

# **THE LAW ON FINANCIAL LEASING**

## **CHAPTER I**

### **GENERAL PROVISIONS**

#### **Scope of Application**

##### **Article 1**

This Law shall govern financial leasing transactions, financial leasing agreements, the rights and obligations of the parties to a financial leasing transaction and the Register of Financial Leases.

In cases not governed by this Law the provisions of other laws shall apply to the parties and legal relations arising out of financial leasing transactions concluded in accordance with the provisions of this Law.

#### **Financial Leasing Transaction**

##### **Article 2**

For the purposes of this Law, financial leasing transaction shall mean a transaction in which the Lessor:

- 1) enters into an agreement with the Supplier of the Leasing Object chosen by the Lessee, pursuant to the specifications provided by the Lessee and under the terms approved by the Lessee so far as they concern his interests, under which the Lessor acquires title to the Leasing Object [hereinafter referred to as: the Supply Agreement];
- 2) enters into a financial leasing agreement with the Lessee, granting to the Lessee the right to possession and use of the Leasing Object for the agreed period of time in return for the payment of the agreed rentals in the agreed installments by the Lessee [hereinafter referred to as: the Leasing Agreement].

## **Duration of the Leasing Agreement**

### **Article 3**

The minimum term of the Leasing Agreement shall not be less than two years from the date of the conclusion of the agreement.

## **The Subject-Matter of Financial Leasing**

### **Article 4**

The subject-matter of financial leasing may be any movable, durable goods (equipment, machinery, vehicles, and similar) [hereinafter referred to as: the Leasing Object].

### **Notification of the Supplier**

### **Article 5**

The Lessor shall give notice to the Supplier of the Leasing Object that the reason for acquiring the Leasing Object is performance of the Leasing Agreement, and state the name of the person being the Lessee in such an agreement.

Notification referred to in Paragraph 1 of this Article shall be made at the time of the conclusion of the Supply Agreement, at the latest.

## **Content and Form of the Leasing Agreement**

### **Article 6**

The leasing agreement shall include the following terms: a precise identification of the Leasing Object, the total amount of rental to be paid by the Lessee, the number of rental installments and the amounts and time of payment for each of the rental installments, as well as the duration of the agreement.

In addition to the terms referred to in Paragraph 1 of this Article, the Leasing Agreement may also include the following: the place, time and the manner of delivery of the Leasing Object, the title to the Leasing Object, the party responsible to insure the Leasing Object and the insured risks, the manner of termination of the agreement, option to buy or to hold the Leasing Object on lease for the further period, the transportation costs for the Leasing Object, installation, disassembly and maintenance of the Leasing Object, parts replacement, servicing and technical and technological improvements, training of the Lessee's personnel to use the Leasing Object and other terms agreed by the parties.

The Leasing Agreement shall be in writing.

## **Leasing Rentals**

### **Article 7**

The payments for the use of the Leasing Object due to the Lessor by the Lessee [hereinafter referred to as: the Leasing Rentals] shall be calculated primarily on the basis of the amortization of the whole or a substantial part of the value of the Leasing Object.

## **Commercial Nature of the Agreement**

### **Article 8**

The Leasing Agreement concluded in accordance with the provisions of this Law, shall be deemed to be a commercial contract within the meaning of the provisions of the law governing contracts and torts, except in case where a Lessee being a natural person is not conducting registered business activity for profit.

## **CHAPTER II**

### **THE PARTIES TO THE FINANCIAL LEASING TRANSACTION**

#### **Definition of the Parties**

##### **Article 9**

The parties to the financial leasing transaction include: the Lessor, the Lessee and the Supplier.

##### **The Lessor**

##### **Article 10**

The Lessor shall mean a person who transfers the right to possession and use of the Leasing Object to the Lessee for the agreed period of time in return for the agreed rentals, while retaining the title to the Leasing Object.

For the purposes of this Law, the Lessor shall mean a business organization that performs financial leasing transactions in accordance with the legislation of the country of its establishment, and whose minimum amount of cash paid as part of its capital assets amounts to €100,000.

## **The Lessee**

### **Article 11**

For the purposes of this Law, the Lessee shall mean a natural or legal person to whom the Lessor transfers the right to possession and use of the Leasing Object for the agreed period of time in return for the agreed rentals.

## **The Supplier of the Leasing Object**

### **Article 12**

For the purposes of this Law, the Supplier of the Leasing Object [hereinafter referred to as: the Supplier] shall be a natural or legal person who transfers the title to the Leasing Object to the Lessor for the purpose of delivery of the Leasing Object to the Lessee for possession and use for the agreed period of time in return for the agreed rentals.

