

# LEASING CONTRACTS: CROATIAN LAW IN COMPARATIVE CONTEXT



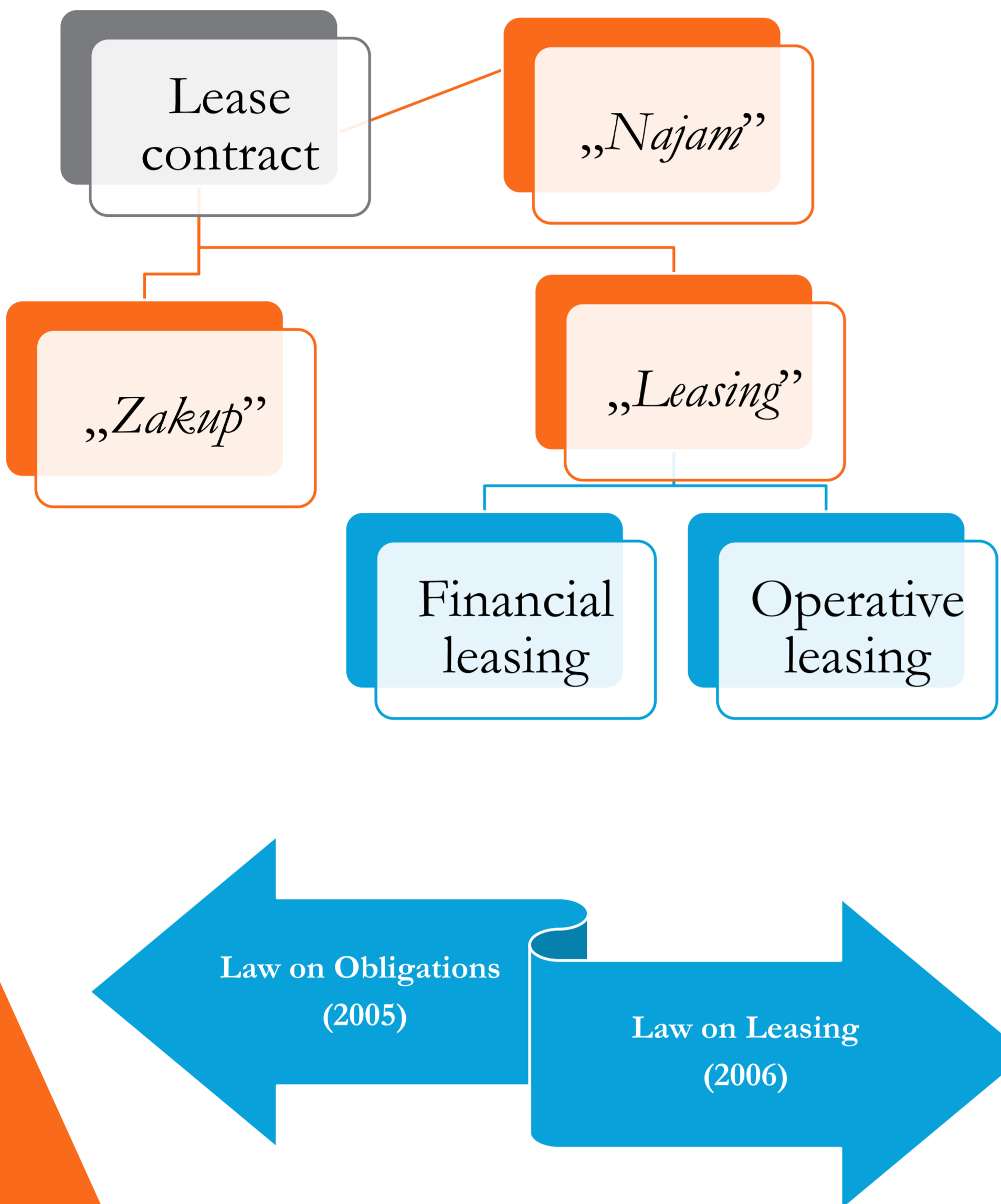
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**Lease contracts in national laws of European countries**

Lease contract is commonly defined as a juridical act which creates obligations and corresponding rights between the lessor and the lessee, as a contract granting a temporary right of use of things against remuneration. Differences between specific types of lease contracts are drawn depending on whether the lease objects are movables (goods) or immovables, consumable or durable things. Lease contracts are furthermore distinguished with regard to the nature of the lessee's right of use, to the extension of the lessee's powers on the lease object. Moreover, lease contracts where the *causa contrabendi* is not merely the use of things in the sense of enjoying the benefits that normally flow from physical control of things, but the financing of this use, are identified as a specific type of a leasing contract with a financing purpose. These leases with a financing purpose usually involve a triangular relationship between the supplier of the lease object, the lessor and the lessee.



