LEGAL SHORTCOMINGS OF ACCOUNTING FOR LEASING OPERATIONS IN THE LEGISLATION OF THE REPUBLIC OF AZERBAIJAN AND PROPOSALS FOR THEIR SOLUTION

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Abstract. The article discusses the features of leasing operations in the Republic of Azerbaijan. The focus is on the regulatory and legal aspects of the control of leasing operations. An attempt has been made to identify the existing shortcomings, analyse them, and on this basis formulate proposals for their elimination. The normative legal documents of the Republic of Azerbaijan and other states are used in the work. As a result of the study, the peculiarities of the regulation of leasing operations are revealed, the prospects for the development of this direction in Azerbaijan are determined.

In addition, this article examines the history of the introduction of the leasing agreement into Azerbaijan legislation, as well as some practical aspects of its formation. A comparative analysis of the current legislation with the previous one regulating the procedure for concluding and executing this agreement and considering it as a special type of services is carried out. The article also notes that in practice, erroneous attempts were made to fit leasing under a loan agreement, which does not correspond to its legal nature. The relevant Resolution of the Constitutional Court of the Republic of Azerbaijan is analysed in this issue. The article classifies the forms of the leasing agreement and reveals its content with reference to legislation, legal literature, as well as judicial practice.

In the next few years, the leasing market should expect significant recovery growth. The article tackles the main shortcomings of the legislation regulating relations in the field of leasing relations and provides proposals for their elimination. The relevance of the article lies in the fact that in the coming years, the leasing market should expect significant recovery growth, for which leasing companies and their clients need government support not only in subsidizing, but also in improving the legislative framework.

Keywords: leasing, Azerbaijan, law, problems, operations, leasing business, leasing market, leasing legislation

INTRODUCTION

The relevance of the article is in the fact that in the coming years, the leasing market will experience a significant recovery growth. Accordingly, leasing companies and their clients need government support not only in subsidizing, but also in improving the legislative framework.

One of the main prerequisites for the effectiveness of the leasing process is reliable legal support for all interacting entities, in compliance with individual and group interests. The purpose of this study is to examine the stages and structure of regulatory support for the implementation of leasing activities in the Republic of Azerbaijan.

Leasing business is an integral part of the development of almost any branch of the economy. The essence of leasing lies in its nature and potential, principles, and organizational forms. Although leasing has become widespread in the world economy since the second half of the 20th century, it remains a fairly new phenomenon for Azerbaijan. At the same time, leasing services are characterized by high dynamism, and the growing influence on economic processes indicates the significant potential of this market segment in Azerbaijan.

The advancement of leasing in Azerbaijan is also relevant due to the need to modernize equipment, its obsolescence, relatively low efficiency of its use, shortage of spare parts, etc. From this point of view, leasing can be a promising solution to the problem, which facilitates the interaction of credit, investment, and foreign trade structures.

MATERIALS AND METHODS

In the course of the research, findings by P.A. Belyaev, N.B. Zavyalov, F.F. Murshudli, Z.G. Zeynalov, A.A. Sadygov, T.A., Sh.A. Jafarova, E.V. Khramova, V.V. Schneider, A.M. Tsyganov, V.A. Burenin, and O.I. Baranovsky were studied. In the work, a range of general and special methods of cognition were applied, notably systematic and theoretical analysis, comparative legal, historical analytical, structural logical, and technical methods, etc.

RESULTS AND DISCUSSION

The development of leasing as an alternative source of financing may be replaced in the future by the understanding of leasing as one of the main sources. For this purpose, it is necessary to overcome the main obstacles to its progress, which are concentrated in the field of regulatory control. The advancement of leasing services would be facilitated by the involvement of leasing companies in the implementation of projects within the framework of state programs, more fully attracting the resources and potential of the state as the main actor in the economy of Azerbaijan.

Formation and evolution of leasing in Azerbaijan.

The global economic space is undergoing quite large-scale changes, which include the growth of the number of multinational companies, the "blurring" of economic boundaries between countries, rapid technological changes, increased taxation, uncertainty about future demand, increased productivity and labour efficiency. In turn, the economy of each state tolerates these processes in different ways.

