

**THE HISTORY OF LEASING CONTRACT**  
**EL CONTRATO DE HISTORIA DE ARRENDAMIENTO**

(Recibido el 26-05-2018. Aprobado el 19-07-2018)

**Nataliya E. Kovalenko**  
**Altai State University,**  
*Associate professor, PhD in Law,*  
*Department of Labor, Environmental*  
*Law and Civil Procedure, Law*  
*Institute Barnaul, Russian*  
*Federation.*  
*Kovalenko1288@mail.ru*

**PhD. Kseniya E. Kovalenko**  
**Ural State Law University,**  
*Ekaterinburg, Russian Federation*  
*ashipova@mail.ru*

**Abstract.** The article is devoted to the study of the history of the concept of leasing. Analyzed legal nature of the leasing contract. This article considers the legal regulation of the leasing agreement, including aircraft leasing. Under the leasing agreement, the lessor undertakes to acquire the property of the lessee specified by the lessee from the seller's seller and to lease it to the lessee for business purposes for a fee. The leasing agreement may provide that the choice of the seller and the acquired property is carried out by the lessor. Then the lessor, on the basis of a contract of sale, acquires property that becomes the subject of leasing. After this, leasing relations arise between the parties to the lease - the acquired property is transferred to the lessee for temporary possession and use. It must be borne in mind that the seller of property cannot be both a lessor at the same time, and a lessor as a seller of property. Meanwhile, an organization within the same leasing legal relationship can simultaneously act as a seller and a lessee.

**Keywords.** Leasing, airborne vehicles, property, contract.

## 1. INTRODUCTION

The term "leasing" comes from the English verb "to lease" - "to hire". "Leasing" in literal translation means giving or taking on the basis of a contract. In Belgium, there is a slightly different interpretation: "location - financment" - "contract of property hiring" or "hiring-financing", as well as "leasing". In German, "Mietvertrag kredit" is sometimes used to refer to a leasing agreement.

Some authors attributed the term "leasing" to the economic lexicon to the operations of the Bell telephone company, whose management in 1877 decided not to sell telephone sets, but to lease them.

The history of the appearance of a leasing agreement is ambiguously interpreted in the legal and economic literature. For example, some scholars claim that the mention of leasing is found in the Laws of Hammurabi (1792-1750 B.C.), Institutions of Justinian (483-565). They refer to leasing as property lease, any complex of property relations, connected with possession of a thing on a different right, rather than the right of ownership.

According to another point of view, the leasing agreement as such appeared in the US in the middle of the 19th century and found its spread in the West by the middle of the 20th century. Thus, Yu.I. Svyados wrote: "Originating initially in the US in the middle of the last century, since the late 50's, this contract has become widespread in business practice firms in Western Europe and Japan, and is currently used in almost all countries. Leasing found recognition in the jurisprudence of many countries that do not have special legislative regulation (USA, FRG, Japan, etc.). In some countries special regulations on leasing relations have been issued (France - Act of 2 July 1966, England - leasing and selling law of 1965).

In studies on leasing development, it is usually noted that the development of rail transport has been the impetus for the widespread use of leasing in the United States and Western Europe. Railway companies, trying to avoid burdensome expenses, sought to acquire locomotives, wagons and other vehicles not in ownership (under sales contracts), but only for use. In this regard, at the initial stage in the United States, the design of the trust was applied, when trust companies acquired the appropriate vehicles and then transferred them to the use of railway companies. Then the investment system changed. Financial companies began to purchase

vehicles and other equipment from a certain manufacturer at the request of transport organizations with the transfer of the latter to the lease. In the early 50-ies of the 19th century in the United States a mass transfer was acquired on the basis of leasing to operating organizations of technological equipment, machinery, ships, aircraft, etc. By the same time, the emergence of specialized leasing companies.

In Spain, the main regulatory act governing leasing relationships is the Law of July 29, 1988 on the regulation of a loan that refers to leases of financial leases registered leases of real estate acquired by the lessor in accordance with the instructions of the lessee, in which the latter is granted the right to purchase leased property by end of the contract for the agreed price.

The Civil Code of Quebec, which is the newest codification of civil law (entered into force in January 1994), considers the leasing agreement as an independent type of civil law contract and devotes a special chapter to it (Chapter 3 "On Leasing", Article 1842-1850). The essence of it is as follows: the lessor provides movable property to the disposal of the lessee for a certain period of time for a fee; the lessor acquires property that is the subject of leasing from a third party upon demand and in accordance with the instructions of the lessee; The leasing agreement can be concluded only for business purposes.

