

The Romanian Government

Ordinance no. 51/1997

From August 28 1997

Relative to the leasing operations and societies

Updated text from August 12 2006 taking into account the following documents:

- The Fiscal Code published in 2003
- Law no. 533/2004
- Law no. 287/2006.

Note! According to the art. II from Law no. 287/2006, the obligation of increasing the registered capital must be fulfilled until December 31 2006, on the level of equivalence in national currency - leu – of the amount of 200.000 Euro, provided for by the art. 19, ind. (2), from the G.O. no. 51/1997, relative to the leasing societies existing on the date when the Law 287/2006 came into force.

CHAPTER I

General dispositions

Art. 1. - (1) The ordinance hereto shall be applied to the leasing operations through which a party, named the lessor / financier, transmits, for a period of time, the right to use an asset owned by him to the other party, named the lessee/ tenant, upon the latter's request, for a periodically paid sum of money, called leasing rate, and at the end of the leasing period the lessor / financier undertakes to observe the lessee/ tenant's right to buy the asset, to extend the leasing contract without changing the nature of the leasing procedure or to cease the contractual relationships. The lessee/ tenant may chose to buy the asset before the closure of the leasing period, but not earlier than after 12 months, if the parties shall agree so and if they pay all their contracted obligations.

(1¹) The ordinance hereto shall also be applied in case the lessee/ tenant of an asset which makes the object of a leasing contract signs another leasing contract having as its object the same

asset with another lessor / financier, called final lessor / financier. The leasing contract thus signed with the final lessor / financier shall be concluded after the obtaining of the initial lessor / financier's prior written approval and the fulfillment by the lessee/ tenant of the requirement solicited by the leasing societies. Under these circumstances, the annulment from any reason of the initial lessee/ tenant's title shall lead to the rightful cession of the leasing contract signed between the latter and the final lessee/ tenant.

(2) The leasing operations have as an object real estate by their nature or which become real estate by destination, as well as mobile assets present in the civil circuit, excepting the audio and video tape recordings, theatre plays, manuscripts, certificates, copyrights and incorporeal properties.

(3) By derogation from the provisions made in the ind. (2), the right to use the computer programs, as a copyright on the computer programs, may be the object of the leasing operations if the owner of the copyright has authorized this operation. In this situation the lessor / financier shall transmit to the tenant, in a determined period of time, the right to use a computer program for which he owns definitive copyrights. The transmitting shall be made upon the solicitor's demand, for a periodically paid sum of money, called leasing rate, and at the end of the leasing period the lessor / financier undertakes to observe the lessee/ tenant's right to obtain the definitive copyright on the computer program, to extend the leasing contract or to cease the contractual relationships. The lessee/ tenant may chose to obtain the definitive copyright on the computer program, before the end of the leasing period, if the parties shall agree so and the lessee pays if the all the contracted obligations.

Art. 2. – Within the meaning of the ordinance hereto, the terms and the expressions hereunder have the following significations:

a) the input represents the value at which the financier purchased the asset, the purchase cost respectively;

b) the total value represents the leasing rate total value to which the residual value is added;

c) The residual value represents the value at which, after the lessee has purchased all the leasing rated stipulated by the contract, as well as all the other sums due according to the contract, the asset copyright transfer is made by the lessee/ tenant and it is established by the contracting parties;

d) the leasing rate represents:

- for the financial leasing, the round lots size from the asset input value and the leasing benefit, which is established upon the benefit rate set by the mutual consent of the parties;

- for the operational leasing, the rent is established by mutual consent;

d¹) the definitive right to use the computer program – the right to use the computer program, granted for an undetermined period of time;

e) Repealed;

f) Repealed;

Art. 3. - (1) During a leasing operation, the lessor / financier title may be owned by a leasing society, a Romanian or foreign legal entity.

(2) Any physical or legal entity, from Romania or abroad may be a lessor / financier, under the terms of the Romanian law.

Art. 4. – In order to perform a leasing operation, any physical or legal entity shall formulate a firm demand, where it should state the asset that shall become the object of the leasing contract. The demand shall be submitted to the leasing society, along with the documents attesting the solicitant's financial situation.

