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Leasing management in Algerian commercial law

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Abstract:

The development of commercial transactions has led to the emergence of a new form of commercial premises exploitation, represented by the lease-management contract carried out by another person, known as the lease-manager. The direct exploitation of the commercial premises is no longer limited to its owner; instead, the commercial premises have themselves become the subject of a lease contract, in which ownership of the premises is separated from its exploitation.

In this article, we will address this newly introduced mechanism in the field of commercial leasing. The study has resulted in a set of findings.

Keywords: Leasing, Free Management, Algerian Commercial Law.

Introduction:

The diversity and variety of the components of a commercial establishment—both tangible and intangible—and their unification as a whole to achieve a commercial purpose have led to the distinction of the commercial premises as a transferable intangible asset. It is no longer limited to being sold or rented, but has extended to include the possibility of being leased and managed by a third party, for a specified period of time, after which the commercial premises revert to the owner for self-management. Commercial practices have thus introduced a new form of commercial premises exploitation: the lease-management contract, where the premises are managed by another person, known as the lease-manager. The exploitation of the commercial premises is no longer exclusively carried out by the owner; rather, the premises themselves become the subject of a lease contract, in which ownership is separated from exploitation.

This development leads us to pose the following research question:

How can lease-management be applied to a commercial establishment, and what are the resulting legal effects?

To answer this question, our study will first examine the importance of concluding a lease-management contract for a commercial premises, then the conditions for its conclusion, followed by the legal effects of the contract, and finally, the ways in which it may be terminated.

The study adopts a **descriptive and analytical** approach to clarify the position of the Algerian legislator regarding this type of contract.

First - The Importance of the Lease-Management Contract for a Commercial Premises¹:

The lease-management contract for a commercial premises emerged after the concept of the commercial premises was crystallized and the separation of its ownership from its exploitation became possible, along with the possibility of leasing or transferring it. This contract has witnessed significant development and widespread adoption, becoming one of the most important economic activities attracting investors who prefer to exploit commercial premises without directly managing them.

The importance of the lease-management contract is particularly evident when a trader wishes to sell their commercial premises to a buyer who does not possess the required price. In such a case, the owner may conclude a lease-management contract with the prospective buyer, coupled with a unilateral promise of sale, allowing the lease-manager to exploit the premises for a specific period until they decide to purchase it.

In the event of the trader's bankruptcy, the court-appointed trustee may consider that the interest of the creditors requires leasing the premises in order to generate rental income to be added to the bankruptcy estate². This is subject to the approval of the supervising judge, to ensure that this measure is not used to harm the interests of the creditors and that there is a genuine benefit justifying the lease; otherwise, the lease will be unenforceable³.

The Algerian legislator has addressed this procedure in Article 277 of the Commercial Code⁴. The lease-management contract offers several advantages for premises exploited by a bankrupt party. It helps preserve the customer base of the commercial premises, whether the bankruptcy ends in a settlement—where the bankrupt trader resumes management of their store—or in liquidation—where the store is sold. In the latter case, the lease-management contract enhances the value of the store due to customer retention, thereby strengthening the general guarantee⁵.

This contract is also useful in emergency situations where a trader is prevented from personally managing their premises, such as illness, death, absence, or disinterest in continuing the business. The lease-management contract provides a practical solution, allowing the trader to retain ownership while receiving rent without directly exploiting the premises.

¹ Ismail Trad, *The Legal System of the Lease-Management Contract for Commercial Premises*, Master's Thesis in Private Law, Faculty of Law, Abou Bekr Belkaid University, Tlemcen, 2007/2008, p 23.

² Ali Hassan Younes, *The Commercial Premises*, Dar Al-Fikr Al-Arabi, Cairo, 1984 edition, p 223.

³ As when it is considered that lease-management may increase the premises' debts, reduce its value, and cause it to lose its clients. See: Chadli Nour-Eddine, *Commercial Law*, Dar Al-Uloom for Publishing and Distribution, 2003, p 166.

⁴ Article 277 of the Algerian Commercial Code states:

“In case of judicial settlement, the debtor may, with the assistance of the bankruptcy trustee and authorization of the supervising judge, continue operating their commercial or industrial enterprise. In case of bankruptcy, if the trustee deems it appropriate to operate the commercial premises, they may only do so with court authorization based on a report by the supervising judge proving that public interest or the interest of the creditors requires it.”

