

# LAW ON LEASING

## I BASIC PROVISIONS

### Article 1

This Law defines leasing business activities, terms for founding, operation and termination of a lessor's operation, rights and obligations of entities participating in leasing operations, termination of a leasing contract, and registration of proprietary rights over object of leasing, reporting, audit and supervision over lessor's operation.

### Article 2

Specific terms used in this Law have the following meaning:

**“Lessor”** is an entity who has obtained a license from Banking Agency of Republika Srpska to perform leasing business activities in accordance with this Law, and who conveys to lessee the right to hold and to use the subject of the leasing for a determined period of time in which period the lessor receives compensation from the lessee.

**“Lessee”** is a legal or physical entity to which lessor conveys the right to hold and to use the subject of the leasing.

**“Leasing supplier”** is a legal or physical entity, who conveys the proprietary right over object of leasing to the lessor in order for the right to be further conveyed to lessee to hold and to use the object of leasing in accordance with the Leasing Contract.

**“Object of leasing”** is a movable and inconsumable or immovable object in accordance with provisions regulating real rights.

**“Leasing fee”** is a cash amount paid in installments by lessee for holding and using the object of leasing.

**“Contract on supply”** is a contract made in writing between supplier of leasing subject and lessor based on which the lessor acquires proprietary right over object of leasing for the purpose of leasing.

### Article 3

In cases not regulated by this Law, provisions of the law regulating obligation relationships, as well as provisions of other laws shall be applied on entities participating in and legal relationships emerging from leasing activities under this Law.

## **II LEASING**

### **Article 4**

Leasing operation is a legal operation in which lessor is transferring to lessee the right to hold and to use object of leasing for a determined period of time with obligation to pay the leasing fee agreed, where lessee has the right to return to lessor or to purchase object of leasing, or to prolong the leasing contract.

### **Article 5**

Entities participating in a leasing operation are the following: lessor, lessee, and supplier of object of leasing.

### **Article 6**

Financial leasing is a legal operation in which lessor:

- a) concludes with supplier of object of leasing selected by lessee an agreement on supply based on which the lessor is entitled to ownership over the object of leasing in accordance with specification made by lessee and terms which, if related to lessee's interests, are to be approved by the lessee;
- b) concludes with lessee an agreement on financial leasing by means of which the lessor is obligated to transfer to the lessee authorization to hold and to use object of leasing for the period of time agreed, and lessee is obligated to pay to the lessor the leasing fee agreed;
- c) decides on the amount of the leasing fee based on amortization of the whole value or of the most important part of the object of leasing.

### **Article 7**

An agreement, in which the lessor and the supplier of the object of leasing is the same person, shall not be considered an agreement on financial leasing in the sense of this Law, but, instead, an agreement on operational leasing.

### **Article 8**

In cases not regulated by this Law, provisions of the law on obligatory relationships shall be applied on the agreement on operational leasing in dependence of each particular agreement (lease, sale with monthly repayments, and similar).

## **Article 9**

- (1) Leasing contract is a contract made in writing, where the following elements shall be included:
- a) Data on entities participating in the leasing contract;
  - b) Object of leasing with characteristics enabling its identification;
  - c) Definition of type of leasing (financial or operational);
  - d) The value of the object of leasing;
  - e) Time period of leasing duration, which in financial leasing shall not be shorter than two years starting with the date of conclusion of financial leasing contract;
  - f) The total amount of leasing fees to be paid by lessee;
  - g) Terms, method of payment of leasing fees, and effective interest rate applied in calculation of leasing fees;
  - h) Possibility to purchase or to prolong the leasing contract;
  - i) Data on the supplier of object of leasing;
  - j) Right to assign the object of leasing to other person for use;
  - k) Cases to be treated as obligations not met by lessee, and
  - l) Penalty interest rate to be paid in cases of obligations not met.
- (2) Besides elements from the Paragraph 1 of this Article, the leasing contract may include the following: place, time, and method of supply of object of leasing, ownership over the object of leasing, party that is obligated to insure the object of leasing, and risks against which the object of leasing should be insured, termination of the contract, costs of transportation of object of leasing, mounting and dismantling, as well as current maintenance of the object of leasing, replacement of parts, servicing and technical-technological improvements, training of the staff of the lessee, and other elements on which contract parties reach an agreement.

### **III LEASING OPERATION PERFORMANCE**

- (1) Leasing operation shall be performed only by:
- a) An entity organized as a joint-stock company with its head-office in Republika Srpska having obtained a license to perform leasing operation (hereinafter: the license) from Banking Agency of Republika Srpska (hereinafter: the Agency);
  - b) An organizational unit having its seat in Republika Srpska and belonging to a lessor registered for leasing operation performance in Federation of Bosnia and Herzegovina, i.e. Brcko District, which has obtained the license from the Agency, and in case of existence of reciprocity for the lessor, with the head-office in Republika Srpska.
- (2) Exceptionally to the Paragraph 1 of this Article, financial leasing operation may be performed also by a bank in accordance with provisions regulating operation of banks in Republika Srpska.

- (3) The bank from the Paragraph 2 of this Article shall operate under provisions of this Law regulating financial leasing contract, rights and obligations of entities involved in leasing operation, as well as registration of financial leasing contract.

