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SECTION 32. Law

LEASE OF THE AGRICULTURAL LANDS IN THE REPUBLIC OF TAJIKISTAN

Abstract: *This article considers aspects related to lease of the agricultural lands in the Republic of Tajikistan. The basic features of lease contracts for agricultural lands have been studied in the article, as well as the main requirements and conditions of such lease contracts.*

Key words: *lease of land, land use rights, agricultural land, land user, lessee, landlord.*

Language: *English*

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Introduction

Lease of agricultural lands

Lease regulations in the Republic of Tajikistan provided by the Law of the Republic of Tajikistan «On Lease», Civil Code and other legislative acts of the Republic of Tajikistan.

Land lease represents a contractual fixed-term possession and use of land, other natural resources, enterprises (associations) and other properties, as well as properties required to the lessee to independently carry out economic or other activities [1,1].

Land lease is the provision of any property, in our case a land plot, for temporary use for a fee based on a lease agreement. This is one of the most widespread and most effective forms of land use in Tajikistan.

Materials and Methods

Land plot is the only truly immovable property, because the remaining items categorized as real estate considered as such because of the close relationship to land. The analysis of Article 24 of Civil Code of Republic of Kyrgyzstan reveals that land is the basis of «real estate». Land plot represents primary and principal element of real estate, whereas all other types of properties are categorized as property because of close link to land. Nasbekova S. K highlights universal characteristics of land plot as follows: land plot – is a part of soil surface; each plot has certain basic characteristics; land – complex, structured reality object, including surface ground,

water items, forest and other; possess of special identifying characteristics; has separability characteristics; considered as immovable property and can be in circulation.

The above-mentioned characteristics of land plot are universal, common for each land plot and in general not only uniqueness being applied, but also possibility for circulation. However, a land plot has other characteristics: specific purpose, non-consumption, indispensability, due to special identification signs a land plot can be attributed to the individually-specific item, uniqueness, inseparability with the Earth. [2,47].

Tenants may be physical and legal persons of the Republic of Tajikistan, joint ventures, international associations and organizations including participation of local and foreign legal entities, as well as foreign countries, international organizations, foreign legal entities and individuals.

Land users can transfer land plots on lease. The land lease agreements are concluded without changing the purpose of land plot.

Land plots are leased for a period of up to 20 years. The land user's relations related to lease of land plots are carried out in accordance with the legislation of the Republic of Tajikistan (art. 14 of Land Code of the RT).

In accordance with Article 7 of the Law of the Republic of Tajikistan «On Lease», the main document regulating the relationship of the lessor with the lessee is the lease agreement. It is based on the principles of voluntariness and full equality of the



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parties. The land lease agreement represents: a description of the land plot and the price of the transferred land use rights, amount of rent, the terms of the lease, description of the rights and obligations of the parties, the responsibility of the lessee for the provision of rent payment in due time, the return of the land to the lessor after expiry of the lease agreement.

Lipski S.A. underlined, that using of land plots based on the lease agreement is one of the progressive ways of social production, which provides not only the right to land, but also the effective, rational use of land [2, 10-14].

General requirements on the conclusion of lease transactions are specified under Chapter 33 of the Civil Code of the Republic of Tajikistan and basic principles of lease agreements related to land plots specified under Art. 14 of the Land Code of the RT.

Lease - is the provision of any property for temporary use for a fee based on lease agreement. The civil law contains general provisions on lease. Articles of Chapter 33 of the Civil Code of RT regulate the most important provisions related to the concept of the lease agreement, its form and conditions, etc. Land lease in the Republic of Tajikistan is regulated by special regulations of the current land legislation, as well as the Civil Code of the Republic of Tajikistan. Lease of land plots relations are defined according to the lease agreement.

The Article 624 of the Civil Code of the Republic of Tajikistan formulates the concept of a lease agreement, where under a lease (property lease) contract, the lessor (lessor) undertakes to provide the lessee (the tenant) with property for temporary possession and use. Based on the Article 626 of the Civil Code of the Republic of Tajikistan, land plots may be the subject of a lease agreement. The analysis of the Land Code of the Republic of Tajikistan, the Civil Code of the Republic of Tajikistan and the Law of RT "On Lease" shows that the main conditions of the lease of agricultural land are:

- Term of lease - the right, period of validity, defined in the contract;
- Fee paying, i.e. compensation of lease relations, included in the lease, paid by the lessee to the lessor;
- Return, i.e. at the end of the lease agreement, leased property - the land plot is subject of return to the lessor, i.e. primary land user.

