

FINANCIAL LEASING ACT, 2013*(Act 8 of 2013)***ARRANGEMENT OF SECTIONS****SECTIONS****PART I - PRELIMINARY**

1. Short title
2. Interpretation
3. Application

PART II - FORMATION OF FINANCIAL LEASE

4. Financial Lease
5. Form of contract
6. Subject matter of a financial lease
7. Financial lease payments
8. Irrevocability and independence
9. Delivery and acceptance of the asset
10. Freedom of contract

PART III - RIGHT, OBLIGATIONS AND DUTIES

11. Rights and obligations of the lessor
12. Duties of the supplier
13. Rights and obligations of the lessee
14. Return of asset
15. Supply agreement
16. Termination or variation of conditions of a supply agreement
17. Non-liability of the lessor for loss in relation to assets
18. Priority of lessor's claim against third party and insolvency of a lessee
19. Third party claims and insolvency
20. Lessee's trustees in bankruptcy or creditors
21. Transfer or assignment of financial lease
22. Transfer of lessee's rights in the assets
23. Removal of leased asset from Seychelles without lessor's permission
24. Priority of liens

25. Default by lessee
26. Accelerated payment or termination with notice to lessee
27. Repossession
28. Recovery of payment due under the financial lease
29. Savings of other remedies

PART IV - REGISTRATION OF FINANCIAL LEASE AND LEASED ASSETS

30. Registration of financial lease

PART V - LICENSING

31. Financial Leasing Licence required
32. Approval to accept deposits
33. Licence Application
34. Granting of licence
35. Licensing
36. Approval required for banks to engage in financial leasing as part of its banking licence
37. Annual licence fee
38. Licensee to comply with rules, directions and instruments
39. Approval for branches
40. Restriction on use of words
41. Revocation of licence or approval
42. Power of the Central Bank to prohibit operations of licensee
43. Urgent action
44. Appeals
45. Suspension of business on revocation of licence or appeal
46. Surrender of licence
47. Revocation and variation of approval for branch business
48. Effect of carrying on financial leasing business without a licence
49. Inspection of financial leasing institution

PART VI - PRUDENTIAL REQUIREMENTS

50. Prudential requirements
51. Other duties

**PART VII - ACCOUNTS, AUDIT INFORMATION
AND INSPECTION**

52. Annual balance sheets, etc
53. Audit
54. Audit committee
55. Publication and display of balance sheets, etc
56. Records
57. Periodic statements
58. Disclosure requirements
59. Inspection of financial leasing institutions

**PART VIII - POWERS OF THE CENTRAL BANK
AND OFFICERS**

60. Persons qualified to be administrators
61. Central Bank to be notified of change in administrators
62. Administrator to declare personal interest
63. Bribery and collusion
64. Acquisition of substantial interest
65. Merger
66. Ban on receipt of deposits
67. Disclosure of information restricted
68. Confidentiality of information
69. Exchange of information
70. Publication of information by Central Bank
71. Central Bank's power over unsafe practices
72. Suspension unaffected by appeal
73. Prohibited operations
74. Approval to transfer assets

PART IX - MISCELLANEOUS

75. General Directions
76. Administration of abandoned property
77. Offences
78. Penalty for offence
79. Protection from suit
80. Review by Court

81. Regulations
82. Rules of Court
83. Non-application of Act
84. Compounding of offences
85. Application of Companies Act



FINANCIAL LEASING ACT, 2013

(Act 8 of 2013)

I assent

A handwritten signature in cursive script, appearing to read 'Michel'.

J. A. Michel
President

11th November, 2013



AN ACT to provide for the regulation of Financial Leasing Business; to specify the rights and duties of lessors and lessees and suppliers of asset; to provide for the licensing, regulation and monitoring of Financial Leasing Institutions and for matters connected therewith or incidental thereto.

PART I - PRELIMINARY

1. This Act may be cited as the Financial Leasing Act, 2013. Short title

Interpretation

2. In this Act,—

“asset” means an asset which is the subject of a financial lease and include any moveable tangible asset but does not include—

- (a) any improvements made to land other than fixtures or immovable property attached to land which can be removed from the land without substantial destruction to such fixture or immovable property;
- (b) money, shares, investments, securities, any financial instruments or any other movables whose fee circulation in Seychelles is restricted by law;

“administrator”, in relation to a financial leasing institution, means any person who is a director or managing director of such institution, or in the case of a branch of a foreign financial leasing institution, the person designated as managing agent pursuant to section 313(1) of the Companies Act;

“assigned capital”, in relation to a branch of a foreign financial leasing institution, means unimpaired capital assigned to the branch by its head office;

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

“bank” and “banking business” have the meaning given to them under the Financial Institutions Act, 2004;

“Board” means the Board of the Central Bank;

“close relation”, in relation to an administrator or a natural person holding a substantial interest in a financial leasing institution, means spouse, parents, children or dependant relatives of such administrator or natural person;

“Central Bank” means the Central Bank of Seychelles as established by section 3 of the Central Bank of Seychelles Act, 2004;

“Companies Act” means the Companies Act 1972;

“control”, in relation to a financial leasing institution, means the relationship between the financial leasing institution and any body corporate in which the financial leasing institution —

- (a) directly, indirectly or acting through one or more persons owns, controls or has the right to vote 20 per cent or more of its voting shares or has the right to elect a majority of its directors; or
- (b) exercises such a controlling influence as the Central Bank may determine;

“deposit” has the meaning given to it under section 2 of the Financial Institutions Act, 2004;

“director” has the meaning given in section 2(1) of the Companies Act, and in relation to a branch of a foreign financial leasing institution includes the person designated as managing agent pursuant to section 313(1) of the Companies Act;

“financial lease” means an agreement between the lessor and the lessee as defined under section 4;

“financial leasing business” means the business of investing money for the provision of asset under a financial lease;

“financial leasing institution” means an institution licensed or authorised under this Act to conduct financial leasing business;

“financial leasing licence” means a licence to conduct financial leasing business granted under this Act;

“foreign financial leasing institution” means an overseas company registered under section 310 of the Companies Act which is established under the laws of a country other than Seychelles and issued with a financial leasing licence under this Act;

“Governor” means the Governor of the Central Bank of Seychelles appointed under section 6 of the Central Bank of Seychelles Act, 2004;

“group of closely-related customers” means —

- (a) two or more persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others;
- (b) two or more persons among whom there is no relationship of control as defined in paragraph (a) but who are to be regarded as constituting a single risk because they are so interconnected to the event that if one of them were to experience financial problems the other or all of the others would be likely to encounter repayment difficulties;

“lessor” means a person licensed or approved, to conduct financial leasing business and who transfers the right to possession and use of an asset under lease to a lessee;

“lessee” means a person who acquires a right to possession and use of an asset under the lease for an agreed period of time in exchange for agreed lease payments;

“local financial leasing institution” means a financial leasing institution established under the laws of Seychelles;

“Minister” means the Minister for the time being responsible for finance;

“net profits” means profits after providing for management charges and taxation;

“substantial interest” means holding solely or jointly with another person directly or indirectly, 10 per cent or more of the capital or of the voting rights of a company or undertaking or, directly or indirectly, exercising and control influence over the control of the company or undertaking as the Central Bank may determine;

“subsidiary” means any body corporate in which another person or group of persons jointly holds

- (a) directly or indirectly 50 per cent or more of the voting shares; or
- (b) a substantial interest that permits such other person or group of persons to exercise effective control over the management or policies of the subsidiary;

“supervisory matters” includes matters relating to money laundering and terrorist financing;

“supplier” means a person who supplies an asset for the purpose of a financial lease, and transfers title to the asset to the lessor for delivery to the lessee;

“supply agreement” means an agreement entered into by a lessor with a supplier for the supply of an asset by the supplier under a financial lease;

“third party” means a person who is not a party to the financial lease in relation to the asset.

Application **3.** This Act shall apply to any financial leasing business if the —

- (a) asset which is the subject of a financial lease is within Seychelles;
- (b) lessee's principal place of business is within Seychelles; or
- (c) financial lease agreement provides that the Laws of Seychelles governs the transaction.

PART II - FORMATION OF FINANCIAL LEASE

Financial
Lease

4.(1) A financial lease is an agreement entered into between two parties, whereby the lessor, in exchange for monetary consideration, leases an asset to the lessee on the following terms —

- (a) the asset is an asset which the lessor agrees to acquire from a supplier chosen and specified by the lessee, so that the lessor shall retain full title to the asset and the lessee is granted the right to possess and enjoy the asset during the period of lease;

- (b) subject to agreement by the lessor, the lessee may —
 - (i) exercise an option to purchase the asset after the expiry of the period of lease at a price to be agreed upon by the parties;
 - (ii) may return the asset to the lessor; or
 - (iii) request renewal of the financial lease; and
- (c) under a financial lease 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.

(2) A financial lease includes the following characteristics —

- (a) the lessee chose the asset without relying primarily on the skill and judgment of the lessor;
- (b) the lessor acquires the asset or the right to possess and use the asset for the purpose of the financial lease or a previous lease, and the supplier is notified;
- (c) the supplier of an asset for financial lease shall have knowledge that the asset is being acquired for the purpose of a financial lease.

