

FINANCE LEASE ACT, 1993 P.N.D.C.L. 331

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P.N.D.C.L. 331

FINANCE LEASE ACT, 1993(1)

AN ACT to provide for finance lease agreements, the rights of the parties and for related matters.

Finance Lease Agreement

1. Requirement for finance lease agreement

(1) An acquisition of assets under this Act shall be made by a finance lease agreement between the

lessor and the lessee in accordance with this Act.

(2) Where the asset is to be acquired by the lessor before the finance lease agreement is finally made,

the prospective lessor and lessee shall enter into a written agreement which shall cover

(a) a statement to the effect that the parties have agreed to enter into a finance 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 in connection with the 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.

2. Contents of a finance lease agreement

(1) A finance lease agreement shall contain

(a) a statement of the price of the asset and the total lease rentals payable under the finance lease agreement,

(b) the amount of each rental by which the total lease rental is to be paid and the date or the mode of determining the date on which each rental instalment is payable,

(c) a description of the asset to which the finance lease agreement relates sufficient to identify it,

(d) a clause that the lessee acknowledges, confirms and declares that the lessee holds the asset as a mere bailee of the lessor and that the lessee does not have a proprietary right, title or interest in the due asset during the entire period of the lease,

(e) a clause that the lessee confirms and acknowledges that the lessee shall pay to the lessor, lease rentals as mentioned in the finance lease agreement,

(f) a clause that the lessee confirms and acknowledges that the finance lease agreement is a full pay-out non-cancellable agreement and that the lessee does not have a right to surrender the asset during the tenure of the finance lease agreement, and

(g) a clause that on determination of the finance lease agreement by expiry of time, unless a renewal is granted or the lessor agrees to sell the asset to the lessee, the lessee shall deliver to the lessor the asset in good order and condition, ordinary wear and tear excepted.

(2) A copy of the finance lease agreement shall be delivered or sent to the lessee within fourteen days

after the making of the agreement.

3. Rights and obligations of lessee

(1) The lessee shall have and enjoy quiet possession of the leased asset during the entire period of the

lease as provided in the finance lease agreement.

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

(3) The lessee is responsible for the proper maintenance and an adequate insurance cover of the asset

which may be mutually agreed on between the parties.

(4) The lessee shall take proper care of the asset, use it in a reasonable manner consistent with that of

a normal user and keep it in the condition in which it was delivered, subject to fair wear and tear and to a

modification of the asset agreed on by the parties.

(5) The lessee shall pay the rentals as stipulated in the finance lease agreement, and unless otherwise

stipulated in the finance lease agreement, the lessee is not liable for the payments set out in the finance

lease agreement if the leased asset is fully or partly destroyed or damaged

(a) by accident not of the lessee's making, or

(b) by an event or effect that can never be anticipated nor controlled by the parties.

(6) As long as the lessee performs the obligations in accordance with the terms of the finance lease

agreement, the finance lease agreement shall not be terminated unilaterally by the lessor, even if the lessor

is declared bankrupt.

(7) Subject to subsection (4), the lessee shall, at the expiration of the finance lease agreement, return

the asset to the lessee, 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 right as against those of the lessee or the supplier, the lessee has

the right to take direct action against the supplier in order

(a) to hold the supplier to the satisfactory performance of the supplier's contractual obligations,

and

(b) to obtain from the supplier compensation for damages resulting from the default of the supplier.

(9) The lessee does not have any other claim against the lessor for non-delivery, delay in delivery or

delivery of a non-conforming asset except to the extent to which this results from the act or omission of

the lessor.

4. Rights and obligations of lessor

(1) Where the leased asset is not delivered to the lessee,

(a) as a result of failure by the lessor to enter into a sales contract with the supplier on time,

(b) as a result of failure by the lessor to make payment to the supplier on time, or

(c) for any other reason,

the lessee's obligations under the finance lease agreement shall be suspended, but subject to subsection

(2), the lessee shall give the lessor an appropriate extension of time during which the lessor may comply

with the contractual obligations.

(2) The lessee shall

(a) request that the finance 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 the termination of the finance lease agreement with the lessor paying the damages or

losses incurred by the lessee as a result of the lessor's failure to comply with the contractual obligations.

(3) Where owing to a default on the part of the lessee, the sales contract between the supplier and the

lessor is subsequently terminated, the lessor retains the right to demand payments due from the lessee

under the finance lease agreement if the lessor acted in good faith and payment was made by the lessor

for purchase of the asset at the request of the lessee.

