

THE DECREE ON FINANCIAL LEASING

NO. 11/PM

Effective 18 February 1999

Unofficial translation

Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Prime Minister's Office

No. 11/PM

Decree
on
Financial Leasing

- Pursuant to the Constitution of Lao People's Democratic Republic No. 01/PSA, dated 14 August 1991;
- Pursuant to the Law on the Government of the Lao PDR No. 01/95/PSA, dated 8 March 1995;
- Pursuant to the proposal from the Minister of Finance and from the Governor of the Bank of the Lao PDR.

The Prime Minister issues this Decree:

PART I
General Provisions

Article 1: Purpose of the Decree

The purpose of this Decree on Financial Leasing is to develop and promote the financial leasing business to meet the financial and material needs of the multi-ethnic peoples of the Lao PDR [and] to contribute to the socio-economic development of the Lao PDR.

Article 2: Definitions

1. "Asset" means any type of moveable or immovable property that is the subject of a lease.
2. "Financial Lease" means a lease with an initial term of one or more years in which:
 - (1) the lessee specifies the asset and selects a supplier without reference to the lessor's ability or decision, and
 - (2) the lessor acquires an asset for the lessee by means of a financial lease contract.

Any lease may be a Financial Lease without regard to whether or not:

 - a. the lease payments are calculated as full payments or a substantial payment of the value of the assets; or
 - b. the lessee has the option to purchase the asset or to continue leasing it at a definite price or by payment of rental.
3. "Finance Lease Company" means a juristic entity that makes at least six (6) Financial Leases per year. A Finance Lease Company must be approved as provided for in this Decree.
4. "Lease" means an agreement between a lessor and a lessee in which the lessee is granted the right to possess and use an asset for any term and must pay a rental or [must meet other] conditions in the lease. A lessee has the right to sub-lease a leased Asset.

5. "Lessor" means a Financial Lease Company that has transferred the right to possess and use an Asset to a lessee.
6. "Lessee" means a person or a juristic entity that has acquired the right to possess and use an Asset from a Lessor.
7. "Supplier" means a person or juristic entity that supplies an Asset to a Lessor. Lessor may acquire an Asset by purchasing it, by leasing it, granting the right to purchase or lease it out, including by assignment from the Lessee. The Lessee may be a Supplier in a sale-leaseback-purchase contract.
8. "Supply Agreement" means an agreement by which a Lessor acquires the right to possess and use an Asset for a Lessee.
9. "Term" means the period of time specified in a Financial Lease agreement in which a Lessee is allowed to possess and use the leased Asset.

Article 3: Scope of the Application of [this] Decree

This Decree applies to financial leases.

PART II

Form and Substance of Financial Lease Agreements

Article 4: Form of a Financial Lease Agreement

A Financial Lease agreement must be made in writing signed by a Lessor and a Lessee. A Financial Lease agreement must provide for the substance and conditions of the parties with respect to the leased Asset.

A Financial Lease agreement must be certified by a notary, unless the law provides otherwise.

Article 5: Right and Obligations of the Lessor

A Lessor has the following obligations:

1. To pay for the Asset, without condition or reservation, once Lessee has accepted the Asset;
2. To ensure Lessee's peaceful use and possession of the leased Asset during the lease term without interference from the Lessor or from some other cause due to Lessor's fault;
3. Shall not be liable to Lessee in respect of the Asset except when the Lessee has suffered injury as a result of Lessor's interference with the selection of the Asset or in specifying standards for the Asset;
4. Whether as Lessor or as owner of the Asset, there shall be no third party liability in respect of death, injury or damage arising from that Asset.
5. If a Lessee violates a Financial Lease agreement, in addition to the rights already provided for in the Financial Lease agreement, Lessor will retain the following rights:

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- 5.1 Claim unpaid rental, together with interest and damages.
- 5.2 If a violation is serious, demand urgent [accelerated] payment of the value of future rental, discounted to present value at the rate provide for in the Financial Lease agreement; or if no rate is specified, calculation shall be at the inflation rate at the time the violation is declared, or terminate the Financial Lease agreement. A serious violation is a violation as follows:
- a. Lessee does not pay two consecutive rentals;
 - b. Lessee violates any provision of the Financial Lease agreement, and does not remedy that violation within a period of ten days after receiving written notice from Lessor;
 - c. Lessee has a guarantor who is insolvent, bankrupt, or lessee cannot find a substitute acceptable to the Lessor within thirty days according to a written submission from the Lessor; or
 - d. Lessee is insolvent, bankrupt or dissolved.
- 5.3 If the Financial Lease agreement terminates before its expiration, Lessor may:
- a. Recover the leased Asset without [having to file] suit in the courts;
 - b. Recover damages in an amount commensurate with [what Lessor would have received] had Lessee completely performed the Financial Lease agreement. The Financial Lease agreement may provide the manner in which damages are to be calculated [and] such provision shall be enforceable as between the parties, unless such damages substantially exceed those referred to above.
6. The creditor [sic] [Lessor] has the right to affix a label on the Asset in a conspicuous manner by which it can be clearly seen that such [Asset] belongs to the Lessor and is in the Lessee's use and possession pursuant to a Financial Lease agreement.
- Lessee is prohibited from removing, obscuring, or tearing off this label.
7. Lessor has the right to request that the Lessee indemnify damages from any loss, claim, damage or other consequences arising from or in connection with Lessee's use and possession of that Asset.
8. Lessor has the right to request that Lessee receive, protect, and pay for insurance regarding liability and damages in relation to the leased Asset for the period that Asset is under [Lessee's] control until that Asset has been returned to Lessor, regardless whether or not the lease term has expired or the lease agreement has been earlier terminated.

Article 6: Lessee's Rights and Obligations

1. A lessee has the duty to accept an Asset if that Asset is timely delivered and conforms to the Supply Agreement. If the leased Asset is not delivered, or is delivered late, or does not conform to the Supply Agreement, at that time or before that Asset is received, but not after [, then]:
- a. Lessee has the right to refuse delivery of the Asset, demand that the Supplier immediately repair and remedy defects, or terminate the agreement, but shall
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- have no right to terminate or modify the Supply Agreement without Lessor's consent;
- b. Lessor has the right, but not the responsibility, to remedy defects so that the Asset conforms to the Supply Agreement.
2. Lessee's obligations as provided for in a Financial Lease agreement, including the obligation to pay rent, must be performed absolutely and are fixed when Lessee receives the Asset.
3. Lessee must use the Asset reasonably, in conformity with its properties, and purpose, must maintain and repair it, and keep it in good condition.
4. Upon the expiration of a lease term or an agreement expires, and when Lessee does not agree to continue the lease or to buy the Asset, Lessee must return the leased Asset to Lessor in as good condition as originally received, save normal wear and tear;
5. Lessee must bear the risk of loss for the leased Asset from the time the Asset is received until that Asset is returned to the Lessor;
6. Lessee has no right to use the Asset as security or to create any obligation [encumbrance] upon the leased Asset;
7. Lessee must be liable to pay import duties, registration fees, excise [use] tax, income tax, business turnover tax, etc., unless the Financial Lease agreement provides otherwise.

Article 7: Supplier's Rights and Obligations

1. A Supplier's obligations as provided for in the Supply Agreement must be performed [for the benefit of] Lessee as if Lessee were a party to the supply of goods [agreement] or as if the leased Asset were directly supplied to the Lessee. The Supplier shall not, however, be liable to both the Lessor and the Lessee in respect of the same damages.
2. Lessee's rights based upon the Supply Agreement shall not be affected by the modification of the term of the agreement already approved by the Lessee unless Lessee agrees to the modification.

Article 8: Other Parties' Rights and Obligations

1. Lessee's rights in the leased Asset shall not be limited only to a right of ownership, but [shall also include] other rights to the leased Asset which shall be enforceable upon Lessee's receivers and creditors, including creditors who have sequestered or seized or [commenced an] enforcement [action] on Lessee's Asset in the case of Lessee's bankruptcy.
2. The provisions of this Article shall not affect the priority of any other creditor who has sequestered or has a security in the Asset arising from other matters unrelated to the sequestering or enforcement [action] referred to above.

Article 9: Assignment and Transfer

1. Lessor has the right to transfer or otherwise deal with its rights in the leased Asset or under the Financial Lease agreement without requiring Lessee's consent, however, such transfer shall not release Lessor from its responsibilities under the Financial Lease agreement or alter the type of the Financial Lease agreement.
2. Lessee has the right to transfer the right to possess or the right to use the leased Asset or any other rights as provided for in the Financial Lease agreement, provided only with Lessor's consent and so long as such does not prejudice the rights of third parties.

PART III

Finance Lease Company

Article 10: Finance Lease Company

A Finance Lease Company that has received approval to undertake business in the Lao PDR must have the status of juristic entity, [either] under the laws of the Lao PDR or a juristic entity under one's own country [of organization], and the Foreign Investment Law of the Lao PDR to be able to undertake the business of financial leasing in the Lao PDR. Individuals shall have no right to receive approval to act as a Finance Lease Company.

