

**REGULATIONS FOR FINANCE LEASING COMPANIES AND FINANCE
LEASING TRANSACTIONS
2001**

CHAPTER I

Title

1. These are regulations to provide for the licensing and regulation of companies engaged in finance leasing in the Republic of Maldives and to define the rights and duties of parties to finance lease agreements and matters connected therewith or incidental thereto.
2. These regulations shall be called the “Regulations for Finance Leasing Companies and Finance Leasing Transactions”.
3. These regulations extend to the whole of the Republic of Maldives.

CHAPTER II - FINANCE LEASING ACTIVITIES

Forms of Business in which Finance Leasing Companies may Engage:

4. A finance leasing company may engage in the following activities:
 - (i) finance leasing and business activities incidental to finance leasing;
 - (ii) issuing and taking guarantees related to finance leasing;
 - (iii) other transactions as authorized by the Authority; and
 - (iv) taking and registering lease agreements and security in respect of finance leasing.

Eligible Lease Property

5. Tangible movable property may be leased under a finance leasing transaction, including, but not limited to, the following:
 - (i) Machinery, equipment and instruments;
 - (ii) Vehicles, aircraft, ships, boats, boatyard equipments;
 - (iii) Motors, and navigation equipment for vehicles, aircrafts, ships and boats;
 - (iv) Household consumer durables; and
 - (v) Movable property that by its location within a building or by being attached to land forms a part of the building or the land.
 - (vi) Movable property that is attached to other movable property.

6. Unless a law or agreement provides otherwise, for the purposes of this law and the recognition and enforcement of the rights of lessors and lessees, movable property that is attached to or installed in a building or land or other movable property is deemed to retain its separate identity and does not become part of the land, building or other movable property to which it is attached.

Restrictions on finance leasing business

7. The total value of property leased to one person or company, including a subsidiary or related company, by a finance leasing company shall not exceed 25% of the total paid-in-capital of the leasing company.
8. The maximum value of property leased by a finance leasing company to one shareholder shall not in individual cases exceed 10% of the shareholder's equity in the finance leasing company and the total value of property leased to shareholders, members of the board of directors, executive director, chief executive officer or officers of the company cumulatively shall not exceed 25% of the total paid-in-capital of the company. Property leased to above mentioned persons shall not be on terms and conditions other than those generally applicable nor should these persons be permitted to serve in any capacity in the company if the lease payments or any other amount due from them to the finance leasing company remains unpaid for more than three months.
9. A finance leasing company shall not solicit, receive or accept deposits from the public but this restriction shall not apply to term deposits of more than one year from institutions and/or companies.

CHAPTER III - LICENSING AND REGULATION OF FINANCE LEASING COMPANIES

Licensing

10. No person, whether natural or legal, shall carry on the business of finance leasing unless the person holds a license issued by the Authority
11. A person seeking a license shall submit an application to the Authority with the following information and documents:
 - (i) founding agreement or shareholder agreement, if any;
 - (ii) the Memorandum of Association and Articles of Association of the company, or, if a partnership, the Partnership Agreement;
 - (iii) a business plan including financial feasibility, marketing plan, operational plan and other relevant information;
 - (iv) information on the method of raising funds and projected financial statements for the next three years;
 - (v) the names and addresses of the directors of the company, the chief executive officer and senior management personnel; and
 - (vi) such other information or documents as the Authority may require.
12. The Authority shall notify the applicant of its decision to grant or deny the application within 45 days from the receipt of a completed application for a license.

Commencement of Business

13. A finance leasing company shall commence its business within six months from obtaining a license, unless an extension of time has been granted by the Authority.