5.(1) A financial lease shall be in writing and shall —

- (a) state that the parties have agreed to enter into a financial lease;

Form of
contract

- (b) state whether the prospective lessee has chosen the asset and the supplier without relying on the skill and judgement of the prospective lessor;
- (c) give a description of the asset which is the subject of the financial lease;
- (d) state the total financial lease payments to be paid by the lessee to the lessor;
- (e) state the amount of each instalment payment payable by the lessee to the lessor;
- (f) state the date or the mode of determining the date on which each instalment is payable;
- (g) state that the lessee acknowledges, confirms and declares that he or she holds the asset as a *mere bailee* of the lessor and that the lessee does not, during the term of a financial lease, have any proprietary right, title, or interest in the asset other than as a lessee;
- (h) state full pay-out period;
- (i) state that the lessee confirms and acknowledges that the financial lease is a full pay-out irrevocable agreement; and
- (j) state that upon determination of the financial lease 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 exempted.

Subject
matter of
financial
lease

6. The asset subject to a financial lease 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 an agreement with the lessee.

7. The payment for use of a leased asset in a financial lease may be calculated primarily on the basis of amortisation of the whole or substantial part of the value of the leased asset and a profit therefor for the lessor, and the manner of financial lease payments may be determined or agreed between parties.

Financial
lease
payments

8. Where a financial lease and supply agreement have been created and the asset subject to the financial lease has been entered into and accepted by the lessee, the lessee's duties toward the lessor shall become irrevocable.

Irrevocability
and
independence

9.(1) Upon the lessee's acceptance of the asset provided under a financial lease, the terms and conditions of the lease shall become irrevocable, and it shall be the duty of the lessee to observe all such terms and conditions including the terms and conditions relating to payments under the lease.

Delivery
and
acceptance
of the asset

(2) For the purposes of subsection (1), a lessee accepts the asset where —

- (a) the lessee signifies to the lessor or supplier that the asset conforms to the supply agreement;
- (b) fails to reject the asset after having been given a reasonable opportunity to inspect such assets; or
- (c) uses the asset.

(3) Unless the parties agree otherwise, after a lessee has accepted the asset, the lessee is entitled to damages only from the supplier if the asset does not conform to the supply agreement.

10. Unless otherwise provided in this Act or any other law, the lessor and lessee may derogate from or vary the effect of this law in determining the contents of a financial lease.

Freedom of
contract

PART III - RIGHTS, OBLIGATIONS AND DUTIES

Rights and
obligations
of the lessor

11.(1) A lessor shall—

- (a) 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 such claim or right of the third party derives from a negligent or intentional act or omission of the lessor;
- (b) not be liable for defects in or unfitness of the leased asset for any particular purpose except as provided in this Act or in the financial lease.

(2) The liability of the lessor for defects in legal title to the leased assets shall not be limited by the agreement.

(3) Where the leased asset is not delivered to the lessee as a result of delay on the part of the lessor to—

- (a) enter into a supply agreement with the supplier; or
- (b) make payment to the supplier on time,

the lessee's obligations under a financial lease shall be suspended.

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

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

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

- (b) terminate the financial lease and demand that the lessor pays any damages or losses incurred by the lessee as a result of the lessor's failure to comply with his or her contractual obligations.

(6) Unless otherwise as provided for in this Act, the lessor shall not be liable to the lessee for damages caused to the leased asset.

(7) Notwithstanding subsection (6), the lessor may be liable to the lessee for damages caused to the leased assets by 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 right to peaceful and lawful use of the leased asset.

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

Duties of the
supplier

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

(3) The lessee may take legal action directly against a supplier of the asset for a 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.

Rights and obligations of lessee

13.(1) The lessee shall have the right to peaceful enjoyment and possession of the leased asset during the term of the financial lease.

(2) The lessee shall —

- (a) take proper care of the asset as provided under the financial lease;
- (b) use the asset in a reasonable manner consistent with that of normal use for which it was provided; and
- (c) maintain and keep the asset in the same condition as was delivered, subject to fair wear and tear and any modification to the asset agreed to by the parties to the financial lease.

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

(4) The lessee shall be responsible for the proper maintenance and provide such insurance cover for the asset as may be agreed upon between the parties and paying the insurance premium throughout the lease of the financial lease.

(5) The lessee shall be responsible for repairing damage caused by third parties during the time the asset is in his or her possession.

(6) Where the lessee repairs damages under subsection (5), he or she shall have the right to take legal action against

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.

(7) Subject to the lessee performing his or her obligations under the financial lease, the agreement shall not be terminated unilaterally even if the lessor is declared bankrupt.

(8) At the expiration of the term of the financial lease, return the asset to the lessor, the lessee shall, unless the financial lease is renewed with the consent of the lessor or the lessee accepts to purchase the asset from the lessor.

(9) Without prejudice to the rights of the lessor against the lessee or the supplier, the lessee shall have the right to take legal action directly against the supplier for the performance of the supplier's obligations and to obtaining from the supplier compensation for damages resulting from his default.

(10) The lessee shall have no other claim against the lessor for non-delivery, delay in delivery or delivery of a nonconforming asset by the supplier.

(11) Where owing to default on the part of the lessee, the supply agreement between the supplier and the lessor is terminated, the lessor may demand lease payments due from the lessee under the financial lease where payment was made by the lessor for purchase of the asset at the request of the lessee.

(12) The lessee may, with the prior written consent of the lessor, lease the asset to a sub-lessee on the same terms and conditions set forth in the financial lease.

14. Upon the expiration of the financial lease or its prior termination under this Act, the lessee shall return the asset to the lessor in such condition as is specified in section 13(2), unless the lessee has accepted to purchase the asset or retain it for a further period. Where the lessee fails to return the asset, the lessor shall have a right to recover possession of the same.

Return of
asset

Supply
agreement

15.(1) A lessor shall not enter into a supply agreement with a supplier for the supply of an asset under a financial lease, until the lessee agrees in writing with the terms, conditions warranties and specifications specified in such agreement.

(2) Where a lessor has entered into a supply agreement in accordance with the provisions of subsection (1) and the asset specified in the agreement is delivered at or before the time fixed under such agreement, the lessee shall accept the asset supplied, if the asset conforms to the terms, conditions, warranties and specifications specified in the agreement.

Termination
or variation
of
conditions
of a supply
agreement

16.(1) A lessee shall not terminate or rescind a supply agreement without the consent of the lessor.

(2) The rights conferred on a lessee under this Act in relation to a supply agreement shall not be affected by any variation of a term, condition, warranty or specification in such agreement, unless the lessee has consented in writing to such variation.

Non-liability
of lessor for
loss in
relation to
the asset

17.(1) A lessor shall not incur any liability to the lessee for any loss suffered by the lessee in respect of the asset provided under the financial lease, except to the extent of any loss arising out of the lessee's reliance on the lessor's skill and judgement on the selection of the asset or in the lessor's intervention in the selection of the supplier or in the specification of the asset.

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

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

18. The title or interest of the lessor or the lessor's assignees in any leased asset under a financial lease shall prevail at all times against claims by a third party including a creditor of the lessee, except as against a purchaser in good faith for value of the asset under a non-registered lease.

19.(1) Except as otherwise provided in this Act, a financial lease is effective and enforceable according to its terms between the parties, against purchasers of the assets and against creditors of the parties.

Third party
claims and
insolvency

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

(3) Any claim to the ownership or any disturbance to the quiet enjoyment of a leased asset by a third party shall be notified in writing by the lessee to the lessor within fourteen days of such claim.

(4) If a lessee fails to notify the lessor as provided in subsection (3) above, the lessee shall be liable for any charge or damages thereby incurred by the lessor.

(5) A lessor may apply to join as a co-defendant in any legal action instituted by a third party claiming any right to a leased asset.

(6) The lessee shall not create any charge or encumbrance over the leased asset during the term of the lease, and if so 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 asset leased against the lessor.

20.(1) The rights of a lessor under this Act, may be enforced against a trustee in bankruptcy of the lessee, or against any creditor of a lessee, including any creditor who has obtained an attachment in execution of such asset.

Lessee's
trustees in
bankruptcy
or creditors

(2) For the purposes of subsection (1), "a trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of a lessee for the benefit of the lessee's creditors.

21.(1) A lessor may, with the written consent of the lessee obtained at the time of entering into the financial lease or thereafter, transfer or assign all or any of the lessor's rights

Transfer or
assignment
of financial
lease

under the financial lease or in relation to any asset provided under the financial lease or of both, to any financial leasing institution.

(2) Unless otherwise stipulated, a financial lease may be assigned by the lessor after he has informed the lessee of his intention in writing. The lessor shall always have the right to assign its rights on the lease payments due under the financial lease without requiring prior information to the lessee thereof.

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

(4) A subsequent holder of a financial lease has the same rights and obligations that are specified in the financial lease 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 leased asset provided the lessee performs his obligations under the financial lease.

(5) Any such transfer by the lessor shall require the Central Bank's approval.

Transfer of lessee's rights in the asset

22. A lessee shall not, except with the written permission of the lessor and subject to any rights of third parties, transfer the right to the possession and use of an asset under a financial lease to any other person.

Removal of leased asset from Seychelles without lessor's permission

23.(1) A lessee or the agent or representative of the lessee shall not remove a leased asset from Seychelles without the prior written consent of the lessor.

(2) If a lessee contravenes subsection (1), the lessee shall be liable on conviction to a fine not less than double the market value of the leased asset or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(3) If a lessor believes that a leased asset has been removed or is being removed from Seychelles without his consent in accordance with subsection (1), the lessor has the right to institute legal action for the return to Seychelles of the leased asset.