#### **Article 11**

- (1) An organizational unit having its seat in Republika Srpska and belonging to a lessor registered for leasing operation performance in Federation of Bosnia and Herzegovina, i.e. Brcko District, shall operate under provisions of this Law, which are related to leasing contract, rights and obligations of entities involved in leasing, registration of leasing contract, reporting and audit, supervision over lessor's operation, and revoking of license.
- (2) The Agency may prescribe in more details method to apply provisions from Paragraph 1 of this Article related to an organizational unit established in Republika Srpska but belonging to a lessor registered for leasing operation in Federation of Bosnia and Herzegovina, i.e. Brcko District.
- (3) An organizational unit established in Republika Srpska belonging to a lessor registered for leasing operation in Federation of Bosnia and Herzegovina, i.e. Brcko District, is a tax payer in Republika Srpska for profit generated in Republika Srpska, and in accordance with provisions regulating this area of operation in Republika Srpska.
- (4) For activities performed in the territory regulated by this Law an organizational unit established in Republika Srpska belonging to a lessor registered for leasing operation in Federation of Bosnia and Herzegovina, i.e. Brcko District, is obligated to maintain business books in accordance with this Law and provisions regulating field of accounting and auditing in Republika Srpska.

#### **Article 12**

- (1) Lessor shall not be entered into the court register before obtaining its operating license from the Agency.
- (2) The term "leasing" may be entered into the court register and it may be used in legal activities only if the license by the Agency has been obtained.
- (3) Application for registration into the court register is to be submitted within 30 days from the date on which the license by the Agency has been obtained.
- (4) The license is issued by the Agency for an undetermined period of time and it is not transferable.

- (5) The Agency shall issue the license or reject the application from Paragraph 1 of this Article within 60 days after receipt of the application.

### **Article 13**

In cases related to lessor, which are not regulated by this Law, provisions of the Law on Enterprises shall be applied.

### **Article 14**

- (1) Minimum core capital of lessor shall amount to KM 250.000 and it shall be fully paid in cash.
- (2) Core capital of lessor paid in tangibles and right expressed in cash value shall be evaluated by an authorized appraiser.
- (3) Minimum core capital to be maintained by lessor shall not be lower than the amount defined by the Paragraph 1 of this Article.

### **Article 15**

- (1) Basic business activity to be performed by lessor shall be leasing activity.
- (2) Lessor shall not extend credits and loans.
- (3) Exceptionally to Paragraphs 1 and 2 of this Article, a bank as a lessor may perform other business activities in accordance with provisions regulating operation of banks.

### **Article 16**

The following documentation shall be attached to the application submitted by lessor headquartered in Republika Srpska to the Agency for issuance of the license:

- a) Original or verified copy of the founding enactment;
- b) Business plan for the first three years of operation including projection of balance sheet and income statement;
- c) A list of founders of the lessor stating all identification data of founders and their share in core capital;
- d) Other documentation prescribed by the Agency, based on which it is possible to determine whether lessor meets all staff, technical, and organizational requirements to perform leasing activities.

### **Article 17**

- (1) Lessor registered to perform leasing activities in Federation of Bosnia and Herzegovina i.e. Brcko District, may perform such leasing activities in Republika Srpska only by means of its operating units established in Republika Srpska, and if licensed by the Agency to perform leasing activities.
  
- (2) The following documentation shall be attached to the license application submitted to the Agency by lessor registered to perform leasing activities in Federation of Bosnia and Herzegovina, i.e. Brcko District, when establishing an operating unit in Republika Srpska:
  - a) Statement by the court register of Federation of Bosnia and Herzegovina, i.e. Brcko District, issued not earlier than 30 days ago;
  - b) Enactment on founding of the lessor registered in Federation of Bosnia and Herzegovina, i.e. Brcko District;
  - c) Data on members of bodies;
  - d) Lessor's financial statements for previous three years audited;
  - e) Business plan for the first three years of operation of the operating unit in Republika Srpska;
  - f) Authorized body's decision on founding the operating unit;
  - g) Statement that operating unit shall maintain complete documentation related to its operation in its seat, and that the operating unit shall prepare financial reports in accordance with this Law;
  - h) Approval by the regulator from Federation of Bosnia and Herzegovina, i.e. Brcko District, if such an approval is required;
  - i) Other documentation prescribed by the Agency, based on which it is possible to determine whether lessor meets all staff, technical, and organizational requirements to perform leasing activities.
  
- (3) As a condition to issue the license for leasing activity performance to a lessor registered to perform leasing activities in Federation of Bosnia and Herzegovina, i.e. Brcko District, and establishing an operating unit in Republika Srpska the Agency may request from the lessor to deposit an amount of money or to provide for an adequate insurance as a guaranty for obligations emerging from business contracts made in the territory of Republika Srpska.

### **Article 18**

The Agency shall issue a license to engage in leasing activity to a lessor headquartered in Republika Srpska, and to an operating unit with its seat in Republika Srpska being established by a lessor registered to perform leasing activities in Federation of Bosnia and Herzegovina, i.e. Brcko District, only if, on the basis of data available and documentation submitted with the license application, the Agency may conclude that the lessor is eligible to operate in accordance with provisions of this Law considering its financial, management, organizational, staff, and technical capacities.

