



ISLAMIC REPUBLIC OF AFGHANISTAN
Da Afghanistan Bank

Financial Leasing Law
(Statute Law)

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Chapter One

General Provisions

Basis

Article 1:

This Law is promulgated in the light of article tenth and thirteenth of the Constitution of Afghanistan to regulate the affairs of financial lease.

Objectives

Article 2:

The objectives of this law are as follow:

1. Promoting small and medium level investments through financial lease;
2. Creating and promoting competition opportunities in the area of investment through granting alternatives for bank loans;
3. Providing job opportunities through financial lease.

Definitions

Article 3:

In this Law, the following terms shall have the following meanings:

- (1) **Financial Lease:** means an agreement by which the lessee chooses the assets covered by financial lease and selects the supplier prior, the lessor acquires the ownership of the assets and lessee obtain the right of possession and use based on a financial lease contract while the supplier knows the fact.
- (2) **Business Assets:** means all non-consumable goods such as machineries, equipment of the manufacturing company, immovable property and capital assets and special manufactured assets which are being used in usual business of the lessee. This terminology does not include money or investment securities.
- (3) **Contract of financial lease:** means a written agreement based on which a person transfers the right of possession and use of a leased asset to another person for a specific length of time and in exchange for specified lease payment according to the provisions of this law, purchasing possibility of leased asset may expressed in financial lease contract.
- (4) **Lessor :** means a person who, under the financial lease contract transfers the right of possession and use of the asset to the lessee. This terminology covers the sub-lessor, unless agreed otherwise.
- (5) **Lessee:** means a person who under a financial lease contract acquires the right of possession and use of the asset from the lessor. This terminology covers the sub-lessee, unless otherwise stated in this Law.
- (6) **Supplier:** means a person from whom the lessor acquires the asset or the right of possession and use of assets for financial lease under the supply contract.
- (7) **Leasing payments:** meanse the amount which to be paid according to the financial lease contract by lessee to the lessor.

- (8) **Place of activity:** It is the location where a person (lessor, lessee, supplier, sub- lessor and sub lessee) regularly conducts the administration of its interest or business affairs. In case of non existence of such location, the registered office of the person or the residential location of him/her shall be considered as a place of activity.
- (9) **Person:** means a natural or juridical person.
- (10) **Supply Contract:** It is an agreement, under which the lessor acquires the asset or the right of possession and use of asset for lease from the Supplier.
- (11) **Default:** means failure to perform duties and responsibilities described in the financial Lease Contract.

Scope of Implementation

Article 4:

- (1) The provisions of this law are applicable if one of the following conditions occurs:
 - 1. The leased asset located in Afghanistan;
 - 2. The place of activity of the lessee located in Afghanistan;
 - 3. The contract of financial lease provides that enforced laws of Afghanistan be observed and implemented.
- (2) This Law does not apply to relationships between the lessor and the lessee unless such relationships have been regulated by a financial lease contract.

Contents of the Financial Lease Contract

Article 5:

- (1) Without prejudice to paragraph (5) of article 10, paragraph (2) of article 20 and paragraph (3) of article 23, parties may determine the contents of the financial lease contract upon their own intention.
- (2) If any provision of financial lease contract is in contradiction with paragraph (1) of this article, such provision is annulled. In this case, to the extent of nullification and modification accrued, the provisions of financial leasing Law shall be enforced and the rest of the provisions of the financial lease contract remain effective.

Compliance with other Laws

Article 6:

Parties to the contract are obliged to consider the provision of this law and other enforced laws of Afghanistan while signing and implementing the financial lease contract.

Ownership Rights over Property

Article 7:

- (1) The asset which is transferred for the possession and use of the lessee shall be counted as the property of the lessor during the period of a financial lease contract.
- (2) Without considering the provisions of paragraph (1) of this article If the financial lease contract provides the transference of title of the asset prior to the expiration of the lease and after fulfillment of entire obligation of the lessee then the lessor, may transfer the title of the asset to the lessee upon total fulfillment of all obligations by the lessee

- (3) When the lessee returns the leased asset to the lessor, the following provisions shall apply:
 1. Any attachment or improvements to the leased asset which can be separated from the asset without causing damage to it and that have been done by the lessee at its own expense, remain the property of the lessee;
 2. Any attachment or improvements to the asset which is conducted with the written consent of the lessor and cannot be separated from this asset without causing damage to it, the lessee has entitle to be compensated for the cost of such improvements.
 3. The cost of inseparable improvements that have been made by the lessee at its own expense without the written consent of the lessor, will not be compensated for, unless the lessor elects to pay such expenses.

Chapter Two

Effects of Financial Lease Contract

Enforceability

Article 8:

- (1) Financial lease contract has the following effects:
 1. Enforceability and effectiveness of financial lease contract according to its term;
 2. The rights and remedies of parties to financial lease contract are enforceable against purchasers of the asset and against creditors of the parties, including an administrator for liquidation and bankruptcy affairs
- (2) The effects expressed in paragraph (1) of this article is applicable, if nothing in this law stated otherwise.
- (3) The lessee may sub-lease the asset or the right to possession and use of such asset to a third party for a specific length of time and in return of a lease payment (as a sub-lease) in accordance with a written consent of lessor.

