**Equipment leasing in Nigeria- Promoting consumer rights as an essential ingredient for successful leasing business**

**Nature of a Lease Contract**

A lease is a contractual agreement between a Lessee and a Lessor for the use of the Lessor’s asset/equipment. Assets include equipments and vehicles.

There are two parties to a lease, the Lessor and the Lessee. The Lessor must be a limited liability company carrying out the business of equipment leasing according to its Memorandum and Articles of Association, the legal owner of the asset leased and registered with the equipment leasing authority in Nigeria[[1]](#footnote-1); while the Lessee is the consumer obtaining the right to use the Lessor’s asset in return for rental payment, subject to the terms and conditions stipulated in the lease agreement.

The Lessee is the consumer, he is the person who parts with his money in exchange for the Lessor’s asset. The need to protect such consumers in any business cannot be overemphasized; consumer protection benefits everyone by ensuring access to the right information to enable them make informed decisions.

**Legitimacy of an Equipment Lease Agreement**

Equipment Leasing is the renting of equipment from its Owner (Lessor), by a consumer (Lessee), who in return for enjoying the use of the equipment leased makes an agreed periodic payment for the use of the equipment to the Lessor.

Equipment Leasing has become a viable financial vehicle for stimulating a country’s economy. In Nigeria, prior to the Equipment Leasing Act (Act) passed into Law in 2015, there was no robust and expansive Equipment Leasing legislation, save for the Consumer Protection Council Act 2004 and the Guide to Charges by Banks and Other Financial Institutions in Nigeria 2017.

The controversy is whether or not ‘other financial institutions’ as stipulated in the CBN regulation, includes private leasing companies, this depends therefore on whether it is a finance or operating lease. The difference between a finance and operating lease is determined based on the ownership of the asset, who bears the day to day expenses and running cost, accounting and tax rewards. A finance lease is where the risk and rewards attached to the ownership of the asset is transferred to the lessee, such a lease is generally presumed a loan agreement, and the lessee bears the taxes, insurance and maintenance on the equipment, making the lessee an owner in substance and the lessor an owner in form; while in an operating lease, the risk and rewards attached to the asset remains with the lessor, it is generally presumed a rent, the lessee only pays a monthly consideration or premium, no depreciation can be claimed, and the lessor bears the taxes, insurance and maintenance on the asset. It is for this reason that the Central Bank’s Guide to charges by Banks and Other Financial Institutions 2017, is applicable to all companies that engage in finance leasing.

S. 2 & 5 of the Equipment and Leasing Act stipulates the requirement of an equipment lease agreement to wit:

* It should be in writing;
* Appropriately identify the parties;
* A description of the equipment to be leased;
* The rental payable;

A copy of the agreement must be sent within 14 days to the Lessee, and kept for inspection with the registration authority[[2]](#footnote-2), failure to register with the necessary authority shall render the agreement invalid between the parties and unenforceable against any third party acting in good faith for value without notice[[3]](#footnote-3).

**Obligation, rights and liabilities of the parties to an equipment leasing agreement**

**Lessee**

It is important to say from the unset that there is no law that permits the consumer to breach an agreement. The Consumer is therefore bound by the terms of the agreement for the duration of the agreement. In exchange for his obligation to pay the lease rental cost when due, take proper care of the lease asset (subject to fair wear and tear), and adhere to terms and conditions; the Lessee shall have the exclusive and irrevocable right to quiet enjoyment of the asset, right to timely supply of the leased asset, no unilateral termination of the agreement under Nigerian law[[4]](#footnote-4), including implied rights such as the right to information, transparency, redress, and fair dealing.

The Lessor must also indemnify the Lessee for willful infringement or unlawful acts that lead to termination of the lease agreement before expiration, or damage to the leased asset, where he has depended on the expertise of the Lessor to supply or install assets with technical specification[[5]](#footnote-5).

While the equipment remains in the possession of the Lessee under the lease agreement, he is prohibited from sub-leasing, mortgaging or creating any encumbrance on the asset[[6]](#footnote-6).

According to S.23 & 24 of the Act, the Lessee will be liable for any damage of the asset caused by himself or his agent, or termination of the agreement either by default or negligence, for which the Lessee is liable to the Lessor to indemnify for any loss incurred. This does not however deprive him of a case against any third party to recover any expense to repair the asset and his indemnity to the Lessor[[7]](#footnote-7).

**Lessor**

The Lessor being the legal owner of the lease equipment must be a limited liability company that warrants having exclusive ownership, rights and interest of the leased equipment, and the equipment must be free of mortgage, liens, pledges or any form of encumbrance.

The Lessor has the right to inspect the leased asset in the Lessee’s possession to verify its state and use. He can also repossess the leased asset due to default of the Lessee on any of the terms and condition of the lease agreement (this right in no way prejudice other remedy that he may be entitled to such as right to recover damages for losses caused by non-compliance with the terms of the lease). He has a right to terminate the lease where the Lessee is in breach of the agreement[[8]](#footnote-8)

**Termination of a Lease agreement**

The process of termination is key. Termination may occur as a result of default by either party to honor the terms and condition of the lease agreement, or even by force majeure. However in a situation where there is a default on the side of the Lessee, the Lessee is entitled to a default notice communicating to the Lessee additional 14 days to rectify the default[[9]](#footnote-9). Default could be in loan repayments or any other default such as the equipment maintained or kept in a different address from that which was agreed which may lead to repossession.

**Common Consumer Complaints and CPC Role**

According to the Central Bank, equipment-leasing transactions are negotiable. They are anchored on the Monetary Policy Rate (MPR) set by the CBN and must reflect the risk based pricing model, while being calculated on a reduced balance method**[[10]](#footnote-10).**

As above, there are certain information that if not present, will nullify or void the agreement, such as the names/identities of the parties to the transaction, full and fair disclosure of the terms and conditions to the lessee; and the premium rate or consideration to be paid monthly by the lessee on the asset. Where these salient points are absent, the lack of transparency may cause problems for the consumer.

For example, if the equipment is valued at one million, there is usually a principal sum, and the sum expected to be the monthly rentals of the lessee, which should be calculated on a reduced balancing method. Common consumer complaints include, over charged due to excessive deductions, flat rate calculations as opposed to reduce balancing, calculations which do not take into account the diminishing value of the asset or risk pricing model as stipulated by the CBN guidelines on charges, or hidden charges by the lessor during the period of the lease; due to lack of transparency in their charge calculations.

According to section 12 of the Consumer Protection Council Act 2004, any person in contravention of any enactment whatsoever for the protection of consumer, is guilty of an offence and liable to a fine or imprisonment or both, in other words the CPC has the powers to enforce either of the 2 legislations discussed above when it bothers on consumer interest.

**Conclusion**

In conclusion businesses involved in equipment leasing must take cognizance of their regulatory obligation and balance it with the rights of consumers in entering into a lease agreement with the lessee. The Lessee must have quiet enjoyment of the asset for which he parts with consideration, the equipment must be without default and fit for purpose, and free from encumbrance, also regardless of the lessor’s insolvency status, he cannot unilaterally terminate the agreement.

Despite the rights, obligations and possible liabilities of both parties, it is significant for businesses to recognize the important role consumers play in the success or otherwise of their business. There are several factors that contribute to the success or failure of any business, consumer satisfaction is one of such essential ingredients that businesses cannot ignore. Every business must track its successes by the loyalty of its customers. The prosperity of a business as well as the business ability to stand out of the competition is linked to its customer base.

Businesses that make consumer satisfaction a priority can build the trust of such consumers who become repeated clients, and best sales/advertising instruments for the business. The underlining factor is that where there is no consumer base for any business the business cannot flourish; hence their loyalty and trust must be valued in exchange for their continuous patronage, increased market share, sustainability and revenue.

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1. S.6 EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-1)
2. As it is today, this is an ophan legislation with the registration authority to be known. [↑](#footnote-ref-2)
3. S.17 EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-3)
4. S22. EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-4)
5. S31 & 32 EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-5)
6. S.20 EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-6)
7. S24. EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-7)
8. S. 26, 37, 38,39,& 40 EQUIPMENT AND LEASING ACT 2015. [↑](#footnote-ref-8)
9. S37, 38 EQUIPMENT AND LEASING ACT 2015 [↑](#footnote-ref-9)
10. Guide to Charges by Banks and other Financial Institutions 2017 [↑](#footnote-ref-10)