⁵ Ali Hassan Younes, *The Commercial Premises*, opp cit, p 118.

Moreover, the lease-management system enables certain individuals prohibited from engaging in commerce due to conflicts with their profession—such as civil servants, doctors, and others—to benefit from their commercial premises. Leasing the premises provides a legal source of income without violating the prohibition¹.

The practical importance of the lease-management contract is also evident for a trader who owns multiple commercial premises, allowing them to lease all or some of them to a lease-manager and focus on their primary commercial activities.

It is equally important in cases where a commercial premises is jointly owned by several partners, for instance, when a trader passes away leaving behind multiple heirs², or when two or more people jointly purchase a commercial premises. A problem then arises regarding how to exploit and benefit from the premises, given its nature as an indivisible intangible movable asset that cannot be physically partitioned. In such cases, the lease-management system offers a legal solution that avoids closure and ensures continued exploitation by assigning management to one of the partners or to a lease-manager, provided that the majority agrees to conclude the contract³.

Second - Formation of the Lease-Management Contract (Gérance Libre):

The lease-management contract (gérance libre) is regulated by the Algerian legislator in Articles 203 to 214 of the Commercial Code. It is subject, in addition to the general rules relating to leases, to specific provisions laid out by the Commercial Code, considering that the contract involves an intangible movable asset of a special nature. To form the lease-management contract, it is necessary to define its concept and then outline the conditions for its formation.

1. Concept of the Lease-Management Contract (Gérance Libre):

The Algerian legislator defines the lease-management contract in Chapter III of the Commercial Code⁴, under the title "Free Management – Lease-Management", stating:

"It is subject to the following provisions, notwithstanding any contrary condition and any contract or agreement through which the owner or operator of a commercial premises transfers all or part of the lease to a manager with the intention of operating it on their own behalf."

It is observed that in this article, the Algerian legislator also refers to the lease-management contract using the term "free management" (gérance libre)⁵. However, this term has been criticized in legal doctrine, with a suggestion to use the term "location-gérance" (lease-management) due to the ambiguity caused by the term gérance (management). It was

¹ Farha Zerouali Saleh, Complete Guide to Algerian Commercial Law (Commercial Acts, Merchant, Artisan, Regulated Commercial Activities, Commercial Register), 2nd edition, Ibn Khaldoun Publishing, Algeria, 2003, p 283.

² To support this, the Algerian legislator exempted heirs from the requirement of expertise to conclude a lease-management contract, as per Article 207, paragraph 5 of the Commercial Code.

³ Ismail Trad, The Legal System of the Lease-Management Contract for Commercial Premises, previously cited reference, p 24.

⁴ See Article 203, paragraph 01 of the Commercial Code No. 75/59 dated September 26, 1975.

⁵ The lease-management contract is also referred to by other terms, such as free management of the premises and exploitation lease.

argued that it should be restricted to types of paid management, since the term "manager" (gérant) refers to an agent who follows the instructions of the store owner, whereas in the lease-management contract, the manager exploits the commercial premises not for the owner's benefit but for their own account, and is not subject to the owner's orders. As a result, the prevailing opinion favors the term "location-gérance", as it more clearly reflects the nature of the contract and defines the role of the lease-manager (gérant locataire).¹

Thus, the lease-management contract (gérance libre) is a contract under which a person leases a commercial premises from its owner to exploit it for their own account and at their own risk, bearing full responsibility for this investment. The owner does not bear any responsibility for the outcomes of this exploitation². This definition is derived from Article 203 of the Algerian Commercial Code³. Like other contracts, the lease-management contract is subject to general conditions for formation, as well as specific conditions due to its unique characteristics. The failure to meet these conditions leads to legal consequences, while their fulfillment results in the formation of the contract.