According to the Land Code of the RT short-term lease up to 3 years and long-term lease up to 20 years are established. (Article 13 of the Land Code of the RT).

Foreign citizens and foreign legal entities can receive land plots for a period of up to 50 years. However, land plots for agricultural purposes and protected territories cannot be provided to foreign

citizens and foreign legal entities (Article 25 of the Land Code of the Republic of Tajikistan).

The main difference between circulation ability of land from circulation ability of other items of civil rights is that the land legislation, when considering the socio-economic and natural value land, sets land disposal restrictions. The law contains restrictions related to, for example, agricultural lands, as well as the rights on land of foreign nationals, due to objective or subjective reason, the conclusion of a transaction, by direct prohibition, specified in the legislation, is not possible [4, 245].

The lessee of a land plot has the right, with the consent of the lessor, to transfer the leased land plot to a sublease within the term of the lease agreement of the land plot. All rights of tenants of land plots are regulated by the Land Code of the Republic of Tajikistan and the Law of the Republic of Tajikistan "On state registration of immovable property and rights to it".

The lease agreement should clearly indicate the location of the land plot, its designated purpose, borders, cadastral number and other characteristics that allow to establish precisely the identification of the relevant land plot.

This information is an essential condition of the contract, in the case of absence of such terms and conditions, the contract is recognized as invalid.

Let's give an example from a court practice. The land plot was allocated and was in use by the Collective Farm «Saodat» on the basis of the Decision of Spitamen district on June 17, 2003. Collective Farm «Saodat» is a primary land user, which was created based on Productive Cooperative «A. Boboev» of the Spitamen district. Productive Cooperative «A. Boboev» transferred a land plot of the Collective Farm «Saodat» for lease to citizen Yuldoshev E. Collective Farm «Saodat» submitted a claim to the Economical Court of Sughd region «On recognizing as invalid the lease agreement, concluded among the Productive Cooperative «A. Boboev» and physical person - Yuldoshev E. ». According to the Decision of the Economical Court of Sughd region from March 10, 2006 the claim was satisfied [3].

The analysis of Civil Code, reality and jurisprudence, as well as an in-depth theoretical study allows to define the main objective of Civil Code, which are qualitative improvement of the business climate. To do so, it is necessary apply changes and additions to the Civil Code, to fill obvious gaps, which create the possibility of non-compliance with the rule of law in business environment [6, 154].

The above case analysis showed that a court correctly established the facts of the case, from which it follows that the disputed land belonged to another subject of law, but the Chairman of the production cooperative «A. Boboev» of Spitamen

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region, which already had no right to this land, concluded a lease of land, which had been declared invalid.

F.M. Rayanova indicated that the contract of property hiring mediates only the relationship over property in the ordinary civil turnover. However, the limits of the lease contract should be recognized much broader, since it is used not only relating to property but also land relations, and has as its goal primarily the mediation of land relations [4,9].

O.I. Krassov, B.F. Erofeev pointed out that the lease of natural resources has characteristics that are not inherent in the civil law contract of property leasing, which indicates the land-legal nature of the land lease agreement, since its legal basis is the normative acts of land legislation [5,4].

U. G. Jarikov notes that the lease of land is one of the main types of temporary use of land. Since he indicates that the fullness and certainty of his rights the tenant stands above the average user who received agricultural land from the state based on an administrative-legal act. From these positions, the rent of land relations is a higher level of legal culture in comparison with unconditional «land use» [6,21].

According to the Article 14 of the Land Code of the Republic of Tajikistan from December 13, 1996, No. 326, agricultural land plots can be leased to individuals and legal entities for up to 20 years.

According to the Law of RT «On Lease» from December 6, 1990, when concluding an agreement on the lease of land, the condition for carrying out scientifically justified rotations should be provided by tenants. In this regard, the minimum lease term for land cannot be one rotation of crop rotation fields.

The land plot can be leased out for agricultural use and production of agricultural products within the timeframe determined by the actual legislation of Republic of Tajikistan.

According to the Article 14 of the Land Code of the RT, the lease of a land plot can be concluded for a period not exceeding 20 years. This article of the Land Code of the RT provides economic incentives for the tenant.

L.M. Akhmetshina notes that for the rational use of agricultural land, it is necessary to establish maximum terms of leasing depending on the category of land and their uses, as well as additional minimum periods for the use of governmental lands (depending on the region) - on average not less than 25 years [7, 19].

The lease contract for the land plot is concluded in written form and is subject to mandatory state registration.

