

**LAW NO. 03/L-103**

**ON LEASING**

**Assembly of Republic of Kosovo,**

In support of Article 65 (1) of Constitution of the Republic of Kosovo,

Adopts:

**THE LAW ON LEASING**

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1**

**Scope of application**

1. This Law shall govern leasing of movable and property, financial and operational and defines the rights and obligations of leasing parties.

2. This law does not apply for land leasing, building leasing, office or apartment leasing and shall not apply for leasing of unsustainable goods (not eternal), money, documents, financial instruments, accounts, art works, intellectual property or other intangible property.

## Article 2

### Definitions

For the purpose of this Law the terms will have the following meaning:

**"Asset"** means any movable and immovable sustainable good. This term does not include unsustainable goods, money, documents, financial instruments, accounts, commercial letter, securities, art work, intellectual property or other intangible property.

**"Financial Leasing"** means a financing transaction in which the Lessor enters into a written agreement with the Lessee which grants the Lessee the right to possession and use of a Leased Asset for the specified period of time in return for the payment of the defined installments by the Lessee, with or without an option to purchase, that includes the following characteristics:

1. the Lessee specifies the Leased Asset and selects the Supplier; and
2. the Lessor acquires the Leased Asset or the right to possession and use of the Leased Asset in connection with a lease and the Supplier was notified by Lessor or Lessee or in any other manner had knowledge of this fact and the Leasing fulfils one or more criteria as following:
  - 2.1. the right in Leased Asset passes immediately from Lessor to the Lessee at the end of Leasing term;
  - 2.2. leasing contains a solid purchasing option under which Lessee may gain Leased Asset less than the real market value at the end of Leasing term;
  - 2.3. leasing duration for period longer than seventy five percent (75%) of economic sustainability of Leased Asset; or
  - 2.4. actual value of leasing payment is higher than ninety percent (90%) of the real market value of assets, that is at the beginning of Leasing term.

**"Asset given with Leasing"** means an asset which is object of a Leasing Agreement.

**"Lessee"** means a person, natural or legal, who receives the right to possession and use of a Leased Asset from the Lessor under a Leasing Agreement. Unless the context indicates otherwise, the term includes a sub-lessee.

**"Lessor"** means a legal person licensed in special manner by Kosovo Central Bank to exercise in mutual way transactions of Financial Leasing and/or Operational Leasing and who grants the right to possession and use of a Leased Asset under a Leasing Agreement. Unless the context indicates otherwise, the term includes a sub-lessor.

**"Operational Leasing"** means leasing transactions which do not fulfill any of the criteria defined in paragraph 2.1. and 2.4. of the definition Financial Leasing mentioned above.

**"Supplier"** means a person from whom the Lessor acquires a Leased Asset or right to possession and use of a Leased Asset under a Supply Agreement.

**"Leasing Agreement"** means an agreement entered into between the Lessor and the Lessee which grants the Lessee the right to possession and use of a Leased Asset for the specified period of time, in agreement, in return for the payment of the defined installments by the Lessee.

**"Supply Agreement"** means an agreement under which the Lessor acquires a Leased Asset to be leased to the Lessee.

**"Trustee in bankruptcy"** shall include a liquidator, administrator, external manager or other person appointed to administer the Lessee's property for the benefit of the general body of creditors

**"Lease term"** is the initial period as specified in the Financial Lease Agreement, during which the Lessee is entitled to possess and use the Leased Asset and that cannot be less than a year and longer than the economic sustainability of the Leased Asset.

## **CHAPTER II**

### **PARTIES TO A FINANCIAL LEASING TRANSACTION**

#### **Article 3**

##### **Parties to the Financial Leasing Transaction**

1. The parties to the Financial Leasing Transaction are: the Lessor, the Lessee and in some cases include the Supplier.
2. The Lessor and the Supplier can be the same person.

## **CHAPTER III**

### **THE LEASING AGREEMENT**

#### **Article 4**

##### **Form of the Leasing Agreement**

The Leasing Agreement shall be executed in written form in accordance with procedures established by legislation and shall stipulate the terms and conditions of the parties with respect to a Leased Asset.

