Legal regulation Farms to Use Land

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THE LEGAL REGULATION OF USE LAND BY FARMS

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Abstract: legal regime of land use by farms is described in this article, analyze problem situations of currently legislation, scientific and practical proposals are given for solution of these problems and improvement of legislation by author.

Keywords: land parcels, reserved lands, crop rotation, norms of crop rotation, agricultural cooperatives (shirkats), lease agreement, land intended use, return land parcels to reserve.

The land plays main role in agriculture industry. Therefore it is impossible to imagine manufacturing factories of agriculture without land. Lands are heart of each state. Becouse, all spheres of each state need to fecundity and fertility land. So our President ShavkatMirziyoyev repeatedly emphasized about save our mother land. Our development is based on efficiency of agricultural sphere. Land users should defend one’s land parcels from erode situations.

Usage of land resources, mainly land with soil that is specialized for agriculture is very important for the factories that deal with manufacturing agriculture products. Undoubtedly, in our country their rights about use of the land are protected by laws in the Constitution of the
Republic of Uzbekistan, Land Code, Civil Code and legal acts “About Agriculture cooperation (Shirkat management)”, “About land rental”, “About Farm”, and “About dehkan Farms”.

According to Article 55 of the Constitution of the Republic of Uzbekistan, “land, subsoil, water, flora and fauna and other natural resources are the national property and they must be used rationally. Such natural resources are under the protection of the state”.

Due to the fact that Uzbekistan is an industrial-agrarian country, serious attention is paid to the issue of regulating land and water use, which are considered as one of the core issues. Our First President Islam Karimov said that «... we should pay special attention to the improvement of the reclamation status of irrigated lands in the reform of agriculture. This task has become one of the most important priorities and will continue to be so. Because of the efficiency of agricultural production, ensuring the economic and food security of the country, increasing not only the material well-being of the rural population, maybe all of the population of our country, is an indispensable factor in the productivity and quality of our land, which is an invaluable treasure”.

As a result of the measures taken in the previous period, the reclamation status of 1 million 700 thousand hectares of irrigated land was improved. This means that more than half of the crops are sown. Due to the above mentioned activities, the most severe floodwaters, that are lands situated to the surface until two metres dropped to nearly 500,000 hectares or one-third of the surface, strong and moderately saline soils are reduced by 100,000 hectares or 12 per cent. The most important achievement in this regard is an increase in crop yields in the sown area by 2-3 centners per hectare and cereal crops by 3-4 centners”.

Today, under the leadership of President Shavkat Mirziyoyev, the farming activity is becoming a leading force in the life of our agriculture and society. Researcher in this field, M.R. Mirzaabdullayeva also claims the legal status of farms in her research, saying, “It is impossible to imagine farmers work without land. For this reason, it is important to improve the rules and rights of land use for these subjects”.

After she prepared her monography she has realized that, it is very crucial to apply long term solutions to encourage farmers who use long term rental lands for agriculture and who provide economic and financial independence of the farms. According to M.P. Mirzaabdullayeva such manners significantly help improve the efficiency of the land and farmer’s duties.

The size of the land parcel for the farming business is determined by the land parcel body by taking into account the local conditions in each particular case and the number of employees in the farm. At the same time, the amount of land plots provided to farmers is defined by law. According to Article 5 of the Law of the Republic of Uzbekistan “About Farm”, the minimum size of land plots leased to farms must be 0.3 hectares in irrigated lands in Andijan, Samarkand, Tashkent, Fergana and Khorezm provinces, for one conditional cattle, but in the Republic of Karakalpakstan and in other provinces the minimum size must be at least 0.45 hectares in irrigated lands and at least 2 hectares on the lands which is not irrigated land”. Land parcels granted to private farms are state-owned, so it can not be privatized, bought, sold, or exchange property. Additionally, leased land plots for farmers cannot be leased to secondary farms.

It should be noted here that in the original version of the law, the issue of secondary leasehold housing was not covered. This situation, in turn, led to many lapses in practice, and inadequate land use. Due to the proposals made by theorists and practitioners, several amendments were made to the legislation and the secondary leasehold lands were abolished. They commented on this, “In the civil law relations, the lease contract has a special role. According to Article 535 of the CC, major lease agreements are concluded. The provisions of the Civil Code of the Lease Agreement provide for the application of the secondary lease contract mainly to the domestic production relations. Land is not a household purpose, but rather an
object used for the production of agricultural products (basic activity, not derivatives). Therefore, it is inappropriate to apply the norms of civil law on secondary lease agreements to farmers' activities”.

According to Part I Article 53 of the Land Code of the Republic of Uzbekistan, “Farming enterprise is an independent business entity with legal personality rights engaged in agricultural production using land plots leased to it”. According to this article, farmers use the land plot through a lease agreement concluded in the appropriate manner.

