

## Current Problems of State Regulation of Leasing Relations

Bolat Abduldaevich Seriyev<sup>1</sup>, Erbol Zhaksybekovich Beisov<sup>1</sup>, Gulnura Kenzhebaevna Kopbassarova<sup>1</sup>, Ermek Talantuly Nurmaganbet<sup>2</sup>

<sup>1</sup>Zhetysu State University named after I. Zhansugurov, Zhansugurov St.187 A, Taldykorgan, 049000 Republic of Kazakhstan

<sup>2</sup>Kazakh National University named after Al-Farabi, Almaty, Al-Farabi Avenue, 71, 050040 Republic of Kazakhstan

**Abstract:** The article is devoted to the issue of state regulation of leasing relations. The author proves that leasing is convenient for all participants of leasing relations: to the manufacturer of equipment, lessee, investor. Leasing is beneficial for RK economy but it demands precise regulation and legal support. The essence of leasing, its financial and right foundations are being considered in the article. The classification of leasing in accordance with main activities in this sphere is given. Key advantages and disadvantages are analyzed and perspectives of its development are outlined. The author proves that current laws regulating leasing still contain some contradictions and faults.

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### 1. Introduction

**The idea of leasing is not new.**

**According to historians and economists, leasing transactions had been concluded long before the new era,**

**in the ancient state of Sumer.**

**Historians claim that the**

**Aristotle spoke ideas of leasing**

**in his treatise “The wealth is in use,**

**and no in right of ownership”**

Relevance of leasing development in Kazakhstan, including the formation of the leasing market, is conditioned primarily by the unfavorable state of the equipment park: proportion of obsolete equipment is significant, efficiency of its use is low, there is no provision of spare parts, etc. One of the solutions to these problems can be leasing, which brings together all the elements of foreign trade, credit and investment operations.

The transition to a market economy has set a number of problems to industrial enterprises, the main of which is the following: how to be established in an environment of increasing competition, reducing market because of the low prices of products and insolvency, difficulties of sourcing of raw materials, materials suppliers and limited financial resources.

### 2. Analysis of the latest researches and publications.

Many works of foreign and domestic scientist economists and lawyers were devoted to the research in the field of leasing relations. Also O.V.Averjyanov

[1], M.I.Braginsky [2], V.V.Vitryansky [3], V.D.Gazman [4] V.Galov [5], O.V.Iosifyan [6], N.A.Kreimer [7], F.N.Kuznetsov [8], V.G.Makeyev [9], V.M.Petrov [10], V.V.Schneider [11], V. Sidorova [12], U. Drobniig [13], R. Goode [14].

### 3. Outstanding part of the overall problem.

Currently, the majority of Kazakhstani enterprises are experiencing lack of working capital. They can not renew their fixed assets, introduce the achievements of scientific and technical progress and are forced to borrow. There are different types of loans: mortgage, secured by securities, secured by consignments, real estate. However, it is more profitable for the enterprise to take the equipment on lease when facing the need to update its assets. The saved funds of the enterprise as compared to a conventional loan for the purchase of fixed assets go up to 10% of the equipment cost for the entire leasing term, which is usually from one to five years. The current economic situation in Kazakhstan, according to experts, is favoring to leasing. The form of leasing reconciles the conflicts between the enterprise, which has no funds for modernization, and the bank, which is reluctant to provide credit to the enterprise as it does not have sufficient guarantees of return of invested funds. Leasing operation is beneficial to all involved parties: one side gets the credit, which pays in stages, and the necessary equipment; the other side - a guarantee of repayment, since the object of leasing is the property of the lessor or bank financing leasing operation, pending the receipt of the last payment.

Leasing is a set of property relations arising in

connection with the acquisition to the ownership of the property and its subsequent delivery to the temporary use for a definite fee. In leasing the ownership of the rented item is retained by the lessor and the lessee acquires only the right to its temporary use. Upon the expiry of the lease agreement the lessee can purchase the object of transaction at the agreed price, to extend the lease agreement or return the equipment to the owner at the end of the contract term.

Classical leasing has a character of tripartite relationships:

- The seller (the person selling the property to the lessor - the subject of leasing);
- The lessor (the person acquiring the property in the ownership and passing it to the lessee for rent fee);
- The lessee (the person renting the property for a fee from the lessor).

