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**INTERNATIONAL LEGAL AND DOMESTIC LEASING REGULATION AT THE CURRENT STAGE
OF GOVERNMENT ADMINISTRATION IMPLEMENTATION IN THE CONDITIONS
OF SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENT**

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Abstract

Leasing is one of the most important and dynamically developing forms of investing free cash in production and a tool to stimulate the renewal of fixed assets of economic entities and progress in the scientific and technological field. With a variety of advantages, leasing activities are pervasive as a form of direct investment. However, progressive development of this type of financial transactions is possible with a competent combination of public administration with the methods of fiscal and customs policy, which inevitably brings up a problem of combining foreign economic policy and foreign policy activities of different countries. The article is devoted to the analysis of the legal regulation of leasing relations in accordance with the norms of international Convention and Russian legislation, as well as consideration of paces and features of the leasing development in the Russian Federation during 2017-2018 and identification of problems of the domestic leasing market in the context of scientific and technological progress.

Keywords

Leasing – The Ottawa Convention – Legal regulation – Scientific and technological progress

International legal and domestic leasing regulation at the current stage of government administration implementation... pág. 666

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Introduction

In the conditions of instability, which can be traced both in domestic and global economy, leasing acts as an effective tool for attracting financial resources in realization of state and municipal management¹. Competition and political tensions have reached such proportions in the world that traditional investment channels are under constant threat. For example, the United States and its allies constantly impose new sanctions (Russia is one of the main targets of their use) to solve their own economic or domestic political problems. Sanctions have become the most popular tool for competition: why should they try to reduce costs or develop technologies when it is simply possible to ban import (or sale) of competitor goods (US attempts to hinder Russian gas sales to Europe through pipeline Nord Stream-2)? Large banks that invest in projects on the territory of countries that are subject to sanctions are themselves at risk of receiving fines or other enforcement measures, so they are afraid to invest in the markets of developing countries. It should be added that China, which has become a leading global investor over the past decade (in particular, by investing heavily in the economies of African countries), is gradually reorienting itself to stimulating domestic consumption as a part of state administration of territories and municipalities. As a result, the volume of Chinese investment in other countries is decreasing.

The purpose of this paper is to analyze leasing as a long-term financing tool for realization of large-scale industrial or infrastructure projects, as well as for achieving strategic goals of state and municipal administration at the present stage of scientific and technological progress.

The following clauses are put forward as a hypothesis:

1) most Russian enterprises have an outdated equipment fleet, which is also often 100% worn out, that is unlikely to allow mass and rapid transition to two levels of economic development at a time;

2) if there is lack of working capital, leasing allows to make a deposit that meets scientific and technological challenges, without resorting to gross borrowings;

foreign leasing companies will be able to participate in the process of renovation of the domestic equipment fleet, getting financial benefits for themselves

Methods

General scientific methods were used in the paper:

- induction: to ensure stable growth rates of leasing in our country, it is necessary to take into account trends of the world leasing market,

- deduction: a hypothesis is formulated about the possibility of using leasing as a tool for strategic goals of state and municipal administration.

The paper is also based on specific scientific methods:

¹ D. R. Vakhitov, Establishment and Development of the Domestic Market of Leasing Services as a Form of Investment Activity (Moscow, 2009).

- statistical analysis: comparison and synthesis of statistical data on various countries related to global effectiveness of leasing transactions on climate change, as well as research conducted by international organizations (UN),
- formal and legal: analysis of legal documents regulating international financial leasing (UNIDROIT Convention on international financial leasing of 1988)
- comparative law: a comparative study of national law.

Analytics (Discussion)

International financial leasing is widely spread in international practice, which naturally led to the idea, and then its implementation, connected with unification of states national law in the field of leasing.

Currently, all documents governing leasing operations operate at three levels: international, regional and domestic.

The Ottawa Convention on International Financial Leasing, 1988², developed by the International Institute for the Unification of Private Law UNIDROIT, a specialized intergovernmental organization established in 1926 under the League of Nations to study necessary methods, is the most important international act on the regulation of leasing operations, modernization, harmonization and coordination of private and, in particular, commercial law between states and groups of states. It is also involved in preparation of draft Conventions. The UNIDROIT Convention on International Financial Leasing was adopted at a diplomatic conference held in Ottawa.

