American University of Armenia

Masters' thesis:

REAL ESTATE: ENTERING INTO A COMMERCIAL LEASE

Prepared by the MCLS 2nd year student

Tatevik Gharibyan

Instructor

Emil Babayan

Yerevan, Republic of Armenia

2006

Part 1. Transaction Description, Public Policy/Private Interest clarification

1. This subject is about entering into the commercial lease, namely commercial lease of real property. Under a contract of lease the lessor undertakes the duty to provide the lessee property for payment for temporary possession and/or use[1]. The contract may be concluded by the sending of an offer (a proposal to conclude a contract) by one of the parties and its acceptance (acceptance of the proposal) by the other party. A lease must also contain consideration, which means that the offeree must give something of value to the offeror. Consideration usually consists of money, but also other things of value may be given to the offeror. Finally, the offeror must deliver the property to the offeree or make the property available to the offeree. When a lease is formed the property owner is called the lessor, and the user of the property is called the lessee.

A lease focuses upon two major interests: (1) the interest of the lessor who owns the fee, and (2) the interest of the lessee occupying the leasehold. Further analyzed, the lessor's fee interest consists of (a) the right to receive contract rent, (b) the right of reversion, and (c) any right he might have to improvements at the end of the lease[2].

2. The lessee's leasehold interest consists of (a) the right to occupy the leasehold, (b) the right to the difference between contract rent and higher market rent.

A lease contract can involve any property that is not illegal to own. Common lease contracts include agreements for leasing moveable and immovable property; real estate, and apartments, manufacturing and farming equipment, and consumer goods, etc. However this subject will be focused on commercial lease of real property, which is particularly significant for businessmen that need lease agreements for office, store, building, and other commercial space to conduct their activities. Leasing a commercial space can be a good alternative owning a commercial real estate. It can have a number of financial benefits for businesses, thus leasing is less capital-intensive than purchasing, so if a business has constraints on its capital, it can grow rapidly by

[1] Article 606 of the RA Civil Code
[2] www.lawdepot.com/contracts/comlease

leasing property than it could by purchasing the property. Leasing may provide more flexibility to a business which expects to grow or move in the relatively short term.

Besides benefits leasing can have also significant drawback. Thus if the business is successful, lessors may demand higher rental payments when leases come up for renewal. If the value of the business is tied to the use of that particular property, the lessor has a significant advantage over the lessee in negotiations.

3. So when parties enter into commercial lease agreement in order to safeguard protection of their interests, they should make sure that all necessary issues are negotiated, defined, and included in commercial lease, which must be in writing.

There are far more issues that need to be assessed, and appreciated by a lessee, when negotiating a commercial lease than with a residential lease (house, condo, residential apartment). Very often lessors and lessees find themselves looking for guidance because an unpleasant surprise has come up during the course of a lease. In most every case, such surprises are the result of having signed a poorly understood or poorly constructed lease agreement.

4. This is especially true of smaller, less sophisticated lessees who, for whatever reason, have chosen to sign the lessor's "Standard Form Lease"[3] with few, if any, changes. In the same way, inexperienced lessors will often accept a lease agreement without really understanding the terms and conditions the agreement will impose on them.

Essentially, a lease is much like a partnership agreement in that it sets out the parameters of a business relationship. When everything goes as planned, most any lease will serve the parties well but the true test occurs when there are setbacks in the relationship. If the lease has not been carefully drafted, a setback can become a major problem for one or the other of the parties. Lessees often forget that the "Standard Form Lease" represents the lessor’s wish list and if not appropriately modified, may not serve their interests when issues arise. On the other hand,

---

[3] www.community.lawyers.com

a sophisticated lessee will often request changes to the lease that, if not fully understood, can cause unforeseen difficulties for the lessor as well.

5. One of the core concepts of a successful negotiation requires that each party have knowledge of the significant issues faced by the other. If certain provisions of the contract are unclear, indefinite, controversial, and if some issues haven’t been negotiated, a conflict can arise, which can cause problems to the parties. For this reason it is important for the procedures relating to the concluding commercial lease agreement to operate efficiently, produce effective results and be well-understood by the parties. This study aims to describe, analyze, and evaluate procedures and explain to the private parties involved how to exercise their rights effectively.

2. Armenian Legal Framework

1. Legal system of the Republic of Armenia has the following sources of law governing leasing activities; RA Civil Code, dated 1998, May 5, Chapter 35 of which establishes the primary rules of contracts of leasing out of property, and laws which envisage some other aspects of transaction of leasing; Land Code, dated 2001, May 2, Law on State Registration of Rights to the Property, dated 1999, April 4, and Law on Profit tax dated 1997, September 30. Both the residential and commercial leasing is governed by the same laws, and legal acts.

