

LAW ON FINANCIAL LEASE

CHAPTER I

GENERAL PROVISIONS

Article 1.-

The purpose of the present law is to determine the rights and duties of all parties involving in financial lease operations and take actions to protect those rights.

Article 2.-

The objective of the present law is to develop banking and financial system and enterprises in order to carry out equal, safe, effective, and productive financial lease operations in accordance with the evolution of the economy of the Kingdom of Cambodia.

Article 3.-

The present law covers only financial lease of movable property in the Kingdom of Cambodia.

Article 4.-

As used under the present law, the following words or terms shall have the following meanings.-

Lessor means a person, natural or legal, who transfers the right to possession and use of movable property to a lessee.

Lessee means a person, natural or legal, who receives the right to possession and use of movable property from a lessor.

Movable property means all properties, plants, and equipments except land and building.

Term means a period of time specified in the financial lease agreement in which the lessee is allowed the possession and use of the leased movable property.

Lease means a transaction in which a lessor enters into an agreement with a lessee in which the lessee is granted the right to possession and use of movable property for a term in return for periodic lease payments or their equivalent. Lease shall include a sub-lease.

Sub-lease means a transaction in which leased property is re-leased by the original lessee to other parties, and the lease agreement between the original parties remains in effect.

Financial lease means a lease for an initial non-cancelable term of a year or more, in which.-

- i- the lessee specifies movable property and selects the supplier without relying primarily on the skill and judgment of the lessor; and
- ii- the movable property is acquired by the lessor in connection with a financial lease agreement for leasing to the lessee ;

Provided, however, that a subsequent lease of previously leased movable property is from the same lessor, such lease can still qualify as a financial lease.

A lease may be a financial lease without regard to:

- i- whether or not the periodic lease payments are calculated so as to take into account in particular the amortization of the whole or a substantial part of the cost of the movable property, or
- ii- whether or not the lessee has or subsequently acquires the option to buy the movable property or to hold it on lease for a further period.

Advance lease payment

means any number of periodic lease payments that are paid by the lessee at or before the inception of the lease. Advance lease payments are not a security deposit.

Security deposit

means an amount identified in a lease agreement as an amount paid by the lessee and to be held by the lessor as security for the full and regular obligations by the lessee under the Lease Agreement.

Supplier

means a person, natural or legal, from whom a lessor acquires movable property to be leased to a lessee. The lessor's acquisition could be by purchase, lease, and assignment of a right to purchase or lease, including assignment of right from the lessee. The lessee could be a supplier in a sale-leaseback transaction.

Supply agreement

means the agreement by which the lessor acquires possession and use of the movable property to be leased to the lessee.

Financial lease agreement

means an agreement, in which the lessor purchases movable property selected by the lessee from a supplier, and leases this movable property to the lessee and authorizes the lessee to periodically pay the lease payment.

CHAPTER II

FINANCIAL LEASE AGREEMENT

Article 5.-

The financial lease agreement shall be in writing signed by the lessor and the lessee, and shall set forth the terms and conditions of the parties with respect to the leased movable property. The financial lease agreement needs not be notarized unless other law provides otherwise.

Article 6.-

An agreement shall be sufficient as a financial lease agreement if it provides at least:

- i- a description of the leased movable property;
- ii- the amount, periodicity and term of the financial lease payments and
- iii- a commencement date of the financial lease, and
- iv- the signature of the lessor and the lessee.

Article 7.-

A financial lease agreement may provide for a security deposit, advance lease payments, or both. A security deposit may or may not earn interest and may be returned to the lessee or applied by the lessor as specified in the financial lease agreement.

In the absence of a provision covering the handling of a security deposit, a security deposit shall not earn interest and shall be returned to the lessee after s/he has fully and timely fulfilled her/his lease obligations. Advance lease payment shall not earn interest. Security deposits and advance lease payment may be in any amount as agreed upon by the parties.

Article 8.-

If the lease agreement provides that the movable properties be labeled as owned by the lessor or subject to a lease from the lessor, such labels shall not be removed or rendered illegible by anyone other than the lessor or its authorized agent.

Any damage to such labels, which make them illegible, shall be immediately notified in writing to the lessor by the lessee upon discovery or the lessee shall be liable to the same extent as if the lessee had removed them without authorization. A lessee shall not be liable for it under this Article, if after reasonable the lessee's notice to the lessor, the lessor failed to replace such labels.

Article 9.-

If the lessor and the lessee agree to settle their accounts by non-monetary methods, such as product, service or barter, the value of the non-monetary payments shall be determined by the market prices of such items, unless the parties specify in the lease agreement a different mechanism.

Article 10.-

Under a financial lease agreement, a lessee acquires the use of movable property for a period of at least a year. The lessee may or may not ultimately acquire the movable property at the end of the agreement. The lessor finances the use of the movable property, not its ownership.

