

THE LEASING CONTRACT AS A MODERN FORM OF FINANCING IN THE CONTEMPORARY ECONOMY. The Greek regulation

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Abstract: The leasing contract is a reciprocal, onerous, and compound contract. It has the features of the following contracts: lease of a thing, mandate, assignment of a claim, and option contract. In Greece the institution of leasing has recently known a rapid development which increases impressively year after year.

Keywords: The contract of leasing; leasing; lessor and lessee; financing.

1. Introduction

The contract of leasing first appeared in the USA in 1952 and today it is widely used throughout the world.

In Greece it was regulated by L. 1665/1986 and it is this same law which, after being modified (by L. 2367/1995, L. 2520/1997, L. 2682/1999, and L. 3091/2002), regulates the contract of leasing in this country to this day [1]

In Greece the institution of leasing has recently known a rapid development which increases impressively year after year [2]

2. The Concept of Leasing

Leasing is the contract whereby the one contracting party (lessor) undertakes the obligation to yield for a certain period of time to the other contracting party (lessee) the use of a thing (leased thing) to be used exclusively for the lessee's professional purposes, while offering the latter the possibility of either purchasing the thing by a unilateral declaration to the lessor at the end of the term, or renewing the contract for a specific period of time (art. 1, para. 1 L. 1665/1986) [3]

3. The Features of Leasing

3.1. The leasing contract is a reciprocal, onerous, and compound contract.

3.2. It has the features of the following contracts: lease of a thing, mandate, assignment of a claim, and option contract [4]

3.3. Its characteristics are the following:

3.3.1. Only a corporation which has been set up for the sole purpose of conducting such leasing business may be the lessor.

3.3.2. For such leasing companies to be formed special permission from the Bank of Greece is required. Moreover, such leasing corporations are required to have a capital amounting to one half of the minimum capital required for setting up a banking corporation [5]. These corporations, known as leasing corporations, are under the supervision and control of the Bank of Greece (art. 2, para. 6 L. 1665/1986).

3.3.3. Only an enterprise or a businessman may be the lessee.

3.3.4. The object of leasing is the yielding of the use of a movable or immovable, or both -provided

that they are intended exclusively for the professional purposes of the lessee-, which the leasing company has been previously bought by the lessee (article 1 para. 2 subpara. (a) L. 1665, as in force). It is the case of (sale and) lease-back method. The purchase of an immovable object is excluded (art. 1 para. 2 subpara. (b) L. 1665, as in force).

The term "immovables" includes agrarian lots, horizontal and vertical real estate properties with buildings erected on them, along with the percentage of land corresponding to each building computed on the basis of the "buildable" space of the terrain (art. 1, para. 3 L. 1665/1986, as modified by art. 27, para. 2 L. 2682/1999. By movables we also understand aircrafts, but ships and other sea vessels are excluded (art. 1, para. 3 L. 1665/1986) [6].

3.3.5. The duration of the leasing contract is always fixed and the parties may not agree on a duration which is less than three years regarding movable things, five years regarding aircrafts, and ten years regarding immovables (art. 3, para. 1 L. 1665/1986. In case a shorter duration is agreed, the minimum duration stipulated by law will apply.

3.3.6. At the expiration of the leasing contract, as an option contract, the lessee has the right to either buy the leased thing or renew the lease for a fixed period of time is entitled to either purchase the leased thing or renew the leasing contract for a fixed duration.

4. The Operation of the Leasing Contract

4.1. Generalities

Leasing is a trilateral contract [7]

The most ordinary form is the "simple" leasing (financial leasing), as in the following example: Businessman B, who needs certain goods (e.g. office electronic equipment), goes to supplier S who sells such merchandise and negotiates with him the price and specifications. Subsequently, B addresses himself to the leasing company L which purchases for him the merchandise in question from supplier S and then leases them out to B through a leasing

contract (to be noted that the corporation has previously directed S to deliver the merchandise directly to B).

4.2. The Relationship between the Parties

4.2.1. Relationship between lessor and lessee

As was already mentioned, the leasing contract differs from the simple contract of lease of a thing in the sense that it is a compound contract which also has the characteristics of other contracts.

Consequently, there are particularities in the relation between lessor and lessee.

More specifically:

4.2.1.1. The selection of the thing to be bought by the lessor, and subsequently become the object of the lease, is made by the future lessee.

4.2.1.2. The lessee is obliged to pay the agreed rent to the lessor at the time periods agreed upon, usually every three or six months [8].

4.2.1.3. During the entire duration of the contract, the lessee is obliged to maintain the thing leased suitable for the agreed use and bear all the relevant expenses.

4.2.1.4. The lessee is liable for chance damage, destruction, or loss of the thing leased. Consequently, in case of damage, the lessee is obliged to repair it at his expense and in case of destruction or loss to replace it with another of equal value without being released from his obligation to continue paying rent.