Under a contract of lease the lessor provides the lessee property for payment for temporary possession. The lessor has the duty to provide property to the lessee in conditions determined in the contract. If the lessor does not provide the property during the time period indicated in the contract, the lessee is eligible to demand the property and compensation for the losses caused by the delay of performance on the lessor’s part[4]. According to Civil Code, Article 610 leasing is

[4] **Հոդված 613**
1. Վարձատուն պարտավոր է գույքը վարձակալին տրամադրել վարձակալության պայմանագրի պայմաններին եւ գույքի նշանակությանը համապատասխանող վիճակում:
2. Գույքը վարձակալության է հանձնվում դրա բոլոր պատկանելիքներով ու դրան վերաբերող փաստաթղթերով (տեխնիկական անձնագիր, որակի հավաստագիր եւ այլն), եթե այլ բան նախատեսված չէ պայմանագրով:
3. Եթե վարձատուն վարձակալության պայմանագրում նշված ժամկետում, իսկ

based on written agreement between the lessor and the lessee. The agreement must have notary authentication and the rights arising from it must have state registration[5]. A contract shall be considered concluded if an agreement has been reached on all essential terms of the contract among the parties in the required form.

2. The essential terms of an agreement for a lease are; the identification of the lessor and lessee, the premises to be leased[6], the commencement and duration of the term, the rent to be paid.

Article 612, as amended through October 4, 2005, differentiates leasing contracts between leasing for a fixed term (contract limited in time) and leasing unlimited in time (contract for indefinite term). Contracts limited in time expire without notice at the end of the time limit. Contracts unlimited in time can be terminated by either party by notice of termination. Law defines that notice of one month in advance should be given, or the contract may establish a different time period for notification of contract termination.

3. Article 614 of the Civil Code defines liability of the lessor for defects in the property. The lessor is liable for defects in property given by lease that in whole or in part hinder the use of it, even if at the time of concluding the contract of lease, it didn't know of these defects. But the lessor shall not be liable for defects in the property that were expected by it upon concluding the

---

եթե պայմանագրում այդպիսի ժամկետ սահմանված չէ` ողջամիտ ժամկետում, վարձակալին չի տրամադրել վարձակալության հանձնված գույքը, վարձակալը, սույն օրենսգրքի 414 հոդվածին համապատասխան, իրավունք ունի նրանից պահանջել տրամադրելու այդ գույքը եւ հատուցելու կատարման ձգձգման հետեւանքով իրեն պատճառված վնասները, կամ պահանջել լուծելու պայմանագիրը եւ հատուցելու պայմանագիրը չկատարելու հետեւանքով իրեն պատճառված վնասները:

[5] **Հոդված 610.**

2. Անշարժ գույքի վարձակալության պայմանագիրը ենթակա է նոտարական վավերացման:

Հոդված 611.

Անշարժ գույքի վարձակալության պայմանագրից ծագող իրավունքները ենթակա են պետական գրանցման:

[6] **Հոդված 608.**

3. Վարձակալության պայմանագրում պետք է նշվեն տվյալներ, որոնք թույլ են տալիս որոշակիորեն սահմանել այն գույքը, որը որպես վարձակալության օբյեկտ հանձնվում է վարձակալին: Պայմանագրում այդպիսի տվյալների բացակայության դեպքում վարձակալության օբյեկտի մասին պայմանը համարվում է չհամաձայնեցված, իսկ համապատասխան պայմանագիրը` չկնքված:

contract of lease, or were previously known to the lessee, or should have been discovered by the lessee at the time of inspection of the property or checking its condition upon the contract.

4. Article 618 sets duties of the parties for the maintenance of the leased property. The lessor has the duty to make at its expense major repair of the leased property. Major repair must be made in the time period established by the contract or if it is not established by the contract, within a reasonable period of time.

5. As Article 437 sets citizens and legal persons are free in the conclusion of a contract. The terms of the contract shall be determined at the discretion of the parties except for cases when the content of the respective term is prescribed by a statute or other legal acts.

A contract must comply with rules obligatory for the parties established by a statute and other legal acts (imperative norms) in effect at the time of its conclusion.

3. Case Studies - of Regulated Event

1. There are a number of court cases involving problems that arise in connection with commencement of commercial lease agreement of real property. There are cases, especially, concerning state registration of the real property leasing contract. Based on discussion with legal entities, judges, attorneys[7] and analysis of cases, the issue which needs an urgent solution is the process of contract registration in the state registration offices, namely established time-limit for registration application.

2. For example, in the case of the year of 2004, “666” LTD v. State Registry of Nor Nork local department, “666” LTD sued State Registry on the ground that the latter refuses to register two contracts; contract of purchase, and lease. The appellant bought a market, signed the purchase contract in 11.08.2003, and applied to the State Registration to register it, but the latter refused stating that the appellant should also solve the problem of defining the status of land, which is

[7] Stepan Miqayelyan, judge of the Malatia Sebastia first instance court, Nazeli Vardanyan, attorney, and Director of “Armenian Forests” NGO

needed for using the market. The appellant, getting the decision of the Mayor Office of Yerevan, leased it and again in 25.03.2004 applied to the state registry for registration. But the respondent again refused state registration on the basis of expiration of deadline for registration. Refusal of registration of lease agreement was even more beyond understanding because it met the time-limit of registration set by the law[8]. The Economic Court of Appeal concluded that there was a violation on behalf of respondent, wrong interpretation of law, and ruled that State Registration of Nor Nork department must register both contracts.

