

Obligated Parties in the Enterprise Lease Agreement

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Annotation:

This article analyzes the legal foundations of lease agreements for enterprises and the relationships between entrepreneurial entities. The contract has a bilateral nature, establishing mutual rights and obligations between the lessor and the lessee. The process of drafting the contract requires registration with the state, which ensures that the contract has legal force.

Keywords: Enterprise, lease agreement, legal foundations, entrepreneurial entities, mutual rights and obligations, state registration, legal force, lessor, bilateral nature.

From the perspective of civil doctrine, the concept of leasing an enterprise is defined in Article 579 of the Civil Code of the Republic of Uzbekistan as follows: "Under the enterprise lease agreement, the lessor undertakes to provide the lessee, for a fee, with the entire enterprise or part of it as a property complex for temporary possession and use, with the exception of rights and obligations that the lessor cannot transfer to other persons"¹. In turn, based on the nature of the aforementioned lease agreement, it is important to examine the issue of subjects of obligations arising from the enterprise lease agreement.

"The parties to the enterprise lease agreement are always entrepreneurs. The number of copies of the enterprise lease agreement must not be less than the number of parties to the agreement. Such a contract must undergo mandatory state registration as a real estate transaction. Regarding the

¹Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1996 й., 11-12-сон, 1-модда; Қонунчилик маълумотлари миллий базаси, 16.11.2023 й., 03/23/878/0852-сон; 22.02.2024 й., 03/24/911/0142-сон; 28.02.2024 й., 03/24/914/0161-сон

leasing of a company, the lease agreement is only concluded after this registration has been completed"². We concur with S.E. Zhilinsky's views on the enterprise lease agreement.

To substantiate S.E. Zhilinsky's opinion, we can observe that in this situation, business entities are considered among the subjects obligated to participate in the matter of enterprise leasing. Based on the characteristic that entering into legal relations of enterprise lease inherently involves a commercial purpose, it is deemed appropriate that the subjects of this contract should also be business entities engaged in commercial activities.

Indeed, if we characterize the enterprise lease agreement within the framework of civil doctrine, it is concluded bilaterally between the lessor and the lessee based on the participation of the subjects. Particularly, according to the time of conclusion, it is consensual - rights and obligations arise after entering into contractual relations. Moreover, considering the interest in the outcome, it occupies a permanent place in legislation and practice as a contract concluded for a fee, stemming from its commercial nature.

Specifically, regarding the issue of subjects, researcher N.I. Loginova expresses her view on this matter as follows: "Activity carried out on the basis of an enterprise is aimed at generating profit, therefore the person using the enterprise, whether the owner or tenant, must have the right to carry out entrepreneurial activity. In this case, entrepreneurial status is necessary for a person to have the right to use the leased enterprise, not to conclude a lease agreement for the enterprise"³.

In this matter, we can observe that researcher N.I. Loginova's opinion sets clear requirements for the subjects of an enterprise lease agreement. In this case, based on the nature of the contract, it is stated that the subject entering into the contractual relationship must be a business entity.

Analyzing another perspective, it was concluded that "As a result of the research, the leasing obligation, on the one hand, represents a complex combination of rights and obligations inherent to other lease obligations of the lessor and lessee. On the other hand, we concluded that there are certain special rights and obligations of the parties in the contracts related to the specifics of the lease agreement; furthermore, the current national legislation has not correctly included only its subject as an essential condition of the lease agreement"⁴.

It is known that in any contract, an obligation is one of the main components of civil law relations. The subjects of the obligation arising from the enterprise lease agreement are also included in the obligation structure. **The participants in the enterprise lease agreement are:**

Subjects of the lease agreement;

The mutual rights and obligations of the parties to the lease agreement, more precisely, the content of the obligation;

It is necessary to separately study the objects for which the obligation arises in relation to the scope of the lease agreement.

"The parties to the lease agreement are the lessor and the lessee. Leasing property is a form of disposing of this property. Therefore, first and foremost, the right to lease property belongs to its owner and is attributed to the person who has the maximum authority (possession, use, disposal)

² С.Э.Жилинский. Предпринимательское право (правовая основа предпринимательской деятельности). М.: Норма, 2018. С. 65. <https://www.at.alleng.org/d/jur/jur043.htm>

³ Н.И.Логинова. Аренда предприятия по законодательству Российской Федерации. 12 00 03. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Москва-2008. С-14.

⁴ Т.О.И. Валентиновна. Договор лизинга как структурно-сложное обязательство. 12 00 03. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Москва-2011. С-18.

over the property"⁵. Based on this, it may be beneficial for the parties of the lease agreement to consider that the issue of subjects of obligations arising from the lease agreement is directly related to the process of property disposal. Taking into account the characteristics of ownership and use by the subject during the signing process of the lease agreement can be advantageous for both parties involved.

Regarding the bilateral nature of the lease agreement: "The bilateral nature of the lease agreement establishes that each participant in the contract possesses all rights and obligations. The primary rights of the lessor include the right to demand rent and the right to reclaim the property, taking into account normal wear and tear after the lease expires. As for the tenant's rights, they can be categorized into two groups, each having a certain independence but unable to exist without the other." As for the tenant's rights, they can be divided into two groups, each of which has a certain independence, but cannot exist without the other"⁶.

In this context, the participation of the parties in this agreement is bilateral in nature, and the rights and obligations are distributed between the parties based on the terms of the agreement. Importantly, both parties have rights and obligations, and it is envisaged that the subjects of this agreement, while exercising their rights, must also fulfill the established and agreed-upon obligations.

