

Pursuant to Article 13h, paragraph 5 of the Financial Leasing Law ("RS Official Gazette", no. 55/2003 and 61/2005), the Governor of the National Bank of Serbia hereby issues the following

D E C I S I O N
ON DETAILED CONDITIONS AND MANNER OF CONDUCTING
SUPERVISION OF LESSORS' OPERATIONS

1. This decision governs detailed conditions and manner of conducting supervision of lessors' operations by the National Bank of Serbia, and the procedure for taking the measures referred to in Article 13h, paragraph 4 of the Financial Leasing Law (hereinafter: Law).

2. The National Bank of Serbia shall conduct the supervision referred to in Section 1 hereof (hereinafter: supervision):

1) off-site, by reviewing reports and other documentation, and other data delivered by the lessor to the National Bank of Serbia, or available to the National Bank of Serbia (hereinafter: off-site supervision);

2) on-site, by examining books of account and other documentation of the lessor (hereinafter: on-site supervision).

The National Bank of Serbia can examine books of account and other documentation, and persons which have business relations with the lessor, for the purpose of checking the data it acquires during supervision.

3. On-site supervision shall be conducted by the National Bank of Serbia staff designated in a resolution by the Governor of the National Bank of Serbia or a person authorized by the Governor (hereinafter: staff).

The resolution referred to in paragraph 1 hereof shall specify the lessor in which on-site supervision shall be conducted, and the subject of that supervision.

If during on-site supervision it is established that the subject of supervision, as specified in the resolution referred to herein, should be expanded, such resolution shall be amended accordingly by the Governor of the National Bank of Serbia (hereinafter: the Governor) or a person authorized by the Governor.

4. In the procedure of conducting supervision, records of conducted supervision (hereinafter: records) shall be compiled and delivered to the lessor.

The lessor may submit its remarks on the records within ten days from the day of delivery of records.

By conducting supervision, the National Bank of Serbia shall check the lessor's allegations contained in its remarks on the records. If the check of allegations reveals that the factual state of things differs significantly from that specified in the records, records shall be supplemented and this supplement delivered to the lessor within 10 days following the day of delivery of remarks on the records. The lessor may then submit its remarks on the supplement to the records as well, within five days from the day when such supplement was delivered to it.

5. The National Bank of Serbia shall issue a conclusion whereby further supervision proceedings shall be discontinued in the event that:

- no illegalities or irregularities have been established in the records, or
- the lessor eliminates established illegalities or irregularities during such procedure, or
- the lessor, within the time period prescribed herein, reasonably disputes by means of its remarks the findings from the records, or from the supplement to the records establishing illegalities and irregularities in its operations.

The conclusion referred to in paragraph 1 hereof shall be delivered to the lessor.

6. If the lessor fails to deliver its remarks on the records or any supplements thereto within the time period prescribed herein, or in the delivered remarks fails to reasonably dispute the findings from the records, or any supplement thereto establishing illegalities and irregularities in its operations – the National Bank of Serbia shall take one of the following measures in respect of such lessor:

- it shall deliver a written warning notice to the lessor;
- it shall deliver a letter of order to such lessor, with the possibility of pronouncing a fine in its respect;
- it shall render a resolution whereby the lessor shall be ordered to eliminate the established irregularities, with a possibility of pronouncing a fine in respect of both the lessor and its managing board member, or person with special authorizations and responsibilities of the lessor;
- it shall render a resolution whereby the lessor's financial leasing license shall be revoked.

The measures referred to in paragraph 1 hereof shall be taken by the Governor or a person authorized by the Governor.

7. The National Bank of Serbia shall render a decision on any measures referred to in Section 6 hereof on the basis of appraisal of:

- illegalities and irregularities established in the lessor's operations;
- readiness and capability demonstrated by such lessor's managing bodies, or persons with special authorizations and responsibilities, to eliminate established illegalities and irregularities.

For the purposes hereof, illegalities and irregularities in the lessor's operations shall mean any lessor's action in breach of the law, or any action that may constitute a threat to its financial standing.

8. In appraising the illegalities and irregularities established in the lessor's operations, the following issues shall particularly be subject to appraisal:

- legality of its operations;
- its financial standing;
- degree of its exposure to individual types of risk, and in particular to credit risk, residual value risk, operational risk, liquidity risk etc.;
- effect of the committed illegality and irregularity on its future financial standing and business reputation;
- number and mutual dependence of committed illegalities and irregularities;
- duration and frequency of illegalities and irregularities.

9. In appraising the readiness and capability demonstrated by the lessor's managing bodies, persons with special authorizations and responsibilities, to eliminate established illegalities and irregularities, the following issues shall particularly be subject to appraisal:

- activities they have taken and their efficiency in eliminating any previously established illegalities and irregularities, and, in particular, in implementing the measures referred to in Section 6, paragraph 1, indents 1 to 3 hereof;
- their capacity to monitor and manage operational risks;
- level of their cooperation with the National Bank of Serbia and staff during supervision.

10. A written warning notice shall be delivered to the lessor if the illegalities and irregularities established in its operations do not have a significant or direct effect on its financial standing, but could have such effect if they are not eliminated.

The written warning notice referred to in paragraph 1 hereof shall contain a time period within which the lessor is required to eliminate any established illegalities and irregularities, and the time period within which it is required to notify the National Bank of Serbia of any activities it has taken in order to eliminate such illegalities and irregularities.