(4) Except in the cases covered by subsections (1), (2) or (3), the lessor is not liable to the lessee for

damage except for wilful 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.

(5) Except where otherwise provided in this Act, or in the finance lease agreement, the lessor does not

incur a liability in respect of defects in or fitness of the leased asset for a particular purpose, unless the

lessee has suffered loss as a result of the reliance on the lessor's skill and judgment and as a result of the

lessor's intervention in the selection of the supplier or the specifications of the asset.

(6) The lessor is not, in the capacity of a lessor, liable to third parties for death, personal injury or a

damage to property caused by the use of the asset by the lessee.

5. Duties of supplier

(1) For the purposes of this Act, the supplier of an asset to a lessor owes to the lessee the same duties

as the supplier owes to the lessor under the sale agreement, but the supplier is not liable to both the lessor

and the lessee in respect of the same damage.

(2) Subsection (1) does not permit the lessee to terminate or rescind the sale agreement without the

consent of the lessor.

6. Registration of finance lease agreement

(1) A finance lease agreement made under this Act shall, irrespective of the value of the asset, be registered by a registering authority designated by the Bank of Ghana.

(2) The registering authority shall, before a registration, notify the Bank of Ghana of the application

to register a finance lease agreement.

(3) The Bank of Ghana shall issue the necessary guidelines for the purpose of implementing this section including guidelines relating to

(a) the stamp duty payable,

(b) the registration and notarisation fees, and

(c) the procedure for filing an application for registration and cancellation of a registration.

(4) Without prejudice to the other provisions of this section, a non-registered finance lease agreement

is valid as between the original parties to the contract, but is not valid with respect to third parties acting

in good faith.

7. Repossession by lessor

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

(2) Subject to subsection (3), where the lessee defaults in the payment of rentals, or commits any other breach, the lessor may terminate the finance lease agreement, and after the termination,

(a) recover possession of the asset, subject to subsection (4), and

(b) recover the damages that will place the lessor in the position in which the lessor would have been, had the lessee performed the finance lease agreement in accordance with its terms.

(3) The lessor is not entitled to exercise the right of termination under subsection (2) when the lessor

has by notice given the lessee a reasonable opportunity of remedying the default so far as the default may

be remedied.

(4) Where the lessor becomes entitled to repossess the asset leased through breach of agreement by

the lessee or otherwise through the 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 initiate legal proceedings in a

Court against the lessee for the recovery of the asset.

(5) The right of the lessor to repossess does not prejudice other remedies available to the lessor under

any other law, including but not limited to the right to recover damages for losses caused by non-compliance with the terms of the finance lease agreement by the lessee.

(6) Where there is repossession under this section, the lessee is, unless otherwise stipulated between

the parties, responsible for the immediate payment of the rents due for the remaining term of the finance

lease agreement.

(7) The parties may, under a finance lease agreement, stipulate that the amount of future rents at the

time of repossession shall be decreased by the fair value of the asset repossessed less the administrative

costs of the lessor, including but not limited to legal and transportation costs.

(8) The lessor is not entitled to recover damages to the extent that the lessor has failed to take reasonable steps to mitigate its loss.

(9) The procedure laid down in this section for the purpose of repossession by the lessor is applicable

equally to a situation contemplated in section 9.

8. Assignment of finance lease agreement

(1) Unless otherwise stipulated, a finance lease agreement may be assigned by the lessor after the lessor has informed the lessee of that intention in writing.

(2) The lessor has the unilateral right to assign the finance lease agreement to third parties, but without infringement of the lessee's right to quiet enjoyment of the asset leased.

(3) A subsequent holder of a finance lease agreement has the same rights and obligations that are specified in the finance lease agreement or as provided by law in relation to the lessee as the original

lessor, and accordingly, the lessee shall continue to have the right to quiet enjoyment of the asset provided

the lessee performs the obligations under the finance lease agreement.

(4) The lessee may transfer the right to the use of the asset or any other rights under the finance lease

agreement only with the consent of the lessor and subject to the rights of third parties.

Third Party Claims and Insolvency

9. Priority of lessor's claim against third party and insolvency of lessee

(1) The title of the lessor or the assigns of the lessor in the asset leased under the finance lease agreement shall prevail at all 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.

