

Proposed Amendments to the Finance Leasing Act No. 56 of 2000 (As amended)

| Section | Existing Provision | Proposed Provision |
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| 1 | This Act may be cited as the Finance Leasing Act, No. 56 of 2000 and, shall come into operation on such date as the Minister may appoint by Order published in the Gazette (hereinafter referred to as the “appointed date”). | <i>No change.</i> |
| 2 | Subject to the provisions of section 44, from and after the appointed date, no person shall carry on finance leasing business, except under the authority of a certificate of registration issued in that behalf under the provisions of this Act. | <i>Repeal.</i> |
| 3 | A person shall not be eligible to be registered under this Act, unless such person <ul style="list-style-type: none"> (a) is a licensed commercial bank or a licensed specialised bank within the meaning of the Banking Act, No. 30 of 1988; (b) a finance company within the meaning of the Finance Companies Act, No. 78 of 1988; or (c) a public company incorporated under the Companies Act, No. 17 of 1982 having such minimum issued and paid up capital as may be prescribed. | <i>Repeal and replace.</i> No person other than <ul style="list-style-type: none"> (a) A licensed commercial bank or a licensed specialized bank within the meaning of the Banking Act, No. 78 of 1988; (b) A licensed finance company within the meaning of the Finance Business Act, No.42 of 2011; or (c) Any other entity permitted under any written law for the time being in force to carry on micro finance leasing business; shall carry on finance leasing business. |
| 4 | (1) An application for registration under this Act, shall be made to the Director in such form as may be provided for that purpose by the Director, and shall be accompanied by— <ul style="list-style-type: none"> (a) in the case of a licensed commercial bank or a licensed specialised bank, a certified copy of the licence issued to such bank by the | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--------------------|
| | <p>Monetary Board under the Banking Act, No. 30 of 1988 and in force on the date of making the application;</p> <p>(b) in the case of a finance company, a certified copy of the licence issued by the Monetary Board under the Finance Companies Act, No. 78 of 1988 and in force on the date of making the application;</p> <p>(c) in the case of a public company, other than those referred to in paragraph (a) and (b) of section 3—</p> <p style="padding-left: 40px;">(i) a certified copy of the Memorandum and Articles of Association of the Company; and</p> <p style="padding-left: 40px;">(ii) a certified copy of the Certificate of Incorporation of the Company;</p> <p>(d) a certified copy of the operating manual containing the particulars specified in section 7;</p> <p>(e) the application fee as prescribed; and</p> <p>(f) certified copies of such other documents as may be prescribed.</p> <p>(2) The Director may, where he considers it necessary, require an applicant to furnish such further information or particulars for the determination of the application.</p> <p>(3) A person who makes any statement in an application made or in any document submitted under subsection (1), or any information or particulars furnished under subsection (2), which to the person's knowledge is false or misleading in any material particular, shall be guilty of an offence under this Act.</p> | |
| 5 | (1) Where the Director, on a consideration of the information contained in an application made and the documents, information and particulars | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--------------------|
| | <p>furnished under section 4 and after such investigation as the Director may deem necessary, is satisfied that the applicant is fit and competent to carry on finance leasing business, the Director may having regard to the interests of the national economy—</p> <p>(a) register the applicant; and</p> <p>(b) issue a certificate of registration to the applicant.</p> <p>(2) Every person registered under subsection (1) shall be referred to as a “registered finance leasing establishment” (hereinafter referred to as a “registered establishment”).</p> <p>(3) Every registered establishment shall exhibit the certificate of registration issued to it in a conspicuous place at the principal place of business of such establishment.</p> <p>(4) The Director shall keep and maintain in the prescribed form, a register of every registered establishment.</p> | |
| 6 | Every registered establishment shall pay the Director an annual registration fee as may be prescribed, within two months of the end of each calendar year. | <i>Repeal.</i> |
| 7 | <p>The operating manual to be submitted under paragraph (d) of subsection (1) of section 4, shall contain particulars relating to—</p> <p>(a) the period of duration of a finance lease;</p> <p>(b) the method of recovery of the payments due on the finance lease;</p> <p>(c) the protection by the lessor of the right of the lessee against claims in respect of the equipment provided under the finance lease;</p> | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--------------------|
| | <p>(d) the disposal of such equipment after the expiration of the finance lease; and</p> <p>(e) such other particulars as may be prescribed.</p> | |
| 8 | <p>Except with the prior written approval of the Director, a registered establishment shall not—</p> <p>(a) alter or deviate from the particulars contained in the operating manual submitted under paragraph (d) of subsection (1) of section 4; or</p> <p>(b) where such establishment is a company, alter its Memorandum and Articles of Association.</p> | <i>Repeal.</i> |
| 9 | <p>(1) The registration of a registered establishment may be suspended or cancelled by the Director on any one or more of the following grounds:—</p> <p>(a) failure to commence business within twelve months after registration;</p> <p>(b) ceasing to carry on finance leasing business;</p> <p>(c) proposing to make, or making any composition or arrangement with its creditors or going into liquidation or being wound up or otherwise dissolved;</p> <p>(d) carrying on its business in a manner likely to be detrimental to the interests of its lessees;</p> <p>(e) inability to meet its obligations to its lessees, creditors or suppliers, as the case may be;</p> | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--------------------|
| | <p>(f) acting in contravention of any provisions of this Act, or any regulations made thereunder, or any condition imposed or any directions given by the Director under this Act, or such regulation;</p> <p>(g) furnishing false, misleading or inaccurate information or concealing or failing to disclose material facts, in its application for registration; or</p> <p>(h) where such establishment is a licensed commercial bank, licensed specialised bank or a licensed finance company, the licence issued to such establishment has been revoked by the authority issuing the same, under the Banking Act, No. 30 of 1988 or the Finance Companies Act, No. 78 of 1988, as the case may be.</p> <p>(2) The Director may, for one or more of the grounds specified in subsection (1)—</p> <p>(a) suspend the registration of a registered establishment for such period as may be specified, which shall not exceed three months, and the establishment shall not during the period of suspension enter into any finance lease; or</p> <p>(b) cancel the registration of registered establishment and the establishment shall not thereafter carry on any finance leasing business except such business as it had entered into before the date on which the cancellation takes effect, and the establishment shall for the purpose of completing such business be deemed to be a registered establishment.</p> | |
| 10 | (1) The Director shall, before suspending or cancelling the registration of a registered establishment on any one or more of the grounds specified in section 9, serve a notice in writing on the establishment, informing it of such fact and specifying the grounds for the proposed suspension or cancellation. | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|---|
| | <p>(2) A registered establishment may, within fourteen days of receipt of a notice under subsection (1), show cause as to why its registration should not be cancelled or suspended.</p> <p>(3) Where a registered establishment fails to show cause within the period specified in subsection (2), the Director may suspend or cancel, as the case may be, the registration.</p> <p>(4) Where the registered establishment in compliance with notice issued to it under subsection (1) shows cause within the specified period, the Director may, after considering the reasons submitted—</p> <ul style="list-style-type: none"> (a) refrain from suspending or cancelling the registration, if he is satisfied that the establishment has shown sufficient cause as to why its registration should not be suspended or cancelled; or (b) suspend or cancel the registration, if he is satisfied that the establishment has not shown sufficient cause as to why its registration should not be suspended or cancelled. <p>(5) The decision of the Director under subsection (3) or subsection (4), shall be served on the registered establishment and shall take effect on the date on which such decision is served on the establishment.</p> | |
| 11 | <p>(1) Subject to the provisions of subsection (2), a lessee has a right to the undisturbed and peaceful possession of the equipment provided to the lessee under a finance lease, and it shall be the duty of a lessor to ensure the protection of such right.</p> <p>(2) The provisions of subsection (1) shall not apply where a lessee has, by reason of any act or omission of the lessee, ceased to be entitled to the right to undisturbed and peaceful possession of the equipment.</p> | <p><i>Repeal and replace subsection (2).</i></p> <p>The provisions of subsection (1) shall not apply where the lessor is taking action to recover the possession of the equipment under this Act.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| 11A | <i>New Provision.</i> | The lessor shall be liable for third-party rights that exist in relation to the equipment which exclude, reduce, or limit the lessee's quiet possession, unless the lessee has agreed to accept such equipment encumbered by such third-party rights. |
| 12 | <p>It shall be the duty of a lessee to—</p> <p>(a) take proper care of the equipment provided under the finance lease;</p> <p>(b) use it for the purpose for which it is provided; and</p> <p>(c) subject to fair wear and tear and to any modifications agreed to by the parties to the finance lease, keep it in the condition in which it was delivered to the lessee.</p> | <p><i>Insert new proviso.</i></p> <p>Provided that the lessor shall at all times provide the lessee all necessary assistance to ensure continuous and uninterrupted usage of the equipment during the lease period.</p> |
| 12A | <i>New Provision.</i> | In case of failure of the lessee to comply with Section 12 of this Act, the lessor shall be entitled to recover or charge from the lessee value of any damages caused to the equipment, except for the fair wear and tear and any modifications agreed by the parties in the finance lease. |
| 13 | <p>(1) Where an equipment specified in a finance lease has not been delivered to a lessee at or before the time fixed under such lease for its delivery, or has been delivered after such time, or where the equipment delivered does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, the lessee may, subject to the provisions of subsection (2), reject the equipment and terminate such finance lease.</p> <p>(2) Where a lessee terminates a finance lease under subsection (1), the lessee may withhold the payment under such finance lease and further shall be entitled to recover from the lessor any money paid under the finance lease, less any reasonable sum withheld by the lessor in respect of—</p> | <i>No change.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--------------------|
| | <p>(a) any benefits derived by the lessee prior to the termination;</p> <p>(b) any expenses incurred by the lessor in connection with the lease; and</p> <p>(c) any loss in value of the equipment arising from a default or negligence of the lessee.</p> <p>(3) Where an equipment specified in a finance lease delivered to a lessee within the time fixed for its delivery does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, or where the lessor has reason to believe that the equipment may not be supplied within the time fixed for its delivery, the lessor may supply to the lessee another equipment in conformity with the terms, conditions, warranties or specifications in the supply agreement and the lessee shall, unless the finance lease provides otherwise, accept the equipment as if the lessee had agreed to accept delivery of the equipment from the lessor.</p> <p>(4) Where a lessee has accepted an equipment specified in a finance lease notwithstanding that it has not been delivered within the time specified for its delivery, or it had been delivered after such time, or does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, the lessee shall not thereafter have the right under subsection (1) to either reject the equipment or terminate the lease, as the case may be.</p> <p>(5) The lessor shall not, except as provided for in this section, incur any liability to the lessee by reason of the Use of equipment. Non-delivery, late delivery and non-conformity of equipment non-delivery or late delivery of an equipment by a supplier or of the non-conformity of such equipment with the terms, conditions, warranties or specifications in the supply</p> | |

