

RESOLUTION # 2,309, of Aug., 28th, '96

Disciplines and consolidates norms
relative to lease agreements

THE CENTRAL BANK OF BRAZIL, pursuant to art. 9 of Law # 4,595. of Dec. 12th, '64, states that the NATIONAL MONETARY COUNCIL, in the course of a session held on Aug. 28th, '96, based upon the contents of Law # 6,099, of Sep. 12th, '94, with the amendments introduced by Law #7,132, of Oct. 26th, '83.

Art. 1 - Has approved the attached Regulations, disciplining the mode of operational lease, authorizes the entry into lease agreement with individuals in general and consolidates norms relative to finance lease.

Art. 2 - The Central bank of Brazil is hereby authorized to take measures and impose norms deemed required to the execution of the contents hereof.

Art. 3 - The present Ordinance shall enter into force on the date of its publication.

Art. 4 - Ordinances # 980 of Dec. 13, 1984, # 1,452 of Jan. 15, 1988, # 1,474 of Mar. 29, 1988, # 1,681 of Jan 31, 1990, # 1,686 of Feb. 20, 1990 and # 1,769 of Nov. 28, 1990, article 2 of Ordinance # 2,276 of Apr. 30, 1996, Circulating Letters # 903, of Dec. 14, 1984, # 2,064 of Oct. 17, 1991 and article 2 of Circulating Letter # 2,706 of Jul. 18, 1996 are hereby revoked.

Gustavo Jorge Labiossière Loyola

Chairman

ATTACHMENT

CHAPTER I

Of the Lease Practice Agreements

Art. 1 - Lease agreements with tax treatment pursuant to Law # 6,099 of Sep. 12, 1974, amended by Law #7,132 of Oct. 26, 1983, shall only be performed by legal entities who have as primary corporate purpose the rendering of lease agreements, by universal banks with lease portfolios and by financial institutions who, pursuant to article 13 of the present Regulation, are authorized to enter into lease agreements with the seller of the object or with legal entities connected to or interdependent with same.

Sole Paragraph. The agreements addressed by the present article may be of either the finance or operational leases.

Art. 2 - In order to perform the agreements addressed by the present Regulation, lease societies and financial institutions mentioned on the previous article shall maintain a technical department duly structured and overseen by one of its directors.

Sole Paragraph. Societies and institutions shall communicate the Regional Office of the Central Bank of Brazil under whose jurisdiction they may be the name of the Director responsible for the commercial lease area.

CHAPTER II

Of the Execution and Operation of Lease Societies

Art. 3 - The execution and operation of legal entities whose primary corporate purpose is the performance of lease agreements, named lease societies, shall be dependent on authorization by the Central Bank of Brazil.

Art. 4 - Lease societies shall be executed as corporations and shall be subject, where appropriate, to the conditions set for the financial institutions under law # 4,595 of Dec. 31, 1964, as well as subsequent legislation pertaining to the National Financial System, and their corporate name shall mandatorily include the expression "Arrendamento Mercantil".

Sole Paragraph. The expression "Arrendamento Mercantil" as a part of the corporate name is exclusive to the societies addressed by the present article.

CHAPTER III

Of the Modes of Arrendamento Mercantil - Leasing

Art. 5 - Finance lease is deemed the mode where:

I – lease payments and other payments set forth under the agreement, due by the lessee, shall be normally sufficient for the lessor to recover the cost of the goods let for the contractual period of time of the agreement and, in addition, perceive a return on the invested funds;

II - maintenance, technical support and ancillary services expenses related to the operability of the goods let shall be the lessee's responsibility;

III - the price for exercising the purchase option shall be freely agreed, and may be the let goods market worth.

Art. 6 Operating Lease shall be the mode in which:

I - lease payments to be made by the lessee include the cost of the lease of the goods and services inherent to its placement, the present worth of such payments not to exceed ninety percent (90%) of the cost of the goods;

II - the term of the contract is shorter than seventy five percent (75%) of the economic life time of the goods;

III - the price for exercising the purchase option is the market worth of the goods leased;

IV - Guaranteed Residual Value is not permitted.

§1º - The agreements regarded by this article are exclusive to universal banks with lease portfolios and leasing societies.

§ 2º - To calculate the present value of the payments shall be used the interest rate of the contract.

§3º - Maintenance, technical support and services connection to the operability of the goods let may be the lessor's or the lessee's responsibility.

