

**SIGNS AND IMPORTANT TERMS OF THE ENTERPRISE LEASE  
AGREEMENT**

**Nuridullaev Asliddin Akhrorovich,**  
**Head of the Department of State Legal Sciences and**  
**Human Rights of the Public Security University of the**  
**Republic of Uzbekistan, associate professor**

**Abstract:** This article describes in detail the features and essential conditions that distinguish the enterprise lease contract from other contracts.

**Keywords:** lessee, lessee, korhona, property collection, immovable property, korhonani lease condition, korhonani topshirish, topshirish dalolatnomasi.

The complex structural structure of the leased enterprise determines the main features of the enterprise lease agreement. In particular, certain transactions aimed at transferring individual elements of the enterprise are recognized as its components. As the entire enterprise is transferred for ownership and use, the parties must transfer each element of the enterprise in accordance with the applicable regulations.

D.G.Akhrarova divides the elements of the enterprise into two groups and emphasizes the following: "The enterprise considered as this type of property has a complex (complex) nature and consists of physical and mandatory separate elements. The obligatory element also expresses the right to the ideal object. Thus, in the content of the contract, an element appears in the form of a property with characteristics corresponding to a lease agreement. These are land plots, buildings, structures, equipment, fixed assets, circulating assets (stocks of raw materials, fuel, materials, etc.) that belong to the lessor in the right of ownership or in the right of management. The second element of the contract is the conditions for the transfer of property rights related to this enterprise. They consider the right of obligation as a limited material right (use of another's property). Their transfer depends on what basis they belong to the lessor".<sup>1</sup>

E. N. Vasileva, based on the content of the enterprise lease agreement, divides its elements into the following three groups:

the first element is the conditions for the transfer of objects: land plots, buildings, structures, equipment, other things that are part of the main assets of the enterprise, as well as

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<sup>1</sup> See : Uzbekistan Republic of citizenship to the Codex Review : Professional reviews . T 2. / Uzbekistan Republic Justice ministry . - Tashkent : Bactria press , 2013. Pages 353-354 .

circulating assets belonging to the lessor based on the right of ownership or the right of operational management (stocks of raw materials, fuel, materials etc.);

the second element is the conditions for the transfer of property rights and debts belonging to the leased enterprise;

as the third element, the conditions defining the procedure for transfer of a complex of special property rights - absolute rights are entered by the author<sup>2</sup>.

Here it is better to agree with the opinion of E. N. Vasileva based on the nature of the components of the whole enterprise as a property complex.

However, not all scientists support one or another of the above points of view. For example, in V.S.Em's opinion, the contract on the transfer of the enterprise is the basis for concluding other contracts aimed at the actual transfer of certain elements of the enterprise to the owner<sup>3</sup>. In our opinion, we cannot agree with this view, because it is inconsistent with the concept that the enterprise is the only object of the lease. Also, it does not take into account that the interests of the parties do not mean the transfer of individual elements of the enterprise (buildings, stock of materials, rights of demand, etc.), but the transfer of the enterprise as a whole property complex with the possibility of profit. Because the subject of the enterprise lease agreement is determined by drawing up a clear list of the property to be transferred to the lessee, the content of the agreement should include the conditions for the transfer of individual elements of the enterprise (for example, the company name, trademarks, service marks).

The collective nature of the enterprise lease agreement allows it to be included in the group of mixed contracts. The relations between the parties to such a contract shall be governed by the provisions on contracts whose elements are included in a mixed contract, unless a different order is understood from the agreement of the parties or from the nature of the mixed contract (Part 3 of Article 354 of the Criminal Code).

As mentioned above, there are a number of signs that distinguish the relations that arise on the basis of the enterprise lease agreement from the relations that arise from other types of property lease agreements<sup>4</sup>.

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<sup>2</sup>Commentary on the Civil Code of the Russian Federation: in 3 volumes. Vol. 2: Commentary on the Civil Code of the Russian Federation (part two) / Ed . by T.E.Abova and A.Yu.Kabalkina ; Institute of State and Law of the Russian Academy of Sciences. –M.: Yurait-Izdat , 2004. –P. 337-338.

<sup>3</sup> Em.V.S. Agreement on the sale of an enterprise as a form of alienation and acquisition of a business // Legislation. 1999. No. 11. –P. 16.

<sup>4</sup> See : Uzbekistan Republic Citizenship of the code second to the part comments . Volume II . / first book / . -T .: " Economy and right world " , 1998. -B.339-341.