Restrictions on Use of Name

14. The name of a finance leasing company shall use as part of its name the words “finance leasing company”.
15. No one shall use in business activity the words “finance leasing company”, “finance lease”, “financial lease” “lease finance” or words of similar connotation without having a license under these regulations.
16. The name of the finance leasing company and its registered office shall not be changed without the approval of the Authority

Regulatory Powers of the Authority

17. The Authority shall regulate, supervise and inspect the business of finance leasing companies and may issue orders and directions as may be necessary for these purposes.
18. The Authority may suspend or revoke the license granted to a finance leasing company for any one or more of the following reasons:
 - (i) the company has not commenced business within six months of the grant of license and no extension has been granted by the Authority;
 - (ii) the company has violated any law or regulation governing the operation of the company;
 - (iii) the company is unable to effectively carry on finance leasing activities;
 - (iv) the company voluntarily terminates its operation after receiving approval for such termination;
 - (v) the company ceases to carry on finance leasing business in the Maldives; or
 - (vi) the company is insolvent or is subject to bankruptcy or liquidation proceedings or a receiver of its assets has been appointed.

Termination of Business

19. A finance Leasing company whose license is suspended or revoked or which voluntarily terminates its operation before or at the expiration of its license shall wind down its operations or conduct its liquidation process, if necessary, in accordance with the laws of the Republic of the Maldives.
20. A finance leasing company that voluntarily terminates its operations prior to the expiration of its license shall do so only after receiving the approval in writing of the Authority.

21. The suspension or revocation of a licence or the termination of business of a finance leasing company shall not affect the validity and enforceability of leases under which the company is the lessor existing at the date of suspension, revocation or termination.

CHAPTER IV - FORM AND CONTENTS OF FINANCE LEASE AGREEMENTS

Writing requirements

22. A finance lease agreement is void unless it is in writing, signed by the parties thereto and bears the seal of the finance leasing company; and if the lessee is a company the seal of the company.

Contents of the Lease Agreement.

23. Every finance lease agreement shall:
- (i) contain a description of the leased property that is sufficient to identify it;
 - (ii) state the period of the lease;
 - (iii) state the terms, if any, under which ownership of the leased property transfers or vests in the lessee; and
 - (iv) include a description in general terms of the basic rights and obligations set out in Chapter V as modified by the lease agreement to the extent that modification is permitted by these regulations.

CHAPTER V - RIGHTS AND RESPONSIBILITIES OF PARTIES

Effect of the Lease Agreement

24. The rights and obligations set out in this chapter, other than those set out in Sections 44-54 of these regulations are, as between the parties, subject to modification by agreement.

Duties of the Lessee

25. The lessee shall fully perform all of the lessee's obligations as provided in the lease agreement.
26. Unless otherwise provided in the lease agreement:
- (i) the lessee shall make all payments as required by the lease agreement including costs of packing, delivery, transit insurance, loading and unloading, installation and preparation for use, duties, charges and penalties related to the leased property;
 - (ii) the lessee shall accept the leased property provided by the supplier if it meets the terms, conditions and specifications set out in writing and delivered to the lessor or supplier by the lessee;
 - (iii) the lessee shall use the leased property in a reasonable manner and maintain it in good working condition, subject to normal wear and tear;

- (iv) the lessee shall make modifications to the leased property only with the agreement of the lessor;
- (v) the lessee shall keep the leased property duly insured against hazards and pay the premiums therefore regularly;
- (vi) at the expiration of the lease term or termination of a lease agreement, the lessee, unless exercising an option or right to buy the leased property or to extend the period of the lease as provided in the lease agreement, shall return the leased property to the lessor in the condition specified in paragraph (iii) above;
- (vii) in case the lease agreement is terminated before the leased property is delivered to the lessee due to the fault of the lessee, the lessee shall reimburse the lessor all the expenses which the lessor has incurred; and
- (viii) the lessee shall not sub-lease the leased property without the permission of the lessor.

Supply of Property

27. The lessee:

- (i) shall be entitled to select the supplier and to specify the quantity, technical specifications, type, price, mode and terms of delivery, installation and maintenance of the leased property;
- (ii) if the lease agreement so provides, may import in its own name as agent for the lessor and directly receive the leased property from the supplier.

28. The lessor shall enter into a supply agreement with the supplier named in writing by the lessee to obtain the property to be leased on terms, conditions and specifications set out in writing by the lessee.

29. The lessor shall pay the purchase price of the leased property to the supplier in accordance with the terms and conditions of the supply agreement. Unless the lease agreement provides otherwise, the lessor shall be responsible for the formalities of the importation of the leased property.