4.2.1.5. The lessee is obliged to insure the thing against the risk of chance destruction or deterioration.

4.2.1.6. The lessor assigns to the lessee the claims he has against the supplier from the sale contract.

4.2.1.7. Finally, what is characteristic of this type of leasing contract is that there is an agreement between the lessor and the lessee that, at the expiration of the leasing contract, the latter has the right to either purchase the thing leased or renew the leasing contract for a fixed period of time.

4.2.2. Relationship between lessor and supplier

The lessor-supplier relation is basically that of a sale contract [9].

However, in this sale transaction two special terms are agreed upon: one, that the delivery of the purchased items will be made to the lessee, and two, that the leasing corporation assigns to the lessee all the claims it has against the supplier for non fulfillment or improper fulfillment of the performance.

4.2.3. Relationship between lessee and supplier

The lessee does not have a contractual relation with the supplier (seller). However, because, as was already mentioned, the leasing company has assigned to him the claims it has against the supplier, the lessee may demand from the supplier and even force him to fulfill his contractual obligations.

5. Termination of the Leasing Contract

The ways for a leasing contract to be terminated are the following [10]:

5.1. Expiration of the time period for which the leasing contract was agreed, provided that the lessee did not exercise the right granted to him by the leasing contract to renew the lease.

5.2. Purchase of the leased thing by the lessee, according to the right granted to him by the leasing contract at the time of conclusion of the transaction.

5.3. Termination of the leasing contract on the part of the leasing company before the expiration of the contract, if the lessee does not fulfill his contractual obligations.

5.4. Bankruptcy (Bankruptcy is the condition into which a merchant lapses, following a court ruling, when he stops making payments on his commercial debts of the lessee - naturally, only if he is a merchant) (art. 4, para. 3 L. 1665/1986).

6. Advantages of leasing Contract

The leasing contract has become so widely spread throughout the world due to the many advantages it offers the enterprise or businessman concluding it.

The most important of them are the following:

1. Leasing facilitates an enterprise to renew, modernize and probably to extend its productive establishments and its mechanical equipment without any requirement of using its own funds or borrowing. Thus, leasing contributes particularly to the development of small medium enterprises, which do not hold adequate funds or have a limited credit standing.

2. It affords the businessman the possibility to upgrade and expand the equipment of his enterprise or business without having to lay out his own capital which is thus freed to be invested elsewhere.

3. Under the leasing method, another source of enterprise financing is being added, since this leasing may supplement the investment programme, without increasing its lending debt.

4. It offers the businessman tax benefits not only in the sense that the leasing contract as such is favorably treated by the tax laws, but also because the rent paid by the lessee falls in the category of 'business expenses' and, as such, can be deducted from his gross income.

5. It helps the businessman avoid borrowing since the rent due may be paid from the income yielded by the operation of the business.

6. Under the leasing method, enterprise's own funds are released, which may be used as floating capital.

7. The financing purpose is being secured under the leasing method, since the financed trader shall not receive any money in its hands for the management but only the necessary equipment for the enterprise.

8. Leasing is producing some tax advantages [11].

7. Disadvantages of leasing Contract

Its disadvantages are:

1. Under leasing a great cost is being created in relation to the nominal interest, given that, apart from the nominal interest of ordinary financing, any fees, charges for equity or mortgage underwriting, stamps, evaluations, investigations in the mortgage registry, cost of capital of own participation etc. should be also considered.

2. The accounting display of the enterprise with diminished coverage, a fact that is considered to be negative for its reputation.

8. Conclusion of the Leasing Contract

8.1. Form

The contract of leasing is a formal transaction because for its valid conclusion it is necessary that it be drawn in writing (private document) and this form is constitutive (art. 4, para. 1 L. 1665/1986). Specifically, in the case of immovables the document needs to be vested notarial form (art. 1, para. 3 in conjunction with art. 4, para. 1 L. 1665/1986) [12].

In practice there are standardized forms for the contracts of leasing.

They are prepared in advance, usually by the leasing corporation which also determines what the "general terms" of the contract will be. Such terms are, for example, the lessee's obligation to pay the rent, make good use of the leased thing, and insure the leased thing.

The "special terms" of the leasing contract are spelled out in the so called "annex" which

constitutes an inseparable part of the leasing contract.

8.2. Publicity

According to the law [8], the leasing contract is also subject to publicity (art. 4, para. 2 L. 1665/1986).

This is secured by the legal requirement to enter it in a special public register kept both at the Court of First Instance of the seat or domicile of the lessee and at the Athens Court of First Instance (art. 5 LD 1038/1949).

Especially regarding immovables and aircrafts, a double system of publicity is thus established: on the one hand they need to be entered in the special public register kept at the Athens Court of First Instance and on the other hand they need to be recorded in the public books of recordation (art. 1, para. 3 L. 1665/1986) of the area where the leased immovable is located or, in the case of aircrafts, in the aircraft registry.

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