

Law on Financial Leasing

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On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**ENACTMENT PROCLAIMING  
THE LAW ON FINANCIAL LEASING  
(Official Gazette of the Republic of Montenegro, No 81/05 dated the 29th  
December 2005)**

I hereby proclaim the Law on Financial Leasing, adopted by the Parliament of the Republic of Montenegro at the third meeting of the second regular session in 2005, held on the 27th of December 2005.

Number: 01-1347/2

Podgorica, 29 December 2005

President of the Republic of Montenegro

Filip Vujanovic, signed

**LAW ON FINANCIAL LEASING  
I GENERAL PROVISIONS**

**Scope of the Law**

**Article 1**

This Law shall govern financial leasing transaction, contract of financial leasing, rights and obligations of the parties to financial leasing transaction and financial leasing registration.

General regulations shall apply to relations not regulated by this Law.

**Financial Leasing Transaction**

**Article 2**

For the purposes of this Law, financial leasing transaction shall mean a legal transaction where the financial leasing lessor (hereinafter: the lessor) shall

1) stipulate with the supplier of the leased object (hereinafter: the supplier) the provision of acquiring the ownership right on the leased object, pursuant to the specification provided by the lessee and under the terms approved by the financial leasing lessee (hereinafter: the lessee), unless the lessor and the supplier are the same person;

2) stipulate with the lessee the provision regarding financial leasing transaction granting to the lessee the right to possession and use of the leased object for the agreed period of time in return for the payment of the fee in the specified installments.

The lessor and supplier may be the same person.

### **Article 3**

Contract of financial leasing must stipulate at least one of the following provisions:

- 1) acquisition of ownership right on the object of financial leasing, upon the expiration of the period the contract is concluded for,
- 2) acquisition of right to purchase the leased object during or at the end of the leasing period at the agreed price'
- 3) obligation to return the leased object to the lessor after the payment of all leasing installments;

### **Object of Financial Leasing**

#### **Article 4**

Object of financial leasing (hereinafter: leased object) may be movable unexpendable asset (equipment, plants, vehicles, and similar) or immovables (land, buildings and similar).

### **Contents and Form of the Financial Leasing Contract**

#### **Article 5**

The financial leasing contract must include the following: identification data on the contractual parties; a precise definition of the leased object; place, time and manner of delivery of the leased object; date of concluding the contract, signatures of the parties to the contract, duration of the financial leasing contract; total amount of the leasing fee to be paid by the lessee; amount of individual fee instalments, their number and time of payment and rate of agreed default interest; option of acquiring the ownership or purchasing the leased object; manner of termination of the financial leasing contract.

In addition to the elements referred to in paragraph 1 of this Article, an important element of the financial leasing contract, when lessor is a business organization or bank, is also the rate of agreed regular interest.

In addition to the elements referred to in paragraphs 1 and 2 of this Article, the financial leasing contract may also include other elements such as the following: contracting party responsible to insure the leased object and risks the leased object should be insured against, indication of the contracting party undertaking the obligation to pay expenses and operating burdens (transportation costs, assembling, disassembling, technical improvement, replacement of parts, service, technical and technological improvements), training of the lessee's personnel to use the leased object, as well as other elements agreed on by the contracting parties.

Financial leasing contract must be concluded in writing.

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

### **Lessor**

#### **Article 6**

Lessor shall mean a person who owns the leased object and transfers the authorization to possession and use of the leased object to the lessee under the contract terms.

For the purposes of this Law, the lessor may be domestic or foreign legal entity or physical person, or business organization and entrepreneur.

## **Lessee**

### **Article 7**

For the purposes of this Law, the lessee shall mean a domestic or foreign legal entity or physical person, or business organization and entrepreneur paying the agreed leasing fee to the lessor for the authorization to possess and use the leased object, in accordance with terms of the contract.

## **Supplier of the Leased Object**

### **Article 8**

For the purposes of this Law, the supplier of the leased object shall mean a domestic or foreign legal entity or physical person, or business organization and entrepreneur transferring the ownership of the leased object to the lessor in accordance with the agreed terms.

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

### **Submitting the Specification of the Leased Object**

#### **Article 9**

The lessor shall be obliged to acquire the leased object compliant with the specification provided by the lessee.

### **Liability for Legal Deficiencies**

#### **Article 10**

The lessor shall be liable to the lessee for legal deficiencies of the leased object.

### **Liability for Material Deficiencies**

#### **Article 11**

The supplier shall be liable to the lessee for material deficiencies of the leased object, unless otherwise contracted.

The lessor shall be obliged to inform in writing the supplier who is liable for material deficiencies of the leased object on name or company name of the entity that is lessee under the contract of leasing.

The notice referred to in paragraph 2 of this Article must be submitted at the latest within 3 business days as of the day of concluding a contract of leasing.

### **Transfer of Ownership Right on the Leased Object to a Third Party**

#### **Article 12**

The lessor shall be entitled to transfer the ownership right on the leased object to a third party, in which case the third party (new owner) assumes the role of lessor and all rights and obligations from the financial leasing contract.

The lessor shall be obliged to inform the lessee with no delay and in writing of the transfer of ownership right of the leased object to a third party.

The transfer of the ownership right on the leased object to a third party may be excluded by the contract.