Leasing is also used in the international sphere. A variation of leasing, for example, are "double din" deals. Their meaning lies in the combination of tax benefits in two or more countries. For example, in the early 80-ies of the 20 century, the acquisition of aircraft was credited with a "double din" between the United States and Great Britain. The benefits of tax benefits in the UK are greater if the landlord has the right of ownership, and in the United States - if the landlord has only the right to own. A leasing company in the UK buys a plane, leases it to an American leasing company, and it, in turn, - to local airlines.

## 2. LEGAL REGULATIONS OF LEASING IN RUSSIA

The beginning of the modern development of leasing operations on the domestic market can be attributed to 1988 - 1989, in connection with the introduction of leasing forms of management. This was facilitated by the adopted Fundamentals of Legislation of the USSR and the Union Republics

on the lease of November 23, 1989 No. 810-1 and the letter of the State Bank of the USSR of February 16, 1990 No. 270 "On the Chart of Accounts." The emergence of a network of commercial banks facilitated the introduction of leasing operations into banking practice. So, in 1988, a joint Soviet-Finnish leasing joint venture "Arendmash" was established to rent out construction equipment to foreign firms operating in the USSR.

An attempt to formulate the international concept of leasing and systematize knowledge about it was implemented in the Convention on International Financial Leasing (hereinafter referred to as the Unidroit Convention), signed in Ottawa on May 28, 1998 (Russia acceded to the Convention in February 1998). This Convention establishes three main features inherent in any transaction of financial leasing. In this regard, we consider it expedient to characterize these features, to make a comparative analysis of the norms of the Unidroit Convention and the Civil Code of the Russian Federation:

1) According to the Unidroit Convention, the lessor himself determines the equipment and determines the supplier, not relying on the experience and judgments of the lessor. This feature was reflected in Art.665 of the Civil Code of the Russian Federation, where it is said: "... the lessor undertakes to acquire the property indicated by the lessee from the seller specified by the lessee."

2) The equipment is acquired by the lessor in connection with the leasing agreement, which, with the knowledge of the supplier, is concluded or must be concluded between the lessor and the lessee. In accordance with Article 677 of the Civil Code, "the lessor, when acquiring property for the lessee, must warn the seller that the property is intended for transferring it to a certain person". Proceeding from the foregoing it follows that the Civil Code of the Russian Federation expressed a clearer position on this issue: the acquisition of the leasing subject by the lessor is carried out only after the conclusion of the contract, in fulfillment of the obligations taken.

3) Periodic payments payable under a leasing agreement are calculated taking into account the amortization of all or a significant part of the cost of the equipment. There is no similar norm in the Civil Code of the Russian Federation.

As for the beginning of the legal regulation of leasing in Russia, this issue relates to the adoption of Presidential Decree of September 17, 1994, No. 1929 "On the development of financial leasing in investment activities." In the Decree, a definition of leasing was defined as a type of entrepreneurial

activity aimed at investing temporarily free or attracted financial resources into property transferred under the contract to individuals and legal entities for a certain period of time. By the mentioned normative act the Government of the Russian Federation was entrusted to develop and approve the Provisional Regulation on leasing. This Regulation was approved by the resolution of June 29, 1995, No. 633 "On the Development of Leasing in Investment Activities". It partially eliminated the shortcomings. In particular, leasing was considered as "a kind of entrepreneurial activity aimed at investing temporarily free or attracted financial means when, under a finance lease agreement, the lessor (lessor) undertakes to acquire the property contracted by the seller from a certain seller and provide this property to the lessee (the lessee) for a fee for temporary use for business purposes "(item 1). From this definition it is evident that leasing was considered not only as an entrepreneurial activity, but also as a civil-law contract.

At present, the question of updating the fleet of civil aircraft is quite sharply raised in the Russian Federation. According to the results of 1999 - 2001, out of 11 Boeing-type aircraft operated by Aeroflot-Russian Airlines (hereinafter - Aeroflot), 8 caused losses to the airline. Losses from the operation of all foreign-made passenger aircraft are about \$ 150 million per year, with each foreign-produced aircraft of a certain type causing losses of \$ 2.5 to \$ 12.0 million per year. By its resolution, the Government of the Russian Federation exempted JSC "Aeroflot" from customs duties when leasing foreign aircraft for the amount of more than \$ 1 billion, obliging JSC "Aeroflot" to purchase aircraft of domestic production. However, JSC Aeroflot not only did not buy, but did not lease any Russian aircraft. Of the 27 foreign-produced aircraft, 21 aircraft (11-A-310 and 10-B-737) operate flights across Russia, displacing Russian aviation carriers from the domestic market.