### **Article 19**

The Agency shall reject application for license issuance if:

- a) The lessor does not meet requirements from this Law based on its founding enactment and other documentation;
- b) Provisions of the lessor's founding enactment are contrary to provisions of this Law.

#### **Article 20**

(1) Lessor headquartered in Republika Srpska may perform leasing activities outside Republika Srpska only through its operating units having their seats outside Republika Srpska with an obligation to inform the Agency on opening of such operating units within eight days.

(2) Information on opening operating unit outside Republika Srpska shall include the following data:

- a) Name and address of operating unit;
- b) Names of persons authorized to run operation of operating unit;
- c) Business plan for the first three years of operation of operating unit.

#### **Article 21**

(1) The Agency's enactments are final.

(2) The Agency's enactments from Paragraph 1 of this Article may be opposed through an administrative procedure at an authorized court in accordance with provisions regulating administrative procedures.

#### **Article 22**

The Agency shall prescribe mode and method to calculate effective interest rates, including all elements of leasing fee calculation, by means of a separate Book of Rules.

#### **Article 23**

The Agency may prescribe to lessor obligation, criteria, and method of risk management, establishing and maintaining reserves, terms and mode of their use, method and terms of reporting on risk management.

## **IV RIGHTS AND OBLIGATIONS OF LEASING PARTICIPANTS**

### **1. Rights and obligations of lessor**

#### **Article 24**

- (1) Based on lessee's request and specification, lessor shall provide for object of leasing from supplier of object of leasing as defined by lessee.
- (2) Lessor shall inform in writing supplier of object of leasing that the object of leasing is being provided in order to honor the contract on leasing. Lessor shall include in such a communication to the supplier of object of leasing also the entity name i.e. the name of the person who is the lessee.
- (3) Information from Paragraph 2 of this Article shall be communicated by the moment of conclusion of contract on supply as the latest.

#### **Article 25**

- (1) In case of bankruptcy, i.e. liquidation of lessee, lessor has the right to separate (separation right) the object of leasing from the lessee's bankruptcy, i.e. liquidation estate, in accordance with provisions regulating bankruptcy, i.e. liquidation procedure.
- (2) Without any delay lessee shall inform lessor on initiation of bankruptcy, i.e. liquidation procedure from Paragraph 1 of this Article.

#### **Article 26**

In case of financial leasing the supplier of the object of leasing is the only one responsible to the lessee for material deficiencies of the object of leasing, unless the contract of financial leasing stipulates otherwise.

#### **Article 27**

- (1) In case of financial leasing, lessor shall not be liable to lessee or to a third party for damage caused by object of leasing or by use of such object of leasing, unless otherwise stipulated.

#### **Article 28**

Lessor shall be liable to lessee if a third party has the right over the object of leasing, or any part of it, which excludes, diminish, or restricts free keeping or use by lessee, and the lessee was not informed on existence of such a right, nor agreed to accept the object of leasing under such terms.

#### **Article 29**

Any and all contract provisions restricting or excluding lessor's responsibility for legal defects of the object of leasing shall be deemed null.

#### **Article 30**

- (1) If a third person has the right from Article 28 of this Law over the object of leasing, lessee shall inform and request the lessor to remove such third person's rights or claims related to the object of leasing within a reasonable period of time.
- (2) Lessee who, without informing lessor, started and lost the court procedure against the third person from Paragraph 1 of this Article, may appeal to lessor's responsibility for legal deficiencies, unless the lessor proves that he disposed with means to reject the third person's claim.
- (3) Lessee shall also have the right to appeal to lessor's responsibility for legal deficiencies of the object of leasing when lessor acknowledged the third person's sound right without either informing lessee or starting court procedure.
- (4) If, in the case from Paragraph 3 of this Article, lessee paid a certain amount in order to have the third person renounce his/her right, the lessor may be released his responsibility if he compensate the lessee for the amount paid and damage suffered.

#### **Article 31**

- (1) If lessor does not act as requested by lessee as in Paragraph 1 of Article 30 of this Law, due to which the object of leasing is taken away from the lessee, the contract on leasing shall be cancelled unless otherwise stipulated by the contract.
- (2) If lessor does not act as requested by lessee as in Paragraph 1 of Article 30 of this Law related to the lessee's decreased or limited keeping or use of the object of leasing, the lessee may cancel the contract if this is preventing the purpose of the contract to be achieved, or a proportional decrease of leasing fee may be requested.
- (3) In cases from Paragraphs 1 and 2 of this Article the lessee is entitled to compensation for damage suffered.

- (4) If, in the moment of concluding the contract the lessee was aware of possibility for the object of leasing to be taken away or its free keeping or use to be decreased or limited, the lessee shall not be entitled to any damage compensation in case such damage occurred.