3. The other case is more recent one; it's a case of the year of 2006. "Dyuna" LTD applied against Real Property State Registration of Shengavit region. The appellant signed a leasing contract and got notary authentication in May 13, 2004. On March 14, 2006 the applicant applied to the state registration office for registering the rights arising from the contract, but the latter refused on the basis of time-limit expiration. The applicant asks the court to restore the omitted time and make the State Registration to register the rights. The court of first instance of Malatia-Sebastia used "666" LTD v. State Registry of Nor Nork local department as precedent and concluded that the refusal of the State Registration to register the contract is not justified and doesn't meet requirements of law.

4. So in both of the cases the problem was the time-limit, which is defined by the law on "State Registration of the rights to the property" during which the parties have to apply to the state registry office of the relevant department. If the time-limit is missed the parties have to apply to the court to have their time-limit restored, and only after that they can again apply to the state registry for registering the rights to the property. The court states that there is a contradiction between the laws[9] which puts both the parties to the contract and the state registry into confusion.

[8] Article 23 of the Law on "State registration of the rights to the property"

[9] See Article 23 of the Law on "State registration of the rights to the property" and Article 449 of the RA Civil Code. (Appendix)

4. Step- by- step description of the transaction

1. Lease contract is classed among bilateral, mutual, consensual, payable, term-conditioned contracts.

The content of the commercial lease agreement includes sufficient, common conditions about which coming into agreement the parties define their mutual rights and responsibilities.

Every commercial lease must be in writing and include the following provisions which should be negotiated by the parties step-by step.

1. **The object of the contract-**the only requirement that law sets is that the object must be non-consumable property. So there must be data about the property; a description of the space, square footage, address, available parking and other amenities. This is important because in case of absence of this data the contract shall not be considered to have been concluded[10].
2. **The term-**how long the lease runs, when it begins and under what conditions one can renew the lease. The term can be both definite and indefinite. If the term is not mentioned the contract shall be considered to be concluded indefinite period of time. In this case in if the parties want to stop the contract they should give notice 3 months in advance[11].
3. **The amount of the payment-** how much rent is due, including any increases, period of payment. Some issues should be negotiated as whether the rent includes utilities, such as phone, electricity, and water, or lessee will be charged for these items separately.
4. **A improvements, repair**- what type of improvements of the real estate can be done by the lessee; whether the lessor agrees that lessee can do improvements or not.
5. **Sublease**- whether the lessee will have a right to sublease or assign the lease to someone else, and if so under what conditions.
6. **Terms of termination**- how lessor or lessee can terminate the lease and its consequences. How much advance notice the parties have to give?
7. **Notarial authentication**-When negotiations are over, and the contract is written it should be taken to the notary office to get notarial authentication.
8. **State Register**- property rights arising from a contract should be registered in the State Register.

Above described steps represent description of the transaction based on Civic Code as amended through October 2005.

[10] The provision of the object of the contract is defined in Article 608 of the Civic Code.
[11] Article 612, of the Civic Code as amended through October 4, 2005.

Part 5. International Best Practice

1. This section will provide the summary of key features of international best practice in respect of commencing commercial leasing contract of real property. It will be discussed particularly the registration requirements of the lease contract in different countries.

2. In the Republic of Armenia every lease contract has to be in writing, be registered, otherwise it will be considered invalid. This summary is based on the analyses of the respective legislation of Germany, Denmark, Sweden, United Kingdom, United States of America.

2. In Germany most private law rules on the law of lease can be found in German Civil Code (*Bürgerliches Gesetzbuch* = BGB) §§ 535. In order to form a leasing contract, two congruent declarations of intent (offer and acceptance) are needed in accordance with the rules of the General Part of the BGB. In general, a contract does not have to be in writing to be valid. An exception applies, *inter alia*, for lease contracts on housing premises. Pursuant to §§550 (1) BGB, a lease contract entered into for a period longer than a year must be in writing.

If the written form is not observed, the lease contract shall be regarded as concluded for an unlimited time, § 550 (2) BGB.

There is no public register for lease contracts in Germany. However, a (property) right of residence according to §1093 BGB has to be registered in the land register (Grundbuch). A leasing agreement can be entered into the land registry. Then the position of the lessee is considered as an "absolute right" – with effect as against third parties, that is to say the buyer cannot terminate the lease merely with reference to the fact of sale.

2. In Sweden the central rules on leases are assembled in chapter 12 of the Land Code, which deals with commercial law as well as the law on private leasing. The Land Code regulates leases relating to land (arrende) and buildings and apartments (tenancy, hyra) and draws a sharp line between these forms. Oral tenancy contracts are valid, but they shall be expressed in written form if either of the parties so requests. Oral contracts are of course extremely rare. Standard forms are normally used, even when lessor is not a professional. Forms can be purchased in

bookstores.

3. There is supposedly no need to register a contract (in the Land Register) and registrations are in practice rare. It is possible to insert a clause into individual lease contracts waiving the need to register. If the contract prohibits registration, the Land Registry will reject any application. The reason for this is a wish to avoid unnecessary registrations, but there are clearly situations where registration would be beneficial to lessee. It is hard to see any rational grounds why lessor should prohibit registration, but nevertheless this option is frequently used.