V.V. Vitryansky points out that the legal regime for the lease of land is almost the most liberal in comparison with the lease of any other objects, including movable property. Unlike any other tenant under any lease agreement, the tenant of the land plot

was given an opportunity to practice freely, at its discretion, to dispose of the right to lease land. Not entitled to transfer its rights and obligations under a lease agreement of a land plot to sublease, give lease rights as collateral, deposit it as a contribution to the charter capital of a business partnership or a company or a share contribution to a production cooperative. Moreover, such a disposal of the tenant's right to lease the land plot, unlike the general provisions on the tenant's powers, is carried out by the land tenant without the owner's consent, but only on condition of its notification [8,55-58]. The peculiarity of leasing agricultural land places special demands on the rights and obligations of the parties to the lease agreement. Of importance are the tenant's responsibilities for the rational use of the land plot. Control over the activities of the lessee is carried out, first of all, by state authorities. The control of the primary land user with the right to alienate or without the right to alienate the tenant's activities should be carried out within the framework of non-interference in the economic activities of the lessee.

V.E. Churkin notes that the tenant of agricultural land should have no right to sublease the land. The purpose of agricultural land is to meet the population's needs for agricultural products. A sublease permit will lead to the formation of a class of intermediaries who will lease agricultural land not for production of agricultural products, but for subsequent subletting. This will primarily affect the value of agricultural products. After all, the subtenant to cover the increased payment for the use of land will accordingly increase the cost of agricultural products. As a result, the population of large cities will suffer, which is the main consumer of agricultural products. If the lessee loses the opportunity to conduct agricultural production in the course of his labor activity, then he has the right to notify the tenant of this and terminate the rent relations ahead of schedule, instead of renting out the land to sublease [9, 17].

The lease of the land plot is terminated in accordance with the procedure provided for by civil law. In general, contracts for lease of agricultural land terminate with the expiration of the term of such a contract and when using land not for its intended purpose. The Lessor has the right to demand early termination of the contract after sending a written notification to the lessee about the need to fulfill the obligation within a reasonable time (art.640 of the Civil Code of the RT).

In addition, according to art.37 of the Land Code of the Republic of Tajikistan, the lease of a land plot for agricultural purposes may be terminated at the initiative of the lessor in the event of: the use of the land plot not in accordance with its designated purpose; not eliminated the committed intentional land infringement, expressed in pollution, damage or destruction of the fertile soil layer of the use of the

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land area in ways that lead to a decrease in soil fertility, their chemical, radioactive and other pollution, deterioration of the ecological situation; do not use the land plot intended for agricultural production for three years; withdrawal of land for government or public needs.

According to A.S. Yarmolenko, and E.A. Vasilieva, lease of agricultural land is the most acceptable and regulated way of using land, so in modern Russian conditions it should be given preference before selling. Since when renting agricultural land, more strict control over its use is possible, the transition from a less economic entity to a more economic one. Lessee in the process of using land is easier to determine the size of land use. Perhaps, to optimize the lease of agricultural land, it would be worthwhile to reduce lease rates [10, 35].

The analysis of article 14 of Land Code of the RT, articles 624-642 of the Civil Code of the Republic of Tajikistan and the provisions of the Law of RT "On Lease" shows that the main sign of the lease contract for a land plot for agricultural purpose is its compensated nature, that is, the lessee must pay lease fee when using the land plot. It can be determined by the parties in the form of a fixed amount of money, in the form of a certain number of agricultural products received during the use of the leased land. The amount, terms and terms of entering a lease payment for a land plot of agricultural purpose shall be established by an agreement.

The legislator clearly delineates the legal consequences of the lease of land plots for a period of up to one and more than one year. So, the lease or sublease agreement of a land plot concluded for a period of more than one year is subject to state registration (Article 8 of the Law of RT "On State Registration of Immovable Property and Rights to It"). In this case, the legislator extended the rule applicable to buildings, structures and structures to agricultural land. It should be kept in mind that according to Article 20 Land Code of the RT, a lease can be transferred to a third party only with the consent of the lessor.

Under the contract of property lease rent lessor undertakes to provide the tenant with property for a fee in temporary possession and use or for use (art.624 of the Civil Code of the RT). Lease of a land plot as a form of legal regulation of the turnover of rights to agricultural land is contractual and has the following features:

➤ the term of the lease, the term of which cannot be more than 20 years and attempts to increase this period are suppressed by law, because according to the Land Code of the RT, the maximum lease period is indicated 20 years.

➤ the tenant does not acquire the title of the primary land user for the leased land, which means that the agricultural land, being leased from a citizen

or an agricultural enterprise, continues to remain with the primary land user.