## **2. Alteration of Lessor or Lessee**

### **Article 32**

- (1) Under a contract concluded with a third person the lessor may transfer his/her rights to such a third person, except for those rights where such transfer would jeopardize lessee's rights from the contract on leasing.
- (2) In case of transfer of ownership over object of leasing from Paragraph 1 of this Article, the third person takes role of the lessor, and rights and obligations from the contract on leasing are created between him/her and lessee.
- (3) The transfer of rights from the contract of leasing does not require the lessee's approval, but the lessor shall have to inform the lessee on performed transfer of rights to the third person.
- (4) In the case from Paragraph 1 of this Article the third person shall not request the lessee to deliver the object of leasing before expiration of the period of time for which the contract on leasing was concluded.
- (5) The transfer of rights of ownership over object of leasing to the third person may be excluded or otherwise anticipated by the contract.

### **Article 33**

Under lessor's written approval the lessee may, by means of a contract, transfer to a third person his/her rights and obligations from the contract on leasing.

## **3. Lessee's Rights and Obligations**

### **Article 34**

Lessee shall take over the object of leasing by means, in the place, and in such time as defined by the contract on leasing.

### **Article 35**

- (1) In financial leasing, if the supplier of the object of leasing does not supply the object of leasing to the lessee, if the supply is delayed, or if there is a material deficiency of the object of leasing, the lessee may:

- a) Accept the object of leasing or request supply of a proper object of leasing, but without any further rights toward the supplier;
  - b) Refuse to accept the object of leasing or cancel the contract on financial leasing with the right to have the damage compensated.
- (2) When the object of leasing is supplied with material deficiencies, the lessee may cancel the contract on financial leasing only if the object of leasing is supplied with such material deficiencies which significantly decrease the value of the object of leasing, i.e. with such a deficiency due to which such a contract would not have been concluded if the lessee had been aware of in the moment of concluding the contract. A contract shall not be cancelled because of difference in quantity, lack of a part, lack of a feature or characteristic, which have no significance for the use of object of leasing.
  - (3) Contract on financial leasing shall remain in force if lessor himself, without delay, supplies to the lessee the object of leasing, under conditions stipulated by the contract of leasing.
  - (4) Until the fulfillment of obligatory supply, which in whole complies with the contract on financial leasing, lessee shall be entitled to withhold the payment of leasing fee, which, based on the leasing contract, he would be obliged to pay to the lessor.
  - (5) If he cancels the contract, lessee shall be entitled to repayment of the fee, which he paid in accordance with the contract on financial leasing, decreased by an amount representing a reasonable compensation of benefits the lessee enjoyed based on the object of leasing.

### **Article 36**

- (1) The lessee shall use the object of leasing in accordance with the contract or purpose of the object of leasing exercising care of a good businessman or a manager.
- (2) The lessee shall be held responsible for the damage caused by putting the object of leasing into use contrary to the contract or purpose of the object of leasing, regardless whether the object of leasing was used by him personally, a person acting under his instructions, or another person allowed by the lessee to use the object of leasing.

### **Article 37**

- (1) The lessee shall be obliged to maintain the object of leasing in order and make repairs of the object of leasing that are needed.

- (2) The lessee shall be responsible for the damage of the object of leasing caused by inadequate maintenance.

### **Article 38**

The lessee shall pay leasing fee to the lessor in amounts, manner and time stipulated by the contract on leasing.

### **Article 39**

- (1) The lessor may cancel the contract if the first payment of the leasing fee is made by the lessee with delay.
- (2) If the lessee, after the first payment of the leasing fee, pays two consecutive leasing fees with delay, the lessor may cancel the contract or request the lessee to pay the remaining portion of the leasing fee together with the interest.
- (3) Exceptionally to provisions of Paragraphs 1 and 2 of this Article, if the lessee fails to pay one leasing fee, the lessor may cancel the contract in regard with obligation to all future payments, when due to given circumstances it is obvious that neither such future payments will be met.
- (4) The lessor wishing to cancel the contract due to reasons defined in Paragraphs 1 to 3 of this Article shall be obliged to provide for the lessee an adequate additional deadline to meet the obligation.
- (5) If the lessee does not meet the obligation within such an additional deadline, the contract on leasing shall be cancelled by the law itself.
- (6) In cases from Paragraphs 1 to 3 of this Article, the lessee may keep the contract in force by providing security acceptable to the lessor.
- (7) Cancellation of the contract due to failure to pay the leasing fee may be otherwise defined by the contract within obligatory rules, public system, and fair business practices.

### **Article 40**

The lessor cancelling the contract due to unpaid leasing fee in cases stipulated by Article 39 of this Law or by the contract on leasing, shall be entitled to restitution of the object of leasing, as well as to compensation of the damage suffered.

#### **Article 41**

- (1) In financial leasing, the lessee, after he accepted the object of leasing, shall be entitled to damage compensation by the lessor, if the object of leasing does not meet provisions of the contract of supply.
- (2) In operating leasing, the lessee, after he accepted the object of leasing, shall be entitled to damage compensation by the lessor, if the object of leasing does not meet provisions of the contract of leasing.

#### **Article 42**

- (1) In financial leasing, the lessee shall bear the risk of accidental destruction or damage of the object of leasing. The risk shall be transferred to the lessee in the moment of taking over the object of leasing, unless otherwise stipulated by the contract on financial leasing.
- (2) In operating leasing, the risk of accidental destruction or damage of the object of leasing shall remain on the lessor, and it shall not be transferred to the lessee.

