

LEGAL ALERT

ZAMBIAN CENTRAL BANK PRESCRIBES THE IRREDUCIBLE CORE FOR FINANCE LEASING



On the 8th of August 2023, the Bank of Zambia issued the “Banking and Financial Services (Finance Leasing) Directives, 2023” (referred to in this alert as the “**Directives**”), aimed at regulating financial service providers involved in finance leasing. Prior to this, finance leasing agreements were governed solely by ordinary contractual arrangements between financial service providers and their customers. This approach allowed for flexibility in determining the terms, content, and structure of these agreements. However, with the coming into force of the Directives, financial service providers are now required to operate within the defined framework of the Directives. Below, we outline some salient aspects of the Directives.

While the Banking and Financial Services Act No. 7 of 2017 (the “**BFSA**”) recognizes finance leasing as a financial service requiring a licence from the Bank of Zambia, the BFSA does not provide a definition of what qualifies as a finance lease. The Directives seek to rectify this gap by defining finance leasing as a lease in which:

- (a) the lessee selects a supplier for the asset, enabling the lessor to acquire it from the supplier for subsequent leasing to the lessee;
- (b) the lessor obtains the asset and maintains full ownership throughout the lease period;
- (c) the asset’s title is transferred by the supplier to the lessor for delivery to the lessee’s possession and use;
- (d) the present value of all lease payments, including any lessee guaranteed residual value, matches or exceeds the fair value of the underlying asset; and
- (e) upon the finance lease agreement’s expiry and with the lessor’s consent, the lessee has the option to purchase the asset at an agreed token value, return it to the lessor, or request a renewal of the lease agreement.

For transactions that align with this definition, certain formalities must be followed. These include ensuring that the agreement is in

writing and that the lessee has an understanding of the terms of the agreement. The Directives prescribe that the lessee's understanding of the finance lease agreement is to be evidenced by signing of a Key Fact Statement in the form to be prescribed by the Bank of Zambia. Additionally, inclusion of a cooling-off clause, allowing the lessee to revoke the agreement within five (5) days of execution via written notice to the lessor, is mandatory for finance lease agreements.

The Directives also specify the minimum content of finance lease agreements and outline the rights and obligations of all parties involved. Lessors are expected to register their interest in the asset on the Collateral Registry in accordance with the Movable Property (Security Interest) Act No. 3 of 2016 or any applicable registry. Furthermore, any transfer or assignment by the lessor to a special purpose vehicle necessitates written consent from the lessee and is permitted solely for securitization purposes, subject to approval by the Bank of Zambia and compliance with any other

regulatory guidelines issued by the Bank of Zambia

There is an additional requirement for lessors to enter into a supply agreement with the asset's supplier upon finalizing the terms of the finance lease agreement. The Directives grant the lessee the right to enforce this supply agreement as if they were a party to it, with the caveat that the supplier is not liable to both the lessee and the lessor regarding the same issue. The lessor also cannot terminate or rescind the supply agreement without the lessee's consent.

Although the Directives specify the mandatory requirements parties must adhere to, with non-compliance potentially resulting upon conviction to a fine of not more than ZMW 3000 (approximately \$150) or imprisonment for a term not exceeding one year, or to both, parties still retain the freedom to agree on additional terms that suit their specific transactions, provided such terms do not conflict with the provisions of the Directives.

We hope you found this alert useful. Please contact our Banking and Finance Partner and Associate, Lupiya Simusokwe at LSimusokwe@corpus.co.zm and Sankanaji Mubanga-Chilufya at SMubanga@corpus.co.zm respectively, if you have any questions relating to this legal alert.

Lupiya Simusokwe

Partner
Banking & Finance Department
Corpus Legal Practitioners
Email: LSimusokwe@corpus.co.zm
Tel: +2602 11 372300 / 01 / 04



Sankanaji Mubanga- Chilufya

Associate
Banking & Finance Department
Corpus Legal Practitioners
Email: SMubanga@corpus.co.zm
Tel: +2602 11 372300 / 01 / 04