International relations also imply financial flows, which have been manifested in the form of leasing relations. This mechanism has become an important source of financing not only for individual enterprises and companies around the world, but also for a number of countries. Leasing operations are an important part of the development and maintenance of the economy worldwide, which explains the popularity and relevance of this topic. The scientific methods of research in the framework of this work were system analysis, generalization and comparison.

The first mentions of leasing transactions have been known since 2000 BC. Leasing, existing in the form in which it currently exists, was formed in the 40s of the 21st century in the USA and began to grow in the field of railway transport. The first company in which leasing became the main activity was the Leasing Corporation of the USA, which appeared in 1952 in San Francisco (Gazman, 1997).

Currently, a set of regulatory documents regulating investment activities in market conditions has been created. New approaches to stimulating investment activity are being introduced, such as competitive placement of centralized resources for investment projects, leasing and others.

In the context of deficiency of financial resources, leasing is one of the most effective ways of market allocation of capital investments, especially in countries with high levels of international debt, as well as with limited foreign exchange funds.

The concept of leasing comes from the English "to lease", and its content can be construed as a certain type of financial services, lending aimed at getting property that the leasing company acquires at its own expense and transfers to the client. If, in the case of ordinary bank lending, the client receives the funds with which the property is purchased, then leasing operations allow the client to transfer the property being used, but which becomes own property only upon full repayment of the debt (Zhang, Yao, & Zhang, 2020).

In international practice, it is customary for insurance companies to participate in leasing operations, which would provide compensation for losses for the seller, leasing company or buyer in case of insured events (Zhang, Yao, & Zhang, 2020).

In addition, the lease agreement might enable the buyer to purchase the property from the seller which the lessor will offer. Moreover, initially the lessor can act as the owner of the property (Zhang, Yao, & Zhang, 2020).

Leasing contributes to economic development, allowing enterprises in the absence of funds or guarantees of repayment of a bank loan to get what they want for use, and with full repayment of the debt – into ownership.

It is easy to see the potential of leasing operations in Azerbaijan, which need an influx of investments and have significant potential for economic modernization. At the same time, leasing was actually launched in the country only in the 21st century. The process of forming the regulatory framework for leasing operations began in the first half of the 1990s.

In the 1990s there was a process of formation of market relations, restoration of the economy of the state affected by armed conflicts. In this context, leasing as a fundamentally new type of operation has just begun to be recognized. This was reflected in the adoption of the first Law on Leasing in the post-Soviet space.

This law provided significant preferences to leasing companies, stimulated the use of leasing operations, including exemptions from various types of taxes. At the same time, the novelty of this type of entrepreneurial activity, the absence of additional conditions for the use of leasing as a tool for modernizing the economy did not make it possible to use its potential in practice.

Nevertheless, several leasing companies were registered during this period, which operated despite the remaining contradictions in the legislation and the insufficient level of regulatory and legal regulation (Murshudli, 2013).

The actual start of leasing operations dates back to the 21st century. In 1999 and 2000, the Civil and Tax Codes were adopted in the Republic of Azerbaijan, which included detailed descriptions regarding leasing relations. In this regard, a separate Law of the Republic of Azerbaijan on Leasing was repealed, and the regulatory framework for this type of activity was based on the Civil and Tax Codes (Zeynalov, 2017).

An important step in the development of leasing in Azerbaijan was the implementation of the International Finance Corporation project (hereinafter: IFC) in 2003. Within its framework, IFC has started close cooperation with the Government of Azerbaijan, relevant departments, banks and insurance companies to launch practical activities in the field of leasing operations (Zeynalov, 2017).

Since 2003, when the IFC project was launched, and before the beginning of the global financial and economic crisis in 2008, there was a rapid growth of the leasing services market in Azerbaijan. Every year there was a practical doubling of the capital of leasing companies. Leasing operations have become quite common.

The crisis of 2008 significantly affected the leasing services market. The Azerbaijan government was forced to reduce some preferences, which negatively affected the advancement of the entire leasing market. In 2009-2010, there was a decrease in the capital of Azerbaijan leasing companies, and then there was a slight increase, which, however, could not compensate for the losses from the 2008 crisis (Zeynalov, 2017).