#### **Article 5**

##### **Content of the Leasing Agreement**

1. The Leasing Agreement shall contain the following minimum provisions:

1.1. identity and addresses of the parties to the Leasing Agreement;

1.2. description of the Leased Asset sufficient to permit its identification, or the time of Leasing Agreement establishment or later;

1.3. duration of the Lease Term cannot be less than a year and longer than the economic sustainability of the Leased Asset.;

1.4. total amount of all payments to be paid by the Lessee;

1.5. number, amounts and the frequency of each periodic payments;

1.6. a description of the terms of any option to either purchase assets granted with leasing or to renew the Leasing Agreement for a further period;

1.7. the identity of the Supplier and reference to the Supply Agreement if a separate Supply Agreement is entered into.

2. Except the provisions referred to in paragraph 1 of this Article, the Leasing Agreement may include such other terms as may be agreed between the parties.

3. The Leasing Agreement may be:

3.1. Domestic: both parties to the Leasing Agreement are residents of Kosovo;

3.2. International: either the Lessor or the Lessee is a non-resident of Kosovo.

## **CHAPTER IV**

### **RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LEASING AGREEMENT**

#### **Article 6**

##### **Irrevocability**

In a Leasing Transaction the obligations of the Lessor and the Lessee are irrevocable and independent from the time the parties enter into the Leasing Agreement. These obligations can not be not be cancelled or modified without the explicit consent of the other party.

#### **Article 7**

##### **Ownership Rights of the Lessor**

1. The Lessor shall preserve his ownership right in the Leased Asset during the lease term and thereafter until the transfer of ownership right is documentary evidenced. The Lessor's ownership right shall be valid against Lessee's trustee in bankruptcy and creditor, unless if a person when exercise his regular business activity supplies with services or materials in respect to the Leased Asset.

2. The Lessor shall preserve his ownership right in the Leased Asset at all times, regardless of the extent of any attachment to or incorporation as part of any other movable or immovable property and shall have a right of repossession of the Leased Asset, unless if by the Leasing Agreement is foreseen otherwise, even if removal of the Leased Asset would cause irreparable damage to that other property. The Lessor shall have no liability for any damage or other harm incurred by such removal on a conditions that the Lessee shall exercise reasonable care to remove this damage or other harm of such property.

## **Article 8**

### **Acceptance of the Leased Asset**

1. Acceptance of a Leased Asset occurs when the Lessee signifies to the Lessor or in cases of Financial Leasing relations, Lessor and the Supplier that the Leased Asset conforms to the Leasing Agreement, declares that the Lessee shall keep it with all inconformity or fails to reject the Leased Asset after a reasonable opportunity to inspect it or uses the Leased Asset.
2. Acceptance may be expressed by issuance of a document acknowledging acceptance or by other means specified in Leasing Agreement between parties
3. Once a Lessee in a Leasing Transaction has accepted a Leased Asset, the Lessee is entitled to damages from the Supplier if the Asset does not conform to the Supply Agreement.

## **Article 9**

### **The Lessee's right to reject the Leased Asset**

1. Where a Leased Asset is not delivered or delivered late or is not in conformity with the Supply Agreement then at or during the time of acceptance, but not after, the Lessee has a right to:
  - 1.1. reject the Leased Asset, and the Lessee shall be free from his obligations from Leasing Agreement;
  - 1.2. request the Supplier to eliminate the defects of the Leased Asset.
2. The Lessee shall have no other claim against the Lessor for non-delivery, delay in delivery or delivery of non-conforming Leased Asset except to the extent this result from the default of the Lessor.

3. In Financial Leasing Transaction, nothing in this article shall affect the Lessee's rights against the Supplier as specified in Article 24 of this Law.

## **Article 10**

### **Distribution of risks, liability for damage**

1. In a Leasing Transaction, the Lessee bears the risk of loss or damage of a Leased Asset from the time of its acceptance by the Lessee until it is returned to the Lessor.

2. The Lessee shall be liable for losses suffered by the use of a Leased Asset contrary to the Leasing Agreement or contrary to the purpose of the Leased Asset, regardless of whether the Lessee personally used the Leased Asset or a person authorized by Lessee, or any other person the Lessee gave permission to use the Leased Asset.