*Composition
altered by the
Ordinance #
2,465 of
February 19th
1998*

CHAPTER IV

Of Lease Agreements

Art. 7 - Lease agreements shall be instrumentalized by private or public act containing, at least, the below indicated specifications:

I - description of the goods which comprise the object of the agreement, with all features that may permit their perfect identification;

II - the lease time limit;

III - the amount of the lease payments or a formula for the calculation thereof, as well as the criterion for adjustment of same;

IV - the manner of settlement of lease payments at set intervals, not to exceed 1 (one) semester, except for operations to the benefit of rural activities, where payment may be set at intervals not to exceed 1 (one) year;

V - the conditions for the lessee to exercise the right to choose among renewal of the agreement, restitution of the goods or purchase of the leased goods;

VI - the allowance to the lessee for purchase options to the leased goods, establishing the price for exercising such right or the criterion applicable to the establishment of the price;

VII - expenses and operating burdens, including technical support, maintenance and ancillary services expenses relative to the operability of the leased goods, admitted, in addition, as regards finance lease:

a) the possibility of the lessee's paying the guaranteed residual value at any time in the course of the duration of the agreement, such payment not to characterize the exercise of the purchase option;

b) adjustment of the price set for the purchase option and the guaranteed residual value;

VIII - conditions for the eventual replacement of the leased goods, including upon the occurrence of contingent events, for others of the same nature, which better serve the lessee's needs, such replacement to be formalized by an amendment to the agreement;

IX - other responsibilities to be agreed arising from:

a) undue or improper use of the leased goods;

b) insurance coverage for risks on the leased goods;

c) damage done to third parties by the use of the leased goods;

d) burdens arising from defects of the leased goods;

X - the lessor's ability to inspect the leased goods and demand from the lessee the adoption of measures required to maintain the integrity of the leased goods;

XI - the lessee's obligations in the event of:

a) default, limited the fine to 2% (two per cent) of the value in delay

b) destruction, death or disappearance of the leased goods;

*Composition
altered by the
Ordinance #
2,659 of
October 28th
1999*

XII -the lessee's ability to transfer to third parties in the country, with the lessor's prior and explicit assent, its rights and duties arising from the agreement, with or without joint and several responsibility.

Art. 8 - Agreements shall establish the following minimum lease duration:

I - for finance leases:

a) 2 (two) years, counted from date of delivery of the leased goods to the lessee, instrumentalized in a statement to the effect of acceptance and receipt of goods, and the date of the last leasing payments , as regards goods with useful life time equal to or shorter than 5 (five) years;

b) 3 (three) years, according to the term duration definition as set above, for other goods;

II - for operational leases, 90 (ninety) days.

Art. 9 The establishment of exchange-rate related clause is allowed in the lease agreements whose acquisition has been made with funds arising from loans taken directly or indirectly abroad.

*Composition
altered by the
Ordinance #
3,175 of
February 20th
2004*

Art. 10 - Lease agreements shall be considered as a sale agreement if the purchase option has been exercised prior to the respective term set under art. 8 hereof.

CHAPTER V

Of Lease Agreements

Art. 11 -May be the object of lease domestically or foreign equipment and real state acquired by the lessor entity for the lessee's use, according his specifications.

Art. 12 - It is permitted lease agreements with individuals and companies as lessees.

Art. 13 - Lease agreements with the seller of the lease goods or with entities affiliated to or interdependent with same may only be agreed as finance lease, with the application of the conditions set forth hereunder.

§1. The operations addressed under the present article may only be entered into with companies as lessees.

§2. Multiples banks with investment, development and/or real state credit portfolios, investment banks, development banks, savings banks and real state credit societies may also perform the operations addressed under the present article.

Art. 14 - The lessor entity may, in the events of return or recovery of the goods let:

I - maintain the goods as fixed assets, for the maximum period of 2 (two) years;

II - sell or new lease agreement to third parties.

Sole paragraph. The contents of the present article shall also apply to goods received as payment.

CHAPTER VI

Of Sub-Lease

Art. 15 - Multiple banks with a lease portfolio and lease societies may enter into lease agreements with entities domiciled abroad, with the single aim of subsequently sub-lease such goods to domestic companies.

Sole Paragraph. Lease agreements addressed under the present article shall be subject to register on the Central Bank of Brazil.

Art. 16 - Multiple banks with a lease portfolio and lease societies may acquire, in the domestic marketplace, rights and duties arising from lease agreements entered into with foreign entities with the single aim of subsequently sub-lease such goods, as set forth under the above article.

Art. 17 - Sub-lease agreement are forbidden where direct or indirect affiliation or interdependence exists between the lessor domiciled abroad and the sub-lessee domiciled in Brazil, pursuant to art. 27 of the present Regulation.

Art. 18 - Multiple Banks with a lease portfolio and lease societies shall pass through to sub-lessees domiciled in Brazil, under finance lease agreements, executed pursuant to the present Regulation, all costs, fees, taxes, commissions and other expenses relative to the acquirement of the goods leased as well as any other conditions set under the agreement entered into with the foreign entities, accrued of compensation, including compensation arising from the eventual acquirement of rights and duties arising from agreements, and such expenses and burdens may accrue the cost of the leased goods.

CHAPTER VII

Of the Sources of Funds

Art. 19 - Leasing societies may employ in their activities, in addition to own resources, those from:

I - loans made abroad;

II - loans and financing from domestic financial institutions, including pass-through of foreign funds;

III - official financial institutions, destined for pass through to specific programs;

IV - placement of public or private debentures and promissory notes destined to the market;

V - assignment of lease agreements, as well as of the credit rights arising there from;

VI - interbank deposits, pursuant to the regulations in force;

VII - other forms of collection of funds, as authorized by the Central Bank of Brazil.