Until the early 60's leasing in foreign countries is largely affected retail companies, which often rented their premises. In the last three decades the popularity of leasing has increased dramatically, and instead of taking the money to buy a computer, car, ship or satellite, company can take it on lease.

The most promising and progressive are those leasing companies, which are controlled by the state structures. These bodies have the opportunity to engage in leasing activity and implement leasing contracts under favorable conditions, as most of the first leasing contracts were agreements for the supply of equipment to their founding banks and their regional offices. In addition, these structures have access to bank capital and generally contribute to the founding bank. Most of these bodies are focused on serving the founding bank and its corporate clients, and only a small percentage of their activity accounts for clients from abroad.

The advantages of leasing compared to other methods of investment lie in the fact that the lessor is provided no money, but property, the seller is able to control the reasonable costs of funds.

Terms of the leasing allow representatives of small and medium-sized businesses to actively participate in the production of consumer goods, which are being lack of resources and without the need for credit can then use new progressive equipment in the production.

In the development of leasing are interested not only lessees, as consumers of equipment, but operating enterprises, as the market is expanding its production of consumer goods with the help of leasing.

For investors, leasing provides the necessary return on investment at minimal risk through effective protection against insolvency of the client.

Leasing has high potential for enhancing economic cooperation with foreign countries and therefore the international leasing is becoming more common and understandable.

The Republic of Kazakhstan is now commonly using options and interest in the lease by virtue of its inherent possibilities.

With the advent of the leasing business in Kazakhstan, the question of legal provision of this type of tenancy has sharply raised, as this type of activity is clearly beneficial to the Kazakhstani economy and requires precise regulation and legal security.

At a time when the world community has questions about where to find additional financial resources, leasing is one of the most effective ways to allocate capital investment, which is particularly important for countries with a high level of international debt, as well as with limited foreign exchange assets, which is the Kazakhstan. Therefore the study of the nature of leasing, the mechanism for its implementation, government regulation, and the lease agreement is supposed necessary to author of this work.

This work deals with the essence of leasing, its financial and legal basis. Classification of lease on the main characteristics of this type of activity is given. The basic advantages and disadvantages, the prospects for its development in Kazakhstan are studied.

At present, in the Republic of Kazakhstan there is still a question of renewal of fixed assets and material-technical base of Kazakhstani enterprises. Unfortunately, in almost all areas of the Kazakhstani economy material-technical base is "outdated", or its amortization does not allow producing competitive products that cannot affect the social status of the population.

Since depreciation of fixed assets in the housing and communal services, energy industry, transport leads to severe accidents and that as a consequence of the victims among the people. There is no own funds to update the material-technical base of the vast majority of our enterprises, and the majority of Kazakhstani entrepreneurs has no hope for help from the state or the ability to pass these costs on the population (except for monopolies that can pass their costs onto the consumers of their goods and services by increasing the tariffs enormously).

Traditionally, entrepreneurs have used three main sources of funding for their activities: equity (share capital of legal entity or personal funds of individual entrepreneur), debt capital and income from securities issued by them.

However, recently, in the world practice one of the main ways to attract funds in the economy was the investment activity. Just thanks to investment postwar

Germany and Japan went from economically devastated states in countries with a strong and developed economy. Investments help entrepreneurs to cope with the most important task in the business - constant updating of the means of production and maintaining them at the proper level, allowing competing and surviving in this dynamic market conditions.

In the countries with advanced economies, one of the major types of investment activity is finance lease or otherwords leasing. Thanks to leasing entrepreneur instead of taking a loan in the bank at interest to buy the equipment, needed for his activities, refers to an investor who buys this equipment and gives it to him for rent. In this case, the entrepreneur does not have to prove his ability to pay or think about a secured loan, and the investor is almost has no financial risk, since in the case of default to pay for the leased property, it is returned to the investor, who sells it or leases, and then will return his costs.

For our state leasing activity is new. Before the nineties, in the Kazakhstani science did not have the concept of "leasing". After Kazakhstan became part of the global economy, leasing appeared in the Republic. Thanks to leasing, the Kazakhstani enterprises obtained the opportunity to quickly restore and update the fleet of vehicles and equipment, composing their capital funds, to quickly recover their investment in equipment.