## **Distinction**

### **Article 13**

For the purposes of this Law, an agreement in which the Lessor and the Supplier is the same person shall not be deemed to be a Leasing Agreement.

The provisions of the law governing contracts and torts shall apply to an agreement referred to in Paragraph 1 of this Article, depending on the legal nature of the specific agreement (lease, sale with payment of price in installments, and similar).

## **CHAPTER III**

### **THE RIGHTS AND OBLIGATIONS OF THE LESSOR**

#### **The obligation to acquire the Leasing Object**

### **Article 14**

The Lessor shall acquire the Leasing Object from a Supplier chosen by the Lessee, pursuant to the specifications provided by the Lessee.

## **Protection in the Event of the Lessee's Bankruptcy**

### **Article 15**

In the event of the Lessee's bankruptcy, the Lessor shall have the right to have the Leasing Object exempted from the Lessee's bankruptcy estate, in accordance with the provisions of the law governing bankruptcy procedure.

The Lessee and the court competent for conducting bankruptcy proceedings, shall notify the Lessor, without delay, of the initiation of the bankruptcy proceedings.

## **Exclusion of Liability for Material Defects**

### **Article 16**

The Supplier shall be liable to the Lessee for material defects of the Leasing Object, unless otherwise provided in the agreement.

## **Exclusion of Liability for Damage Caused by the Leasing Object**

### **Article 17**

The Lessor shall not incur any liability to the Lessee for damage caused by the Leasing Object except to the extent the Lessee has suffered loss as the result of its reliance on the Lessor's skill and judgment, or due to the Lessor's participation in the selection of the Supplier, or specification of the Leasing Object, unless otherwise provided in the agreement.

## **Liability for Legal Defects**

### **Article 18**

The Lessor shall be liable for existence of a third party's rights on the Leasing Object which exclude, reduce or limit Lessee's quiet possession, and of which the Lessee was not informed, nor he agreed to accept the Leasing Object under such conditions.

## **Notification of the Lessor**

### **Article 19**

The Lessee shall notify the Lessor of any third party's claim of rights to the Leasing Object referred to in Article 18 of this Law and request the Lessor to free the Leasing Object of the third party's right or claim within a reasonable time thereafter.

The Lessee, who initiated and lost a lawsuit against a third party referred to in Paragraph 1 of this Article without notifying the Lessor, may invoke the Lessor's liability for legal defects, unless the Lessor proves that he had available means to reject the third party's claim.

The Lessee shall also have the right to invoke the Lessor's liability for legal defects of the Leasing Object even when he, without notifying the Lessor and without entering into a lawsuit, admitted a third party's right.

If the Lessee has paid certain amount of money to the third party to give up its right in the case referred to in Paragraph 3 of this Article, the Lessor may be released of his liability if he indemnifies the Lessee for the amount paid and the loss suffered.

### **Sanctions for Legal Defects**

#### **Article 20**

The Leasing Agreement shall be terminated if the Leasing Object is removed from the possession of the Lessee and the Lessor does not act according to the Lessee's request referred to in Article 19, Paragraph 1 of this Law, unless otherwise provided in the agreement.

If the Lessor does not act according to the Lessee's request referred to in Article 19, Paragraph 1 of this Law, where the Lessee's quiet possession is reduced or limited, the Lessee shall have the right to avoid the agreement if the purpose of the agreement can not be fulfilled accordingly, or shall have the right to request proportionate reduction of the Leasing Rental.

In cases referred to in Paragraphs 1 and 2 of this Article, the Lessee shall have the right to claim damages for the loss suffered.

The Lessee shall not have the right to claim damages where the Leasing Object is taken away from him or his quiet possession is reduced or limited, if he was aware of such possibility at the time of the conclusion of the Leasing Agreement.

### **Limitations or Exclusions of the Lessor's Liability by the Agreement**

#### **Article 21**

The Lessor's liability for legal defects of the Leasing Object shall not be limited or excluded by the agreement.

## **Transfer of Title to the Leasing Object**

### **Article 22**

The Lessor shall have the right to transfer title to the Leasing Object to a third party.

In the event of the transfer of title to the Leasing Object referred to in Paragraph 1 of this Article, the third party shall enter into the role of the Lessor, and the rights and obligations from the Leasing Agreement shall be established between him and the Lessee accordingly.

In the case referred to in paragraph 1 of this Article, the third party shall not request that the Lessee deliver the Leasing Object before the expiry of the agreed period of duration of the Leasing Agreement.

The transfer of title to the Leasing Object to a third party may be excluded by the agreement or provided otherwise therein.

