

Financial Leasing Law

We the Captains Regent of the Most Serene Republic of San Marino

*Are promulgating and ordering the publication of the following law approved by the
Great and General Council at the meeting of 19 November 2001.*

Art. 1

The Contract

The financial lease is the contract with which a party, called grantor or lessor, undertakes to make available to the other party, the lessee or user, for a given amount of time, a movable or immovable asset in exchange of a payment to be made at predetermined regular intervals, determined in relation to the value of the asset, the duration of the contract and other relevant elements established between the parties. The lessee or user has the right to become the owner of the asset used upon expiry of the contractual term, or upon request for an early repayment if provided for in the contract, on payment of an amount to be determined according to pre-established criteria.

Art. 2

Contract duration and termination

The duration of the financial leasing contract may not be less than twenty-four months for immovable transactions and a forty-eight months for real property transactions.

The early termination of a contract is allowed if due to default by the user; in which case, the lessor shall grant the user any capital gain achieved with the sale or relocation of the asset, having deducted the capital sums, interest, costs and any other amount due.

Any stipulation contrary to this provision is null and void.

Art. 3

Material defects and responsibility of the parties

The following agreements are valid: agreements with which the grantor limits or excludes its liability for failure or delay in delivery of the good by the supplier, or for faults or defects of the good itself, under the condition that the grantor has agreed with the supplier the right for the user to exercise directly against it all rights and actions arising from the purchase agreement between the supplier and the grantor.

The limitations of the supplier's responsibility may be invoked by the grantor against the user who had known them.

The user, from the time of delivery, takes on all the risks of the asset under contract, even if derived from an accident, force majeure, or deed of a third party.

Art. 4

Insolvency proceedings

In the financial leasing, insolvency proceedings against the lessor do not constitute grounds for termination of the contract. In the case of insolvency proceedings against the user, the insolvency administrator or legal representative appointed by the Court can take over the contract also notwithstanding the provisions of Article 2; in this case, the insolvency administrator or legal representative may immediately pay the remaining lease instalments and purchase the asset through the payment of the agreed price for redemption, at discounted values based on the rate of the transaction.

If the insolvency administrator or legal representative does not intend to take over the agreement, they must return the good to the lessor at once, with fair payment for the use of the item, any damage and any charges.

The lessor is nevertheless obliged to pay for concurrence purposes any capital gain obtained through the sale or the relocation of the asset.

In the event of insolvency proceedings against the lessor, the user may exercise the rights provided for by contract also availing itself of the right referred to in the following Article 9.

The rules contained in the previous paragraphs shall apply in any similar insolvency proceedings nevertheless named, and also in liquidation proceedings.

Art. 5

Accounting of financial leasing transactions

Without prejudice to the provisions of Law no. 68 of 13 June 1990, as subsequently amended, the recording into accounts of financial leasing transactions must be made according to the following criteria.

The lessor shall include in the budget the amount of the asset concerning the transaction for an amount equal to the purchase price including all incidental expenses. For financially leased assets, the depreciation allowance is determined in each period to the extent resulting from the relevant financial depreciation plan, and accelerated depreciation is not allowed.

The user must enter the amount of lease payments relating to capital goods in the costs, and has the obligation to indicate in the appropriate memorandum accounts, or in a special explanatory note in the case of parties who are not required to present their financial statements, the value of the leased asset and the amount of remaining lease instalments to be paid.

If the user obtains ownership of the asset, s/he must include the cash surrender value in the budget, or in a specific balance sheet note.

Art. 6

Specific provisions

The authorisation of the Council of XII to the registration of the real estate property under the fourth paragraph of Article 18 of Law no. 68 of 13 June 1990 expires and must be renewed when the financial leasing agreement is not concluded within three months from the authorisation date.

In the case of areas intended for productive activities transferred by the Most Excellent Chamber, any non-assignability restrictions shall not apply when the assignee covers the property in a leasing contract for the construction of the proposed building and limited to this contract.