4. Certain classic priority situations are solved by first registration rules. The most typical is probably this: Lessor rents an apartment first to lessee 1 and then to lessee 2. The apartment will go to lessee 2, if he registers first and did not know about lessee 1. Protection against lessor's creditors is given automatically for lessee in multi-apartment buildings, but in all other cases registration would give priority against mortgagees and others who benefit from encumbrances, registered later in time, if the property is sold by court order.

5. In Denmark the legislation is primarily set out in four Acts. Two of these Acts regulate commercial premises and social housing (non-profit housing). The basic rules are found in the Contracts Act (Consolidated Act 781 of 26 August 1996).The rules for entering into leasehold agreements in Denmark do not differ from the rules for the formation of most other kinds of contract. The Danish rules on formation of contract are largely in accordance with the principles stated in Chapter 2 of PECL (Principles of European Contract Law).

6. The leasing agreement does not require a specific form. However Section 4(1) of the Private Housing Act gives each of the parties under a tenancy agreement the right to demand the agreement to be in writing.

7. Registration in the Land Registry (tingbogen) is not obligatory. Under Section 7(1) of the Private Housing Act, the fundamental rights of tenants are enforceable against anyone, without registration. If lessee has been granted special rights, he has to register the leasing agreement in order to be protected against any new owners and the creditors of lessor. (Section 93(1)(f) of the

Private Housing Act).

8. <u>In the United Kingdom</u> the development of this branch of the law has been a result of a combination of property and contract law, combined with public law when dealing with local authorities. As a general rule of property law, leasing agreements are required to comply with certain formalities originally to prevent the occurrence of fraud and, more recently, in order to ensure that all parties know where they stand. A leasing contract would usually be required to comply with the formalities in section 2, Law of Property (Miscellaneous Provisions) Act 1989. This requires the contract to be in writing, incorporating all the terms of the agreement either in one document or by reference to another, and to be signed by or on behalf of both parties to the contract. In order to have effect at law, leases for more than seven years must be registered in the Land Registry where the land is subject to registration. Leases for less than seven years can take effect at law provided that they are made by deed. However, there is an exception to this rule in the case of leases for less than three years which can be made by parol, that is, orally provided they are for the best rent reasonably obtainable[12].

<u>9. In the United States of America</u> lease agreements can also be concluded in oral form, but almost in every state the lease agreement of more than one year must be in writing. Agreements of long term (this term is different indifferent states) must also be recorded like deed. Thus in Alabama leases for more than 20 years must be registered within one year in county in which leased property is situated. In Maryland leases for more than seven years must be recorded, but even if not recorded they are considered valid and binding, whereas in the Republic of Armenia if the contract is not recorded it is considered to be void[13].

10. Generally as we can observe in common law and civil law jurisdictions the key features of regulation of commencement of commercial leasing agreements are basically the same and less complex as compared to the regulation of the Republic of Armenia. In most of the countries the lease agreements of short term need not be registered, and the countries where the long-term

---

[12] http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/tenancyLaw
[13] Dukeminier Krier, Property (1988)

contracts need to be registered don't impose a very short time-limit for applying for registration. Even when the contract is not registered it is still considered to be binding and void.

Part 6. Procedure Evaluation

1. The procedure for commencing real property leasing agreements in the Republic of Armenia is a bit burdensome. It is not only compulsory that the leasing contract must be in writing, but it is also subject to notarial authentication, and the rights arising from a contract of lease of real property are subject to State Registration. Compared to international practice this procedure is time-consuming and more complex.

2. Even in some countries the leasing contract can be in oral form, let alone the notary authentication and state registration. I think that oral agreements will be very difficult to prove at court, and the requirement of written form in RA legislation is justified, because they have evidentiary value. But the procedure for state registration of the rights arising from the leasing contract can be of an issue, and can cause a problem.

3. Thus according to the first part of Article 23 of the "Law on State Registration of the Real property", "The rights arising from the contracts are subject to state registration within 30 days since concluding the contract".

3-rd part of Article 449 of the RA Civil Code states "A contract rights under which are subject to state registration shall be considered concluded from the time of the registration of these rights".

Article 23 "within 30 days since concluding the contract" expression must be interpreted word for word on the basis of Article 449. So the above mentioned expression means "within 30 days since state registration of the contract rights".

The cases mentioned in part 3 of this essay arose on the issue of contradiction of the above mentioned two articles.

4. Thus the contracts which are signed and have notary authentication are not yet concluded, and the start of the time since concluding the contract cannot be regarded as coming into effect, which means that 30 days time-limit cannot be considered violated.

In other words leasing contract can be concluded after state registration of the rights arising from the contract which means that the time of the conclusion of the contract and origination of the rights of the lessee coincide.

5. Thus first part of Article 23 “Law on State Registration of the Real property” is meaningless and stops being a norm regulating any legal relation, and it stops being usable.