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

##### **Taking Into Possession the Leased Object and Payment of the Leasing Fee**

###### **Article 13**

The lessee shall be entitled and obliged to take into possession the leased object in the manner, at the time and place set forth in the financial leasing contract.

The lessee shall be obliged to pay the lessor a leasing fee in the amounts, deadlines and the manner prescribed by the financial leasing contract.

##### **Modifications of the Leased Object**

###### **Article 14**

Modifications of the leased object made by the lessee that can be separated from the leased object shall be in the ownership of the lessee, unless otherwise contracted.

If the lessee, without damaging the leased object, makes modifications at his own expense and with the written consent of the lessor, which cannot be separated from the leased object, he shall be entitled to compensation of the expenses incurred by such modifications upon cancellation of the financial leasing contract, unless otherwise contracted.

##### **Maintenance of the Leased Object**

###### **Article 15**

The lessee shall be obligated, unless otherwise contracted, to maintain the leased object in a proper condition, make all necessary repairs on the leased object and cover maintenance costs.

#### **V CONSEQUENCES OF FAILURE OF THE LESSEE TO FULFILL ITS OBLIGATIONS**

##### **Cancellation of the Contract Due to Default by the Lessee**

###### **Article 16**

Unless otherwise contracted, the lessor shall be entitled to cancel the financial leasing contract in the cases where lessee:

- 1) defaults payment of the first instalment;
- 2) after the payment of the first instalment, defaults one or several instalments for the period of at least 90 days as of the day of their maturity;
- 3) substantively violates contractual provisions relating to the use and maintenance of the leased object.

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

### **Article 17**

If the lessor cancels the financial leasing contract in accordance with Law and the lessee refuses to return the leased object on a voluntary basis, the lessor may file an application for execution with the court requesting an order authorizing the leased object to be seized and returned to the lessor.

On the basis of the application for execution referred to in paragraph 1 of this Article and in accordance with Article 16, items 1 and 2 of this Law, the competent court shall hold a hearing limited to following issues:

- 1) whether a legally valid financial leasing contract registered with the competent authority exists;
- 2) whether the lessee has failed to meet his contractual obligation.

The burden of proof shall be upon the lessee in the case referred to in paragraph 1 of this Article.

Upon a finding favourable to the lessor, the court shall issue an order designating a law execution officer to seize the leased object from the lessee or a person in possession of the leased object and return in to the lessor, without the obligation to previously inform them on execution.

The law execution officer cannot refuse to make or continue a seizure, unless it has been furnished with security that actual seizure costs will be covered.

The court shall be obliged to adopt the order on the application for execution referred to in paragraph 1 of this Article at the latest within 3 business days as of the day of its submission.

Objection against the execution order referred to in paragraph 4 of this Article shall not be allowed.

The leased object shall be seized within three business days as of the day of adoption of the order on seizure referred to in paragraph 4 of this Article in accordance with the Law on Executive Procedure.

The appeal against the execution order referred to in paragraph 4 of this Article may be filed with the court of second instance within 5 days as of the day of receiving the order.

Filing of the appeal shall not postpone the execution of the order.

## **VI TERMINATION OF THE LEASING CONTRACT**

### **Grounds for Termination**

#### **Article 18**

The leasing contract shall terminate by the expiration of the period it is concluded for, by transfer of the ownership right from the lessor to the lessee, by purchase of the leased object or by the cancellation of the contract.

In the cases referred to in paragraph 1 of this Article, the lessor shall be obliged to submit a request for deletion of the registration of the leasing from the adequate registry within three business days as of termination of the leasing contract.

### **Devastation of the Leased Object Due to Force Majeure**

#### **Article 19**

The leasing contract shall be terminated, if the leased object is devastated due to force majeure.

## VII LEASING REGISTRATION

### **Registration of Immovable Property as Leased Object**

#### **Article 20**

Financial leasing contract that has immovable property as leased object shall be registered in the Real Estate Registry in accordance with regulations governing registration of rights on immovables.

### **Registration of Movable Property as Leased Object**

#### **Article 21**

Data from the financial leasing contract that has movable property as leased object, termination of the contract, as well as other required data, shall be registered in the Pledge Registry of the Republic of Montenegro (hereinafter: Pledge Registry) in accordance with provisions of the law regulating pledge as security for claims.

### **Registration Obligation**

#### **Article 22**

The lessor shall be obliged to submit a request or application for registration of encumbrances and limitations, or data from the financial leasing contract referred to in Articles 20 and 21 of this Law, within 3 business days as of the day of concluding the financial leasing contract.

## VIII PENAL PROVISIONS

### **Violations Committed by Lessor**

#### **Article 23**

A pecuniary fine in the amount of 100 fold to 200 fold of the minimum wage in the Republic of Montenegro shall be imposed on the lessor – legal entity or entrepreneur if he does not submit the request or application for registration of data from the financial leasing contract to the adequate registry within three days as of the day of concluding the financial leasing contract (Article 22).

A pecuniary fine in the amount up to 20 fold of the minimum wage in the Republic of Montenegro shall be imposed for the offence on a responsible person in the legal entity and physical person who is the lessor.

## IX FINAL PROVISION

#### **Article 24**

This Law shall come into effect on the eighth day from the day of its publication in the “ Official Gazette of the Republic of Montenegro” .