| Section | Existing Provision | Proposed Provision |
|---------|--|--|
| | agreement, unless such non-delivery, late delivery or non-conformity was due to an act or omission on the part of the lessor. | |
| 13A | <i>New Provision.</i> | A lessee is deemed to have accepted an equipment under a finance lease, if the lessee has by a statement in writing directed to the lessor indicating that the equipment complies with the lease agreement requirements or that the lessee will accept the property notwithstanding any non-compliance with such requirements. |
| 14 | Where a lessee accepts the equipment provided under a finance lease, the terms and conditions of the lease shall be irrevocable thereafter and it shall be the duty of the lessee to observe all such terms and conditions including the terms and conditions relating to payments under the lease. | <p><i>Repeal and replace.</i></p> <p>(1) A lessee shall be given a reasonable opportunity to inspect the equipment.</p> <p>(2) Where a lessee accepts the equipment, the terms and conditions of the finance lease shall be altered only with the express agreement of the parties to the finance lease, and it shall be the duty of the parties to the finance lease to observe all such terms and conditions including the terms and conditions relating to payments under the finance lease.</p> <p>(3) The lessor shall have a right to affix its ownership stamp, tag or identification on the equipment during the lease term.</p> |
| 15 | Upon the expiration of the period of a finance lease or its prior termination under this Act, the lessee shall return the equipment to the lessor in such condition as is specified in paragraph (c) of section 12, unless the lessee had acquired a right to purchase the equipment or retain it for a further period. Where the lessee fails to return the equipment, the lessor shall have a right to recover possession of the same. | <p><i>Repeal and replace.</i></p> <p>(1) Upon the expiration of the period of a finance lease or its prior termination under this Act, the lessee, unless exercising the right to purchase under Section 19A of this Act, or the lessee has acquired a right under the finance lease to retain it for a further period, shall return the equipment to the lessor in such condition as specified in paragraph (c) of Section 12.</p> <p>(2) Upon the expiration of the period of a finance lease or its prior termination under this Act, the lessor shall have a right, to be notified by</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--|
| | | the lessee of the whereabouts of the equipment and recover possession of the same. |
| 16 | <p>(1) A lessee shall not terminate or rescind a supply agreement without the consent of the lessor.</p> <p>(2) The rights conferred on a lessee under this Act, in relation to a supply agreement, shall not be affected by any variation of a term, condition, warranty or specification in such agreement, unless the lessee has consented in writing to such variation.</p> | <i>No change.</i> |
| 17 | <p>(1) A lessor shall not enter into a supply agreement with a supplier for the supply of an equipment under a finance lease, until the lessee agrees in writing with the terms, conditions, warranties and specifications specified in such agreement.</p> <p>(2) Where a lessor has entered into a supply agreement in accordance with the provisions of subsection (1) and the equipment specified in the agreement is delivered at or before the time fixed under such agreement, the lessee shall accept the equipment supplied, if the equipment conforms to the terms, conditions, warranties and specifications specified in the agreement.</p> | <i>Repeal Section 17(1) and Section 17(2) to be renumbered as Section 17(1).</i> |
| 17A | <i>New Provision.</i> | The supply agreement shall be in writing, of which a copy shall be provided to the lessee in the Preferred Language. |
| 17B | <i>New Provision.</i> | <p>The supply agreement shall include the following minimum information;</p> <p>(a) a precise description of the equipment that is sufficient to identify it;</p> <p>(b) price;</p> <p>(c) place, manner and time of delivery;</p> |

| Section | Existing Provision | Proposed Provision |
|---------|-----------------------|--|
| | | <p>(d) details of the lessor, lessee and the supplier;</p> <p>(e) a statement to the effect that the relevant equipment is acquired for the purpose of entering into a finance lease agreement between the lessor and lessee; and</p> <p>(f) any other matter directed by the Board to be included in supply agreements.</p> |
| 17C | <i>New Provision.</i> | The finance lease agreement shall be in writing, signed by the parties thereto and a copy of the agreement shall be provided to the lessee, in the Preferred Language of the lessee. |
| 17D | <i>New Provision.</i> | <p>The finance lease agreement shall include the following minimum information;</p> <ul style="list-style-type: none"> (a) State that the agreement is a finance lease agreement for the purpose of this Act; (b) A description of the equipment that is sufficient to identify it; (c) Period of the lease; (d) Acquisition value or the fair value of the equipment; (e) Initial costs incurred by the lessor on the finance lease; (f) Other charges chargeable under the finance lease; (g) Total amount of the lease payments payable by the lessee under the lease; (h) The number of instalments payable and the time of payment; |

