



ANALYSIS OF SOME OF THE ISSUES OF EXPANDING THE SUBJECT OF A LOAN AGREEMENT

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Article history:		Abstract:
Received:	11 th March 2024	The article analyzes the concept, value of the loan agreement and issues related to its application. The article also considers the expansion of the scope of the subject of the loan agreement and develops proposals to improve the legislation on debt.
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Taking into account that the procedures and practices used in today's practice regarding the loan agreement, business practices formed in the industry, and the legislation aimed at regulating lending activities in the banking and financial sector are not provided for in the FC and have formed norms that meet the modern requirements of today's financial market, the loan agreement has the following legal symbols showing: one-way or two-way, real and consensual contract, free or paid contract. This characterization of the loan agreement results from the terms of the agreement and the requirements for lending and receiving loans established in the mutual agreement of the parties. For example, if in the loan agreement the parties specify the lender's obligation to pay the loan amount in the future, if they agree to repay the loan amount with interest, then the loan agreement with this content is consensual, bilateral (mutual) and fee-based contracts. If a loan agreement is executed between citizens and the loan amount is to be returned without interest, such a loan agreement is considered a real, one-sided and gratuitous agreement.

At the legislative level, the inclusion of securities and foreign currency in the content of the debt contract is also a result of today's modern financial market and habits formed among citizens and entrepreneurs. After all, in a situation where many lawsuits related to the recovery of debts issued in foreign currency are heard by the courts, the fact that this issue is not defined in the legislation, that is, the existence of a legal gap, does not allow the courts to form clear conclusions. As a solution to this problem, it is related to the introduction of the provision of the possibility of lending in foreign currency in the legislation. Securities lending is also related to these aspects. After all, when securities are loaned, it is appropriate for the borrower to improve his financial capabilities by the dividend or by selling it, and later, when the agreed term arrives, the debtor, who has improved his financial capabilities, returns this type of securities. At the same time, this would have had a

positive effect on the development of the stock market in Uzbekistan.

Currently, the use of debt receipts in drawing up a debt contract and determining the rights and obligations of the parties, ensuring the interests of the parties to the contract, and expanding the possibilities of using debt in business activities are urgent. It is important to use specific purpose loans, to simplify the procedure for issuing loans issued by banks and microcredit organizations.

In addition, in order to expand the possibilities of attracting investments to the country and increase investment attractiveness, it will be necessary to create certain conditions for the use of loans from Islamic banks, and to set requirements for the use of interest-free loans among citizens. In this regard, it is relevant today to cancel the procedure for setting interest on the borrower's loan amount for personal needs, and to receive a share of the profit on the loan amount received for business, and to determine the procedure for repaying the loan in case of no profit.

From time immemorial, relations between people such as mutual support, mutual assistance, and mutual care have been formed in the spirit of certain morals and human love. Different forms and means of mutual care and closeness and support of people apply. One such tool is debt. In the explanatory dictionary of the Uzbek language, loan is a word taken from the Arabic language and it is described as something given or received with the condition of returning it after a certain period of time [6, - 247 p.].

Today, debt has certainly not lost its character of care, support and mutual assistance. However, the importance and necessity of debt is not determined only by these factors. In addition, debt is considered as a means of attracting funds for the implementation of business activities. For example, small business entities can start their business on the basis of receiving a microloan from the bank.

In the Civil Code of the Republic of Uzbekistan, the provisions on debt contracts are found



in Chapter 41. That is, the loan agreement is placed in the middle of transportation and forwarding services and services provided by the bank, which is the basis for recognition of the loan agreement as a service agreement. But if the definition given to this contract in the FC is analyzed more deeply, the place of this contract in the FC may be questioned. In particular, according to the first part of Article 732 of the Criminal Code, one party (the lender) under the loan agreement gives the other party (the borrower) money or other items marked with specific signs as property, and the borrower gives the lender a lump sum or in installments. undertakes to return the amount of money or items equal to the type, quality and quantity of borrowed items (debt amount).

It can be seen that the most important action in the loan agreement is that one party (lender) gives money or an object that meets certain characteristics to the other party (borrower). Such a movement, and the device (construction) is similar to the structure of trading. Because in the first part of Article 386 of the FC there is also a construction that expresses the obligation of one party (the seller) to transfer the goods to the other party (the buyer) as property.