30. The lessor shall fulfill its obligations and compensate all damages suffered by the lessee in case the leased property is not delivered on time due to any breach of the supply agreement by the lessor.

31. Except as provided in these regulations, the supply agreement may not be amended, terminated or rescinded without the written consent of both the lessor and the lessee.

32. The lessor shall not, in its capacity as lessor, be liable to third parties for death, personal injury or damage to the leased property caused by use of the leased property.

Duties of the Supplier

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

Faulty Delivery of Property.

35. Where the leased property is not delivered or is delivered late or does not conform to the supply agreement, then before acceptance of it by the lessee, but not thereafter:
 - (i) the lessee has the right to reject the property or to terminate the lease agreement, and
 - (ii) the lessor has the right to remedy the supplier's failure to tender property in conformity with the supply agreement.

Claims Against the Lessor

36. Upon the lessee's acceptance of the property, the lessee's obligations under a finance lease, including the obligation to make lease payments and other specified payments, become absolute and irrevocable, and the lessor's contractual obligations to the lessee relating to the quality and performance of the leased property and any claims by third parties, other than persons with claim arising from the acts or omissions of the lessor, no longer exist except to the extent that:
 - (i) the lessor has assumed obligations that, under the terms of the lease agreement, continue after acceptance of the property; and
 - (ii) the lessee has suffered loss as a result of the lessor's intervention in the selection of the supplier, the leased property or setting the specifications of the leased property. If the lease agreement so provides, the lessor incurs no liability for participation in the selection of the supplier.
37. Except as provided in Section 35, the lessee shall have no claim against the lessor for non-delivery, delay in delivery or delivery of non-complying property except to the extent to which this results from an act or omission of the lessor.

Acceptance of the Leased Property

38. A lessee has accepted leased property if, after having had a reasonable opportunity to inspect it:
 - (i) the lessee, by a statement in writing directed to the lessor or by its actions with respect to the leased property, has indicated to the lessor that the property complies with the lease agreement requirements or that it will accept the property in spite of the non-compliance, or
 - (ii) the lessee has failed to give notice of rejection of the leased property within a reasonable period of time after discovering the non-compliance.

Rejection by Lessee

39. The lessee may not, as against the lessor, reject property when the lessee has accepted the property on the assurance of the supplier that a non-compliance would be cured.

Risk and Delivery

40. The risk of loss passes to the lessee upon delivery of the leased property to the lessee. For this purpose, delivery to the lessee occurs when:
- (i) the lessee or an agent of the lessee is in actual receipt of the leased property,
 - (ii) the lessor makes available the leased property to the lessee as provided in the lease agreement,
 - (iii) the leased property, which is to be delivered at a particular destination by a carrier, is made available to the lessee by the carrier at that destination, or
 - (iv) the leased property is delivered to a carrier named by the lessee.

Additional Rights of the Lessor

41. A lessor shall be entitled:
- (i) to demand from the lessee complete quarterly and annual reports on its business activities and other matters relating to the leased property;
 - (ii) to affix its ownership stamp/tag/identification on the leased property during the lease term;
 - (iii) to indemnification for damages resulting from failure or non-performance by the lessee of its obligations including obligations to maintain, repair, or insure the leased asset during the lease term; and
 - (iv) to recover penalties and interest on unpaid amounts as provided in the agreement.
42. The lessor may assign its rights and interest in the lease agreement to another finance leasing company licensed as provided in these regulations, and may assign its rights to lease payments to another person or legal entity. The assignment is effective without the consent of the lessee, but notification of the assignment shall be given to the lessee.

Restrictions on Rights of Lessee

43. The lessee shall not assign or transfer the use of the leased property to a third party without prior consent in writing of the lessor, and shall not mortgage or create a charge over the leased property.