On the basis of this contract, an entire enterprise or a part of it as a property complex intended for production, business or commerce is leased. In this case, the intention of the owner (lessor) to give a specific enterprise or a part of it to the lessee, and in turn the lessee's agreement to rent this enterprise, is the basis for concluding the contract<sup>5</sup>.

Due to the fact that the enterprise consists of various property complexes, such relations between the parties are regulated by a number of relevant laws. In particular, the issues related to the evaluation of the enterprise are solved directly on the basis of the norms of the Law "On Evaluation Activities" along with the Civil Code, "On Rent" and other laws. Renting and using the land plot of the enterprise is carried out in accordance with the provisions of the Land Code, in addition to the Civil Code. Therefore, the focused purpose and importance of the enterprise in the field of entrepreneurship, as well as the diversity of its structural structure, cause the relationship arising from this contract to be more complicated. On the other hand, this type of property lease agreement includes conditions that clearly reflect not only the general characteristics, but also specific aspects of economic activity<sup>6</sup>.

One of the main features of the relations arising from the lease agreement of the enterprise is that the transfer of working funds (funds), which are part of the production funds (funds) that are fully consumed during the production process,<sup>7</sup> is added to the main fund under different conditions.

The lease agreement of the enterprise is a consensual, bilateral agreement, which creates mutual rights and obligations, and is concluded in exchange for a fee.

In consensual contracts, rights and obligations are concluded as soon as they are formalized in the form required by law based on the agreements of the parties and create rights and obligations for the parties.<sup>8</sup> The entry into force of the enterprise lease agreement is not related to the transfer of the leased enterprise to the lessee.<sup>9</sup> The necessity of state registration of the lease agreement does not change the nature of the agreement, but means "the process of concluding the agreement has been completed"<sup>10</sup>. The enterprise lease agreement is concluded from the moment of such registration (see Articles 84, 110, 111, 366, Part 2 of the RF FC).<sup>11</sup> Also, from the moment the

<sup>5</sup> Ruziev R.Zh. Mulk izharasi shartnomasi : Ўқув Kullanma . – T.: OzMU , 2005. 172-bet.

<sup>6</sup> Kalmykov Yu. Kh. The meaning and legal nature of the contract for the lease of enterprises // Sov. state and law, 1989, No. 3, -P.75.

<sup>7</sup> Karang : Brief economic dictionary. / Ed. by Yu. A. Belik et al. – 2nd ed., suppl. – M.: Politizdat, 1989, -P.193.

<sup>8</sup> Fuqarolik huquqi : Darslik . I qism / Mualliflar jamoasi -T.: TDYU nashriyoti , 2016. -290-bet.

<sup>9</sup> Vitryansky V.V. Lease agreement and its types: hire, time chartering, lease of buildings, structures and enterprises, leasing. (2nd edition, corrected ) - M.: "Statut", 2000. - P. 79-80.

<sup>10</sup> Kozyr O.M. Lease of real estate // Law. 2000. No. 11., - P. 69.

<sup>11</sup> Uzbekistan Republic of citizenship to the Codex Review : Professional reviews . T 2./ Uzbekistan Republic Justice ministry . - Tashkent : Bactria press , 2013. 358 pages.

contract is registered in the state register, the obligation of the lessor to transfer the property and the right of the lessee to demand the transfer of the property arise.

The lease agreement of the enterprise is a bilateral agreement like any other agreement, because both parties must agree to enter into the agreement (Article 102 of the Federal Law of the Republic of Uzbekistan).

By its very nature, a lease agreement is a contract that creates mutual rights and obligations. According to G. F. Shershenevich, "there are two relationships in such contracts, each of them has its own active and passive subjects. These relations are so closely connected that they cannot be separated from each other. In the lease agreement there are rights and obligations for each counterparty<sup>12</sup>.

From the moment the enterprise is handed over to the lessee, he has the right to own and use the leased property, as well as the obligation to pay the rent.

The movement of the lessee to pay the rent is equivalent to the movement of the lessor to hand over the enterprise for temporary use as a property complex. Thus, the lease agreement of the enterprise is a contract concluded in exchange for a fee.

Considering the important conditions of the lease agreement of the enterprise, it is necessary to clarify in which aspect the concept of "agreement" is studied in this matter, that is: an agreement - a transaction, an agreement - a document or an agreement - a legal relationship. There are two approaches in the legal literature.