The current status of legal support for leasing operations in Azerbaijan

Leasing is a special, new sphere of civil law regulation and entrepreneurial initiative. It is widely spread abroad and is currently actively growing in Azerbaijan, and although leasing in Azerbaijan originated quite recently, it can already be confidently stated that all conditions for the intensive development of the leasing business are ready in the country now.

The issues of legal regulation of leasing operations from the point of view of property entrepreneurship and property rights are fixed in the relevant sections of the Civil Code of the Republic of Azerbaijan. In chapter 38 of the Civil Code under the title “Leasing” 13, the rules for resolving issues specific to leasing operations in the legal aspect are given in Articles 747-751 of the law. For example, Article 747, which is called the “leasing agreement”, sets out the provisions governing the essence of the leasing agreement, its subjects, objects, forms of leasing, the legal form of leasing operations and other similar issues. Article 747 of the Civil Code of the Republic of Azerbaijan specifies the essence of the leasing agreement: “under the leasing agreement, the lessor is obliged to transfer a certain thing to the lessee for use for a certain fee stipulated by the agreement, for a certain period and on other terms. The lessee is obliged to pay the rent with the established frequency. The lessor is obliged to prepare or purchase the property provided for in the contract. Under the lease agreement, the lessee may be charged with the obligation to purchase or lease the leased item after the expiration of the contract or be granted such a right, provided that the contract does not end with the full depreciation of its item. The fact of depreciation should be taken into account in all cases when calculating the final cost. If there is no corresponding provision in the contract, the lessee has the right to purchase the leased item."

The main forms of leasing are domestic leasing and international one. International leasing transactions include contracts, the lessor and the lessee thereof are located worldwide.

Since 2012, new impulses have been given to the leasing market. In December 2012, the Development Concept "Azerbaijan 2020: A Look into the Future" was approved in the Republic of Azerbaijan, in which leasing was given a significant place in the financial services market as one of its main instruments. For the first time, leasing began to be considered in the context of economic modernization, the implementation of major infrastructure projects, and investment attraction.

The Government paid attention to the leasing market in the programs adopted to support small and medium-sized businesses. Leasing has become not just a concept, but also an economic reality in the Republic of Azerbaijan.

The Customs Code of Azerbaijan provided benefits for leasing operations. Since January 1, 2016, according to amendments to the Tax Code, all leasing companies were exempt from value added tax in case of import. This has become an important factor in the international advancement of the country's leasing market, and its involvement in globalization processes.

As a result of regulatory changes and practical work on their implementation, there has been an increase in leasing companies in Azerbaijan in the period from 2003 to 2015 by more than 10 times. The total capital of leasing companies has grown almost 90 times (Zeynalov, 2017).

It should be noted the significant growth of foreign leasing companies in Azerbaijan. However, the main role in the leasing services market is played by the Association of Leasing Companies of Azerbaijan (ALKA). It is a kind of link between Azerbaijan leasing companies, whose founders are usually banks and business structures, and the state.

In the leasing services market, the main role is played by vehicles, mainly freight and passenger vehicles, construction equipment and medical equipment.

At the same time, there are numerous of problems that do not allow the leasing market of Azerbaijan to become one of the "drivers" of economic growth.

In particular, the legislative framework for such transactions is not sufficient, and the existing context in the field of taxation and currency legislation often turn such transactions into economically unprofitable transactions.

Due to the large role of banks in the growth of leasing companies, the underdevelopment and financial weakness of the banking sector of Azerbaijan remains a "weak spot" in the implementation of projects for the advancement of the leasing services market, complementing the difficulties with high-quality borrowers and insufficiently positive incentives for lending leasing services.

From the above, it is unprofitable to provide leasing conditions to the buyer. Often, for the client, the property turns out to be extremely expensive, and the repayment periods of loans are extremely short.

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Creditors' rights are relatively poorly protected with regards to the law, which creates additional vulnerabilities in this market, complementing the underdevelopment or lack of the necessary infrastructure, including a collateral and guarantee system.