3. The Lessee shall be liable for damage suffered by the Lessor in case if the Leased Asset is returned to the Lessor in a condition which does not correspond to Article 16 paragraph 3 of this Law.

## **Article 11**

### **Insurance**

1. In Financial Leasing Transaction, unless by Leasing Agreement is foreseen otherwise, the Lessor has a right to require the Lessee to insure and keep proofs of insurance of a Leased Asset during the lease term, starting from the moment of acceptance of the Leased Asset by the Lessee unless otherwise provided in the Leasing Agreement.

2. The Lessor may obtain insurance himself if the Lessee fails to do so and in such a case, with the proof of payment for this insurance, the Lessee shall reimburse immediately the Lessor for all cost incurred in connection with such insurance, unless if it is foreseen otherwise with Leasing Agreement.



3. In Operational Leasing Transaction, Lessor shall insure Leased Assets, unless it is foreseen otherwise with Leasing Agreement.

## **Article 12**

### **Exception of liability of the Lessor**

1. In Financial Leasing Transaction, the Lessor shall not be liable to the Lessee in respect of the Leased Asset's material deficiencies.

2. In Operational Leasing Transaction, Lessor shall be liable to the Lessee on material deficiencies of the Leased Assets, unless it is foreseen otherwise with Leasing Agreement.

3. The Lessor, in its capacity of a Lessor, shall not be liable to third parties for death, personal injury or damage or property damage incurred by the Leased Asset or by the usage of such asset.

## **Article 13**

### **Warranty of quiet possession**

1. The Lessor warrants that the quiet possession of the Lessee will not be disturbed by any person who has a superior title or right or who claims a superior title or right or acts under the authority of a court, where such title, right or claim derives from a negligent or intentional act or omission of the Lessor.

2. In case of disturbance of the quiet possession by the Lessee, the Lessee has the right to remedy his damages against the Lessor.

3. The parties may not derogate from or amend the effect of the provisions of this article.

## **Article 14**

### **Lessor's right to be informed**

1. The Lessor may request from time to time from the Lessee to inform him with regards to any loss, claims, damages or other material events arising in connection with the Lessee's use and possession of the Leased Asset. The Lessee should provide such information in accurate and timely manner.
2. The Lessee shall inform the Lessor with regard to the location of the Leased Asset and shall not move it to a new location without the Lessor's prior written consent.

## **Article 15**

### **Lessor's right to inspect the Leased Asset, Labels and Registration**

1. The Lessor has a right to execute inspection of Leased Asset any time during the lease term. Inspection shall not obstruct the Lessor's warranty of quiet use and possession. The right to inspect will not be used as a way to interfere with any aspect of the Lessee's possessor right.
2. The Leasing Agreement may provide that during the Leasing term the Leased Asset be labeled as owned by the Lessor or subject to a lease from the Lessor, and such labels may not be removed or rendered throughout the duration of the Lease Term illegible by anyone other than the Lessor or its authorized agent.
3. The existing of the Leasing Agreement as to a Leased Asset may be registered in any appropriate registry for such property, including but not limited to, the Pledge Filing Office for moveable property established under the law in force, under the Motor Vehicle registry, real estate/land registry or any registry for intellectual property.

## **Article 16**

### **Maintenance of the Leased Asset**

1. The Lessee shall take proper care of the Leased Asset and use it in a reasonable manner in compliance with its characteristics and purpose, and in conformity with applicable laws, rules and regulations.
  
2. When manufacturer or Supplier of the Leased Asset issues technical instructions for the use of the Leased Asset, the Lessee should comply with such instructions.
  
3. The Lessee shall keep the Leased Asset in the condition in which it was delivered, subject to normal consumption and usage.
  
4. In Financial Leasing transaction, the Lessee shall also at its own expense maintain and repair the Leased Asset and keeps it in good working condition unless the Lease Agreement provides otherwise.
  
5. In Operational Leasing transaction, Lessor should at its own expense maintain and repair the Leased Asset and keeps it in good working condition unless the Lease Agreement provides otherwise.