| Section | Existing Provision | Proposed Provision |
|---------|--|--|
| | | <ul style="list-style-type: none"> (i) The value of the instalment payable; (j) The manner and terms of transfer of the right of ownership of the equipment; (k) Manner and terms of extending the agreement; (l) Annualized interest rate implicit in the lease payment under the applicable accounting standard or standards; (m) Circumstances which would amount to substantial failure of the finance lease; (n) Terms and conditions relating to prior termination of the lease agreement by the lessee; (o) Terms and conditions relating to repossession of the equipment; and (p) Any other matter directed by the Board to be included in the agreement. |
| 18 | <p>(1) Where a lessor enters into a supply agreement for the supply of an equipment to a lessee, the lessee shall also have the right to enforce such agreement as if the lessee were a party to it.</p> <p>(2) Where the supplier discharges the liability under a supply agreement to either the lessor or lessee, the supplier shall be released from the liability to the other, and the provisions of subsection (1) shall not be construed as imposing on the supplier, any liability to both the lessor and the lessee in respect of the same matter or thing under such agreement, in such instance.</p> | <i>No change.</i> |
| 19 | (1) A lessor shall not incur any liability to the lessee for any loss suffered by the lessee in respect of the equipment provided under the finance lease, except to the extent of any loss arising out of the lessee's reliance on the | <i>No change.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|---|
| | <p>lessor's skill and judgement on the selection of the equipment or in the lessor's intervention in the selection of the supplier or in the specification of the equipment.</p> <p>(2) Subject to the provisions of subsection (1), the lessor shall not, in the capacity of a lessor, be liable to any person for any loss suffered by death, personal injury or damage to property caused by any equipment provided under the finance lease or its use.</p> <p>(3) The provisions of subsection (2), shall not affect the liability of a lessor for the loss referred to in that subsection, in a capacity other than as a lessor.</p> | |
| 19A | <i>New Provision.</i> | At the end of the lease period, subject to the lessee settling all dues to the lessor under the finance lease, the lessee shall get a right to ownership of the lease equipment and such right shall not be withheld by the lessor due to the effect of any other contract entered in to with the lessee by the lessor or any other person, including any other lease agreement or a guarantee bond signed by the lessee. |
| 20 | <p>Where a lessee fails to comply with certain terms and conditions of the finance lease in such circumstances as would amount to a substantial failure of such lease, the lessor may, subject to the provisions of section 21—</p> <p>(a) require the lessee to make accelerated payment of the monies due under the lease, where the lease so provides; or</p> <p>(b) where a lessee fails to make accelerated payments as required under paragraph (a), terminate the finance lease and—</p> <p>(i) recover possession of the equipment provided; and</p> <p>(ii) recover such damages as would place the lessor in a position the lessor would have been if the lessee had</p> | <p><i>Repeal and replace.</i></p> <p>(1) Where a lessee fails to comply with terms and conditions of the finance lease, which would amount to a substantial failure according to the relevant finance lease agreement, the lessor may serve by registered post a notice on the lessee;</p> <p>(a) Specifying the circumstances which had caused a substantial failure;</p> <p>(b) Appointing a date, not being a date less than 14 days after the date of the notice, for remedying the failure referred to in paragraph (a).</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| | <p>complied with the provisions of the finance lease in accordance with its terms and conditions.</p> | <p>(2) Where a lessee fails to remedy the failure specified in a notice served under subsection (1), on or before the date appointed in the notice, or fails to give a reasonable cause for such failure, the lessor may;</p> <p>(a) Require the lessee to make accelerated payment of the monies due to the lessor <i>mutatis mutandis</i> under Section 22(2) of this Act, within a period not less than 28 days from the date of such notice;</p> <p>(b) Where a lessee fails to make the accelerated payment as required under paragraph (a), the lessor may terminate the finance lease and require the lessee to hand over the possession of the equipment to the lessor, within a period not exceeding 14 days from the date of such notice; and</p> <p>(c) Where the lessee fails to hand over the possession within the stipulated time period above, the lessor may;</p> <p>(i) recover possession of the equipment under Section 27 or 28 of this Act; and</p> <p>(ii) recover the dues to the lessor under Section 22(2) below.</p> <p>(3) Where a lessee remedies the failure specified in subsection (1) within the period stipulated therein, the lessor shall continue with the finance lease and the lessee shall continue to comply with the terms and conditions of the finance lease.</p> |
| 21 | <p>(1) A lessor shall, prior to enforcing the right to accelerated payment or to the termination of a finance lease under section 20, serve by registered post a notice on the lessee—</p> <p>(a) specifying the circumstances which had caused a substantial failure of the lease within the meaning of the finance lease;</p> | <p><i>Repeal and replace.</i></p> <p>(1) The lessor may terminate the finance lease immediately by sending a notice of termination in writing to the lessee to that effect if;</p> <p>(a) the leased equipment has suffered irreparable damage, or destroyed or has been attempted to do so;</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--|
| | <p>(b) appointing a date, not being a date less than seven days after the receipt of the notice, for remedying the failure referred to in paragraph (a).</p> <p>(2) Where a lessee fails to remedy the failure specified in a notice served under subsection (1) on or before the date appointed in the notice, or fails to give a reasonable cause for such failure, the lessor may act in accordance with the provisions of section 20.</p> | <p>(b) the leased equipment is seized under judicial process or become subject to a lien or charge;</p> <p>(c) if an application is filed in court for bankruptcy/winding up of the lessee; or</p> <p>(d) any representation made by the lessee with respect to any material aspect of the lease agreement is untrue;</p> <p>and subsequent to such termination, the lessor shall have a right to repossession of the equipment, as far as practicable, under Section 27 or 28 of this Act.</p> <p>(2) The lessee may at any time during the operation of the finance lease;</p> <p>(a) terminate the finance lease, after giving 30 days' notice to the lessor, subject to provisions of Section 22(2) below, and handover the possession of the equipment to the lessor on or before the end of the said notice period; or</p> <p>(b) offer to the lessor to terminate the finance lease and purchase the equipment, by giving 14 days' notice to the lessor, and the lessor shall sell the equipment to the lessee, subject to Section 22(3) below.</p> |
| 22 | <p>A finance lease may provide for the manner in which damages recoverable under this Act, may be computed and such provision shall be enforceable between the lessor and the lessee, unless the damages so computed, would be substantially in excess of those provided under subparagraph (ii) of paragraph (b) of section 20.</p> | <p><i>Repeal and replace.</i></p> <p>(1) Where a finance lease has been terminated under Sections 20(2)(b), 21(1), 21(2)(a) or 21(2)(b) such termination shall be effective from;</p> <p>(a) In case of Section 20(2)(b) - from the expiration of the last day given to the lessee to make the accelerated payment.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--------------------|---|
| | | <p>(b) In case of Section 21(1) - from the date of the notice of termination sent to the lessee.</p> <p>(c) In case of Section 21(2)(a) and Section 21(2)(b) - after expiration of the relevant notice period given by the lessee.</p> <p>Provided that such termination shall not affect the lessor's right to recover any dues to the lessor under the lease agreement and the lessor may not transfer the ownership of the equipment to the lessee until such payment is completed by the lessee, where applicable.</p> <p>(2) Where a finance lease has been terminated under Sections 20(2)(b), 21(1) or 21(2)(a) of this Act, the following shall be payable by the lessee to the lessor, in full and final settlement of the finance lease.</p> <p>(a) Such dues to the lessor under the finance lease up to the date of the termination of the finance lease;</p> <p>(b) Costs incurred in recovering the possession of the equipment from the lessee, if any;</p> <p>(c) A percentage of the future interest due to the lessor, as set out by the Board from time to time by way of a Direction; and</p> <p>(d) Any amounts due to the lessor for damages to the equipment, subject to Section 20A above.</p> <p>(3) Where a finance lease has been terminated under Section 21(2)(b) of this Act, the following shall be payable by the lessee to the lessor, in full and final settlement of the finance lease.</p> <p>(a) Such dues to the lessor under the finance lease up to the date of the termination of the finance lease;</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| | | <p>(b) The present value of the remaining total of the lease instalments payable under the finance lease discounted at the implicit interest rate stated in the finance lease agreement; and</p> <p>(c) A percentage of remaining total of the lease instalments payable under the finance lease, as set out by the Board from time to time by way of a Direction.</p> <p>(4) A finance lease shall not provide for or no amount shall be accrued as payable or charged from the lessee, by the lessor, except the amounts stated in Sections 22(2) and 22(3), on termination of a finance lease.</p> |
| 23 | A lessor shall not be entitled to recover under subparagraph (ii) of paragraph (b) of section 20, such damages which the lessor could have on a consideration of the circumstances of the case, avoided in the exercise of due diligence. | <i>Repeal.</i> |
| 24 | <p>(1) A lessor may, with the written consent of the lessee obtained at the time of entering into the finance lease or thereafter, transfer or assign all or any of the lessor's rights under the finance lease or in relation to any equipment provided under the lease or of both, to any registered establishment or to any special purpose vehicle :</p> <p>Provided that in the case of a transfer or assignment to a special purpose vehicle, such transfer or assignment shall be made only for the purpose of securitisation and the structure for securitisation shall be as approved by the Central Bank.</p> <p>(2) A registered establishment or a special purpose vehicle shall effect securitisation only in accordance with the structure approved granted by the Central Bank and in compliance with such directions and guidelines as may from time to time be issued by the Central Bank.</p> | <p><i>Repeal "and the structure for securitization shall be as approved by the Central Bank" in the proviso for subsection (1).</i></p> <p><i>Repeal subsection (2).</i></p> <p><i>Repeal "that the transfer or assignment has been effected under the securitization structure approved by the Central Bank," in subsection (4)(a).</i></p> <p><i>Add as subsection (5):</i></p> <p>(5) Irrespective of any such assignment or securitisation, lessee's right for peaceful possession as provided for under Section 11(1) and the right of lessee to purchase equipment upon full settlement of all dues shall be honoured by all parties to the assignment or securitisation.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--------------------|
| | <p>(3) A transfer or assignment under subsection (1) shall not relieve the transferor or assignor of its duties—</p> <ul style="list-style-type: none"> (a) under the finance lease or alter the nature or legal effect of such lease; or (b) insofar as they relate to any equipment provided under the terms of the finance lease. <p>(4) Upon a transfer or assignment by the lessor as provided for in subsection (1) to a special purpose vehicle of his rights in a motor vehicle within the meaning of the Motor Traffic Act (Chapter 203),—</p> <ul style="list-style-type: none"> (a) the transferee or the assignee shall, notwithstanding anything to the contrary in the Motor Traffic Act (Chapter 203), be deemed to be the absolute owner of the motor vehicle and the transferee or the assignee shall within seven days after the transfer or assignment, as the case may be, apply to the Commissioner to have the name of the transferee or assignee entered as the absolute owner of the vehicle in the appropriate register maintained in such form as may be provided by the Commissioner, for such purpose. The application shall be accompanied by the fee thereto prescribed under the aforesaid Act and a copy of the instrument of transfer or assignment as the case may be. Upon the Commissioner being satisfied on the contents of the document forwarded to him with the application, that the transfer or assignment has been effected under a securitisation structure approved by the Central Bank, he shall cause the name of the transferee or assignee, as the case may, be to be entered as absolute owner of the vehicle in the appropriate register maintained by him ; and (b) the transferee or assignee may from the date of registration, exercise all rights under the aforesaid Act or the finance lease which | |

