

# Leasing Contracts and the Legal-Economic Characteristics of This Efficient Financial Instrument in the Albanian Reality

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## Abstract

The leasing contract is an economic instrument but also a legal relationship which is not much used in Albania. However, it is being understood, each day and more that the legal coating of the economic transaction in the form of leasing contract brings significant advantages. The purpose of this article is precisely to highlight the advantages of leasing contract compared with other contracts.

Financial leasing as a contemporary form of medium-term financing, taking into account the economic level of our country, offers favorable conditions for small and medium-sized businesses since it offers a new form of purchasing when one does not have the necessary liquidity. On the one hand, in this article we will discuss legal aspects and features of the leasing contract and in turn will see the operation of this type of contract in Albania, aiming to show the importance that this instrument has for the market, as well as the advantages and risks that this new product is facing in the Albanian market.

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## Introduction

Leasing<sup>1</sup> contract is an instrument of financing aid in the form of a lease, used as an effective alternative to purchasing equipment. Usually a financial leasing transaction, which combines in a legal relationship three parties: the lessee (leasing-receiver), the lessor (leasing-giver) and the supplier, works this way: at the request of the lessee, after the required goods specifications have been identified by the lessee and after the supplier has been selected, the lessor enters into an agreement for the supply of goods to the supplier. The lessor acquires ownership of the good delivered by the supplier, who receives direct payment from the lessor. Later, the lessor gives to the lessee the good in use. The latter also enjoys the right to acquire ownership over the good, at the end of the contract. Thus, through leasing contract, one is

granted the right to use a good delivered by a subject (by the lessor or directly by the supplier) against payment of a periodic installment. At the end of the terms of the contract one is given the opportunity to buy the materials in question, by exercising the right to purchase by paying a price (redemption price).

According to the Swiss doctrine, the financial leasing contract is an agreement whereby the leasing-giver gives to the leasing-receiver the right to possess a good, according to a specified periodic payments for a specified time. At the end of this relationship, the leasing-receiver, based on his will, may return the goods or buy them by a reference to the price of the goods, or sell them to a third party, or seek renewal of the contract with the same conditions<sup>2</sup>.

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<sup>1</sup> For the first time this contract was recognized in Anglo-Saxon law, where the word "lease" in English means "to bind a bargain, which is paid for using a building, a ground, a device for a period of time assigned".

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<sup>2</sup> The Contract of financial leasing in Albania legal framework. Implementation of the standarts foressenin the UNIDROIT Convention of "International financial leasing" – Dr. Ervin Pupe

Under British law, the financial leasing contracts is defined as a relationship between the leasing-receiver and leasing-giver, where the leasing-receiver is obliged to pay the entire value of the goods, together with a financial profit. Therefore, the lessee assumes all risks of the goods, as its next owner<sup>3</sup>.

In German legislation, the leasing contract<sup>4</sup> is included among the modern contracts and it is not considered a regular contract. The leasing contract regularly includes a relationship between 3 parties: seller/supplier, lessor (Leasinggeber) and the lessee (Leasingnehmer). This contract is an interaction between a contract of sale (the lessor and the supplier) and a rental contract (between the lessor and the lessee)<sup>5</sup>.

In developing economies, the leasing contract is often the only way of financing for enterprises which have the financial inability to immediately pay the asset acquisition cost. The lessee (lessee) can increase its production capacity without collateral requirements as would happen with a bank loan. Meanwhile, the lessor has a lower risk of business financing, because maintains ownership over the asset until the lessee fully completes his payments. The time of use of the asset in the leasing contract is only for a period, which generally is the same as most of the period of consumption of the asset. However, for periodic payments it is projected that their amount to be approximately similar to the real market value of the asset, but that achieves to cover the investment of the lessor and provide a return on his investment (Galgano, 1999).

The leasing contract differs from classical contracts originating from Roman law, as is the sale, donation or the simple rental contract. In fact, leasing contracts, as well as other contracts in the banking or trading area, which on the basis of their activity have profit as activity, is also called business contract<sup>6</sup>.