## **Article 17**

### **Improvements of the Leased Asset**

1. Unless otherwise stipulated by the Leasing Agreement, in cases when the Leased Asset is due to any reason returned by the Lessee to the Lessor the following provisions shall apply:
  - 1.1. any improvements to the Leased Asset which can be separated from this asset without causing damage to it (separable improvements) and that have been done by the Lessee at its own expense shall remain the property of the Lessee;

1.2. when a Lessee with the written consent of the Lessor and at its own expense has made improvements to the Leased Asset which can not be separated from Leasing asset without causing damage to it (inseparable improvements), the Lessee has the right to be compensated for the cost of these improvements; and

1.2.1 the cost of inseparable improvements that have been made by the Lessee at its own expense without the written consent of the Lessor, will not be compensated.

## **Article 18**

### **Pledge of the Leased Asset**

The Lessee shall not pledge, mortgage or otherwise create a charge or lien over the Leased Asset. Any such an action shall cause non-fulfillment of the Leasing Agreement.

## **Article 19**

### **Transfer of rights**

1. The Lessee may transfer or otherwise deal with all or any of its rights in the Leased Asset or under the Leasing Agreement only with written consent of the Lessor and subject to the rights of third parties.

2. The Lessor may transfer or otherwise deal with all or any of its rights in the Leased Asset or under the Leasing Agreement without approval by the Lessee. Such a transfer shall not relieve the Lessor of any of its liabilities under the Leasing Agreement or alter the nature of the Leasing Agreement. The transfer of Lessor's rights can be excluded or limited by the Leasing Agreement.

## **Article 20**

### **Return of the Leased Asset**

1. In the event the Lease Agreement terminates and the Lessee does not exercise any right to get the Leased Asset in Financial leasing Transaction or to buy the Leased Asset in Operational leasing Transaction or to renew the Leasing Agreement, then the Lessee shall return the Leased Asset in the same condition in which it was delivered except for normal consumption or as specified in the Leasing Agreement.

2. In the absence of specification in the Leasing Agreement or notice to the Lessee, the Leased Asset shall be returned to the address of the Lessor specified in the Leasing Agreement.

3. In cases where the Lessee fails to return Leased Asset on time or returns it late, the Lessee will be liable for payment for the period of delay unless Leasing Agreement provide otherwise.

4. In cases where late return of the Leased Asset led to a fine or other charge to be paid by the Lessor, the Lessee shall reimburse the Lessor an amount of any fine or charge paid unless Leasing Agreement provide otherwise.

## **CHAPTER V**

### **DEFAULT OF THE PARTIES TO THE LEASING AGREEMENT**

#### **Article 21**

##### **Lessor's right in case of default by the Lessee**

1. In the event of default by the Lessee, the Lessor may recover accrued unpaid lease installments, together with interest and damages.

2. Where the Lessee's default is material, then the Lessor may also require accelerated payment of the future lease instalments or may terminate the Leasing Agreement and after such termination:

2.1. recover possession of the Leased Asset; and

2.2. recover such damages as will place the Lessor in the position in which it would have been had the Lessee performed the Leasing Agreement in accordance with its terms, including casual damages, such as obligations, expenses or commissions incurred by delay of deliveries in transport, caring and keeping Leased Assets after the delay of the Lessee in respect of returning or depositing of the Leased Asset.

3. The Leasing Agreement may define circumstances where the default, including the postponement of payment, is to be considered material.

4. The Lessor may not execute his rights under paragraph 2 of this Article unless it has sent written notice of material default to the Lessee and the Lessee failed to rectify such default within fifteen (15) business days after receipt of such notice.

## **Article 22**

### **Repossession of the Leased Asset**

1. Repossession of the Leased Asset as set out in Article 21 paragraph 2.1. occurs by:

1.1. judicial act;

1.2. Lessor itself, if it can be done without breaching the public order; or

1.3. administrative act, in agreement with paragraph 4 of this Article.

2. If Lessor proceeds with judicial act, it shall lodge a claim to the court of competent jurisdiction asking for an order, ex parte and with no prior notice to Lessee or any other person, by authorizing the Lessor or

his/her authorized agent to repossess the Leased Asset and to deliver it to the lessor. This submission shall be decided upon by the court by no later than three (3) working days from the date of submitting lodge claim.