In the Republic of Armenia, as compared to other countries, it is not only compulsory to have state registration, but there is also a deadline for carrying out registration, and if one misses the deadline, he/she has to apply to court to restore time-limit, then again to apply to the state registration for registering the rights arising from the contract. In many cases this provision causes abuses and corruption on behalf of State Registry. Many people avoid going to court and give some money to the agents of state registry so that they will disregard the deadline and will register the contract. Even sometimes deadline is not missed but the registry refuses to register the rights as happened in “666” LTD v. State Registry case. The court in these cases based its ruling on Article 9 of “Law on legal acts”, which states that laws should comply with the codes, and if there is a contradiction the code is superior and must prevail. Besides even if there were contradictions between normative legal acts of the same legal power, the normative act which is preferable by an individual or legal entity should prevail.

6. The main policy of the 30-day deadline rule is to make the parties to the contract more punctual, and responsible. But this policy doesn’t justify the breakdowns, shortcomings of the law. The parties should be free to decide when to conclude the contract.

Thus Article 23, which puts into confuse both State Registration Offices and the parties to the contract should be amended.

7. Another problem with state registration is registering the rights arising from short-term leasing agreements of real property. The law on state registration of real property does not make difference in short or long term leasing contracts. From interviews with several NGOs it was clear that in practice short-term contracts are not registered by the parties. Thus, for instance,

"Burg" NGO had to conduct some trainings and seminars in regions of the RA, and it leased the room for trainings for three or four day period. They only signed the leasing agreement, but didn't register it, because in practice it is burdensome to register the rights of the contract which is for a short period.

8. As it is mentioned in part 6 of the International Best Practice in some European countries only the leasing contracts of real property which are long-term, for instance, for 8, 9 years or more periods are subject to state registration.

9. I would make a suggestion for the Republic of Armenia to make an amendment and exclude from the state registration the leasing contracts which are made up to 1 year period. In this case the practice and the law will go hand in hand, which is important for establishing a country of rule of law.

7. Recommendations for Reform

1. As it was mentioned and discussed in the previous chapter Article 23 of the "Law on State registration of rights to the property" is in contradiction with article 449 of the RA Civil Code. Contradictions put the parties involved in relevant activities in confusion which complicates the solution of the dispute.

2. Even the fact RA Law on Legal Acts states that the laws should comply with the codes, and if there is a contradiction the code is superior and should prevail, State registration first of all relies and basis its operations on the "Law of State registration of rights to the property".

3. The first recommendation that I would like to make is to eliminate all the controversies existing in laws, and as a result abolishing the first part of Article 23, which requires 30 day time-limit for acquiring contract registration.

The period of 30 day time-limit can have the following negative aspects and impact on the parties to the contract.

a) *Corruption risks*

4. The set time-limit increases the possibility of corruption risks. The parties to the contract frequently, as a result of not being informed about the law or other subjective circumstances miss the time-limit to register the contract. According to the procedure if a party to a contract misses the deadline, he or she has to apply to court, which is eligible to restore the time-limit. After executing this procedure the party has a right to apply to the local subdivision of the state registration for the second time to have the rights arising out of the commercial lease agreement registered. People usually evade applying to the courts, because they view the procedure of application very burdensome, court hearings are generally time-consuming, exhausting and tiresome. For these reasons the agents of the state registry suggest that the parties pay some money, and they will disregard late application and register the contract. So this provision of the law gives opportunity for corruption.

The main policy of the 30 time-limit is to guarantee the punctuality of the parties to the contract, and make them register the contract early, but this police is not of good implementation, because it causes rather harm than good.

b) Violation of party's right to freely conclude a contract

5. The contract represents an expression of the will of the contracting parties, and for that reason it should be respected and enforced by the courts. And the only fact that the contract is not registered within 30 days the court cannot use as a base to consider the contract void.

The concept of the freedom of a contract or will theory of a contract emerged yet in the nineteenth century when jurists decided to permit parties to bind themselves by an expression of their will. But it was not the will theory the first theory of contract to rely on expressions of will, in fact, natural law theories also relied on the concepts of will and choice, and they did so centuries prior to the emergence of the will theories in the nineteenth century. These liberal theories see the law of contracts as a guarantee of individual autonomy.

6. If two parties are to be observed entering into a voluntarily private exchange, they should also voluntarily define and set time for executing private property rights.

The parties are free to determine the provisions, and conditions of the contract, to negotiate certain aspects of it, and, definitely, they should be free to decide when to conclude a contract. The principles of modern contract law are founded on the concepts of free will over government intervention and individualism, which is belief in the primary importance of the individual, in the virtues of self-reliance and personal independence.

7. As we have seen in the case of international best practice, the developed countries don't limit the rights of the contracting parties, and make them register the contract during the set time-limit. And without the set deadline the leasing operations are conducted quite efficiently, without any serious problems.

8. So I think that it is the parties right to determine when to enter into a contract. The 30 day time-limit violates the parties' rights. A person should be free from governmental regulation in the pursuit of a person's economic goals.

9. Another recommendation that I would like to *make is elimination of the requirement of state registration of the leasing contracts which are concluded up to one year.*

From the research that I have done, I found that very often, if not almost always, the commercial leasing agreements of less than one year are not registered. Nowadays many NGOs from Yerevan carry out activities in regions. They conduct trainings; organize seminars, workshops or conferences[14]. They lease a room or a hall for several days, and this short-term leasing agreements are not registered in the corresponding subdivision of the State Registry office, because it is not practical, it is very burdensome and costly operation for a short-term contract.

