

inBrief



Emirates Development Bank appointed to maintain Register of Finance Leases

By Greg Mayew | 23 October 2019

Introduction

Pursuant to UAE Federal Cabinet Resolution No. 56 of 2019, Emirates Development Bank has been appointed to maintain the register of finance lease contracts created pursuant to UAE Federal Law No. 8 of 2018 on Finance Lease (the **Finance Lease Law** or the **Law**).

Background

The Finance Lease Law was promulgated in December 2018. This Law creates a register (the **Register**) pursuant to which “Finance Lease Contracts” shall be registered. A Finance Lease is defined in the Law as: *“A relationship whereby the Lessor acquires Leased Property for leasing purposes and, under a separate contract, leases such property to the Lessee for a specific period in accordance with the provisions hereof and offers the Lessee the option to own the Leased Property pursuant to the provisions hereof.”¹*

Leased Property under the Law includes both personal and real property.²

In order for a lease to constitute a Finance Lease within the meaning of the Law it must include a rent-to-own option. A lease without an option to purchase would not fall within the scope of the Law. Whether intended or not, this requirement will have the practical effect of excluding a considerable number of leasing arrangements commonly practiced in the UAE from the scope of the Law. Also, whether intended or not, the Law will apply to *Ijarah* contracts used in Islamic financing whereby the purchase of property is facilitated by the lender purchasing the property and leasing it back to the customer on a lease-to-own basis.

The appointment of Emirates Development Bank to maintain the Register is a logical choice given that Emirates Development Bank already maintains the Emirates Movables Collateral Registry (**EMCR**)

The Author



Greg Mayew

Partner

gmayew@afridi-angell.com
Tel: +971 2 610 1010

Greg Mayew joined Afridi & Angell in 2004 and is the partner in charge of the Abu Dhabi office. He is involved in the firm's corporate and commercial, capital markets, construction, project finance, and banking practices. Greg holds a JD from the University of Minnesota Law School, a master's degree from the Massachusetts Institute of Technology and a BA from the University of Denver. He is a member of the New York State Bar. Prior to joining Afridi & Angell, Greg was an associate at the London and New York offices of a leading firm.

established pursuant to Federal Law No. 20 of 2016 on the Mortgage of Movable Property to Secure Debt.

UAE Federal Cabinet Resolution No. 56 of 2019 was published in the UAE Federal Gazette in August of 2019. As of the date of this inBrief, registration is not yet possible. Emirates Development Bank has not made public the timetable for launching the Register but this is expected in the near future.

Compliance Requirements and Further Legislation

The Finance Lease Law states that the Central Bank shall enact licensing regulations governing licensing the practice of Finance Lease activity in the UAE and may further license branches of foreign finance lease companies.³ The Central Bank has not yet issued such regulations. Guidance from the Central Bank in this regard is critical given that (i) Article 2(1) of the Law stipulates that Finance Lease activity may not be practiced in the UAE unless and until the Lessor has obtained a license to that effect from the Central Bank and (ii) Article 2(2) states that any Finance Lease concluded with a person unlicensed by the Central Bank shall be deemed null and void. Similarly, Article 3 of the Law stipulates that a Finance Lease contract must be registered in the Register, otherwise such contract shall be deemed null and void. The deadline for complying with the licensing and registration requirements under the Law is 31 December 2019.⁴

Given the draconian consequences of non-compliance, and in light of the fact that (i) the compliance deadline is approximately 10 weeks away, (ii) the Register has not yet been launched, and (iii) the Central Bank has not issued the licensing regulations contemplated by the Law, the question arises as to whether extensions will be granted. This remains to be seen. Other, somewhat less critical, legislation is also pending.

The Law contemplates Special Accounting Standards relating to Finance Leases to be created by resolution of the Minister of Finance, which resolution has not yet been issued.

Article 35 of the Law specifies a fine not exceeding AED 500,000 for violations of the Law but further contemplates that the Cabinet will issue a resolution specifying the amount of the fine prescribed for each violation. Cabinet Resolution No. 56 of 2019 did not address this issue. Accordingly, a further Cabinet resolution specifying the amount of such fines is awaited.

Article 37 of the Law contemplates a resolution of the Minister of Justice designating certain employees as judicial officers and vesting them with the authority to establish whatever is done in contravention of the Law. Such resolution has not yet been issued.

Conclusion

The appointment of Emirates Development Bank to maintain the Register is a positive development in the implementation of the Finance Lease Law. Further legislation contemplated by the Law is eagerly awaited by all parties affected by the Law, as is the launch of the Register. This includes finance lease companies that will need to obtain licenses from the Central Bank and lessors that are required to register existing Finance Lease Contracts by 31 December 2019. ■

¹ See Article 1 of the Finance Lease Law.

² The Finance Lease Law defines Leased Property as: "*Each personal or real property which is useful to the usufructuary and is subject of the Finance Lease, inter alia, the on-plan subdivided real estate units that may be subject of legal dispositions in accordance with the provisions of legislation in force.*"

³ See Article 2(4) of the Finance Lease Law.

⁴ The Finance Lease Law was published in the Official Gazette on 31 December 2018 and came into effect the following day. Article 38 of the Law provides for (i) a one year grace period from the effective date of the Law for companies practicing Finance Leasing to obtain a license from the Central Bank and (ii) a one year grace period for Lessors to register Finance Leases in the Register.

Afridi & Angell

Founded in 1975, Afridi & Angell is a full-service UAE law firm in its fifth decade at the forefront of the legal community. From the beginning, our hallmarks have been a commitment to quality, unsurpassed knowledge of the law and the legal environment, and crafting of innovative business solutions. Licensed in the three largest Emirates of Abu Dhabi, Dubai and Sharjah as well as the Dubai International Financial Centre, our practice areas include banking and finance; corporate and commercial law; arbitration and litigation; construction; real estate; infrastructure projects; energy; project finance; maritime (wet and dry); and employment. We advise local, regional and global clients ranging in size and sophistication from start-ups, sole proprietorships, family-owned businesses, entrepreneurs and investors to some of the world's largest public and private companies, governments and quasi-government institutions. We attract and retain clients with our dedication to practical guidance focused on their business needs supported by decades of experience here in our home jurisdiction, the UAE.

Afridi & Angell is the exclusive member firm in the UAE of top legal networks and associations, most notably Lex Mundi, the world's leading network of independent law firms, and World Services Group.

www.afridi-angell.com