Meanwhile, Russian aircraft companies servicing the air transportation of citizens and cargoes are not able to buy aircraft at their full cost. To acquire aircraft equipment in leasing, and then pay its cost to the lessor in parts - is quite realistic and, in today's economic situation, the only way to update the civil aviation fleet. According to the Government of the Russian Federation, 4 to 5 aircraft in 2000-2001 were actually manufactured under a leasing scheme, but the contracts were very difficult. The Government of the Russian Federation decided to support the leasing scheme and plans to annually produce 25 aircraft or more.

In 2001, Russian air carriers under this scheme were able to purchase only 4 new aircraft. In 2000 there were 8 of them, and before the beginning of the 90s, at least 100 were purchased annually. At that time, there was one leasing company, the Ministry of Civil Aviation. It received funds from the federal budget, purchased airplanes and, through their operation, gradually returned these funds to the budget. In 2000-2003, in our country, in fact, 4 to 5 civil aviation vessels were produced annually and are currently being manufactured through a leasing scheme with average annual rates of up to 15%.

Financial lease (leasing) of aircraft, as a rule, involves compensation through leasing payments of the full value of the property, which at the end of the leasing period becomes the property of the lessee. It rarely ends up with the return of the aircraft (except for debts and in the case of operational leasing), and often the lessee redeems the aircraft ahead of schedule, thereby exempting the tax charges existing at its purchase. In Russia, aircraft are delivered to airlines in financial leasing, usually for a period of 15 years. At the end of the leasing period, the ownership of the aircraft passes to the customer airline. The basic financial terms provide for an initial advance of up to 10% of the value of the aircraft and subsequent monthly lease payments in an amount corresponding to the international practice applied to finance such programs. In addition, the airline pays for maintenance and insurance costs of the aircraft. At the same time, during the term of a financial lease, the airline has the right to repurchase the aircraft at an agreed cost. In Russia, leasing of civil airplanes is mainly carried out by two leasing companies - IFC (Ilyushin Finance Co.) and FLC (Financial Leasing Company). The activities of both companies are controlled by the state, including through the ownership of controlling stakes and representation on the boards of directors. The objects of financial leasing are new passenger and transport aircraft of the latest generation-Tu-204, Tu-214 and IL-96 of various modifications. According to this scheme, they have already received airlines "Dalavia", "KrasAir" and "Vladivostok-Avia". Under a lease agreement, Russian aircraft have recently begun to be acquired in Western production, for example, Aeroflot did this with some of its newest A-320 family. The truth and the leasing contract was concluded with the western leasing company.

In order to successfully develop leasing of aircraft, the state creates the most favorable conditions for individual leasing companies, freeing them from taxes and customs duties.

In the system of sources of legal regulation of aircraft leasing, first of all, international treaties should be called. In accordance with Part 4 of Article 15 of the Constitution of the RF, generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of the legal system of the Russian Federation. And in the event of a conflict between the norms of the international treaty and the law of the Russian Federation, the rules of the international treaty are applied.

As already mentioned in the first paragraph, leasing is regulated by the Convention on International Financial Leasing (Unidroit Convention). A comparative analysis of this Convention and the current Russian legislation will be conducted in the following paragraphs of the study.

There is also the Chicago Convention on International Civil Aviation of December 7, 1944, the Convention entered into force on April 4, 1947. It involves 185 states, including Russia - since November 14, 1970. Although the Convention does not contain rules on the leasing of air ships, but their basic concepts are contained in it (aviation, aircraft, etc.).

The normative act establishing the legal basis for the use of the airspace of the Russian Federation and activities in the field of aviation is the Air Code of the Russian Federation of February 19, 1997 (as amended by the Federal Law of March 21, 2005) (VK RF). State regulation in this area is aimed at meeting the needs of citizens and the economy in air transport, aviation, as well as ensuring the defense and security of the state, protecting its interests, the safety of aircraft operations, aviation and environmental safety.

Another legal act in the sphere of regulation is the Federal Law "On State Regulation of Aviation Development" dated January 8, 1998 No. 10-FZ. It operates with such concepts as aviation, state regulation of aviation development, aviation technology, etc. Article 2 of this Law defines the objectives of state regulation of aviation development. One of them is the creation of a system for leasing Russian civil aviation equipment as the basis for updating the fleet of aircraft, creating favorable economic conditions for Russian and foreign legal entities, and individuals for investing in the acquisition of this aircraft.