Termination of Lease Agreement Prior to End of Lease Period

44. The lessor may, without prior notice to the Lessee, terminate the lease agreement and take possession of the leased property if:

- (i) the leased property is in danger of being damaged, destroyed or taken out of the Maldives without the consent of the lessor;
- (ii) the leased property is modified or its value or usefulness is in any way reduced without the consent of the Lessor as provided herein;
- (iii) the leased property is seized under judicial process or becomes subject to a lien or charge or is in danger of being confiscated or sequestered;
- (iv) the lessee has failed to insure the leased property or to keep it insured or has failed to keep it in good repair as required by the lease agreement;
- (v) the lessee is insolvent, or is subject to bankruptcy or receivership proceedings or makes a composition with its creditors;
- (vi) a guarantor of the lessee's obligations under the lease agreement is insolvent or is subject to bankruptcy or receivership proceedings;
- (vii) the lessor has reasonable grounds to believe that the leased property is or is about to be placed in jeopardy or that the prospect of performance of the terms of this agreement by the lessee is impaired;
- (viii) any representation made by the lessee with respect to any material aspect of the lease agreement is untrue;
- (ix) the lessee suspends business; or
- (x) the lessee commits a substantial breach of the lease agreement.

45. The lessor may terminate the lease agreement prior to the expiration of the lease term if, the lessee, after having been given a written notice of default and intention to terminate the lease agreement, fails to immediately make a lease payment or other payment that is due as provided for in the lease agreement or fails to immediately remedy any other non-compliance with the requirements of the lease agreement.

46. The lease agreement shall be terminated prior to its expiration if the leased property is lost or suffers irreparable damage. In such case, Section 51 shall apply. The lessor shall, however, pay the lessee all moneys received from an insurer as a result of an insurance claim when the amount required to be paid by the lessee has been paid in full.

Consequences of Termination

47. If the lease agreement is terminated pursuant to Section 44 or Section 45, the lessor shall be entitled without legal proceedings or court order to:

- (i) take possession of the leased property;

- (ii) if a breach of the peace does not result, go on to land or premises or on to a boat or ship, whether owned or occupied by the lessee or another person, in order to take possession of the leased property, and when so doing, shall not be guilty of trespass or illegal entry; and
 - (iii) sever leased property from immovable property or other movable property to which it is affixed, but in so doing the lessor shall cause no more damage or inconvenience to persons in possession of the immovable or movable property than is necessarily incidental to the removal of the leased property.
48. Upon written request of a lessor, the Maldives Police Service shall give the necessary protection and assistance to a lessor seeking to take possession of leased property as provided in Section 47 when the lessor has presented to a senior officer of the Maldives Police Service the following:
- (i) proof of the right of the lessor to terminate the lease agreement and take possession of the leased property;
 - (ii) a written statement that, within the immediately preceding 20 days, the lessee or other person in possession of the leased property has refused to surrender possession of the leased property and has resisted verbally or physically attempts by the lessor to take possession of the leased property.
49. Leased property repossessed by the lessor may be disposed of or otherwise dealt with only after 12 days of such repossession and if the lessee does not make an application to the court as provided in Section 50.
50. A lessee may make application to a court for return of leased property taken by a lessor. The application shall be made not later than 10 days after the leased property has been taken from the lessee. Notice of the application shall be given to the lessor. If the court determines that the lessor was not entitled to terminate the lease agreement and take possession of the leased property or if the lessee has tendered to the lessor complete performance of the lessee's obligations under the lease agreement, including amounts required to exercise an option to purchase the leased property, the court may order return of the leased property to the lessee.
51. If a lease agreement is terminated as provided in Section 44 or Section 45, the lessor shall be entitled to retain all payments made by the lessee under the lease agreement and to recover from the lessee immediate payment of the following amounts:
- (i) lease payments owing at the date of termination;
 - (ii) all charges for late payment provided for in the lease agreement;
 - (iii) the present worth of all additional unpaid lease payments and other amounts payable to or at the expiry of the period of the lease, including any extension of it, determined as provided in the lease agreement, and, in the absence of such provision, by discounting the value of these payments and amounts by an annual rate agreed between the lessor and the lessee in the lease agreement.
 - (iii) all other costs and expenses incurred by the lessor provided for in the lease agreement with interest thereon at the rate specified in the lease agreement from the date the amounts become payable.
52. If the lessor exercises its right to take possession of the leased property, the amount

specified in Section 51 shall be reduced by the difference between the equivalent fair market value of the leased property as of the earliest date the lessor could reasonably have sold the property if it had been offered for sale at that time and, the residual value of the leased property as specified in the lease agreement, and in the absence of such a provisions, the estimated market value of the leased property at the end of the lease term. If the lessor does not exercise a right to take possession of the leased property, the lessor may recover, in addition to amounts specified in Section 51, the residual value of the leased property as specified in the lease agreement, and in the absence of such a provisions, the estimated market value of the leased property at the end of the lease term.