Art. 5. – By the leasing contract – financial or operational -, the obligation to insure the asset belongs to the lessor / financier, who has the liberty to chose the insurer, if the parties haven't agreed otherwise. The insurance costs are charged to the lessee / tenant, if the parties haven't agreed otherwise by contract.

CHAPTER II

The leasing contract

Art. 6. - (1) The leasing contract must contain, aside from the contracting parties, at least the following elements:

a) the clause relative to the defining of the leasing contract as financial or operational leasing;

b) the name of the asset to be the object of the leasing contract and its identifications characteristics;

- c) the leasing rate value and their due payment term;
- d) the asset use period in a leasing system;
- e) the clause relative to the obligation to insure the asset;
- f) the total value of the leasing contract.

(2) The financial leasing contract should contain, aside from the elements provided in ind. (1), the following:

- a) the asset input value;
- b) the asset residual value agreed upon by the parties, where necessary;
- c) the advance value;
- d) the leasing rate.

(3) The parties may agree upon other clauses as well.

Art. 7. – The leasing contract shall be concluded in written. In case the leasing contract should cease from the lessee's fault or due to the asset loss by theft, total damage, total destruction, defined according to the law and having taken place before one year from the contract's coming into force, the latter will not change its nature and the asset making the object of the leasing contract shall be treated as a fiscal and accounting asset, object to a leasing contract.

Art. 8. – The leasing contracts, as well as the real and personal guarantees, set out in order to warrant for the obligations contracted when signing the leasing contract, are considered to be enforceable orders.

Art. 8¹. - The leasing contracts having as an object the copyrights on the computer programs are considered an enforceable order if the lessee does not give up his right to use the computer program, does not disimplement the program and erase the safety drafts as well as, where needed, the restitution of the supports and documentation additional to the computer program, under the following circumstances:

- a) at the end of the leasing period, if the lessee hasn't formulated yet the intention to buy the asset, namely to obtain the definitive right on the using of the computer program or to extend the contract;
- b) in case the contract cession is made by the lessee's exclusive fault.

CHAPTER III

The obligations of the parties during a leasing operation

Art. 9. – The lessor / financier undertakes to:

- a) respect the lessee/ tenant's right to choose the asset provider, according to his interests;
- b) contract the asset with the provider assigned by the lessee/tenant, under the terms that he has formulated or, where needed, to obtain the definitive right on the using of the computer program;
- c) conclude a leasing contract with the lessee/tenant and to transfer upon him, on basis of the leasing contract, the rights resulting from the contract, except the disposition right, and when it comes to the computer programs, to transfer upon the lessee/tenant the right to use them, without being able to enjoy this right during the performance of the leasing contract;
- d) respect the lessee/tenant's right to buy the asset, to extend the leasing contract without changing the nature of the leasing procedure or to cease the contractual relationships;
- e) guarantee to the lessee/tenant the proper use of the asset, if he has respected all the contractual clauses;
- f) insure, by means of an insurance company, the assets offered for leasing, if the parties haven't agreed otherwise by contract.

Art. 10. – The lessee/tenant undertakes to:

- a) make the reception and receive the asset in the terms and delivery conditions agreed upon with the lessor;
- b) to exploit the asset in conformity with the instructions issued by the lessor and to insure the instruction of the designated staff for exploitation;
- c) not to raise charges on the asset making the object of the leasing contract except with the lessor's approval;
- d) pay all the due amounts in conformity with the leasing contract – leasing rates, insurances, taxes, fees -, within the quantities and the terms mentioned in the;
- e) pay the maintenance charges, as well as all the other expenditures affiliated to the asset from the leasing contract;
- f) to assume for all the period of the contract, if not otherwise stipulated, all the obligations resulting from the direct or indirect use of the asset, including the risk of loss, damage of the used asset from fortuitous causes, and to continue to pay with a leasing rate title until the total payment of the leasing contract value;

g) allow the lessor/financer to periodically check on the state and exploitation manner of the asset making the object of the leasing contract;

h) inform the lessor/financer, in due time, of any trespassing of the property right coming from a third party;

i) not to bring amendments to the asset and not to change the place declared in the contract without the lessor/financer's approval.

j) restitute the asset in conformity with the leasing contract's provisions.