In the process of formation of legislation, which forms the legal basis for regulating the leasing of aircraft, a significant role was played by the Decree of the President of the Russian Federation of June 7,

1996, No. 825 "On Additional Measures for the Development of Civil Aviation of the Russian Federation". In order to accelerate the equipping of the civil aviation of the Russian Federation with competitive new-generation mainline aircraft, improve flight safety and facilitate the export of high-tech products, the Decree ruled:

1. To establish that one of the main directions of the state policy in the field of civil aviation development of the Russian Federation is the creation of a system for leasing domestic aircraft of the new generation as the basis for updating the fleet of aircraft and facilitating the accelerated creation of favorable financial conditions for domestic and foreign banks for investing in the acquisition of equipment for the purpose of its subsequent transfer to leasing to Russian airlines.

2. The Government of the Russian Federation: to envisage, in accordance with Presidential Decree No. 112 of January 29, 1996, "On the Federal Targeted Program for the Development of Civil Aviation Equipment of Russia until 2000," the priority areas of this program, the organization of leasing of domestic aviation equipment of a new generation; taking the necessary measures to ensure state support for structural restructuring and development of enterprises - manufacturers of aviation equipment.

The Resolution of the Government of the Russian Federation of June 26, 2002, No. 466 (as amended by the Decree No. 861 of 3 December 2002, No. 756 of 9 December 2004, as of 02.03.2005 No. 107, is of great importance in the legal regulation of legal relations under investigation) , Amended on February 14, 2004 No. 80) "On the procedure for refunding to Russian airlines part of the costs of paying lease payments for Russian-made aircraft received by them from Russian leasing companies under leasing agreements, as well as part of the cost of paying interest on loans received in 2002-2005 in Russian credit institutions for the purchase of Russian aircraft. "

The resolution stated that the Federal Air Transport Agency, in carrying out contests for the provision of funds to reimburse Russian companies for part of these costs, must proceed from the fact that the annual amount of funds for these purposes should not exceed 500 million rubles. The Resolution approved the Rules of Reimbursement of these costs.

### 3. DISCUSSION

When characterizing the sources of aircraft leasing regulation, the Federal Target Program "Modernization of the Transport System of Russia (2002-2010)" (sub-program "Civil Aviation") approved by the RF Government Decree No. 232-r of February 16, 2001, cannot be omitted. The main goal of this program is to develop a fleet of new generation aircraft. Another objective is to preserve and maximize the market of air transportation and aviation operations by increasing flight safety, competitiveness, quality of service and economic efficiency, based on the radical re-equipment of the aircraft fleet with new aircraft and domestic helicopters, including long-distance passenger and cargo aircraft, regional aircraft, air general aviation vessels, agricultural aviation and aviation for serving the national economy, health and protection from fires using leasing mechanisms.

The program provides for the drafting of federal laws "Airports of Russia", "On Aviation Leasing", "On State Registration of Rights to Aircraft and Transactions Therewith", resolutions of the Government of the Russian Federation on the specifics of subsidizing part of the interest rate on loans for leasing (acquisition) of aircraft a new generation and modernization of the existing fleet of civil aviation.

The above material allows us to draw the following conclusions. Aviation leasing should be understood as an aggregate of economic and legal relations arising in connection with the implementation of an aviation leasing agreement providing for the acquisition, at the expense of its own funds, of a lessor or the means of aviation leasing that it attracts. The rules governing aviation leasing are notable for their inconsistency. Certain aspects of the relations under consideration are not regulated by special legislation, which creates serious difficulties in law enforcement practice.

According to Art. 33 of the Air Code of the Russian Federation, aircraft intended for flight operations are subject to state registration in the following order:

-Civil aircraft, except for ultralight civil aircraft of general aviation, in the State Register of Civil Aircraft of the Russian Federation with the issuance of certificates of state registration or in the state register of civil aircraft of a foreign state subject to the conclusion of an agreement on maintaining airworthiness between the Russian Federation and the state of registration;

-Ultra light civil aircraft of general aviation - in the manner established by the authorized body in the field of civil aviation;

-State aircraft - in accordance with the procedure established by the authorized body in the field of defense in consultation with authorized bodies having units of state aviation.

#### 4. CONCLUSION

Under the leasing agreement, the lessor undertakes to acquire the property of the lessee specified by the lessee from the seller's seller and to lease it to the lessee for business purposes for a fee. The leasing agreement may provide that the choice of the seller and the acquired property is carried out by the lessor.

Then the lessor, on the basis of a contract of sale, acquires property that becomes the subject of leasing. After this, leasing relations arise between the parties to the lease - the acquired property is transferred to the lessee for temporary possession and use.