53. If the lease agreement is terminated as provided in these regulations, the lessor's ownership of the leased property shall not be affected. The property shall not be deemed an asset of the lessee in the receivership or liquidation process relating to the lessee.
54. If a lease agreement is terminated prior to its expiration due to a breach by the lessor, the lessor shall be liable to pay damages caused to the lessee as a reasonably foreseeable consequence of that breach.

CHAPTER VI – FUNDING AND ACCOUNTS

Capital

55. The paid-in-capital of a finance leasing company must be achieved within six months of grant of a licence by the Authority under these regulations.
56. The Authority may require the establishment of reserve funds to cover losses from finance leasing business and may regulate the quantum and method of allocation from such reserves for covering said losses.
57. The ratio of capital to risk weighted assets of a finance leasing company shall be at least 12 percent. For the purposes of assigning weights, internationally accepted methodology shall be followed.

Debt

58. A finance leasing company licensed under these regulations may raise funds through issuance of promissory notes, debentures, bonds, term deposits from institutions and companies and through loans and overdrafts from persons, banks, insurance companies and other savings institutions located in Maldives or abroad. The total debt of a finance leasing company shall not be an amount greater than ten times its capital.

Financial Statements

59. The financial statements of a finance leasing company licensed under these regulations shall consist of the balance sheet, the profit and loss statement and any additional details required for those statements and shall be in such form as is required by international accounting standards. Such financial statements shall be submitted to the Authority within 15 days of the annual general meeting.

60. The records of a finance leasing company licensed under these regulations shall be audited annually by an auditor approved by the Auditor General.
61. Every finance leasing company shall furnish to the Authority at such time and in such manner as the Authority may prescribe, all such information and data as the Authority may reasonably require.

CHAPTER VII - ENFORCEMENT MEASURES & PENALTIES

Measures against Finance Leasing Companies

62. If it is determined by the Authority that a finance leasing company has violated the provisions of these regulations or directions issued by it, it may:
 - (i) issue a written warning;
 - (ii) issue an order requiring remedial action to be taken within a specified time;
 - (iii) order a finance leasing company to stop or limit specified activities;
 - (iv) impose fines or other penalties;
 - (v) suspend temporarily or revoke a license.
63. Any person aggrieved by any action taken as provided in Section 62 may appeal to the court within 30 days from the date on which notice of such action has been communicated to it.
64. The measures and penalties provided for shall not preclude application of other penalties as provided in other laws. No fine shall be imposed for conduct that is a criminal offence except as may be provided by other applicable law.

Penalties Imposed by Authority

65. The following penalties may be imposed by the Authority:
 - (i) for engaging in finance leasing activities without obtaining a license, confiscation of all income illegally earned and all existing leasing agreements and a fine not exceeding Rf. 100,000,
 - (ii) for failure to comply with these regulations or an order of the Authority, a fine not exceeding Rf. 50,000,
 - (iii) for intentionally impeding supervisory actions taken or initiated by the Authority, a fine not exceeding Rf. 20,000,
 - (iv) for not submitting the annual financial statements, periodic reports and other requested materials as required by these regulations or an order of the Authority, a fine not exceeding Rf. 10,000.
66. The fines imposed under these regulations shall be paid to the Authority.

67. A person who is subject to a penalty as provided by Section 65 may appeal to the court within a period of 30 days from the date that the person has been notified of the imposition of the penalty. The court may make such order as is just under the circumstances.