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

Priority of liens

25. Where a lessee fails to comply with certain terms and conditions of the financial lease in such circumstances as would amount to a substantial failure of such lease, the lessor may, subject to the provisions of section 26 —

Default by lessee

- (a) require the lessee to make accelerated payment of the payments due under the financial lease, where the lease so provides;
- (b) where a lessee fails to make accelerated payments as required under paragraph (a), terminate the financial lease and —
 - (i) recover possession of the asset provided; and
 - (ii) recover such damages as would place the lessor in a position the lessor would have been if the lessee had complied with the provisions of the financial lease in accordance with its terms and conditions.

26.(1) A lessor shall, prior to enforcing the right to accelerated payment or to the termination of a financial lease under section 25, serve by registered post a notice on the lessee —

Accelerated payment or termination with notice to leave

- (a) specifying the circumstances which had caused a substantial failure of the lease within the meaning of the financial lease;
- (b) appointing a date, not being a date less than 21 days after the receipt of the notice, for remedying the failure referred to in paragraph (a).

(2) Where a lessee fails to remedy the failure specified in a notice served under subsection (1) on or before the date appointed in the notice, or fails to give a reasonable cause for such failure, the lessor may act in accordance with the provisions of section 25.

Repossession

27.(1) Where the lessee defaults in the payment of lease payments in accordance with the financial lease, the lessor may recover unpaid dues together with interest and damages.

(2) In the event of—

- (a) death, bankruptcy, liquidation or dissolution of the lessee; or
- (b) expiry of the financial lease; or
- (c) breach of any terms of the financial lease by the lessee, including default in one lease payment of any amount not remedied within such period as may be stipulated in the financial lease, or in the absence of any such stipulation, within a period of 30 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 by the creditors of the lessee.

(3) Subject to subsection (4), where the lessee defaults in the payment of lease dues in accordance with the financial

lease, or commits another breach, the lessor may terminate the financial lease, 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 in accordance with its terms.

(4) Where the lessor becomes entitled to repossess the leased asset 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 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 by the lessee.

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

(7) The parties may, under a financial lease, stipulate that the amount of future payments at the time of repossession shall be decreased by the fair value of the asset repossessed, less any administrative costs of the lessor, including but not limited to 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.

Recovery of
payments
due under
the
financial
lease

28.(1) In an application under section 27, a lessor may, in addition to praying for an order of possession, also pray for an order for recovery of any payments due under the financial lease, and in that event shall specify in the plaint filed the sum due and such other facts as may be necessary for the determination of such matter.

(2) The provisions of section 27 (4) and (5) shall, mutatis mutandis, apply to an order under subsection (1) of this section, and the court may in the order made under those subsections, include an order for recovery of the sum of money sought to be recovered.

(3) An order made under subsection (2), shall be executed in the same manner as if it were a decree for the recovery of money.

Savings of
other
remedies

29. The provisions of sections 28 shall be in addition to and not in derogation of any other remedy that may be available to a lessor in law, for the recovery of possession of any asset or any money due under a financial lease.

PART IV - REGISTRATION OF FINANCIAL LEASE AND LEASED ASSETS

Registration
of financial
lease

30.(1) The Central Bank, in consultation with the Minister, may designate by Notice in the *Gazette* a registry for registration of assets under financial lease which shall be made open for inspection by the public.

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

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

PART V - LICENSING

31.(1) A person shall not advertise for or engage in financial leasing business in accordance with section 3, unless a financial leasing licence is obtained from the Central Bank.

Financial
Leasing
Licence
required

(2) A person shall not be eligible to be licensed under this Act, unless such person is —

- (a) a company incorporated under the Companies Act; or
- (b) an overseas company registered under the Companies Act,

having its principal place of business in Seychelles and having such minimum issued and paid-up capital as may be prescribed by the Central Bank and proposing to solely conduct financial leasing business.

(3) A licence granted under this Act is granted in writing for an indefinite period of time and shall not be transferable. The licence shall specify the activities which the holder of the licence is authorised to undertake and the terms and conditions under which it has been issued.

(4) Notwithstanding (1), every person who is carrying on financial leasing business on the commencement date, may continue to carry on such business for a period not exceeding one year from such commencement date, but shall within that period apply for and obtain a financial leasing licence under this Act to carry on such financial leasing business.

(5) Where a person referred to in subsection (4) does not apply for a financial leasing licence, or is refused a financial leasing licence under this Act, only such financial leases entered into by that person before the expiration of the period referred into subsection (4) or the date of refusal, as the case may be, shall remain valid for the periods for which they are entered into.

Approval to
accept
deposits

32.(1) A licence granted under section 31(1) shall authorise the licensee to solely engage in financial leasing business without the right to accept deposits.

(2) A licensee authorised under section 31(1) to engage in financial leasing business may apply to the Central Bank for an extension to its licence to accept deposits from the public.

(3) Central Bank shall approve a request made under (2) where it is satisfied as to the person's ability to adequately and effectively manage the risks associated with its conduct of business.

(4) A person who holds funds by accepting deposits from the public without approval under this section shall repay those funds pursuant to the directions of the Central Bank and this shall constitute an offence.

Licence
Application

33.(1) An application shall be made in writing and in such manner as the Central Bank may provide and shall include —

- (a) an authenticated copy of the instrument of incorporation under which the applicant is formed, together with the memorandum of association or bylaws, if any, and the address of its head office;
- (b) the amounts of the authorised and subscribed capital of the applicant, including the amounts that have been paid in, or the assigned capital in the case of a branch of an overseas company incorporated outside Seychelles;
- (c) the name, nationality, residence and business or profession of every administrator, together with a statement detailing the qualifications and professional experience and at least three references;

- (d) the name, nationality, residence and business or profession of every person holding a substantial interest, together with at least two references verifying good finance standing, and, where the person holding substantial interest is a body corporate, copies of the latest three audited annual balance sheets and profit and loss accounts where applicable;
- (e) a list of all shareholders and ultimate beneficial owners of shares stating the name, address and respective shareholding;
- (f) for each administrator and person holding substantial interest an affidavit duly signed by the individual stating whether or not there has been convictions for crimes, past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings;
- (g) copies of the latest three audited annual balance sheets and profit and loss accounts of the applicant, and in the case of a newly formed company, financial projections for the next three years;
- (h) a business plan setting out the business objectives and types of activities of the proposed financial leasing institution, the selected business model, a description of its organisational structure, corporate governance, resources required, business management and employees continuous education plans, internal controls and risk management processes, together with projected balance sheets, profit and loss accounts and cash flow statements for the next three financial years;

- (i) an operating manual containing particulars relating to —
 - (i) the duration of the financial lease;
 - (ii) the method of recovery of the payments due on the financial lease;
 - (iii) the protection by the lessor of the right of the lessee against claims in respect of the asset provided under the financial lease;
 - (iv) the disposal of such asset after the expiration of the financial lease;
 - (v) the funding strategy;
 - (vi) such other additional information as may be deemed necessary to analyse the request; and
 - (vii) such other particulars as may be prescribed.
- (j) a statement by the auditor selected to be appointed indicating the auditor's willingness to take on this task;
- (k) a list of companies in which the applicant holds shares, specifying the number of shares and the registered addresses of those companies;
- (l) the location of the principal and other places in or outside Seychelles where it proposes to conduct business, and in the case of a mobile office, the area to be served;
- (m) in the case of an application by an overseas company incorporated outside Seychelles, in addition,—

- (i) a certificate of the designation specifying the name, nationality, residence and business or profession of its managing agent, being the officer, agent or other person in Seychelles responsible for carrying on financial leasing business and on whom any process may be served;
- (ii) a statement that the foreign supervisory authority responsible for the supervision of the applicant in the country of incorporation is aware of the application and exercises consolidated supervision;
- (n) in the case of an overseas company incorporated outside the Seychelles seeking to establish a branch, in addition, a sworn undertaking of its head officer, supported by an appropriate resolution of its board of directors, that it will, on demand of the Central Bank, make available, in such currency and at such place as may be specified by the Central Bank, funds necessary to cover all obligations and liabilities incurred in the conduct of financial leasing business authorised under the financial leasing business licence;
- (o) proof of payment of the application fee as prescribed by the Central Bank;
- (p) duly certified and apostilled copies of such other documents as may be prescribed by the Central Bank.

(2) The application and every document submitted in accordance with subsection (1) shall be signed by the directors

of the applicant, or by a principal officer of the applicant duly authorised to do so. Where documents are not executed in the English language, certified and apostilled translations in English must be submitted.

Granting of
licence

34.(1) In considering an application for a licence received under section 33, the Central Bank shall conduct such investigations as it may deem necessary and shall grant a licence to the applicant on being satisfied as to —

- (a) the validity of the documents submitted under section 33(1);
- (b) *(i)* the financial status; and
(ii) history of the applicant where applicable;
- (c) the character and professional experience of its administrators;
- (d) the identity and character of its owners, in particular persons holding a substantial interest;
- (e) the adequacy of its capital structure;
- (f) its ability to cover all obligations and liabilities incurred in the conduct of the proposed business to be authorised under the licence;
- (g) the soundness of its proposed operations;
- (h) the viability of the business plan and operating manual;
- (i) any risks or corporate activities which may affect the applicant of the international standing and good repute of Seychelles; and

- (j) any other criteria as the Central Bank considers relevant.