2- Conditions for the Formation of the Lease-Management Contract:

The essential elements of the lease-management contract—consent, object, and cause—constitute the substantive conditions for its formation. However, due to its specific nature, this contract is also subject to special substantive conditions, the violation of which entails penalties as stipulated by the legislator, in addition to formal conditions required under penalty of nullity. These can be addressed as follows:

A- Substantive Conditions for the Formation of the Lease-Management Contract:

Applying general rules to lease-management contracts does not raise significant issues, as these conditions find their foundation in the general provisions of the Civil Code. The substantive conditions for the formation of the lease-management contract are divided into general conditions, which are considered the essential elements of the contract, and special conditions unique to this type of contract due to its specificity.

A-1- General Substantive Conditions for the Formation of the Lease-Management Contract: These conditions are subject to both the general rules of the Civil Code and the specific rules of the Commercial Code. They include:

a- Consent: Consent is a fundamental element; in its absence, the contract is null. In a lease-management contract, consent is directed at the use of the asset, not its ownership, for a determined period of time. It is governed by general rules and is manifested through the mutual exchange of the parties' will to create a legal effect, free from any defects.

b- Capacity: To conclude any type of contract, the legislator requires full legal capacity, which is determined by the contracting party having reached the full age of 19 at the time the contract is concluded, being mentally sound, and not placed under legal guardianship.

¹ Tarad Ismail, The Legal System of the Commercial Premises Lease-Management Contract, previously cited reference, p 19.

² Ahmed Mahraz, Algerian Commercial Law: Commercial Contracts , Dar Al-Nahda Al-Arabia, 1st ed., 1981, p 161

³ Which states, "It is subject to the following provisions, notwithstanding any contrary clause, and any contract or agreement through which the owner or operator of a commercial premises transfers all or part of the lease to a manager for the purpose of exploiting it on his own behalf."

Otherwise, the contract would be voidable in favor of the person lacking capacity, or absolutely void in case of total absence of capacity¹.

The "free management lease" is a lease contract concerning an intangible movable, and it is considered a commercial act by form². It can be concluded by the owner of the commercial premises or the artisanal establishment, or by the operator³.

In the field of commerce, Algerian legislation allows a guided minor to undertake certain legal acts⁴, which leads us to say that capacity in commercial obligations is a condition of validity.

Considering that the lease contract is an act of administration—except when it exceeds nine years, in which case the leased item is not considered to have left the lessor's estate—what actually happens is that the lessor permits another person to benefit from the object or its fruits for a specific period.

On this basis, the lessor does not need full capacity to dispose, but only administrative capacity⁵.

c- Subject Matter⁶: According to general rules, the subject matter is the legal act that the two parties have agreed to accomplish, while the subject of the obligation is what the debtor commits to. In a lease contract, the subject matter is a legal operation aimed at allowing the lessee to benefit from the leased property in exchange for a known rent.

Therefore, the subject matter includes both the leased item and the rent. One of the most important obligations of the lessor is to allow the lessee to benefit from the leased property, while the key obligation of the lessee is to pay the rent.

In the context of a free management lease, the subject matter retains this same meaning: it includes the commercial premises and the rent.

For the contract to be valid, the subject of the lease must be a commercial premises. The same conditions required under the general rules for the subject of a contract apply. Thus, the subject matter must exist or be capable of existing, be determined or determinable, and be legally permissible.

An additional requirement due to the nature of the lease is that the leased item must be non-consumable; otherwise, the contract is absolutely void.

It should be noted that some activities are prohibited from being subject to a management lease, such as pharmacies and analysis laboratories, because they are regulated by specific laws that require the owner or the licensed individual (if a natural person) to manage them personally. If the owner is a legal entity, then the technical management must be undertaken by a person who holds the scientific and practical qualifications required for the activity.

¹ see Article 40 of the Algerian Civil Code.

² Farha Zerroui Salah, *Al-Kamel fi Al-Qanoun Al-Tijari (The Complete Guide to Commercial Law)*, previously cited reference, p 285.

³ See Article 203 of the Algerian Commercial Code, as amended by Ordinance No. 96-27 dated 09/12/1996, Official Gazette No. 77 dated 11/12/1996.

⁴ See Articles 5 and 6 of the Algerian Commercial Code.

⁵ Abu Al-Saud Ramadan Mohamed, *Contract of Lease*, Dar Al-Jami'a for Printing and Publishing, Beirut, 1994, p. 324.

