreneur to carry out its activities" and cites the following specific features of the enterprise: first, the enterprise - goods intended for

entrepreneurial activities -property; second, the enterprise is a whole property separated from other property; thirdly, an enterprise is not only a single property complex consisting of various objects, but also a single complex commodity that cannot be consumed; fourth, the enterprise is real estate.

According to U.K. Hajiyev, "an enterprise is a complex and unique property complex, containing material and intangible assets, designed to carry out business activities in a particular area, exploitable (able to operate in practice)."

Analyzing the views and opinions expressed by the above scientists, we believe that the subject of the lease of the enterprise may be a part of the existing enterprise in the form of a property complex, which can operate independently of the entire enterprise or other parts. A part of an enterprise that cannot operate independently may not be the subject of an enterprise lease agreement, but may be the subject of other agreements (e.g., a property lease agreement, a building or structure lease agreement).

For example, the Makro supermarket chain, which has been operating in Uzbekistan since 2010, includes 103 supermarkets. The macro supermarket chain as a whole can be the subject of a lease agreement. Also, a separate supermarket, which is part of it, can be part of the enterprise as the subject of the lease agreement of the enterprise. This is because a separate supermarket, part of the Macro supermarket chain, can operate independently.

As another example, the private company Urgench Carpet Service provides services such as washing and cleaning carpets. Urgench Carpet Service as a whole can be the subject of a lease agreement. However, its carpet washing shop or drying shop cannot be the subject of an enterprise lease agreement as part of a separate enterprise. Because a separate shop of this enterprise can not operate independently.

Therefore, based on the above considerations, we found it necessary to define an enterprise lease as follows: with the exception of rights and obligations that the lessor may not transfer to other person”.

Important terms of the lease of the enterprise include, first of all, its subject. The subject of this agreement is the entire enterprise as a property complex used for business activities (Article 579 of the Civil Code of the Republic of Uzbekistan). As a general rule, the lease agreement must contain information that allows the lessee to clearly identify the property to be transferred as the object of the lease. In the absence of this information in the contract, the terms of the leased object are considered not agreed by the parties, and the contract is not concluded. Although the subject of the contract is not the individual components of the enterprise, but the whole enterprise, the terms of the contract are considered agreed only if the list of property to be transferred to the lessee is specified (specific features of the enterprise as an object of lease are discussed in detail in the next section).

Secondly, important terms of an enterprise lease include the price of the contract. Unless the parties have agreed in writing on the lease in writing, the lease agreement shall be deemed not to have been entered into. This rule is established in relation to the contract of lease of a building or structure (Article 577 of the Civil Code of the Republic of Uzbekistan), and also applies to the contract of lease of an enterprise. This is because Chapter 34, Paragraph 5 of the Civil Code does not provide for a different procedure.

As a general rule, rent is not one of the important conditions of the lease agreement (Article 544 of the Civil Code of the Republic of Uzbekistan). However, the fact that the rent is not specified in the lease agreement agreed by the parties does not mean that the property was transferred free of charge, but in similar circumstances the contract must be paid for at the price of such goods, works or services (Article 356 of the Civil Code). The provisions of Article 356 of the Civil Code apply mainly to lease relations in which the object is movable property, as in many cases it is not difficult to identify property "similar" to that specified in the contract. In cases related to the lease of real property, especially when leasing a complex object of civil rights, such as an enterprise, the provisions of Article 424 of the Civil Code do not apply, because it is impossible to find an object similar to the leased property ("exactly similar"). According to some authors, important terms should also include a contract form. The basis of this idea is part 1 of Article 364 of the Civil Code.¹⁵ Its literal interpretation means that in order for a contract to be recognized as having been concluded, it must require not only the existence of essential conditions, but also that it be in the form prescribed by law. The above view is contradictory, as the failure of the parties to comply with the requirements for the form and content of the contract leads to various negative consequences: the agreement may be found to be invalid or inconsistent.

CONCLUSION

The essential terms of a lease of an enterprise include the subject matter and price of the lease. The subject of the contract is the entire enterprise as a property complex used for business activities. The value of the contract is expressed in the form of rent, and if it is not specified in the contract, the contract of lease of the enterprise is considered not concluded. This rule applies to the lease of a building or structure (Article 577 of the Civil Code of the Republic of Uzbekistan) and also applies to the lease of an enterprise.

REFERENCES

1. Vitryansky V.V. The contract of sale and its separate types. -M.: Statute, 1999. -p. 264
2. Vitryansky V.V. Lease agreement and its types: hire, time charter, lease of buildings, structures and enterprises, leasing. (Ed. 2nd., Rev.) -M.: Statute, 2000. -p. 203-204
3. <https://lex.uz/docs/180552>
4. Civil law. Q.II / M. Abdusalomov, H. Azizov, B. Ahmadjanov and others; Ministry of Justice of the Republic of Uzbekistan, Tashkent State Law Institute. -Tashkent: Adolat, 2007. p. 171.
5. Shokirov B.M. Legal regulation of contractual relations of housing rent. Candidate of Legal Sciences - T., 2011. - p. 14.
6. Khajiev U.Q. The concept and peculiarities of the enterprise as an object of civil treatment // J. Philosophy and law. -2012. № 3.p. 75.
7. Braginskiy M.I. Vitryansky V.V. Contract law. Book two: Agreements on the transfer of property.-M.: "Statute", 2000.-p.539-541.
8. Commentary to the Civil Code of the Republic of Uzbekistan. Volume 1 (Part One) Ministry of Justice. -T.: "Vector-Press", 2010. -p. 260.; Rahmonqulov H. Objects of civil law. Textbook.-T.: TSU, 2009.-p. 26.; Ruziev R.J., Topildiev V.R., Choriev M.Sh. Contracts for

- the disposal of property. –T.: Institute of Philosophy and Law of the Academy of Sciences of the Republic of Uzbekistan, 2010. –p. 68.; Rakhmonqulov H. Purchase agreement .-T .: Adolat, 2000. –p. 138-141.; Rakhmonqulov H. General description and comments on the first part of the Civil Code of the Republic of Uzbekistan. / Editors-in-Chief: Mir-Akbar Rakhmonkulov, Ismail Anortoev /; Volume I. -T.: "The world of economics and law", 1997. - p. 229.; Balabanov I.T. Real estate transactions in Russia. -M., 1996. – p.18.; Vitryansky V.V. The contract of sale and its separate types. -M.: Statute, 1999. -p. 265.; Russian Civil Law: Textbook / Ed. Z.G. Krylova, E.P. Gavrilova. -M., 1999. -p.52.
9. abashnikovV.N. Enterprise as an object of civil rights // J. Legislation, 1998. - No. 9. -p. 12-14.
 10. Commentary to the Civil Code of the Republic of Uzbekistan. Volume 1 (Part One) Ministry of Justice. –T.: “Vector-Press”, 2010. –p. 260.
 11. Commentary on the Civil Code of the Russian Federation, part one (item-by-article) / Ed. O.N. Sadikov. -M., 1997. -p. 281-282.
 12. Civil law. Textbook. Part II / Ed. A.P. Sergeev, Yu.K. Tolstoy. -M., 1997. -p. 103-104.
 13. <https://makromarket.uz/pages/o-nas#>
 14. <http://ecochistka.uz/2016/03/22/>
 15. Fokov A.P./Yu.G. Poponov and others. Civil law. General and special parts: Textbook. - M.: KNORUS, 2005. - p. 336.