#### **Article 43**

- (1) Upon expiration of the contract on leasing the lessee shall return undamaged object of leasing to the lessor or to the person designated by the lessor, unless otherwise stipulated by the contract on leasing.
- (2) The lessee shall not be responsible for the object of leasing being worn-out due to its regular use or for changes made on the object of leasing under an agreement with the lessor.

#### **Article 44**

The lessee shall provide for insurance of the object of leasing against risks in accordance with the contract on leasing.

#### **Article 45**

- (1) The lessee may give the object of leasing, in whole or in parts, to the third person under the lessor's written agreement.
- (2) The lessor may cancel the contract and request damage compensation if the lessee gave the object of leasing to the third person for use without the lessor's written agreement.
- (3) The lessee's giving the object of leasing to the third person for use shall not release the lessee from his obligations toward the lessor as provided by the contract on leasing.

- (4) The act of giving the object of leasing to the third person for use may be excluded from the contract or provided for in a different way.

#### **4. Rights and Obligations of the Supplier of the Object of Leasing**

##### **Article 46**

- (1) The supplier of object of leasing shall supply to the lessee the object of leasing having characteristics which fully comply with contracted properties, in good working condition with all parts and additional components, in quantity, quality and type, in manner, place, and time as determined by the contract on supply.
- (2) If the lessor and the supplier of the object of leasing are the same person, then obligations from Paragraph 1 of this Article become obligations of the lessor.

##### **Article 47**

Modifications of the contract on supply, which is concluded between lessor and supplier of the object of leasing, based on which lessor acquires the right of ownership over the object of leasing, may influence lessee only if he himself agrees to them.

##### **Article 48**

(1) In financial leasing, if supplier of the object of leasing does not deliver the object of leasing in good working condition to the lessee, or the object is delivered with delay, or with a material deficiency, the lessee has the same rights toward the supplier of the object he would have if he were a party of the contract concluded with the supplier of the object of leasing. The supplier of the object of leasing shall not be responsible to both lessor and lessee for the very same damage.

(2) Exceptionally to Paragraph 1 of this Article, the lessee shall have neither right to initiate actions causing cancellation of the contract on supply concluded between lessor and supplier of the object of leasing, nor the right to request decrease of the price.

(3) Lessee's rights from paragraph 1 of this Article do not change rights and obligations of parties of the contract on supply.

##### **Article 49**

The lessor and the supplier of the object of leasing shall be mutually responsible toward lessee on solidarity basis, if the lessor himself has chosen the supplier of the object of leasing, and the object of leasing has not been delivered to the lessee, or the delivery was delayed, or the object of leasing is found to have material deficiencies.

#### **V TERMINATION OF THE CONTRACT ON LEASING**

##### **Article 50**

The contract on leasing shall terminate:

- a) Due to the end of the period of time for which it has been concluded;
- b) Due to destruction of the object of leasing by force major;
- c) Due to cancellation of the contract as stipulated by this Law; and
- d) Due to other reasons in compliance with provisions regulating obligatory relationships.

#### **Article 51**

- (1) The lessee shall not acquire the right of ownership over the object of leasing after expiration of period of time for which the contract on leasing was concluded, unless the contract on leasing itself provided for it.
- (2) The contract on leasing may stipulate that after the expiration of the period of time on which the contract was concluded the lessee is given the right to purchase the object of leasing at the price defined by the contract or to extend the contract on leasing for an additional period of time after the expiration of the period of time on which the contract was originally concluded.
- (3) The lessee shall inform the lessor in writing on his/her decision to purchase the object of leasing or to extend the contract on leasing not later than a month before expiration of the period of time on which the contract was originally concluded, unless the contract on leasing provided for it otherwise.

### **VI REGISTRATION OF OWNERSHIP RIGHTS OVER THE OBJECT OF LEASING**

#### **Article 52**

Ownership rights over object of leasing shall be registered in public registers depending on the nature and purpose of the object of leasing.

#### **Article 53**

The following data from contract on leasing shall be entered into the public register:

- (1) Data on lessor and lessee;
- (2) Data on object of leasing;
- (3) Contract on leasing (the number of the contract, date of conclusion and the period of time for which the contract is concluded);
- (4) Other facts in accordance with the law.

#### **Article 54**

The lessor shall submit request for registration of ownership rights over object of leasing and other data from the contract of leasing within seven days from the date of delivery of the object of leasing in case of movables, that is within 30 days in case of real estate, while request for change or removal of such data from the public register shall be submitted within seven days from the moment of coming to existence of facts that caused such a change i.e. removal of data from the register.

#### **Article 55**

If the object of leasing is real estate (land, apartment, or office space as a separate part of a building or other construction) the lessor's ownership rights over the object of leasing shall be registered in accordance with provisions regulating real estate registration.

#### **Article 56**

- (1) If the object of leasing is a movable the lessor's ownership rights over the object of leasing shall be registered in accordance with provisions regulating lien registration.
- (2) Confirmation on registration issued by the Register of Liens represents a public document.