⁶ Turad Ismail, *The Legal System of the Free Management Lease of the Commercial Premises*, *op cit*, p. 60.

b- Cause¹: The cause is the immediate purpose or objective that the obligor seeks to achieve. In a free management lease, the element of cause is fulfilled by the mutual intent of the lessor and the lessee-manager to achieve a specific goal.

This is not merely the lessor allowing the lessee to use the premises in return for rent, but rather the exploitation of the commercial premises and ensuring its continuity in the commercial environment.

The element of cause in the lease contract is subject to the general legal rules concerning its existence and legitimacy. Therefore, the cause must exist at the time of contract formation and during its execution, and it must also be lawful.

Consequently, the absence of cause, or its illegality due to being contrary to public order or morals, leads to the absolute nullity of the contract².

It is worth noting that the penalty for breaching the substantive conditions is the nullity of the free management lease contract. However, the contracting parties may not invoke this nullity against third parties³.

The rationale behind depriving the contracting parties from invoking nullity due to lack of conditions is to prevent them from benefiting from their own negligence in order to evade obligations toward third parties resulting from the exploitation of the premises.

Thus, the legislator treats them contrary to their intention, making them bear responsibility for their mistakes⁴.

A-2- Special Substantive Conditions for the Formation of a Free Management Lease Contract: In addition to the general conditions required for all contracts, the Commercial Code has introduced special conditions due to the unique commercial nature of the commercial premises. The legislator has laid down several requirements that must be fulfilled by both the lessor and the lessee-manager:

a- The status of trader or craftsman for a specific period with respect to the lessor: The Algerian legislator requires,⁵ for a free management lease contract to be valid, that the lessor holds the status of a trader, or a craftsman in the case of an artisanal establishment. Both are subject to the obligations of traders and craftsmen and are bound by the provisions of the law related to the commercial register⁶, for a period not less than five years.

This condition applies regardless of whether the lessor is a natural or legal person, as long as they have the legal status of a trader.

This condition can be proven by all legal means, and registration in the commercial register is considered prima facie evidence unless proven otherwise.

The lessor's right to lease their commercial premises is not only contingent on having practiced commercial activity for five years or having worked as a manager during the same period, but there is also an additional limitation on their contractual freedom to conclude a free management lease.

¹ Turad Ismail, The Legal System of the Free Management Lease of the Commercial Premises, Opp cit , p. 67.

² Article 98 of the Algerian Civil Code issued by Ordinance No. 75-58 dated 20 Ramadan 1395 corresponding to 26 September 1975, containing the amended and supplemented Civil Code.

³ See Article 212 of the Algerian Commercial Code.

⁴ Ahmed Mahraz, Commercial Law, opp cit, p170.

⁵ See Article 203 of the Algerian Commercial Code.

⁶ Ahmed Mahraz, Commercial Law, opp cit, p 162.

Specifically, the lessor must have personally operated the premises subject to the lease for at least two years.

According to Article 205 of the Commercial Code, it is not required that the five-year period be continuous, immediately precede the lease, or that the previous commercial activity be related to the current activity of the premises under contract.

However, this condition of experience associated with the above-mentioned time periods is not rigid and allows for exceptions.

The required period may be exceeded or reduced by order of the President of the Court, after hearing the Public Prosecutor. This reflects an attempt to balance private interests with the public interest.

The decision to exceed or reduce the period of experience lies solely with the judge, based on the principle of preventing speculation over commercial premises and artisanal establishments¹.

b- The free management lease must concern a commercial premises or artisanal enterprise: In the absence of a commercial premises or enterprise, a free management lease contract cannot be concluded, as this condition is essential in distinguishing a free management lease from a mere rental of premises for the purpose of carrying out a trade or craft².

For a valid free management lease contract to exist, there must be a pre-existing commercial premises or artisanal enterprise with all its components, especially the clientele element, which essentially constitutes the business itself³.

Furthermore, the essential elements of an enterprise must be present: namely, the repetition of activities using material, moral, and human means, and the existence of an organized structure aimed at carrying out these activities⁴.

It should be noted that the penalty for breaching these special substantive conditions is the nullity of the free management lease contract⁵.

However, the contracting parties may not invoke this nullity against third parties.

