

CHAPTER 417

THE FINANCIAL LEASING ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 417

THE FINANCIAL LEASING ACT

An Act to provide for financial lease transactions and for related matters.

[1st July, 2008]

[GN. No. 95 of 2008]

Acts Nos.

5 of 2008

11 of 2010

PART I PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Financial Leasing Act.

Application

2.-(1) This Act shall apply to Mainland Tanzania as well as to Tanzania Zanzibar.

(2) This Act shall apply to any financial lease of an asset where-

- (a) the asset is within the United Republic of Tanzania;
- (b) the lessee's centre of main business is within Tanzania; or
- (c) the financial leasing agreement provides that Tanzanian law governs the transaction.

Interpretation

3. In this Act, unless the context otherwise requires -

“asset” means a property that is non consumable, used in the trade or business of the lessee, and includes-

- (a) personal property that can be legally sold or imported into the United Republic of Tanzania, that becomes the subject matter of a financial lease agreement, whether or not the property has become a fixture to or incorporated in land;
- (b) immovable property;

(c) trade marks and copyrights or other moral rights to intellectual property;

(d) computer software;

(e) capital good,

but does not include shares, investment securities, any financial instrument, government bonds and securities, or any other moveable or immovable asset whose free circulation in the United Republic of Tanzania is restricted by law;

“assignment” means the transfer of rights and obligations, including transfer of legal title and ownership rights to assets under a financial lease agreement by a lessor to a third party and includes assignment of rights on rent receivables;

“centre of main business” means a place where a person conducts the administration of his business on a regular basis or in the absence of proof to the contrary, the person’s registered office or habitual residence;

“financial lease agreement” means an agreement for financing by the lessor in form of an asset to be used for business purposes by a lessee;

“lessee” means a natural person or legal person, who under a financial lease agreement, obtains from another person known as the lessor, the right to possession and use of an asset in return for rental payments over an agreed period of time, and includes its successors and assignees;

“lessor” means a person legally registered or licensed to engage in financial leasing business, who acting under a financial lease agreement, conveys to another person known as the lessee, for an agreed period of time, the right to possession and use an asset in return for rental payments and includes its successors and assignees;

“Minister” means the Minister responsible for finance;

“residual value” means the actual value of the asset at the expiry of the lease term, which can be estimated at the inception of a lease;

“secondary lease” means a contract under which a leased asset is transferred to a new lessee upon early termination

of a financial lease and the lessor assumes the obligations of the supplier in relation to the subsequent lessee;

“sub-lease” means a contract under which a lessee under a financial lease agreement, leases a leased asset to a sub-lessee for the term and under the conditions set forth in the financial lease agreement subject to obtaining the consent of the lessor to sub-lease;

“supplier” means a person, company or firm other than the lessor or lessee, from whom a lessor acquires an asset to be leased under a financial lease;

“supply agreement” means an agreement under which a lessor acquires an asset for lease under a financial lease agreement whether the acquisition is by way of sale or purchase contract and the lessor acquires legal title over the asset; and

“rentals” means the total sum payable by the lessee under a financial lease agreement, excluding any sum payable as taxes, management fee, service charge, penalty, or compensation or damages for breach of the agreement.

PART II

FORMATION OF FINANCIAL LEASE AGREEMENT

Financial lease
agreement

4.-(1) A financial lease agreement shall be made between two parties, where the lessor in exchange for money consideration in the form of periodic payments, leases an asset to another party known as the lessee for the purposes of the lessee's business operations.

(2) A lessee shall not use any leased asset for business operation under this Act, unless he complies with the provisions of this Act.

(3) The lessee shall identify and choose a supplier of an asset for the purpose of enabling the lessor to acquire asset from a supplier for leasing to the lessee.

(4) The lessor shall, after acquiring an asset under subsection (3), retain full title of the asset during the period of lease.

(5) The supplier of a leased asset shall transfer the title to the leased asset to the lessor for purpose of delivery of the asset to the lessee for possession and use.

(6) Notwithstanding subsection (5), the lessor and supplier may agree that the supplier shall deliver the asset directly to the lessee.

(7) At the expiry of the period of the financial lease agreement and subject to the consent by the lessor, the lessee may exercise an option to purchase the asset at a price to be agreed upon by the parties or may return the asset to the lessor, or request renewal of the lease agreement:

Provided that, under a financial lease agreement the purchase price to be agreed upon by the parties upon expiry of the lease term shall be based on the residual value of the asset at the expiry of the lease term.