Art. 11. – Within the leasing operations the parties' rights and obligations shall be stipulated in the contract and shall not be limited to the provisions art. 9 and 10.

Art. 12. - Within leasing contract, the lessee/tenant has the following rights :

a) the right to directly act on the lessor, in case there are complaints relative to the delivery, quality, technical assistance, the necessary service in the warranty and post-warranty period, the lessee/tenant being exonerated of all responsibility;

b) the right to exercise its possessing actions to third parties.

Art. 13. - (1) The rights of the lessor/financer on the asset making the object of the leasing contract have effect for the syndic judge as well, in case the lessor/financer should find himself in a legal restructuring and/ or bankruptcy situation, in conformity with the stipulations made on the matter.

(2) If the lessor/financer finds himself in dissolution and / or liquidation situation, the dispositions made in the ind. (1) shall also apply to the liquidator assigned by the Law no. 31 / 1990 relative to commercial companies, republished, with the subsequent amendments.

(3) The lessor/financer's rights on the asset used on basis of a leasing contract have effect for the syndic judge and to the creditors in case the lessor/financer should find himself in a legal restructuring and/ or bankruptcy situation, in conformity with the stipulations made on the matter..

(4) If the lessor/financer finds himself in dissolution and / or liquidation situation, the dispositions made in the ind. (3) shall also apply to the liquidator assigned by the Law no. 31 / 1990 relative to commercial companies, republished, with the subsequent amendments.

(5) In the situations described in the ind. (3) and (4) lessor/financer's rights, described by the ordinance hereto and those stipulated in the leasing contract shall follow the asset in whichever property, only if the lessor/financer's rights were observed accurately.

CHAPTER IV

The parties' responsibility

Art. 14. - (1) In case the lessee / tenant refuses to receive the asset on the term agreed upon with the lessor and / or in the leasing contract or if he finds himself in a legal restructuring and/ or bankruptcy situation, the lessor/financer has the right to cease the leasing contract with damage – benefits.

(2) The lessor/financer shall not be held responsible if the asset which makes the object of the leasing contract is not delivered or is delivered uncaringly to the lessee / tenant by the lessor.

Art. 15. – If the contract doesn't stipulate otherwise, if the lessee / tenant does not obey to the total payment obligation for the leasing rate for two consecutive months, calculated from the expiration of the period mentioned in the leasing contract, the lessor/financer has the right to cease the leasing contract, and the lessee / tenant has to restitute the asset and to reimburse all the due payments, until the restitution date stipulated by the leasing contract.

Art. 16. – If the lessee / tenant doesn't observe the lessor/financer's right to choose, as it is stipulated in the ordinance hereto, the lessor/financer shall be charged with indemnification fee, equivalent to the total prejudice produced by the non-observance of this obligation, and the legal instance assigned to establish the indemnification fees shall be able to pronounce a decision making up for a sell-purchase document.@

Art. 17. – If during the performance of the leasing contract the lessor/financer alienates the respective asset, if he ceases the definitive copyright on the computer program to another leasing society, the beneficiary is bound to the same contractual obligations as the lessor/financer who has alienated the asset, namely the transferor who ceded the definitive copyright on the computer program.

Art. 18. – From the moment when the leasing contract is concluded and until its expiration date and the reentry in the asset's possession, the lessor/financer shall be exonerated of all responsibility towards a third party for all the damages caused by using the asset, the lessee/tenant's deed or omission.

CHAPTER V

The organizing and the functioning of leasing societies

Art. 19. - (1) The leasing societies, Romanian legal entities, are founded and function according to the Law no. 31/1990, republished.

(2) The leasing societies are commercial companies which have as their main activity object the performance of leasing operations and a minimal registered capital, subscribed and paid over with cash upon foundation, equal to the equivalent in national currency of the amount of 200.000 Euros.

(3) The cumulating of the supplier and financer titles is allowed only with the observance of the provisions made in the ordinance hereto.

