

DISTINCTIVE FEATURES OF ENTERPRISE SALE AND LEASE CONTRACTS

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Abstract

In the article, there were reflected peculiar signs of contracts on selling and renting enterprises. The main attention was paid to the subject of the contract on selling and renting enterprises. Also, some ideas were offered on juridical signs of these legal acts.

Keywords: an enterprise, purchase and sale, rent, raw materials, managing subject, industrial object, the right of property, a property complex, a contract subject, a single property complex.

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INTRODUCTION

With the expansion of the circle of objects introduced in the market economy, the enterprise was recognized as the subject of various transactions (such as sales, rent, mortgage, trust management). That is, the enterprise is included in the civil law as an object of property right.

Business contracts are distinct from other transactions. They arise in making and executing transactions, transferring property complexes and liability arising therefrom.

Contracts for the sale and lease of the enterprise occupy a special place in the arrangements made on the enterprise. For example, it may be possible to examine specific features of transactions made on an enterprise.

The contract for the sale of an enterprise involves the purchase and sale contract, which, in addition to the rights and obligations that the seller has no right to transfer to other persons, shall be entrusted to the buyer to transfer the entire enterprise as a whole, and the purchaser shall have the right to accept the property complex and pay the sum of money. (Civil Code, Part 1, Article 386; Article 489, Part 1)

The contract of sale of the enterprise is a separate type of purchase and sale contract. The rules governing its position are contained in paragraph 8 of Article 29 of the Civil Code. Relationships related to the sale of the enterprise are also governed by the requirements of subsidiary use agreement (Article 479, Part 1). Some authors consider the sale of an enterprise as a type of real estate sales contract. H.Rahmankulov, M.Sh.Choriev, V.Vitryansky, who consider the contract of sale of the enterprise contract separately, are more important to focus on. In our opinion, the application of the rules on the sale of real estate on a subsidiary basis to the sale of an enterprise is a peculiar method of legislative technique in order to prevent the repetition of the amendments of paragraph 7 of Article 29 by paragraph 8. Also, this agreement specifies only the sale of property of the enterprise, which is in contravention of the sale of this real estate. In particular, the documents representing the real situation of all property, the rights and obligations of the enterprise must be attached to the contract. This claim relates to an entity's legal personality, and determines its obligations and proprietary claims to third parties and, it prevents the disputes between the parties of the contract in the future. Documents to be attached to the contract include inventory, balance sheet, auditor's report and others. As it turns out, the contract of sale of the enterprise is a separate type of purchase and sale agreement.

Rental relationships arise as a result of the transfer of ownership and use of the property to the other party on a

contractual basis within the ownership of the property[1]. Special peculiarity of an enterprise leasing contract is connected with its particular subject i.e. with an enterprise like a contract for the sale of an enterprise.

The whole enterprise, i.e. the property complex, is the subject of the agreement. The aim of the lease for the enterprise is to continue to utilize it in entrepreneurship.

Contractor's lease contract is a separate type of property lease agreement. This is expressed with that the subject of this agreement includes two object specifications. These are:

1. Lease of the enterprise as a single property complex for the entrepreneurial activity;
2. The movements of the lesser for the transfer of the enterprise to the lessee's disposal and the lessee's acceptance of the enterprise, the proper use of the leased property, the timely payment of lease payments and the return of the leased property complex to the tenant after the lease term expires[2].

The distinctive feature of the sale of an enterprise from leasing is that when the enterprise is sold, the proprietor entrusts all rights (acquisition, use and disposal) with the buyer. In the case of renting, the proprietor reserves the right to own, use or partially control over a certain period, but retain the right of ownership to the enterprise. It should also be noted that the lesser owns and uses certain non-expense items for a specified period of time. The property (raw materials, products and materials) are transferred to the lessee under the right of ownership. Otherwise, the lessee will not be able to fully exercise his rights to exploit the enterprise. Because, in accordance with the contract of sale or lease of the enterprise, the enterprise, which is operating in practice, is issued.

The lessee of the enterprise is obliged to pay the rent, the expense of the enterprise and the return of its owner. In addition, the tenant is required to keep the enterprise in a proper technical condition during the whole period of validity of the contract, including its current repair and capital repairs in cases provided by the contract.

There should be taken into consideration certain actions before concluding an agreement on the sale and lease of the enterprise. This includes identifying the composition of the enterprise, conducting an audit examination, evaluating the business value, setting the rental fee, and so forth.

The main condition of any agreement is the subject of this agreement. As the subject matter of the contract of sale and lease of the enterprise, the enterprise is a property complex (except for rights and obligations that can not be transferred to other persons). The subject of the contract for the sale of the

enterprise is determined in accordance with Articles 85, 489 of the Civil Code.