### **I. Normative regulation of the leasing contract, under the provisions of the domestic legal order.**

In Albania, this contract has been provided for the first time in the Civil Code (CC) of 1994, adjusted in only one article, as a special type of rental contract and being considered *atypical contract*<sup>7</sup>. In domestic legislation, this contract is provided with the name *financial rental contract* and not as *leasing contract*, a label which is known in many other countries<sup>8</sup>. Albanian legislation, in fact, at the title of Article 849 of Civil Code, has provided alongside with the term "financial rent" also the

term "leasing" in English, in brackets, to orient interested parties that it is a leasing contract.

The meaning of the term "financial rental contract (leasing)" is found in the Civil Code, which makes this definition: "The financial rental contract (leasing contract) is a contract where one party is obliged to make available to the other party, for a certain time, a movable or immovable asset, against a payment in periodical deadlines, determined in accordance with the value of the property, the duration of the contract and, eventually, with other elements as agreed between the parties. The good must be acquired or built by the lessor according to the lessee's preferences and description, and the latter has the right to obtain ownership, on expiry of the contract, against the payment of a predetermined value"<sup>9</sup>. This provision, the only one in the Albanian Civil Code, which deals with financial leasing, must be interpreted as a generalization for this type of contract.

While the Civil Code regulating this contract reserves only one article to it, in detail this contract is regulated by the law nr.9396, dated 12.05.2005 "On financial leasing", as amended in 2007. According to this specific law<sup>10</sup>, *leasing* is defined as "A legal relationship under which the lessor buys from the supplier an item selected from the lessee at the supplier and gives it to the lessee to use for a fixed period of time, at a price set in the contract, and with the expiry of the contract, the lessee may purchase the item, continue to hold it in lease for another period or return it to the lessor".

From a joint interpretation of the regulations of the two laws mentioned above, it is created a panorama of a bilateral or three-lateral legal relationship, where the lessor, the lessee and in some cases even the supplier operate simultaneously. The lessor produces, builds or buys from a supplier a movable or immovable goods, chosen in advance or built based on the lessee's preferences. The latter uses the goods for a fixed period of time, against a periodical payment with the right to purchase (the possibility of acquiring property) at the end of the lease contract, paying a final price to the lessor. In the case where the lessor produces or builds an asset based on the lessee's preferences and leases it to the latter, we are dealing with a bilateral legal relationship between a lessee and a lessor. While, when the lessor buys the asset from the supplier in order to give it to the lessee, or if the latter obtains possession of the asset being supplied directly from the supplier, the legal relationship identifies three parties. The existence of a third party (supplier) is provided as an opportunity from the regulation stipulated by the Civil Code, when determining that "the agreement may provide that the lessee, before claiming his rights from the lessor, should be addressed to the one who gave him the asset (the supplier) for his rights or for the rights which have been passed to him"<sup>11</sup>.

This interpretation leads to the conclusion that the financial lease contract is divided into two types: *direct financial lease contract* and *lease contract with supply*. The difference between them lies in the fact that the *direct financial lease* comprises two parties: lessor and

<sup>3</sup> Ibid.

<sup>4</sup> The article 535 of the German Civil Code.

<sup>5</sup> Lease contract – Irena Plaku

<sup>6</sup> Law nr.9396 / 2005 "On financial leasing", as amended, Section 5 "The commercial nature of financial lease contract": In cases where the lessee in leasing contract is a natural person not registered for commercial activity development, the lease is estimated non-commercial and subject to the general rules of contract<sup>7</sup>.

<sup>7</sup> Jani Vasili "Kontratit atipike" Tirane 2009, p.12

<sup>8</sup> The Republic of Kosovo, for example, uses the term "leasing" in its law; Law of the Republic of Kosovo No.03/L-103, dated 25.06.2009 "On leasing".

<sup>9</sup> Civil Code, Article 849, paragraph 1 and 2.

<sup>10</sup> Law nr.9396 / 2005 "On financial leasing", as amended by Law Nr.9823, dated 29.10.2007 and the Law Nr.9966, dated 24.07.2008, article 1, paragraph 11.

<sup>11</sup> Civil Code, Article 849, paragraph 4.

lessee, whereas the *lease contract with supply* is a legal relationship which identifies three parties: the lessor, the lessee and the supplier. In addition, in the first contract, the lessor is the owner of the asset himself or the builder and gives the asset directly to the lessee<sup>12</sup>, whereas in the second contract (lease with supply), the builder of the asset is the supplier, who realizes it based on the preferences of the lessee and then this asset is bought from the lessor. In other words, in the case of *financial lease with supply* we are dealing with two contracts: a supply contract (a sale) and a rental contract<sup>13</sup>.