(2) For the purposes of subsection (1)(c) and (d), the Central Bank shall have regard to the following—

- (a) the applicant's probity, competence, experience and soundness of judgement for fulfilling the responsibilities of the proposed business;
- (b) the diligence with which the applicant is fulfilling or is likely to fulfill these responsibilities;
- (c) the applicant's educational and professional qualifications, and membership of professional or other relevant bodies as applicable;
- (d) the applicant's knowledge and understanding of the professional obligations to be assumed or undertaken;
- (e) any evidence that the applicant has committed an offence involving dishonesty or has contravened a law designed to protect any member of the public arising from dishonesty, incompetence, malpractice or conduct of discharged or undischarged bankrupts or otherwise insolvent persons;
- (f) such other information which may come to the notice of the Central Bank.

(3) Within 30 days after the receipt of an application, the Central Bank shall inform the applicant whether the application is deemed complete or specify the additional information required to make the application complete.

(4) Within 90 days after the receipt of a complete application, the Central Bank shall —

- (a) grant a licence; or
- (b) inform the applicant that it has refused to grant a licence giving the reasons for the refusal:

Provided that the Central Bank shall be under no duty to give reasons where —

- (i) it is precluded by law;
- (ii) information has been disclosed to the Central Bank under conditions of confidentiality between the Central Bank and any public sector agency or law enforcement agency; or
- (iii) information has been disclosed to the Central Bank under conditions of confidentiality between the Central Bank and any other foreign regulatory agency pursuant to a memorandum of understanding, an agreement or a treaty entered into by the Central Bank or the Republic of Seychelles.

(5) Where the Central Bank, on consideration of the information contained in an application made and the documents, information and particulars furnished under section 33 and after such investigations which the Central Bank deems necessary, is satisfied that the applicant is fit and competent to carry on financial leasing business, the Central Bank may, having regard to the interests of the national economy grant a financial leasing business licence.

(6) Where a licence is granted under this Act, the Central Bank shall publish in the *Gazette* and in a local newspaper a notice to that effect specifying the name of the financial leasing business and the activities authorised by the licence.

(7) Failure on the part of the Central Bank to make a decision to grant or refuse to issue a licence within the 90 days stipulated under subsection (3) shall be deemed to be a refusal and the applicant may re-apply for the licence, in which case the Central Bank may make a decision within 30 days of the resubmission.

35.(1) In granting a licence, the Central Bank may specify the terms and conditions which shall be complied with by the financial leasing institution.

Licensing

(2) The financial leasing institution may only start its operations once the annual fee for its first year of operation has been paid to the Central Bank.

(3) A financial leasing institution holding a licence shall not engage in any business other than the activities specified therein.

(4) Every financial leasing institution shall exhibit the licence issued to it in a conspicuous place at its principal place of business.

36.(1) Notwithstanding section 4 of the Financial Institutions Act, a bank wishing to engage in financial leasing business as part of its banking licence shall require Central Bank's prior approval.

Approval
required for
banks to engage
in financial
leasing as part
of its banking
licence

(2) A request under subsection (1) shall be made in any form or manner as shall be prescribed by the Central Bank.

(3) A bank wishing to engage in financial leasing business as part of its banking licence is required to submit the information required under section 33(1) (h), (i), (o) and (p).

(4) The Central Bank shall determine an application under subsection (2) based on all available information and the prospective impact that an approval could have on the financial stability of the bank and the economy.

(5) Where the Central Bank deems fit to approve an application made under sub-section (2), the Central Bank shall communicate such approval to the bank within 30 days of submission of the complete application.

(6) Where the Central Bank refuses an application made under subsection (2), the Central Bank shall, subject to this Act, issue the bank with a written explanation of the grounds upon which the refusal was based, in which case the bank may re-apply for an authorisation.

(7) The Central Bank shall keep track of all financial leasing portfolios, benchmark them and continuously evaluate their performance.

Annual
licence fee

37.(1) Every financial leasing institution shall pay the Central Bank an annual licence fee as may be prescribed, within two months of the end of each calendar year.

(2) The Central Bank may prescribe different annual fees for different classes of financial leasing institutions which shall apply uniformly to financial leasing institutions within each class.

(3) With the exception of the year in which a licence is granted, where the holder of a financial leasing licence fails to pay the annual fee prescribed under subsection (1) before the beginning of the year for which the annual fee is due, the financial leasing institution shall be subject to an additional charge of 1 per cent of the annual fee, per day.

Licensee to
comply with
rules,
directions, and
instruments

38.(1) The operations of a financial leasing institution are subject to statutory directions and instruments made under this Act and to any determination, notice or other requirement that

may be made or issued by the Central Bank from time to time or in accordance with this Act, the Central Bank of Seychelles Act or any other written law.

(2) Without prejudice to the Companies Act, a local financial leasing institution shall not, without the prior written approval of the Central Bank, alter the instrument under which it is formed.

(3) The Central Bank shall not approve alterations which conflicts with this Act, the Companies Act or other laws.

(4) Without prejudice to section 312 or any other relevant provision of the Companies Act, every foreign financial leasing institution shall notify the Central Bank of any alteration in the instrument under which it is formed within 30 days of the alteration.

(5) Every financial leasing institution shall notify the Central Bank of any change in the registered shareholders or in the shareholdings of the institution within 21 days of such change or becoming aware of such change, whichever is the latest, where one shareholder holds or were to hold 5 per cent or more of the paid-up capital.

39.(1) The prior written approval of the Central Bank is required—

Approval for
branches

- (a) for a financial leasing institution to open or close a branch in any part of Seychelles, or to change the location of any existing place of business in Seychelles;
- (b) for a local financial leasing institution to open or close a branch, outside Seychelles.

(2) An approval under subsection (1) may be given subject to such conditions as the Central Bank may prescribe by regulations or specify in the written approval.

Restriction
on use of
words

40.(1) A person other than a financial leasing institution shall not without the prior written approval of the Central Bank, use the words “financial leasing institution” or any of their derivatives in any language in the name, description or title under which that person is incorporated, registered or doing business in Seychelles.

(2) Nothing in subsections (1) prevents the use of the words there specified or any of their derivatives in any language when it is for the sole purpose of organising a company for the purpose of applying for a licence under this Act.

(3) A person shall not be granted or shall continue to hold licence under a name which so closely resembles the name of an existing financial leasing institution as would be likely, in the opinion of the Central Bank, to mislead the public.

(4) Except with the prior written approval of the Central Bank, a financial leasing institution shall not use, or refer to itself by, a name other than that under which it is licensed under this Act.

(5) Where the Central Bank approves a change of name under subsection (5), the Central Bank shall publish in the *Official Gazette* and in a local newspaper a notice to that effect specifying such name.

Revocation
of licence
of approval

41.(1) The Central Bank may revoke or vary the terms and conditions of a financial leasing licence if the licensee—

- (a) has obtained the licence on the grounds of false or fraudulent statements or other material irregularities connected with the licence application;
- (b) fails to commence operations within a period of 6 months or such longer period as has been allowed in writing by the Central Bank;

- (c) fails to comply with the terms and conditions of the licence or any corrective measures required by the Central Bank in accordance with section 38;
- (d) no longer possesses the minimum amount of capital and reserves required by regulations under this Act or can no longer be relied upon to fulfill its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;
- (e) has failed to obtain prior approval of the Central Bank for the transfer of a substantial interest held in the financial leasing institution;
- (f) is insolvent or apparently insolvent; for the purpose of this paragraph a financial leasing institution is apparently insolvent when the financial leasing institution is not paying its financial obligations as they fall due or the Central Bank has determined that the capital of the financial leasing institution is less than 25 per cent of the minimum capital as shall be prescribed by regulations or that the capital base of the financial leasing institution is 8 per cent or below 8 per cent of the total value of its assets determined on a risk adjusted basis or that the capital of the financial leasing institution being its assets less liabilities is 1.5 per cent or less of the financial leasing institution's tangible assets on an unweighted basis;
- (g) undergoes a merger, consolidation, amalgamation or division;
- (h) is in breach of any material provision of this Act or of regulations, rules, orders or

directions which are applicable to the licence or the licensee; or

- (i) being a bank, has ceased for more than 3 months to engage in the business of receiving money deposits or other repayable funds from the public or extending credits for its own account;
- (j) fails to pay the annual fee or charges within 14 days after the due date.

(2) The Central Bank may withdraw or vary the terms and conditions of any approvals issued under this Act if—

- (a) such was obtained on the grounds of false or fraudulent statements or other material irregularities connected therewith;
- (b) fails to undertake the activity for which the approval is granted within a period of 6 months or such longer period as has been allowed in writing by the Central Bank;
- (c) fails to comply with the terms and conditions of the approval or any corrective measures required by the Central Bank in accordance with section 71;
- (d) no longer possesses the minimum amount of capital and reserves required by regulations under this Act or can no longer be relied upon to fulfill its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;
- (e) has failed to obtain prior approval of the Central Bank for the transfer of a substantial interest held in the financial leasing institution;

- (f) is insolvent or apparently insolvent; for the purpose of this paragraph a financial leasing institution is apparently insolvent when the financial leasing institution is not paying its financial obligations as they fall due or the Central Bank has determined that the capital of the financial leasing institution is less than 25 per cent of the minimum capital as shall be prescribed by regulations or that the capital base of the financial leasing institution is 8 per cent or below 8 per cent of the total value of its assets determined on a risk adjusted basis or that the capital of the financial leasing institution being its assets less liabilities is 1.5 per cent or less of the financial leasing institution's tangible assets on an unweighted basis;
- (g) undergoes a merger, consolidation, amalgamation or division;
- (h) is in breach of any material provision of this Act or of regulations, rules, orders or directions which are applicable to the licence or the licensee; or
- (i) being a bank, has ceased for more than 3 months to engage in the business of receiving money deposits or other repayable funds from the public or extending credits for its own account;
- (j) fails to pay the annual fee or charges within 14 days after the due date.