CHAPTER III

RIGHTS AND OBLIGATIONS OF THE LESSOR

Article 11.-

The ownership right to the leased movable property shall remain with the lessor at all times during the lease term, and thereafter, until transferred to the lessee or other parties.

Article 12.-

The lessor shall be responsible for all import duties and fiscal obligation stated by law and registration fees upon the leased movable property, unless the lease agreement provides otherwise.

Article 13.-

The lessor has an obligation to pay for the movable property to the supplier once the lessee has accepted it without condition or reservation.

Article 14.-

The lessor warrants the quiet use and possession of the leased movable property to the lessee for the lease term to be free from interference, provided that the lessee is not in breach of the lease agreement.

Article 15.-

The lessor shall not be liable to the lessee in respect of the movable property except to the extent that the lessee has suffered losses as a result of the lessor's intervention in the selection of the movable property or in the specification of the movable property.

Article 16.-

During the implementation of the financial lease agreement, the lessor shall not be liable for any damages to third parties caused by the lessee using the leased movable property.

Article 17.-

In the event of a default of the financial lease agreement by the lessee, the lessor shall have in addition to such rights as provided by the lease agreement, the following rights.-

- a- The lessor may require the lessee to pay the accrued unpaid lease payments together with interest and damages.

- b- The lessor may also require accelerated payments of the future lease payments, may terminate the lease agreement, and may recover possession of the leased movable property if:
 - i- the lessee does not pay the lease payments pursuant to the lease agreement for two consecutive lease payment periods;
 - ii- the lessee breaches any other provision of the lease agreement and fails, after receiving a written notice from the lessor to remedy such breach within ten (10) days;
 - iii- the lessee has a guarantor who is insolvent, bankrupt, or dissolved and the lessee has failed to find a substitute guarantor acceptable to the lessor within thirty (30) days of a written demand by the lessor to do so; or
 - iv- the lessee is insolvent, bankrupt, dissolved or dead without assignee.
- c- Whether or not the lease agreement is terminated prior to its expiration, the lessor may.-
 - i- recover possession of the leased movable property without having to go to court if such action would not cause a breach of peace; and
 - ii- recover such damages as acceptable by the lessor including the additional costs caused by the default of the lessee; the lease agreement may provide for the manner in which such damages are to be computed and such computation shall be enforceable by the two parties unless it would result in damages substantially in excess of those which will place the lessor in the position in which it would have been had the lessee performed the lease agreement in accordance with its terms
- d- If necessary, the lessor may request for a court order directing the lessee to immediately return the movable property to the lessor upon presentation of an affidavit stating that the lessee is in default of the lease agreement. But the lessor shall remain liable for any damages caused to the lessee shall it subsequently be proven that repossession was a breach of the lease agreement by the lessor.

Article 18.-

The lessor has the right to require that the lessee indemnifies the lessor from any and all losses, claims, damages or other consequences arising from or in connection with the lessee's use and possession of the leased movable property.

Article 19.-

The lessor may require that the lessee obtains, maintains and pays for liability and casualty insurance covering the leased movable property during all times that s/he is in the possession or control of the lessee until the leased movable property has been returned to the possession and control of the lessor, even if the lease term has come to an end or the lease agreement has been earlier terminated.

If the lessee is obligated to obtain and pay for insurance, and fails to do so, the lessor has the right but not the duty to obtain such insurance and the lessee shall immediately reimburse the lessor if s/he has incurred such a cost.

Article 20.-

The leased movable property shall not be part of the lessee's estate. In this regard, in case of bankruptcy of the lessee, all creditors of the lessee including those who obtained right to foreclose the lessee's property by the court decision shall have no right in the leased movable property.

Article 21.-

The lessor may assign, transfer or otherwise deal with all or any of its rights in the leased movable property or under the lease agreement to any parties without the consent of the lessee. Such a transfer shall not relieve the lessor of any of her/his obligations or alter the nature of the lease agreement. The lease agreement may provide that the lessee agrees not to assert any offsets, defenses or claims against any assignee or transferee of the lessor.

Article 22.-

In case of the lessor bankruptcy, the creditors of the lessor and other interested parties shall have no greater rights than the lessor has pursuant to such financial lease agreements.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE LESSEE

Article 23.-

A lessee has the obligation to accept the leased movable property if it is timely delivered and conforms to the supply agreement. If the leased movable property is not delivered or is delivered late or does not conform to the supply agreement, then at or before the time of acceptance, but not after, the lessee has the right to reject the movable property, to demand from the supplier the immediate cure of its defect or defects, or to cancel the lease agreement, but shall have no right to terminate, rescind or modify the supply agreement without the consent of the lessor.