In the case provided for in the previous paragraph, in the event of interruption of the contract or non-redemption by the user, the Most Excellent Chamber has the right of first refusal and takeover of the contract; if the right of first refusal is not exercised, any takeover in the contract must be authorised by the State Congress.

If the Most Excellent Chamber exercises the right of first refusal thus taking over the contract, the withdrawing party is granted only the paid, discounted share capital, excluding the first two yearly instalments.

Art. 7

Tax on imports

The provisions relating to tax on imports referred to in Law no. 40 of 22 December 1972 and Decree no. 126 of 21 December 1999 are applied to parties exercising financial leasing activities according the procedures set out in the following paragraphs.

Tax payment is based on the rules and procedures laid down in Decree no. 126 of 21 December 1999, which regulates the import of capital goods, only if the user-related conditions are satisfied.

If the assets referred to in the second paragraph, with the exception of vehicles, vessels and aircraft, are granted in leasing to a non-resident party to use them in the conduct of business activities or professions, the grantor or lessor can benefit from payment of reimbursement on export, as provided for in Article 9 of Law no. 40 of 1972.

The goods referred to in the second paragraph (capital goods) shall be retained for at least two years if they are movable assets, and for at least four years if they are real property, from the date of the lease contract, except as expressly provided for by Decree no. 126 of 29 December 1999.

If, during the period of mandatory retention, the goods referred to in the second and third paragraphs are returned to the grantor's availability the as a result of the termination of financial leasing contracts, and if during the same period the goods are removed from their financial leasing status and are sold or leased to third-party users who do not have the right to used them as capital goods, the grantor must pay the tax provided for in Law no. 40 /1972, having deducted the tax possibly paid to the Tax Office at the time of import.

Apart from the circumstances provided for in the previous paragraph, if the assets referred to in the third paragraph return in the grantor's possession, even when the obligation for their retention is expired, the grantor is required to pay the tax referred to in Decree no. 126 of 29 December 1999, without prejudice to the right to its return if the conditions for reimbursement on export are met.

Payments referred to in the fifth and sixth paragraphs must be made within sixty days from the transaction or from the event that caused them; said term must also be complied with in the event of transfer of assets intended for financial leasing.

The party exercising the financial leasing activity can make use of the provision contained in the last paragraph of Article 6 of Decree no. 126 of 29 December 1999.

Art. 8

Registration fees

For the purposes of the registration fee relating to financial leasing contracts, table "A" item no. 19/bis of Law no. 85 of 29 October 1981, as subsequently amended, is amended and supplemented as follows:

No.	Object of taxation	Amount of Tax			Comments
		Prog.	Prop.	Fixed	
19 bis	Financial leasing movable property			Euro 52	For the establishment of a financial lease contract or amendments other than correction of material misstatement Tax payment is to be borne by the grantor or lessor
	real property		0.25%	155 Euro	
19 ter	Transfer of ownership of real property between lessors pending a contract		0.5%		Provided that the lessee remains the same
19 quater	Transfer of real property contract		1.5%		The tax applies on the amount agreed in the contract between the assignor and the successor party, which for real property cannot be lower than the actual amount already paid by previous users.
	Transfer of movable property contract		1%		

The deed of purchase of registered movable assets or real property is subject to payment of the registration fee, transcription and transfer, when due, by the party that carries out the financial leasing activity, to the extent provided for by Laws no. 85, no. 87 and no. 88 of 29 October 1981, as subsequently amended and supplemented.

The transfer of ownership of immovable property by the grantor or lessor to the lessee or user is subject to the register, transcription and transfer fees referred to in Laws no. 85, no. 87 and no. 88 of 29 October 1981 when they are due, applied to the surrender value of the leasing contract, which must not, in any case, for the purposes of the aforesaid taxes, be less than 5% of the total value of the financial leasing contract.

