

FINANCE LEASE REGULATIONS FOR BANK-FINANCIAL INSTITUTIONS

1.0 INTRODUCTION

Pursuant to its authority under Section 39 of the new Financial Institutions Act (FIA) of 1999, and in keeping with the Central Bank of Liberia (CBL) hereby issues these regulations on finance lease business conducted by bank-financial institutions. The standards set herein are minimum requirements, and banks engaged in finance lease are required to adhere to international best practices related to finance lease.

2.0 DEFINITIONS:

In these regulations, unless the context otherwise requires,

“Finance lease” means a lease with respect to which:
the lessor does not select, manufacture, or supply the asset;

- (a) the lessor acquires the asset and the right to possession and use of the asset; and while the lessor keeps ownership or title rights of the asset, the possession and use of the asset rights is transferred to the lessee once the lease transaction is consummated;
- (b) one of the following occurs:
 - (i) the lessee’s approval of the contract by which the lessor acquired the asset and the right to possession and use of the asset is a condition to the effectiveness of the lease contract;
 - (ii) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimer of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the asset in connection with or as a part of the contract by which the lessor acquired the assets and the right to possession and use of the asset; or
 - (iii) if the lease is not a consumer lease, before the lessee signs the lease contract, the lessor informs the lessee in writing (a) of the identity of the company/firm or institution supplying the asset to the lessor, unless the lessee has selected that company/firm or institution and directed the lessor to acquire the asset and the right to possession and use of the asset from that supplier, (b) that the lessee is entitled under this Section to promises and warranties, including those of any third party, provided to the lessor by the supplier of the asset in connection with or as part of the contract by which the lessor acquired the asset and the right to possession and use of the asset, and (c) that the lessee may communicate with the supplier to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

“Person” means and includes any company, partnership, association or body of persons, corporate or unincorporated.

“Asset” means all property that is non-consumable. It includes personal property that can be legally sold or imported into Liberia, that becomes the subject matter of a finance lease agreement, whether or not the asset has become a fixture to or incorporated in land; and also immovable property, natural resources, trademarks and copyrights or other moral rights to intellectual property, computer software, but does not include shares, investment securities, any financial instrument, government bonds and securities, or any other moveable asset whose free circulation in Liberia is restricted by law. The term **“asset”** shall have the same meaning as **“equipment”**, **“goods”** and **“property”** for the purposes of these regulations.

“Lessee” means a person who under a finance lease agreement, obtains from another person, known as the lessor, the right to possession and use of an asset in return for rental payments over an agreed period of time, and includes its successors and assignees.

“Lessor” means a person, legally registered or licensed to engage in finance leasing business, and who acting under a finance lease agreement, conveys to another person known as the lessee for an agreed period of time, the right to possession and use of an asset in return for rental payments and includes its successors and assignors.

“Supplier” means a person other than the lessor or lessee, from whom a lessor acquires an asset to be leased under a finance lease agreement for a predetermined period and rental consideration.

“Supply Agreement” means an agreement under which a lessor acquires an asset for lease under finance lease whether the acquisition is by way of sale, supply, or purchase agreement but so that the lessor acquires legal title over the asset.

“Total Lease Rental” means the total sum payable by the lessee under a finance lease agreement, exclusive of any sum payable as taxes, management fee, service charge or as penalty or compensation or damages for breach of the agreement.

“Secondary lease” means an agreement pursuant to which a leased asset is transferred to a new lessee upon early termination of a first lease agreement. The lessor assumes the additional obligations of the supplier in relation to the subsequent lessee.

“Sublease” means an agreement pursuant to which a lessee under a finance lease agreement leases a leased asset to a sub-lessee for a part of the subsisting term and under the conditions set forth in the principal lease agreement subject to obtaining the consent of the lessor to sub lease such asset and without prejudice to the obligations of the lessor as owner of title to such asset.

“Assignment” means the transfer of rights and obligations, including transfer of legal title and ownership rights to assets under a lease agreement by a lessor (known as the “Assignor”) to a third party (known as the “Assignee”) including assignment of rights on rental payments.

“Non -Cancelable Lease” means a lease that is cancelable only:-

- (a) by mutual agreement; or
- (b) by determination/operation of law.

“Residual value” means the actual value of the asset at the expiry of the lease term, which can be estimated at the inception of a lease.

“Option to purchase” shall mean the option, at an agreed price, for the lessee to purchase the asset from the lessor at the expiry of the agreed lease period. It is the basis for the consideration of transferring the title at the end of the lease term from the lessor to the lessee.

“Finance leasing business” means the business of investing money for the provision of asset under a finance lease.

“Finance Lease Agreement” means

An agreement made between two parties, whereby one of the parties known as the lessor, in exchange for money consideration in the form of periodic rental payments, leases an asset to another party known as the lessee.

For avoidance of doubt, a finance lease agreement is an agreement for financing the acquisition and use of an asset, including a capital good that is to be used by a lessee whereby the lessor makes an investment in the asset or capital good. A finance lease agreement is a special contract that constitutes neither a rental-sale, a hire- purchase, a sale with preservation of property rights, nor a credit sale or sale by payment in installment.