Interest in leasing in Kazakhstan continues to grow for several years. A Number of leasing companies is increasing, existing ones are expanding activity field, foreign leasing companies are entering the market. The articles that analyze the various problems of leasing business are being published systematically on the pages of periodicals, journals. The legal, regulatory and methodological framework of leasing activity is being improved.

Despite ongoing efforts, leasing remains undemanded by the bulk of Kazakhstani entrepreneurs. Therefore, the development of leasing in Kazakhstan remains valid and the need for its study and application continues to this day. From the point of view of a lawyer the most interesting in the study of leasing relations is to investigate legal regulation of the leasing agreement, which is precisely the reason for the leasing relations.

For small and medium-sized businesses diversion most of the working capital for the purchase of expensive equipment is unacceptable, to avoid stopping development in this case the leasing should be used. Currently leasing companies finance up to 90% of the value of purchased equipment. Lessee has to invest in the purchase only a small portion of own funds.

As known, any development and growth

requires some investment. Rarely a bank can provide long-term financing for up to 5 years without collateral. On such a "long" period, usually only privileged clients of banks are credited, what do the rest of enterprises staying in the development stage? There is a solution: leasing is a real investment in real business.

In the legal and economic literature the circumstances surrounding the emergence of the leasing agreement are differently evaluated. According to lawyers, the leasing agreement as such appeared in the U.S. in the middle of XIX century, and in other Western countries widely spread in the middle of the XX century as a legal institution designed to regulate new forms of investing funds in the economy, resulting from the use of this method, as the acquisition by financial institutions of machinery and equipment with subsequent transfer of these firms in the lease at the request of industrial companies.

It appears that such statements are based on a misunderstanding of the essence of the leasing agreement and its qualifying attributes that distinguish leasing as a separate type of the leasing agreement.

Half a century ago, in 1952 in San Francisco (USA) first leasing company appeared. Since then, financial leasing has been developed in Western Europe, where the volume of leasing in industrial investment is more than 20%, and in South-East Asia and Australia, where this rate is 1/3 of all industrial investment [15, p. 114]. Leasing - a word of English origin, derived from the verb to lease - take and pass the property for temporary use. In the United States, Britain and other countries the development of rail transport contributed to the spread of leasing.

Having originated in the USA since the late 50's this agreement has been widely used in business practice of firms in Western Europe and Japan, and is now used in almost all countries of the world. Leasing has found acceptance in the jurisprudence of many countries, where there are no specific legal regulation (USA, Germany, Japan, etc.), but in some countries issued special regulations on leasing relations (France - Act of July 2, 1966, England - Law on lease and sale in 1965) [3].

In many countries, the leasing agreement was settled by law, including through the inclusion of appropriate standards in codification legal acts.

For example, in Art. 2A-103 of the Uniform Commercial Code of the United States distinctive features that distinguish finance lease to a separate rental agreement form, are characterized as follows. Financial rent (leasing) means lease where the lessor does not select, produce or deliver property, but acquires the property or the right to own and use it in connection with the leasing agreement. This results in one of the following events: 1) the lessee receives a

copy of the contract by which the lessor acquired the property or the right to possession and use of the property before signing a lease agreement, 2) the approval by the lessee of contract under which the lessor acquired the property or the right to possession or use of property, is a the condition of the lease agreement, and 3) the lessee before signing the lease agreement gets full and fair statement on the circumstances and the guaranties, on denial of guarantee, limitation of requirement rights, ways to protect and indemnities, including third party (e.g., a manufacturer of the property) provided to the lessor by the supplier under a contract, under which the lessor acquired the property or the right to possession or use of property, or 4) if the lease is not a consumer agreement, the lessor, before the lessee signs the lease agreement shall in writing (a) show lessee the person supplying property to the lessor unless the lessee chooses this supplier and authorized the lessor to purchase the property or the right to possession and use of this property from this person, (b) specify that the lessee has the right to use the commitments and guarantees, including third party, provided to the lessor by the supplier of the property under contract, under which the lessor acquired the property or the right to possession and use of property, and (c) inform that the lessee can come into contact with the person who supplied the property to the lessor, and to receive from this person full and fair statement of the commitments and guarantees and to refuse to guarantees and warranty limitations or protection ways [1, p. 68].

Despite the constant improvement of the legal framework of leasing, there remain issues that require legislative authorization. The definition and allocation of leasing as a separate legal category is arguable, and in the criticisms of some authors, the terms “lease” and “leasing agreement” are used interchangeably [2].