| Section | Existing Provision | Proposed Provision |
|---------|---|--|
| | <p>the transferor or assignor may have exercised, prior to the transfer or assignment of his rights under subsection (1).</p> <p>For the purposes of this section “Commissioner” means the Commissioner of Motor Traffic appointed under section 204 of the Motor Traffic Act (Chapter 203).</p> | |
| 25 | <p>(1) A lessee shall not, except with the written permission of the lessor and subject to any rights of third parties, transfer the right to the possession and use of an equipment under a finance lease to any other person.</p> <p>(2) For the purposes of subsection (1), a “third party” means a person who is not a party to the finance lease in relation to the equipment.</p> | <p><i>Repeal and replace.</i></p> <p>(1) The lessee may, subject to any rights of third parties, assign or transfer the right to possession and utilization of the leased equipment to any other person, with the written consent of the lessor.</p> <p>Provided that the lessee shall continue to be bound by the finance lease agreement in case of such assignment or transfer of the right to possession and utilization of the leased equipment.</p> <p>(2) A lessee may transfer the rights and obligations under a finance lease to any other person with the written permission of the lessor and subject to any right of the lessor to any claim from the lessee under the finance lease up to the date of such transfer.</p> <p>(3) For the purposes of subsection (1), a third party means a person who is not a party to the finance lease in relation to the equipment.</p> |
| 26 | <p>(1) The rights of a lessor under this Act, may be enforced against a trustee in bankruptcy of the lessee, or against any creditor of a lessee, including any creditor who has obtained an attachment in execution of such equipment.</p> <p>(2) For the purposes of subsection (1), “a trustee in bankruptcy” includes a liquidator, administrator or other person appointed to administer the estate of a lessee for the benefit of the lessee’s creditors.</p> | <p><i>No change.</i></p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| 27 | <p>A lessor who becomes entitled to recover possession of an equipment under this Act, or under a provision of a finance lease, may—</p> <ul style="list-style-type: none"> (a) notify such right to the officer-in-charge of the police station for the area within which the equipment is found; (b) obtain the assistance of a police officer of that police station to prevent a breach of the peace in the exercise of that right; and (c) recover possession of the equipment from the place where it is found, if possession could be obtained without resistance from the person in possession of the equipment or where it is not in the possession of any particular person, without resistance from any person. | <p><i>Repeal and replace.</i></p> <p>(1) A lessor who becomes entitled to recover possession of an equipment under this Act, before taking action to recover the possession of such equipment, shall;</p> <ul style="list-style-type: none"> (a) Notify such right to the officer-in-charge of the police station for the area within which the equipment is found; (b) Provide proof of the right of the lessor to terminate the lease agreement and take possession of the equipment, along with such notice; (c) Provide an affidavit signed by a Key Management Personnel of the lessor to the officer-in-charge of the police station that the lessee has not complied with a notice issued under Section 20(2)(b) of this Act to hand over the possession of the equipment within a period stipulated in such notice or circumstances has arisen to recover possession of the equipment under Section 21 of this Act.; and (d) Obtain assistance of a police officer of that police station to prevent a breach of the peace in the exercise of that right to recover the possession of the equipment. <p>(2) No recovery of an equipment under this Section shall be exercised unless in the presence of a police officer.</p> <p>(3) In recovering possession of an equipment from a lessee, the police officer assisting such repossession under Section 27(1) hereof shall take action to obtain possession of the equipment from the lessee and hand over such possession to an officer or agent of the lessor present at the place of repossession, in a manner which prevents breach of the peace.</p> |

| Section | Existing Provision | Proposed Provision |
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| | | <p>(4) In exercising the right of repossession, any officer or agent of the lessor shall not use force or cause injury, threaten or intimidate the lessee or any other person in possession of the equipment.</p> <p>(5) Where the equipment subject to the finance lease cannot be practically removed from the premises where it has been installed, due to the equipment being fixed to the ground or any other movable or immovable property, or such removal requires special equipment, technical expertise or otherwise, the lessor, subject to the above Sections 27(1), 27(2), 27(3), and 27(4), may take such action to prevent further use of such equipment by the lessee, and within seven days of such action remove the equipment from the premises of the lessee.</p> <p>Provided that any action taken by the lessor to prevent the use of the equipment by the lessee shall not prevent the lessee from using the premises other than for using the equipment subject to the finance lease.</p> <p>(6) In recovering possession of an equipment, a lessor may sever such equipment from the ground or any other movable or immovable property to which it is attached, but in doing so the lessor shall cause no damage to the ground or movable or immovable property to which the equipment is attached than is necessarily incidental to the removal of the leased equipment.</p> <p>(7) An equipment repossessed by the lessor may be disposed of or otherwise dealt with only after 21 days of such repossession.</p> <p>(8) A lessee may make an application to the District Court for return of the equipment repossessed by the lessor, not later than 14 days after the equipment has been repossessed by the lessor, by submitting a Petition and Affidavit stating that;</p> |