(2) In the event of

(a) the death, bankruptcy, liquidation or dissolution of the lessee,

(b) the expiry of the finance lease agreement, or

(c) a breach of a term of the finance lease agreement by the lessee, including a default in one rental payment of an amount, not remedied within the period that is stipulated in the finance lease agreement and in the absence of that stipulation, within a period of thirty days,

the lessor, subject to section 7, has the right to repossess the leased asset which shall not be included in

the assets of a receivership or pool of assets to be disposed of by creditors of the lessee.

10. Claim by third parties

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

(2) The lessee shall inform the lessor of an impediment or any other disturbances by third parties to

the quiet enjoyment of the asset.

(3) Where the lessee fails or delays to inform the lessor as provided under subsection (2), the lessee is

responsible for the charges or damages incurred by the lessor.

(4) Where as a result of legal proceedings initiated by a third party against the lessor, the value of the

asset is decreased, the lessee shall have the right to reduction of the rent or cancellation of the finance

lease agreement.

11. Damage caused by third parties

(1) The lessee is responsible for repairing damage caused by third parties during the time the asset is

in the possession of the lessee.

(2) The lessee has the right to take legal action against the third parties to recover the expenses incurred as a result of the obligations to restore the condition of the asset or to pay damages to the lessor.

12. Lessee not to create charge

(1) The lessee shall not create a charge or an encumbrance on the asset leased in favour of a third party.

(2) Where a charge or an encumbrance is created, the charge or encumbrance is void and the creditors

of the lessee are not entitled to enforce the charge or encumbrance on the asset leased.

13. Companies as lessors

(1) A lessor in a finance lease agreement shall be a body corporate incorporated as a company under

the Companies Act, 1963 (Act 179) and specifically licensed to engage in finance leasing.

(2) The Bank of Ghana, in consultation with the Ministry of Finance, shall by guidelines prescribe the

requirements to be satisfied before a company becomes eligible for a licence to carry on the business of

finance leasing.

(3) The guidelines shall, among other things, provide for

(a) the minimum paid-up capital of the company,

(b) the minimum requirements regarding management expertise and administrative controls, and

(c) the prohibition or otherwise of accepting deposits from the public by leasing companies.

14. Powers of the Bank of Ghana

(1) For the purposes of regulating the credit system of the country, the Bank of Ghana may

(a) require finance lease companies, generally or a particular company, to furnish the Bank with statements and information or particulars relating to the business of the finance lease companies or that company in the form and at the times specified by the Bank;

(b) give to finance lease companies, generally or to a particular finance lease company, directions relating to the conduct of their or its business;

(c) in consultation with the Ministry of Finance, give to finance lease companies, generally or to

a particular company, directions regarding acceptance of deposits from the public; and
(d) lay down suitable guidelines for proper supervision and control of the exercise of the power to accept deposits from the public.

(2) Without prejudice to the generality of the power vested in the Bank of Ghana under subsection (1), the statements, information or particulars to be furnished by a finance lease company may

relate to all or any of the following matters of the company:

- (a) the paid-up capital;
- (b) the reserves and any other liabilities;
- (c) the share holding pattern;
- (d) the investments; and
- (e) the persons to whom, and the assets and periods for which, leasing is provided and the terms and conditions on which it is provided.

(3) A finance lease company shall furnish the statements, information or particulars called for and

shall comply with a direction given to it by the Bank of Ghana.

(4) The Bank of Ghana may, at any time, cause an inspection to be made by one or more of its officers or employees or any other persons, of a finance lease company for the purpose of verifying the

correctness or completeness of a statement, an information or the particulars furnished to the Bank of

Ghana.

15. Limitation of action

The limitation of actions arising under this Act shall be governed by the Limitation Act, 1972.2(2)

16. Information by lessee

(1) Where by virtue of a finance lease agreement, a lessee is under a duty to keep the asset in possession or control, the lessee shall, on receipt of a request in writing from the lessor, inform the lessor

where the asset is at the time when the information is given, or if the information is sent by post, at the

time of posting.

(2) A lessee who fails without reasonable cause to give the information within fourteen days of receipt

of the notice, commits an offence and is liable, on summary conviction, to a fine not exceeding two

hundred and fifty penalty units.

17. Removal of asset from the Republic

(1) The lessee under a finance lease agreement, shall not remove the asset from the Republic without

the written consent of the lessor.

(2) A lessee who contravenes subsection (1), commits an offence and is liable on conviction to a fine

not exceeding two hundred penalty units or to a term of imprisonment not exceeding six months or to

both the fine and the imprisonment.