#### ***I.1. Albanian Lex specialis<sup>14</sup> related to financial leasing.***

The law "On financial leasing" was enacted by the Albanian parliament in May 2005<sup>15</sup>. This law specifically regulates renting financial relations, namely those relationships that arise from a financial renting of movable assets and real-estate. In principle, we are dealing with a renting contract, where the main parties are the lessor and lessee and where the object can be only goods, regardless of their classification. However, this contract, as regulated by the special law, features some distinguishing characteristics from other forms of rent which are:

- a) The good, object of this relationship is selected by the lessee himself in full independence from the lessor.
- b) The item selected by the lessee, is bought or as the case requires is built with the funds of the lessor, with the only goal, to give it through financial lease, according to the contract signed by the parties for which the supplier is completely aware.
- c) The rent is in the form of payments, which are calculated taking into account the rate of depreciation of the property, or of a substantial portion thereof.
- d) Upon termination of the financial lease contract, the lessee is entitled: to buy the good by paying a symbolic value predetermined by the parties in the contract or specified at the time of exercise of the right to purchase; to renew the contract for another term against a fee lower than the original; to return the good to the lessor<sup>16</sup>.

The law mentions for the first time the difference between financial leasing with supply and direct financial leasing. In the latter, besides the fact that the lessor is the owner of the item itself or its builder, there

are also identified these features: a) the lessor, in addition to the property, offers to the lessee maintenance and support services; b) the goods which are leased are mostly of a kind; c) the lessee has more freedom to terminate the contract ahead of schedule, with prior notice<sup>17</sup>.

The law provides the parties which may be part of this relationship. Besides the two parties of a typical lease relationship, in the financial lease contract, the supplier<sup>18</sup> emerges as a party, and in some cases even the warrantor, who takes over the obligations of the lessee, by means of the warranty contract concluded between the lessee and the warrantor<sup>19</sup>. Thus, the leasing contract is a contract that can be guaranteed on warranty, or with the bill, as requested by the lessor and unlike bank loans (bank credit) does not need a mortgage. This is the reason why many businesses are more inclined to buy the means of production through the leasing contract, rather than through bank loans, which necessarily require mortgage guarantees.

In terms of contract subjects, the special law has denied the right of being the subject of the relations as a lessor to all financial institutions and banks if this right is not explicitly defined in the relevant license or permit. The lessor must necessarily be a legal person with a charter capital of no less than 20 million ALL and cannot perform any other activity except that of leasing. The precise characteristics of the image of the lessor prove once again the trading nature of the leasing contract.

The object of the leasing contract is the set of legal actions performed by the lessor to provide the lessee to use an asset for a certain period of time against remunerative periodic installments. At the end of the contract the lessee has the right to take ownership of this good, paying a price as the difference between the total price of the property and the lease installments paid so far by the lessee. Meanwhile the material object (content) of the financial lease contract can be a movable property (vehicles, manufacturing equipment, furniture, etc.) or immovable objects (real-estates such as houses, shops, etc.). Given the fact that we are dealing with a lease, we must say that the object of the leasing contract can only be individually specified goods, which are used by the lessee and which may or may not be returned again to the lessor. In the lease contract, the object of the contract cannot be money, because money is an object determined in gender and consumable. When money is given in "rent" (as a loan/credit), it is not returned the same money, because the "lessee" behaves with this amount of money as the owner (he has disposed of this amount to a third party) and not as a user.

The law also stipulates the rights and obligations of the parties in this relationship. As in a classical renting, the lessee has the right to full enjoyment of the property. It is the lessor who must provide guarantees, thus to respond to claims of third parties on the object, who oppose, undermine or limit full enjoyment of the property by the lessee, if the latter has accepted the property in good faith. The lessee, for the purpose of protection of his rights, has the right to re-establish the same rights as the

<sup>12</sup>Law nr.9396 / 2005 "On financial leasing", as amended, Section 14.01, "Direct Financial Rent" is the lease under which the lessor gives the lessee a thing that he/she owns, to use the term assigned for a specific period of time, at the end of which the lessee has the right to purchase the item, paying a certain price, to extend the contract for rental of the property holding or return it to the lessor.