The subjects of the leasing market, as we know, are the lessors, lessees, manufacturers (sellers) of the property, banks and other financial institutions, as well as brokerage and consulting firms, which, although not directly involved in leasing transactions, but provide other market participants mediation, information and consulting services. The main subjects of leasing, i.e. parties to the leasing agreement, are the lessor and lessee. In financial leasing the participant of the transaction is also the manufacturer (seller) of the property - the object of the leasing agreement, although he is not the party directly in the leasing agreement. Lessor - it is a legal entity that acquires the property from the manufacturer (seller) and passes it to the lessee under the leasing agreement. By law, the lessor may be an individual person, i.e., the citizen registered as an entrepreneur without formation of a legal entity, but in

practice this is unlikely [15].

Leasing relations are also compared to the investment relations. Today's economic dictionary states: “Leasing – type of investment activity for the acquisition of property and its transmission on the basis of leasing agreement to persons or entities, for a definite fee, for a specified period of time and under certain conditions, with the right to purchase the property by lessee” [16].

In each of the sectors of the state economy the use of leasing has its own peculiarities. Features of leasing usage in the gas industry are explained primarily by the specifics of the necessary equipment, the lease term, provided by maintenance of implementation of leasing transactions. In this work the peculiarities of leasing systems on examples of work of companies in the industry will be considered.

As the experience of foreign countries shows, leasing in such areas as gas, enables enterprises to rapidly exit from the crisis and to ensure their sustainable development, so an increase of leasing transactions is an important task [6].

At the present stage of development of agricultural enterprises is characterized by extreme instability of their financial and economic situation. On the one hand, economic situation of agricultural enterprises and enterprises of other areas of agricultural production is deteriorating. On the other hand, governmental opportunities to fund agricultural enterprises are limited. The actual size of investments compared to modern needs of agricultural enterprises and especially agricultural producers in particular are insufficient. Sources of funding of technical potential recovery may be, as in other cases, in fact, own, attracted and borrowed funds. In crisis conditions, when many enterprises can not make large financial investments in technical renewal and intensification of production, it became clear that a significant increase in the role of leasing is necessary, which allows attracting additional private investment for the development of the production sector and supporting domestic production, including agriculture.

Leasing in agriculture is to sell vehicles with payment by installments, or car rental and payment for their value in part, that in the interests of both manufacturers and consumers of vehicles. Leasing is a very flexible economic tool that can speed up the solution of problems of financing, modernization, reconstruction and development of production. Rent based on leasing is favorable in respect of expensive equipment, and less sophisticated equipment [7].

However, apart from the practical and qualitatively study of the effectiveness of leasing it is necessary to analyze its economic benefits also in the quantitative aspect. Proceeding to analyze specific techniques it is necessary to make some assumptions:

Under the cost-effectiveness of leasing can be understood obtaining certain benefit (savings, income) by the subject of leasing transaction as compared to other methods of acquisition of equipment (bank loan).

Lease cost may be lower than or equal to value of the loan only if certain tax benefits. We need to compare the costs of each mode of lending. Principle, based on which a comparison is made, is the financial equivalent of payments, reduced to the same point in time by discounting.

Making an economic assessment of leasing, it should be noted that the lessor has the alternative of selling this equipment. To compare two versions of funding it is necessary to calculate the net present value in each case. Must be considered:

- Tax benefits, in each case, for the object that is not owned, depreciation benefits can not be used;
- If the object is purchased, then the firm has to pay maintenance costs (in many countries, these costs are deducted from taxable income), and if the object of leasing, it depends on the agreement;
- Because the object does not belong to the lessee, he loses the right to the residual value.

For making practical comparison let us choose a scheme for the organization the leasing process in the case of a direct leasing, as the last of the proposed schemes of interaction between the parties of leasing agreement is the most simple and effective in use in terms of domestic environment, as it is most conducive for cheaper leasing.

From a commercial point of view the lessor must be guided by the maximum that the lessee is willing to pay. But it must be considered that the construction company has an alternative to purchase such equipment through a loan obtained in the bank. Therefore, the leasing cost should not exceed the cost of similar maturity of bank commercial credit. The terms of the leasing agreement provide that leasing payments should be made on a quarterly basis; their value is constant over the life of the leasing agreement [8].