(3) A lease shall not be convicted of an offence under subsection (2) where the lessee satisfies the

Court that the lessee did not intend to deprive the lessor of the ownership or to defeat the rights of the

lessor to obtain the payment due.

(4) If the lessor believes that the asset has been removed or is being removed from the Republic without the written consent, and with intent to deprive it of its ownership or to defeat the rights to obtain a

payment due to it under the finance lease agreement, it may institute an action for the return of the asset.

(5) Before instituting an action under subsection (4), or while the action is pending, the lessor may

apply to the Court for an order for the attachment of the asset.

(6) For the purposes of subsection (5), the Court may require the applicant to give security for damage

resulting from the order.

(7) An order for the attachment of the asset under this section

(a) may be discharged or varied by the Court for good cause shown by a person affected by the order and on the terms as to costs specified by the Court; and

(b) shall be discharged on the lessee giving a security that the Court thinks proper, taking into account the value of the asset, the amount due to the lessor and the costs of the lessor.

18. Variation of rights, duties and liabilities of the parties

Subject to this Act, the rights, duties and liabilities of the parties to a finance lease agreement as laid

down in this Act may, as between the parties themselves, be varied by express agreement or by the course

of dealing between the parties, or by a custom which the parties may be taken to have agreed to be

applicable to the agreement.

19. Offences by bodies of persons

(1) Where an offence is committed by a body of persons under this Act,

(a) in the case of a body corporate, other than a partnership, every director or an officer of that body shall be deemed to have committed that offence, and

(b) in the case of a partnership, every partner or officer of the partnership shall be deemed to have committed that offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if it is proved that the

offence was committed without the knowledge or connivance of that person and that due care and

diligence was exercised to prevent the commission of the offence having regard to the circumstances.

20. Penalty

(1) A person found guilty of an offence under this Act for which a penalty is not provided, is liable,

on first conviction, to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding one year or to both the fine and the imprisonment.

(2) On a second or subsequent conviction for an offence under this Act, a Court may impose a penalty

which does not exceed double the penalty referred to in subsection (1).

21. Interpretation

In this Act, unless the context otherwise requires,

“Court” means a court of competent jurisdiction;

“finance lease agreement” means a written agreement between two parties by which the lessor undertakes to lease to the lessee for the lessee’s use only and against payment of mutually agreed lease rentals over a specified non-cancellable period,

(a) either the lessor’s own already acquired assets, or

(b) an asset that the lessor agrees to acquire from a third party, known as the supplier, chosen and specified by the lessee so that the lessor retains full title to the asset during the period of the lease,

and, under which, subject to agreement by the lessor, the lessee may exercise an option to purchase the

asset outright after the period of the lease at a price agreed on by the parties;

“fair value” means an amount for which an asset can be exchanged between a knowledgeable willing buyer and a knowledgeable willing seller;

“lessee” includes a person who, under a finance lease agreement, obtains from another person, the

lessor, the right to use, in return for rent, an asset for an agreed period of time and the successors and

assignees of the lessee;

“lessor” includes a person who, under a finance lease agreement, conveys to another person, the

lessee, the right to use the asset in return for rent for an agreed period of time, and the successors and

assignees of the lessor;

“leasable asset” means a movable asset which can be legally sold in or imported into the Republic

that becomes the subject matter of a finance lease agreement, whether or not the asset has become a

fixture to or incorporated in land;

“non-cancellable lease” means a lease that is cancellable only

(a) on the occurrence of a remote contingency,

(b) by mutual agreement, or

(c) by operation of law;

“residual value” means the value estimated, at the inception of a lease, of the leased asset, at the expiry of the lease term;

“supplier” means a person, other than the lessor or lessee, who is in the business of buying and selling goods;

“total lease rental” means the total sum of money payable by the lessee under a finance lease agreement, exclusive of a sum of money payable as management fee, service charge or as a penalty or

as compensation or damages for breach of the finance lease agreement.

22. Application of the Act

This Act applies to a finance lease agreement entered into after the date of the coming into force of

this Act.3(3)

23. Commencement

Spent.4(4)

Endnotes

1 (Popup - Footnote)

1. This Act was issued as the Finance Lease Law, 1993 (P.N.D.C.L. 331), made on the 5th day of January,

1993 and notified in the Gazette on 18th June, 1993.

2 (Popup - Footnote)

2. N.R.C.D. 54.

3 (Popup - Footnote)

3. That is, the 5th day of January, 1993.

4 (Popup - Footnote)

4. The section provided for the 5th day of January, 1993 as the date of the coming into force of the Act.