Paying attention to the position of the loan agreement in the FC, S.Yu. Eshakulov states the following: the debt cannot be included in the terms of contracts aimed at transferring property to another person, because the loan agreement provides for the return of the money and things transferred as property in the same amount and quality, "aimed at the transfer of property" and in contracts, the party who takes ownership of the goods pays the specified fee in exchange for it, and this process is carried out almost at the same time, and in the loan contract, the money or material taken as property is returned after the period specified in the contract [8, - 9-10 p.].

In our opinion, in contrast to the contract of sale, in essence, it does not provide for the exchange of goods for money, but represents the return of the same amount of money in return for the money given as property. In debt relations, money does not act as a means of payment or exchange, but as an object whose original essence is preserved, its quantity and value do not change.

It should be noted that the principle of nominalism applies here. That is, in this case, factors such as depreciation of the value of money, inflation rate will not be important in fulfilling the monetary obligation. The payment for the use of the loan (that is, the return of the loan amount), in addition to the payment of the fee to the lender, must cover all the costs of the lender related to the loan of money or

property, in which case the payment of interest by the borrower specified by the contract or law should be interpreted in this sense [1, - 6-7 pp.].

As a type of debt obligations, money is given as property to another party, that is, it alienates the money it has, but assumes that the same amount of money will be returned. In other words, with the validity and fulfillment of the loan agreement, the money given by the lender as property returns to him as property after a certain period of time. In this case, it is not possible to give property in exchange for loaned money or money in exchange for loaned property, otherwise such an exchange becomes a transaction. It is this aspect of the loan, i.e., in return for the money given as property, after a certain period of time, the return of the same amount of money and, if there is a mutual agreement, to receive interest for it, seems to represent the elements of rent.

Touching on this issue, E.A. Kolomiets states the following: the similarity of the loan agreement with property lease and loan agreements and the specific aspects of the loan allow to determine its differences from these agreements. The lender and the lessor provide the property for use, and the lender - gives ownership to another co-agent. The borrower and the lessee must return the item itself, and the borrower must return the item of such type and quality [4, - 4 p.]. Therefore, if the subject of a loan and property lease is non-consumable private symbolic objects, the subject of a loan is consumable, specific symbolic objects[3, - 89 p.].

Agreeing with this opinion, it should be said that the property belonging to the lessor is returned to the lessor in the lease relationship. However, unlike debt, in a lease relationship, the property is not transferred to the other party. Secondly, exactly what kind of property was given to the lessee for rent, exactly that property should be returned. In the case of a loan, after the property has been transferred to the borrower, the borrower can dispose of it as he wishes, consume it, only if he returns the property of the same type and quality within the specified period.

The purpose of the loan agreement is to satisfy this need of a person who needs money or certain property and to allow him to restore and improve his property situation. Commenting on this issue, A.I. Khabirov states the following: civil transactions are aimed at satisfying the current needs of the participants, creating competition with bank transactions (loan agreements). In bank (financial) transactions, the legislator has defined the system of protection of debtors' rights - administrative and judicial procedure. People have to help each other along with



the professional participants of the financial markets due to the fact that they do not have the opportunity to acquire the relevant object based on the sales contract [7, - 29 p.] .

According to N.V. Gritsay, the need to attract debt means that any participant in the civil legal relationship - commercial organization and individual entrepreneurs usually will not be able to carry out their activities without attracting financial resources; individuals actively use consumer credit and mutual borrowing; small business entities use the services of microfinance organizations that provide microloans [6, - 3 p.].

In our opinion, it is also important to ensure the rights of citizens and small business entities who feel the need to borrow and are trying to restore their material conditions through debt . However, debt is an attitude that arises out of necessity and, it must be said, sometimes out of desperation. Borrowing is also a measure that obligates a person to undertake actions related to its repayment within a specified period.

Experts and scientists do not have clear opinions about the legal features of the loan agreement. Many argue that this contract is strictly considered a real contract. In particular, according to S.Yu.Eshonkulov, a debt contract is always considered a legal relationship that arises as a result of the action of the lender, and a promise to pay the debt later (even in writing) cannot be a legal fact and does not create any legal consequences [8, - 8 b .].

Of course, in this situation, S.Yu. Eshonkulov is right from the point of view of the rule established in the second part of Article 732 of the Criminal Code " the loan contract is concluded from the moment money or things are handed over " and the current procedure established by the legislation. However, if we consider the situation of the loan agreement in practice, the practice of business entities (pawn shops, microcredit organizations, banks) that carry out direct lending activities, and the law provides that small business entities and low-income groups of the population are also allowed to lend a limited amount by banks. it would not be correct to interpret the loan agreement only as a real and therefore one-sided agreement. Because microcredit organizations offer acceptable and convenient conditions for microcredit and microloans for small business entities, and the amount and duration of microloans are implemented through lending techniques that are acceptable for business entities [5, - 19 p.].