The lessor has the right to ask the supplier to supply the movable property in conformity with the supply agreement but he has no obligation to be responsible for the failure caused by the supplier.

Article 24.-

Acceptance of the movable property may be by making a document acknowledging acceptance, or by other means which include:

- (a) the lessee by its actions with respect to the leased movable properties has indicated that the movable property is acceptable, whether or not within compliance with the supply agreement;
- (b) the lessee has failed to give timely notice as specified in the supply agreement to the lessor and the supplier of specific non-compliance with the supply agreement, where the supplier or the lessor could have timely cured the non-compliance had they been given timely notice;

- (c) The lease agreement may provide that the lessee shall be deemed to have accepted the movable property unless the lessor receives a written notice of the lessee's rejection, detailing the specific reasons for rejection, with a specified period of ten (10) business days after the lessee has received the movable properties.

Article 25.-

The lessee's obligations under a financial lease, including the obligation to pay lease payment, become absolute and irrevocable upon the lessee's acceptance of the movable property.

Article 26.-

The lessee shall use the movable property in a reasonable manner in accordance with its movable properties and purpose, and in compliance with all applicable laws, rules and regulations, operational manuals, and manufacturer's requirements. The lessee shall also at its own expense maintain and repair the movable property and keep it in good condition and usable unless the lease agreement provides otherwise.

Article 27.-

At the expiration of the lease term or upon termination of the lease agreement, and in the absence of the proper exercise of any purchase option or renewal option, the lessee shall return the leased movable property to the lessor in as good condition as originally delivered, except for normal wear and tear.

Article 28.-

The lessee shall bear all risk of loss in respect of the leased movable property from the time of its delivery until it is returned to the lessor.

Article 29.-

The lessee shall not mortgage, pledge, encumber, lien or otherwise create a charge over the leased movable property.

Article 30.-

The lessee is obligated to keep the lessor informed in writing as to the current and the removal to a new location of the leased movable property unless the lease agreement provides otherwise.

Article 31.-

The obligations of the supplier under the supply agreement shall also be owed to the lessee as if it were a party to the supply agreement and as if the leased movable property were to be supplied directly to the lessee. However, the supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

The lessee's rights derived from the supply agreement shall not be affected by a variation of

any term of the supply agreement previously approved by the lessee unless s/he consented to that variation.

Article 32.-

The lessee may not sublease, assign or transfer the right to the possession or use of the leased movable property under the lease agreement or in the leased movable property without prior written consent of the lessor and subject to the rights of third parties. Any such attempted sublease, assignment or transfer without lessor's prior written consent shall be null and void and conclusively deemed to have been in bad faith for all purposes under this and any other law.

CHAPTER V

SUPERVISORY AUTHORITY AND REGULATORY POWER

Article 33.-

The National Bank of Cambodia is the supervisory authority of financial lease institutions and shall:

- 1- issue, suspend or revoke licenses to operate financial lease business and define the licensing process and procedure;
- 2- issue regulations for the implementation of the present law, in particular:
 - a. the amount of minimum capital,
 - b. prudential ratios,
 - c. loan classifications and provisioning.
 - d. accounting system and related standards.
- 3- supervise permanently through both offsite and periodic onsite examination of the financial lease institutions;
- 4- take disciplinary sanctions in accordance with the conditions defined in Article 35 of the present law.

Article 34.-

Financial lease operations may be implemented by banks and financial lease institutions receiving licenses to operate banking business from the National Bank of Cambodia.

These operations may also be implemented by the financial lease institutions established under the provisions of the present law.

Financial lease institutions shall apply for a license from the National Bank of Cambodia to operate financial lease business.

Financial lease institutions shall not be allowed to undertake banking operations other than the financial lease business.

CHAPTER VI

SANCTIONS

Article 35.-

If a financial lease institution has contravened a provision of the laws or regulations governing its activities, has failed to heed a warning or not complied with an injunction, the supervisory authority may impose one of the following disciplinary sanctions:

- caution;
- reprimand;
- prohibition on the execution of certain operations and any other limitations on the carrying on of business;
- temporary suspension of one or more of the executives, with or without appointment of a provisional administrator;
- compulsory resignation of one or more of the executives, with or without appointment of a provisional administrator;
- placement of subsequent provisional administrations;
- withdrawal of the license and liquidation.

CHAPTER VII

TRANSITORY PROVISIONS

Article 36.-

Any institution undertaking financial lease business with no legal status shall apply for license from the supervisory authority according to the provision of the present law during a period of twelve (12) months after this law comes to be in force.

CHAPTER VIII

FINAL PROVISIONS

Article 37.-

The present law shall prevail if there are provisions of other laws not consistent with the present law.

Article 38.-

The present law has been declared as urgent.

Royal Palace, Phnom Penh, 20 June 2009

Signed and Sealed

NORODOM SIHAMONI