Parties to a finance lease transaction: the parties to a lease transaction shall be the lessor, the lessee and the supplier.

“The Bank” means the Central Bank of Liberia.

“The ACT” means the Financial Institutions Act of 1999.

“Lease Asset” means the asset/s under Finance Lease.

“Lease Receivables” means receivables under finance lease agreement.

3.0 PERMISSION TO DO FINANCE LEASE BUSINESS

Licensed bank-financial institutions shall be allowed to engage in finance lease business as a permissible activity as provided in the New Financial Institutions Act. However, any licensed financial institution seeking to engage in finance lease business shall be required to seek the prior approval of the Central Bank of Liberia, and meet the necessary requirements of Regulation No. CBL/SD/001/2009 concerning introduction of financial products and services, to substantiate that it has the capacity and skills to conduct a finance lease business.

The Central Bank of Liberia shall, having received such application from a bank, formally grant a finance lease product approval, after it is satisfied that the bank (s) has met all the requirements to provide such service.

The indications for capacity and skills shall include firm commitments from the bank through:

- (a) Board Resolution;
- (b) Capacity to establish a Leasing Unit in the bank or the Lease Product Function added to the various relevant Departments;
- (c) Availability of funds for finance leasing business; and
- (d) Capacity to maintain an in-house Asset Management Register and Asset Management Function.

4.0 FORMALITIES OF A FINANCE LEASE AGREEMENT

- (a) A finance lease agreement shall at least include each of the following key elements:
 - (i) Traceable or tractable identities of the lessor and lessee;
 - (ii) A comprehensive description of the asset to be acquired under the lease, the estimated price of the asset, and the schedule of total lease rentals payable by the prospective lessee in a formalized spreadsheet including the dates when these payments shall fall due;
 - (iii) The duration of the lease agreement, residual value or the option to purchase and transfer of ownership from the lessor to lessee. Subject to an agreement by the lessor, the lessee may exercise an option to purchase the asset outright after the period of lease at a price to be agreed upon by the parties or may return the asset to the lessor, or request renewal of the lease agreement; provided that 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;
 - (iv) Conditions for termination of the lease agreement including damages due in case of termination before the lease term expires;
 - (v) A statement to the effect that the parties have agreed to enter into a finance lease agreement;
 - (vi) A statement that the asset is being acquired by the prospective lessor from the supplier in connection with the finance lease agreement, which to the knowledge of the supplier, is to be made between the prospective lessor and lessee. The supplier of an asset for finance lease shall have knowledge that the asset is being acquired for the purpose of a finance lease;
 - (vii) A statement as to whether or not the prospective lessee has selected the asset and selected the supplier without relying primarily on the skill and judgement of the prospective lessor;

- (viii) The asset under lease is an asset that the lessor agrees to acquire from a third party, known as the supplier chosen and specified by the lessee, so that the lessor shall retain full title to the asset during the period of lease;
 - (ix) During the lease period, the minimum lease payments should be greater or equal to 75% of the original cost of the equipment or the asset;
 - (x) The lessor acquires the asset and the right to possess and use the asset in connection with the lease or a previous lease, and the supplier is so notified;
 - (xi) The supplier of a leased assets shall transfer title of the leased assets to the lessor for the purpose of delivery of such asset into the possession and for the use of the lessee;
 - (xii) The lessor and supplier may agree that the supplier shall deliver the asset directly to the lessee;
 - (xiii) Proper provisions shall be made for the appropriation after sales support especially to preserve the life and function of the asset through the primary lease period; and
 - (xiv) Other necessary requirements applicable to finance lease agreement in keeping with best practice.
- (b) The asset that forms the subject matter of a finance lease agreement may either be existing assets, owned by the lessor or assets to be manufactured or acquired by the lessor from a supplier for the purpose of making agreement with the lessee.

5.0 CREDIT RISK MANAGEMENT

Licensed banks engaging in finance lease shall be required to maintain sound risk management policies and practices to prudently manage and control their lease portfolio and exposure to credit risks. The credit risk management should provide, at a minimum, a finance lease or credit policy, including a portfolio review process.

6.0 CLASSIFICATION AND PROVISIONING OF LEASE ASSETS

- 6.1 Every bank financial institution engaging in finance leasing business shall be required to follow the prudential standards set out in “AMENDED PRUDENTIAL REGULATIONS FOR ASSET CLASSIFICATION, PROVISIONS FOR LOANS AND SUSPENSION ON INTEREST ON NON-PERFORMING LOANS AND ADVANCES” (referenced Regulation NO.CBL/SD/004/2010).
- 6.2 The calculation of depreciation and amortization of leased equipment shall be based on the provision of section 204 of the Revenue Code of Liberia Act 2000.
- 6.3 Finance lease portfolio shall be reviewed at least once in every quarter and the leased assets shall be classified based on the payment schedule of the lease rentals, and subject to the requirements of Prudential Regulation #CBL/SD/004/2010, Amended Prudential Regulations for Asset Classification, Provisions for Loan Losses and Suspension of Interest on Non-performing Loans and Advances.