10. Thus law is being violated, but it should be mentioned that in this case eviction of the law is grounded on poor practical legal reasoning, and artificial complexities.

As an early stage of human development first laws were created and enacted to regulate relationships, and make solution of disputes easier. Nowadays some legislation instead of making relationships less complex, stand far from practical reality, don't represent logical

[14] This information was obtained through interviews in "Burg" NGO, 'Armenian Forests" NGO, "Shen" NGO

solution of the disputes, are quite unreasonable, and create negative attitude among the people, who as a result seek to evade them.

11. While examining international best practice we saw that there are countries where there is no requirement of state registration at all. I don't think that general elimination of state registration will be good for the Republic of Armenia, because state registration is important for state recognition, guarantee and protection of rights to the property, for supporting to the establishment of the real estate market, for provision of accessibility, objectiveness, and updating information on property, including rights and encumbrances.

But elimination of the short term contract registration will make the procedure of concluding leasing contracts less complex.

The laws will mirror the reality imposed by people reasoning and will be enforced in more natural way.

8. Reform Implementation

1. The law on "State registration of rights to the property" was adopted by the National Assembly in 30 April, 1999. Amendments to the law should be made by the National Assembly at the proposal of National Parliament or the Government. In conformity with Article 75 of the Constitution[15] the right to legislative initiative in the National Assembly shall belong to the

---

[15] ***Article 75***

The right to legislative initiative in the National Assembly shall belong to the Deputies and the Government.

The Government may determine the sequence of the debate for its proposed draft legislation and may demand that they be voted only with amendments acceptable to it. The Government may put forward a motion on confidence in the Government in conjunction with the adoption of a draft law proposed by the Government. If within twenty four hours after the Government has raised the question of the vote of confidence a minimum of one third of the total number of Deputies does not put forward a draft resolution on expressing no confidence in the Government or if no resolution on expressing no confidence in the Government is adopted by the majority of the total number of Deputies during the period set forth in Article 84 Part 3 in case when such a draft is put forward, the draft law proposed by the Government shall be considered adopted. The Government may not raise the issue of its confidence in conjunction with a draft law more than twice during any single session.

Deputies and the Government. The right of legislation initiative is exercised through the submission of the draft law or the package of drafts to the National Assembly for debate.

2. Within a two-day period the Chair of the National Assembly circulates the draft of the law among

a) the Government (if the author is deputy), addressed to the Prime Minister and to the Staff who in a 20-day period must submit their conclusions on the draft to the Chair of the National Assembly.
b) Standing Committees appointing the Lead Committee from among them, which in 30-day period, however, not earlier than the receipt of the conclusions from the Government has to submit the conclusion on the draft.

3. The National Assembly consists of a number of standing committees. One of the bodies of proposing amendment to the above mentioned law can be the Committee, named Standing Committee on State and Legal Affairs which main scope of operations include human and civil rights and freedoms, constitutional amendments, state bodies, NGO-s, political organizations, civil service, justice, judicial administration, prosecutor's office, advocacy and notary service, civil, criminal, administrative and other legislation, regional government, local government, Rules of Procedure of the National Assembly, and election system.

The other way of implementing amendments to laws is by the President’s order, Prime Minister’s decrees, and Governmental decrees.

4. Though the amendments are carried out by governmental bodies, it does not mean that civic society should be passive. Organizations, companies, NGOs that come up with the problems that are caused due to certain drawbacks of the law, that make difficult to conclude commercial leasing contract, should apply to relevant governmental bodies to make them introduce changes.

Conclusion

1. In order to execute the procedure of conclusion of a commercial leasing contract, there should be an offer on behalf of one party and acceptance by the other party. An offer is a proposal addressed to one or several concrete persons that definitely express the intent of the person to give real estate for a rent or to get the real estate for a rent. An acceptance is the response of a person to whom an offer is addressed. When an offer and acceptance are not concluded as such, negotiations can start, which are usually characterized by proposals and counter proposals. The contract must be in writing and the rights out of it are subject to state registration. Only after notary authentication and state registration the contract shall be deemed to be concluded. Generally we can conclude that Armenian legislation regulates all aspects of leasing law. But if we compare RA legislation with international best practice, we can see that in the case of latter the procedure, particularly, that of registration, is very easy and simplified, where the parties to the leasing contract in the RA come up with certain problems while carrying out the operation of registration. So there are some drawbacks and shortcomings, discussed in the Procedure Evaluation chapter of the essay, that need to be addressed and changed.

Hopefully this paper will have its contribution to picturing the system of leasing and revealing the gaps that exist in Armenian leasing legislation.

REFERENCES

Dukeminier Krier *Property* 1988 Little, Brown and Company, Boston and Toronto

Roger Bernhardt *Real Property* 1994 West Publishing

Martinbale- Hubbell *Law Digest* 1997 Chicago, Illnois

The Civil Code of the Republic of Armenia (1998)

The Land Code of the Republic of Armenia (2001)

Law on State Registration of Rights to the Property (1999)

http://www.cadastre.am

Tenancy law of the European countries,

http://www.iue.it/LAW/ResearchTeaching/EuropeanPrivateLaw/tenancyLaw

Appendix.