The main idea of the Convention, specified in the preamble, is the need to increase the demand for leasing at an interstate level.

Article 3 of the Ottawa Convention defines that the document is applicable if the lessor and the lessee reside in member countries of the Convention, or if leasing and delivery agreements of the leased item are governed by the law of one of the member countries of the Convention. However, even if there are conditions, the application of this act may be excluded if the parties have stipulated for this in their agreement.

The subject of the transaction, according to Paragraph 4, Article 1 of the Convention is any equipment, except for those used for personal, family and household purposes (Paragraph 4, Article 2 of the Convention).

The Convention suits two contracts - the purchase and sale agreement and the leasing agreement. The total amount of lease payments and the term of the agreement are adjusted to the depreciation of all or a significant part of equipment cost, which determines pretty exact terms of the agreement and sets a specific time frame for the end of payments, and the possibility of equipment purchasing.

The Convention frees the lessor from liability to the lessee for equipment safety in case of damage caused to the latter as a result of his confidence in the lessor's qualifications

² The UNIDROIT Convention on International Financial Leasing 1988. Retrieved from: https://online.zakon.kz/Document/?doc_id=1016273

and decision in choosing a supplier or equipment. The lessor is also released from liability to third parties for causing life damage, health or property of third parties by equipment operated by the lessee (Par. 1, Article 8).

As has already been mentioned, the Ottawa Convention is not applied in all cases, but only when commercial enterprises of both parties of the leasing agreement reside in different countries.

Respectively, there are two potential options for resolving the legal issue of the situation.

Firstly, if the subjects of the financial leasing agreement are residents of the countries participating in the Convention. States may be different at each stage, but the main thing is that each of them has ratified the Ottawa Convention.

Secondly, the delivery agreement and the leasing agreement may be governed by the law of a member state of the Convention. If the terms of sale and purchase agreement are subjected to the law of the state that has ratified the Convention, the Convention will be applied in any case.

Under the terms of the Ottawa Convention, financial leasing is a transaction that is accompanied by two different contracts:

- a purchase and sale agreement concluded between the lessor and the supplier that specializes in equipment required by the lessee;
- a lease agreement between the lessee and the renter (i.e. the lessor).

Since the Ottawa Convention is aimed at unifying international leasing, it has articles that specify the process: the amount of leasing payments must be calculated adjusting all depreciation or a significant part of equipment cost, that is, so that after the last payment is made, the lessee immediately will transfer the entire residual value of the leased item, and will have the opportunity to get the goods into ownership.

The provisions of the Convention on the rights and obligations of the lessee apply to all lessees, in particular, to those who purchase equipment in subleasing.

The lessee cannot damage the equipment and must hand it over in its original form. Issues related to equipment wear and its any modifications must be discussed by all the parties.

In addition to legal framework for international financial leasing, it is also necessary to develop the sphere of accounting, taxation, and economic regulation. For example, international financial reporting standards Committee (IASC) defines Common accounting principles. The Committee was founded by 16 professional accounting organizations in Australia, Canada, France, the United Germany, Mexico, Japan, England and the United States, and in 2001 the Committee was transformed into the International accounting standards Committee.

Leasing legislation has significant differences in many countries. For example, the French leasing model with an option to purchase equipment at the end of the contract is not

considered a leasing, but a lease-sale transaction in England. In the United States, an option is not considered a mandatory condition of leasing. The role of the purchase option in leasing has generally the opposite assessment: from recognizing it as a necessary and integral part of leasing to completely negating its positive value in leasing operations.

There is no unified accounting system for leased property. Anglo-American accounting system specifies recording of the object of leasing on the balance sheet of the lessee, and according to the rules in force in France and some other countries, it is recorded on the balance sheet of the leasing company.

In such conditions, either to solve numerous problems of the domestic economy, or to ensure its sustainable growth, leasing can act as a long-term financing tool, which is required for the implementation of large-scale industrial or infrastructure projects, as well as for achieving state and municipal administration strategic goals. It is evidenced by a number of conceptual documents, including the “strategy for scientific and technological development of the Russian Federation” approved by the President of Russia, as well as the State program for its implementation³. At the same time, there is a potential for high-quality growth in the volume of leasing services in the Russian Federation, moreover for several reasons.