The takeover by a new lessee in an already existing financial leasing contract concerning a real estate property, is subject to the obligation to register the purchase contract that gave rise to it,

and to pay only the registration fee referred to in item 19/quarter and the fixed fee.

In the above case, the lessor, at the time of registration of the new lease, is required to attach the agreement between the assigning lessee and its successor.

A copy of the contract indicated in the previous paragraph shall be forwarded by the Register Office to the Tax Office.

The financial lease of movable property registered under Law no. 136 of 25 November 1997 as subsequently amended and supplemented, is subject to a fixed fee of 52 Euro.

Art. 9

Transfer of ownership to a new lessor party

The transfer of ownership to a new lessor is allowed, for owned immovable assets governed by an existing finance lease agreement, provided that the lessee remains the same party who had signed the initial contract.

Transfer of ownership is also allowed within forty-eight months as provided for in Article 2 of this law.

The transfer of ownership to a new lessor is party is subject to the proportional registration fees referred to in entry 19/ter and the fixed tax referred to in entry 19/bis, Article 8 of this law, and to the transcription and transfer fee to the extent of one-tenth of the fee provided for by applicable laws.

Art. 10

Transcription of financial leasing contracts for real property

Financial leasing contracts, including those relating to successors as well as substantial amendments, when they cover real property located in the territory of the Republic, are also subject to the formality of transcription in the manner, terms and with the effects provided for by the relevant laws in force, except as provided for in Article 13, second paragraph.

The established transcription fee is 103 Euro.

Art. 11

Sanctions

Failure to comply with the rules laid down for movable property in Article 7, fourth paragraph, of this law shall entail the application of sanctions referred to in Law no. 40 of 22 December 1972, as subsequently amended and supplemented.

Failure to comply with the rules provided for in Articles 8 and 9 of this law involves the application by the Director of the Register and Mortgage Office of a sanction amounting to half of the evaded tax, and the application of the normal registration and transcription fees.

Art. 12

Transitional Rules

Financial contracts concluded prior to the date of entry into force of this law, are subject to transcription only in so far as they are still effective between the parties. In this case, the transcription is made on the basis of a statement made by the granting company, which must be accompanied by a copy with the details of the registered contract.

The formalities referred to in the previous paragraph are carried out by the granting companies within twelve months of the entry into force of this law.

Failure to comply with the formalities provided for in the previous paragraphs entails the application by the Director of the Register and Mortgage Office of an administrative sanction amounting to 516 Euro for each contract, in accordance with Law no. 68 of 28 June 1989.

The granting company is exclusively liable for payment of the sanction provided for in the previous paragraph, and it shall in no manner bring actions against the user. Any stipulation contrary to this provision is null and void. The transactions referred to in the previous paragraphs are exempt from registration and transcription.

The provisions of the second paragraph of Article 5 shall also apply to all lease contracts in force on the date of entry into force of this law. The relevant depreciation plans shall be amended by 31 December 2002.

The balance between windfall proceeds and windfall costs possibly derived from the financial depreciation method is subject to tax pursuant to Law no. 91 of 13 October 1984, through the separate taxation system at 5 %, as provided for in Article 7 of the aforementioned law.

Art. 13

Final regulations. Abrogations

Tables "A" and "C" and the regulations attached to law no. 85 of 29 October 1981 (as subsequently amended), as well as the rules of this law providing for the rate of a fee or sanction, can be changed by a decree of the Republic of San Marino.

By administrative regulations, the Register and Mortgage Office can establish the procedures for keeping the formalities required for the transactions referred to in this law, also by means of electronic and computerised procedures.

Laws no. 140 of 13 November 1985, no. 114 of 16 October 1986, the second paragraph of Article 7 of Decree no. 3 of 20 January 1986 and any other provision to the contrary, are repealed.

Art. 14

This law shall enter into force on the fifth day following its legal publication.

Done at our Residence, on 23 November 2001/1701 s.F.R.

THE CAPTAINS REGENT

Alberto Cecchetti - Gino Giovagnoli

