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## LEASING OPERATIONS IN PARAGUAY

**Initial remark:** this report don't cover the regulation established by "Executive Decree N° 3154/19 of incentive for shipping industry and incorporation of vessels to Paraguayan flag".

In Paraguay, leasing operations are governed by the provisions of law No. 1.295/1998, Decree No. 6.060 /2005, Decree No. 4.346 /2015, Law No. 861/1996 and various regulations of the Central Bank.

The following is a brief summary of the essential aspects of the aforementioned legal norms.

Before proceeding, please be aware that Paraguayan legislation presents several contradictions, errors and lack of clarifications on many aspects of leasing operations, issues that Paraguayan authorities must seek to rectify for a better understanding and application of the laws on this matter.

### I) LEASING CONTRACTS – OVERVIEW

#### 1. Applicable law

- a) Law No. 1.295/1998 on "Financial and Commercial Leasing".
- b) Decree No. 6.060 /2005, which regulates Law No. 1.295/1998, on "Financial and Commercial Leasing".
- c) Decree No. 4.346 /2015, which regulates certain aspects of Law No. 1295/1998, on "Financial and Commercial Leasing".
- d) Law No. 861/1996 on "Banks, Finance Companies and other Credit Entities".

#### 2. Types of leasing operations

Paraguayan law regulates two types of leasing operations:

- a) Financial leasing; and
- b) Commercial leasing.

#### 3. Intervening parties

- a) LESSOR: is the one obliged to lease to the Lessee the asset object of the financial or commercial leasing contract.  
Paraguayan law expressly determines the entities that can act as Lessors, be it in financial or commercial leasing operations.
- b) LESSEE: is the one who receives an asset from the Lessor, in lease, and is obliged to pay periodic installments for an agreed period of time.

Paraguayan law does not establish particular limitations as to who can enter to a financial or commercial leasing contract as Lessee.

## II) FINANCIAL LEASING

### 1. Definition of financial leasing

“Financial leasing” is the contract between the Lessor and the Lessee, whereby:

- a) The Lessor leases to the Lessee a built property of its ownership; or a non-expendable movable asset, or a built property owned by a third party specified by the Lessee, from whom the Lessor is obliged to acquire or shall acquire it from the Lessee, with the sole purpose of leasing it to the Lessee.
- b) In exchange, the Lessee pays to the Lessor an amount of money in periodic installments, and
- c) The contract includes an irrevocable purchase option that the Lessee may exercise at the end of the term of the leasing contract, by paying a residual price that is freely agreed between the parties.
- d) Likewise, parties may agree that, if the Lessee does not exercise the purchase option once the initial term of the contract or its extension expires, the asset will be returned to the Lessor and the Lessor will be allowed to: a) sell it; or b) deliver it in financial leasing to a new Lessee (article 8 of Law No. 1.295/1998).

### 2. The Lessor of a financial leasing contract

The following may enter into a financial leasing contract as a Lessor (Article 2 of Law No. 1.295/1998):

- a) Banks and financial entities regulated by Law No. 861/1996 on “Banks, Finance Companies and other Credit Entities”;
- b) The subsidiaries of banks, financial entities and other entities performing financial intermediation that are regulated by Law No. 861/1996 on “Banks, Finance Companies and other Credit Entities”, incorporated for this purpose;
- c) Financial Leasing Companies;
- d) Importers, regarding the assets imported by them;
- e) Manufacturers domiciled in Paraguay, regarding the assets manufactured by them;
- f) Distributors domiciled in Paraguay, regarding the assets distributed by them;
- g) Suppliers from abroad, regarding the assets supplied by them from abroad; and,
- h) Construction Companies, real estate agencies or developers, regarding the built property owned by the aforementioned or from third parties.

### 3. Assets that may be object of financial leasing

Both, non-expendable movable assets and properties may be object of financial leasing.

The assets that are object of financial leasing contracts may be new or used.

The following assets may, as well, be subject of financial leasing: all kinds of fixed assets, computer equipment and computer programs; agricultural and industrial machinery; land, river or air vehicles.

On the other hand, the following cannot be subject of leasing: instruments of debt, instruments of participation or instruments that represent merchandises.

4. Financial Leasing Companies

Financial leasing companies are one of the entities that are allowed to act as Lessor in financial leasing operations.

The main activity and purpose of these companies is to carry out financial leasing operations.