## **CHAPTER IV**

### **THE RIGHTS AND OBLIGATIONS OF THE LESSEE**

#### **Acceptance of the Delivery of the Leasing Object**

##### **Article 23**

The Lessee shall accept the delivery of the Leasing Object at the time, place and in a manner set forth in the agreement.

#### **Avoidance of the Agreement Due to Non-delivery**

##### **Article 24**

The Lessee shall have the right to reject acceptance of the delivery of the Leasing Object or to avoid the Leasing Agreement and claim damages, in accordance with the provision of the law governing contracts and torts, in cases where the Supplier did not deliver the Leasing Object, or due to late delivery, or due to material defects of the Leasing Object.

In the case referred to in Paragraph 1 of this Article, the agreement shall nevertheless remain effective if the Lessor without further delay delivers the Leasing Object to the Lessee in accordance with the terms set forth in the Leasing Agreement.

The Lessee shall have the right to withhold rentals payable to the Lessor under the Leasing Agreement until the delivery obligation is performed in total conformity with the Leasing Agreement.

The Lessee shall be entitled to recover any rentals paid in accordance with the Leasing Agreement reduced for the amount equal to the benefit derived from the use of the Leasing Object (reasonable amount), if he has exercised a right to avoid the agreement.

### **Use of the Leasing Object**

#### **Article 25**

The Lessee shall use the Leasing Object with the diligence of a good businessman, i.e. diligence of *bonus patrisfamilias*.

The Lessee shall use the Leasing Object in accordance with the agreement or in accordance with the purpose of the Leasing Object.

The Lessee shall be liable for losses suffered by the use of a Leasing Object contrary to the agreement or contrary to the purpose of the Leasing Object, regardless of whether he personally used the Leasing Object or a person authorized by him, or any other person he gave permission to use the Leasing Object.

### **Maintenance of the Leasing Object**

#### **Article 26**

The Lessee shall maintain the Leasing Object in good condition and perform all necessary repairs on the Leasing Object.

The Lessee shall be liable for all losses suffered due to the failure to maintain the Leasing Object in good condition.

### **Payment of the Leasing Rentals**

#### **Article 27**

The Lessee shall pay the Leasing Rentals to the Lessor in the amounts, at the time and in a manner specified by the Leasing Agreement.

## **Avoidance of the Agreement Due to Non-payment of the Leasing Rentals**

### **Article 28**

The Lessor shall have the right to avoid the agreement if the Lessee delays payment of the first installment of the Leasing Rental.

The Lessor shall have the right to avoid the agreement or to request payment of the remainder of the Lease Rental with interest, if the Lessee, after the payment of the first installment of the Leasing Rental, delays payment of one or more successive installments of the Leasing Rental amounting to one fourth of the total Leasing Rental.

In exception to the provisions of Paragraphs 1 and 2 of this Article, the Lessor shall have the right to avoid the agreement in regard to all future installments of the Leasing Rental, if the Lessee did not pay one of the Leasing Rental installments, provided that circumstances clearly indicate that the remaining installments of the Leasing Rental shall not be paid either.

In order to avoid the agreement for reasons set forth in Paragraphs 1 to 3 of this Article, the Lessor shall fix an additional period of time of reasonable length for performance by the Lessee of his obligations.

If the Lessee fails to fulfill its obligations within the period of time referred to in Paragraph 4 of this Article, the Leasing Agreement shall be deemed terminated as a matter of law.

In cases referred to in Paragraphs 1 to 3 of this Article, the agreement shall remain nevertheless effective if the Lessee provides adequate assurances.

Termination of the agreement due to non-payment of the Leasing Rental may be stipulated otherwise in the agreement, in compliance with the mandatory legislation, public policy and good practices.

### **Effects of Avoidance**

#### **Article 29**

The Lessor who avoids the agreement due to non-payment of the Leasing Rental for the reasons set forth in the Article 28 of this Law or in the Leasing Agreement, shall have the right to repossess the Leasing Object, as well as the right to claim damages.

## **Special Procedure for Repossession of the Leasing Object**

### **Article 30**

On the request of the contracting parties, the court shall hold a hearing to confirm in the minutes that the parties have agreed that the Lessor shall have the right to repossess the Leasing Object in the event of non-payment of the Leasing Rental by the Lessee at the time specified in the agreement.

The minutes of the agreement of the Parties referred to in Paragraph 1 of this Article, signed by the Parties, shall be enforceable as binding court settlement.

The Lessor may request that the court decide on removal of the Leasing Object from the Lessee or from the person in possession of the Leasing Object, and delivery of such object to the Lessor, if the Lessee did not fulfill his duty to pay the Leasing Rentals on time in accordance with the provisions of the agreement, nor voluntarily returned the Leasing Object to the Lessor.