It is also important to point out that some individuals are exempt from certain special conditions, pursuant to Articles 207 and 210 of the Algerian Commercial Code.

B – Formal Conditions for the Formation of a Free Management Lease Contract:

The Algerian legislator has surrounded the free management lease contract with important formal requirements, mandating that the will of the contracting parties be expressed in the form of an official written document⁶, as well as requiring publication of the contract⁷.

However, the articles regulating the free management lease do not specify the content of the publication in the Official Bulletin of Legal Announcements⁸, unlike the case of the sale

¹ Ibid, p162.

² Considering that the leases referred to in Article 169 and subsequent articles of the Commercial Code apply to commercial leases "i.e., lease of the premises as real estate"

³ Fadila Nadia, Algerian Commercial Law (Commercial Acts, Trader, Commercial Business), University Publications Office, 9th ed., Algeria, 2001, p 169.

⁴ Fadila Nadia: Algerian Commercial Law, *op cit*, p 75.

⁵ See Article 205 of the Algerian Commercial Code.

⁶ See Article 324 bis 1 of the Algerian Civil Code.

⁷ See Article 203 of the Algerian Commercial Code.

⁸ Articles 203 to 214 of the Algerian Commercial Code.

of a commercial business¹, which must, under penalty of nullity, include the dates and amounts of payment and its reference number, or in the case of a simple declaration, the date and receipt number of this declaration. In both cases, reference must be made to the office where these procedures were carried out.

Additionally, the publication must include the date of the contract, the name, surname, and address of both the former and new owners, the type of commercial business, the agreed price including charges or estimations used for registration purposes, the deadline for submitting objections, and the chosen domicile within the jurisdiction of the court².

Since both forms of publication aim to inform third parties, it is considered necessary that they contain all relevant information regarding both parties, especially the lessee, and that they provide a precise identification of the commercial premises or artisanal enterprise.

The legislator has also established penalties for non-compliance with these formal requirements, including nullity of the contract if the formal conditions are not met. This is stipulated in Article 212 of the Commercial Code, which encompasses all conditions for the formation of a free management lease contract, and in Article 324 bis 1 of the Civil Code, which requires such contracts to be concluded in an official form under penalty of nullity.

The Algerian legislator requires the official writing of the lease contract due to the involvement of a significant element—namely, the commercial premises. Furthermore, failure to register the contract in the commercial register is considered a fault, which may result in the trader being held liable for damages under civil liability rules, in accordance with general principles.

In addition, the trader may be deprived of the benefit of protective bankruptcy proceedings, and registration in the chambers of commerce may be refused³.

In addition to these civil penalties, and to ensure respect for the formal conditions—particularly those related to registration in the commercial register and legal publication—the legislator introduced financial penalties in Law No. 04-08⁴.

It is worth noting that these financial penalties are deterrent in nature, designed to ensure strict compliance with the prescribed formalities, thereby providing protection for the contracting parties and especially for third parties⁵.

Third – Effects of the Conclusion and Termination of the Free Management Lease:

The free management lease contract of a commercial business entails important effects, as it results in reciprocal obligations between the lessor and the lessee. It also produces effects toward third parties, especially in the event of the sale of the commercial business, and before its termination for either general or specific reasons.

¹ See Article 83 of the Algerian Commercial Code.

² Mohamed Farid El-Oreiny and Galal Wafaa Mohamedin, *Commercial Law (Commercial Acts, Traders, Commercial Business)*, University Publications House, Egypt, 3rd ed, 1998, p 224.

³ Mohamedin Galal Wafaa, *General Principles of Commercial Law*, University House for Printing and Publishing, Egypt, 1999, p 46.

⁴ See Article 30 of Law No. 04-08 of 14 August 2004 on the Conditions for Practicing Commercial Activities, under the chapter on crimes and penalties related to the conditions for practicing commercial activities.

⁵ See Articles 37 and 40 of Law 04-08 on the Conditions for Practicing Commercial Activities

1. Effects of the Conclusion of the Free Management Lease Contract: Upon the fulfillment of the aforementioned material and formal conditions, the free management lease contract is concluded, and this automatically results in important effects: first, between the contracting parties, and second, toward third parties.