First of all, most Russian enterprises have an outdated equipment fleet, which is also often 100% worn out. Unfortunately, Russian economy is mainly in the fourth technological order, while the world is gradually moving to the sixth. General sources of funding are not enough order to switch to two levels massively and quickly at a time.

Especially outdated equipment fleet is observed in agricultural production. For example, results of researches show that over the past 10 years there has been a significant decrease in energy supply (about 1/2) with an increase in the level of average monthly wages in the range of 3.8-4.5 times⁴ in agricultural formations of the South-Eastern natural economic zone of Tatarstan in the context of administrative districts. Although it is leasing that acts as a factor in stimulating economic growth in general⁵, and innovation in particular⁶.

Secondly, domestic enterprises lack working capital, so leasing allows them to replenish it without resorting to high-scale borrowings⁷.

³ The Strategy of Scientific and Technological Development of the Russian Federation: approved by the Decree of the President of the Russian Federation No. 642 of December 1, 2016. - Published in: Collection of Legislation of the Russian Federation of 2016, No. 49, art. 6887; Order of the Government of the Russian Federation of March 29, 2019 No. 377 «About approval of the state program of the Russian Federation "Scientific technology development of the Russian Federation"» - Published in: Collection of Legislation of the Russian Federation of 2019, No. 15 (part 3), art. 1750.

⁴ I. N. Safiullin; F. N. Avkhadiev y L. G. Ibragimov, Placement of Production - a Factor of Ensuring Food Security of the Country. Proceedings of the International scientific and practical conference «The Role of Socio-economic Science in Ensuring Food Security of the Country» (pp.124-126). (Kazan: Publishing house of Kazan State University, 2018).

⁵ D. R. Vakhitov y A. Zamaletdinov, “Leasing as a Factor of Economic Growth”, *Procedia Economics and Finance* num 23 (2015): 839–845.

⁶ D. R. Vakhitov; A. Zamaletdinov; N. Gabdullin y T. Kondratyeva, “Innovative Systems Influence on the Economic Growth of the Volga Federal District of the Russian Federation”, *Procedia Economics and Finance* num 24 (2015): 237–245.

⁷ D. R. Vakhitov, *Formation and Development of the Domestic Market of Leasing Services as a Form of Investment Activity* (Moscow, 2009).

Thirdly, Russian economy, despite the sanctions, is a part of global economic system, which means that foreign leasing companies will be able to participate in the renovation of the domestic equipment fleet, gaining financial benefits for themselves.

International financial leasing is classified by customs authorities as a risk group, i.e. transactions that may lead to non-payment of customs payments, which indicates that fiscal authorities are paying a more focused attention to the participants in foreign economic activities involved in such projects.

However, positive aspects inherent in leasing are much greater than negative ones, and historical experience of leasing development in many countries confirms its important role in updating production, expanding sales and activating investment activities. Leasing becomes especially attractive with the introduction of tax and depreciation incentives. Moreover, the scope of leasing operations is constantly expanding, adapting to current problems of our time, such as climate change on the planet⁸.

Results

Analysis of statistical data related to Russia shows, and the above mentioned reasons prove it, that leasing in our country is growing faster than the entire economy as a whole. If in the period 2017-2018, the growth rate of the Russian economy did not exceed 2% per year, the volume of domestic leasing business increased by 48% only in 2017, and in 2018 exceeded the mark of 20%⁹. Traditionally, growth leaders are railway segment and auto leasing. However, if in the first case the growth factor is the investment program of the natural monopoly of JSC “Russian Railways”, in the second – the growth of the income level of the population and entrepreneurs who can afford to buy new vehicles either for personal purposes or for business. The increase in leasing transactions in railway transport is also due to the fact that huge fleet of cars is aging, being disposed, which means that demand for new cars remains. At the same time, JSC “Russian Railways” is still the main carrier (among all types of transport) of goods within the country, therefore, the level of technical equipment of this company depends on the growth rates of other economy sectors, and the rates for goods and services.