Characteristics
of financial lease
agreement

5.–(1) The financial lease agreement under this Act shall be made under the circumstances that the–

- (a) lessee specifies the asset without relying primarily on the skill and judgment of the lessor;
- (b) lessor acquires the asset or the right to possess and use the asset in connection with the lease or a previous lease;
- (c) supplier of asset for financial lease is knowledgeable that the asset is being acquired for purposes of a financial lease; and
- (d) rentals under the financial lease agreement is calculated taking into account the amortisation of the whole or a substantial portion of the cost of the asset.

(2) For avoidance of doubt, a financial lease agreement shall be a special contract that constitutes neither a rental, a sale, a rental-sale, a hire-purchase, a sale with preservation of property rights, nor a credit sale or sale by payments made in installment of which operations are excluded from the scope of the existing laws.

Formalities of contract

6.-(1) An acquisition for an asset under financial lease shall be made by a financial lease agreement between the lessor and the lessee subject to the provisions of this Act.

(2) Capacity to contract, offer and acceptance in a financial lease agreement shall be regulated by the law of contract concerning capacity to contract and formation of contracts and parties to a financial lease agreement shall retain maximum freedom to contract.

(3) Where an asset is to be acquired by the lessor before a financial lease agreement is finally made, the prospective lessor and lessee may enter into a written agreement which shall contain the following-

- (a) a statement to the effect that, the parties have agreed to enter into a financial lease agreement;
- (b) a description of the asset to be acquired under the lease, the estimated price of the asset and the total lease rentals payable by the prospective lessee;
- (c) a statement that, the asset is being acquired by the prospective lessor from the supplier in connection with the financial lease agreement which, to the knowledge of the supplier, is to be made between the prospective lessor and lessee; and
- (d) a statement as to whether or not the prospective lessee has selected the asset and selected the supplier without relying on the skill and judgment of the prospective lessor.

Subject matter of financial lease agreement

7. The asset that forms the subject matter of financial lease agreement may be either existing goods, owned or possessed by the lessor, or goods to be manufactured or acquired by the lessor from a supplier for the purpose of making agreement with the lessee.

Lease rentals

8. The payment for use of leased asset in an agreement for financial lease shall be calculated primarily on the basis of harmonisation of the whole or substantial part of the value of the leased asset and a profit for lessor thereof, and the manner of rental payments may be determined or agreed between the parties.

Irrevocability of financial lease agreement

9. In a financial lease agreement, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement and the supply agreement have been made.

PART III

RIGHTS, OBLIGATIONS AND DUTIES

Rights and obligations of lessor

10.-(1) A lessor in a financial lease agreement shall have the following rights and obligations-

- (a) to grant the lessee quiet possession of the leased asset free from interference from any third party having or claiming a right in the leased asset, where the claim or right of the third party derives from a negligent or intentional act or omission of the lessor;
- (b) not to incur any liability in respect of defects in or unfitness of the leased asset for any particular purpose except as provided in this Act or in the financial lease agreement.

(2) Under the financial lease agreement, the liability of the lessor for defects in legal title to the leased asset shall not be limited by the agreement.

(3) Where the leased asset is not delivered to the lessee as a result of failure of the lessor to-

- (a) enter into a sales contract with the supplier on time; or
- (b) make payment to the supplier on time, the lessee's obligations under a financial lease agreement shall be suspended.

(4) Notwithstanding subsection (3), the lessee may give the lessor extension of time during which the lessor may comply with his contractual obligations.

(5) Upon the occurrence of the event in subsection (3) of this section, the lessee may-

- (a) request that, the financial lease agreement be fulfilled in its entirety and that a penalty be paid, covering the actual losses that have resulted from the delay; or

(b) demand that, the financial lease agreement be terminated with the lessor paying any damages or losses incurred by the lessee as a result of the lessor's failure to comply with contractual obligations.

(6) Except as provided for under this Act, the lessor shall not be liable to the lessee for damage caused to a leased asset.

(7) Notwithstanding subsection (6), the lessor may be liable to the lessee for damage caused by willful infringement or unlawful acts of the lessor which result in-

- (a) damage to or defects in the leased asset;
- (b) curtailment of the lessee's rights in relation to a third party; or
- (c) infringement of the lessee's peaceful and lawful use of the leased asset.

(8) The lessor shall not, in his capacity as lessor, be liable to third parties for death, personal injury or any damage to an asset caused by the use of the asset by the lessee.

Duties of supplier **11.**-(1) For the purposes of this Act, the supplier of asset to a lessor for financial lease shall owe the lessee the same obligations as regards quality and fitness of the asset that he owes to the lessor under the supply agreement and shall be liable to the lessee for material defects of the leased asset.

(2) The benefit of a supplier's promises to the lessor under the supply agreement and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply agreement, extend to the lessee to the extent of the lessee's interest under a financial lease related to the supply agreement.

(3) The lessee may take legal action directly against a supplier of the asset for financial lease in respect of material defects in the leased asset, and a supplier of goods shall not be liable to both the lessor and lessee in respect of the same damage.

(4) Where the lessee fails to enforce the supplier's promises or warranties against the supplier as a result of the absence of privity of contract between the lessee and the supplier, the lessor shall be obliged to take commercially reasonable steps to assist the lessee.

(5) This section shall not be construed as permitting the lessee to terminate or rescind the sale agreement without the consent of the lessor.

Rights and obligations of lessee

12.-(1) The lessee shall have and enjoy quiet possession of the leased asset during the entire period of the lease as provided for in the financial lease agreement.

(2) The lessee shall use the asset according to the terms and conditions of the lease agreement.

(3) The lessee's obligation to the lessor under a financial lease agreement shall be irrevocable once the contract is concluded.

(4) Under a financial lease agreement, the lessee shall be responsible for proper maintenance and adequate insurance cover of the asset as may be mutually agreed upon between the parties.

(5) The lessee shall take proper care of the asset, use it in a reasonable manner consistent with that of normal use and keep it in the condition in which it was delivered, subject to fair wear and tear and any modification of the asset agreed upon by the parties.

(6) As long as the lessee performs his obligations in accordance with the terms of the lease agreement, the agreement shall not be terminated unilaterally, even if the lessor is declared bankrupt.

(7) Subject to subsection (4) of this section, the lessee shall, at the expiration of the financial lease agreement, return the asset to the lessor, unless the lease is further renewed with the consent of the lessor or the lessor agrees to its purchase by the lessee.

(8) Without prejudice to the lessor's rights as against those of the lessee or the supplier, the lessee shall have the right to

take direct legal action against the supplier in order to hold the supplier to the satisfactory performance of the supplier's contractual obligations and to obtain from the supplier compensation for damages resulting from his default.

(9) The lessee shall have no other claim against the lessor for non-delivery, delay in delivery or delivery of a non-conforming asset except to the extent to which the same results from the circumstances stipulated under subsection (7) of this section.

(10) Where owing to default on the part of the lessee, the sales contract between the supplier and the lessor is subsequently terminated, the lessor shall retain the right to demand payments due from the lessee under the financial lease agreement so long as the lessor acted in good faith and payment was made by the lessor for purchase of the asset at the request of the lessee.

(11) The lessee in a financial lease agreement may lease the leased asset to a sub-lessee for the terms and conditions set forth in the financial lease agreement provided that, he obtains the consent of the lessor to sublease the leased asset.

Repossession

13.—(1) Where the lessee defaults in the payment of rentals in accordance with the financial lease agreement, the lessor may recover unpaid rents together with interest and damages.

(2) In the event of—

- (a) death, bankruptcy, liquidation or dissolution of the lessee;
- (b) expiry of the financial lease agreement; or
- (c) breach of any terms of the financial lease agreement by the lessee, including default in one rental payment of any amount not remedied within a period as may be stipulated in the lease agreement in the absence of any such stipulation, within a period of thirty days,

the lessor shall have a right to repossess the leased assets which shall not be included in the assets of any receivership or pool of assets to be disposed of by the creditors of the lessee.

(3) Subject to subsection (4), where the lessee defaults in the payment of rentals in accordance with the financial lease agreement, or commits another breach, the lessor may terminate the lease agreement, and after the termination-

- (a) recover possession of the asset; and
- (b) recover damages as will place the lessor in the position in which he would have been had the lessee performed the financial lease agreement in accordance with its terms.

(4) Where the lessor becomes entitled to repossess the asset leased through breach of agreement by the lessee or otherwise through operation of law, and the lessee does not deliver the asset after having been given due notice to surrender the asset to the lessor, the lessor may-

- (a) on his own motion, repossess the leased asset provided that in doing so the lessor does not commit a breach of peace; or
- (b) apply for an order for repossession or recovery of the leased asset in a court.

(5) The right of the lessor to repossess shall not prejudice other remedies available to the lessor under any other law, including but not limited to, the right to recover damages for loss caused by non-compliance with the terms of the financial lease agreement by the lessee.