3. Within three (3) days from the repossession of Leased Asset, the Lessee may submit a motion to oppose the entire or partial repossession, by providing proofs of lacks in action under the Leasing Agreement including payments in installments and/or other proofs supporting the opposition. Afterwards, the court or any other competent body makes a decision whether a given order should be revoked or amended, based on Paragraph 2 of this Article, and determines the responsibilities of the Lessor on damages incurred by the order to repossess and deliver the Leased Asset.

4. A Lessor upon default of the Lessee may appoint a person designated by the court to obtain possession of the Leased Asset where:

4.1. the Lessor does not have the right to enter upon the site where the Leased Asset is located;

4.2. the Lessor's possession rights are interfered with by the Lessee or any other person; or

4.3. there may be a public disorder if the Lessor has tried on his own to have the repossession

5. Within fifteen (15) days after the repossession or possession of the Leased Asset from the Lessee, the Lessee may request from the Lessor the return of the Leased Asset by meeting the obligations as set in the Leasing Agreement and all the incurred expenses, fines or damages related to non-fulfillment of the Leasing Agreement and repossession of Leased Asset in order that the Lessee shall fulfill all his/her obligations under the Leasing Agreement before the time the Lessor returns the Leased Asset to the Lessee.

## **Article 23**

### **The Lessee's right in case of default of the Lessor**

1. In Operational Leasing Transaction, unless provided otherwise in the Leasing Agreement, the Lessee may not terminate the Leasing Agreement in case of breach of the Leasing Agreement by the Lessor, but

is entitled to such other remedies as are provided by the Leasing Agreement and by law.

2. In Operational Leasing Transaction, the Lessor may terminate the Leasing Agreement in cases of material damages incurred by the Lessor, unless provided otherwise in the Leasing Agreement.

## **CHAPTER VI**

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

#### **Article 24**

##### **Lessee as Benefiter of Leasing Agreement**

1. In Financial Leasing Transaction, benefit from obligations provided to Lessor by a Supply Agreement and all guarantees, expressed or indicated, including those of whichever third party provided to regarding or as part of the Supply Agreement, shall be extended to the Lessee as foreseen by the Leasing Agreement but in compliance with the Supply Agreement and to all safeguards and claims deriving from them.

2. Extension of benefits from the obligations of supplier and of all guarantees to the Lessee shall not:

2.1. change the duties and obligations of parties in the Supply Agreement, the rights and obligations that derive from it or not; or

2.2. put any barrier or responsibility on the Lessee by the Supply Agreement.

3. Any modification or cancellation of Supply Agreement by the Supplier and Lessor is valid to the Lessee also, unless prior modification or cancellation the Supplier is informed that the Lessee has entered into Leasing Agreement related to Supply Agreement.

4. If modification or cancellation between the Supplier and the Lessee occurs, the Lessor despite the



obligations of the Lessor from the Lessee, is deemed to have accepted as existing the commitments which the Supplier made to Lessee as well as modified or cancelled guarantees that have existed and have been available to the Lessee prior to modification or cancellation.

5. Notwithstanding the engagement and commitment of the Supplier provided to the lessee according to this article, the Lessor holds all the rights it may have against the Supplier, which rights may derive from an agreement between the Lessee and the Supplier or by any other law.

6. Parties may not derogate from or vary the effect of the provisions of this Article.

## **Article 25**

### **Amendments to the Supply Agreement**

1. The Supply Agreement shall not be amended, changed between the Lessor and the Supplier without prior consent of the Lessee. If the Lessee does not consent to such amendment or change, the Lessor is deemed to have assumed the duties of the Supplier to the Lessor.

2. The parties may not derogate from or vary the effect of the provisions of this Article.

## **CHAPTER VII**

### **BANKRUPTCY**

## **Article 26**

### **The Lessor's Bankruptcy**

1. When nominating an Administrator of bankruptcy on the Lessor's property, the Lessee has an option to pay the outstanding amount of leasing installments within the period of liquidation on the terms agreed with the Trustee in Bankruptcy and thus obtain the right to the Leased Asset, if the Leasing Agreement foresees transfer of title to the Lessee.