| Section | Existing Provision | Proposed Provision |
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| | | <p>(a) the lessee has tendered to the lessor complete performance of the lessee's obligation under the lease agreement,</p> <p>(b) the lessor was not entitled to terminate the agreement and take possession of the equipment; and</p> <p>(c) praying for reinstatement of the finance lease agreement from the date of its termination, and damages to the lessee incurred due to such termination.</p> <p>(9) In hearing a petition submitted under Section 27(8) above, the Court shall follow the summary procedure set out in the Civil Procedure Code.</p> |
| 28 | <p>(1) Where a lessor fails to recover possession of an equipment under section 27, or where a lessor has reasonable grounds to believe that it is impracticable to obtain possession under that section, the lessor may make an application to the District Court within whose jurisdiction the finance lease had been entered into, for an order of possession of the equipment.</p> <p>(2) An application under subsection (1), shall be made by way of petition and affidavit to which the lessee shall be made a respondent, and which shall contain the following information—</p> <p>(a) the date of the finance lease;</p> <p>(b) the payments, if any, made under the lease; and</p> <p>(c) the circumstances constituting the default by the lessee.</p> <p>(3) The petition shall be accompanied by a certified copy of the finance lease.</p> <p>(4) The District Court on consideration of the petition and affidavit and the documents attached thereto, and being satisfied that the petitioner is prima facie entitled to obtain possession of the equipment, shall make an interim</p> | <p><i>Repeal and replace.</i></p> <p>(1) Where the lessor fails to recover possession of any equipment under Section 27 of this Act, or without attempting to recover the possession of the equipment under Section 27, the lessor may make an application to the District Court within whose jurisdiction;</p> <p>(a) the finance lease has been entered into;</p> <p>(b) where the defendant resides; or</p> <p>(c) where the equipment to be recovered is located;</p> <p>for an order of possession of the equipment.</p> <p>(2) Such application shall be by way of a Petition to which shall be attached a copy of the finance lease agreement relied on by the lessor, and shall contain the following information;</p> <p>(a) the date of the finance lease;</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--|
| | <p>order of possession compelling the respondent to deliver possession of the equipment to the petitioner.</p> <p>(5) A copy of the interim order made under subsection (4) shall be served on the respondent and—</p> <p>(a) where the respondent fails to show sufficient cause within fourteen days after the service of the order as to why the order should not be made permanent, the court shall make the order permanent; or</p> <p>(b) where the respondent shows sufficient cause within fourteen days after the service of the order as to why the order should not be made permanent, the court shall set aside the interim order.</p> <p>(6) A permanent order made under subsection (5), shall be executed in the same manner as if it were a decree for the recovery of movable property.</p> | <p>(b) the payments, if any, made under the lease; and</p> <p>(c) the circumstances constituting the right to repossession by the lessor.</p> <p>(3) In an application under subsection (1) above, a lessor may, in addition to praying for an order of possession, also pray for an order for recovery of any monies due when the finance lease is terminated under Section 20(2)(b) of this Act, and in that event, shall specify in the petition and affidavit filed the sum due and such other facts as may be necessary for the determination of such matter.</p> <p>(4) The lessor shall on presenting the Petition, file with the Petition an affidavit to the effect that the Petitioner has the lawful right to claim possession of the equipment and any sum claimed is lawfully due to the lessor, a draft interim order, the requisite stamps for the interim order and for service thereof.</p> <p>(5) The Petitioner shall make the lessee a respondent in action filed under this Section and may make any other person in possession of the equipment respondents, and file in court such number of copies of the plaint and affidavit, as is equal to the number of respondents in the action.</p> <p>(6) The affidavit to be filed by the lessor under Section 28(4) shall be made by any director or a principal officer of the lessor and shall be made by such person having personal knowledge of the facts of the cause of action and such person shall in his affidavit swear or affirm that he deposes from his own personal knowledge to the matters therein contained and shall be liable to be examined as to the subject matter thereof at the discretion of the judge.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| 29 | <p>(1) In an application under section 28, a lessor may, in addition to praying for an order of possession, also pray for an order for recovery of any monies due under the finance lease, and in that event shall specify in the petition and affidavit filed the sum due and such other facts as may be necessary for the determination of such matter.</p> <p>(2) The provisions of subsections (4) and (5) of section 28 shall, mutatis mutandis, apply to an order under subsection (1) of this section, and the court may in the interim order and the permanent order made under those subsections, include an order for recovery of the sum of money sought to be recovered.</p> <p>(3) A permanent order made under subsection (2), shall be executed in the same manner as if it were a decree for the recovery of money.</p> | <p><i>Repeal and replace.</i></p> <p>(1) The District Court on consideration of the petition and affidavit and the documents attached thereto, and being satisfied that the petitioner is <i>prima facie</i> entitled to obtain possession of the equipment, and where the finance lease agreement produced to court appears to the court to be properly drawn-up and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be baited by prescription, shall issue the order nisi, compelling any one or more respondents to deliver possession of the equipment to the petitioner, together with such other relief prayed for by the lessor as the court may seem meet.</p> <p>(2) Where a lessor has prayed for, the court may in addition to an order for repossession of the equipment order payment of a sum not exceeding the sum prayed for in the Petition together with interest up to the date of payment and such costs as the court may allow at the time of making the order.</p> <p>(3) Notwithstanding anything to the contrary in this Act or any other law, the Court shall not grant as interest, a sum of money in excess of the sum of money calculated as principal due to the lessor at the date of termination of the finance lease.</p> <p>Provided that nothing in this provision shall prevent the Court from granting legal interest to a lessor.</p> <p>(4)</p> <p>(a) The <i>order nisi</i> shall, be ordinarily served on a respondent by registered post at the address given by the respondent to the lessor as the address to which process may be served on him.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--------------------|--|
| | | <p>(b) Where a respondent is a public officer, the court may at its discretion, in addition to sending the order nisi to the respondent by registered post, also forward a copy of the order nisi, in duplicate, by registered post to the head of the department in which the respondent is employed, and it shall be the duty of such head of department to cause a copy of the order nisi to be served personally on the respondent, and to return the other copy of the order nisi to the court forthwith, with either an acknowledgement of receipt of the order nisi by the respondent or with a statement of service of the order nisi endorsed thereon and signed by the person effecting the service and countersigned by the head of the department if the head of the department has not himself effected the service.</p> <p>(c) Where a respondent is not a public officer and is in the employment of another person, the court may at its discretion, in addition to sending the order nisi by registered post to the respondent, also forward a copy of the repossession order in duplicate to the employer of the respondent at his usual place of business or, where the employer is a company or corporation, to any secretary, manager or other like officer of the company or corporation, and it shall be the duty of such employer or officer, as the case may be, to cause a copy of the order nisi to be served personally on the respondent and to return the other copy of the repossession order to the court forthwith, with either an acknowledgement of receipt of such repossession order by the respondent or with a statement of service of the repossession order endorsed thereon and signed by the person effecting the service and countersigned by the employer of the respondent if such employer has not himself effected the service.</p> <p>(d) The court may, on an application being made to that behalf immediately after the order nisi is entered, and in its discretion, order that in lieu of serving the order nisi by registered post, the</p> |

| Section | Existing Provision | Proposed Provision |
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| | | <p>order nisi be served by tendering or delivering the same on a respondent personally through a process officer.</p> <p>(e) If the service referred to in subsections (a) and (d) cannot by the exercise of due diligence be effected, the process officer shall affix the order nisi at some conspicuous part of the house in which the respondent ordinarily resides or in the case of a corporation or company, at the usual place of business or office of such corporation or company, and in every such case the repossession order shall be deemed to have been duly served on the respondent.</p> <p>(f) It shall be the duty of the process officer, on repossession order being served on a respondent or any other person on his behalf, to require the signature or the thumb impression or both of such respondents or person to be made in an acknowledgement of the service of the repossession order, on the original.</p> <p>(g) The process officer shall return the receipt to court setting out in detail the manner, the person, place and other particulars relating to the identity of the person on whom, the date on which, and the time at which, the repossession order was served and also state in the report, whether the person on whom it was served placed his signature or thumb impression or both, or refused to place the signature or thumb impression or both, on the original, in acknowledgement of such service.</p> <p>(h) Where an <i>order nisi</i> is required to be served personally through a process officer, such order nisi may be served in any part of Sri Lanka provided that where an order nisi is required to be served outside the local limits of the jurisdiction of the court issuing the same, the order nisi shall be forwarded by such court to the court within whose jurisdiction the defendant is believed to be residing, and it shall be the duty of the last mentioned court to cause the</p> |

| Section | Existing Provision | Proposed Provision |
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| | | <p>order nisi to be duly served on the defendant in accordance with the provisions of this Act.</p> <p>(5) Within 14 days of service of the order nisi under Section 29(4), the respondent may file an application to leave to appear before court and show cause as to why the order nisi should not be made permanent.</p> <p>(6)</p> <p>(a) In an action instituted under this section a respondent shall not appear or show cause against the order nisi unless leave be obtained from the court to appear and show cause.</p> <p>(b) The court shall upon the filing by the respondent of an application for leave to appear and show cause supported by affidavit, which shall deal specifically with the petitioner's claim and state clearly and concisely what the defense to the claim is and what facts are relied upon to support it, and after giving the respondent an opportunity of being heard, if a valid cause to interfere is evident, grant leave to appear and show cause against the order nisi;</p> <p>(i) upon the defendant paying to court the sum mentioned in the decree nisi; or</p> <p>(ii) upon the defendant furnishing such security as to the court may appear reasonably and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute; or</p> <p>(iii) upon the court being satisfied on the contents of the affidavit filed, that they disclose a defense which is <i>prima facie</i> sustainable and, on such terms, as to security,</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--------------------|--|
| | | <p>framing and recording of issues, or otherwise as the court thinks fit.</p> <p>(c) Where the respondent either fails to file an application within the period stipulated under subsection (5) above or having filed such application, the application to show cause is refused, the court shall make the order nisi permanent.</p> <p>(d) A permanent order, if it consists of separate parts, may be discharged in part and made absolute in part.</p> <p>(7)</p> <p>(a) No appeal by a respondent shall lie against the repossession order which has been made permanent on the ground of the respondent's non-appearance, but it shall be competent to the court within a reasonable time after the permanent order was entered, to entertain an application by way of summary procedure instituted by any respondent against such permanent order, to have it set aside on the ground that, the applicant was prevented from appearing after the repossession order was served on him by reason of accident or misfortune, or that such repossession order was not served on him.</p> <p>(b) Where the ground on which an application is made under paragraph (a) is duly established to the satisfaction of the court, the court may set aside the permanent order, upon such terms and conditions as the court shall consider it just and right to impose upon the applicant, and upon the permanent order being so set aside, the court shall proceed with the hearing and determination of the matter in accordance with the provisions of this Section.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--------------------|---|
| | | <p>(c) Where an application by way of summary procedure is instituted by any respondent under paragraph (a) of this section the provisions of the Civil Procedure Code (Chapter 101) relating to the applications by way of summary procedure shall apply in respect of such application.</p> <p>(d) Where the Court grants leave to a respondent to appear and show cause under (b) above, the provisions of sections 384, 385, 386, 387, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, <i>mutatis mutandis</i>, apply to the trial of the action.</p> <p>(8)</p> <p>(a) The permanent order entered in an action instituted under this Section shall deemed to be a writ of execution duly issued to the Fiscal in terms of Section 225(3) of the Civil Procedure Code (Chapter 101), and notwithstanding anything to the contrary in any other written law, the execution of the same shall not be stayed.</p> <p>(b) Any person resisting the Fiscal while executing a writ under this Part of the Act shall deemed to be guilty of contempt of Court and shall be liable to a fine not exceeding one million or to imprisonment for a term not exceeding two years unless he proves that the equipment sought to be seized belonged to a person other than the respondent.</p> <p>(9)</p> <p>(a) Where it appears to the Court that an order in an action instituted under this Act was obtained by willful suppression or non-disclosure of any relevant facts or, if after the entering of such order, the order is discharged and the action is dismissed, the court may in the same action, on the application of the party</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--------------------|---|
| | | <p>against whom the order was entered, award against the lessor obtaining the same, such sum as it deems reasonable compensation for the expense or injury caused to such party by the entering of the order, and an award under this subsection shall bar any action for compensation in respect of the entering of the order.</p> <p>(b) Notwithstanding the dismissal of any action instituted under this Act where an application is made for compensation under (a) in respect of an order entered in such action, the action so dismissed shall be deemed to continue until the determination of such application.</p> <p>(10)</p> <p>(a) Where any one or more of the respondents appear in court in response to an order made under Section 29(1) and does not contest the order but admits liability and prays to hand over possession of the equipment to the lessor and liquidate the amount claimed by the lessor, the court shall with the consent of both parties to the action, minute the fact on the record and thereafter make the order permanent.</p> <p>(b) Where a respondent admits liability and prays to liquidate the amount claimed by the lessor, the court may with the consent of the Petitioner, allow the respondent to pay the sum prayed for by the petitioner in instalments.</p> <p>(11) Notwithstanding anything to the contrary in any other law, where leave to appeal is granted on an application made in respect of an order, determination, decision, direction, or requirement made under this Section, proceedings in the original court shall not be stayed by the court hearing such appeal.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--|
| | | <p>(12)</p> <p>(a) In any matter or question of procedure not provided for in this part of the Act, the procedure laid down in the Civil Procedure Code (Chapter 101) relating to the applications by way of summary procedure in a like matter or question shall be followed by the court if such procedure is not inconsistent with the provisions of this part of the Act.</p> <p>(b) Where no form to be used for the purpose of this Act has been prescribed, such form as the court may approve may be used in that case or for such purpose.</p> <p>(13) Upon an application submitted by the lessor, if the court is satisfied that equipment stated in such application has been hidden or concealed by the lessee or any other person, preventing repossession by the lessor, the Court may issue an order to any government authority or government institution to stop such authority from renewing any licence issued for use of such equipment or transferring the ownership of any licence issued for use of such equipment, under the statutory powers vested under such authority or institution.</p> |
| 30 | The provisions of sections 27, 28 and 29 shall be in addition to and not in derogation of any other remedy that may be available to a lessor in law, for the recovery of possession of any equipment or any money due under a finance lease. | <i>No change.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|---|---|
| 31 | The parties to a finance lease may provide in such lease for the non-applicability of the provisions of this Part of this Act, other than the provisions contained in sections 11, 16, 22 and 24, to a finance lease entered into between them. | <i>Repeal.</i> |
| 32 | <p>(1) The Director or any officer authorised by the Director may require by notice issued in that behalf to any person whom the Director has reason to believe is carrying on finance leasing business without obtaining a registration under this Act, to furnish such information including the production of any documents as the Director may consider necessary, in order to ascertain such fact.</p> <p>(2) Where the Director or the officer authorised, after considering the information furnished and inspecting any documents furnished under subsection (1), is satisfied that the person concerned is carrying on finance leasing business without being registered under this Act, the Director shall by written notice issued in that behalf, require that person to immediately cease carrying on such finance leasing business.</p> <p>(3) Where a person to whom a notice is issued under subsection (2) fails to comply with the requirements of the notice within the time specified therein, the Director may take necessary measures to—</p> <ul style="list-style-type: none"> (a) prosecute such person for an offence under this Act; and (b) apply to the High Court of the Province in which such person is carrying on finance leasing business to obtain an order for an injunction restraining such person from continuing to carry on finance leasing business, until a valid registration is obtained for that purpose under this Act. | <p><i>Repeal and replace.</i></p> <p>(1) Without prejudice to the power vested by any other law on a police officer to investigate offences, where an officer of the Central Bank authorized on this regard, receives any complaint or information on a person committing an offence under Section 39(a) of this Act, such officer shall submit such complaint or information to the Inspector General of Police, and request the Inspector General of Police to conduct an investigation on such complaint or investigation. It shall be the duty of the Inspector General of Police to investigate or cause an investigation on such commission of offence, and during such investigation may exercise all powers of investigation provided for in this Act or in any other written law.</p> <p>(2) Notwithstanding the provisions of the subsection (1) above, where a police officer has reasonable grounds to believe that any person is engaging in any activity relating to an offence under Section 39(a) of this Act, such officer, may investigate or cause an investigation on such commission of offence and may exercise all powers of investigation provided for in this Act or in any other written law.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--------------------|
| | <p>(4) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down in Chapter XXIV of the Civil Procedure Code.</p> <p>(5) The High Court of the Province shall after consideration of an application made under subsection (3) and where it is satisfied that the person concerned is carrying on finance leasing business without being registered under this Act, issue an injunction restraining such person from continuing to carry on such business until a valid registration is obtained by him under this Act, for that purpose.</p> | |

| Section | Existing Provision | Proposed Provision |
|---------|--|---|
| 33 | <p>(1) The Director or any officer authorised by the Director shall have the power to examine the books and accounts of a registered establishment, at such time and place as may be specified by him.</p> <p>(2) For the purposes of exercising the power under subsection (1), the Director or the authorised officer may require a registered establishment to produce for inspection at such place as may be notified, any books, records or documents relating to the affairs of the establishment and any registered establishment which fails to comply with such requirement shall be guilty of an offence under this Act.</p> | <p><i>Repeal and replace.</i></p> <p>Where any person fails to provide any information, book, record, file, register, or such other document or material or object or provides false, incorrect or incomplete information, book, record, file register or such other document or material or object when required by a police officer conducting an investigation under this Act, a police officer not below the rank of Assistant Superintendent of Police may make an application to a Magistrate for the issuance of an order-</p> <ul style="list-style-type: none"> (a) authorizing any officer named in the application to inspect any book, record, file, register and such other documents maintained in print, electronic or in any other form, material or object of the person who has failed to comply with the requirement made by a police officer. (b) requiring the person who has failed to comply with the requirement made by a police officer, or a director, partner, member, secretary, manager, employee, agent, contractor or auditor of such person as may be named in the order, to produce any book, record, file, register, and such other document maintained in print, electronic, or any other form, material or object of such person, to an officer and at a place specified in the order. |
| 33A | <i>New provision.</i> | <p>(1) A police officer not below the rank of Assistant Superintendent of Police, may at any time, make an application to a Magistrate to impound the passport of a person investigated in terms of Section 32 of this Act.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--|
| | | <p>(2) In an event where the person investigated in terms of Section 32, is a body of persons, it shall be lawful for a police officer not below the rank of Assistant Superintendent of Police to make an application, as may be necessary to impound the passport-</p> <p>(a) if that body of persons is a body corporate, of any director, shareholder or manager of the body corporate; or</p> <p>(b) if that body of persons is a partnership, of any partner of such partnership; or</p> <p>(c) if that body of persons is an unincorporated body other than a partnership, of any member of such body or any officer of that body responsible for its management and control.</p> |
| 33B | <i>New provision.</i> | An agreement which is not titled a lease agreement but has the characteristics of a lease agreement entered in to for the purpose of a finance lease transaction within the meaning of this Act, or which provides such rights and obligations for the parties to the agreement which are defined as the rights and obligations of parties to the lease agreement under this Act, shall be considered a lease agreement for the purposes of this Act. |
| 33C | <i>New provision.</i> | The Inspector General may delegate to an officer not below the rank of Deputy Inspector General of Police any of the powers conferred on the Inspector General under Section 32(1) of this Act. |
| 33D | <i>New provision.</i> | No person other than a person stated in Section 3 of this Act, shall use in its name the word “leasing”, “lease” or any of its derivatives, transliterations, or their equivalent in any other language, without prior written approval of the Board. |
| 34 | The Director shall have the power to issue such general directions, as he may consider necessary for the purpose ensuring that registered | <i>Repeal and replace.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|---|
| | <p>establishments maintain efficient standards in carrying out their duties, including directions on the following matters:—</p> <ul style="list-style-type: none"> (a) maximum rate of payments to be levied by registered establishments; (b) matters concerning the method of collecting payments; (c) form and manner in which the books of accounts or other records or documents are to be maintained; (d) terms and conditions of finance leases; (e) minimum paid up capital and the reserves a registered establishment shall have, having regard to the value of its finance leases; (f) having regard to the paid up capital and the reserves of a registered establishment, the maximum value of finance leases that may be granted to any one person, group of persons, or category of persons as may be specified by the Director; (g) capital and reserves of registered establishments; (h) minimum initial payment required to be made by a lessee for any equipment or different categories of equipment, such minimum to be expressed as a percentage of the value of the equipment; or (i) provisions for bad and doubtful debts. | <p>(1) The Board may issue directions under Section 12 of the Finance Business Act, No. 42 of 2011 and Sections 46 and 76J of the Banking Act, No. 30 of 1988 (as amended), to licensed finance companies and licensed banks, respectively, regarding the manner in which the finance leasing business is to be conducted by such licensed finance companies and licensed banks, provided such directions do not contradict with the provisions of this Act.</p> <p>(2) The Board may issue guidelines to the Microfinance and Credit Regulatory Authority under Section 59(1) of the Microfinance and Credit Regulatory Authority Act... regarding the manner in which micro finance leasing business is to be conducted by microfinance institutions licensed under that Act.</p> |
| 35 | (1) The Minister may make regulations in respect of any matter required by this Act, to be prescribed or in respect of which regulations are authorised by this Act, to be made. | <i>Repeal.</i> |