#### **Article 57**

Lessor shall register contract on financial leasing with authorities in charge in accordance with separate provisions.

### **VII REPORTING AND AUDIT**

#### **Article 58**

- (1) Lessor shall keep and maintain bookkeeping records and documents, and prepare and present financial statements in accordance with provisions regulating reporting and auditing.
- (2) Lessor shall submit financial statements from Paragraph 1 of this Article to authorities in charge in manner and within time limits determined by provisions regulating reporting and auditing, as well as by other enactments of those authorities in charge.
- (3) Under the Agency's approval lessor shall appoint an external auditor to audit annual financial statements and to prepare audit report, in accordance with provisions regulating reporting and auditing.
- (4) Lessor shall submit the annual financial statement to the Agency within 75 days, and an independent auditor's report not later than five months upon expiration of the business year to which the report is related.

### **Article 59**

Lessor shall report on its business activity to the Agency in the form, content, and within deadlines defined by the Agency's regulation. Also, lessor shall make its business books and documentation available for inspection.

## **VIII SUPERVISION OF OPERATION AND REVOKING LICENSE**

### **Article 60**

- (1) In accordance with this Law and regulation based on the Law the Agency supervises lessor's business operation.
- (2) In performing its supervisory function the Agency evaluates legal compliance and soundness of lessor's operation, orders and undertakes measures for removal of irregularities and incompliance found.
- (3) Within the scope of its supervisory authority the Agency shall make assessments of good business practices exercised by the lessor.

### **Article 61**

- (1) In the course of supervision the Agency's examiners may request the lessor to present reports and information on all issues relevant for assessment whether the lessor operates in accordance with provisions of this Law and regulation emerging from this Law.
- (2) The Agency's examiners may request from the lessor's director or another authorized person to make a statement on data from Paragraph 1 of this Article.
- (3) The Agency's examiners may file a request to bring action against offences as defined by this Law.

### **Article 62**

- (1) Supervision of the lessor's operation shall be performed by reviewing financial statements and carrying out on-site examinations.
- (2) On-site examination shall be performed in the lessor's premises by reviewing business books and records, as well as other documentation related to lessor's operation;
- (3) On-site examination of lessor's operation shall be performed by the Agency's examiners.

### **Article 63**

- (1) Under the request of the Agency's examiners lessor shall provide for on-site examination to be carried out in its premises.
- (2) Under the request of the Agency's examiners lessor shall enable on-site examination of the lessor's business books, documentation and records.
- (3) Under the request of the Agency's examiners lessor shall hand over transcripts and photocopies of the lessor's business books, documentation and records.

### **Article 64**

Lessor shall provide for undisturbed working conditions for the Agency's examiners in carrying out an on-site examination, as well as for the staff to cooperate and to enable access to documentation and its review by the Agency's examiners.

### **Article 65**

The Agency shall issue a general enactment to prescribe on-site examination method, procedure of giving orders and undertaking measures, as well as deadlines for removal of irregularities and incompliance found by such an examination.

### **Article 66**

- (1) The Agency may revoke leasing operating license from lessor in following cases:
  - a) Under lessor's request;
  - b) If lessor fails to apply for registration with the registration court within 30 days from the date of license issuance;
  - c) If lessor fails to start performing leasing business activities within six months from the court registration or the lessor ceases to perform its operation for a period of time longer than six months;
  - d) If the license was obtained under artificial statements and data giving the Agency false impression;
  - e) If lessor fails to act in accordance with the Agency's order to remove irregularities i.e. incompliance found, within the deadline defined by the Agency's enactment;
  - f) If lessor's main business activity is actually such an activity which is neither leasing nor leasing supporting nor it allows leasing activity as an additional business activity;
  - g) If lessor ceases to meet requirements making him eligible to obtain license for leasing operation;
  - h) If lessor's business activities fail to comply with this Law and the Agency's enactments;
  - i) If a valid court decision created grounds for license revoking.

- (2) Lessor shall not conclude, start or engage in any new business activity related to business operation in accordance with provisions of this Law after the date on which the decision on revoking the Agency's license/approval became final.
- (3) The procedure of revoking license/approval shall be prescribed by the Agency's general enactment.

#### **Article 67**

Lessor, whose license for leasing operation has been revoked due to bankruptcy i.e. liquidation procedure shall comply with provisions regulating bankruptcy i.e. liquidation procedure.

#### **Article 68**

Lessor shall make payments for supervision and examination in accordance with fee amounts prescribed by the Agency.