It must be borne in mind that the seller of property cannot be both a lessor at the same time, and a lessor as a seller of property. Meanwhile, an organization within the same leasing legal relationship can simultaneously act as a seller and a lessee.

The main feature of a financial lease is that the lease is leased not the property that was previously used by the lessor, and the new one - the one indicated by the lessee and specially purchased for it from a certain seller. The lessor in this case is not responsible for the choice of the subject matter of the leasing and the seller, unless otherwise provided by the contract.

Another significant difference between the leasing agreement and the lease is that instead of two entities, as in the case of leases, three parties are involved in the legal relations of the finance lease: the seller of the property, the lessor and the lessee.

Participants in a finance lease are not related to one, but, as a rule, to two contracts. The landlord concludes a contract of sale with the seller of the property chosen by the tenant, and with the lessee, a financial lease agreement. Both contracts are interrelated: usually it is the lessee, and not the lessor who chooses the seller and agrees all the terms of the contract of sale. Tenant agrees on the subject of the contract of sale, its price, terms and place of delivery. Nevertheless, the tenant is not in a contractual relationship with the seller of property,

although it is endowed with a number of rights and duties in relation to it.

The repurchase of leased property is not an integral condition of the financial lease agreement. The law determines that the contract may provide for the transfer of the subject of leasing into the ownership of the lessee after the expiry of the term of the leasing agreement or until its expiration on terms stipulated by the agreement of the parties.

At the same time, the state registration of civil aircraft of the Russian Federation is a documentary confirmation by the state authority of the Russian Federation of the extension of the jurisdiction of the state to this aircraft, with the resulting obligations of the owner, operator and state in accordance with the requirements of the RF Air Code and international agreements. Due to such registration, the aircraft registered in the Russian Federation acquires the nationality of the Russian Federation, as well as the acquisition of nationality by aircraft in foreign countries.

At present, the state registration of civil aircraft of the Russian Federation is carried out in accordance with the Rules of State Registration of Civil Aircraft of the Russian Federation, and has the following task:

Accounting for all civil aircraft of the Russian Federation flying in the airspace of the Russian Federation and beyond. Determination of the nationality of the aircraft, the vessel's belonging to a particular state. Legal registration of the ownership, ownership and operation of this aircraft. Concentration in the state body of information on civil aircraft. In civil aviation under the Chicago Convention of 1944, proper aircraft registration serves as the fundamental basis for international air transport. Further details on the registration and identification of civil aircraft are contained in Annex 7 to the 1944 Chicago Convention: each aircraft must be registered in one of the States, and each State should maintain a register of civil aircraft. No aircraft can have a valid registration in more than one state, but a change of registration from one state to another is possible. The state of registration of each aircraft entered in the state register, assumes the obligation to ensure the safe operation of this aircraft.

#### REFERENCES

Alekseyev, S. S. (2010). Issues of legal theory: Course of lectures. Moscow.

- Bolotova, E. (2009). Teaching freedom right restrictions. *People's education*. No. 4.
- Dobrynina, L.Yu., Gubareva, A.V., Gudovicheva, L.B., Krasnoyarova, N.I., Stepkin, S.P., & Shchekochikhina E.P. (2018). Strategy of development of international and foreign economic relations of the Russian Federation. Collective monograph. Moscow.
- Khabriyeva, T. Y. (2010). Economic and legal analysis: methodological approach. *Russian law periodical*. № 12.
- Malko, A.V. (1993). Of the restriction of person and citizen rights and freedoms in the project of the RF Constitution. *State and right*. No. 3.
- Ozhegov, S.I. (1997). Russian language vocabulary. Moscow.
- Reeve, R. (2002). Policing International Trade in Endangered Species: The CITES Treaty and Compliance. L.: Earthscan.
- Root, F. R. (1990). International Trade & Investment. Cincinnati. Ohio.
- Smolensky, M.B., Marchheim, M.V., & Tonkov E.E. (2009). The RF Constitutional rights. Rostov-on-Don: Phoenix.
- Kovalenko K.E. (2014) Some aspects of reasonableness in the law. *World Applied Sciences Journal*. No. 7.
- Vyshkvartsev, V.V. (2013). Theoretical regulative aspects of a citizen rights and freedoms limitation in the Russian Federation. *Modern lawyer*. No. 2(3).
- Zaitsev, S.Yu. (2014). Constitutional legal granted teaching freedoms. Thesis for a Candidate Degree in Law Sciences. Belgorod.