This form of turnover of rights to agricultural land cannot guarantee the preservation and improvement of the fertility of agricultural soils, since the tenant, unlike the primary land user with the right to alienate and without the right to alienate the agricultural land, is a temporary user and is not interested in radical improvement of leased land.

Therefore, the law provides for a preferential right to renew lease relations only to the lessee who duly fulfilled his contractual obligations (Part 1, Article 642 of the Civil Code of the RT).

As for the parties of the lease agreement, the civil and land legislation does not establish any requirements for the tenant: they can be any individual or legal entity.

Articles 686 - 692 of the Civil Code of the Republic of Tajikistan, provide for the requirements and terms of the lease of agricultural land.

Under the lease of land, the landlord undertakes to transfer the land to the lessee for temporary use, and the lessee undertakes to use them for the purpose and pay the rent.

The lease of agricultural land is subject to the rules of the lease agreement, unless otherwise provided by the contract or law.

The land can be leased by the relevant executive authorities and the land supervisory authorities in accordance with the Land Code and the Law of the Republic of Tajikistan "On Subsoil".

Secondary land users have the right to independently transfer the land plot for lease in accordance with the Land Code of the Republic of Tajikistan.

Tenants are physical and legal persons of the Republic of Tajikistan, foreign legal entities and individuals, joint ventures, international organizations and foreign countries.

The land lease agreement must be concluded in written form.

The minimum term of the land lease contract cannot be less than one rotation of crop rotation fields.

The lessor is obliged to transfer to the lessee the land of agricultural purpose in a condition suitable for the appointment stipulated by the contract.

The Lessor is obliged to implement measures aimed at creating the necessary conditions for the effective use of leased land (water supply, measures to improve soil fertility, laying and repair of roads, etc.).

The Lessor is obliged to reimburse the necessary expenses incurred by him on the leased land, as well as other necessary expenses incurred with the consent of the lessee.

The Lessor is obliged to reimburse the necessary expenses to the lessee caused by the early

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termination of the land lease contract at the request of the lessee, including the cost of the harvest not yet harvested.

The lessee is obliged:

use the land for its intended purpose;

not to leave land unused;

carry out measures to improve the state of the land.

Make a timely payment of the lease fee.

At the end of the lease, return the land in good condition.

The tenant of the land is entitled to compensation for the cost of the improvements made with the consent of the lessor or the leased land necessary for the normal use.

Upon expiration of the contract, the lessee has the right to renew the contract. In the absence of an application by one of the parties to terminate or amend the contract at the end of the term, it is considered extended on the terms and conditions stipulated in the contract.

In accordance with Part 2 of Article 188 of the Civil Code of the Republic of Tajikistan, notarization of transactions is required:

a) in the cases specified in the law,

b) at the request of either party.

Even if Civil Code of the Republic of Tajikistan does not require certify by state notaries of the land lease contract, but according to clause «b» of Article 188 of the Civil Code of the Republic of Tajikistan, on the request of any of the parties, this type of transaction must be notarized.

In the Instruction on the procedure for notarial acts by state notaries of notary public offices of the Republic of Tajikistan approved by the Decree of the Minister of Justice of the Republic of Tajikistan dated January 13, 2015 No. 7 «a», Chapter 5 provides for the certification of contracts for the rental (lease) of property.

According to paragraph 94 of this Instruction, when certifying the contract of lease (rent) of

immovable property, the notary is presented with title documents for immovable property leased, which confirms the ownership of the lessor. In notary office there copies of the title documents should be kept. When certifying the contract of lease (rent) of immovable property by notary other than the above documents, they must submit a technical inventory certificate or an extract from the state registration register. The contract specifies the period, procedure and terms of payment of the amount of lease (rent), which determine the parties to the contract.

In accordance with clause 6 of Article 10 of the Land Code of the Republic of Tajikistan, land plot, the right of use, which was received (acquired) with the right of alienation by the land user - an individual during his marriage, the provisions on joint ownership of spouses are established, established by civil and family law.

A similar requirement is provided by the civil legislation of the Republic of Tajikistan. According to Article 304 of Part 1 of the Civil Code of the Republic of Tajikistan, if the right to use the land plot of the spouse was acquired during marriage, this right to use the land plot is their joint property, unless another regime of this property is established by the law or the contract between them.

Conclusion

In this regard, according to paragraph 95 of this Instruction, if the individual's right to use the land plot is leased by him during the marriage period jointly by spouses, then, in accordance with clause 3, Article 35 of the Family Code of the Republic of Tajikistan for the lease of the land plot the notarized consent of the other spouse is required. In this agreement, certain conditions can be stipulated that the spouse considers necessary to include in the contract. In the latter case, the notary must verify compliance with these conditions.

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