A. Effects of the Contract's Conclusion Between the Contracting Parties: These are the rights and obligations arising from the contract between the two parties of the free management lease—namely, the lessor and the lessee-manager:

a. Effects on the Lessor: These are the obligations and rights that arise as soon as the contract is concluded, regardless of whether the lease is published. Upon the conclusion of the free management lease contract, the lessor loses their status as a trader, unless they continue operating another commercial business.

The lessor bears several obligations, such as delivering the commercial business or the artisanal establishment with all its components as agreed in the contract, in order to enable the lessee-manager to benefit from it, and refraining from any act that could hinder the lessee's enjoyment according to the contract terms.

This includes guaranteeing protection from legal disturbance caused personally by the lessor or by third parties, ensuring the commercial business or the artisanal establishment is free from defects, and maintaining the leased premises—unless otherwise agreed in the contract¹.

In case the lessor fails to fulfill their maintenance obligation, the lessee-manager may invoke the general rules of liability by: Compelling the lessor to fulfill their obligation in kind, where possible; Demanding compensation for the harm suffered due to reduced enjoyment of the premises; Requesting a reduction in rent; Or terminating the contract with the right to compensation.

Additionally, the lessee-manager may, with the lessor's approval, obtain judicial authorization to carry out the maintenance works themselves at the expense of the lessor.

The lessor is also required to either register themselves in the commercial register or amend their current registration by stating the lease, in order to inform third parties and provide them with the legal status of the commercial business or the artisanal establishment in terms of exploitation.

In return for these obligations, the lessor holds basic rights, such as the right to receive rent.

b. Effects on the Lessee-Manager: Under the contract, the lessee-manager bears several obligations. They must preserve the leased premises and avoid endangering the business², and pay the rent—usually a monetary amount agreed upon in the contract, though it may also be a percentage of the turnover or profit, subject to revision³.

The lessee is also obligated not to assign the lease or sublet it to a third party unless the lessor agrees or a provision in the contract allows full or partial subletting.

¹ Ismail Tradd: The Legal System of the Commercial Premises Management Lease Contract, *op cit*, p. 116

² See Article 495 of the Algerian Civil Code

³ See Article 498 of the Algerian Civil Code

It is also noted that the lessee-manager is subject to all the obligations of traders, such as keeping commercial accounting records, registering in the commercial register, and paying taxes—in short, all obligations applicable to traders¹.

In return, the lessee enjoys all the rights of a trader, including the right to request preventive settlement in case of insolvency, and the right to renew the contract if such a clause exists in the contract, or if the parties agree on a renewal mechanism, whether explicit or implied².

B. Effects of the Formation of the Free Management Lease with Respect to Third Parties: The third parties referred to here are the creditors of both parties, as they are the primary individuals potentially affected by the contract's consequences, and also the owner of the property if the premises occupied by the commercial business are not owned by the lessor.

a. Effects of the Formation of the Free Management Lease with Respect to Creditors: The free management lease contract may harm the lessor's creditors, especially if the lessor loses their status as a trader or artisan. For this reason, the commercial legislator provided specific protection for them by making their debts immediately due and payable. Creditors may file a lawsuit within three months from the date of the contract's publication in the Official Bulletin of Legal Announcements³ before the court in whose jurisdiction the commercial business is located⁴.

These debts must exist prior to the conclusion of the free management lease contract and must arise from the operation of the commercial business. However, the extent to which the lease affects the lessor's debts is subject to the discretionary power of the judge, after the creditors provide proof.

As for the lessee's creditors, the lessor is jointly liable with the lessee-manager for debts arising from the operation of the commercial business by the latter until the contract is published in the Official Bulletin of Legal Announcements, and for a period of six months from the date of publication⁵.

b. Effects of the Lease with Respect to Other Third Parties: If the property in which the commercial business operates is not owned by the lessor, then the lease of the premises remains strictly between the property owner and the lessor, despite the latter entering into a free management lease contract. This contract is not considered a transfer of the lease or a sublease. Rather, it involves the leasing of intangible movable property, with the leasehold right being one of its components.

Nevertheless, the free management lease of the commercial business remains connected to the lease contract of the real estate concluded between the property owner and the business owner in terms of the lease's validity, duration, and renewal⁶.