Law on State Registration of the Rights to the Property dated 1994, April 4.

Article 23 State Registration

Rights originating from real estate transactions, such as the right of ownership, right of use, mortgage, hypothec, servitude, other encumbrances, rights to personal property, as well as other rights stipulated by law shall be subject to state registration within 30 days from the day of transaction in the Territorial Subdivision of Real Estate State Registration, where such real estate is located.
In case if the requirement of state registration of rights originating from the real estate transaction is not fulfilled the transaction shall be deemed invalid. Such transaction shall be deemed null and void.
Հոդված 23. Պետական գրանցումը
Գույքի հետ կատարվող գործարքներից ծագող իրավունքները՝ սեփականության իրավունքը, օգտագործման իրավունքը, գրավը, հիփոթեքը, սերվիտուտները, այլ սահմանափակումները, շարժական գույքի նկատմամբ իրավունքները, ինչպես նաեւ, օրենքով նախատեսված դեպքերում, այլ իրավունքները ենթակա են պետական գրանցման՝ գործարքների կնքման օրվանից սկսած 30-օրյա ժամկետում՝ անշարժ գույքի պետական ռեգիստրի տարածքային ստորաբաժանումներում՝ ըստ անշարժ գույքի գտնվելու վայրի:
Գործարքներից ծագող իրավունքների պետական գրանցման պահանջը չպահպանելը հանգեցնում է դրա անվավերության: Նման գործարքը համարվում է առոչինչ:

Civic Code dated 1998, May 5.

Article 449. Time of Conclusion of the Contract

1. A contract shall be considered concluded from the time of receipt by the person who has sent an offer of its acceptance.
2. If, in accordance with a statute, the transfer of property is also necessary for the conclusion of a contract, the contract shall be considered concluded from the time of transfer of the respective property (Article 177).
3. A contract rights under which are subject to state registration shall be considered concluded from the time of the registration of these rights.

Հոդված 449. Պայմանագիրը կնքելու պահը
1. Պայմանագիրը կնքված է համարվում օֆերտա ուղարկած անձի կողմից դրա ակցեպտն ստանալու պահից:
2. Եթե օրենքին համապատասխան, պայմանագիր կնքելու համար անհրաժեշտ է նաեւ հանձնել գույք, պայմանագիրը կնքված է համարվում համապատասխան գույքը հանձնելու պահից (հոդված 177):
3. Այն պայմանագիրը, որից ծագող իրավունքները ենթակա են պետական գրանցման, կնքված է համարվում այդ իրավունքի գրանցման պահից:

Article 616. Lease Payment
1. The lessee is obligated to make timely payment for the use of property (lease payment).
The procedure, conditions and times for making of lease payment shall be determined by the contract of lease. In the case when they are not determined by the contract, it is considered that the
procedure, conditions, and times are established that are usually used in the leasing of analogous

property in comparable circumstances.
3. Unless otherwise provided by the contract, the size of lease payment may be changed by agreement of the parties within the times provided by the contract, but not more often than once year. A statute may provide other minimum times for reconsideration of the amount of lease payment for individual types of lease and also for the lease of individual types of property.
4. Unless a statute provides otherwise, a lessee shall have the right to demand a corresponding reduction of lease payment if by force of circumstances for which it does not answer, the conditions of use provided by the contract of lease or the state of the property has significantly worsened.
5. Unless otherwise provided by the contract of lease, in case of substantial breach by the lessee of times for making lease payment, the lessor shall have the right to demand from it early making of lease payment at a time established by the lessor.

Հոդված 616. Վարձավճար

1. Վարձակալը պարտավոր է ժամանակին մուծել գույքն օգտագործելու համար վճարը (վարձավճարը):

Վարձավճար մուծելու կարգը, պայմանները եւ ժամկետները որոշվում են վարձակալության պայմանագրով: Եթե պայմանագրով դրանք որոշված չեն, ապա կիրառվում են նույնանման գույքի վարձակալության ժամանակ համեմատելի հանգամանքներում սովորաբար գործող կարգը, պայմանները եւ ժամկետները:

3. Վարձավճարի չափը կարող է փոփոխվել կողմերի համաձայնությամբ պայմանագրով նախատեսված ժամկետներում, եթե այլ բան նախատեսված չէ պայմանագրով: Օրենքով կարող են նախատեսվել վարձակալության առանձին տեսակների, ինչպես նաեւ գույքի առանձին տեսակների վարձակալության համար վարձավճարի չափի վերանայման նվազագույն ժամկետներ:

4. Եթե այլ բան նախատեսված չէ օրենքով, վարձակալն իրավունք ունի պահանջել նվազեցնելու վարձավճարի չափը, եթե, հանգամանքների ուժով, որոնց համար ինքը պատասխանատվություն չի կրում, վարձակալության պայմանագրով նախատեսված օգտագործման պայմանները կամ գույքի վիճակը վատթարացել են:

5. Վարձակալի կողմից վարձը վճարելու ժամկետների էական խախտման դեպքում վարձատուն իրավունք ունի նրանից պահանջել վաղաժամկետ մուծելու վարձավճարը, եթե այլ բան նախատեսված չէ վարձակալության պայմանագրով:

Article 607. Fruits, Products, and Incomes from the Leased Property

The fruits, products, and incomes received by the lessee as the result of the use of the leased property are under its ownership, unless otherwise provided by the contract.

