

Legal Framework for Financial Leasing Agreements

Approved by Decree-Law no. 149/95, of June 24.

This decret came into force after its *vacatio legis*.

This version, when it was made, took into account the amendments subsequently approved by the following diplomas:

- a) Decree-Law no. 265/97, of October 2;
- b) Declaration of Rectification no. 17-B/97, of October 31;
- c) Decree-Law no. 285/2001, of November 3rd;
- d) Decree-Law no.º 30/2008, of February 25.

Last amendment: Decree-Law no. 30/2008, of February 25.

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DL 149/95

The entry into force of the General Regime for Credit Institutions and Financial Companies, approved by Decree-Law no. 298/92, of December 31, regulating the common fundamental aspects to financial market institutions, left open the update of the special laws regulating various types of credit institutions and the laws governing agreement that are the object of the activity of these companies, namely the financial leasing agreement.

This law introduces significant changes to the legal framework for financial leasing agreements, with the aim of adapting it to the demands of a market characterized by the growing internationalization of the Portuguese economy and its integration into the single European market. Portuguese companies must have a agreement instrument adapted to these realities, so that their ability to compete with their foreign counterparts is not diminished.

Thus, the reform introduced into the legal framework of the leasing agreement aims, fundamentally, to harmonize it with the rules of EU countries, preventing unequal competition with companies from those countries and the consequent extradition of activities that it is advantageous to maintain within the national economy.

In this vein, the following main innovations stand out:

The object of the agreement is extended to any goods that can be leased; the form of the agreement is simplified, limiting it to a simple written document;

It is possible for the residual value of the leased item to be close to 50% of its total value;

The minimum terms for financial leasing have been reduced, so that the leasing of movable property can be concluded for a period of 18 months and that of immovable property for a period of 7 years;

The rights and duties of the lessor and lessee are spelled out more fully, in order to ensure greater certainty of their rights and, therefore, the fairness of the relationship.

Thus:

Under the terms of paragraph a) of no. 1 of article 201 of the Portuguese Constitution, the Government decrees the following:

Article 1º

Concept

Financial leasing is the agreement whereby one of the parties undertakes, for a consideration, to cede to the other the temporary enjoyment of a thing, movable or immovable, acquired or built by indication of the latter, and which the lessee may buy, after the agreed period, for a price determined therein or determinable by simple application of the criteria set out therein.

Article 2º

Purpose

- 1 - Financial leasing has as its object any goods that can be leased.
- 2 - When the lessor builds on the lessee's land under a surface right, this right is presumed to be perpetual, without prejudice to the landowner's right to acquire it under the general terms.

Article 3º

Form and publicity

- 1 - Financial leasing agreements can be concluded by private document.
- 2 - In the case of immovable property, the signatures of the parties must be acknowledged in person, unless they are made in the presence of a registry official when the application for registration is submitted.
- 3 - In the cases referred to in the previous paragraph, the existence of a license for the use or construction of the property must be certified by the entity carrying out the recognition or verified by the registry official.
- 4 - The signatures of the parties in the financial leasing agreements of movable property subject to registration must include the number, date and issuing authority of the identity card or equivalent document issued by the competent authority of one of the countries of the European Union or the passport.
- 5 - The financial leasing of immovable or movable property subject to registration is subject to registration with the competent registry office.

(Wording given by Decree-Law no.º 30/2008, of February 25, which came into force 30 days after its publication).

Article 4º

(Repealed)

(Text revoked by Decree-Law no.º 285/2001, of November 3rd.)

Article 5º

(Repealed)

(Text revoked by Decree-Law no.º 285/2001, of November 3rd.)

Article 6.º

Deadline

- 1 - The financial leasing period for movable property must not exceed the period corresponding to the presumed economic use of the property.
- 2 - The financial leasing agreement cannot have a duration of more than 30 years and is considered to be reduced to this limit if it is longer.
- 3 - If no term is stipulated, the financial leasing agreement is deemed to have been concluded for a period of 18 months or 7 years, depending on whether the goods in question are movable or immovable.
- 4 - (Deleted.)

(Drafting given by Decree-Law no.º 285/2001, of November 3rd.)

Article 7º

Destination of the goods at the end of the agreement

If the agreement ends for any reason and the lessee does not exercise the right to purchase, the lessor may dispose of the asset, namely by selling it or leasing it to the previous lessee or to a third party.