It should be noted that if the real estate lease contract includes a clause prohibiting assignment or subleasing, the free management lease is not considered a breach of that clause.

¹ Ahmed Mahraz, Algerian Commercial Law, opp cit, p 167

² Ahmed Mahraz, Algerian Commercial Law, opp cit, p 167

³ See Article 208 of the Algerian Commercial Code

⁴ Article 208 of the Algerian Commercial Code

⁵ See Article 209 of the Algerian Commercial Code

⁶ Ahmed Mahraz, Algerian Commercial Law, opp cit, p 169

However, some argue that the commercial business lease implicitly includes a lease of the premises it occupies¹.

Based on this, the lessee-manager has the right to request renewal of the lease through an indirect claim, but not the right to claim eviction compensation.

The commercial business owner retains the right to sell or mortgage the business, and their creditors have the right to seize the business and request its sale, either voluntarily or compulsorily.

As a general rule, the free management lease contract is enforceable against the buyer provided it has a date prior to the sale².

2. Termination of the Free Management Lease Contract:

The reasons for the termination of the free management lease contract are varied and include both general and specific causes.

The contract terminates for general reasons that are common to other contracts, in accordance with general rules on contract termination. These include the expiration of the contract term, termination due to breach of obligations by either party, destruction of the commercial business, its closure, expropriation, or a court ruling declaring the contract void. The contract also terminates in the case of merger of the legal personalities of the lessee and the lessor³, in accordance with the general rules.

Additionally, it may terminate for specific reasons related to the personal nature of the contract. These specific reasons pertain to the person of the lessee-manager, such as their death, loss of legal capacity, or declaration of bankruptcy. In this regard, the legislator departed from the general rule and made an exception for lease contracts where the personality of the lessee is of particular importance.

These causes lead to the termination of the free management lease contract. However, regardless of whether the contract terminates for general or specific reasons⁴, the legislator requires that the same procedures for registration and publication be followed as in the case of contract formation, namely, registration in the commercial register and publication in the Official Bulletin of Legal Announcements⁵.

Conclusion:

The free management lease holds an important place among the contracts related to the commercial business, as it allows owners to exploit the parts of their real estate that exceed their personal needs without engaging in commercial activity themselves, and thus avoiding the legal obligations associated with such activity. It also provides broad opportunities for those wishing to practice commerce to find a place to do so. This special feature of the lease contract, which keeps the leased premises in the hands of the owner while transferring the right of usufruct to another party, has contributed to the widespread use of such contracts.

¹ Farha Zerroui Salah, *The Complete Guide in Commercial Law*, opp cit, p 302

² Mostafa Kamal Taha, Wael Anwar Bandak, *Principles of Commercial Law*, Dar Al-Fikr Al-Jame'i, Alexandria, 2013, p 253

³ Article 304 of the Algerian Civil Code stipulates that: "If the qualities of both creditor and debtor are united in the same person with regard to the same debt, the debt shall be extinguished to the extent of such merger of estates..."

⁴ Samia Al-Qalyoubi: *The Intermediate Commentary on the Egyptian Commercial Law*, 1999/17, 1st ed., Dar Al-Nahda Al-Arabia, p 598

⁵ The Algerian legislator provided for this in the last paragraph of Article 203 of the Commercial Code

The free management lease of a commercial business is concluded between the lessor and the lessee for the purpose of the latter's investment, without obligating the owner of the premises with the outcomes of the exploitation. The Algerian legislator has regulated the free management lease contract in Articles 203 to 214, which confirms the importance of this type of lease. From the above, we can draw the following conclusions:

1. The free management lease contract helps in certain emergency situations faced by the trader that prevent them from personally operating their commercial business, such as illness, death, absence, or when they no longer wish to engage in trade.
2. The free management lease contract is an important mechanism for the bankrupt trader to retain their clientele, which increases the general guarantee and its value.
3. The commercial lease does not transfer ownership of the leased premises but only transfers the right of usufruct.
4. The owner of the commercial business is not obligated by the results of operating the premises during the commercial lease.
5. The free management lease system allows individuals who are prohibited from engaging in commerce due to conflicts with their professions to exploit their commercial businesses without violating the restrictions imposed on them.

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