(3) The Central Bank shall, subject to the provisions of this Act, give reasons for its decision under subsection (1) and (2).

(4) Subject to subsection (5), the revocation or variation of a licence under subsection (1) or approval under subsection (2) takes effect 30 days after the date on which the Central Bank gives notice of it to the licensee.

(5) The aggrieved party may, within 15 days after receipt of notice under subsection (4), submit to the Central Bank reasons why, in their opinion, there should not be a revocation or variation of the terms and conditions of licence or approval, as the case may be, or bring forth evidence that show the rectification of any irregularity which may have been the cause of the revocation or variation of the licence or variation.

(6) At the latest 3 days before the revocation or variation is to take effect pursuant to subsections (4) or (5), the Central Bank shall —

- (a) confirm the revocation or the variation with or without modification; or
- (b) withdraw the revocation or the variation unconditionally.

(7) A notice of any action taken under subsection (5) shall be published by the Central Bank in the Official Gazette and in at least one local newspaper.

Power of
the Central
Bank to
prohibit
operations
of licensee

42.(1) Where the Central Bank has given notice of revocation under section 41(3) it may give a direction to the licensee —

- (a) prohibiting it from receiving money deposits or other repayable funds from the public in the case of a financial leasing institution with an approved extension to do so;
- (b) prohibiting it from dealing with or disposing of its assets in any manner specified in the direction;

- (c) prohibiting it from entering into any transaction or class of transactions specified in the direction;
- (d) prohibiting it from soliciting deposits in the case of a financial leasing institution with an approved extension to do so; or
- (e) requiring it to take certain steps or pursue a particular course of action, and the licensee shall comply with that direction notwithstanding the notice of revocation.

43.(1) In an emergency situation requiring urgent action, the Central Bank may revoke a financial leasing licence or any approvals issued under this Act pursuant to section 41(1) and (2) to take effect immediately and direct the financial leasing institution as to the required course of action.

Urgent
action

(2) The Central Bank shall give notice of the revocation to the licensee as soon as practicable. The notice shall state the reasons requiring urgent action. The filing of an appeal pursuant to section 44 does not effect a suspension of any measures imposed by the Central Bank.

44.(1) Where the Central Bank takes a decision —

Appeals

- (a) to refuse to grant a licence under section 34;
- (b) to refuse to grant an approval for the opening or closure of a branch of a financial leasing institution under section 39;
- (c) under section 47 to revoke or vary the terms or conditions of an approval granted under section 39;
- (d) to confirm a revocation of, or variation of the terms or conditions of a licence under section 41(5);

the aggrieved party may appeal to the Central Bank within 15 days from the date on which the aggrieved party receives notification of the decision of the Central Bank to reconsider its decision. The filing of an appeal does not effect a suspension of any measures imposed by the Central Bank.

(2) The Central Bank shall afford to the aggrieved party an opportunity of submitting a written statement of its case and, at the request of the aggrieved party, provide for a hearing before the Board. The Central Bank shall take a final decision within 90 days after considering the case.

(3) If an aggrieved party is not satisfied with the final decision of the Central Bank under this section, the aggrieved party may appeal to the Supreme Court within the time and in accordance with the procedures applicable to civil appeals to that Court.

(4) Notwithstanding anything in any other law, no action or proceeding may be instituted in any court in respect of loss or damage actually incurred, or likely to be or alleged to be incurred by reason of the application of section 41(1).

Suspension
of business
on revocation
of licence of
approval

45.(1) Where the revocation of a licence is made final by the Central Bank under section 44(2), the Central Bank shall —

- (a) direct the financial leasing institution immediately to suspend business authorised under the licence;
- (b) take charge of all its books, records and assets; and
- (c) take such measures as may be necessary to prevent the continuance of the business of that institution.

(2) Where the revocation of a licence has been made final in respect of a local financial leasing institution, the

Central Bank shall immediately take appropriate steps for the winding up of that institution in accordance with the provisions of the Financial Institutions Act.

(3) Where the revocation of a licence has been made final in respect of a foreign financial leasing institution, without prejudice to Schedule 5 of the Financial Institutions Act, 2004, the Central Bank shall direct the head office of that foreign financial leasing institution to immediately cover all obligations and liabilities incurred in the conduct of the business of the institution under the financial leasing licence in accordance with the undertaking of the head officer given under section 33(1)(n).

(4) The Central Bank may, in substitution for the procedures laid down in subsections (1), (2) and (3), take such other action as it considers fit, including arranging for the amalgamation of the financial leasing institution with any other financial leasing institution or financial leasing institution which is agreeable to such amalgamation.

46.(1) Subject to this section, a licensee may, with the prior written approval of the Central Bank, surrender its licence to the Central Bank.

Surrender
of licence

(2) The Central Bank shall grant its approval to an application for the surrender by a licensee of its licence under subsection (1) where it is satisfied that it has made adequate provision in respect of all its liabilities in relation to its business.

(3) In granting its approval under subsection (2), the Central Bank shall appoint a date on which the surrender shall take effect.

(4) Where approval has been granted to a licensee under subsection (2), the licensee shall, not later than 30 days before the date appointed under subsection (3), publish in a local newspaper and an international financial newspaper he

approved by the Central Bank a notice of the proposed surrender of the licence and specifying the date on which the surrender shall take effect.

(5) A surrender of a licence under this section shall have effect as a revocation of a licence under this Act.

(6) The Central Bank shall, as soon as is practicable, publish in the Gazette and in a daily local newspaper a notice of every surrender of a licence under this section but any delay in publishing, or failure to publish, the notice shall not affect the validity of the surrender or its effect.

Revocation
and
variation of
approval
for branch
business

47.(1) The Central Bank may, for exceptional reasons, revoke or vary the terms or conditions of an approval given under section 39, including ordering the closure of a branch of a financial leasing institution.

(2) Any action under subsection (1) shall be communicated by the Central Bank to that financial leasing institution, which shall carry out all the obligations and meet all the liabilities of the branch.

(3) The Central Bank shall give reasons for its decision under subsection (1).

(4) Where an order of closure has been made under subsection (1), the Central Bank shall take all necessary steps to ensure that —

- (a) all persons who have deposited monies in that branch are given the opportunity to withdraw those monies within a reasonable period of time; and
- (b) such measures are taken as will safeguard the interests of those depositors.

48.(1) The Central Bank or any officer authorised by the Central Bank may require by notice issued in that behalf to any person whom the Central Bank has reason to believe is carrying on financial leasing business without obtaining a licence under this Act, to furnish such information including the production of any documents as the Central Bank may consider necessary, in order to ascertain such fact.

Effect of
carrying on
financial
leasing
business
without a
licence

(2) Where the Central Bank or the officer authorised, after considering the information furnished and inspecting any documents furnished under subsection (1), is satisfied that the person concerned is carrying on financial leasing business without being licensed under this Act, the Central Bank shall by written notice issued in that behalf, require that person to immediately cease carrying on such financial leasing business.

(3) Where a person to whom a notice is issued under subsection (2) fails to comply with the requirements of the notice within the time specified therein, the Central Bank may take necessary measures which may lead to —

- (a) the prosecution of such person for an offence under this Act; and
- (b) apply to the Supreme Court to obtain an order for an injunction restraining such person from continuing to carry on financial leasing business, until a valid license is obtained for that purpose under this Act.

(4) Every such application shall be to the Supreme Court and shall be heard and determined in accordance with the procedure laid down in the Civil Procedure Code.

(5) The Supreme Court shall after consideration of an application made under subsection (3) and where it is satisfied that the person concerned is carrying on financial leasing business without being licensed under this Act, issue an injunction restraining such person from continuing to carry on

such business until a valid license is obtained by him under this Act, for that purpose.

Inspection
of financial
leasing
institutions

49.(1) The Central Bank may, if it considers that an inspection of a financial leasing institution is necessary or desirable to ascertain whether that institution is complying with this Act, cause an inspection of that institution to be made by an officer of the Central Bank or by any other person appointed by the Central Bank for the purpose.

(2) Such inspection may include officers or employees of the authority of another country that is charged with the monetary or prudential supervision of activities of financial institutions in that country if it concerns the inspection of a branch or a subsidiary of a foreign financial leasing institution in Seychelles having its head office in that country, or the inspection of a local financial leasing institution that holds a substantial interest in such foreign financial leasing institution, or the inspection of a financial leasing institution in Seychelles in which such foreign financial leasing institution has a substantial interest.

(3) The Central Bank and any person authorised under this section to inspect a financial leasing institution shall be subject to section 11 of the Central Bank of Seychelles Act in respect of information acquired in the course of performing functions under this section and may —

- (a) require any administrator, officer, employee or agent of a financial leasing institution to furnish such information as deemed necessary for the purpose of the inspection; or
- (b) require any such administrator, officer, employee or agent to produce for inspection any books, records or other documents in his or her possession containing or likely to contain any such information.

PART VI - PRUDENTIAL REQUIREMENTS

50.(1) Notwithstanding any other written law, every financial leasing institution shall comply with the requirements of this Part.