Հոդված 607. Վարձակալած գույքի պտուղները, արտադրանքը եւ եկամուտները

Վարձակալած գույքի օգտագործման արդյունքում վարձակալի ստացած պտուղները, արտադրանքը եւ եկամուտները նրա սեփականությունն են, եթե այլ բան նախատեսված չէ պայմանագրով:

Article 613. Granting Property to the Lessee

1. The lessor is obligated to grant the lessee property in a condition corresponding to the terms of the contract of lease and the purpose of the property.
2. Property is granted by lease together with all its accessories and documents (plan documentation, quality certificate, etc.) relating to it, unless otherwise provided by the contract.
If such accessories and documents were not transferred but without them the lessee cannot use the property in accordance with its purpose or to a significant degree is deprived of that upon which it had a right to rely upon making of the contract it may demand provision to it by the lessor of such accessories and documents or rescission of the contract and also compensation for damages.

3. If the lessor has not provided the lessee with the leased property within the time indicated in the contract of lease and in the case when in the contract such a time is not indicated, within a reasonable time, the lessee shall have the right to demand this property from it in accordance with
Article 414 of the present Code and to demand compensation for the damages caused by the delay
in performance or to demand the rescission of the contract and compensation for the damages caused by its nonperformance.

Հոդված 613. Գույքը վարձակալին տրամադրելը

1. Վարձատուն պարտավոր է գույքը վարձակալին տրամադրել վարձակալության պայմանագրի պայմաններին եւ գույքի նշանակությանը համապատասխանող վիճակում:

2. Գույքը վարձակալության է հանձնվում դրա բոլոր պատկանելիքներով ու դրան վերաբերող փաստաթղթերով (տեխնիկական անձնագիր, որակի հավաստագիր եւ այլն), եթե այլ բան նախատեսված չէ պայմանագրով:

Եթե այդպիսի պատկանելիքները եւ փաստաթղթերը չեն հանձնվել, իսկ վարձակալը առանց դրանց չի կարող գույքն օգտագործել իր նշանակությանը համապատասխան կամ զգալի չափով զրկվում է այն բանից, ինչը կարող էր ակնկալել պայմանագիրը կնքելիս, նա կարող է վարձատուից պահանջել իրեն տրամադրելու պատկանելիքներն ու փաստաթղթերը կամ լուծելու պայմանագիրը եւ հատուցելու իր կրած վնասները:

3. Եթե վարձատուն վարձակալության պայմանագրում նշված ժամկետում, իսկ եթե պայմանագրում այդպիսի ժամկետ սահմանված չէ՝ ողջամիտ ժամկետում, վարձակալին չի տրամադրել վարձակալության հանձնված գույքը, վարձակալը, սույն օրենսգրքի 414 հոդվածին համապատասխան, իրավունք ունի նրանից պահանջել տրամադրելու այդ գույքը եւ հատուցելու կատարման ձգձգման հետեւանքով իրեն պատճառված վնասները, կամ պահանջել լուծելու պայմանագիրը եւ հատուցելու պայմանագիրը չկատարելու հետեւանքով իրեն պատճառված վնասները:

Article 626. Improvement of the Leased Property

1. Separable improvements to the leased property made by the lessor are in its ownership, unless otherwise provided by the contract of lease.
2. In the case when the lessee has made at the expense of its own funds and with the consent of the lessor improvements in the leased property that are not separable without damage to the property, the lessee shall have the right after the termination of the contract for compensation for the value of these improvements, unless otherwise provided by the contract of lease.
3. The value of inseparable improvements of the leased property made by the lessee without the consent of the lessor is not subject to compensation unless otherwise provided by a statute.
4. Improvements in the leased property, both separable and inseparable, made at the expense of amortization transfers from this property are owned by the lessor.

Հոդված 626. Վարձակալած գույքի բարելավումները

1. Վարձակալած գույքից վարձակալի կատարած բաժանելի բարելավումները համարվում են նրա սեփականությունը, եթե այլ բան նախատեսված չէ վարձակալության պայմանագրով:

2. Եթե վարձակալն իր միջոցների հաշվին եւ վարձատուի համաձայնությամբ կատարել է վարձակալած գույքից անբաժանելի բարելավումներ՝ առանց դրան վնաս պատճառելու, պայմանագիրը դադարելուց հետո վարձակալն իրավունք ունի հատուցում ստանալ այդ բարելավումների արժեքի չափով, եթե այլ բան նախատեսված չէ վարձակալության պայմանագրով:

3. Վարձակալի կողմից առանց վարձատուի համաձայնության վարձակալած գույքից կատարած անբաժանելի բարելավումների արժեքը չի հատուցվում, եթե այլ բան նախատեսված չէ օրենքով:

4. Վարձակալած գույքի ամորտիզացիոն միջոցների հաշվին կատարված ինչպես բաժանելի, այնպես էլ անբաժանելի բարելավումները համարվում են վարձատուի սեփականությունը: