ECONOMIC PROCESSES MANAGEMENT
international scientific e-journal (ISSN 2311-6293)
epm.fem.sumdu.edu.ua
№3 – 2015

Cite This Article:
Sargsyan S. Legal regulating problems in the lease contractual relations [Online] / S. Sargsyan // Economic *Processes Management: International Scientific E-Journal*. № 3. 2015. Available: http://epm.fem.sumdu.edu.ua/download/2015_3/2015_3_3.pdf

Received
May 22, 2015

Accepted
July 10, 2015

JEL Clasification: K2

LEGAL REGULATING PROBLEMS IN THE LEASE CONTRACTUAL RELATIONS

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Within the frames of the article some questions closely related to the lease contractual relations are analyzed by the author. The author highlights the drawbacks and gaps within the legal regulation of leasing relations, represents the ways of overcoming them through the discussing views and opinions substantiated scientifically and comparative analyses within the frames of studies made.

Keywords: *leasing, lessor, lessee, landlord, tenant, finance leases.*

INTRODUCTION

The implementation process of business activity is often combined with the involvement of additional financial recourses among which the financing and lending have a key role. As a kind of financing business activity lending is manifested in various forms and types which are mainly conditioned by the targeted role of credit implementation. As a result of researches on the practical use of lending activity credit types are classified according to the purposes they are meant for. The leasing or the financial lease as a type of financing of business activity draws a special attention and research in the theoretical literature conditioned by the wide use of gradual development tendency.

The difference between the financial rent and loan is that in the leasing relationship the subjects are not to make any percent payments. The articles 677-684 of the Civil Code regulate relationships arising from financial rent.

Particularly, according to the article 677th of the Civil Code, under the contract of finance lease (the contract of leasing), the lessor is obligated to obtain in ownership property indicated by the lessee from a seller designated by it and to provide the lessee with this property for payment in temporary possession and use for entrepreneurial purposes.

MAIN MATERAIL

The leasing contract also grants the opportunity of ownership transfer of rental goods. On the expiration of leasing contract on the condition of payment by the lessee provided by the contract the leased property is returned to the lessor, moreover, the lessee does not have the right to require the ownership of leased property (RA Draft low about leasing activity, art. 7, point 3).

The lessee can become the owner of that goods only by concluding corresponding contract of purchase and sale with the lessor. (RA Draft law about leasing activity article19, point 2, as well as Russian leasing law article 19 point 2). On the expiration of the leasing contract issue of transfer of ownerships is also regulated by the paragraph 3 of the article 677 of RA Civil Code, where the following is clearly defined The contract of finance lease may provide that the leased property moves to the ownership of the lessee upon the expiration of the term of its lease or before its expiration on the condition of the payment by the lessee of the buyout price provided by the contract.That is the Civil Code allows the transference of ownership of rental goods to a lessee on the condition of paying the whole price to a lessee and the RA draft law on leasing activity in the article 7 paragraph 3 does not allow the transfer of ownership of lessee even with the lessee's will, but it is possible to privatize the equipment only by signing the sale contract. Basically various mechanisms are defined upon the issue and whether the lessee has the right to buy the rented goods remains, because there is no consensus among the authors. For example, in Bocharov's opinion, «The subject of leasing may be either returned or given for rent again after the expiration of the contract». Basically the procedure defined by the Civil Code is obvious and more applicable. We find that the transfer of ownership is more appropriate after paying the whole price of contract.

In our opinion, in these conditions the basic problem of satisfaction of business interests and legal interests and rights of the lessee will be insured in the leasing transaction with the maximum level. It is necessary to take into account the fact that in spite of controversial approaches related to the project raised in represented analyses the adoption of RA Civil Code and controversial approaches of its practical application can create a serious problem for legal agencies. In this regard we suggest that the project takes into account the satisfaction of business gains and interests direct necessary of the application of theoretically fixed principle and change the fixed mechanism complaining with the Code requirements.

In the Ra financial leasing has practical application especially in the economy sector. The latter is seen in the statistics of CJS(C) of AGBA leasing [1] running the financial leasing in RA (Fig.1).