Prudential
requirements

(2) The Central Bank shall prescribe prudential requirements relating to—

- (a) minimum capital and reserve fund;
- (b) liquidity risk management;
- (c) foreign currency exposure;
- (d) provisioning and classification of lease assets; and
- (e) other prudential requirements regarding credits, investments, matching as to maturity and interest, maximum ratios and exposures concerning the assets, risk-weighted assets and off-balance sheet items and various categories of capital and reserves,

to be maintained by financial leasing institutions.

51. It shall be the duty of every financial leasing institution to ensure that—

Other duties

- (a) the systems of provisioning and classification of lease assets as prescribed by the Central Bank are applied properly;
- (b) adequate measures to prevent money laundering and terrorist financing are adopted and implemented according to the law.

**PART VII - ACCOUNTS, AUDIT INFORMATION
AND INSPECTION**

Annual
Balance
Sheet, etc

52.(1) At the expiration of each calendar year —

- (a) every local financial leasing institution in respect of all business transacted by it in or outside Seychelles; and
- (b) every foreign financial leasing institution in respect of all business transacted by or through its branches in Seychelles,

shall prepare, with reference to that year, in accordance with an internationally recognised financial reporting framework, a balance sheet as of the last working day of that year and a profit and loss account and cash flow statement in respect of that year.

(2) The balance sheet, profit and loss account and cash flow statement of every financial leasing institution shall give a true and fair view of the state of affairs of that institution as at the end of the calendar year to which the accounts relate.

(3) The Central Bank may prescribe accounting rules for the preparation of accounts of financial leasing companies.

(4) The Central Bank may give directions as to the matters to be shown in the balance sheet, profit and loss account and cash flow statement —

- (a) by way of a note;
- (b) in a statement or report to be annexed.

Audit

53.(1) Every financial leasing institution shall appoint annually an auditor to audit its accounts and such appointment shall be subject to the approval of the Central Bank. The auditor shall be independent, experienced in the audit of financial institutions, a member of a body of accountants,

whether established in or outside Seychelles, and have the necessary resources to undertake audits of financial institutions on a consolidated basis as determined by the Central Bank.

(2) A financial leasing institution shall not appoint the same auditor continuously for a period of more than 5 years without an exemption granted by the Central Bank.

(3) A financial leasing institution shall, upon a change of its auditor, notify Central Bank of the change within 21 days and, if so required by the Central Bank, the reasons for the change.

(4) If a financial leasing institution fails to appoint an auditor satisfactory to the Central Bank, the Central Bank shall have the power to appoint such an auditor.

(5) The remuneration of the auditor, whether appointed by the financial leasing institution or by the Central Bank, shall be paid by the financial leasing institution concerned, and in the case of an auditor appointed by the Central Bank in terms of subsection (4) or (10), shall be of such amount as the Central Bank may determine.

(6) The auditor shall —

- (a) in the case of a local financial leasing institution, make a report to its shareholders;
or
- (b) in the case of an foreign financial leasing institution, make a report to its head office, on the financial statements, annual balance sheet, profit and loss account and accounts.

(7) In the auditor's report, which shall be completed not more than 3 months after the end of the financial year, the auditor shall state —

-
- (a) whether in the auditor's opinion the balance sheet, profit and loss account and cash flow statement are complete and fair and properly drawn up;
 - (b) whether they exhibit a true and fair view of the financial leasing institution's affairs;
 - (c) whether fiduciary duties are being administered in accordance with the law; and
 - (d) if the auditor has called for explanation or information from the administrators, employees or agents of the institution, whether that explanation or information is satisfactory.
- (8) The report of the auditor—
- (a) in the case of a local financial leasing institution, shall be read, together with the report of the directors of the financial leasing institution, at the annual meeting of shareholders;
 - (b) in the case of a foreign financial leasing institution, shall be transmitted to the head office.
- (9) A copy of the auditor's report shall be sent to the Central Bank by the financial leasing institution not later than 30 days after it becomes available, and within 4 months after the end of the financial year at the latest.
- (10) Where the Central Bank is not satisfied with the auditor's report it may require the appointment within a specified time of another auditor who shall make a new report.
- (11) The Central Bank may impose on an auditor, in addition to any duty specified in subsection (7), a duty to—

- (a) submit to the Central Bank such additional information in relation to the audit as the Central Bank considers necessary;
- (b) submit a report, carry out any other examination or establish any procedure if required by the Central Bank;
- (c) submit to the Central Bank a report on the financial and accounting systems and internal controls of the financial leasing institution.

(12) Where in the course of performing functions under this Act an auditor becomes aware of transactions or conditions in a financial leasing institution that may affect its safe and sound operations and the auditor has reasons to believe that —

- (a) there has been a material change in the risks inherent in the business of the financial leasing institution with the potential to affect its ability to continue safe and sound operations;
- (b) there has been a serious violation of any of the provisions of this Act, in particular with regard to the protection of depositors' and creditors' interests;
- (c) a serious criminal offence involving fraud or other dishonesty has been or is likely to be committed;
- (d) measures to prevent money laundering or terrorist financing are not being properly implemented; and
- (e) the paid-up capital or assigned capital, as the case may be, of the financial leasing institution has been reduced by 50 per cent or more, the auditor shall immediately report the matter in writing to the Central Bank. Such report shall not be construed as a breach of professional confidentiality obligations.

Audit
committee

54.(1) Every local financial leasing institution licensed to conduct financial leasing business shall establish an audit committee. The audit committee shall consist of not less than 2 members one of whom shall be a non-executive director of the financial leasing institution. No member of the audit committee shall be a director exercising an executive function or a managing director or manager in the bank. For a foreign financial leasing institution, a similar representative organ may carry out the functions of an audit committee and report to the managing agent in Seychelles.

(2) The audit committee shall report to the directors particularly on the—

- (a) review of the auditor's report and the financial statements before they are approved by the directors;
- (b) review and evaluation of the appropriateness of accounting, internal control and financial disclosure procedures;
- (c) review of such investments and transactions that could adversely affect the sound financial condition of the financial leasing institution as brought to the attention of the audit committee;
- (d) review of the compliance with applicable laws, regulations and guidelines;
- (e) other matters as may be prescribed by the Central Bank.

(3) The officer in charge of internal auditing shall attend meetings of the audit committee. The external auditor shall attend such meetings upon the request of the audit committee.

(4) Every member of the audit committee shall keep confidential and not disclose any information obtained in the course of its functions to third parties, save as otherwise provided for under this Act.

55.(1) Every local financial leasing institution in respect of all of its business and every foreign financial leasing institution in respect of its business transactions by or through its operations in Seychelles shall transmit to the Central Bank its audited financial statements, namely the balance sheet, profit and loss account and cash flow statement, not later than 30 days after becoming available, and within 4 months after the end of the financial year at the latest. In addition, every foreign financial leasing institution shall transmit to the Central Bank its audited annual financial statements in respect of its total business throughout the world on a consolidated basis not later than 30 days after becoming available.

Publication
and display
of balance
sheets, etc

(2) Every financial leasing institution shall publish in the Gazette and a daily local newspaper within 4 months after the end of the calendar year the balance sheet and profit and loss account required to be submitted under subsection (1) and any report made by the auditor under section 53 (Audit).

(3) A financial leasing institution shall submit draft audited reports and financial statements and consult the Central Bank not later than 3 months after the end of the financial year.

(4) A financial leasing institution shall consult the Central Bank before making a publication pursuant to subsection (2).

(5) Every financial leasing institution shall conspicuously display throughout the following year, in a public part of each of its places of business, copies of the balance sheets and profit and loss accounts required to be published under subsection (2).

Records

56.(1) Every financial leasing institution shall maintain in Seychelles for a period of at least 7 years such records as are necessary to exhibit, clearly and correctly, the state of its business affairs and to explain its transactions and financial position so as to enable the Central Bank to determine whether the financial leasing institution is complying with this Act and in particular —

- (a) customer identification records, during and after termination of the customer relationship;
- (b) transaction records showing, for each customer, at least on a daily basis, particulars of its transactions with or for the account of that customer, and the balance owing to or by that customer;
- (c) application and contract documents pertaining to a transaction, and a signed written record of the decision approving the transaction;
- (d) financial records concerning counterparties and any other documentary evidence on which the financial leasing institution relied in approving the transaction;
- (e) such other documents as the Central Bank may specify by regulation.

(2) Every record shall be kept in written form or kept in digital format and it shall be the duty of the financial leasing institution to ensure that adequate data recovery systems and procedures are in place.

Periodic
statements

57. Every financial leasing institution shall submit periodic statements to the Central Bank in such form as the Central Bank may determine.

58. Financial leasing institutions shall regularly notify its customers of the terms and conditions associated with transactions, including the annual rate of interest, fees and other costs in clear and easily understood language in any directions issued by the Central Bank.

Disclosure
requirements

59.(1) The Central Bank may, if it considers that an inspection of a financial leasing institution is necessary or desirable to ascertain whether that institution is complying with this Act, cause an inspection of that institution to be made by an officer of the Central Bank or by any other person appointed by the Central Bank for the purpose.

Inspection
of financial
leasing
institutions

(2) Such inspection may include officers or employees of the authority of another country that is charged with the monetary or prudential supervision of activities of financial leasing institutions in that country if it concerns the inspection of a branch or a foreign financial leasing institution in Seychelles having its head office in that country, or the inspection of a local financial leasing institution that holds a substantial interest in such foreign institution, or the inspection of a financial leasing institution in Seychelles in which such foreign institution has a substantial interest.