Article 8º

Duration

- 1 - The financial leasing agreement takes effect from the date on which it is concluded.
- 2 - The parties may, however, make the commencement of its term conditional on the actual acquisition or construction, where appropriate, of the leased goods, their transfer to the lessee or any other facts.

Article 9º

Legal position of the lessor

- 1 - These are, in particular, obligations of the lessor:
 - a) Acquire or have built the property to be leased;
 - b) Granting the use of the property for its intended purpose;
 - c) Sell the property to the lessee, if he wishes it, at the end of the agreement;
- 2 - In addition to the general rights and duties provided for in the leasing regime that are not incompatible with this statute, the lessor has the following rights in particular and in addition to those established in the previous paragraph:

- a) Defend the integrity of the property, under the general terms of the law;
- b) To examine the property, without prejudice to the lessee's normal business;
- c) To make its own, without compensation, the parts or other accessory elements incorporated into the goods by the lessee.

Article 10°

Legal position of the lessee

1 - These are, in particular, the lessee's obligations:

- a) Pay the rents;
- b) To pay, in case of rental of an autonomous fraction, the current expenses necessary for the enjoyment of the common parts of the building and services of common interest;
- c) Allowing the lessor to examine the leased property;
- d) Not to use the property for a purpose other than that for which it was intended or to move it to a place other than that was provided for in the agreement, unless authorized by the lessor;
- e) Ensure the property is preserved and not used recklessly;
- f) Carry out repairs, whether urgent or necessary, as well as any work ordered by the public authority;
- g) Not to provide others with total or partial enjoyment of the property through the onerous or gratuitous assignment of their legal position, subletting or lending, unless the law allows it or the lessor authorizes it;
- h) Communicate to the lessor, within 15 days, the transfer of use of the property, when permitted or authorized under the terms of the previous paragraph;
- i) Notify the lessor immediately whenever they become aware of any defects in the property or know that it is in danger or that third parties are claiming rights over it, provided that the lessor is unaware of the fact;
- j) Insure the rented property against the risk of loss or deterioration and damage caused by it;
- k) Return the leased property, at the end of the agreement, in good condition, except for deterioration inherent to normal use, when they do not choose to purchase it.

2 - In addition to the general rights and duties provided for in the leasing regime that are not incompatible with this law, the financial lessee has the following rights in particular:

- a) Use and enjoyment of the leased property;
- b) Defend the integrity of the property and its enjoyment, in accordance with their rights;
- c) Use possessory actions, even against the lessor;
- d) Onery, in whole or in part, their right, with the express authorization of the lessor;
- e) To exercise, in the lease of an autonomous fraction, the lessor's own rights, with the exception of those which, by their nature, can only be exercised by the lessor;
- f) Acquire the leased property at the end of the agreement for the stipulated price.

(Wording given by Decree-Law no.º 265/97, of October 2, corrected by Declaration of Rectification no.º 17B/97, of October 31.)

Article 11º

Transfer of legal positions

1 - In the case of capital goods, the transfer of the lessee's position between living persons is permitted under the conditions laid down in article 115 of Decree-Law no. 321-B/90, of October 15th, and the transfer by death, by way of legal or testamentary succession, when the successor continues the deceased's professional activity.

2 - If they are not capital goods, the lessee's position can be transferred under the terms of the lease.

3 - In any of the cases provided for in the preceding paragraphs, the lessor may oppose the transfer of the position in the agreements by proving that the transferee does not offer sufficient guarantees for the performance of the agreement.

4 - The leasing agreement subsists for all purposes in transfers of the lessor's position, with the purchaser occupying the same legal position as its predecessor.

(The wording of paragraphs 2 and 3 was given by Decree-Law no.º 265/97, of October 2.)

Article 12.º

Defects in the leased property

The lessor is not liable for defects in the leased property or its unsuitability for the purposes of the agreement, except as provided in article no. 1034 of the Civil Code.

Article 13º

Relations between the lessee and the seller or contractor

The lessee may exercise against the seller or the contractor, where appropriate, all rights relating to the leased property or resulting from the purchase or works agreement.

Article 14º

Expenses

Unless otherwise stipulated, the costs of transportation and insurance, assembly, installation and repair of the leased goods, as well as the costs necessary for their return to the lessor, including insurance, if essential, shall be borne by the lessee.