| Section | Existing Provision | Proposed Provision |
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| | <p>(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of publication or on such later date as may be specified in the regulation.</p> <p>(3) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval but without prejudice to anything previously done thereunder.</p> <p>(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the Gazette.</p> | |
| 36 | A suit or prosecution shall not lie against the Director or any officer authorised by the Director for any act which is in good faith done or purported to be done by the Director or such officer under this Act. | <i>Replace the word “Director” by the word “Board”.</i> |
| 37 | <p>The Director or any officer authorised by the Director shall not disclose any information or matter acquired in the discharge of his duties under this Act, except—</p> <p>(a) when required to do so—</p> <p style="padding-left: 40px;">(i) by a court of law;</p> <p style="padding-left: 40px;">(ii) by the person to whom such information or matter relates;</p> <p>(b) in the performance of his duties under this Act; or</p> <p>(c) in order to comply with any of the provisions of this Act or any other law.</p> | <i>Replace the word “Director” by the word “Board”</i> |

| Section | Existing Provision | Proposed Provision |
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| 38 | Every registered establishment and every special purpose vehicle shall be deemed to be a lending institution within the meaning, and for the purposes, of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990. | <p><i>Repeal and replace.</i></p> <p>(1) No agreement entered under the Consumer Credit Act shall be construed, expressed, or implied as a finance lease agreement.</p> <p>(2) All agreements entered under the Consumer Credit Act shall explicitly state that such agreement is not a finance lease agreement.</p> |
| 39 | <p>Every person who—</p> <p>(a) carries on finance leasing business in contravention of the provisions of section 2;</p> <p>(b) fails to comply with the provisions of subsection (3) of section 5;</p> <p>(c) fails to pay the annual registration fee as required by section 6;</p> <p>(d) fails to provide the particulars required under section 7;</p> <p>(e) alters the particulars contained in the operating manual or the Memorandum or Articles of Association in contravention of the provisions of section 8; or</p> <p>(f) contravenes any regulation made under this Act or fails to comply with any direction or notice issued under this Act,</p> <p>shall be guilty of an offence under this Act.</p> | <p><i>Repeal: (a), (b), (c), (d), (e), (f)</i></p> <p><i>Replace with:</i></p> <p>(a) carries on finance leasing business or micro finance leasing business, as the case may be, in contravention of the provisions of Section 3 of this Act;</p> <p>(b) hides or conceals an equipment preventing or hindering repossession, or in any way damage the equipment or remove any part, attachment or component of the equipment;</p> <p>(c) assigns or transfers the right to possession of use of the leased equipment to any other person, without the written permission of the lessor;</p> <p>(d) transfers the rights and obligations under a finance lease to any other person without the written permission of the lessor; or</p> |

| Section | Existing Provision | Proposed Provision |
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| | | <p>(e) removes, distorts or damages any ownership stamp, tag or identification affixed by the lessor on an equipment for identification purposes;</p> <p>shall be guilty of an offence under this Act.</p> |
| 40 | <p>Any person who, being a director, manager, officer or employee of a registered establishment—</p> <p>(a) wilfully makes, or causes to be made, a false entry in any book or record of the registered establishment;</p> <p>(b) wilfully omits to make an entry in any book or record of a registered establishment or wilfully causes any such entry to be omitted; or</p> <p>(c) wilfully alters, abstracts, conceals or destroys an entry in any book or record of the registered establishment or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,</p> <p>shall be guilty of an offence under this Act.</p> | <p><i>Repeal and replace.</i></p> <p>(1) Any person who is guilty of an offence under Section 39(a) of this Act shall be liable on conviction after trial before a magistrate to imprisonment of either description for a term not exceeding five years or to a fine not exceeding five million rupees or to both such imprisonment and fine.</p> <p>(2) Any person who is guilty of an offence under Sections 39(b), 39(c), 39(d), or 39(e) shall be liable on conviction after trial before a Magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding three million rupees or to both such imprisonment and fine.</p> |
| 41 | <p>(1) Any person who is found guilty of an offence under this Act shall be liable on conviction after summary trial by a Magistrate, to imprisonment of either description for a term not exceeding two years or to a fine not less than rupees ten thousand and not exceeding rupees two hundred and fifty thousand or to both such imprisonment and fine.</p> <p>(2) Where an offence under this Act, is committed by a body of persons, then—</p> | <p><i>Repeal subsection (1).</i></p> |

| Section | Existing Provision | Proposed Provision |
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| | <p>(a) if that body of persons is a body corporate, every director, manager or secretary of that body corporate;</p> <p>(b) if that body of persons is an unincorporated body, every individual who is a member of such body; and</p> <p>(c) if that body of persons is a firm, every partner of that firm,</p> <p>shall be guilty of the offence unless such director, manager, secretary, individual or partner, as the case may be, proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> | |
| 42 | <p>(1) The Director may with the approval of the Monetary Board and having regard to the circumstances in which an offence under this Act was committed, compound such offence for a sum of money not exceeding one hundred thousand rupees.</p> <p>(2) The compounding of any offence under this section shall have the effect of an acquittal of the accused.</p> | <i>Repeal.</i> |
| 43 | <p>this Act, unless the context otherwise requires—</p> <p>“close relation”, in relation to an individual, means the spouse, or dependent child of that individual;</p> <p>“Director” means the head of the department of the Central Bank of Sri Lanka to which the subject of supervision of finance leasing companies under this Act, has been assigned by the Monetary Board;</p> <p>“equipment” means any tangible asset which has an economically useful life of more than one year and does not include land, any improvements made to land other than fixtures or immovable property attached to land which</p> | <p><i>Repeal.</i></p> <p><i>“close relation”, “director”, “finance leasing business”, “Monetary Board”</i></p> <p><i>“Supplier” - Repeal the phrase “but does not include a lessee where the lessee supplies such equipment”.</i></p> <p><i>Insert:</i></p> <p><i>“Board” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act;</i></p> <p><i>“Finance Lease” means an agreement between a lessor and a lessee;</i></p> |