The request referred to in Paragraph 3 of this Article shall be accompanied with the minutes of the agreement of the Parties referred to in Paragraph 1 of this Article, signed by the Parties.

The court shall render a decision on the request referred to in Paragraph 3 of this Article within three days from the date of the submission of the request.

Procedure on repossession of the Leasing Object shall be completed within three days from the day of the rendering of the decision granting the request referred to in Paragraph 3 of this Article.

The Lessee may file an objection that the payment has been made supported with the written evidence against a decision on repossession of the Leasing Object from the Lessee or the person in possession of the Leasing Object, within three days from the receipt of the decision.

The objection referred to in Paragraph 7 of this Law shall not stay the execution of the decision.

The court shall decide on the objection referred to in Paragraph 7 of this Article, in accordance with the law governing execution procedure.

The provisions of the law governing execution procedure shall apply to the procedure for repossession of the Leasing Object, unless otherwise prescribed by this Law.

## **Damages**

### **Article 31**

Damages for loss suffered due to non-payment of the Leasing Rental shall be computed in such manner as to place the Lessor in the same position he would have been had the Lessee performed its obligations in accordance with the agreement.

The agreement may provide for the manner in which the damages are to be computed provided it does not exceed the amount recoverable under the Paragraph 1 of this Article.

## **The Risk of Accidental Loss of or Damage to the Leasing Object**

### **Article 32**

The Lessee shall bear the risk of accidental loss of or damage to the Leasing Object.

The risk shall pass to the Lessee at the time of the acceptance of the Leasing Object, unless otherwise provided in the agreement.

## **Obligation to Return of the Leasing Object**

### **Article 33**

The Lessee shall, upon the termination of the agreement, return the intact Leasing Object with all parts and attachments to the Lessor or the person specified by the Lessor, unless the Lessee, under the agreement, has the right to buy the Leasing Object or to hold it on lease for the further period.

The Lessee shall not be liable for wear and tear of the Leasing Object due to its regular use or for any modifications of the Leasing Object agreed with the Lessor.

## **Insurance Obligation**

### **Article 34**

The Lessee shall bear the obligation to insure the Leasing Object from risks specified in the agreement, unless otherwise provided in the agreement.

## **Transfer of the Leasing Object to the Third Party for its Use**

### **Article 35**

The Lessee may, with the Lessor's written consent, transfer the Leasing Object, or parts thereof, to a third party for its use.

The Lessor may avoid the agreement and claim damages if the Lessee has transferred the Leasing Object to a third party for its use, without the Lessor's written consent.

Special procedure for repossession of the leasing object referred to in Article 30 of this Law shall apply *mutatis mutandis* in case of avoidance of the agreement referred to in Paragraph 2 of this Article.

Transfer of the Leasing Object to a third party for its use shall not release the Lessee of his obligations to the Lessor under the Leasing Agreement.

The right to transfer the Leasing Object to a third party for its use may be excluded by the agreement or otherwise stipulated therein.

## **CHAPTER V**

### **THE RIGHTS AND OBLIGATIONS OF THE SUPPLIER**

#### **Delivery of the Leasing Object**

##### **Article 36**

The Supplier shall deliver the Leasing Object to the Lessee in good condition with all parts and attachments, at the time, place and in a manner specified in the Supply Agreement, unless the Leasing Agreement provides that the Lessor shall bear the obligation to deliver the Leasing Object.

#### **Modifications of the Agreement**

##### **Article 37**

If the Lessee has approved the content of an agreement concluded between the Lessor and the Supplier, under which the Lessor has acquired title to the Leasing Object, subsequent changes of such an agreement shall not affect the Lessee's rights, unless he consented to such modifications.

## **Supplier's Liability to the Lessee**

### **Article 38**

The Lessee shall have the same rights he would have had under the law governing contracts and torts as party to the agreement with the Supplier, if the Supplier does not deliver the Leasing Object, delays the delivery of the Leasing Object or the Leasing Object has material defects.

In exception to the provisions of Paragraph 1 of this Article, the Lessee shall not have the right to, without the Lessor's consent, avoid or annul the agreement concluded between the Lessor and the Supplier nor shall have the right to claim price reduction.

The Supplier shall not be liable both to the Lessor and the Lessee in respect of the same damage.

## **Joint and Several Liability of the Lessor and the Supplier**

### **Article 39**

The Lessor and the Supplier shall be jointly and severally liable to the Lessee if the Supplier was chosen by the Lessor and the Leasing Object is not delivered to the Lessee, or it has material defects.