Article 15.º

Risk

Unless otherwise stipulated, the risk of loss or deterioration of the goods shall be borne by the lessee.

Article 16º

(Repealed)

(Text revoked by Decree-Law no.º 285/2001, of November 3rd.)

Article 17º

Termination of the agreement for non-compliance and deregistration

1 - The leasing agreement may be terminated by either party, under the general terms, on the grounds of non-compliance with the obligations of the other party, and the special rules contained in civil law relating to leasing shall not apply.

2 - For the cancellation of the leasing registration on the grounds of termination of the agreement for non-compliance, proof of communication of the termination to the other party in general terms is sufficient.

(The wording of the heading and of no.º 2 was given by Decree-Law no.º 30/2008, of February 25, which came into force 30 days after its publication).

Article 18º

Specific cases of agreement termination

The leasing agreement may also be terminated by the lessor in the following cases:

- a) Dissolution or liquidation of the lessee company;
- b) Verification of any of the grounds for declaring the tenant bankrupt.

Article 19º

Guarantees

Any guarantees, whether personal or in rem, may be set up in favor of the lessor in relation to the rent and other charges or any compensation owed by the lessee.

Article 20°

(Repealed)

(Text revoked by Decree-Law no.° 285/2001, of November 3rd.)

Article 21°

Precautionary measure for judicial surrender

1 - If, at the end of the agreement due to termination or the expiry of the term without the right to purchase having been exercised, the lessee does not return the asset to the lessor, the latter may, after requesting the deregistration of the financial lease, to be carried out electronically whenever the technical conditions allow, apply to the court for a precautionary measure consisting of its immediate delivery to the applicant.

2 - With the application, the lessor provides summary proof of the requirements set out in the previous paragraph, except for the request to deregister, and the court is obliged to consult the register electronically whenever technical conditions allow.

3 - The court will hear the defendant whenever the hearing would not seriously jeopardize the purpose or effectiveness of the order.

4 - The court shall order the requested measure if the evidence produced shows that there is a serious probability that the requirements referred to in paragraph 1 have been met, although it may require the lessor to provide adequate security.

5 - The security may consist of a bank deposit to the order of the court or any other legally admissible means.

6 - Once the injunction has been issued and regardless of any appeal filed by the lessee, the lessor may dispose of the property under the terms of Article 7.°

7 - Once the precautionary measure has been ordered, the court hears the parties and prejudices the main case, except when the elements necessary for the definitive resolution of the case have not been brought into the procedure, in accordance with paragraph 2.

8 - The general provisions on precautionary measures set out in the Portuguese Code of Civil Procedure shall apply to this measure in the alternative, in everything that is not specifically regulated in this statute.

9 - The provisions of the preceding paragraphs shall apply to all leasing agreements, whatever their purpose.

(The wording of the heading and paragraphs 1, 2, 7, 8 and 9 was given by Decree-Law no.° 30/2008, of February 25, which came into force 30 days after its publication).

Article 22°

Operations prior to the agreement

When, prior to the conclusion of a leasing agreement, any interested party has agreed to order goods with a view to a future agreement, it is understood that they are acting at their own risk, and the

lessor cannot be held liable in any way for any losses arising from the failure to conclude the agreement, without prejudice to the provisions of article 227 of the Portuguese Civil Code.

Article 23º

Operations of a similar nature

No entity may habitually carry out operations of a similar nature or with economic results equivalent to those of finance lease agreements.

Article 24º

Final provisions

1 - The provisions of Article 21 shall apply immediately to agreements entered into before its entry into force and to actions already brought in which no injunction has been issued to obtain immediate delivery of the leased property.

2 - The provisions of Article 21 of Decree-Law no. 10/91, of January 9, shall not apply to leasing agreements entered into under the terms of this Decree Law.

Article 25º

Revoke rule

Decree-Law no. 171/79, of June 6, is revoked.

Seen and approved by the Council of Ministers on February 9, 1995. - Aníbal António Cavaco Silva
- Eduardo de Almeida Catroga - Álvaro José Brilhante Laborinho Lúcio.

Promulgated on June 6, 1995.

Publish.

The Republic President, MARIO SOARES.

Referendum held on June 7, 1995.

The Prime Minister, Aníbal António Cavaco Silva.