| Section | Existing Provision | Proposed Provision |
|---------|---|--|
| | <p>can be removed from the land without substantial destruction to such fixture or immovable property.</p> <p>“finance lease” means an agreement between a lessor and a lessee—</p> <ul style="list-style-type: none"> (a) for the possession and use by the lessee for an initial period of not less than one year from the date of the agreement, of an equipment specified by the lessee and either provided by the lessor or a supplier selected by the lessee; (b) for the payment by the lessee to the lessor for possession and use of such equipment of such sums to be calculated so as to take into account in particular the amortization of the whole or substantial part of the cost of the equipment; (c) which, after the acceptance of the equipment by the lessee, is not terminable by the lessee during the initial period set out in paragraph (a); and (d) which, though not a hire purchase agreement within the meaning of the Consumer Credit Act, No. 29 of 1982, may or may not provide for the extension of the initial period set out in paragraph (a) or for the purchase by the lessee of the equipment after the expiration of the initial period set out in paragraph (a) or the period extended under this paragraph; <p>“finance leasing business” means the business of investing money for the provision of equipment under a finance lease;</p> <p>“lessor” in relation to a finance lease, means the person who transfers the right to possession and use of a equipment under lease to a lessee;</p> | <ul style="list-style-type: none"> (a) for the possession and use by the lessee for an initial period of not less than one year from the date of the agreement, of an equipment specified by the lessee and either provided by the lessor or a supplier selected by the lessee, or an equipment of which the ownership has been transferred to the lessor by the lessee; (b) the whole of the equipment subject to the lease being fully paid by the lessor to the supplier or the lessee, as the case may be, to the effect that the ownership shall be with the lessor at the time of executing the lease; (c) whereby the lessor undertakes to transfer to the lessee the right to possession and use of the equipment during the said period of time, during which the lessee enjoys all rewards and bears all risks incidental to possession of the equipment; (d) for the payment by the lessee to the lessor for possession and use of such equipment of such sums to be calculated so as to take into account in particular the amortization of the whole cost of the equipment, which shall include the cost incurred by the lessor in acquiring the ownership of the equipment, and charges and other fees chargeable from the lessee and the interest implicit in the lease under any applicable accounting standard; (e) which may or may not provide for the extension of the initial period set out in paragraph (a) or for the purchase by the lessee of the equipment after the expiration of the initial period set out in paragraph (a) or the period extended under this paragraph. <p>“Head of Department” means;</p> |

| Section | Existing Provision | Proposed Provision |
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| | <p>“lessee”, in relation to a finance lease, means a person who acquires a right to possession and use of an equipment under the lease;</p> <p>“Monetary Board” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act;</p> <p>“securitisation” means the issuance of securities by a special purpose vehicle which are backed by any assets consisting of any or all the rights in a finance lease or any equipment forming the subject matter of a finance lease or of both, transferred or assigned by a lessor in favour of such special purpose vehicle;</p> <p>“special purpose vehicle” means a body corporate or unincorporate, including a trust, established solely for the purpose of securitisation and for activities connected therewith or incidental thereto;</p> <p>“supplier” means a person who supplies an equipment for the purpose of a finance lease, but does not include a lessee where the lessee supplies such equipment; and</p> <p>“supply agreement”, means an agreement entered into by a lessor with a supplier for the supply of an equipment by the supplier under a finance lease.</p> | <p>(a) when used with reference to a member of any unit of the Sri Lanka Army, Navy or Air Force, means the Commanding Officer of that unit ;</p> <p>(b) when used with reference to a person employed in a Provincial Council means the Secretary of that Provincial Council ;</p> <p>(c) when used with reference to a person employed in Provincial Public Service means the head of the department in which such person, is employed;</p> <p>(d) when used with reference to a person employed in a local authority, if the local authority is a Municipal Council means the Municipal Commissioner of the Council; and if the local authority is an Urban Council or a Pradeshiya Sabha, means the Chairman of that Council or Sabha;</p> <p>(e) when used with reference to any other public officer, means the head of the Department of Government in which such person is employed.</p> <p>“Microfinance and Credit Regulatory Authority” means the Authority established under the Microfinance and Credit Regulatory Authority Act.</p> <p>“Microfinance company” means a microfinance company licensed under the Microfinance and Credit Regulatory Authority Act.</p> <p>“Micro Finance Leasing Business” means the business of investing money for the provision of equipment under a finance lease, to low-income earning persons and micro enterprises.</p> <p>“Preferred language” means any one of the Sinhala, Tamil or English languages.</p> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--|
| | | <p>“Process officer” means the Fiscal Official of the court of Fiscal of a court of like jurisdiction within the local limits of whose jurisdiction the repossession order is served, or any officer specially authorised in exceptional circumstances by court to serve the repossession order or any process officer of a court or a Grama Niladhari.</p> <p>“Supply agreement” means an agreement between a lessor, lessee and a supplier for the supply of an equipment by the supplier under a finance lease.</p> |
| 44 | <p>(1) Every person who is carrying on finance leasing business on the appointed date, may, notwithstanding the provisions of section 2 of this Act, continue to carry on such business for a period not exceeding one year from such appointed date, but shall within that period apply for and obtain a certificate of registration under this Act to carry on such finance leasing business.</p> <p>(2) Where a person referred to in subsection (1)</p> <p>(a) is registered under this Act, all finance leases entered into by such person before such registration shall be deemed to be finance leases entered into under this Act, and the provisions of this Act shall, accordingly apply to and in relation to every such lease; or</p> <p>(b) does not apply for registration, or is refused registration under this Act, only such finance leases entered into by that person before the expiration of the period referred into subsection (1) or the date of refusal, as the case may be, shall remain valid for the periods for which they are entered into.</p> | <i>No change.</i> |
| 44A | (1) Notwithstanding the provisions of subsection (1) of section 44 of the principal enactment, a person who was required to be registered under that subsection within the period of time stipulated therein and who has not | <i>No change.</i> |

| Section | Existing Provision | Proposed Provision |
|---------|--|--------------------|
| | <p>obtained a registration on the date of the coming into operation of this Act—</p> <ul style="list-style-type: none"> (a) shall not be deemed to have committed an offence under the provisions of the principal enactment and consequently any agreements entered into by such person shall be deemed to be valid; (b) may continue to carry on the business of finance leasing for a period of two years from the date of the coming into operation of this Act; and (c) shall, subject to the provisions of subsection (2) of this section, be required within the period referred to in paragraph (b) of this subsection, to apply for and obtain a Certificate of Registration under the principal enactment, to continue to carry on such finance leasing business. <p>(2) A person shall not be eligible to be registered under paragraph (c) of subsection (1) of this section, unless such person is a public company incorporated under the Companies Act, No. 17 of 1982 having a minimum issued and paid up capital of such amount as shall be prescribed, provided that the amount shall not exceed the amount prescribed as minimum issued and paid up capital under paragraph (c) of section 3 of this Act.</p> <p>(3) Every application made for registration under this section, shall be accompanied by—</p> <ul style="list-style-type: none"> (a) the documents referred to in section 4 of the principal enactment; (b) a copy of the audited balance sheet and the profit and loss account for the year preceding the date of submitting the application; and | |

| Section | Existing Provision | Proposed Provision |
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| | <p>(c) the prescribed fee.</p> <p>(4) The Director may in addition to the documents referred to in subsection (3), request an applicant to submit such further documents or information as he may consider necessary and it shall be the duty of the applicant to comply with any such request.</p> <p>(5) The provisions of subsection (2) of section 44 shall apply in respect of a person referred to in subsection (1) of this section.</p> <p>(6) The Director in concurrence with the Minister may by notice issued in that behalf, require a person registered under this section, to increase within the time specified therein, its minimum issued and paid up capital to such amount as specified in such notice. Provided that the minimum issued and paid up capital as increased shall not exceed the amount prescribed under paragraph (c) of section 3.</p> <p>(7) Where any registered person fails to comply with any requirement under subsection (6), the Director shall have the authority to restrict or limit the finance leasing business or any other transactions being carried on by such person, until the requirement contained in the aforesaid notice is complied with.</p> | |
| <p>Transitional (44B)</p> | <p><i>New provision.</i></p> | <p>The provisions of this Amendment Act shall not apply to any supply agreement or a finance lease which is duly entered in to before the date these amendments come into effect.</p> <p>Provided, however, any addendum to an agreement entered in to from the date of these amendments coming into effect, shall be subject to these amendments.</p> <p>Any person who uses the word “leasing”, “lease” or any of its derivatives, transliterations, or their equivalent in any other language shall change</p> |

| Section | Existing Provision | Proposed Provision |
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| | | such name to comply with Section 33D above, within six months from the date of the commencement of this amendment Act. |
| 45 | In the event of any inconsistency between the Sinhala and Tamil text of this Act, the Sinhala text shall prevail. | <i>No change.</i> |