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LEGAL NOTICE NO. 85 OF 2018

**Financial Institutions (Financial Lease) (Amendment)  
Regulations, 2018**

Pursuant to section 71(1) of the Financial institutions Act, 2012<sup>1</sup>, I,

**DR. RETŠELISITSOE MATLANYANE**

Commissioner of Financial Institutions, make the following Regulations -

**Citation and commencement**

1. These Regulations may be cited as the Financial Institutions (Financial Lease) (Amendment) Regulations, 2018 and shall come into operation on the date of publication in the Gazette.

**Characteristics of a financial lease**

2. Regulation 5 of the Financial Lease Regulations 2013<sup>2</sup>, referred to in this law as the Principal Law, is amended by inserting at the beginning of paragraph (i) the following:

“a written”

**Right and duties of lessee**

3. Regulation 7 of the Principal Law is amended by deleting the second subregulation “7(4)” which appears at the end of the Regulation and substituting subregulation “7(6)”.

**Duties of Supplier**

4. The Principal Law is amended by deleting regulation 9(1) and renumbering accordingly.

**Acceptance of an asset**

5. Regulation 12 of the Principal Law is amended by deleting subregulation “(1)(b)” and substituting the following:

“(1)(b) fails to reject and return the asset within a period of seven days from the delivering of the asset; or”.

#### **Pre-emptive notice and registration of financial lease**

6. Regulation 16 of the Principal Law is amended -
- (a) in subregulation (1) by deleting in line 1, after lessor, “is” and substituting the following:  
“shall” and
  - (b) by deleting subregulation “(3)”.

#### **Transfer of rights and duties**

7. Regulation 18 of the Principal Law is amended by deleting in subregulation (5), substituting the following words:

“which may not be reasonably withheld”.

#### **Notice of default**

8. Regulation 22 of the Principal Law is amended by -
- (a) deleting subregulation (1) and substituting the following:  
“(1) A lessor shall, where a lessee commits a default by failing to comply with any of the terms and conditions of a finance lease, serve the lessee with a notice of default -
    - (i) by personal delivery, certified mail, facsimile or electronic mail;
    - (ii) specifying in the notice, the circumstances which caused the default of the lease;” and
    - (iii) appointing a date which is not less than fourteen days for remedying the default.”

- (b) deleting subregulation (2) and substituting the following -

“(2) If a lessee fails to remedy the default in terms of subregulation (1), on or before the date appointed, the lessor shall serve a notice of termination and enforcement to the lessee, by personal delivery, certified mail, facsimile or electronic mail,” and

- (c) deleting in subregulation (3), the following words:

“which shall also be filed in the registration system”.

#### **Termination**

9. Regulation 25 of the Principal Law is amended by deleting subregulation (4), and substituting the following:

“(4) Upon termination of a finance lease by the lessor as provided in subregulation (2), the lessor shall have the right to recover damages which will place the lessor in a position he would have been if the lessee had complied with the provisions of the financial lease in accordance with its terms and conditions.”

#### **Possession and disposition at the end or termination of possession**

10. The Principal Law is amended by deleting regulation 26 and substituting the following:

“Possession and disposition at the end or termination of possession

26. (1) Upon the expiration of -

(a) a period of a lease;

(b) its prior termination; or

(c) on the failure to adhere to the terms and conditions of the lease by the lessee, including the failure to pay lease rentals,

the lessee shall immediately return the asset to the lessor, subject to fair wear and tear.

(2) In the event of a lessee's failure to return the asset to the lessor, the lessor has the right to:

- (a) take possession of the asset without resorting to judicial process; and
- (b) dispose the asset immediately.

(3) A lessor shall have an absolute right to dispose of an asset without prejudice and delay.

(4) Where a lessor has failed to comply with the obligation to give notice in conformity with these regulations, the lessee is entitled to damages.

#### **Licencing of financial lease company**

11. Regulation 29(4) of the Principal Law is amended by deleting "Notwithstanding" "subregulation (2)" and substituting the following:

"Subregulation (3)".

#### **Special requirements for a bank credit only and deposit taking micro-finance institution, to engage in financial leasing**

12. Regulation 30 of the Principal Law is amended -

- (a) by deleting "subregulation (2)" and substituting the following:

"(2) Notwithstanding regulation 27(2), a bank, a credit-only and deposit taking micro-finance institution which intends to operate a financial leasing business, shall apply for approval in writing, to the Commissioner. ";

- (b) by deleting "subregulation (4)", and substituting the following:

"(4) A bank, credit-only and deposit taking micro-finance

institution seeking approval for an application made in terms of subregulation (2), is required to make a presentation on its business plan to the Commissioner.”;

- (c) by deleting “subregulation (5)” and substituting the following:

“(5) Where the Commissioner approves an application made under subregulation (2), the Commissioner shall grant the bank, credit-only and deposit taking micro-finance institution, permission to operate a financial lease licence business within thirty days after the date of submission of the application”; and

- (d) in subregulation (6), by inserting in line 1, after “bank”, the following:

“credit-only and deposit taking micro-finance institution.”

#### **Capital requirements**

13. The Principal Law is amended by deleting regulation 31(1)(a) and renumbering accordingly.

#### **DATED:**

**DR. RETŠELISITSOE MATLANYANE**  
**COMMISSIONER OF FINANCIAL INSTITUTIONS**

#### **NOTE**

1. Act No. 3 of 2012
  2. L.N. No. 39 of 2013
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LEGAL NOTICE NO. 86 OF 2018

**Lesotho National Development Corporation Board of Directors**  
**(Amendment) Notice, 2018**

Pursuant to section 8(3)(c) of the Lesotho National Development Corporation Act, 1990<sup>1</sup>, I,