According to Paragraph 3, Part 1 of Article 46 of the Land Code, the provision of “Land for Citizens of the Republic of Uzbekistan – for Farming” is defined as the general rule. In our country farmers have the right to lease land parcels for fifty years, but not less than thirty years.

Part 2 of Article 53 of the Land Code and Part 1, of Article 10 of the Law of the Republic of Uzbekistan “About Farm”: “For farming purposes following land parcels are given:

- land parcels of reserved land;
- land plots not provided to legal and physical persons, agricultural lands;
- land parcels of newly established agricultural cooperatives (shirkats) and other agricultural enterprises, institutions and organizations;
- land parcels of agricultural cooperatives (shirkats) and other agricultural enterprises, institutions and organizations.

A farmer using a land plot on a lease must fulfill a number of obligations, indicated by Article 17 of the Law of the Republic of Uzbekistan “About Farm” to ensure the effective and rational use of the land parcel for the purpose specified in the law and the lease agreement. “However, in practice, some farmers have negative attitudes such as non-observance of the terms of the lease agreement, non-compliance with agreed terms, and the lack of measures to increase land productivity coefficients. These cases, in turn, have a negative impact on the fertility of the soil; and secondly, it violates normative legal acts that determine the procedure for land use.

According to the State Committee of the Republic of Uzbekistan for Land Resources, Geodesy, Cartography and State Cadastre, during the first six months of 2016, when land-use surveys were organized among 218 farm subjects, it is revealed that 188 of them have committed land-use offenses. The criminal case was instituted against 161 managers of economic entities and fined for 50.6 million soums. In four cases, the documents of the offender were sent to the law enforcement agencies. At the same time in 15 cases warnings and instructions were given to the managers of the undertakings to eliminate the violations of the law. Only in 2016, due to the revealed violations, 116172.9 hectares of land, allocated to 1 961 land users, were identified in accordance with the current legislation, taking into account the re-allocation of the district hokimiyats to the reserve fund and transfer them to other users accordingly.

Today, one of the most important issues is the development of legislation on the activities of private farms and filling in the gaps in this sphere. It is desirable to make the following modifications and additions based on the principles of existing legislation:

First, in accordance with Part 2 of Article 53 of the Land Code and Part 1 of Article 10 of the Law “About Farm”,

- land plots on reserve land;
- land plots not provided to legal entities and individuals, land parcels in agricultural land ”, two parcels speculate the same meaning. We will look at their concept. According to Article 78 of the Land Code, “Reserve Lands” have the following notion: “The Land Code does not include categories of land specified in paragraphs 1-7 of Article 8 of the Land Code, and does not have jurisdiction and ownership to own, use, rent or leasehold real estate. All lands are reserved.
Reserved lands in the jurisdiction of district and city municipalities and are, in accordance with the Land Code, such as land is estimated to be given for possession, use and lease for agricultural purposes. “If we pay attention, agricultural land not granted to juridical and physical persons is located at the discretion of khokimiyats of districts or towns until the winner is selected. According to the current legislation, the government will have a reserved land. It should be noted that the lands which are not assigned to juridical and physical persons, should also be included in category of reserved land. Accordingly, it is desirable to include Part 2 paragraph 2 of Article 53 of the Land Code and Paragraph 2 of Paragraph 1 of Article 10 of the Law About Farm as Paragraph 1 of these Articles.

Additionally, it is necessary to harmonize the procedure for land parcels in the national agriculture, especially farms, with international standards. For example, in Thailand, using the scheme of 30:30:30:10 on the use of agricultural land, farmers are engaged to grow 30 percent of vegetable, 30 percent of rice, 30 percent of artificial fishing and 10 percent other crops in their land. Initially, the population has to meet the demand for foodstuffs, and, secondly, to increase the fertility of the land by broad introduction of crop rotation, and to make efficient use of water resources. Therefore, it is desirable to ensure the balance of agricultural crops in the use of agricultural crops in our country. Land cultivation principles in our country have not been developed yet. Only in the case of cotton cultivation, the rules of land replacement are utilized. It would be expedient for the relevant ministries and government agencies, research institutes to develop land standards.

Our agricultural legislation isn’t perfect. So we try to improve legal norms of use land. Nowadays, currently agricultural reforms are based on The strategy for the five priority directions of development of Uzbekistan for 2017–2021 years in our country. Modernization and intensive development of agriculture – is the 3rd priority direction of Uzbekistan’s development strategy. Farms are really supporters of our state’s economy. Today’s one of the core issues is to improve the legal framework for land use in farming, replenishment of gaps in the legislation. Undoubtedly, farmers receive their income out of their land and run their businesses using water resources. Therefore, if the legal mechanism set out in the land use is to be followed, then the potential for further farming will be improved, and the economy of our country will thrive rapidly.

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