In auto leasing in 2017-2018, the growth rate of freight transport leasing exceeded the same indicators for personal vehicles (+211% vs. +158%)¹⁰. This interest in commercial vehicles can be explained by the implementation of a number of major infrastructure projects in the country, support for the construction industry at both federal and regional levels, as well as relatively affordable (compared to the 90s and the beginning of the 21st cent.) mortgage rates. Together, these measures have contributed to the growth of the construction industry, which has traditionally been one of the main consumers of trucks. At the same time, the situation, for example, in retail trade, which actually records stagnation during this period of time, does not allow us to hope that the growth rate of auto leasing in the near future will be high due to the growth of income of the population. Thus, growth in

⁸ D. R. Vakhitov; T. N. Grinevetskaya; Y. V. Samovich; M. R. Magdeeva y L. V. Gusarova, “Climate Change Influenced by Technologies: Legal, Social and Economic Implications”, *International Journal of Recent Technology and Engineering* Vol: 8 num 2 (2019): 4667-4672.

⁹ RA Expert. 2017 Leasing Market: Upward Movement. Retrieved from: www.raexpert.ru/researches/leasing/2017

¹⁰ RA Expert. 2017 Leasing Market: Upward Movement. Retrieved from: www.raexpert.ru/researches/leasing/2017

the automotive segment is mainly supported by the state investment program. In future, the capacity of both federal and municipal budgets is unlikely to increase dramatically, so it will be difficult to maintain investment at such a high level, therefore, further growth of car leasing will not be so rapid. In 2018, the growth rate of car leasing remained at a high level (no more than 40%)¹¹ due to gradual reduction in rates on bank loans. What is more, traditional prevalence of cargo segment in the Russian market is also explained by the fact that car leasing for individuals in Russia is less developed than in North America and Europe. Therefore, citizens of our country, wishing to buy a car, either accumulate the necessary amount on their own, or use numerous bank loan options, but do not apply to leasing companies. The key consumer of passenger cars under leasing schemes are taxi companies, but trends in the development of scientific and technological progress in the field of unmanned vehicles in the near future may change the situation with car leasing radically.

Unfortunately, trends in other segments of domestic leasing are not so optimistic as with rail and road transport. As has been noted above, railway leasing receives financial support from the state monopoly of JSC "Russian Railways", and in the segment of motor transport, especially cargo, there is a state program for subsidizing vehicles purchase. In other industries, there are no such strong state investment incentives, although, for example, very large amounts of money are invested in agriculture, both public and private. Economic growth observed in construction and agriculture should increase the volume of new leasing transactions in these sectors, but the government needs a well-thought-out policy to encourage participants of leasing market. In the meantime, the terms of leasing transactions are being tightened, not relaxed: VAT rate has increased, and Central Bank's rate has also increased. In this situation, further rapid growth in the volume of leasing business looks too optimistic.

Business support in the form of government programs has become a means of survival of leasing companies during the funding crisis, which is confirmed by a study of Rosstat on factors that negatively affect leasing activities development in Russia. In 2017, 73.9% of the studied lessors identified this indicator of commercial credit as the most influential factor in market development.

With increasing competition on world markets, as well as sanctions policy towards Russia, the issue of import substitution is transferred from the category of theoretical disputes to the task of ensuring national security. In our opinion, strategic sectors that are important for the country's future include aircraft manufacturing, pharmaceuticals, manufacturing of components, and machine tool construction, which require large-scale reconstruction and equipment fleet updating. It is very difficult to perform this in a short period of time, in conditions of financial resources lack, and leasing can act as a "lifesaver". If we do not administer priority, accelerated development of these industries, Russia will not only lose its not numerous competitive advantages, but also lose the prospects of catching up developed countries in switching of our civilization to the sixth technological order.