<sup>13</sup> Law nr.9396 / 2005 "On financial leasing", as amended, Article 2.2 and Article 3.

<sup>14</sup> Lex specialis is a Latin phrase which means "law governing a specific subject matter". It comes from the legal maxim "lex specialis derogat legi generali" - definitions.uslegal.com.

<sup>15</sup> Law nr.9396 / 2005 "On financial leasing", as amended.

<sup>16</sup> Law nr.9396 / 2005 "On financial leasing", as amended, Article 1.2.

<sup>17</sup> Ibid, Article 2/2 and 2/3.

<sup>18</sup> Ibid, Article 3/5: The supplier is the party that owns, manufactures or constructs the object, as requested by the lessee and then sells it to the lessor, against payment of the sale price of the property by the lessor".

<sup>19</sup> Ibid, Article 3/4.

lessor in the relationship that the latter has with the supplier, regardless of the fact that the lessee himself is not a party to the supply contract<sup>20</sup>. Thus, in the supply contract, the obligations and guarantees of the supplier to the lessor are obligations even towards the lessee, as if this was also a party to the supply contract, but always within the bounds of the interests of the lessee. Thus, the supplier: (a) Must submit the item (good) to the lessor on the time, place and manner specified in the supply contract. Delivery of the item should be done exactly as the lessee has chosen it, and it is the only the lessee who has the right to deem if the item supplied matches with his description or not, otherwise the lessee may not accept the item; (c) Gives a warranty for the item and is responsible for any kind of faults only to the lessor. However, the supplier does not hold dual responsibility to both the lessor and lessee for the same breach of the terms of the supply contract or other guarantees and liabilities assumed.

The financial leasing contract, like any other contract, in order to be valid must contain the essential elements, which are: the subjects, object and content of the contract (rights and obligations of the parties towards each other). Therefore, for the creation of the contract it is necessary to achieve the consent of the will of the parties to the necessary conditions of the contract, that based on the legal theory are called the essential conditions of the contract (*essential negotii*)<sup>21</sup>. The absence of even one of these elements entails the invalidity of the contract. In addition to these essential conditions, characteristic of each contract, the financial leasing contracts must contain some other basic conditions, where among other things include:

- a) a description of the item (good), so that to make it possible to distinguish it;
- b) the initial term (period of time) and the right of the lessee to renew it for another term or some other terms, but renewal is done when the object is able to meet the needs, for which it is rented;
- c) the right to purchase the property by the lessee and the respective price or pricing formula;
- d) the number and amount of lease payments or their calculation formula;
- e) cases of rejection of the object by the lessee;
- f) termination of contract cases and procedures of the reversal of the item to the lessor;
- g) the obligation of the parties to cover the costs and burden of administration, including technical support, maintenance and ancillary services related to the usability of the leased item;
- h) third party liability;
- i) the obligation to ensure the leased item;
- j) the obligations of the parties, in the case of defects in the leased item.

Another feature of the leasing contract, provided by the new law, is the fact of its treatment as an *executive warrant* in terms of the recovery of the leased item, which is the subject of the lease contract. This executable warrant is executed by a court bailiff after issuance of the order of execution by the Court<sup>22</sup>.

According to the Albanian special legislation, the lessor has these rights and obligations towards the lessee:

- Must notify in writing the supplier that he or she has bought the item for lease to the lessee, under the terms of the lease contract (Article 13.1 of the Law);
- Must deliver the property to the lessee in good condition, at the time, place and manner specified in the contract;
- Must guarantee the lessee of any legal and physical defect of the item, thus providing the lessee with the complete and serene enjoyment of the item from any claims of third parties over it, which oppose, jeopardize, or limit full enjoyment of the item from the lessee. The lessee must be in good faith for the qualities of the leased item and claims of third parties on the item;
  - Has the right to exercise control, to see if the leased item is used or maintained properly and examine the financial documentation;
  - Has the right to transfer to third parties the rights over the property, even without the consent of the lessee, thus becoming the replacement of the lessor;
  - Maintains the right to ownership of movable items, which become additions to other movable or immovable items, gaining joint-ownership with the owners of the property, to whom the property was joined.