CHAPTER VIII - REGISTRATION OF FINANCE LEASES

68. This chapter does not apply to leases of property the ownership of which is required to be and is registered in an official registry of the Government of the Republic of Maldives that is open to public inspection.
69. The ownership of a lessor in leased property may not be asserted against a person who purchases the leased property for a price that is approximately equal to its market value without actual knowledge that the lessee is not the owner of the property, unless a notice is delivered to the office of the Ministry of Finance and Treasury before such person enters into the purchase contract and takes possession of the property.
70. A notice referred to in Section 69 shall be in the form prescribed by the Ministry of Finance and Treasury and shall contain:
- (i) the full name and address of the lessor;
 - (ii) the full name and address of the lessee;
 - (iii) a description of the leased property sufficient to enable it to be identified, including the name of the manufacturer and the serial number affixed to the property by its manufacturer;
 - (iv) the description of any immovable or movable property on or in which the leased property is installed or affixed, or will be installed or affixed.

CHAPTER IX - MISCELLANEOUS PROVISIONS

Further reference

71. The provisions of these regulations shall be in addition to, and not, save as herein expressly provided, in derogation of the Companies Act of the Republic of Maldives (Law No. 10/96) and any other law for the time being in force.

Regulations to Override Memorandum, etc.

72. Except as provided in these regulations or any other applicable law:
- (i) the provisions of these regulations shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a finance leasing company, or in any agreement executed by it, or in any resolution passed by it in general meeting or by its board of directors, and
 - (ii) any provision contained in the memorandum, articles, agreement or resolution aforesaid shall, to the extent to which it is repugnant to the provisions of these regulations, become or be void, as the case may be.

Final Provision

73. Persons engaged in finance leasing business at the date these regulations come into force shall organize and conduct their operations in accordance with these regulations within twelve months of that date.

Preservation of Existing Rights

74. Nothing in these regulations shall affect:

- (i) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of these regulations, or
- (ii) any legal proceeding or remedy in respect of any such right, title, interest obligation or liability, or anything done or suffered before the commencement of these regulations, or
- (iii) anything done before the commencement of these regulations.

75. When under these regulations a notice is to be given to a person, the notice may be hand delivered, sent by courier or sent by registered post to the address of the person, and in the case of a notice sent by the Authority, to the address of the person as it appears in the records of the Authority. Unless the postal service is not functioning at the time, a notice sent by registered post shall be deemed to have been received by the person to whom it is addressed 48 hours after the time when it was sent as disclosed in the records of the postal service.

Coming into Force

76. These regulations shall come into force on the date when the Authority publishes a notification in this regard.

CHAPTER IX - DEFINITIONS

77. In these regulations, unless the context otherwise requires:

“**Authority**” means the Maldives Monetary Authority

“**Court**” means the courts established under the Judicature Act of the Maldives.

“**Lease**” and “**lease agreement**” mean a contract under which a finance leasing company, also called the “lessor,” transfers the right to possession and use of property to another person, called the “lessee”, for an agreed term in return for a periodic payment, referred to as “lease payments.” The terms “lease” or “lease agreement” may also refer to a sub-lease.

“**Finance Lease**” means a lease or lease agreement entered into pursuant to a transaction in which:

- (i) the lessee specifies the property and selects the supplier;
- (ii) the lessor acquires the selected property through lease or purchase as instructed in writing by the lessee without assuming any direct responsibility of maintenance and after-service;

(iii) the lease payments are calculated so as to take into account the amortization of the whole or a substantial part of the cost of the property; and

(iv) matters concerning the disposal of the leased property after the expiry of the lease, including an option given to the lessee to purchase the leased property, are agreed upon between the parties.

“Leased property” shall mean the property leased under a finance lease agreement.

“Finance leasing business” shall mean a business of conducting finance leasing.

“Finance leasing company” shall mean a legal person engaged in finance leasing business which is required to obtain a license as prescribed in these regulations.

“Guarantor” means a person or entity that has undertaken, in writing, to fulfil the promises and obligations of a lessee under a financial lease, should the lessee as primary debtor fail to do so.

“Paid-in-capital” means a minimum of 50 million Rufiyas held in the form of cash payments received by the company for shares and retained earnings.

“Supplier” shall mean a person from whom a lessor buys or leases property to be leased under a finance lease agreement.

“Sub-lease” means a lease of property the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