Bankruptcy and Settlement of the Lessee and Lessor

Article 9:

- (1) The lessee, in case of the settlement of the lessor or the declaration of his bankruptcy may continue the implementation of the financial lease contract in accordance with its terms.
- (2) The Person who receives the asset pursuant to enforcement of a charge against the lessor according to the Secured Transactions Law for Movable Property, or the lessor's settlment or bankruptcy shall be entitled to enforce the rights of the original lessor under the leasing agreement. The new owner shall not have the right to take possession of the asset or terminate the Financial Lease Contract, unless the lessee is in default under the Financial Lease Contract.
- (3) If a decision to liquidate or declare the bankruptcy of the lessor issued by a court, the asset shall not be included in the schedule of assets for the benefit of creditors and shall not be considered part of the settlement or bankrupt's estate.

Lessee as Beneficiary of Supply Agreement

Article 10:

- (1) The Department shall take the necessary action to verify the accuracy of the information included in the application and documents attached thereto.
- (2) The liability of supplier to the lessee does not modify the rights and duties of the parties to the supply Contract, whether arising from such agreement or otherwise, or impose any liability under the supply Contract on the lessee.
- (3) Where the absence of a contract between the lessee and supplier prevents the lessee from enforcing the duties of the supplier under the supply Contract, the lessor shall be bound to take necessary measures to enforce the supplier to perform its obligation to lessee. If the lessor does not take such measures, the lessor is deemed to have assumed the duties of the supplier.
- (4) The rights of the lessee under the paragraphs (1, 2 and 3) of this Article shall not be affected by a variation of any term of the supply contract that was previously approved by the lessee, unless the lessee consented to that variation. If the lessee did not consent to such variation, the lessor is deemed to have assumed the duties of the supplier to the extent of the variation.
- (5) The parties to the financial lease contract can not set forth provisions into the contract which contradict the paragraphs (1, 2, 3 and 4) of this article.
- (6) The lessee can not modify or terminate the provisions of the supply contract without the consent of the lessor.

Priority in Right of Possession

Article 11:

- (1) A creditor of the lessee and the holder of any interest in immovable property or personal property to which the assets under financial lease contract becomes affixed take subject to the rights and remedies of the parties of financial lease and cannot attach any interest arising under financial lease contract.
- (2) Except as otherwise provided by the laws, a creditor of the lessor takes subject to the rights and remedies of the financial lease parties.

Limitation of Responsibility of the Lessor

Article 12:

The lessor in his own capacity and responsibility shall not be liable for the lessee or a third party, for death, physical injuries or damage to property caused by the asset or the way of usage of the asset.

Chapter Three **Performing the Obligations**

Obligatory of Duties

Article 13:

- (1) The lessee in a financial lease contract can not deny performance of duties to the lessor which set forth in the contract, unless otherwise stated in this law.
- (2) Each parties to the leasing must perform its responsibilities according to the terms of financial lease contract, regardless of the performance or non-performance of other party, unless the party to whom the duty is owed terminates the financial lease contract or otherwise explicitly agrees.
- (3) Following after the acceptance of the leased property by lessee, any damage to the property or impracticability at all, shall not unburden the lessee from performing its obligations, unless stated otherwise in the financial lease contract.

Possible damage risks of Assets

Article 14:

- (1) The lessee is liable for compensating the possible loss. If the liability for compensation of possible loss has not been stated within the financial lease contract, the liability passes to the lessee when financial lease contract has been entered into.
- (2) When an asset under financial lease is not delivered or partially delivered, or delivered late to the lessee or fails to conform to the financial lease contracts, the lessee may invokes its remedies under Article 17 of this law. In such a case, the risk of loss in respect to damages extends to the supplier.
- (3) The parties to lease Contract may agree to require the lessee to provide additional securities for performing his obligations.

Goods Damaged Under Financial Lease Contract

Article 15:

When an assets under financial lease is damaged without fault of the lessee and lessor before the asset is delivered to the lessee, the lessee may demand inspection and choose one of the two following options:

1. Accept the asset with due compensation from the supplier for the loss in value, without further right against supplier.
2. Ask for remedies according to the provisions of this law.

Acceptance

Article 16:

- (1) The assets under financial lease contract deems accepted if:
 1. The lessee has assured the lessor or supplier that the asset is correct and conforms to the financial leased contract.
 2. The lessee has not reject the leased asset after the expiration of an agreed period for investigation of the leased property under the financial lease.
 3. The lessee has used the asset under financial lease.
- (2) When an asset under financial lease delivered to the lessee but does not conform to the supply contract, the supplier is obliged to compensate the damage.

Compensation of damages (other Compensations)

Article 17:

- (1) The Supplier is ought to compensate the loss and provide asset conforming to the financial lease contract if he:
 1. Has not delivered the leased asset to the lessee;
 2. Partially delivered the leased asset to the lessee;
 3. Has not delivered the leased asset to the lessee within the time specified in financial lease contract.
 4. Delivered to the lessee such an asset which is not conforming to financial lease contract.
- (2) If the lessee rejects an asset in accordance with paragraph (1) of this Article and the time for performance has not expired, the lessor or supplier is obliged to remove the failure within the agreed time.