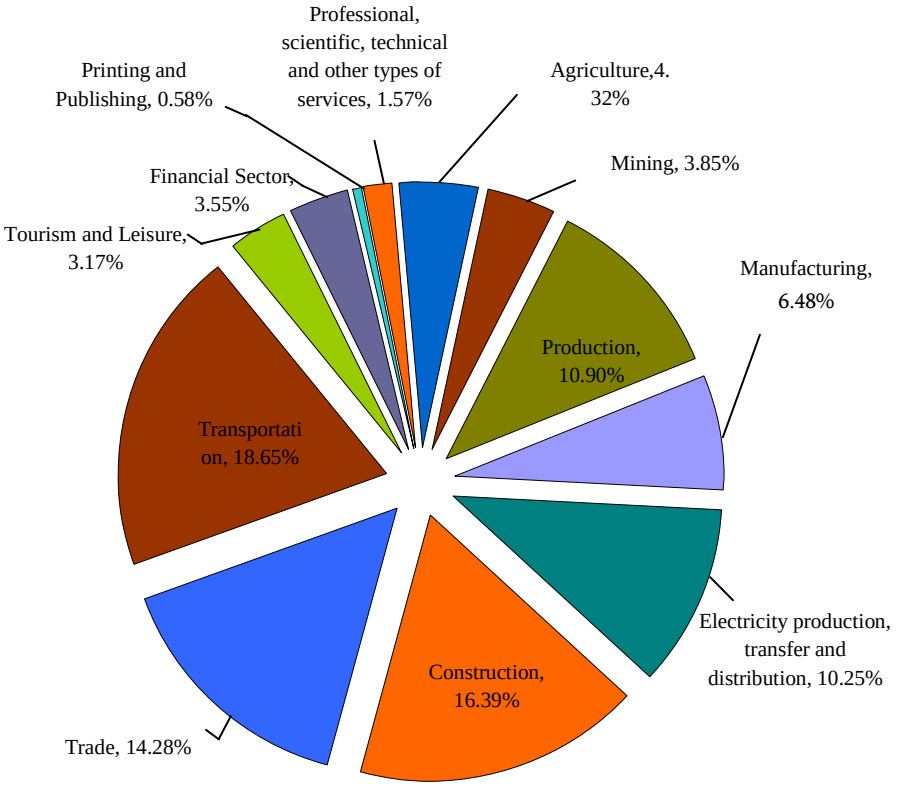

Fig. 1. **As of March 31, 2014 "ACBA Leasing" CJSC portfolio by economic sectors**

CONCLUSION

The current legislation distinguishes the leasing contract as a contract having a complex legal structure where the buyer, the seller, the lessor and the lessee participate. Referring to the approaches existing in the theoretical literature about legal nature of the transaction it should be noted that the classification into one part, double part and multipart transactions clarifies the issue emphasizing the will and the willingness of the part (parts) [2] however, when the matter concerns leasing operations we face the ambiguous approaches existing in the scientific world. By the way, it is worth mentioning that the parts of the transaction are based of the willingness of the counteragent as an expression of will [3]. The versatility of the transactions has a practical role: the latter take than two people into the legal relations. It should be mentioned that the rights and duties of the participants of leasing relations are distributed the way that it makes suspicious to view the leasing contract as a bilateral transaction [4].

Proffesor Barseghyan states the bilateral nature of the leasing contract, noticing at the same time a signing trade contract is an important element of leasing relations and has a derivative nature. In our opinion leasing relations should be viewed upon as

a versatile transaction, as the Civil Code of the RA defines some features of leasing relations, the interpretation of which already states the versatility of the leasing

– The participation of a third party or a provider-seller in the leasing relations.

– The lessor acquires the equipment not for his personal utilization but for leasing it (Civil Code Article 677th).

– The lessee has the right to select the equipment and its provider (Civil Code 677).

– Acquiring the equipment the provider is apprised that the equipment is meant for a rent to a person (Civ. Code 681).

– The equipment is delivered to the lessee directly by the provider (C. Code 682).

– The lessee introduces the requirements concerning the quality, completeness and erection of the defects of the equipment to the lessor (C. C.683).

– The risk of an accidental loss or unintended injuries of the equipment is passed to the lessee immediately on the delivery moment (683).

The above mentioned requirements of Civil Code are three-part in their nature, as defining rights and duties for the lessor and the lessee the involve the provider-seller in the transaction process. We also share the opinion that financial rental relations are three part relations [5], as the important feature of viewing the transaction as a versatile one is the fact of the involvement of more than two parts in it, and the aim they pursued that is the for concerning transactions as a versatile ones. We are based on the subject stuff [6] and the matter of aim, which occur in leasing relations. It is due to the subject stuff as well as the aim put forwarded by them and the immediate participation of the provider-seller in the exercise process of the rights and duties of the lessor and the lessee, that serve as a base for us to view leasing relations as versatile. As a bases for the reinforcement of such an approach serves the fact that in a legal relations except the lessor and the lessee, there participates a third part, the provider-seller [7], who can be any juridical or physical person [8]. Despite of the fact that the aim, pursued by the provider-seller, is the direct sale of the equipment from the lessor to the lessee, and the lessor pursues the aim of equipment renting to the lessee; the lessee involves the provider-seller in the legal relation selecting him for his own interests. The regulation of such kind of legal relations however should be emanate from the law. From the point of view of legal techniques, the classic definition of the legal acts the format of the exception of overloading in the legal regulation mechanisms, in our opinion, is not probably applicable.

We find that judging by the principle of legal certainty; however, a strict legal regulation under the law is necessary. Not the only above mentioned brief analyses, but also the broad practical application of leasing transactions and the gradual development of the application are based on in such kind of conclusion. We assume that the strict legal regulation of the sphere also, under a specific law, will allow to

clarify the problems, which occur or may occur in cause of the practical usage. What was mentioned above, certainly lacks the hypothetic definition, that the existence of law eliminates or excepts the drawbacks and gaps in various legal-regulating mechanism or minimizes the size of its probability, it is worth mentioning, that the format of the law [9], in our opinion, may minimize in the sphere of the occurrence of variety of problems from the point of view of legal technique.

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ПРАВОВЕ РЕГУЛЮВАННЯ ПИТАНЬ ЛІЗИНГОВИХ ВІДНОСИН

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В рамках статті автор аналізує ряд питань пов'язаних з лізинговими відносинами. Порівняльний аналіз та обговорення науково обґрунтованих поглядів і думок дозволяє автору підкреслювати правове регулювання лізингових відносин, зробити висновки щодо існуючих недоліків та прогалин, запропонувати шляхи їх подолання.

Ключові слова*: лізинг, лізингодавець, лізингоодержувач, орендодавець, орендар, фінансова оренда.*

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ВОПРОСОВ ЛИЗИНГОВЫХ ОТНОШЕНИЙ

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В рамках статьи автор анализирует ряд вопросов тесно связанных с лизинговыми отношениями. Сравнительный анализ и обсуждение научно обоснованных взглядов и мнений позволяет автору подчеркивать правовое регулирования лизинговых отношений, сделать выводы по поводу существующих недостатков и пробелов, представить пути их преодоления.

Ключевые слова*: лизинг, лизингодатель, лизингополучатель, арендодатель, арендатор, финансовая аренда.*

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