

## Amendments to Government Ordinance 51/ 1997 regarding leasing operations and leasing companies



**On 16 April 2021 in the Official Gazette of Romania under number 401 has been published the Law 83/2021 amending and supplementing the Government Ordinance no. 51/1997 regarding leasing operations and leasing companies ("Law 83/2021").**

One of the most important changes brought by Law 83/2021 is represented by the elimination of the enforceable title of the leasing agreements concluded with a consumer, as well as of the real and personal guarantees constituted in order to secure the leasing agreements concluded with a consumer. With a view to clarify the notion of consumer under the Government Ordinance no. 51/1997 regarding leasing operations and leasing companies ("Ordinance 51/1997") the term consumer has been defined, at the same time being included also a presumption regarding the consumer capacity for the leasing agreements concluded under Ordinance 51/1997.

Moreover, the provision granting the lessor/financier the right to terminate the leasing agreement for non-payment of the leasing instalments has been amended, increasing the non-payment period after which termination may be requested from 2 consecutive months to 3 consecutive months, being expressly stated that this right of the lessor/financier shall be applicable when the lessee/user is acting as a consumer.

Although it seems that the situation of the lessee/user, acting as a professional, has not been included in article 15 (1) of Ordinance 51/1997, as amended by Law 83/2021, through the decision of the Constitutional Court no. 59/2021 regarding the rejection of the objection of unconstitutionality of the provisions of the Law for amending and supplementing the Government Ordinance no. 51/1997 on leasing operations and leasing companies ("CC Decision 59/2021") the Court, vested with an a priori control regarding Law 83/2021, stipulated the following: "even if art. 15 para. (1) of Government Ordinance no. 51/1997, as amended by the criticized law, refers only to leasing agreements concluded with consumers, this shall not mean that, in the event that professionals fail to observe the obligation to pay the leasing rate, the lessor shall not have effective legal instruments provided in the text of the law. [...] In other words, such aspects may be regulated by the law of the parties, namely by the agreement".

The new law also brings an amendment regarding the consequences of non-fulfilment of the obligations by the lessee/user. In a form similar to the giving in payment ("datio in solutum"), the new provisions included in Law 83/2021 stipulate that the lessee/user shall have the right to return to the lessor the leased object within the leasing term stipulated in the agreement, in which case the lessee/user shall be obliged only to the difference between the amounts due under the agreement and the value obtained from the leased object or the value established through a valuation report issued by an authorized valuator.

In order to eliminate the costs and payment obligations which are excessive for the lessee/user, the amounts that may be requested under the leasing agreement have been expressly and exhaustively mentioned, respectively the invoices issued and unpaid, the entry value remaining to be paid until the end of the leasing period, including the residual value, the expenses with the insurance of the asset, represented by the mandatory insurance policy and/or the optional insurance policy, the traffic fines and the fines for non-payment of the vignette, as well as the taxes related to the leased asset.

As a consequence of the fact that the asset has been returned within the contractual term, the lessee/user, acting as consumer, or a third party proposed by the latter shall benefit from a pre-emption right to purchase the asset, valid for 30 days as of the date of delivery of the asset. Given the wording of the respective legal provision it may be considered that this right may also apply to users under operational leasing agreements.

In order to purchase the good, the lessee/user, acting as consumer, or the proposed third party shall be able to purchase the asset only in case all the amounts due under the leasing agreement have been paid and, in case the third party offers a purchase offer lower than the amounts due under the leasing agreement, the obligation to bear the difference shall be incumbent on the lessee/user, acting as consumer. Although it has been designed as a way through which the lessee/user, acting as consumer, is helped in the context of a difficult financial situation, the new legal provision stipulates that the transfer of ownership over the asset shall operate on the date all the amounts due under the leasing agreement have been paid and thus, it shall lead, on the other hand, to a disadvantage vis-à-vis the third party buyer in cases when the lessee/user, acting as consumer, is not obliged to pay the difference before the proposed third party. Thus, the non-payment of the difference by the lessee/user, acting as consumer, shall lead to the impossibility to transfer the ownership from the lessor/financier to the third buyer, for which reason the third buyer shall be obliged to make an offer equal to the amount of all amounts due under the leasing agreement or to pay the difference between the amount of its offer and all the amounts due under the leasing agreement, in which case it shall most likely benefit from a right of recourse against the lessee/user, acting as consumer.

In conclusion, as regards the applicability in time of Law 83/2021, for reasons of predictability of legal acts in general, the new legal provisions shall apply only to leasing agreements concluded after the entry into force of Law 83/2021, as the Constitutional Court also stated through CC Decision 59/2021.