7.0 LARGE EXPOSURE OR SINGLE OBLIGOR LIMIT

- 7.1 The criteria for credit extension subject to large exposure or single obligor limit as stated in Regulation #CBL/SD/04/2000 shall apply to finance leases. In addition, in determining the single obligor limit of any borrower, a bank shall be required to include finance leases to a borrower or a group of related borrowers.
- 7.2 Every bank-financial institution is required to seek credit reference information on every potential lessee in keeping with Directive No. CBL/SD/01/2005 concerning lending to delinquent borrowers.

8.0 ACCOUNTING REQUIREMENTS

- 8.1 An asset under a finance lease shall be recorded in the Financial Statements of the bank (as the lessor), not as property, plant or equipment, but as an investment in a lease.
- 8.2 At the inception of the lease, the bank (as the lessor) shall recognise in the accounts simultaneously:
- i. Gross investment in a lease, and
 - ii. Unearned finance income from the lease.
- 8.3 The unearned finance income should be deferred and allocated to the income of the bank (as the lessor) over the lease term based on a pattern reflecting a constant periodic rate of return on the lessor's net investment outstanding.
- 8.4 Initial direct costs that are identifiable with direct finance leases should be taken to the income statement as expense in the period in which the costs were incurred, while initial fees or fees falling due should be recognized in the income statement in the period of receipt of such monies.

Banks are further required to take into account other standards accounting requirements related to best practices in finance lease transactions.

9.0 FINANCE LEASE REGISTRY

- 9.1 Until such time as the registration system, including a central registry, becomes operational, all finance leases shall be filed with the Central Bank of Liberia which shall maintain a register of finance lease on its premises and/ or on the premises of any third party authorised by the Central Bank.

The Lease Register shall contain the following information about each registered finance lease:

- a) A description of the asset on lease;
- b) The lease term;
- c) The parties to the lease;

- d) The physical location of the asset;
 - e) Original cost of the asset; and
 - f) Any extension of the lease transaction.
- 9.2
- a) All finance leases shall be filed in order of time they are received and based on the confirmed dates of commencement of such lease transactions.
 - b) The finance lease registry may be accessible to the public.
 - c) Notice of the registered asset shall constitute notice to the third party purchasers of the leased asset, of existing interests in the leased assets.
 - d) The entire finance lease agreement shall not be required to be kept in the lease registry but shall be produced for verification before the registration of a lease interest.
 - e) The lease registry shall from time to time prescribe forms and fees for filing of any notices and lease extracts.
 - f) All operating banks should ensure they crosscheck, in the registry, all prospective lease assets against encumbrances and existing proprietary rights before concluding lease transactions.

10.0 REPORTING REQUIREMENTS

Licensed banks are required to include in their loan portfolio report to the Central Bank of Liberia, their finance lease portfolio. Periodical reports on leasing activities based on standard reporting format shall be provided to the Regulation & Supervision Department of the Central Bank of Liberia.

11.0 LESSOR's RIGHT TO REPOSSESSION

- 11.1 If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods;
- 11.2 After a default by the lessee under the lease contract of the type described herein or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises; and
- 11.3 The lessor may proceed under Subsection 11.2 without judicial process if it can be done without breach of the peace or the lessor may proceed by action; provided the procedure of repossession without judicial process is clearly stated in the contract governing the lease.

12.0 ASSET MANAGEMENT

All assets under lease must be well managed and subject to the following conditions and obligations of the lessor and lessee:

- (a) Assets must be supported and maintained according to manufacturer's specifications irrespective of whether this responsibility is that of the lessor or lessee.
- (b) Moving assets (especially vehicles) must have adequate information for tracking.
- (c) Fixed and moving assets should be given an appropriate asset number depending on the configurations used by the lessor and an asset number plate or indexing imprinted on a visible part of the asset.
- (d) Assets shall be subject to periodical inspections and monitoring by the lessor to ensure compliance on used conditions indicated in the lease agreement. However this should be without undue interference with the user rights of the lessee and should be with notice.

13.0 PENALTY FOR NON-COMPLIANCE

Any licensed bank that fails to comply with these regulations shall be subjected to a fine of not less than L\$200,000.00 (Two Hundred Thousand Liberian dollars) for each day of non-compliance, and/or may be subjected to other supervisory sanctions as may be determined by the CBL or both.

These regulations shall take effect immediately upon publication in an Official Gazette, and shall remain in force until otherwise advised by the CBL.

Issued this 31st day of March, 2011 in the City of Monrovia, Republic of Liberia.

BY ORDER OF THE PRESIDENT

**TOGA GAYEWEA McINTOSH, PHD
MINISTER OF FOREIGN AFFAIRS**

**MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA
MARCH 31, 2011**