Conclusion

Analysis of the rating of leading domestic leasing companies shows that the role of the state remains dominant. The top three leaders are "State Transport Leasing Company", "Sberbank Leasing" and "VTB Leasing", provided that only they had the volume of new

¹¹ Leasing.ru. Analysis of the car leasing market in 2018. Retrieved from: www.leasing.ru/about/leasing-auto-2018

business that exceeded the mark of 100 million rubles (214, 196 and 158 million rubles, respectively) in 2018¹². “LC “Europlan” that is at the fourth place, this figure is only 73 million rubles. Thus, without active state participation, especially direct financing of leasing transactions, it is difficult to maintain high growth rates of this business in our country: non-state companies are small in volume, and foreign lessors are reluctant to introduce themselves to the domestic market for various reasons. At the same time, 2018, as a whole, was successful for Russian companies, a lot of them demonstrated impressive growth rates of new business (for example, Alfa Leasing - 107.2%, and REGION Leasing – so much as 235.2%)¹³. However, in our opinion, it is not necessary to be deceived by these figures, since in Russia leasing, unfortunately, still does not play the role that can be seen in the economies of developed countries in North America and Europe.

Therefore, in future, to ensure stable (and high) growth rates of leasing in our country, it is necessary to take into account the trends in the world leasing market that can be identified at this time.

First of all, monetary policy, which is the main instrument of macroeconomic regulation in developed countries, implies constant security in economy. As a result, competition between lenders is ensured, which is a positive factor for leasing companies, since it allows them to attract credit resources at a low rate. This trend is not applicable for domestic market: Western countries have imposed a whole range of sanctions against the Russian Federation, including financial sphere.

Secondly, among lessors (especially small ones), there is a tendency to narrow specialization, which provides conditions for a deep study of the market and the best satisfaction of lessors' needs.

Thirdly, leasing firms, as in any other economic sphere, strive for consolidation and expansion assets volume. As a result of such mergers and acquisitions, it is possible to finance high-scale leasing projects (for example, in infrastructure programs). Traditionally, the largest leasing companies are concentrated in the United States of America. For Russia, such processes are not new, but the scale of domestic leasing companies is much inferior to foreign competitors.

Fourthly, small banks that have previously shown no interest in leasing start to play an important role, but are currently seeking to open their own leasing business or acquire an existing leasing company. This allows for business diversification.

Fifthly, it is necessary to take into account the acceleration of scientific and technological progress in the transition to the sixth technological order, which results in a faster moral rather than physical equipment obsolescence. As a result, priority is given to operational leasing over financial leasing. The trend is clearly visible in the production of computer equipment, medical equipment, communication devices, etc¹⁴. Such rapid

¹² All-leasing. Expert RA: the leasing market in 2018 reached 1.3 trillion rubles. Retrieved from: www.all-leasing.ru/news/detail/1032683/

¹³ All-leasing. Expert RA: the leasing market in 2018 reached 1.3 trillion rubles. Retrieved from: www.all-leasing.ru/news/detail/1032683/

¹⁴ Y. Leheza; M. Savielieva y O. Dzhafarova, “Structural and Legal Analysis of Scientific Activity Regulation in Developed Countries”, *Baltic Journal of Economic Studies* Vol: 4 num 3 (2018): 147-157.

changes require adjustments to the existing education system, which should not be limited only to the priority of interactive forms of education¹⁵.

Sixthly, securitization of transactions continues to gain popularity. It allows firms to reduce cost of leasing transactions, increase investment volumes, and optimize taxation. Moreover, securitization is actively engaged in captive insurance company formed by the producers of leasing assets. Thanks to securitization mechanism, risks are reduced, that has a beneficial effect on the growth rate of the global leasing market.

It is impossible to ignore the above trends if the country does not want to be behind in leasing development growth rate, and, consequently, in terms of technological equipment, at the same time it is necessary to take into account the specifics of national economy when developing specific tools for managing leasing activities at federal and municipal levels. In General, leasing situation in 2017-2018, in our opinion, can be estimated from a positive point of view, but the development vector should be shifted towards supporting Russian manufacturers of equipment and machinery.

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¹⁵ S. Freemana; S. L. Eddy; M. McDonough; M. K. Smith; N. Okoroafor; H. Jordt y M. P. Wenderoth, "Active learning increases student performance in science, engineering, and mathematics", Proceedings of the National Academy of United States of America Vol: 111 num 23 (2014): 8410-8415.

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