(3) The Central Bank and any person authorised under this section to inspect a financial leasing institution shall be subject to section 11 of the Central Bank of Seychelles Act in respect of information acquired in the course of performing functions under this section and may require any —

- (a) administrator, officer, employee or agent of a financial leasing institution to furnish such information as deemed necessary for the purpose of the inspection; or
- (b) such administrator, officer, employee or agent to produce for inspection any books, records or other documents in his or her possession containing or likely to contain any such information.

**PART VIII - POWERS OF THE CENTRAL BANK
AND OFFICERS**

Persons
qualified to be
administrators

60.(1) A financial leasing institution shall obtain the written approval of the Central Bank before appointing or electing an administrator.

(2) A person shall not be appointed or elected as an administrator of a financial leasing institution if he or she has been—

- (a) adjudged to be bankrupt, has suspended payment or has entered into a composition with his or her creditors; or
- (b) convicted in a court of law of a felony or any offence involving fraud or dishonesty.

(3) A person who has been an administrator of a financial institution which has been wound up by the court or the licence of which has been revoked shall not be eligible to be an administrator of any financial leasing institution:

Provided that in exceptional circumstances, having been satisfied as to the qualifications, professional experience and conduct of a person, the Central Bank may exempt such person from the foregoing provisions of this subsection no earlier than 6 years following the relevant winding-up or revocation of licence.

(4) An administrator of a financial leasing institution shall cease to hold office on—

- (a) becoming subject to any disqualification mentioned in subsection (2) and (3);
- (b) becoming permanently incapable of performing his or her duties; or

- (c) having been convicted of any offence and the Central Bank has determined that such administrator is not suitable to hold such an office.

61. A financial leasing institution shall, upon a change of its administrators, notify the Central Bank within 21 days of the change or of being made aware of the change, whichever is the latest.

Central Bank
to be notified
of change in
administrators

62.(1) Every administrator of a financial leasing institution who is directly or indirectly interested in any financial lease from that institution shall as soon as possible declare the nature of his or her interest to the directors of the institution or to the head office, as the case may be.

Administrator
to declare
personal
interest

(2) For the purpose of subsection (1) a declaration by an administrator to the effect that he or she has an interest in any financial lease, which may, after the date of the notice, be extended by that institution is deemed to be a sufficient declaration of interest in relation to any financial lease so extended if—

- (a) it specifies the nature and extent of the interest; and
- (b) the interest is not different in nature from, or greater in extent than, the nature and extent so specified in the declaration at the time of such extension.

(3) Where a declaration is made under subsection (1) to a local financial leasing institution the administrator concerned shall cause it to be brought up and read at the next meeting of the directors after it is made and the directors shall cause the declaration to be recorded in the minutes of the meeting at which it is brought up and read.

(4) Where an administrator of a local financial leasing institution holds any office or possesses any property which directly or indirectly conflicts with his duties or interests as an administrator, the administrator shall, in accordance with subsection (5), make a full declaration to the directors of the institution of the fact, nature, character and extent of such conflict or potential conflict.

(5) A declaration under subsection (4) shall be made by the time the first meeting of the directors is held —

- (a) after he or she becomes an administrator of the financial leasing institution; or
- (b) if already an administrator, after the conflict or potential conflict has become apparent, and shall be recorded in the minutes of that meeting.

(6) An administrator directly or indirectly interested in any financial lease from that financial leasing institution shall not take part in any decision regarding such financial lease.

Bribery and
collusion

63. An administrator, officer, employee or agent of a financial leasing institution shall not ask for or receive, consent or agree to receive, any gift, commission, emolument, service, gratuity, money, property or thing in value, for his or her own personal benefit or advantage or that of any of his or her close relations, for permitting or procuring or endeavoring to permit or procure for any person any financial lease from the institution.

Acquisition
of
substantial
interest

64.(1) Any person, acting directly or indirectly or through or in concert with other persons, who proposes to acquire a substantial interest in a financial leasing institution shall give at least 30 days' prior notice to the Central Bank and obtain prior approval of the Central Bank.

(2) The notice of the proposed acquisition shall include—

- (a) the name, nationality, residence, and business or profession of each proposed person holding a substantial interest or its ultimate beneficial owner, together with at least two references verifying the good financial standing of such person;
- (b) for each proposed person holding a substantial interest or its beneficial owner, an affidavit in accordance with section 33(1)(f).
- (c) in case a proposed person holding a substantial interest or its ultimate beneficial owner is a body corporate, copies of the latest three audited annual balance sheets and profit and loss accounts where applicable;
- (d) the identity, source and amount of the funds to be used in making the acquisition;
- (e) any plans or proposals regarding a major change in the financial leasing institution's business, corporate structure or management; and
- (f) such other information as the Central Bank may require.

(3) The Central Bank shall assess the expected effects on the financial stability of the financial leasing institution and be satisfied as to the identity and character of the proposed owners, in particular persons holding a substantial interest.

The Central Bank shall not approve a proposed acquisition referred to in subsection (1) if it would substantially lessen competition, jeopardise the financial stability of the

financial leasing institution or prejudice the interests of its depositors.

(4) Any financial leasing institution becoming aware of a proposed acquisition of a substantial interest in the financial leasing institution shall give at least 30 days' prior notice to the Central Bank, or once it becomes aware of such proposal, whichever is earlier.

Merger

65.(1) A financial leasing institution shall not merge or consolidate with any other financial institution or acquire, either directly or indirectly, the assets of, or assume liability to pay any deposits made in, any other financial institution except with the prior approval of the Central Bank.

(2) Any financial leasing institution which intends to engage in any merger, consolidation, acquisition or assumption of liability under subsection (1) shall give at least 30 days' prior notice to the Central Bank, and provide the Central Bank with such information as the Central Bank may require.

(3) The Central Bank shall assess the financial and managerial resources and future prospects of the existing and proposed financial institutions. The Central Bank shall not approve a proposed transaction referred to in subsection (2) which would substantially lessen competition unless any anticompetitive effects are clearly outweighed by its expected positive effects.

Ban on
receipt of
deposits

66.(1) A deposit-taking financial leasing institution shall not receive any deposit while it is insolvent or apparently insolvent.

(2) An administrator, officer, employee or agent of a deposit-taking financial leasing institution who knows, or in the proper performance of his duty should know, that the deposit-taking financial leasing institution is insolvent or

apparently insolvent shall not receive or authorise the acceptance of any deposit while the institution is insolvent or apparently insolvent.

67.(1) A person who has acquired knowledge in a capacity as —

Disclosure
of
information
restricted

- (a) administrator, officer, employee or agent of a financial leasing institution; or
- (b) auditor, member of the audit committee, reorganising agent, liquidator or supervising agent of a financial leasing institution, shall not disclose to any person or governmental authority the identity, assets, liabilities, transactions or other information in respect of a customer except —
 - (i) with the written authorisation of the customer or other beneficiary, or of his or her heir or legal representative;
 - (ii) for the purpose of the performance of his or her duties within the scope of employment or appointment in compliance with this Act;
 - (iii) in the case of a foreign financial leasing institution, to its head office;
 - (iv) when required to make disclosure by any court of competent jurisdiction in Seychelles;
 - (v) to the Central Bank;
 - (vi) to a police officer when authorised under the Evidence (Bankers' Books) Act;

- (vii) pursuant to the provisions of the Anti-Money Laundering Act;
- (viii) pursuant to section 69; or
- (ix) notwithstanding anything in the Business Tax Act or the Social Security Act, to the Revenue Commissioner or the Director of Social Security when ordered by a judge on proof on oath to the satisfaction of the judge that the information is required for any investigation under the Business Tax Act or the Social Security Act, as the case may be.

(2) Nothing in subsection (1) prevents a financial leasing institution from providing to a person on a legitimate business request, a general credit rating.

(3) Subject to any express requirement of this Act, every administrator, officer, employee or agent of a financial leasing institution shall preserve and aid in preserving confidentiality with regard to all matters relating to the affairs of the financial leasing institution and of every customer of the institution that may come to his or her knowledge in the performance of his or her duties.

(4) Every administrator, officer, employee or agent of a financial leasing institution shall, before entering on his or her duties, sign a declaration pledging himself or herself to observe strict confidentiality in respect of the matters specified in subsection (3) and not to reveal those matters except as otherwise permitted or required under subsection (1).

68.(1) The Central Bank and every officer or employee of the Central Bank shall deal with all documents, records of bank accounts, statements and other information in the

possession or under the control of the Central Bank, its officers or employees and relating to the business of financial leasing institutions conducted under this Act as confidential.

(2) Except where ordered by the Supreme Court under subsection (3), the Central Bank, its officers and employees shall not be required to produce or disclose to any court, tribunal, committee of inquiry or other authority in Seychelles or elsewhere any information required to be dealt with as confidential under subsection(1).

(3) The Supreme Court shall not make an order for the production or disclosure of any information referred to in subsection (1) except on proof to the satisfaction of the Court that the information is in good faith required for the purposes of any inquiry or trial into or relating to the trafficking of controlled drugs, arms trafficking, money laundering or terrorist financing and any other serious offences under the Criminal Procedure Code.

(4) This section shall be without prejudice to the —

- (a) obligations of Seychelles under any international treaty, convention, agreement or the Mutual Assistance in Criminal Matters Act, 1995;
- (b) obligations of the Central Bank under any agreement with a Central Bank or any other monetary authority or supervisory authority of a foreign country.
- (c) obligations of the Central Bank to disseminate information to participating institutions of the Credit Information System.