The first is based on the study of the important terms of the contract - legal relations. Supporter of this approach V.V. Vitryansky bases his position on the fact that the contract-agreement is a legal fact that does not have the main content, and the contract-document cannot be the source of all the terms of the contract, because most of them are determined by the imperative and dispositive norms of the law<sup>13</sup>.

The second approach, which seems more reasonable to us, comes from the analysis of the important terms from the point of view of the contract. As the authors of this approach rightly noted, the content of the contract as a contract (agreement) is a set of conditions agreed by the parties, and the content of the contract as a legal relationship is the rights and obligations of the counterparties<sup>14</sup>.

<sup>12</sup> Shershenevich G.F. Textbook of Russian civil law: in 2 volumes. Vol. 2. - M.: Statut, 2005. -P. 75.

<sup>13</sup> Vitryansky V.V. Essential terms of the contract in domestic civil law and legal practice // Bulletin of the Supreme Arbitration Court of the Russian Federation. 2002. No. 5. - P. 139.

<sup>14</sup> Karang : Fuqarolik huquqi : Darslik . I qism / Mualliflar jamoasi -T.: TDYU nashriyoti , 2016. 288-289 betlar .; Topildiev V. Fukarolik civil law . Volume 1. Textbook. Sixth edition, revised and supplemented / Ed. by A.P. Sergeev, Yu.K. Tolstoy. - M .: OOO "TK Velbi " , 2002. - P. 588-592 .

Judging from the literal interpretation of Clause 1 of Article 364 of the Civil Code, only at the stage of concluding a contract (agreement-agreement), it is possible to distinguish their important ones by classifying the conditions. Because a civil legal relationship can be established only when an agreement is reached between the parties on all the important terms of the contract. After the conclusion of the contract, the participants of the legal relationship are equally obliged to follow the agreement between them, as well as the imperative and dispositive norms of the law that come into force when the contract is concluded, without prior consent<sup>15</sup>.

Thus, we consider the "necessary and sufficient conditions for the conclusion of the contract" to be important, and consider the essential terms of the enterprise lease agreement from a contractual point of view. According to Clause 1 of Article 580 of the Civil Code, since the enterprise lease agreement is concluded in writing, all important terms of this agreement must be determined in the form of separate provisions. That is, in our case, the contents of the contract-agreement and the contract-document correspond to each other as a set of conditions agreed by the parties.

The important terms of the enterprise lease agreement include its subject matter. The subject of this contract is the entire enterprise as a property complex used for business activities (Article 579 of the FC of the Republic of Uzbekistan). As a general rule, the lease agreement must contain information that allows the property to be transferred to the lessee to be clearly defined as the object of the lease. In the absence of this information in the contract, the terms of the leased object have not been agreed upon by the parties, and the contract is not concluded. Although the subject of the contract under consideration is not individual structural elements of the enterprise, but the entire enterprise, the terms of the subject of the contract are agreed upon only when the list of property to be transferred to the lessee is clearly indicated ( *the specific characteristics of the enterprise as a leased object will be considered in detail in the next chapter* ).

Secondly, the price of the contract is one of the important terms of the enterprise lease agreement. If the contract does not contain a condition agreed upon by the parties in writing about the rent, the lease agreement of the enterprise is considered not to have been concluded. Such a rule is established in relation to the lease agreement of a building or structure (Article 577 of the FC of the Republic of Uzbekistan), and is also applied to the lease agreement of an enterprise. Because no other procedure is specified in Chapter 34, Paragraph 5 of the Civil Code.

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<sup>15</sup>Civil Law. Volume 1. Textbook. Sixth edition, revised and supplemented / Ed. A.P. Sergeev, Yu.K. Tolstoy. - M.: OOO "TK Velbi ", 2002. - P. 591.

As a general rule, the rent is not one of the important terms of the lease agreement (Article 544 of the Federal Law of the Republic of Uzbekistan). However, the fact that the rental fee is not specified in the lease agreement agreed by the parties does not mean that the property was handed over for free, but for the performance of the contract, a fee should be paid according to the price that is usually charged for such goods, works or services in similar situations (Article 356 of the FC of the Republic of Uzbekistan). The provisions of Article 356 of the Civil Code are mainly applied to tenancy relations, the object of which is movable property, because in most cases it is not difficult to determine the property "similar" to the one specified in the contract. In cases related to the lease of real estate, especially when a complex object of civil rights, such as an enterprise, is leased, the provisions of Article 424 of the Civil Code do not apply, since it is impossible to find an object that is similar ("exactly similar") to the leased property.