On the other hand the lessee has rights and obligations towards the lessor, which in summary are as follows :

- Has the right to choose the item and the supplier (if we have a lease contract with supply), taking or not taking into account the suggestions made by the lessor;
- Has no right to demand without the consent of the lessor, the abrogation of the contract of supply, let's say reducing the sale price of the property, etc.;
- Must use and maintain the property at its own expense;
- Must insure the object from any damage, the risk of destruction, loss, theft, deterioration or premature aging (except as otherwise provided in the contract);
- Must be responsible for any loss caused by the use of the object contrary to the contract, or contrary to its purpose;
- Specific improvements that the lessee can make to the object remain in its possession when a prior written consent has been taken from the lessor. If these improvements cannot be removed without damaging the property, the lessee has the right to ask the lessor the value of the improvements.
- In the supply contract, the obligations and the guarantees of the supplier towards the lessor are at the same time obligations towards the lessee, as if the lessee was also a party to the supply contract,

<sup>20</sup> Civil Code, Article 849, paragraph 4.

<sup>21</sup> Mehdi J. Heterni "Obligations and Contracts", publishing house LUARASI 1998

<sup>22</sup> Law nr.9396 / 2005 "On financial leasing", as amended, Article 32/1 "Procedure of the item recovery through sequestration": The financial

leasing contract is an executive title, in terms of the recovery of the property, subject to the lease contract and is executed by a court bailiff, after the issuance of the respective order of execution of the responsible court, which is expressed within 5 days from the date of the application.

but within the bounds of the interests of the lessee. Thus, the supplier:

- Needs to deliver the property to the lessor at the time, place and manner specified in the supply contract;
- Needs to deliver the property to the lessor, as selected by the lessee himself, who has the right to deem if the supplied item matches or not with his or her description, otherwise may not receive the item;
- Gives a warranty for the item and is responsible for any kind of defects only to the lessor. Holding dual responsibility of the supplier to the lessor and lessee, for the same breach of contract or warranty given on it, is prohibited;

## II. The development of financial leasing in Albania and its representations.

### II.1. Leasing operators in Albania.

From inquiries made regarding companies which offer financial leasing in Albania, it results that we are dealing with a new market, but one that promises a lot in contributing to the development of small and medium enterprises<sup>23</sup>. The latter more often than not, face difficulties to buy the assets necessary for the conduct of their activity. Until the moment when leasing companies entered the market, businesses (legal persons) and individuals (natural persons) could obtain loans only from the banks, which required guarantees for granting credit, thereby hampering the emergence of new businesses. Meanwhile the advantage of financial leasing lies precisely in this fact, the company that provides financial lease does not require guarantees for, as the asset itself serves as a collateral.

<sup>23</sup> The main companies operating in Albania are: (1) Tirana Leasing is the first in Albania, which applied the activity of financial leasing only for vehicles. It was created in November 2004 (from Tirana Bank), as a market demand for more credit available. (2) Landeslease is a leasing company, which operates in the Albanian market since 2005. Landeslease today owns about 30% of the domestic market in the financing of vehicles of different types, trucks, buses and heavy machinery as well as production lines, medical equipment, etc. (3) Raiffeisen Leasing, headquartered in Tirana is part of the Raiffeisen-Leasing International GmbH spread in 16 countries of central and eastern Europe. It operates in Albania since May 2006, offering financing (leasing) for vehicles, machinery and equipment as well as real estate. (4) Credins Leasing - whose activity officially started in September 2007, but in fact in January 2008 (Credins Bank). About 55% of the leasing portfolio of the company is occupied by machinery and equipment. (5) Leasing Societe Generale (SOGLEASE) - can cover: Vehicles for public or goods transport; Machinery instruments; Construction machinery; Equipment; Printing equipment, etc. (6) Albarent - was created in October 2009. It also provides a complementary basket of transport and tourism services which were absent in the market.