CHAPTER V¹

The Auditing of the annual financial situations

Art. 19¹. – The annual financial situations of the leasing companies shall be drawn in conformity with the stipulations made by the applicable accounting regulations and shall be audited by the physical or legal entities, active members of the Romanian Chamber of Financial Auditors, according to the applicable legal regulations.

CHAPTER VI

The publicity for the leasing operations

Art. 20. - (1) The registration for the annulment of the asset making the object of the contract shall be made by the lessee / tenant when dealing with a financial leasing and by the lessor/financer when dealing with an operational leasing.

(2) The purchase of real estate and mobile assets, when dealing with financial leasing, are treated as investments, being subject to annulment in conformity with the applicable normative documents.

(3) The registration of the leasing operations in the leasing companies' accounting books, as well as in the accounting registers belonging to the commercial using assets in a leasing system, shall be made according to the applicable accounting regulations.

Art. 21. - (1) The leasing contracts having as an object the use of the real estate assets shall be registered in the official register.

(2) In case changes should arise relative to the lessee/ tenant's or the lessor/financer's offices or changes relative to the asset legal situation, the person involved has to proceed to the notifying of the other party and to the rectification in the official register.

(3) The stamp duties and the legal stamp, due when concluding a sell- purchase contract at the end of the leasing contract, resulting from the lessee/ tenant's choice, shall be calculated with respect to the asset residual value, as it is defined in the art. 2 let. c).

CHAPTER VII

Transitory and final dispositions

Art. 22. - (1) The dispositions made in the ordinance hereto shall also apply if a physical or legal entity sells an asset to a leasing company in order to use it in a leasing system, with the right or the obligation to reimburse it at the end of the leasing contract.

(2) It is also allowed to reimburse the asset making the object of the leasing contract by the supplier to the lessor / financer.

Art. 23. – The assets making the objects of the leasing contract may be used in a leasing system by more than one commercial company, if between those and the lessor / financer a contract was concluded in this meaning.

Art. 24. - (1) The leasing companies may conclude leasing contracts having as an object:

a) the erection of a building on the land belonging to the lesser / financer, case in which the parties may agree that the reimbursement period for the leasing rates starts should start beginning with the receiving of the construction and they confer a property right on the building to the lessor / financer and o right to use the land, if the parties haven't agreed otherwise;

b) obtaining the right to erect a building on the lesser / financer's property, case in which the parties may agree that the reimbursement period for the leasing rates starts should start beginning

with the receiving of the construction and they confer a property right on the building to the lesser / financier and a right to use the land, if the parties haven't agreed otherwise;

c) The existing constructions, belonging to the lesser / financier or which are to be bought by him, built on the lesser / financier's property or on lands that are to become his property or on which the lesser / financier has a building lease. In which case, the lesser / financier shall transfer the constructions in a leasing system and, where needed, he will finance the costs for the land which is to be bought and will have a property right on the constructions and a property right or a building lease on the land, as the case should be, whilst the lessee/tenant will have the right to use both the constructions and the land;

d) the existing constructions, belonging to the lesser / financier, built on the lesser / financier's property or on a third party's property on which the lesser / financier has a right; the parties may agree that the reimbursement period for the leasing rates starts should start beginning with the receiving of the construction by the lessee / tenant . Under these circumstances, the lessee / tenant shall have a property right on the construction and a property right or, as the case should be, a right to use the land, if the parties haven't agreed otherwise.

(2) The leasing contract involving mobile assets may be concluded on a period established by both parties, in conformity with the provisions made in the art. 7.

(3) The provisions made in the art. 16 shall also apply in the case of the leasing contract involving mobile assets.

Art. 25. – The incomings obtained by the non resident as interests or concession tax (leasing rate) established by the contracting parties, when dealing with financial or operational leasing contracts, are imposed in Romania by detainment at the origin, according to the stipulations made in the conventions for avoiding double taxation or by the internal legislation, respectively. When dealing with operational leasing contracts, the concession tax represents the benefit established by the parties or the entire leasing rate, if the contract does not identify the benefit part.

Art. 26. – when registering the damages and cashing the amounts resulting from the insurance of the assets which make the object of the leasing contracts, the parties may agree upon the annulment of their reciprocal loan claims by compensation, within the provisions of the applicable law.