(6) Where there is a repossession order under this section, the lessee shall, unless otherwise stipulated in the financial lease agreement, be responsible for the immediate payment of rents due for the remaining term of the lease agreement.

(7) The parties may, under a financial lease agreement, stipulate that the amount of future rents at a time of repossession shall be decreased by the fair value of the asset repossessed, less any administrative costs of the lessor, including legal and transportation costs.

(8) The lessor shall not be entitled to recover damages to the extent that, he has failed to take reasonable steps to mitigate the loss.

PART IV

THIRD PARTY CLAIMS AND INTERESTS

Assignment of financial lease agreement

14.—(1) The lessor may assign a financial lease agreement to a third party after he has informed the lessee of his intention in writing and may assign his rights on the rental receivables under the lease without requiring prior information to the lessee.

(2) The lessor shall be entitled to unilateral right to assign the lease agreement to third parties, provided that, the assignment does not infringe the lessee's right to the quiet enjoyment of the asset leased.

(3) A subsequent holder of a leasing contract shall have the same rights and obligations as that specified in the financial lease agreement or as provided by law in relation to the lessee, and the lessee shall continue to have the right to quiet enjoyment of the asset provided that the lessee performs his obligations under the financial lease agreement.

(4) The lessee may transfer the right to the use of the asset or any other rights under the financial lease agreement, only with the consent of the lessor and subject to the rights of third parties.

Third party claims and insolvency

15. Except as otherwise provided in this Act, a financial lease agreement shall be effective and enforceable according to its terms between the parties and against purchasers of the asset and creditors of the parties.

Non-registered lease

16. The title of the lessor or his assignee in the asset leased under the financial lease agreement shall prevail at times over claims by third parties including creditors of the lessee except as against a purchaser in good faith for value of the asset under a non-registered lease.

Action by third party

17.—(1) An action by a third party claiming right to the asset shall be brought against the lessor.

(2) The lessee shall inform the lessor of any impediment or disturbances by third parties to his quiet enjoyment of the asset.

(3) In the event of the lessee's failure or delay to inform the lessor as provided under subsection (2), the lessee shall be responsible for any charges or damages incurred by the lessor.

Repairing of damages

18.-(1) The lessee shall be responsible for repairing damage caused by third parties during the time the asset is in his possession.

(2) Where the lessee repairs damages under subsection (1), he shall have right to take legal action against the third parties to recover any expenses incurred as a result of his obligations to restore the condition of the leased asset or to pay any damages to the lessor.

Charge or encumbrance over leased asset

19. The lessee shall not create any charge or encumbrance over the leased asset during the term of the lease, and if created, the charge or encumbrance shall be void and the creditors of the lessee shall not be entitled to enforce the charge or encumbrance of the leased asset.

Priority of liens

20. Where an asset subject of financial lease agreement becomes attached to immovable property; and where the lessee under a financial lease agreement has creditors, the creditors of the lessee and the holders of the interest in land to which the leased asset becomes affixed take the rights subject to the financial lease agreement and cannot attach the lessee's interest.

PART V

REGISTRATION OF FINANCIAL LEASE AGREEMENTS AND LEASED ASSETS

Registration of financial lease agreement and assets

21.-(1) The Minister and the Minister responsible for finance in the Revolutionary Government of Zanzibar, may designate by Notice in the *Gazette* an existing registry for registration of assets under financial lease agreements which shall be made open for inspection by the public.

(2) Parties to a financial lease agreement shall register assets under financial lease agreement with the register of financial lease agreements.

(3) A registered asset under a financial lease agreement shall serve as a notice to third party purchasers of leased assets of existing interests in the leased asset.

PART VI

MISCELLANEOUS PROVISIONS

Regulations
Act No.
11 of 2010 s. 12

22. The Governor of the Bank of Tanzania may, after consultation with the Minister, make regulations for better carrying out or giving effect to the purposes and provisions of this Act.

Variation of
rights, duties and
liabilities

23. Subject to the provisions of this Act, the rights, duties, and liabilities of the parties to a financial lease agreement as laid down in this Act may be varied by express agreement or by the course of dealing between the parties, or by a custom which the parties may agree to be applicable to the agreement.

Events of default

24. The parties may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies to the parties as specified in this Act.

Damages

25. Upon default, the aggrieved party shall be entitled to recover damages to the extent that places the aggrieved party in the position in which that party would have been had the financial lease agreement been performed in accordance with its terms.

Computation of
damages

26. A financial leasing agreement that provides for the manner in which damages are to be computed shall be enforceable between the parties, unless it is likely to result in damages substantially in excess of those provided in section 25.

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