The name of a Finance Lease Company must consist of its own name and include the words "Finance Lease Company."

A Finance Lease Company has the right to undertake all types of tasks that relate to the financial leasing business with reference to international business undertakings as follow:

1. Purchase of Assets for lease;
2. Procuring Assets for a Lessee by means of a lease agreement;
3. Sell or otherwise transfer Assets to a Lessee or a third party during the term of a lease agreement or at the end of the term of an agreement;
4. Obtain guarantees, promissory notes, bills of exchange, or other agreements to support and encourage financial leasing activities.

Article 11: The Establishment of a Finance Lease Company

Domestic juristic entities seeking to establish a Finance Lease Company must file an application with the Bank of the Lao PDR. Foreign juristic entities must file an application with the Foreign Investment Promotion and Management Committee in the Lao PDR and are to adhere to the Law on Foreign Investment Promotion and Management in the Lao PDR.

An application must comprise of information and various documents as provided for in regulations issued by the Bank of the Lao PDR.

The Bank of the Lao PDR shall consider such application within 60 days of the receipt of the application.

Juristic entities seeking to establish a Finance Lease Company must meet the following primary conditions:

1. Must have a minimum registered capital of Kip 500,000,000;
 2. Must have stable financial status;
 3. Must have expertise in financial leasing activities.
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Article 12: Finance Lease Company Belonging to a Bank

A commercial bank in the Lao PDR has the right to establish a Finance Lease Company by adhering to the procedures and rules for establishment provided for in Article 11 above.

A Finance Lease Company that has received approval to be established must be a financially independent juristic entity and be separate from the concerned bank.

Article 13: The Relationship between a Finance Lease Company and a Bank

A commercial bank, which has established a Finance Lease Company or has an equity stake in a Finance Lease Company, shall have no right whatsoever to offer any special financial rights [or] services to the Finance Lease Company that it has established or in which it has an equity stake.

[With regard to providing] banking services to a Finance Lease Company that one has established or in which one has an equity stake, [that Finance Lease Company] must be treated similarly to [other] customers in general.

Article 14: Rights and Obligations of a Finance Lease Company

A Finance Lease Company has the following rights and obligations:

1. Has no right to mobilize deposits, but may seek sources of funding in the form of issuing promissory notes and other instruments, with a maturity of one or more years with the approval of the Bank of the Lao PDR;
2. Has the right to open its own branch in the Lao PDR with the approval of the Bank of the Lao PDR.
3. Has the right to be a member of the Credit Information Bureau of the Bank of the Lao PDR;
4. Submit its annual report which has been approved by external auditors to the Bank of the Lao PDR, and other information according to regulations issued by the Bank of the Lao PDR;
5. Must strictly adhere to the enterprise accounting system of the Lao PDR;
6. Must pay profits tax and other obligations as required by laws and regulations.

PART IV**Measures Against Violators****Article 15: Measures [to be Applied Against] a Lessee**

Lessor has the right to employ the following measures against a Lessee who violates a Financial Lease agreement as provided for in Article 5, clause 5 of this Decree such as: fails to pay two consecutive rentals, [or] causes damage to the leased Asset:

1. demand that Lessee comply with the agreement;
2. demand that civil servants in charge of judgement enforcement require that Lessee return that Asset to the Lessor;
3. employ other measures provided for in laws and regulations.

Article 16: Measures [to be Applied Against a] Finance Lease Company

A Finance Lease Company that violates this Decree on Financial Leasing and other laws and regulations, such as: failure to report or failure to timely report to the Bank of the Lao

PDR, [or] failure to pay income tax, shall have imposed upon them [certain punitive] measures according to the seriousness of the violation as follows:

1. written warnings;
2. compensation of damages to a contracting party;
3. activities suspended or have undertakings limited;
4. business license withdrawn;
- a. other measures as provided for in laws and regulations.

PART V

Final Provisions

Article 17: Implementation

Individuals or juristic entities who operated a financial leasing business before the promulgation of this Decree on Financial Leasing must amend [their activities] for proper compliance with this Decree within 360 days from the day this Decree is effective.

The Bank of the Lao PDR, ministries, and other relevant sectors are assigned to implement this Decree in accordance with their respective duties.

Article 18: Effectiveness

This Decree is effective upon its signing onward.

Vientiane, 18 February 1999

Prime Minister

[signature]

[seal of Prime Minister]

Sisavath Keobounphanh