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**THE CONTRACT OF LEASING IN THE RUSSIAN FEDERATION: CONTROVERSIAL ISSUES**

**Аннотация:** Данная статья освящает общее вопросы, касающиеся контракта лизинга в Российской федерации. В ней автор раскрывает главный вопрос, почему лизинг пока не столь популярен в РФ. В этой работе автор попытается проанализировать различие модели развития договора лизинга в России от США или Европы. **Ключевые слова:** Лизинг, лизинг в России, тип займа, кредит, история лизинга, преимущества лизинга.

The history of leasing contract in the Russian Federation started a half of century later than in the USA or in Europe. Even in the 1990-s after the disintegration of the Soviet Union there were a lot of barriers for the development of leasing in Russia. Despite the legislator’s efforts, the difference in popularity of leasing in Europe and in Russia was enormous. It was the same even in 2011 after the limits for the parties to a leasing agreement had been removed as only a business entity could have used leasing before. Unfortunately, leasing in Russia did not get that much popularity as in the USA where every citizen uses leasing to get everyday goods like cars. Even American business entities can lose functionality without leasing.

An important stage in the history of leasing in Europe and the USA was made due to the spreading of railway transport. Back then, companies tried to get rid of unwanted expenses. As a result, they started to purchase trains and wagons not as an estate but for their operation. Earlier trust companies had been applied to in order to achieve this goal. Trust companies purchased railway transport and transferred it to a business entity for use. Now financial corporations and manufacturers become more and more interested in the said, which leads to changings in the system of investing. Financial corporations purchased transport and equipment from the supplier and rent it out to railway companies[[1]](#endnote-1).

The popularity of leasing contract in the USA prompts business entities to lease equipment, vehicles, planes, water crafts and etc. Trade banks of the USA got the permission of the US Federal Reserve System to create subcompanies for leasing transactions. Europe and Japan are affected by the same developments too[[2]](#endnote-2).

First, we must define the notion of “leasing”. According to the Federal Law, under the contract of financial lease (leasing contract), the lessor undertakes the duty to acquire from a seller the property indicated by the lessee, and to provide the lessee with the property for temporary possession and use, in exchange for payment. By entering into agreement, the lessor and a lessee sign a contract. It is worth mentioning, that the main difference between leasing and renting lies in the parties to agreement. Instead of the renter and the owner in leasing transaction there are the lessor, the lessee and the supplier. Also, sometimes the lease payment is not the subject matter. In some instances, the leasing contract allows the object of leasing contract to be passed into the ownership the lessee. The purchase of the fixed assets by the organization using the contract of leasing gives the opportunity to get a discounted rate of tax. Profit tax base also decreases. Just as important, amortization is accelerated.

There are different kinds of leasing. Financial leasing is a contract where the assets are in use of a lessee for a period which lasts as long as the amortization period or longer. Commonly, in the end of the period of the contract, the object of the leasing passes into the ownership of the lessee; Operating lease is a type of the contract, when the lessee uses the assets for a fixed period of time for the lease payment. As usual, the object of leasing passes into the ownership of the lessor. Sale or leaseback is a type of leasing when the supplier is also the lessee. Direct leasing is leasing when the supplier is also the lessor. Group leasing is leasing when the lesser is a group of several entities. Net leasing is leasing when the lessee is responsible for maintenance of the object of leasing. Wet leasing is leasing when the lesser is responsible for maintenance of the object of leasing.

Large-scale participation of the whole world in leasing required its regulation. So, the International Institute for the Unification of the Private Law (UNIDROIT) took the responsibility of formulating certain uniform rules that regulate civil and legal aspects of international financial leasing. The UNIDROIT Convention on international financial leasing was signed in Ottawa on 28 May 1988. The Russian Federation joined the Convention in February 1998[[3]](#endnote-3).