The payment for the use of the leased enterprise is determined by the agreement of the parties in the form of fixed payments from time to time or in a lump sum (Part 3 of Article 544 of the Labor Code of the Republic of Uzbekistan). Payment is made in advance for each period (quarter, month). In this case, for example, the rent for the lease of public property is paid periodically (quarterly, monthly, etc.)<sup>16</sup>.

The term clause is not one of the important terms of the enterprise lease agreement, but since the purpose of the lease is to provide the property for temporary use, it is necessary to pay attention to this clause.

In accordance with the general provisions of the Civil Code on rent, the contract is concluded for the period specified in the contract (Article 540 of the FC of the Republic of Uzbekistan). The term specified in the contract may be determined by a calendar date or by the passage of time measured by years, months, weeks, days or hours, as well as by specifying an event that must inevitably occur (Article 145 of the Federal Republic of Uzbekistan).

If the term of the lease of the enterprise is not specified in the contract, the contract is concluded for an indefinite period. This gives each of the parties the right to withdraw from the contract at any time. Only the parties are required to give each other three months' prior written notice. The specified term is dispositive, that is, other terms of notice may be established by law or contract<sup>17</sup>.

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<sup>16</sup> Uzbekistan Republic of citizenship to the Codex Review : Professional reviews . T 2./ Uzbekistan Republic Justice ministry . - Tashkent : Bactria press , 2013. p. 277.

<sup>17</sup> Uzbekistan Republic of citizenship to the Codex Review : Professional reviews . T 2./ Uzbekistan Republic Justice ministry . - Tashkent : Bactria press , 2013. 268 pages.

If neither party requests to cancel the lease agreement of the enterprise concluded for an indefinite period, it can last indefinitely. However, this situation does not take into account that the lease contract of the enterprise can be indefinite, because "unlimited use through ownership of another's property remains equal to the right of ownership".<sup>18</sup> "This means that when one of the contracting parties requests to cancel it, the term of the contract ends, therefore, this term is not clearly defined in the contract, and the contracting parties leave it to themselves to determine it later"<sup>19</sup>.

As V. V. Vitryansky rightly pointed out, such a situation may not satisfy both the tenant and the lessor, taking into account the complexity of the enterprise lease agreement and the amount of expenses necessary for the execution of the established agreement<sup>20</sup>.

Leasing contracts for state-owned enterprises may be subject to a fixed term. For example, in accordance with paragraph 7 of the Regulation "On the Procedure for Leasing State Property" approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 102 dated April 8, 2009, the maximum term of state property lease is five years, for small business entities, including private medical organizations and it is ten years, with the exception of the cases provided for by law. The maximum period of leasing state property in the territory of the Technopark is ten years, with the possibility of extending this period in case of timely and full fulfillment of the obligations under previously concluded contracts of state property lease, except for the cases provided for by law<sup>21</sup>.

According to some authors, the form of the contract should also be included in the important conditions.<sup>22</sup> Part 1 of Article 364 of the Civil Code is considered as the basis of this idea. Its literal interpretation means that in order to recognize the contract as concluded, it is required not only the presence of important conditions, but also that it must be in the form prescribed by law. The above point of view is contradictory, because the failure of the parties to comply with the requirements for the form and content of the contract leads to various negative consequences: the contract may be considered invalid or, accordingly, not concluded.

In short, the important terms of the enterprise lease agreement include the subject of the agreement and the price. The subject of the contract is the entire enterprise as a property complex used for business activities. If the value of the contract is invisible in the form of rent, and it is not

<sup>18</sup>Sinaisky V.I. Russian civil law. (Classics of Russian civilistics). - M.: "Statut", -2002. - P. 388.

<sup>19</sup>Meyer D.I. Russian civil law. - M.: Statut, 1997. - P. 262.

<sup>20</sup> Vitryansky V.V. Lease agreement and its types: hire, time chartering; lease of buildings, structures and enterprises, leasing. (2nd edition, corrected) - M.: "Statut", 2000. - P. 211.

<sup>21</sup><https://lex.uz/docs/1465016>

<sup>22</sup> Karang : Fokov A.P./Yu.G. Poponov et al. Civil law. General and special parts: Textbook. - M.: KNORUS, 2005. - P. 336.



specified in the contract, the lease contract of the enterprise is not concluded. Such a rule is established in relation to the lease agreement of a building or structure ( Article 577 of the FC of the Republic of Uzbekistan), and is also applied to the lease agreement of an enterprise.