11. The letter of order shall be delivered to such lessor:

1) that has already been delivered a written warning notice referred to in Section 10 hereof, but it has failed to act in conformity with that warning notice within the time period specified in Section 10 hereof, or

2) in which supervision has revealed illegalities and irregularities referred to in Section 7 hereof.

The letter of order referred to in paragraph 1 hereof shall contain in particular:

1) overview of the lessor's operations not managed in the prescribed manner;

2) evidence of such lessor's actions that have led to an unsatisfactory state of its operations;

3) time period within which the lessor is required to eliminate established illegalities and irregularities, and the time period within which it is required to notify the National Bank of Serbia of any activities it has taken in order to eliminate such illegalities and irregularities.

In addition to the letter of order, the fine referred to in Section 13 hereof can also be pronounced in respect of the lessor.

12. The resolution whereby the lessor is ordered to eliminate established irregularities shall be issued in respect of the lessor and managing body member, and/or person with special authorizations and responsibilities of the lessor:

1) to which a written warning notice or letter of order referred to in Sections 10 and 11 hereof, respectively, has already been sent, but it has failed to act in conformity with that warning notice or letter of order within the time periods specified therein, or

2) in which supervision has revealed illegalities and irregularities referred to in Section 7 hereof which, if not eliminated, could lead to serious disruptions in operations.

By means of the resolution referred to in paragraph 1 hereof, the lessor shall be ordered to implement one or several activities that would ensure efficient elimination of established illegalities and irregularities.

The resolution referred to in paragraph 1 hereof shall specify the manner and time periods in which the activities referred to in paragraph 2 thereof shall be taken, and the manner and time periods in which the National Bank of Serbia is to be notified of the execution of orders from that resolution.

13. By means of the resolution referred to in Section 12 hereof, a fine may be pronounced which, if pronounced in respect of the lessor, shall amount to at least 3% and not more than 20% of the minimum amount of pecuniary part of equity capital prescribed for lessors in Article 10, paragraph 2 of the Law, and which, if pronounced in respect of a managing body member, and/or person with special authorizations and responsibilities of the lessor, shall amount to at least the salary received by this person in the preceding month, and not more than the sum of its salaries in the six months immediately preceding the day of issuing this resolution, according to the criteria (appraisal) referred to in Sections 7 to 9 thereof.

At the request of the National Bank of Serbia, the lessor shall be required to deliver, within a specified time period, accurate information on the amount of salary earned by the persons referred to in paragraph 1 hereof, and data on opened current accounts such persons hold with banks.

14. The lessor shall be required to deliver to the National Bank of Serbia evidence of crediting the fines referred to in Section 13 hereof to the gyro-account of the National Bank of Serbia within 15 days following the day of receiving the letter of order referred to in Section 11, or the resolution referred to in Section 12 thereof, at the latest. Otherwise, debt enforcement shall take place.

15. In addition to notification of acting in conformity with the pronounced measure, the lessor in whose respect one of the measures referred to in Section 6, paragraph 1, indents 1, 2 and 3 hereof has been pronounced shall be required to deliver the report on eliminated illegalities and irregularities, with supporting evidence enclosed, to the National Bank of Serbia within the time periods specified in Section 10, paragraph 2, Section 11, paragraph 2, indent 3 and Section 13, paragraph 3 thereof.

The National Bank of Serbia can request the lessor to supplement the report referred to in paragraph 1 hereof, and/or provide additional explanations.

Following the receipt of the report referred to in paragraph 1, and/or any supplement to the report referred to in paragraph 2 hereof, the National Bank of Serbia shall conduct supervision in order to ascertain whether established illegalities and irregularities have been eliminated. If it finds that

established illegalities and irregularities have been eliminated, the National Bank of Serbia shall issue a conclusion on the discontinuation of supervision proceedings. If it finds that established illegalities and irregularities have not been eliminated, the National Bank of Serbia shall take adequate measures in respect of the lessor in conformity herewith.

In the event that the National Bank of Serbia finds that established illegalities and irregularities have been eliminated, but that new illegalities and irregularities have been committed, the National Bank of Serbia shall issue a conclusion on the discontinuation of these supervision proceedings and shall immediately conduct new supervision.

16. The resolution on the revocation of financial leasing license, which is rendered by the Governor, shall be rendered in all cases set out in Article 13i, paragraph 1 of the Law.

17. For the purposes hereof, a lessor shall be deemed not to have allowed the National Bank of Serbia to conduct supervision of its operations if:

- it has failed to deliver all requested data and evidence within the specified time period, and, in particular, the data that the lessor is required to have subject to regulations or rules of profession;
- it has intentionally or by gross negligence delivered inaccurate data;
- it has failed to provide necessary conditions for the staff to conduct supervision.

For the purposes hereof, a lessor shall be deemed not to have submitted prescribed reports and data on its operations to the National Bank of Serbia if it has failed to deliver two successive reports that it is required to periodically deliver in conformity with regulations, and if, at repeated request of the National Bank of Serbia, it has failed to deliver the requested reports or data within the specified time period.

18. The provisions hereof shall apply to the lessors referred to in Article 10 of the Law, and to companies that engage in the activity of lessors, and that have brought their operations in compliance with the provisions of the Law within the time period prescribed in the Law.

19. This decision shall enter into force on the eight day following the day of its publication in the “RS Official Gazette”.

Dec. no. 91
December 29, 2005
B e l g r a d e

G o v e r n o r
of the National Bank of Serbia