According to the Convention, the financial leasing transaction includes the following characteristics:

(a) the lessee specifies the equipment and selects the supplier without relying primarily on the skill and judgment of the lessor;

(b) the equipment is acquired by the lessor in connection with a leasing agreement which, to the knowledge of the supplier, either has been made or is to be made between the lessor and the lessee; and

(c) the rentals payable under the leasing agreement are calculated so as to take into account in particular the amortization of the whole or a substantial part of the cost of the equipment[[4]](#endnote-4).

According the research of the European Federation of Leasing Company Associations (Leaseurope), the portfolio of leased assets increased by 5.3% reaching €802.2 billion in 2017 as compared to 2016. It is worth noting that the number of companies represented through Leaseurope’s members grew by 9.4%, which added €384.1 billion into portfolio. By the way, the Russian Federation made a contribution. The portfolio of Russia increased for more than 20% as compared to 2016[[5]](#endnote-5).

However, right now it is hard to state without a doubt that the contract of leasing is going to be much popular than the credit contract. The majority of average consumers do not even know about this type of contract. Banks are creating safety cushion. It is unreal to negotiate a leasing contract without large initial installment. Moreover, despite the announcements of the lease organizations guaranteeing a small first installment, the said happens when the deals involve a really great sum of money, where the minimum percentage is a substantial sum.

Anyway, the Russian Federation shows interest in popularization of leasing. Unfortunately, all the programs are not for physical persons but only for industrial complexes and other business entities. Ministry of Industry and Trade of the Russian Federation pays a subsidy and discounts to initial installment for the vehicles manufactured in Russia later than 2018.

Popularization of leasing could be a boon for the Russian economy because even if the economy is instable, leasing is stimulating a demand for the technical equipment. Technological infrastructure will be up to date because of new technologies. And that’s why, the industry is going to be effective. Also, the number of workplaces is going to grow as well as the occupational level. The governments of countries with a highly developed leasing do their best to support and regulate the leasing market. The world’s history shows a positive correlation between the development of leasing and funding the industry.

For this reason, there is no doubt that leasing in Russia needs popularization. The easiness of access to leasing should be widened to include not only business entities but any physical entities as well. But without active participation of the government all those attempts are going to fail.

Right now, there are some steps that Russia needs to make in order to improve and popularize the leasing contract within its borders.

Certainly, we need to save accelerated amortization. That is a really important issue because it is the core subject of leasing. Refunding VAT to leasing companies would also be a great idea.

The next issue that government regulation is implementing the fixed standards for financial leasing. There should not be any controversial issues related to the interpretation of laws on leasing operations. This will help protect parties to leasing contracts and, accordingly, reduce the risks of leasing transactions, which will increase the confidence of organizations and citizens in this type of agreement.

Additional state benefits and subsidies to leasing participants are also one of the most important tasks which is already being implemented, but it is necessary to expand the circle of persons whom it applies to, as well as to develop more flexible programs.

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3. Annual Statistical Enquiry 2017 // Leaseurope.org: the European Federation of Leasing Company Associations URL: http://www.leaseurope.org/uploads/documents/LeaseuropeFF\_17\_PRINT.pdf (access date: 22.09.2019).

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**Abstract:** This article focuses on general issues regarding a leasing contract in the Russian Federation. The author examines why leasing is not so popular in the Russian Federation which is one of the most important problems. Also, the article presents the analysis of the main difference between the development of model of a leasing contract in Russia and the USA as well as in Europe. **Key words:** leasing, leasing in the Russian Federation, type of loan, credit, history of leasing, advantages of leasing

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2. M.I. Braginsky, V.V. Vitryansky. Dogovornoye Pravo. Kniga Vtoraya: Dogovory o Peredache Imushestva. [Contract Law. Book Two: Contracts on Property Transfer]. Statut Publishing House, 2000, p. 554. [↑](#endnote-ref-2)
3. Federal Law of the Russian Federation on the Russian Federation became a party to a UNIDROIT convention on international financial leasing under date of 8 February 1998 № 16-ФЗ // Russian Federation Code. 1998 г. № 7. a. 787 [↑](#endnote-ref-3)
4. UNIDROIT Convention on international financial leasing (Ottawa, 28 May 1988) [↑](#endnote-ref-4)
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