Despite the differences in terminology and the elements that make up the content of the agreements governing leasing relations, essentially it is one and the same agreement. E.V.Kabatova gives definition of the leasing agreement, given in one of the documents of the European Association of National Associations of financial rent (leasing) of equipment (Leaseurope): «Leasing is a rental agreement for the plant, industrial goods, equipment, real estate for use in industrial purposes by the lessee, while the goods are purchased by the lessor and he reserves the right to property» [16].

Leasing is a type of investment activity for the acquisition of property and its transmission on the

basis of leasing agreement to individual persons or legal entities, for a fee, for a certain period and under certain conditions due to the agreement, with the right to purchase the property by the lessee [9].

Leasing is a combination of economic and legal relations arising in connection with the implementation of the leasing agreement, including the purchase of the leased asset.

In the former Soviet Union the concept of “leasing” was introduced during the Second World War, when in 1941-45 on lend-lease was carried out deliveries of American techniques. In the modern period in the CIS countries, including Kazakhstan and Russia, the formation of leasing structures in the domestic market starts from 1989. Here legal regulation of leasing relations was behind not only the needs, but even the existing practice of its application [17]. Leasing is one of the most promising and effective forms of financial investment in conditions of the deficit of traditional sources of financing, capital investment and high inflation. It allows to increase the investment activity, accelerate scientific and technological progress by updating the fixed assets and equipment modifications, enhance marketing of valuable products in conditions of debt crisis.

Leasing - the tripartite transaction, which has similarities with the rent, conditional sale and purchase, loan, but do not belong to any of them [10]. Leasing - is an economic phenomenon, type of activity, but not a separate element of civil law [4]. That lease allows reconciling the interests of producers and consumers, banks and leasing companies in the best way.

Leasing - a more profitable way to purchase (use) of equipment compared to its purchase or ordinary rent. So it's safe to assume - the number of concluded leasing agreements by Kazakhstani entrepreneurs will increase from year to year and, in the end, the share of leasing in the total investment will reach the leading, successful developing countries. That will eventually lead to renewal of fixed assets and material-technical base of Kazakhstani entrepreneurs, and as a consequence of economic growth of our state [11].

Leasing - this type of business activity, aimed at investing temporarily idle or borrowed funds, when according to financial lease rent (leasing) the landlord (lessor) agrees to acquire ownership of the property due to the contract from a particular seller and give this property to the tenant (lessee) for a fee for temporary use for business purposes [18].

The legislation of Kazakhstan, in contrast to the Russian Federation law, using the notion of “financial rent (leasing)”, uses the term “leasing” (CC RK) and “financial leasing” (Law on Leasing).

In accordance with paragraph 1 of Art. 565 of CC under the leasing agreement the lessor agrees to purchase the property specified by the lessee from the seller and give the lessee the property for the temporary possession and use for business purposes for a fee. The Law on leasing under financial leasing means a type of investment activity in which the lessor undertakes to pass acquired from the seller for ownership and due to the leasing agreement the subject of lease for a fee and on certain conditions for temporary use for a period of at least three years for business purposes. The transfer of the leased asset by the leasing agreement must meet one or more of the following conditions:

1) transfer of leased asset to the lessee for ownership, and (or) provision of the right to the lessee to purchase the leased asset at a fixed price determined by the leasing agreement;

2) lease term is more than 75 percent of the useful life of the leased asset;

3) current (discounted) value of the lease payments for the entire lease term is more than 90 percent of the value of the transferred leased asset [19]. In this case, the leased asset becomes the property of the lessee at the end of the term of the lease before it expires, or upon payment of the full amount of the lessor, the lease agreement provided for, if such a transition is provided by the leasing agreement.

#### 4. The methodological basis for the study.

As the main methods of research methods were used dialectical general scientific knowledge of social processes, as well as a number of private research methods: a systematic approach, the concrete historical, comparative legal analysis and scientific interpretation.

**Scientific novelty of research (article) is that** for the first time as part of scientific research on the economic and legal sciences in Kazakhstan innovative science theoretical and practical relevant issues of financial leasing is complexly considered. In a study for the first time Kazakhstani legal and economic literature is subjected to scientific analysis of the process of formation and development of the law of the Republic of Kazakhstan on the lease for the period from 1995 to the present.