Art. 20 - Leasing societies and financial institutions authorized to perform the operations addressed hereunder may take loans abroad, with the following purposes:

I - funds to acquire goods for the purpose of lease;

II - acquirement of credit rights arising from lease agreements that contain exchange rate adjustment clauses;

III - acquirement of lease agreements that contain exchange rate adjustment clauses as per art. 22 of the present Regulation.

Art. 21 - Leasing societies may obtain loans, credits, transfer of funds and guarantees from collegued or interdependent financial institutions, provided the corresponding liens shall be the ones normally charged in similar operations performed with third parties.

*Composition
altered by the
Ordinance #
2,595 of
February 25th
1999*

Art. 22 - Assignment and acquisition operations regarding lease agreements in the domestic marketplace, with the exception of those mentioned under art. 13 hereof, shall be restricted to multiple banks with a lease portfolio and lease societies.

Sole paragraph. Assignment and acquisition of agreements referred to under art. 13 of the present Regulation between institutions authorized to perform such activities is permitted.

Art. 23 - Acquisition of lease agreements whose goods have been acquired with funds arising from foreign loans or that contain exchange rate adjustment clauses, as well as of the credit rights arising from same, may only be performed with the employment of funds arising from loans obtained abroad.

Art. 24 - Lease societies may offer as collateral for loans taken in the domestic or foreign markets, pledge of credits rights arising from lease agreements.

Art. 25 - The assignment of lease agreements, as well as of the credit rights arising from same, to entities domiciled abroad shall depend on the previous authorization of the Central Bank of Brazil.

Art. 26 - Multiple banks with investment or development portfolios, investment banks and development banks may employ funds arising from foreign loans taken pursuant to Ordinance # 63 of Aug. 21, 1967, in lease agreements as addressed by art. 13 of the present Regulation.

§1. Operations performed pursuant to the present article shall only be entered into with legal entities as lessees.

§2. The portion of foreign funds amortized by the settlement of considerations may be applied to new lease agreements, to passthroughs to customers, or to alternative applications as authorized for foreign funds destined to passthroughs.

§3. Observed the minimum terms set forth under art. 8, item I, of the present Regulation, operations referred to under the present article may only be performed at terms equal to or shorter than those of the final amortization of the loan taken abroad, whose funds shall remain in Brazil pursuant to the foreign repayment period admitted by the Central Bank of Brazil at the time of the authorization of its entry.

CHAPTER VIII

Of Affiliation and Interdependence

Art. 27 - For the purposes of art, 2, Paragraph 1, of Law # 6,099 of Sep. 12, 1974, and of the present Regulation, affiliated or interdependent shall be the entity:

I - in whom the lessor entity has a direct or indirect stake equal to or in excess of 10% (ten percent);

II - in whom the managers of the lessor entity, their spouses and respective relatives up to twice degree have, as a group or individually, directly or indirectly, a stake equal to or in excess of 10% (ten percent);

III - in whom shareholders with a stake equal to or in excess of 10% (ten percent) of the lessor entity have, directly or indirectly, a stake equal to or in excess of 10% (ten percent);

IV - who has, directly or indirectly, a stake equal to or in excess of 10% (ten percent) of the lessor entity;

V - whose managers, and their spouses and relatives up to twice degree as a group or individually, directly or indirectly, a stake in the lessor entity equal to or in excess of 10% (ten percent);

VI - whose partners, quotaholders or shareholders with a stake equal to or in excess of 10% (ten percent) also have, directly or indirectly, a stake in the lessor entity equal to or in excess of 10% (ten percent);

VII - whose managers be, partially or in their entirety, the same ones as for the lessor entity.

CHAPTER IX

Prohibitions

Art. 28 - Lease societies and the financial institutions referred to under art. 13 of the present Regulation are barred from entering into lease agreements with:

I - affiliated or interdependent natural and legal entities;

II - managers and their spouses and relatives up to twice degree;

III - the manufacturer of the goods let.

Art. 29 - Lease societies shall not enter into loan agreements with non-financial natural and legal entities.

CHAPTER X

Final Considerations

Art. 30 - The Central Bank of Brazil may set criteria for the distribution of considerations throughout the term of the agreement, in the light of appropriate compliance with the minimum terms set forth under art. 8 of the present Regulation.

Art. 31 - Lease societies' available funds, where not kept in currency, may be freely invested in the financial market, pursuant to the limits and other regulatory norms relative to each type of financial investment.

Art. 32 - The norms in force for financial institutions in general shall apply to lease societies, as regards the Central Bank of Brazil's exclusive jurisdiction for the award of authorizations contemplated under item X of art. 10 of Law # 4,595 of Dec. 31, 1964, as well as for the confirmation in any position in the management of said societies, including consultative, fiscal or similar bodies, pursuant to said Law and subsequent regulations.

Art. 33 - Agreements performed that in disagreement to comply with the contents of the present Regulation shall not be construed to be lease agreement.