Features of leasing agreements in the legislation of the Republic of Azerbaijan

Highlighting the three parties to the leasing agreement, the modern legislator of Azerbaijan has defined this agreement as a trilateral one. The law "On Leasing Services" of 1994 noted different forms of leasing. They are:

1) Depending on the source of funds, the following forms of leasing were allocated in the mentioned law: Leasing services carried out at the expense of the leasing organizations themselves; Leasing services carried out at the expense of both leasing organizations and those attracted from other sources (in this case, the share of the leasing organization could not be lower than 30 percent of the total amount);

2) Depending on the content of the leasing fee, the mentioned law distinguished the following: leasing fee with the inclusion of the purchase price of the object, other expenses related to the service, as well as the profit of the leasing company; and leasing fee with the inclusion of the purchase price of the object, as well as the profit of the leasing company;

3) Depending on the participants of the leasing activity the following is distinguished: leasing services with the participation of three different parties: (the seller, the leasing company and the contractor); leasing services involving two parties (in this case, it was possible for the company in need of funds to sell its property in favour of the leasing company with the condition of its leaseback from it). As objects of the leasing agreement, the legislative authority specified industrial buildings, structures, machines, vehicles and other objects. Taking into account the possibility of providing completely different objects under a leasing agreement, as well as various forms of contractual relations, attempts have been made in practice to fit it under a loan agreement. The Constitutional Court of the Republic of Azerbaijan, in its Decision as of December 28, 2020 "On the interpretation of certain provisions of Articles 747.1, 747-1.3 and 747-2 of the Civil Code of the Republic of Azerbaijan", put an end to these disagreements. The aforementioned Resolution states that in accordance with the requirements of Articles 747.1 and 747-2 of the Civil Code of the Republic of Azerbaijan, as well as the legal positions of the descriptive and motivational part of this decision, it is impossible to hide behind a loan agreement when concluding a leasing agreement, since the subject of the leasing agreement is not money, but certain property.

In these contractual relations, individuals and legal entities selling their property to leasing companies; and leasing companies acquiring property for the purpose of its next resale, as well as individuals and legal entities renting property were specified as participants. In the mentioned law, the legislator also established the legal status of leasing companies. According to Article 8, in line with the law, financial and credit organizations and specialized leasing enterprises could participate as such. Such companies could obtain legal status only after they acquired a license from the relevant state executive authority. Like the current one, the previous legislative body noted the mandatory written form of concluding a leasing agreement. Article 5 of the

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mentioned law specifies the content of the leasing agreement as following: the parties to the contract, their rights and obligations; composition and value of leased property; term of the contract; the cost, terms, and procedure for the implementation of the leasing fee; and the residual value of the leasing property at the end of the lease term.

The current legislative authority, unlike the previous one, defined the leasing agreement not just as a type of service, but as a bilateral agreement.

Article 747 of the current Civil Code of the Republic of Azerbaijan provides the following definition of a leasing agreement: “under a leasing agreement, the lessor is obliged to provide a certain thing for use by the lessee for a certain agreed fee, for a certain period and on other terms (including granting the lessee the right to purchase property). The lessee is obliged to pay the fee with the established frequency”.

It is necessary to address an important detail regarding the above-mentioned definition of the lease agreement. At first glance, the domestic legislator in Article 747 of the Civil Code considers the leasing agreement as a bilateral agreement. Although, another article of the Civil Code considers two forms of concluding a leasing agreement. Thus, according to Article 747-5.1 of the Civil Code of the Republic of Azerbaijan, the legal forms of leasing operations are the following:

1) either a leasing agreement concluded between the lessor and the lessee, and a purchase and sale agreement concluded between the lessor and the seller;

2) or a tripartite agreement concluded between these persons in accordance with Article 747-5.2 of the Civil Code and other provisions related to leasing.