The conclusion of the loan agreement and the conditions set between the parties on it show that the practice of this agreement has advanced considerably

in the legislation. Because the widespread use of foreign currency by citizens in mutual debt relations, cases of earning interest for the loan, the activities of microcredit organizations and pawnshops, and even the fact that banks have allowed lending activities, show that the rules of the FC, which provide for the basic rules of the loan contract, are far behind the times. In particular, according to the seventeenth paragraph of Article 5 of the Law of the Republic of Uzbekistan "On Amendments and Additions to the Law of the Republic of Uzbekistan "On Banks and Banking Activities" dated November 5, 2019 No. ORQ- 580 lending in the forms stipulated in the documents is also included. In addition, since 2006, microcredit organizations have been providing microloans in our country. According to Article 5 of the Law of the Republic of Uzbekistan No. O'RQ-50 "On Microfinancing" dated September 15, 2006, a microloan is money provided by banks and microcredit organizations to a borrower who is an individual in an amount not exceeding 50 million soums based on the terms of repayment, maturity and repayment. .

The rules regarding the recognition of foreign currency and securities as objects of the loan agreement are defined in Article 807 of the Civil Code of the Russian Federation, they are defined based on the real requirements of today's market and are widely used. For example, in a microloan contract issued by banks, the bank undertakes the obligation to provide a microloan, a check microloan contract is not issued immediately when the client applies to the bank, but is presented after a certain period of time has passed after the conclusion of the contract. In addition, lending in foreign currency is also very popular among citizens today. In addition, for business entities, entering into a loan agreement and hoping for its fulfillment is a sign of risks inherent in business activities. However, none of these aspects are taken into account in the current Article 732 of the FC. Therefore, the adoption of this article in the version proposed above will have a positive effect in solving the listed problems.

All of the factors listed above require the improvement of the concept of the loan agreement and the practice of drawing it up. Therefore, it will be necessary to change the rules provided for in Article 732 of the FC regarding the loan agreement. In our opinion, it is appropriate to specify this article in the following version:

gives or **undertakes to give** the other party (the borrower) money, other items or **valuable securities marked with specific signs** , and the borrower pays the lender, in one way or in installments, the same amount of money. (debt amount), undertakes



to return the items or **such securities** equal to the type, quality and quantity of borrowed items .

If a citizen participates in the loan agreement as a lender , the agreement is concluded from the moment of handing over the money or goods to the borrower or the person designated by him .

In the territory of the Republic of Uzbekistan, foreign currency and currency values may be the subject of a loan agreement in accordance with the provisions of Articles 94, 95 and 245 of this Code.

If the loan agreement stipulates the obligation of the lender to give a loan, he has the right to fully or partially refuse to fulfill the agreement if it is clear that the loan will not be repaid within the term of the loan.

The lender undertakes to lend the loan until the deadline set for the borrower to hand over the loaned item under the loan agreement, if no such deadline has been established, at any time until the time of borrowing, if the law, other legal document or other situation in the loan agreement in which the person carrying out business activities is the borrower has the right to fully or partially refuse to take a loan by notifying the lender,

A loan agreement can be concluded by placing bonds. If the debt agreement is concluded by placing bonds, the right of the bondholder to receive the nominal value of the bond or other property equivalent from the person who issued the bond is specified in the bond or in the document defining the rights under the bond.

The amount of the loan transferred to the third party specified by the borrower or another item of the loan agreement is considered to be transferred to the borrower.

A borrower - a legal entity, if he is given the right to attract citizens' funds by law, has the right to attract citizens' funds for interest by means of a public offer or an offer aimed at an unknown group of persons.

The features of lending a loan to a borrower-citizen for purposes not related to the implementation of business activities are determined by law.

One of the unique features of the loan agreement is that it represents the main basis of monetary obligations in civil law. That is, the rule that a person must return the amount of money to the creditor in order to fulfill his obligation to return the money he

has taken on. The construction of the loan agreement means that the person who received the money must return the same amount. In today's modern economic relations, the nature of the debt is fundamentally changing, the number of objects falling under its scope is increasing, and the fields of application of the debt contract are expanding.

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