Art. 27. - (1) The mobile assets brought into the country by the users, Romanian physical or legal entities, on basis of a series of leasing contracts concluded with leasing companies, or

foreign legal entities, correspond to the customs regime of temporary admission, for the whole period of the leasing contract, with total exoneration from the payment duty of the amounts additional to the import monopolies, including the customary guarantees.

(2) The mobile assets brought into the country by leasing companies, foreign legal entities, correspond to the import customs regime, with total exoneration from the payment duty of the amounts additional to the import monopolies.

(3) In case the user, from the leasing society's fault or the supplier's fault, hasn't benefited from his right to choose the extension of the leasing contract or the purchase of the asset stipulated by the contract, and the assets hasn't been returned, the user shall be under the obligation to pay the customs fees compared to the asset residual value. The accounting basis for the customs fees cannot be inferior to 20% from the asset input value, irrespective whether the parties have agreed upon a smaller residual value.

(4) When purchasing the assets brought into the country under the terms stipulated in the ind. (1) and (2), the user is under the obligation to pay the customs fee calculated at the residual value of the asset at the moment when the sell-purchase contract was concluded. The accounting basis for the customs fees cannot be inferior to 20% from the asset input value, irrespective whether the parties have agreed upon a smaller residual value.

(5) The term under which the assets are to be returned or to be given another customs destination is that agreed upon by the parties within the leasing contract. The term under which the assets are to be returned or to be given another customs destination cannot be superior to 7 years from the date when the asset was brought into the country, irrespective of the fact that the parties settled by contract for a higher lasting period, excepting the means reserved for the airway transport for which the stipulated term is 14 years.

(6) The assets which make the objects of a leasing contract concluded between lessors / financiers, Romanian legal entities, and lessees / tenants, foreign legal or physical entities, and which perform exportation activities from Romania within the meaning of these contracts are observing the customary regime of temporary exportation, in conformity with the provisions relative to the matter.

(7) The term under which the assets making the object of a leasing contract, concluded under the terms of the ind. (6), are to be returned or to be given another customs destination is that

agreed upon by the parties within the leasing contract, but it cannot be superior to 7 years from the date when the respective asset was exported from the country.

Art. 28. - (1) The leasing companies functioning in Romania are under the obligation to report and consult the banking risks information to the Romanian National Bank – Banking Risks Center.

(2) The leasing companies provided for in the ind. (1) must conform to the reporting obligations in 6 months' time from the date when the Romanian National Bank will issue normative documents relative to the reporting procedure.

NOTE:

According to the provisions made in the art. III from the Law no. 90/1998, published in the Romanian Official Journal of Laws, Part I, no. 170 from April 30 1998:

"Art. III. – Upon the coming into force of the present law the Government's Decision no. 72/1993 shall be repealed, relative to the customary regime of imported assets making the objects of the leasing transactions, published in the Romanian Official Journal of Laws, Part I, no. 44 from February 26 1993, Governmental Ordinance no. 12/1995 relative to some measures related to the customary regime of devices, installations and machines important within the leasing transactions, as well as the customary regime of raw materials, exchange parts, materials and components used in their own production by some economic agents, published in the Romanian Official Journal of Laws, Part I, no. 26 February 3 1995, approved by the Law no. 59/1995, as well as by any other contrary disposition."

According to the provisions made in the art. V and VI from the Law no. 99/1999, published in the Romanian Official Journal of Laws, Part I, no. 236 from May 27 1999:

"Art. V. - 1. The contracts leased prior to the coming into force of the present law maintain their validity.

2. Within 12 months from the publishing of the present law in the Romanian Official Journal of Laws, the leasing companies have the obligation to increase their registered capital so as to have a minimal subscribed and disbursed capital amounting to 500 million lei.

3. Should the dispositions made in the ind. 2 not be observed the leasing company held responsible shall not have the right to perform leasing operations.

Art. VI. – The Ministry of Finances will issue methodological norms *) relative to the accounting to the leasing operations within 30 days from the publishing of the present Law in the Romanian Official Journal of Laws."