According to Paraguayan law, they must be incorporated as joint-stock companies and must be authorized by the Central Bank of Paraguay to carry out financial leasing operations. Their minimum social capital must be of Gs. 750,000,000 (Guarani seven hundred and fifty million) represented by registered shares, totally paid-in in cash at the time of its incorporation.

The procedures for their incorporation and their operations are regulated by the applicable law defined in I) 1. of this summary, as well as the regulations of the Central Bank of Paraguay.

5. Formalities

The financial leasing contract shall be granted by:

- a) public deed if the asset subject of leasing is a recordable asset, or
- b) public or private instrument with signature certified by a notary public, in any other cases. (Article 9 of Law No. 1.295/1998)

The financial leasing contract shall be registered in the Office of Public Records.

The non-registration of the contract shall not affect its validity as an agreement between the parties. However, in order for it to be valid as a financial leasing contract and against third parties acting with good faith, the compliance of such solemnity will be required.

The validity of the registration shall be equal to the terms set in the contract, and may be re-registered at the request of the parties for the requested period.

6. Choice of the asset to be leased

It is the sole and exclusive responsibility of the Lessee to determine and specify, at Lessee's own risk, the assets that will be object of the financial leasing contract, as well as to designate the manufacturer, builder or distributor of such assets.

If the Lessor is not the supplier or does not own the asset subject to the financial leasing contract, the Lessor is obliged to acquire it from the supplier designated by the Lessee.

7. Maintenance of the asset

As a general rule, the maintenance and repairs of the asset that shall be performed during the term of the financial leasing contract shall be borne by the Lessee (Article

39 of Law No. 1.295/1998), notwithstanding the responsibility of the supplier of the asset or the Lessor in the cases provided in the following paragraph.

8. Responsibility for defects

As a general rule, the Lessor will not be liable for defects found in the asset object of leasing if the Lessor is not the supplier of such asset (Article 25 of Law No. 1.295/1998).

On the other hand, the Lessor will be responsible for defects found in such asset in the following cases:

- a) With respect to hidden defects, if the Lessor was the owner of the asset at the time the financial leasing contract is signed (Article 28 of Law No. 1.295/1998).
- b) If the Lessor has participated in the selection of the builder, manufacturer or distributor of the asset, or has participated in the determination of the specifications of such asset (Article 10.2. of Decree No. 6.060 /2005).

If the asset object of leasing was not supplied by the Lessor and defects are found on the acquired asset, the Lessee must exercise its rights against the supplier of such asset (Article 25 of Law No. 1.295/1998).

9. Irrevocability

According to Law No. 1.295/1998, the right to revoke financial leasing contracts while they are in force cannot be agreed. Furthermore, financial leasing contracts cannot be ended early without fault from either party or by mutual agreement except when:

- a) 50% (fifty percent) of the agreed obligations have been fulfilled and the purchase option is exercised (Article 11 of Law No. 1.295/1998). In such case, the Lessee must also pay all the agreed installments with the discount provided in the financial leasing contract for the advance payment of non-due installments (Article 14.17 of Decree No. 6.060 /2005); or,
- b) the assets object of the contract are affected by extraordinary damages, caused by acts of god or force majeure, such as fire or other accidents or incidents. In such case the Lessee must pay the due and outstanding installments as well as the residual value with the discount that will be agreed between the parties (Article 11 of Law No. 1.295/1998).

10. Termination

When the financial leasing contract is terminated due to Lessee's fault, the Lessor may choose between the following (Article 44 of Law No. 1.295/1998):

- a) Claiming the payment of all installments for the time elapsed and for the time remaining until the fulfillment of the agreed term, plus the residual price. In this case, the Lessor will have to give up on the asset for the benefit of the Lessee; or

- b) Recover the asset by claiming from the Lessee the installments accrued up to the date of the effective recovery, plus interest charge and a penalty that may not exceed 30% (thirty percent) of the amount of the installments that corresponds for the time remaining until the fulfillment of the agreed term.

In both cases, the Lessor can also claim compensation for the damages that the breach of the Lessee has caused.

Aside from the right to claim damages, law does not establish particular rules in the case of termination of the financial leasing contract due to Lessor's fault.

#### 11. Insurance

The asset object of financial leasing contracts must be insured against losses that may affect it and such insurance shall be kept in force during the term of the contract (Article 34 of Law No. 1.295/1998).