Each enterprise operates in a market economy as a separate (relatively and absolutely) economically productive unit. Outcome of reproductive (ability to reproduce) operation of enterprises, marginalized economically and interdependent in the creation of goods and services, is the individual reproduction. To conduct economic activity, the enterprise should have the investment resources, which are in constant motion, expressed by leasing.

Transformation of the production and circulation under the influence of scientific and technological progress, deep changes in economic business conditions necessitate search and implementation of non-traditional for economy of our country methods of updating material-technical base and modification of fixed assets of subjects of various forms of ownership. One of these methods is leasing.

Compared to other research on the separate specific problems of financial leasing in this work is subjected to complex study of the structure of leasing relations arising from financial leasing. The scientific research is characterized by novelty nomination and justification of guidelines. The research identified characteristics of the leasing agreement, and suggests ways to resolve some outstanding problems of financial leasing.

#### 5. The main results of the study.

Based on this study, the following conclusions:

1 Leasing is a form of innovation and entrepreneurship, aimed at investing of free or borrowed funds, which solves a number of problems, accelerate the development of the technological base of our industry, when according to financial rent (leasing) the landlord (lessor) agrees to purchase the property due contract from certain sellers and give the property the tenant (lessee) for payment for temporary use for business purposes and not readiness of technologically coupled production to supply parts and materials of required quality.

2. There are a number of advantages that characterize the leasing as an attractive mechanism financing investments, such as: reducing the risk of non-repayment, the leasing payments are charged to cost of production, thereby reducing taxable income, the availability of depreciation and tax benefits to the lessor, which he can share with the lessee and others. In general, from the national point of view, leasing is a mean of production, the introduction of scientific and technical progress, and the creation of new jobs, so the government is interested in promoting and expanding leasing.

Inconsistency of existing legislation on leasing in the Republic of Kazakhstan conditioned by two major problems.

First, based on the Ottawa Convention on International Financial Leasing in 1988 and the concept of the American tax law legal regulation of leasing relations.

Secondly, the legal regulation of leasing relations are provided by the norms of the Civil Code, containing a generic term of lease agreement, and the Law on financial leasing based on the concept of leasing as an economic-legal category, as well as regulating features of the financial leasing as a form of

investment in detail. In this case, rules of law, contrary to the Civil Code, as the rule of a special law, take precedence over the general rules of the Civil Code governing the leasing agreement.

In order to address the identified inconsistencies it is necessary to improve Kazakhstani legislation by bringing the provisions of the Law on financial leasing in accordance with the general provisions of the Civil Code which do not contradict the essence of leasing relations that involve the extension of the scope of this Law, the legal relations arising in the process of financial leasing retain their peculiarities of legal regulation of relations by extending its provisions to regulate civil leasing relations.

3. Leasing - off-balance-sheet operation and information on the use of leasing is recorded in the notes to the financial statements of an entity-lessee. Information on leasing payments for the current period in the profit and loss account in "Operating expenses".

4. The proposed method of calculating the leasing payments is based on the Guidelines and takes into account the factors that really affect the size of the leasing payments.

5. Development of the leasing industry has a positive effect on economic development in several ways:

- Competition in the financial services market is created. So, with the advent of leasing cost of funding has been decreased and market of financial services has been expanded, in particular, funding with unchanging interest rate.

- Leasing increases the amount of capital investment since it is an additional form of long-term financing.

- Leasing positively affects on sales of equipment, because for local companies - manufacturers new opportunities to sell their products have been opened.

- Leasing provides conditions for the development of small and medium businesses, due to this fact leasing companies play an important role in the financing of small and medium enterprises.

- Leasing promotes the industrial and financial policy, as it is the stabilizing factor during the recession due to the fact that it increases the effectiveness of preferential tax regime established for capital investment.

6. The Law on financial leasing gives the classification of leasing types and it is presented by low study of leasing under the laws of the Republic of Kazakhstan. In this regard, we consider it possible to refuse legal division of leasing into types. Here we assume it is possible to keep in the Law on financial leasing rules on the legal regulation of the leaseback, which feature from the legal point of view, is to

combine the functions of the seller and the lessee by the same person at the same time.

7. Insurance, credit, budgetary, fiscal, financial, custom, investment and other legal relationships include as central (main) relations a complex system of legal relations, as well as of third parties.