The concept of business as an object of lease is slightly different from the concept of enterprise defined in Article 85 of the Civil Code. Particularly, according to Part 1 of Article 579, the leased enterprise includes land, buildings, structures, equipment and other fixed assets. Other elements of the composition of the entity, such as the provision of raw materials, materials, fuels, land use rights, rights to use the building and others, are given to the performer "on the basis of the terms and conditions specified in the agreement". In addition, the rights to use and disposal of land, water and other natural resources owned by third parties shall be exercised in the manner provided for by law and other legal acts.

Under the contract of sale and lease of the enterprise, the rights acquired by the seller or the lesser on the basis of a special permit (license) can not be acquired by the buyer or the lessee, unless otherwise provided by the law (Part 3 of Article 489 and Article 579, Part 5).

An enterprise may have separate "production objects" in its internal structure as a single undertaking. As E.A. Fleychitz points out, "any production facility may not have an independent business, although it is the only technical unit"[3]. In other words, the product of one "production facility" in one enterprise will become a tool for future operation of the second "production facility", i.e. parts of the enterprise should be interconnected in the production of a single production process. In practice, the production structure of the enterprise can be separated. This can be done through reorganization of the enterprise. In this case, a separate production structure, which is separated from one another, should be regarded as an independent enterprise rather than as a part of an enterprise. For example, one company may have several workshops. The milk processing plant, which is a part of the enterprise, is a raw material for the butter processing plant. If the butter processing plant is separated from the enterprise and an economically independent production complex is created, in that case, it is necessary to talk about an independent enterprise, not an integral part of the enterprise.

In developed countries with extensive expertise in enterprise (business), the whole or partial disposal of the enterprise has not been fully addressed. For example, Article 6-102 of the United States Trade Code, which regulates the sale of businesses, recognizes its complex sale. Complex sale of the enterprise is to sell more than half of its financial assets and the seller should not be able to continue his previous business. In Germany a proprietor can sell parts of an enterprise and in that case he has to properly evaluate and guarantee the quality of the sold items in the dealer.

RESULTS AND DISCUSSION

The process of handing over and renting a corporation from one person to another is of an official nature. The assignment process must be carried out in the same manner regardless of the organizational and legal form of the undertaking. However, in practice the transfer of state unitary enterprises from one person to another is carried out on the basis of the administrative act. This is a characteristic of administrative and command-oriented management.

The Uzbek Civil Code of 1964 did not consider the sale of the enterprise as an object of legal relations. Because the state was considered as the single proprietor of its property. The state-owned enterprise is free from one public body. Thus, the uniqueness of the subject of state property had been preserved. The transfer of the state enterprise from one institution to another was made by the decision of the authorized government agency. This is explained by the principle of "single fund" of state property, which was strengthened in the legislation of that period. That is, the state is the sole owner of its property. The transfer of the enterprise from a public body to another state body was accompanied by all assets and liabilities, approved plans, material-technical equipment and so on.

The transfer of the enterprise was regulated by the Resolution of the Council of Ministers of the former Soviet Union No. 940 of October 16, 1979 "On the procedure for the transfer of enterprises, associations, organizations, institutions, buildings and structures". The charter was approved on the basis of this Resolution and it began to control the process of enterprises' delivery completely.

According to the charter, state enterprises are permitted to be transferred to cooperatives and public organizations and enterprises of cooperatives and public organizations to the state. This option was agreed upon with the central bodies of cooperatives and public associations, with the permission of the Union of Soviet Socialist Republics and the Council of Ministers of the Union. If not otherwise specified in the laws of the Union of Soviet Socialist Republics, the transfer of enterprises in this order was made for a fee.

CONCLUSION

Thus, the legal basis for the transfer of the enterprise from one state body to another was considered as a special administrative action. This administrative action was approved by the competent authorities. State, cooperative and other public organizations were independent subjects of civil law. Therefore, in addition to the administrative action to transfer a state-owned enterprise to a cooperative or another public organization, the consent of these organizations to receive property was also required.

Thus, according to Articles 489, 579 of the Civil Code of the Republic of Uzbekistan, the subject of the contract is recognized as a property complex. In other words, an enterprise is an indivisible property complex in the sale and lease of the enterprise. Because the enterprise can only have its own customers in a sustainable economic relationship, a company name, and they can not be disposed as separate enterprises. In addition, when the enterprise is sold in full capacity, its employees maintain their jobs. Of course, the proprietor can retain certain (individual) facilities or certain rights within the enterprise. However, it only means that the property is reduced, not the sale of the enterprise. When a facility (independently capable of producing goods) is separated from an enterprise, it should be treated as a separate facility for disposal. These objects can be disposed on the basis of reorganization of the enterprise. It is important to note that it is not advisable to sell the parts of the enterprise separately. Firstly, such a property can be created for various illegal purposes (for example, hiding from foreclosure on the creditor's request); secondly, it causes the reduction of workplaces and the increase in the number of unemployed.

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