Furthermore, within the framework of the enterprise lease agreement, it should be noted that the authorization granting entrepreneurship rights to an individual or legal entity is not intended for them to participate in the lease agreement as a subject. Rather, it should grant them the right to use the leased enterprise and all its associated properties. If necessary, this should be reflected in the clauses of the agreement as one of its objectives.

In order to regulate relations in the field of state property management in the Republic of Uzbekistan, the Law of the Republic of Uzbekistan "On State Property Management" was adopted on March 10, 2023. It was established that all relations pertaining to this matter would be legally regulated based on this adopted law. This law provides legal solutions to issues directly related to the subjects of obligations arising from enterprise lease agreements, including state-owned enterprises, state institutions, state property, state property register, state shares, state unitary enterprises, leasing of enterprises, and other related matters⁷.

It is known that according to current norms, the rights of the owner in relation to property transferred to economic management or operational control of legal entities are regulated by norms and legal documents. "According to the enterprise lease agreement, the lessor undertakes to transfer the entire enterprise or its part as a property complex to the lessee for temporary possession and use in exchange for payment, with the exception of rights and obligations that the lessor cannot transfer to other persons"⁸. In this case, we can emphasize that the enterprise is transferred for temporary ownership and use purposes.

An important aspect of leasing an enterprise is that "the enterprise can only be transferred to the lessee after settling accounts with creditors who have requested the lessor to cancel obligations or

⁵ Н.И. Логинова. Аренда предприятия по законодательству Российской Федерации. 12 00 03. Диссертация на соискание ученой степени кандидата юридических наук. Москва-2008. С-40

⁶ С.Н.Бритвин. Арендные права и их гражданский оборот. 12 00 03. Автореферат диссертации на соискание ученой степени кандидата юридических наук. Волгоград - 2006. С-10.
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⁷ Қонунчилик маълумотлари миллий базаси, 10.03.2023 й., 03/23/821/0132-сон; 15.02.2024 й., 03/24/907/0127-сон

⁸ Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1996 й., 11-12-сон, 1-модда; Қонунчилик маълумотлари миллий базаси, 16.11.2023 й., 03/23/878/0852-сон; 22.02.2024 й., 03/24/911/0142-сон; 28.02.2024 й., 03/24/914/0161-сон

fulfill them prematurely and compensate for losses"⁹. The issue of existing debts is also reflected in the norms, detailing the procedure for their recovery.

Another researcher, Ye.P. Torkanovsky, expresses his views on the matter of leasing, stating that "a leasing enterprise, as a type of entrepreneurship, not only encompasses the possibility of obtaining economic income through the improvement of production without being outside market relations, but also operates proactively in the circulation of goods"¹⁰.

An enterprise, as a property complex in state (municipal) ownership and assigned in the prescribed manner to a unitary enterprise with the right of economic management, is considered an object of economic management. As an object of economic management rights, an enterprise is characterized by the integrity (indivisibility) of its individual parts, pertains to complex and specifically defined assets, and, as a rule, has limited transferability¹¹.

It is clear from the above considerations that, based on the characteristics of the era, leased enterprises were primarily implemented in relation to state property. The lack of consideration for future participation from the commercial and private sectors indicates the need to develop requirements and criteria for the contracting parties and improve relevant legislation today.

Therefore, after conducting a legal analysis of the subjects involved in obligations arising from enterprise lease agreements, the following conclusions can be drawn:

Firstly, given the bilateral nature of enterprise lease agreements, it is necessary to develop clear criteria for the parties involved. It should be noted that in the early years of independence, enterprise leasing primarily pertained to state property. The lack of clarity regarding the status of business entities entering into these legal relationships today creates contentious debate.

Secondly, when classifying the subjects of enterprise lease agreements, it is also necessary to determine the scope of business entities. Specifically, it is important to define the legal status of both legal entities and individuals as business entities when entering into lease agreements.

Thirdly, to eliminate ambiguities in the interpretation of legal rules, it is necessary to clarify and supplement legislation regarding the rights and obligations of parties in enterprise lease agreements.

Fourthly, to prevent disputes between parties, it is necessary to introduce mechanisms to protect the interests of both lessors and lessees. For example, it is important to clearly include provisions such as penalties for breaching contract terms or compensation for damages.

Fifthly, measures should be taken to expand the legal protection of parties to ensure compliance with contract terms and to guarantee compensation for damages in case of rights violations, considering that entrepreneurial activities are carried out under lease agreements and involve inherent risks.

Sixth, strengthening control over the fulfillment of contractual obligations to ensure compliance with legislation and protect the rights of the parties will increase the interest of business entities in this type of contract.

⁹ Ўзбекистон Республикаси Олий Мажлисининг Ахборотномаси, 1996 й., 11-12-сон, 1-модда; Қонунчилик маълумотлари миллий базаси, 16.11.2023 й., 03/23/878/0852-сон; 22.02.2024 й., 03/24/911/0142-сон; 28.02.2024 й., 03/24/914/0161-сон

¹⁰ Торкановский Е. П. Аренда предприятий; теоретический аспект. Аренда предприятий и самоуправления. / Отв. ред. Е. П. Торкановский/ - М., 1990, -С.6.

¹¹ С.О.Корытов. Юридическая природа права хозяйственного ведения. Автореферата по ВАК РФ 12.00.03, кандидат юридических наук. М 2000 г. С-25

Seventh, taking a special approach, directly specifying existing force majeure circumstances in the enterprise lease agreement will help prevent future dangerous situations, considering that disputes may arise regarding the full fulfillment of stipulated conditions by the subjects of obligations under certain circumstances and under the influence of irresistible forces.

Eighth, within the framework of the parties' participation in the enterprise lease agreement, it is advisable to provide for two categories in the contract for the purpose of permanent or temporary possession and use when directly leasing the enterprise.

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