## **CHAPTER VI**

## **TERMINATION OF THE LEASING AGREEMENT**

### **Expiry of the Lease Period**

#### **Article 40**

The Leasing Agreement shall cease to exist after the expiry of the period of time for which it was concluded.

### **Loss of the Leasing Object Due to *Force Majeure***

#### **Article 41**

The Leasing Agreement shall cease to exist if the Leasing Object was destroyed due to *force majeure*.

## **Option to Buy or to Extend the Duration of the Agreement**

### **Article 42**

The Lessee shall not acquire title to the Leasing Object after the expiry of the period of time for which the Leasing Agreement was concluded.

The Leasing Agreement may specify the Lessee's right to buy the Leasing Object for the price determined by the agreement, or the Lessee's right to hold the Leasing Object on lease for the further period, after the expiry of time for which the agreement was concluded (option rights).

The Lessee shall inform the Lessor of his decision to buy the Leasing Object or to hold the Leasing Object on lease for the further period, one month before the expiry of the period of time for which the agreement was concluded, at the latest.

## **CHAPTER VII**

### **THE REGISTER OF FINANCIAL LEASES**

#### **Definition**

#### **Article 43**

The Register of Financial Leases is a public register wherein, in accordance with the provisions of this Law, the data on the Leasing Agreements concluded between the natural and legal persons shall be recorded.

The Register of Financial Leases [hereinafter referred to as the Register] is an integrated electronic database, based on a central database where all the recorded data is stored.

The local units of the Register shall be established in the territory of the Republic of Serbia.

The central database shall be accessible via the local databases for the purposes of registration and database search.

## **Competence for Maintaining the Register**

### **Article 44**

The organization determined in accordance with the Law, shall be the competent authority for maintenance of the Register.

## **Accessibility of the Register**

### **Article 45**

The Register shall be accessible to all persons regardless of the place and territory of access to the Register, for the purpose of recording the Leasing Agreements in the Register, or for the purpose of database search.

## **Transparency**

### **Article 46**

The data filed and kept in the Register shall be public.

The organization competent for maintenance of the Register shall, at the request of an interested party, issue a certified record of the data kept in the Register, or issue a record confirming the non-existence of financial leasing data on specified goods in the Register.

## **Registration Costs**

### **Article 47**

A fee shall be paid to the organization referred to in Article 44 of this Law for the purposes of:

- 1) recording or amending data in the Register;
- 2) database search including the issuance of a record;
- 3) issuance of a certified record.

## **Effects of Registration on Third Parties**

### **Article 48**

Third parties shall be deemed aware of the existence of the Leasing Agreement that is recorded in the Register.

No one shall be entitled to rely on the fact that he was not aware of the data on the financial leasing that is recorded in the Register in accordance with the provisions of this Law.

Data recorded in the Register shall not be used as evidence of title or any other rights to the Leasing Object nor of the validity of any legal transaction.

## **Registration Obligation**

### **Article 49**

The Leasing Agreement, its modifications and amendments, as well as the termination of the agreement shall be recorded in the Register.

The Lessor shall register data referred to in Paragraph 1 of this Law within seven days from the day of the conclusion of the Leasing Agreement, its modifications and amendments, and termination of the agreement.

The Leasing Agreement may specify that the obligation to register referred to in Paragraph 1 of this Article shall be borne by the Lessee.

The Lessor and the Lessee shall be jointly and severally liable to the third party acting in good faith for the loss suffered due to non-performance of the registration obligation referred to in Paragraph 1 of this Article.

## **Content of the Registration Record**

### **Article 50**

Request for recording of the Leasing Agreement in the Register shall particularly include the following:

- 1) the data identifying the Lessor and the Lessee;
- 2) the precise identification of the Leasing Object;
- 3) the duration of the Leasing Agreement;
- 4) the signature of the person requesting recording of the Leasing Agreement in the Register.

Data referred to in Paragraph 1 of this Article shall be recorded in the Register at the time of the submission of the request for registration.

## Other Recorded Data

### Article 51

The Lessor, the Lessee and the Supplier may request a note to be recorded in the Register of the existence of the lawsuit related to the Leasing Object.

## CHAPTER VIII

### FINAL AND TRANSITIONAL PROVISIONS

#### Article 52

The Leasing Agreements concluded before January 1, 2004 shall be recorded at the Register from the date the Articles 43 to 51 come into effect, and before January 31, 2004, at the latest.

This Law shall come into force on the eighth day from the day of its publishing in the "Official Gazette of the Republic of Serbia". The provisions of the Articles 43 to 51 of this Law shall be effective as of January 1, 2004.

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