### II.2. Types of lease contracts in the Albanian market.

The forms of leasing contracts provided by the Albanian legislation, or even by the international one are numerous. Leasing contract, based on whether or not the property is transferred to the lessee, is divided into: (a) Financial Leasing - where the lessor gives the lessee the right to possession and use of an item for a certain period of time in return to payment by installments, with the option to purchase the item at the end of the lease term. In this case, the price to be paid by the lessee is a modest amount, much less than the real value of the property on the market at the time of concluding the contract. This value is calculated as the minimum, taking into account the duration of the lease; (b) Operating Leasing, where the lessor cannot pass ownership to the lessee at the end of the contract period, but only the right to use the item. This impeding condition can be predicted by the parties in their contract voluntarily, or it comes from the very meaning of the contract. For example, if the lessor has received from the supplier only the right to use the item and has the opportunity only to give the object in use, logically the right of ownership over the property that the lessor does not have himself cannot be passed to the lessee since the contract would be invalid<sup>24</sup>.

Such a classification can be achieved even if we use as a classification criterion the risks and benefits of the leased asset. Thus in *financial leasing*, the lessee has the main part of the risks and benefits, while in *operating leasing* it is the lessor, the owner of the leased asset, that has the main part of the risks and benefits. Financial lease is a way to finance the purchase of equipment. The lease period is fixed and is determined approximately based on the projected economic life of the equipment. Leasing installments are set in such a way that the total lease payments over the predetermined period of time, covers the cost of the asset together with the lessor's interests and profit, because the lessee has the right to buy the device. The residual value of the asset at the end of the period is too small or insignificant for the lessor. While in operating leasing, the lessee enters into a contract for short-term use of the device. The lessor buys a device and benefits from leasing the asset to different users, bearing also the risks posed by the residual value of the equipment as well as the risk of aging.

In addition to the above classification, there are several other sub-groups of leasing contract, as follows:

-Based on the participating parties, the leasing contract is divided into: (a) Leasing with a supplier, where the lessor buys the item ordered or preferred from the lessee by the supplier and (b) Direct Leasing, where the lessor is also the direct supplier to the lessee, thus they are the same person.

-Based on the domicile of the parties, the contract of lease is divided into: (a) Domestic leasing, when the object is held rented in the Republic of Albania, and the lessor together with the lessee have permanent residence in the Republic of Albania and (b) International Leasing, when the lessor and the lessee, or one of them, does not have residence or permanent residence in the Republic of Albania. Financial leasing in this case is governed by

<sup>24</sup> "Operating leasing usually deals with consumable items (spending - consumables), while long-term leasing (finance leasing) mainly refers to large leasing financial facilities". Prof.Dr.Mehdi J.Hetemi, "Obligations and Contracts",1998.

international law on leasing or, where applicable, by bilateral agreements, where our country is a party<sup>25</sup>.

There are also other forms of leasing, for example the lease-back form, which is much like financial leasing, except that the lessee is the original owner of the asset. The lessee sells the device to the lessor and enters into a contract to retain, through a lease-back, the asset in exchange for payments of installments. The lessee may use the funds derived from the sale of equipment as capital.

### III. Advantages of using leasing contract compared with other forms of financing.

Ways of funding for the purchase or use of equipment, machinery, and generally various assets are numerous. However, leasing contracts present several advantages compared with other financing alternatives. Thus, for example, financial leasing is similar to the bank loan (credit), but there are some changes in the structure compared to the loan.

A finance lease is more flexible than credit, because, within the accepted norms of risk management, the leasing company is shown to be "more tolerant" than in the case of credit. Financing through leasing contract is "theoretically" easier to get than a credit financing. Meanwhile, the structure of financial leasing may be different from that of the loan. In this method of financing (leasing), the prepayment itself on the value of the vehicle, as well as the establishment of the residual value at the end of financing, make the financing structure to fit more than the loan, according to the needs and customer's payment capabilities. At the end of the funding period, the client has the opportunity to exercise or not of the right to purchase the vehicle, which unlike loans, facilitates his management of the vehicles at the end of the period of a given project. This type of financing would enable the customer to periodically renew his technology, staying within the structure of leasing.