In other words, with the first form of leasing, there are two independent contracts: a lease agreement, and a purchase and sale agreement with the ultimate purpose of transferring the leased object to the lessee’s use. In the content of the contract of sale concluded in connection with leasing, along with other provisions stipulated by the Civil Code, the following conditions must also be specified, namely, the object of leasing is acquired by the lessor specifically for leasing; the lessee, unless otherwise provided by the lease agreement, has the rights of the buyer arising from the purchase and sale agreement concluded between the seller of the leased object and the lessor. The position of the Constitutional Court of the Republic of Azerbaijan on this issue is given in the Resolution of the Plenum of the Constitutional Court of the Republic of Azerbaijan dated January 12, 2017 “On the interpretation of Article 140.6 of the Tax Code of the Republic of Azerbaijan in the context of Articles 13.2.14.1, 140.2, 164.1.2 of this Code and Articles 747-1 and 747-5 of the Civil Code of the Republic of Azerbaijan”. The said Resolution specifies that in accordance with Article 747-5 of the Civil Code of the Republic of Azerbaijan, the lessor is obliged to conclude a purchase and sale agreement with the seller (supplier) under the leasing agreement. The purchase and sale agreement may be signed prior to the lease agreement, which indicates that the contract is intended specifically for leasing purposes. From the point of view of the requirements of Article 747-1.3 of the Civil Code of the Republic of Azerbaijan, the transfer of the leased object to a legal entity or an individual who is not engaged in entrepreneurial activity is not excluded. Civil legislation does not exclude the possibility that under the lease agreement, the seller and the lessor might be the same person, as well as separate parties to the contract.

The subjects of the leasing agreement are the lessor, the lessee and the seller (supplier). Any resident and non-resident of the Republic of Azerbaijan may be a subject of a leasing agreement in the manner and cases established by the Civil Code. According to Article 747-1 of the current Civil Code of the Republic of Azerbaijan, the lessor is a legal entity or an individual who on the basis of a leasing agreement, provides an object acquired by him at the expense of attracted or own financial resources and owned by him as an object. The lessee is a legal or natural person who, in accordance with the lease agreement, accepts the leased object for a certain fee, for a certain period and under certain conditions for temporary possession and use. The seller (supplier) is a legal entity or individual who, in accordance with the contract of sale, sells the leasing object to the lessor. The modern legislator recognizes as leasing objects movable or immovable items related to fixed assets according to the classification established by the legislation, with the exception of items that, according to the laws of the Republic of Azerbaijan, have been withdrawn from free civil circulation or whose civil turnover is limited.

In our opinion, it is necessary to develop the domestic leasing market and finance this area of activity on the basis of the existing regulatory framework, but at the same time it will increase state control over the leasing market.

Prospects for solving existing problems and advancing leasing services.

Leasing activity is an important socio-economic phenomenon that fulfils a number of tasks, notably, it allows the growth of the main sectors of the economy and forms new ones, opens up the possibility of their application. New technologies contribute to the enhancement of the investment activity. The level of leasing activity is increasing every year, which undoubtedly has a positive effect on the overall economic situation, and the negative consequences of crisis events are decreasing. The use of the leasing mechanism is the most important resource for increasing financing in the manufacturing sector the volume of production, the introduction of modern equipment, the improvement of existing technologies and the emergence of new ones. Leasing, on the one hand, is a highly profitable instrument that provides decent financing for enterprises (tenants), there is no possibility to provide a loan, on the other hand, it ensures high income result of the operation for the financing organization (tenant).

One of the decisive conditions for the high efficiency of leasing activities is the reliable legal support of the economic relations of all economic entities interacting, taking into account the interests of each participant in the transaction. Russia belongs to the group of countries where there is special legislation regulating leasing relations. The legal basis of leasing is contained in regulatory acts of state bodies and governing bodies of various levels and has unequal legal force.

Legal regulation of leasing relations are legal norms that establish the rights and obligations of participants in a leasing operation, which are a generally binding rule of conduct. The legal basis of leasing is dispersed in regulatory acts of state authorities and management of various levels and having unequal legal force.

The state plays a leading role in implementing reforms, improving legislation, and creating favourable conditions for the development. Taking into account the fact that the leading role in the leasing services market is played by the state, its role in the popularization and advancement of leasing operations is exceptionally high, and in numerous aspects the state bears the main responsibility for the existing problems (Nechaev, Zakharov, Barykina, Velm, & Kuznetsova, 2020).