### III) COMMERCIAL LEASING

#### 1. Definition of commercial leasing

It's the contract between a Lessor, and a Lessee whereby:

- a) a non-expendable movable assets, manufactured or imported by the Lessor is leased;
- b) in exchange for the periodic payment of a sum of money by the Lessee, for a period of time;
- c) at the end of said period of time the Lessee will have the option of 1) purchasing the asset object of the contract by paying the residual value, 2) receive a substitute of such asset on equal terms, or 3) extend the current contract for an additional term and with a lower installment (Article 50 of Law No. 1.295/1998).

#### 2. Lessors in commercial leasing

According to Article 50 of Law No. 1.295/1998, the following may enter into a commercial leasing contract as a Lessor:

- a) manufacturer domiciled in Paraguay;
- b) an importer;
- c) a distributor;
- d) a supplier from abroad;
- e) a commercial leasing company;
- f) banks and financial leasing companies in order to lease recovered assets or those received as payment, provided that, the obligation to maintenance of the leased asset is entrusted to a third party and agreed by the Lessee. If the leased asset is new, the responsibility for hidden defects and for the maintenance of the leased asset must be assumed without restriction by the Lessor and accepted by the Lessee, unless otherwise agreed".

#### 3. Assets that may be subject to commercial leasing

Only non-expendable movable assets can be subject of commercial leasing operations.

Aside from new assets, used assets may be subject of operational leasing, but they must be delivered to the Lessee in perfect condition.

4. Formalities

Commercial leasing contracts must be granted by either public deed or private instrument with signature certified by a notary public. (Article 51 of Law No. 1.295/1998)

Its registration in the Office of Public Records will be mandatory when the term of the contract is equal to or more than six months (Article 15.3 of Decree No. 6.060/05).

5. Maintenance of the assets

In commercial leasing operations, the maintenance and conservation of the asset is the responsibility of the Lessor, unless otherwise provided in the contract (Article 55 of Law No. 1.295/1998).

6. Defects

The Lessor of a commercial leasing contract will be responsible for the defects of the leased asset. When defects are found on the asset, the Lessor will be obliged to:

- a) make the necessary repairs;
- b) replace the asset with another of equal characteristics; and
- c) discount from the price the period during which the Lessee has not been able to use the asset.

When it is not possible to replace the asset and the repairs take up excessive time, the contract will be terminated without responsibility for the parties, unless the Lessor has acted negligently (Article 56 of Law No. 1.295/1998).

7. Termination

The commercial leasing contract may be terminated by either party, by either notifying such decision in accordance with the provisions of the leasing contract or by paying as compensation a penalty not exceeding 30% (thirty percent) of the price corresponding to the period remaining until the expiration.

8. Insurance

Paraguayan law does not establish the obligation to insure the asset object of commercial leasing contract.

#### IV) TAX REGIME

Leasing operations are taxed by income tax and Value Added Tax (VAT).

Articles 69 to 72 of Law No. 1.295/1998 provide special taxation rules for both types of leasing operations. Below you will find some important points regarding taxation of leasing operations:

- a) In the case of assets imported by a Lessor indicated in II) 2. of this summary, for a financial or commercial leasing, the application of Value Added Tax (VAT) will be suspended and the payment of VAT will have to be secured as requested by the Customs Office; unless that, at the time of custom clearance, the Lessor submits a copy of the financial leasing contract duly registered at the Office of Public Records. The amount given as security will be returned to the Lessor when the corresponding leasing contract is submitted.

When the Lessor is not domiciled in Paraguay, the payment of a security will not be necessary. Submitting the leasing contract duly registered at the Office of Public Records will be sufficient.

- b) The payment of VAT will also be suspended when the Lessor acquires assets under a financial leasing contract from suppliers domiciled in Paraguay, in which case the suppliers may offset totally the credit VAT related to the manufacturing or purchase of the asset with the debit VAT arising from other operations.
- c) When the Lessee operates under a regime that provides full or partial exemption of taxes on the import of assets, the Lessor shall import the assets object of a registered financial leasing contract under such regime.

The investment incentive regime provided by law No. 60/90 "Investment Incentive Law" is an example of a tax exemption regime on imports. Under this law, companies engaged in the leasing of capital assets as well as the capital assets imported or produced domestically under a leasing contract are entitled to the tax benefits provided in said law, as long as their investment projects are approved by the Ministry of Industry and Commerce and the Ministry of Finance. For more information on this investment incentive regime, please read our summary on the "Investment Incentive Law".

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