Transfer of Rights and Duties

Article 18:

- (1) In a financial lease contract, the lessor may transfer his/her rights to another person without the consent of the lessee.
- (2) In a financial lease contract, the lessor may transfer his/her duties and obligations to another person with the consent of the lessee.
- (3) In a financial lease contract, the lessee may transfer his/her rights and obligations upon earlier consent of the lessor subject to the rights of the third party.
- (4) The lessee, the lessor and the third parties may consent in advance to the transfers stated in paragraphs (1,2 and3) of this Article.
- (5) The asset which the supplier sold to a lessor under the Supply contract may be leased by supplier based on the lease contract.

Guarantee of Possession

Article 19:

- (1) The lessor is obliged to guaranty that the quiet possession of the lessee will not be disturbed by a person who has superior title or right or who claims superior title or right provided that such a title or right be given to him by the court due to negligent or intentional act or omission of the lessor.
- (2) Where the lessor or supplier provides leased asset in accordance with the specifications given by the lessee, the lessor and supplier would not be responsible for the damages raised due to the wrong selection of the asset by the lessee.
- (3) In violation of paragraph (1) of this Article, the lessee's sole remedy is action for damages which raised from disturbance of quiet possession by the lessor.

Warranty of Acceptability of the Assets under financial lease and suitability for maintaining the Purpose

Article 20:

- (1) The Supplier is obliged to warranty that the asset under financial lease meets the requirement of lease activity and is fit for the ordinary purposes for which an asset of that description is used. The warranty is enforceable only against the supplier.

- (2) The parties to the financial lease contract can not set forth provisions into the contract which contradict provisions of this article.

Obligations of the Lessee to maintain and return the asset under financial lease

Article 21:

- (1) The lessee is responsible to take proper care and maintain the asset under financial lease subject to normal wear and tear and use the asset reasonably in the manner in which such assets are ordinarily used.
- (2) When in a financial lease contract set forth a duty to maintain the asset or the manufacturer or supplier of the asset issues technical instructions for the use of the asset, the compliance by the lessee with such duty or instruction deems to satisfy the requirements of paragraph (1) of this Article.
- (3) When the financial leasing contract comes to an end or is terminated, the lessee, unless exercising a right to buy the asset or to hold the asset on lease for a further period, shall return the asset to the lessor in the condition specified in paragraph (1) of this article.

Chapter Four **Default**

Cases of Default

Article 22:

- (1) Parties to a financial lease contract may agree as to the events that constitute a default or give rise to the rights and remedies stated in this law. In the absence of an agreement by the parties an action may deems default if one party fails to perform a duty arising under the financial lease contract or provision of this Law.
- (2) An aggrieved party shall give a defaulting party notice of default, notice of enforcement, notice of termination of financial lease contract and a reasonable opportunity to remove the default.
- (3) In case of not removing the default, the defaulting party is obliged to compensate for the damages according to the terms of in financial lease contract or provisions of this law.

Determination of Compensable Amount

Article 23:

- (1) When the leasing agreement provides that a specified sum or a sum computed in a specified manner be paid for compensation of damage the defaulting party is obliged to pay such a sum to the aggrieved party.
- (2) In case if the amount mentioned under paragraph (1) of this article is greater than the damage caused, the court may decrease compensable amount in proportion to the damage.
- (3) Parties to the financial lease contract cannot set forth provisions into the contract which are contradict the provisions of this article.

Chapter Five **Final Provisions**

Termination

Article 24:

- (1) In each of following condition the Lessor or lessee may terminate the financial lease contract:
 1. Agreement of two parties
 2. Enforcement of the provisions of other applicable laws.
- (2) Lessor may terminate the financial Lease contract upon substantial damage by the lessee.
- (3) Lessee may not terminate the financial lease contract upon substantial damage by the lessor or supplier but is entitled to such other remedies as provided by the financial lease contract or other enforced laws.
- (4) Subject to article (13) of this law, on termination of the financial lease contract, all duties of both parties against each other are discharged. The rights of the parties which rose prior to default or performance are excluded from this provision.

Possession and Disposition

Article 25:

- (1) After the leasing agreement comes to an end or is terminated, the lessor may take possession of the asset or dispose the asset.
- (2) In the paragraph (1) of this Article the lessor may proceed with the asset repossession without resort to judicial authorities, if it provide in financial lease contract.

Retrospective Effects of this Law

Article 26:

The provision of this law does not apply to financial lease contracts concluded before enforcement date of this Law.

Enactment of Regulations and Procedures

Article 27:

To ensure effective implementation of this Law, Da Afghanistan Bank may issue regulations and Procedures.

Priority

Article 28:

If provisions of this Law are in contrary with other laws, the provisions of this law would take precedence.

Enforcement Date

Article 29:

This Law shall take effect upon the date of it's publication in the official Gazette