8. Using the classification of agreements by sphere of economic activity, the leasing agreement can be attributed to the business agreements. The leasing agreement, which is one of the varieties of contracts of tenancy (rental), must be recognized as consensual, compensated, mutual, bilateral, one-type agreement. Features of Kazakhstani law on leasing suggest that there are two types of leasing liabilities: financial leasing commitments and operational leasing commitments. However, in accordance with the law of the Republic of Kazakhstan on the leasing, to a variety of business investment agreements should be applied only finance leasing contracts; operating leasing agreements should be allocated to the business agreements.

9. At the conclusion of the leasing agreement with the participation of the seller, then in such an agreement as a single document, there is a mechanical unification of the two transactions - sales and leasing, which does not allow recognizing the leasing agreement as tripartite transaction.

In the event of conclusion of two agreements - leasing and sales - from the leasing agreement appears external - proprietary legal relationship between the lessee and all other persons and domestic - obligatory legal relationship between the lessor and the lessee; from the sales contract – contractual legal relationship between the lessor and the seller and contractual legal relationship between the seller and the lessee, which is not party to the sales contract, but its participant related to the lessor as a party to the sales contract (i.e., a third party to whom the contract was made the sales contract).

In conclusion of my work I want to stress again the great importance of leasing for the Kazakhstani economy and conclude that today in the Republic of Kazakhstan financial rent (leasing) as an economic category and civil institution has already been formed. Although the share of leasing in the total investment in the Kazakhstani economy in comparison with economically developed countries is still extremely small, the potential of leasing is great. Leasing has many advantages compared to other civil and legal economic institutions, of which the main are following:

1. Leasing allows getting the equipment in the possession and use without full payment for it;

2. Thanks to leasing new production without major mobilization of the necessary financial resources can be arranged;

3. Thanks to leasing leasing there is an opportunity to upgrade production without debt financing;

4. At leasing there is an opportunity to test the equipment to its full payment or to use the equipment only for the period when it is necessary.

Summarizing the research must be said of the conclusions made in the process.

Leasing can be described as a combination of economic and legal relations arising in connection with the implementation of the leasing agreement, including the purchase of the leased asset.

Leasing agreement has a specific, unique to him, features that distinguish it from other contracts of tenancy. The legal status of members of the leasing is not constant and varies depending on the type of leasing.

The combination of the “financial leasing” itself means the continuity of regulation, taxation and economic benefits of leasing. Our country is still trying on to the old financial instrument through which devastated postwar Japan for ten years has updated its production facilities and advanced to three world economic leaders [20, 21].

In order to attract financial capital to leasing operations other than the creation of the legislative and regulatory framework it is necessary to provide favorable tax conditions. Author of work believes that the stability of the regulatory framework is very important for investors interested in investing in the leasing sector in Kazakhstan, because they need to be sure that the “rules of the game” will not be arbitrarily changed or loosely interpreted during realization of the project. Therefore, further the legislator should take into account the above principles to encourage the development of leasing in Kazakhstan and help attract both Kazakhstani and foreign investment in this sector. It is hoped that the top of government will come to understand that the order and legal regulation of this type of activity will help the strategic development of Kazakhstani economy.

Summing up the study of leasing, I emphasize that the leasing agreement, dating of descent to the rent, is not just rent (tenancy), but the symbiosis of investment (financial) and the rental relations. The major in leasing is the process of an investment by the lessor of the lessee’s funds at the lessors disposal, who receives this financial assistance in the form of the transfer of the temporary possession and use of property specially purchased for him from the seller defined by him.

Legal regulation of the leasing agreement is provided by Ottawa UNIDROIT Convention on International Financial Leasing, Moscow Convention on inter-country lease, the Civil Code of the Republic of Kazakhstan (General Part, Chapter 29, § 2 of

Chapter 29) and a special Law of the Republic of Kazakhstan “On Financial Leasing”. After making some changes and additions to the relevant Kazakhstani regulative acts, which was due to the need to stimulate the development of leasing in Kazakhstan and its compliance with international standards of regulation, it is safe to say that modern Kazakhstani leasing legislation has sufficiently coherent system.

However, speaking on the legal regulation of leasing activity, we should recognize that in the current legislation governing the leasing there are still some flaws and contradictions, which are mentioned in this work.

#### **Corresponding Author:**

Dr. Nurmaganbet, Kazakh National University named after Al-Farabi, Almaty, Al-Farabi Avenue, 71, 050040 Republic of Kazakhstan.

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