

Financial lease Law

Chapter 1 General Provisions

Bases

Article 1:

This law is created under provisions of article tenth and thirteenth of the Afghanistan's constitutional law 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.

Terminologies

Article 3:

The bellow mentioned terminologies present 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:** Is 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 agreed otherwise.

- 6. Supplier:** is 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:** The amount 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, Procurer, 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

Implementation Area

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:

Parties may regulate the contents of the financial lease contract upon their intention, unless otherwise stated in this law.

Observation of 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 right over the good

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) 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. Notwithstanding the provisions of paragraph (1) of this article

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 can not 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 insolvency administrator.
- (2) The effects expressed in clause (1) of this article is applicable provided nothing in this law state 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 Liquidation of the lessor and lessee:

Article 9:

- (1)- The lessee, in case of the liquidation 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 liquidation 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 liquidation or bankrupt's estate.

Lessee as Beneficiary of Supply Agreement

Article 10

- (1) The supplier under the supply contract shall also be liable to the lessee as if the lessee was a party to the supply contract and as if the asset was to be supplied directly to the lessee. The supplier shall not be liable to both the lessor and the lessee in respect of the same damage to the leased asset.
- (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 clauses (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 clauses (1, 2, 3 and 4) of this article.
- (6) The lessee can not modify or terminate the provision of this Article.

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.

Comment [Wahid1]: This article is one of the Ghaleb questions which should be described to him.

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 3

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 froth in the contract.

- (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.

Possible risks of loss in 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, partially delivered, delivered late to the lessee or fails to conform to the financial lease contracts the lessee may invokes its remedies under Article 17. In such a case, the risk of loss in respect to damages extends to the supplier.

Goods Damaged under financial lease contract

Article 15:

1. When an assets under financial lease is damaged without fault of the lessee or lessor before the asset is delivered to the lessee, the lessee may demand inspection and choose one of the two following options:
 - a) Accept the asset with due compensation from the supplier for the loss in value, without further right against supplier.
 - b) 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 asset under the financial lease within the reasonable opportunity;
- 3- The lessee has used the asset under financial lease.

(2) When an asset under financial lease delivered to the lessee but dose not conform to the supply contract the supplier is obliged to compensate the damage .

Remedies (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 clause (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 right 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 with the consent of the lessee. The Lessee may not withhold the consent without reasonable excuse.
- (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 party may consent in advance to the transfers stated in clause (1 and 2) 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.

Warranty 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 clause (1) of this Article the lessee's sole remedy is action for damages which raised from disturbance of quiet possession.

Warranty of Acceptability of the asset under financial lease and Suitability for 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 clause (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 clause(1) of this article.

Chapter 4
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 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. In such a case it deems that the aggrieved party has performed based on the terms of financial lease contract.

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 clause (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 can not set forth provisions into the contract which are contradict the provision of this article.

Chapter 5 **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. Upon substantial default by lessee

(2). 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.

(3). 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 clause (1) of this Article the lessor may proceed with the asset repossession without referring to related officials, 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 appropriate procedures and regulations.

Validity

Article 28

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

Date of Enforcement

Article 29

This Law must enter into force when signed and must be published in the Official Gazette .