### **IX PENALTY PROVISIONS**

#### **Article 69**

- (1) Lessor shall pay fine in an amount of KM 1,500 up to KM 15.000 for the following violations:
  - a) Contract on leasing does not contain obligatory elements from Article 9, Paragraph 1 of this Law;
  - b) Contract on financial leasing is concluded for a period of time shorter than two years, which is contrary to Article 9, Paragraph 1, Line d) of this Law;
  - c) Engagement in leasing operation without the Agency license, which is contrary to Article 10, Paragraph 1 of this Law;

- d) Application for registration is not submitted to the registration court within the deadline prescribed by Article 12, Paragraph 3 of this Law;
  - e) Core capital paid in is not maintained in compliance with Article 14 of this Law;
  - f) Contrary to provisions of Article 15, Paragraph 1 of this Law, lessor's main business activity is actually such an activity which is neither leasing nor supporting leasing activities nor it allows for leasing activity as an additional business activity;
  - g) Failure to inform the Agency within the deadline prescribed on establishing operating unit outside the territory of Republika Srpska (Article 20, paragraph 1);
  - h) Failure to observe restrictions prescribed by the Agency in Article 23 of this Law;
  - i) Failure to inform in writing supplier of the object of leasing that the object of leasing is provided for execution of the contract on leasing as prescribed by Article 24, Paragraph 2 of this Law;
  - j) Failure to make registration as prescribed by Articles 55 and 56, Paragraphs 1 and 57, respectively, of this Law;
  - k) Failure to maintain, keep, prepare, present and submit financial statements in accordance with Article 58, Paragraphs 1 and 2 of this Law;
  - l) Failure to have annual financial reports audited and to report to the Agency in accordance with Article 58, Paragraphs 3 and 4 of this Law;
  - m) Failure to report to the Agency and to present for review business books and documentation in accordance with Article 59 of this Law;
  - n) Failure to enable the Agency's examiners to carry out examination in accordance with provisions of Articles 63 and 64 of this Law;
- (2) In case of violation from Paragraph 1 of this Article fine shall be also paid by responsible person in the lessor in an amount of KM 500 and KM 1,500.
  - (3) Failure of a legal entity to submit a request for removing from the court register leasing business activity as provided by provisions of Article 71, Paragraph 2 of this Law shall be fined by an amount of KM 1,500 up to 15,000 KM;
  - (4) Responsible person in the entity shall be also fined for the failure from Paragraph 3 of this Article in an amount of KM 500 up to KM 1,500.

## **X TRANSITIONAL AND FINAL PROVISIONS**

### **Article 70**

Within three months from the date of coming into effect of this Law the Agency shall declare regulation within the scope of its authority for implementation of this Law, including regulation on:

- a) Conditions to be fulfilled and documentation to be submitted together with application for issuance of the license from Article 10, Paragraph 1 of this Law;
- b) Manner and method to calculate effective interest rate, including all other elements of calculation of leasing fee in accordance with Article 22 of this Law;
- c) Method of carrying out supervision/examination, procedure of issuance of orders and undertaking measures, as well as deadlines to remove irregularities and incompliance found as prescribed by provisions of Article 65 of this Law; and
- d) Procedure for revoking leasing license in accordance with provisions of Article 66 of this Law.

#### **Article 71**

- (1) Legal entities engaged in leasing operation as of the date of coming into effect of this Law shall harmonize their operation with provisions of this Law within six months from the date of its implementation.
- (2) If legal entities engaged in leasing operation fail to harmonize their operation as provided by Paragraph 1 of this Article they shall apply for removal of their registration of leasing operation from the court register.

#### **Article 72**

The existing contracts on leasing, which had been concluded in accordance with regulation on obligatory relationships before this Law was implemented, shall remain in effect up to expiration of obligations included in such contracts, and shall not be extended.

#### **Article 73**

This Law shall come into effect on the eight day from the date of its being published in the “Official Gazette of Republika Srpska”, and it shall be implemented after expiration of three months following its coming into effect.

Number: 01-1276/07

Date: 17 July 2007

PRESIDENT  
OF  
NATIONAL ASSEMBLY  
M. Sc. Igor Radojičić

# **LAW**

## **ON AMENDMENTS TO THE LAW ON LEASING**

### **Article 1**

In the Law on Leasing (“Official Gazette of Republika Srpska”, number 70/07) after Article 6, a new Article 6a shall be added and say:

#### “Article 6a

(1) In conducting financial leasing operations, a lessor shall ensure the protection of rights and interests of a beneficiary, i.e. a lessee who enters into a contract with the lessor in order to use services for the purpose not designated for its business or other commercial activities (hereinafter: beneficiary).

(2) A lessor shall ensure the protection of rights and interests of a beneficiary by adopting and consistent applying of general business terms and other acts that must comply with regulations and based on good business practices and fair attitude towards a beneficiary, adhering to the following principles of:

- a) good faith,
- b) due professional care while fulfilling obligations,
- c) equal relation among a beneficiary and lessor,
- d) protection from discrimination,
- e) transparency of operations and informing,
- f) contracting obligations that are defined or definable, and
- g) beneficiary’s right to complaint and indemnification.

(3) A lessor shall ensure that employees, engaged in the sale of leasing services or providing advice to beneficiaries, have appropriate qualifications, knowledge and experience, professional and personal qualities, exercise the rules of profession, act in accordance with good business practices and business ethics, respect both the personality and integrity of a beneficiary, and at beneficiary’s request, completely and accurately inform such beneficiary on leasing services terms, and the lessor shall conduct continuous training and specialization of employees engaged in the sale of services or providing advice to beneficiaries in accordance with market necessities and requests.