69.(1) The Central Bank may, on a reciprocal basis, exchange information on supervisory matters, whether based on a Memorandum of Understanding or not, with foreign or

Exchange
of
information

local supervisory authorities, foreign or local public sector agencies or law enforcement agencies when required by law provided that the Central Bank has satisfied itself that the information submitted shall remain confidential with the foreign or local supervisory authorities, public sector agencies or law enforcement agencies.

(2) The Central Bank may enter into Memoranda of understanding with local or foreign supervisory authorities setting out the scope, procedures and further details for the exchange of information on a reciprocal basis.

Publication
of
information
by Central
Bank

70. The Central Bank may publish in whole or in part at such time as it may determine any information or data furnished under this Act, except that no information or data shall be published which might disclose the individual affairs of a financial leasing institution or of a person whose interests are protected under section 67 unless the consent of every such person has been obtained in writing prior to that publication or the data is already in the public domain.

Central
Bank's
power over
unsafe
practices

71.(1) Where the Central Bank determines that a financial leasing institution or any of its owners or administrators has —

- (a) violated a provision of this Act or of any regulation, direction or order of the Central Bank;
- (b) violated a provision of any agreement between the Central Bank and the financial leasing institution on remedial measures to be taken by the financial leasing institution;
- (c) violated any term or condition attached to the licence of the financial leasing institution or to an authorisation issued to the financial leasing institution by the Central Bank; or

- (d) conducted an unsafe or unsound operation of the financial leasing institution,

it may take the following actions with respect to the financial leasing institution —

- (a) issue written warnings;
- (b) call a meeting of the shareholders or other owners and the administrators of the financial leasing institution to discuss and to agree on remedial measures to be taken;
- (c) issue written orders to cease and desist from such infractions and to undertake remedial action, or written orders to impose special prudential requirements that differ from those normally applicable to such financial leasing institution;
- (d) issue written orders concerning the rate of interest, maturity or other conditions applicable to any financing extended or received (including deposits) by a bank, or to contingent liabilities of the bank;
- (e) issue written orders to the financial leasing institution to suspend the payment of dividends or the distribution of profits in any other form;
- (f) appoint an adviser for the financial leasing institution;
- (g) appoint an external auditor at the expense of the financial leasing institution to perform a financial or operational audit under terms of reference determined by the Central Bank;

- (h) suspend temporarily or permanently one or more administrators from performing duties in the financial leasing institution;
- (i) issue written orders that one or more persons holding a substantial interest in the financial leasing institution sell or otherwise dispose of such interest in accordance with the law and within 30 days immediately following the receipt of the order;
- (j) attach conditions to the licence of the financial leasing institution to the extent required to remedy such infraction;
- (k) appoint a reorganising agent in accordance with the provisions of section 88 of this Act;
- (l) revoke the licence of the financial leasing institution in accordance with the provisions of section 41 of this Act.

(2) The remedial actions described in this section shall be determined in particular cases by the Central Bank. Remedial actions shall be applied in proportion to the seriousness of the infraction and the impact of the infraction on the financial leasing institution's assets.

(3) An order under subsection (1) becomes effective as specified in the order, and remains effective unless and to the extent that the Central Bank informs the financial leasing institution that it is not so effective, and the Central Bank may so inform the financial leasing institution either before or after the effective date of the order.

(4) Before the expiry of 30 days after the issue of an order under subsection (1), the financial leasing institution may appeal to the Central Bank to reconsider the order and the Central Bank shall give a final decision within 15 days after the appeal.

72. The filing of an appeal under section 71(4) shall not effect a suspension of any measures imposed by the Central Bank.

Suspension
unaffected
by appeal

73.(1) Notwithstanding any other written law or any contract, a financial leasing institution shall not directly or indirectly—

Prohibited
operations

- (a) deal in the buying or selling or bartering of goods, except in the course of conducting licensed activities under this Act or in connection with the realisation of security given to or held by it;
- (b) engage in any trade; or
- (c) buy, sell or barter goods for others except in the course of conducting licensed activities under this Act.

(2) Subject to subsection (3), a financial leasing institution shall not own, to an aggregate value exceeding 25 per cent of the sum of the paid-up or assigned capital and reserves of that institution, the share capital of any company, firm or other undertaking except such shareholding as the financial leasing institution may acquire in the course of satisfaction of debts due to it.

(3) Subsection (2) does not apply to any shareholding approved in writing by the Central Bank pursuant to the provisions of the Financial Institutions Act in a subsidiary company, firm, or other undertaking formed by a financial leasing institution for the execution of leasing, nominee, executor, fiduciary or trustee functions or other functions incidental to the financial leasing institution's business provided that the Central Bank shall carry out supervision of the financial leasing institution on a consolidated basis.

(4) Where a shareholding acquired by a financial leasing institution in satisfaction of debts due to it exceeds the maximum specified in subsection (2), the institution shall dispose of that excess at the earliest suitable opportunity.

(5) A financial leasing institution shall not hold an interest in immovable property or any right therein other than for the purpose of conducting its operations, including offices or employee housing. This provision does not apply to immovable property or any right therein obtained in connection with the realisation of any security given in the course of its operations, provided that such immovable property or any right therein is disposed of without undue delay.

(6) Notwithstanding anything to the contrary in the instrument under which a financial leasing institution is formed, a financial leasing institution or a shareholder of it shall not issue bearer shares.

Approval to
transfer
assets

74. A financial leasing institution shall not —

- (a) without the prior written approval of the Central Bank, sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets; or above the market value of the assets;
- (b) increase the valuation of the assets as recorded in the books of the institution.

General
Directions

75. The Central Bank shall have the power to issue such general directions, as may be considered necessary for the purpose of ensuring that financial leasing institutions maintain efficient standards in carrying out their duties, including directions on the following matters —

- (a) maximum rate of payments to be levied by financial leasing institutions;

- (b) matters concerning the method of collecting payments;
- (c) terms and conditions of financial leases;
- (d) minimum initial payment required to be made by a lessee for any asset or different categories of asset, such minimum to be expressed as a percentage of the value of the asset; or
- (e) computation of damages.

PART IX - MISCELLANEOUS

76. The Central Bank may prescribe matters in relation the administration of abandoned properties acquired by deposit-taking financial leasing institution's conduct of business.

Administration
of abandoned
property

77.(1) Every person who —

Offences

- (a) carries on financial leasing business in contravention of the provisions of sections 31(1), 35(2) or 35(3);
- (b) fails to comply with the provisions of subsection (4) of section 35;
- (c) fails to pay the annual license fee as required by section 37;
- (d) alters the particulars contained in the operating manual or the Memorandum or Articles of Association without Central Bank approval; or
- (e) contravenes any regulation made under this Act or fails to comply with any direction or notice issued under this Act,

shall commit an offence under this Act.

(2) Any person who, being a director, manager, officer or employee of a licensed financial leasing institution —

- (a) wilfully makes, or causes to be made, a false entry in any book or record of the licensed financial leasing institution;
- (b) wilfully omits to make an entry in any book or record of a financial leasing institution or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book or record of the financial leasing institution or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,

shall commit an offence under this Act.

Penalty for
offence

78.(1) Any person who commits an offence under this Act shall be liable on conviction, to imprisonment up to a term not exceeding two years or to a fine not less than SCR1,000 and not exceeding SCR400,000 or to both such imprisonment and fine.

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

- (a) if that body of persons is a body corporate, every director, manager or secretary of that body corporate;
- (b) if that body of persons is an unincorporated body, every individual who is a member of such body; and
- (c) if that body of persons is a firm, every partner of that firm,

shall be guilty of the offence unless such director, manager, secretary, individual or partner, as the case may be, proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

79. The Central Bank or any member of its Board nor any officer, employee or agent of the Central Bank shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith under, or in execution or intended execution or in connection with the execution of, any power or duty conferred on the Central Bank by or under this Act.

Protection
from suit

80. The acts, directions, orders, determinations or decisions of the Minister or the Central Bank under this Act shall be subject to judicial review.

Review by
court

81. The Central Bank may, in consultation with the Minister, make regulations for the better carrying out of objects and purposes of this Act including —

Regulations

- (a) prescribing any matter which is to be or may be prescribed under this Act;
- (b) prescribing charges or fees —
 - (i) for applications, objections, appeals or certificates; or
 - (ii) for or in connection with services provided under this Act; and
- (c) prescribing charges or fees for services provided by financial leasing institutions.

82.(1) The Chief Justice may make rules of court relating to proceedings in court under this Act, including —

Rules of
court

- (a) prescribing the fees and costs payable in any proceedings before a court;
- (b) providing generally for matters of practice and procedure and incidental matters arising in connection with any proceedings.

(2) Subject to any rules of court made under subsection (1), the forms to be used and the practice and procedure to be followed in proceedings in court under this Act shall be as near as practicable to those in ordinary civil cases before the court.

Non-application of Act

83. Except where it is otherwise expressly provided in this Act or any other written law, the provisions of this Act in whole or in part shall not apply to such persons as may be prescribed by regulations.

Compounding of offences


84.(1) Where a financial leasing institution or any other person agrees in writing to the compounding of a contravention of this Act which is an offence punishable on conviction by a fine, the Central Bank, in consultation with the Attorney General, may compound the offence as prescribed by regulations.

(2) The compounding of any offence under this section shall have the effect of an acquittal of the accused.

Application of Companies Act

85. Except where expressly stated in this Act, nothing in this Act affect the operation of the Companies Act in respect of the incorporation and winding up of any financial leasing institution to which that Act and this Act apply.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 29th October, 2013.



Azarel Ernesta
Clerk to the National Assembly