## Distinction between a right to use and a right to use and fruits in civil codes

- *Mietvertrag* (§535 BGB) and *Pachtvertrag* (§581 BGB)
- *Bestandvertrag* (§1090 ABGB); *Mietvertrag* and *Pachtvertrag* (§1091 ABGB)
- *Mietvertrag* (Art.253 OR) and *Pachtvertrag* (Art.275 OR)
- *locazione* (art.1571 ICC) and *affitto* (art.1651 ICC)
- *najam* (art.550 ZOO) and *zakup* (art.519 ZOO)

## No distinction between a right to use and a right to use and fruits in civil codes

- *contrat de louage* (art.1709 FCC)
- *hire* (UK common law)
- *Huur* (art.7:201 BW)
- IV.B.–1:101(2) DCFR

## Common features

- Exclusively contractual relationship
- Temporary character of the right to use the leasing object
- Remuneration as a prerequisite
- Lessor needs not to be the owner
- Movables and immovable property
- Non-consumable things

## Leasing contract with a financial purpose as a nominate contract

- Estonia, France, Germany, Greece, Hungary, Netherlands, Poland

## Leasing contract with a financial purpose as an innominate contract

- Austria, Czech Republic, Denmark, Norway, Slovakia, Sweden, Switzerland, United Kingdom

## TERMINATION OF THE LEASE CONTRACT DUE TO PAYMENT DEFAULT

If the lessee makes two consecutive late payments, the lessor may terminate the lease contract and the lessor shall be entitled to the due amount and other receivables based on the lease contract. The lease agreement refer shall still be valid if the lessee pays the due amount prior to the termination of the contract. If the lease contract is terminated, the lessor shall be entitled to take away the leased object from the lessee.

## RETURN OF THE LEASED OBJECT

When the lease contract expires, the lessee shall, with no delay, return the leased object to the lessor in the manner and in the condition stipulated in the lease contract, unless, pursuant to the lease contract, the lessee meets the conditions for ownership of the object, contract extension or if a new lease contract is signed for the same leased object. The lessee shall not be responsible for the wear and tear of the leased object, nor for any changes made to it in agreement with the lessor.

## RESPONSIBILITY OF THE SUPPLIER TO THE LESSEE

If the supplier fails to deliver the object to the lessee, delivers late or if the object has damage, the lessee shall have rights towards the supplier which, pursuant to the regulations on civil obligations, it would have if it were in agreement directly with the supplier. If the lessor has chosen the supplier, the lessor shall be jointly responsible to the lessee if the leased object is not delivered, delivered late or has a damage.

## FINANCIAL AND OPERATIVE LEASING CONTRACT IN CROATIAN LAW ON LEASING

According to art.35 of ZOL, **LEASING CONTRACT** is a contract under which the lessor is obligated to obtain the leased object from the supplier and to assign the right to the lessee to use such object during a specified period, where the lessee is obliged to pay a specified fee to the lessor.

Leasing contract must be in writing and contain provisions on several elements proscribed in the art. 36 ZOL, one of them being the specification of the leasing operation as a financial or as an operative leasing. Therefore the leasing contracts in Croatian law are further divided into financial leasing contracts and operative leasing contracts.

Characteristics of the **FINANCIAL LEASING CONTRACTS** are: lessee pays a specified fee to the lessor during the use of the leased object and such fee takes into account the overall value of the leased object; the lessee bears the depreciation costs of the leased object and by applying a purchase option may acquire a right to ownership of the leased object for a specified price (which at the moment of exercising such option, is lower than the actual value of the leased object).

Typical for **OPERATIVE LEASING CONTRACT** is the following: the lessee pays a specified fee to the lessor during the use of the leased object, and such fee does not have to take into account the overall value of the leased object; the lessor bears the depreciation costs of the leased object and the lessee does not have a purchase option.

In both types of the leasing contract, the lessee's right to use the leased object includes also the right to fruits of the leased object. In both types of the leasing contract, an important element is the acquisition of ownership of the lease object by the lessor on the basis of a supply contract with the supplier which is nominated by the lessee.

## THIRD PARTY CLAIM ON THE LEASED OBJECT

The lessor shall be responsible in front of the lessee if there is a third party claiming lien to the leased object or to a part of it, which excludes or limits the rights of the lessee, unless the lessee was previously informed and agreed to be assigned a leased asset encumbered with such lien. If it is determined that the claim of the third party totally excludes the right of the lessee over the leased asset, the lease agreement shall be terminated and the lessor shall compensate the lessee for the damage. When the claim by a third party only limits the rights of the lessee, the lessee may choose to terminate the agreement or request lower lease payments, and in any case, to request compensation of damage.

## Art.14 ZOO

- (1) The provisions of this Law referring to contracts shall apply to all types of contracts, unless it is explicitly provided otherwise for commercial contracts.
- (2) Within the meaning of this Law, commercial contracts are contracts entered into by traders between themselves in pursuing activities that fall under the scope of activities of at least one of them or that are related to the pursuit of such activities.
- (3) Any provisions of this Law that relate to contracts shall also apply adequately to other legal transactions.

**LEASING ACTIVITIES MAY BE PERFORMED ONLY BY:**

- a leasing company;
- a bank, under terms and conditions defined in the regulations on the banking operations.

## A LEASING COMPANY

A leasing company is a legal entity registered in the Republic of Croatia and entered into the court register on the basis of a license issued by the Croatian Financial Services Supervisory Agency. The leasing company may be incorporated as a shareholding company and/or as a limited liability company. The leasing company may not be recorded in the court register unless it obtained the license. The term "leasing" and its derivatives in the company name may be recorded in the court register and may be used in legal transactions only by a company that has obtained the license.

## SUBLEASE

The lessee may fully or partially assign the leased object for use to a third party only upon written consent by the lessor. The lessor may terminate the lease agreement and request damage compensation if the lessee assigns the leased asset for use to a third party without lessor's consent. Assignment of the leased asset for use to a third party shall not release the lessee from its obligations stipulated in the lease agreement.