(4) Related to the issues of beneficiary’s protection based on financial leasing agreements, a lessor shall, in all phases of establishment and presence of relationship with a beneficiary (adopting and advertizing general terms of operation, negotiation phase and informing a beneficiary via standard information sheet, agreement conclusion, leasing usage and duration of contractual relation, transfer of receivables based on leasing agreement), apply the provisions of the Law on Banks of Republika Srpska governing the field of rights and interests of beneficiary’s protection.

(5) The provisions of this Article shall not apply to financial leasing agreement excluding a contractual option for a lessee to acquire the right of ownership over the leasing object.

(6) The Agency shall prescribe terms and conditions of fulfilling the rights and interests of a beneficiary according to financial leasing agreements, as well as lessor’s method of fulfilling obligations in the procedure of beneficiary’s protection within 90 days from the date

of this Law coming into force.”

## **Article 2**

In Article 8, a new paragraph 2 shall be added and say:

“(2) With respect to beneficiary protection issues under operational leasing agreement, the regulations regarding beneficiary’s protection and obligatory relations shall be applied.”

## **Article 3**

In Article 9, new paragraphs 3 and 4 shall be added and say:

„(3) With respect to leasing agreement, interests, fees and other expenses, if variable, shall depend on contractual elements that are published officially (reference interest rate, consumer price index, etc.), and whose nature is such that their value cannot be affected by unilateral will any of the contractual parties.

(4) In leasing agreement conclusion, a lessor in addition to the agreement communicates to a beneficiary one copy of the lease payment plan considered as an integral part of the agreement while the lessor retains the other copy of this plan in its documentation.“

## **Article 4**

After Article 58, a new Article 58a shall be added and say:

„Article 58a

(1) A lessor shall carry out tasks and obligations in its business operations, as well as undertake measures and activities defined by the regulations governing the field of anti-money laundering and terrorism activities financing and regulations governing the introduction and application of certain interim measures for the purpose of effective implementation of international restrictive measures.

(2) A lessor shall establish a system of internal controls and internal audit, adopt policies and procedures for the purpose of detection and prevention of transactions involving criminal activities, money laundering, financing terrorism activities and activities obstructing the introduction and application of international restrictive measures, as well as undertake measures to identify all persons entering into business relations with, in accordance with the separate regulations of the Agency.

(3) A lessor shall inform authorized bodies and communicate data in accordance with the regulations governing the field of anti-money laundering and terrorism financing, and submit to the Agency a monthly report on the abovementioned, in the form prescribed by the Agency, within 90 days from the date of this Law coming into force.”

## **Article 5**

In Article 69, paragraph 1, the number: “1,500“ shall be replaced with the number “5,000“, and the number: “15,000“ shall be replaced with the number “50,000“.

After item n), new items o) and p) shall be added and say:

“o) fails to submit to the Agency the reports under Article 58a, paragraph 3 of this Law and

p) fails to act in the manner as prescribed in Article 72a of this Law”.

In paragraph 2, the number “500“ shall be replaced with the number: “2,000“, and the number: “1,500“ shall be replaced with the number: “10,000“.

In paragraph 3, the number: “1,500“ shall be replaced with the number: “5,000“, and the number: “15,000“ shall be replaced with the number: “50,000“.

In paragraph 4, the number: “500“ shall be replaced with the number: “2,000“, and the number: “1,500“ shall be replaced with the number: “10,000“.

After paragraph 4, a new paragraph 5 shall be added and say:

„(5) In case of violating the provisions of Article 6a of this Law, the provisions of the Law on Banks of Republika Srpska stipulating penalties for infringements in the field of beneficiary’s protection shall be applied.“

### **Article 6**

After Article 72, a new Article 72a shall be added and say:

#### **“Article 72a**

(1) A lessor shall harmonize its acts of operations with the provisions of this Law and regulations of the Agency, no later than three months from the date of the adoption of such regulations.

(2) A lessor shall harmonize the agreements concluded before this Law coming into force with the provisions of Article 98ж, paragraphs 2 thru 7 and Article 98j, paragraphs 3 and 4 of the Law on Amendments to the Law on Banks of Republika Srpska regulating definability of contractual obligations, contracting and changing of interest rate, within 6 months from the date of its coming into force, so that the amount of agreed variable but indefinable nominal interest rate, i.e. variable indefinable element of such rate shall not exceed its initial amount (the amount at the time of agreement conclusion).

(3) The provisions of Article 98ж, paragraphs 2 thru 7, and Article 98j, paragraphs 3 and 4 of the Law on Amendments to the Law on Banks of Republika Srpska shall be applied on all obligations under agreement with maturity date after the deadline for agreement harmonization referred to in paragraph 2 of this Article.

(4) A lessor, within the deadline determined for harmonization of agreement referred to in paragraph 2 of this Article, shall not increase the amount of interest rate by applying contractual indefinable elements.

(5) A lessor is not permitted to charge beneficiaries under agreement with a special fee for harmonization of agreements as determined in paragraph 2 of this Article, nor request additional documentation for such purpose.

### **Article 7**

This Law shall come into force from the eighth day from the date of its being published in the “Official Gazette of Republika Srpska”.

Number: 01-1708/11  
Date: 3 November, 2011

PRESIDENT OF  
THE NATIONAL ASSEMBLY  
*M.Sc. Igor Radojičić*