However, its progress should be associated with increasing the transparency of the financial activities of enterprises, business entities, leasing companies. It is necessary to take comprehensive measures to improve the level of management. State support should be strengthened and should be manifested both in improving the regulatory framework and in solving complex problems of economic growth.

It is important to improve the statistical base, to improve the skills of personnel working in this field, to study leasing as a field of activity.

Without addressing these issues, it will be extremely difficult to achieve fairly modest volumes according to world estimates. The difficulty lies in the gap between the level of leasing services and other sectors of the financial market of Azerbaijan.

Unlike conventional lending, leasing is rather a single operation in business practice. The economic value of leasing is insignificant.

The underdevelopment of the leasing market is confirmed by the fact that about half of all leasing companies registered in Azerbaijan carry out their activities in practice (Zeynalov, 2017).

However, the main issue of market growth is the availability of financial resources, access of leasing companies to financial resources should be expanded. If leasing companies continue to borrow money from the parent bank, and the leasing conditions are more stringent than the loan ones, the effect of the changes will be very small. But if we use the experience of other countries, it will have a very positive impact on the market. Especially in the current economic situation, there is a great need for leasing to expand production capacity and reduce dependence on imports. In order to enhance the activities in the market, it is also necessary to simplify the attraction of international leasing companies to Azerbaijan.

In addition to improving the legal regulation of leasing services, it is necessary to reform the entire financial sector, facilitating access to cheap loans, making long-term loans more accessible, taking anti-inflationary measures and measures to improve financial stability.

Only in this case, it will be possible to gain the huge potential, which is estimated by the Association of Leasing Companies of Azerbaijan to be about 10 times greater than the actual one currently existing. Thanks to comprehensive measures, it is possible to overcome the relative lack of demand for the leasing market in the state, create favourable conditions for its advancement and turn it into one of the foundations of the future economic prospects of the Republic of Azerbaijan.

In the future, according to the "Strategic Roadmap for the Production of consumer goods at the level of small and medium-sized enterprises in the Republic of Azerbaijan" adopted in 2016, the share of the leasing services sector should reach 4% of gross domestic product by 2025.

The development of leasing as an alternative source of financing may be replaced in the future by the understanding of leasing as one of the main sources, but for this it is necessary to overcome the main obstacles to its progress, which are concentrated in the field of regulation.

Attention should be paid to the disclosure of aspects of international leasing in regulatory legal acts, which will help attract foreign companies and integrate the leasing market of Azerbaijan with the world, regulate in detail the problems of collateral and guarantee security, disclose insurance aspects of leasing, which will help avoid ambiguities or double interpretation.

It is important to proceed from international experience, apply international good practice, and standards.

The growth of leasing services would be facilitated by the involvement of leasing companies in the implementation of projects within the framework of state programs, more fully attracting the resources and potential of the state as the main actor in the country's economy.

CONCLUSION

Unfortunately, there are factors that hinder the development of leasing the Republic of Azerbaijan. As one of the obstacles mentioned, a significant part of the population does not understand what leasing is. It can be either a lessee or a lessor. The reason for this is that this attitude is a new concept for Azerbaijan.

The underdevelopment of the financial market infrastructure, as well as other reasons, restrains the advancement of leasing relations. That is, one of the reasons for this is that the consulting services provider does not have many companies, as well as leasing organizations.

The leasing services market of the Republic of Azerbaijan emerged in the 1990s. At that time, the regulatory framework for leasing operations was being formed. The 21st century can be designated as the beginning of the full functioning of the leasing services market in the state. At the same time, despite numerous attempts to promote leasing in Azerbaijan, the regulatory framework still does not fully regulate this area, which is probably a key obstacle in its progress. Leasing in Azerbaijan is under reforms. In this regard, the potential of leasing services remains largely undiscovered, and the state's attempts to improve the country's regulatory framework should be systemic in nature, covering not only the sphere of leasing, but also the economic activities of entities directly or indirectly involved in this sphere, taking into account international law in this area.

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