What is more, financing through leasing contracts provides other advantages compared with other forms of financing. Thus, it allows the lessee not to involve high levels of financial capital to use or purchase the asset. This happens because the leasing financing method does not include the request for collateral. Therefore, buying a new asset through leasing is not considered a costly version because it does not require considerable capital as collateral, and thus it enables businesses to save valuable reserves of cash. Moreover, the leasing contract enables 100% funding of the asset value, which creates opportunity for the lessee to use more resources as capital. Leasing contracts may not directly meet the needs of lessee for working capital, but structuring through small installments of the leasing agreement indirectly meet the working capital.

Financing leasing offers a financing method through lower monthly payments and flexibility in repayment. Small regular payments, defined by a leasing agreement, enable businesses with limited capital to manage their cash flow more effectively and adapt quickly to changing economic conditions. Leasing agreement also provides flexibility of the repayment period complying with "effective life" of the equipment. Leasing contracts in this way allow businesses to improve assets more often, ensuring that they have the latest equipment without having to make additional capital expenditures.

<sup>25</sup> Law nr.9396/2005 "On financial leasing", as amended, Article 8.

Financing leasing does not replace or reduce the ability to use cash or bank loans for other purchases, but it adds a source of capital with products that maximize flexibility and facilitate the use of modern technology. Moreover, this method of financing provides assurance to businesses, because financial lease agreement can not be canceled from the lessor and payments are generally fixed. However, they can also be structured to include other benefits such as equipment maintenance or variable monthly payments depending on the needs of a business.

### CONCLUSIONS AND RECOMMENDATIONS

Leasing contract, as the legal form with which it is vested the relationship of financing of the use and purchase of an asset, is very important in terms of the market economy, where funding needs are always present. Leasing is profitable for all parties involved in it and as such leads to increased well-being and indirectly in the development of the economic sector. This contract is a very good financing alternative, especially for medium-sized and small businesses, which have limited opportunities to be developed without additional financial resources. The more appropriate conditions offered by Financial Leasing, compared with borrowing or purchasing of capital assets, as well as the more favorable tax make *leasing contract* to become the most attractive financial tool for leasing companies in order to move ahead with their business.

The leasing contract has a number of advantages compared with the bank loan contract, which in Albania results to be more prevalent. For example, the lessee does not require deployment, as security for the compliance to the requirements, of a real estate in the mortgage, or finding a warrantor etc. Parties are faced with simpler and faster leasing procedures for binding the contract between them. Likewise, financial leasing contracting parties can choose a variety of combinations regarding contractual terms as for example: time-extension of the contract, the value of the asset at the end of contract etc.

The scope of the leasing contract is broader than the regulation that our Civil Code reserves to the financial rental contract. This has been regulated by the Albanian special law on financial lease, anticipating two forms of this contract, financial leasing and operating leasing.

Currently, this contract is very extended in international law for all types of movable and immovable assets, while in Albania it is more focused on the leasing of vehicles. Taking into consideration the facilitating criteria, provided by financial operators, in the future are expected to be developed other types of leasing, as for example the agricultural one, or other production equipment etc.

Leasing contract is an executable title (warrant) and this presupposes the right of the lessor to require the competent authorities to exercise their legal authority to the lessee, to retake the leased item. The executive title is executed by force, by the relevant decision of the court, when the lessee has failed to fulfill its obligations, for example, did not pay the installment of the lease, or does not use the item by destination for which the contract was concluded. The order of execution can be issued, by the court, in order only to force the lessee to deliver the leased item, but not to claim from him the equivalent value of the leased item.

In the future, the development of leasing will largely depend on the elimination of uncertainties related to the tax treatment of leases. Although the general civil legal framework regarding the leasing contract is improved,

the financial treatment remains not very clear, especially in relation to the treatment of value added tax (VAT). Therefore there is a need to improve the legal framework in this regard. Furthermore, another required improvement of national legislation needs to be done in connection with the regulation of all cases of non-fulfillment of a leasing contract. Improvement of legislation will result in an increase in leasing contracts and on a relief for small and medium-sized enterprises (SME), which often require new equipment, but cannot meet the conditions of loans from banks to carry out the purchase.

Since in Eastern and Central Europe, leasing is widely regarded as the most favorable option for financing investments, this form of outsourcing should be introduced gradually in the Albanian market near the SMEs, which are in financial difficulty and unable to invest in purchasing long-term assets. In order to achieve this, there can be organized awareness campaigns by the government as well as other financial intermediaries, which may have an interest in this type of activity.

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