2. Unless it is proved that the Lease Agreement have been concluded not on commercially reasonable terms, the Lease Agreement can not be cancelled and remains in force for any creditor or creditors of the Lessor, who obtain title over the Leased Asset as a result of the bankruptcy or liquidation procedure.

## **Article 27**

### **The Lessee's Bankruptcy**

1. When nominating an Administrator of bankruptcy on the Lessee`s property, the Leased Asset shall be excluded from the bankruptcy estate of the Lessee, as well as from the general obligation to creditors and shall be returned to the Lessor.

2. Apart of the provision in Paragraph 1 of this Article, the Trustee in Bankruptcy may notify the Lessor, via registered mail, within thirty (30) business days of the date of bankruptcy announcement, that the Lessee wishes to carry on with the Leasing Agreement, in which case the Leasing Agreement will remain in force, under the condition that the leasing installments are paid in accordance with the Leasing Agreement.

3. In case of liquidation of the Lessee, which is a legal entity, regardless of whether the liquidation is mandatory or voluntary, the Leased Asset may be repossessed by the Lessor, without undermining the Lessee's rights set forth in the Leasing Agreement.

## **CHAPTER VIII**

### **FINAL PROVISIONS**

## **Article 28**

1. The Law on Obligations applies to financial leasing transactions to which this law applies only to the extent that there is no conflict between this law and the Law on Obligations. This law shall be applied, in case of any conflict.

2. If provisions of International Treaty to which Kosovo is a party, differ from the ones of this Law, the provisions of the International Treaty shall prevail.

3. This Law shall be applicable to international lease agreements as provided in Article 5 sub-paragraph 3.2. of this law, if parties agree that this Law shall be governing the Leasing Agreement.

4. This Law shall supersede any provision in the applicable law that is inconsistent with it.

### **Article 29**

1. For the purpose of implementing this law, the Ministry of Economy and Finance in cooperation with the Central Bank of Kosovo shall issue sub-legal acts that shall specify manner, term and licensing terms under which the Lessor may exercise the activities of Financial and Operational Leasing.

2. Lessors should apply to the Central Bank of Kosovo for registering and licensing to earn the right of Financial and Operational Leasing offer. Lessors should acquire a written approval and license prior to exercise their leasing activities.

3. Lessors should act in compliance with policies, procedures and licensing terms and reporting defined by the Central Bank of Kosovo in respect of leasing activities.

4. Lessors shall be participants in registry of credits of the Central Bank of Kosovo and shall report every Operational and Financial Leasing as requested by the Central Bank of Kosovo.

5. Lessor should register in Kosovo Market Association (Registry) as Association with Limited Responsibilities (ALR) or as Stock Company (SC) in compliance with the Law no. 02/ I-123 on Business Organizations and should fulfill all necessary terms foreseen by that Law.

6. Lessor should register in the registry by mentioning their business activities and especially by including

leasing.

7. Lessor should act based on the provisions foreseen by Regulation 1999/21 amended with Rule XVI on registering, oversight and Operation of Financial Non-Banking Institutions, which act in Kosovo, authorized by Article 46 of the Regulation 1999/21. Lessor should register in Financial-Non-banking Institution under Rule XVI within the Central Bank of Republic of Kosovo.

8. In order for the Lessor to exercise the leasing activity in their registration, in Kosovo Central Bank, should be included the authorization to exercise leasing or they must possess the written consent taken priorly from Kosovo Central Bank.

9. According to amended Rule XVI, paragraph 4. (a), Kosovo Central Bank is solely responsible for registering and oversight of activities of financial non-banking institutions in Kosovo. With the aim to avoid any misinterpretation, this shall include especially institutions dealing with leasing.

### **Article 30**

#### **Entry into force**

This law enters into force fifteen (15) days after being published in the Official Gazette of the Republic of Kosovo

**Law No. 03/L-103**

**25 June 2009**

**Promulgated by the Decree No. DL-020-2009, dated 17.07.2009, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu.**

