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NEW CHANGES IMPACTING THE LEASING LEGISLATION

1. Background

Law no. 83/2021 amending and supplementing Government Ordinance no. 51/1997 on the leasing operations and the leasing companies (“GO no. 51/1997”) was published on April 16, 2021 in the Official Gazette no. 401, Part I (“Law no. 83/2021”). Importantly, the provisions of Law no. 83/2021 may only be applied for leasing agreements concluded after its entry into force.

The legislative novelties set forth by Law no. 83/2021 have as purpose to ensure a balance between the parties to the leasing agreements, *i.e.* the tenants/users that are also considered consumers and the lessors/financiers. This is because the leasing agreements have standard clauses and the consumers may in fact only adhere to such agreements, not being entitled to negotiate them.

The amendments brought by Law no. 83/2021 refer, broadly, to the following aspects:

- (i) the elimination of the enforceability of the leasing agreements concluded with a consumer (the “Consumer Leasing Agreements”);
- (ii) the deadline within which the lessors/financiers may exercise the right to request the termination of the Consumer Leasing Agreements; and
- (iii) the consequences related to the breach of obligations by tenants/users under the Consumer Leasing Agreements.

We have summarized below the most important changes implemented by Law no. 83/2021.

2. Elimination of the enforceability of the Consumer Leasing Agreements

One of the most important changes brought by Law no. 83/2021 is the elimination of the enforceability of the Consumer Leasing Agreements, as well as of the real and personal guarantees requested in order to secure such agreements.

The “*consumer*” within the meaning of Law no. 83/2021 is defined as “*any natural person or group of natural persons having the status of user/tenant in a leasing agreement and acting for purposes outside his commercial activity*”. The capacity of consumer is presumed once the tenant/lessee is a natural person.

The lessors/financiers will no longer be able to directly enforce the Consumer Leasing Agreements against the consumers through a bailiff. Instead, the lessors/financiers will have to follow the common law procedure to obtain an enforceable title, respectively a court decision which most likely will delay the recovery of the debts under the Consumer Leasing Agreements.

3. Extension of the default period under the Consumer Leasing Agreements

Before the amendments, per the provisions of GO no. 51/1997, the lessor was able to terminate the Consumer Leasing Agreement for non-payment by the tenant of the leasing instalments for 2 (two) consecutive months. The amendments brought by Law no. 83/2021 extend the period to 3 (three) consecutive months.

4. Breach of obligations under Consumer Leasing Agreements

The tenant/user in breach under the Consumer Leasing Agreement who will hand over the good before the expiry of the leasing term will be obliged to pay, as damages, the total amounts owed under the agreement less (i) the value obtained by the capitalization of the good, excluding VAT, or (ii) as the case may be, the value established by a valuation report of the good issued by a valuer authorized according to the law.

With regard to the notion of total amounts owed under the agreement, in order to eliminate imposing arbitrary costs and commission by the lessor, Law no. 83/2021 expressly provides that such amounts may only include (i) the invoices issued and unpaid, (ii) the entry value remaining to be paid until the end of the leasing period, including the residual value, (iii) expenses with property insurance, represented by the compulsory insurance policy and/or the optional insurance policy, (iv) traffic fines and fines for non-payment of the toll, as well as (v) taxes related to the property.

This amendment is aimed to address the fact that previously the tenants/users had both (i) the obligation to pay all the amounts (as such were set forth under the agreement) due for the entire leasing duration and (ii) the obligation to hand over the good.

Finally, if the tenant/user does not hand over the good within the term provided by the agreement, he will pay the lessor/financier, in addition to the amounts due under the agreement also the expenses for the recovery of the good.

5. Priority right to acquire the good

According to Law no. 83/2021, in case of default by the tenant/user, provided that the good was handed over within the term stipulated under the Consumer Leasing Agreement, the tenant/user or a third-party buyer will have a priority right within 30 days as of the handing over date to acquire the good object of the agreement.

The tenant/user will be able to acquire the good after paying all the amounts due according to the Consumer Leasing Agreement. In case a third-party buyer proposes an acquisition offer lower than the amounts due according to the agreement, the obligation to pay the rest remains in charge of the tenant/user. Therefore, for a third-party buyer it is safer to make an offer matching the value of the outstanding amounts in order to secure the acquisition of the good.

Importantly, the payment of all outstanding amounts under the agreement has to be performed within the 30 days period and is a condition precedent for the transfer of the ownership right over the goods.

To conclude, it remains to be seen what practice will develop after the entry into force of Law no. 83/2021 and how these legislative changes will effectively protect the tenants/users under the Consumer Leasing Agreements.

This article contains general information and should not be considered as legal advice.



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