

# The Expiration of the Financial Lease Contract: A Comparative Study between Jordanian Legislation and Egyptian Legislation

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## Abstract

Leasing activity has proved its importance as a competitive tool of financing, especially with the growing awareness of a lot of legislations of the benefits provided by leasing as a source of funding, as well as the increasing size of projects and their need for more flexible funding sources that are more liable to respond to the requirements of profitability required by these projects. Since the financial leasing contract is in progressive development just like any other aspect of the economy through which it grows, I preferred that the subject of this research shall be on the expiration of the financial leasing contract in the Jordanian Legislation compared with the Egyptian Legislation. It is clear that a financial lease contract is similar to any other contract in terms that ends on appointed date. However, and because of the particular nature of the financial leasing contract, It differs from what is provided in the General Provisions regarding the expiration of the leasing contract since it is distinguished by the fact that it gives the lessee at the end of the term three choices: The lessee buys the leased assets, or extends the leasing contract or returns the leased asset. A common reason for ending the financial leasing contract is the termination of the contract by revoking it. If any party breaches the obligations rendered on them, the second party may terminate the contract and will be free from any obligations since the financial leasing contract is a binding contract for both parties.

**Keywords:** Egyptian legislation, financial lease contract, Jordanian legislation, law

## 1. Introduction

Financial Leasing is basically a kind of a commercial arrangement in which the lessor buys the equipment previously chosen by the lessee. The lessor rents these equipments to the lessee in a way that enables the lessee to benefit from these equipments for a certain period of time during which the lessee pays regular installments to the lessor in return of benefiting from this equipment. At the end of the contract duration, the lessee has three options: own the leased assets, or renew the contract, or return rented assets.

It is clear through this transaction that both parties of the contract are liable to certain commitments in return for having certain rights imposed by the contract to the other party and clarified by the contract's items.

The contract expires when its duration comes to an end. However, the contract is generally dissolved for many reasons: executing the obligations by both parties (Al-Sanhouri, 2007),also The contract expires not through expiration (since expiration requires the execution of the obligations arising from the contract) but through dissolution which often takes place before the implementation of the contract either by both parties' agreement or for reasons specified by the law (Sultan, 2012; Abu-Soud, 2007).The contract also expires and is considered as if it has not been signed if it was ruled invalid for a defect in one of its terms when it was signed. Also The contract may end as well by an individual will of one of the parties based on the provision of the law or explicitly provided in the contract (Jordan civil law, 1976).

Finally, the contract may elapse as a result of its dissolution in binding contracts for both parties, if one of the parties had not made his commitment.

A financial lease contract is no exception to any other contract in terms of what causes it to be terminated regarding the General Provisions terminate, except in certain issues that will be demonstrated duly. Nevertheless,

the contract expires at the end of its specified duration which is the natural end specified for it, knowing that this duration varies according to the nature of the asset so that it be identical with the life span of this asset.

## **2. Literature Review**

The research problem is represented in the fact that although the legislation of Jordan has enacted a modern law for the financial leasing contract but this contract was not organized in a detailed and accurate way that enables us being acquainted with some of the important aspects of this contract including the cases of ending the financial leasing contract. Since such this regulation did not address these cases but left them to be handled through the General Provisions, this study aims to grope these provisions and to compare them with the Egyptian legislation.

## **3. The Research Importance**

The importance of this research is represented in answering the following question: "Did the Jordanian Legislation benefit from the General Provisions when formulating the financial leasing law regarding the cases of ending the financial leasing contracts; and thus is this reflected on the relationship between the two parties of the contract in a way that made this relationship balanced once again.

## **4. The Methodology and Model**

There is very limited research on end financial leasing in both Jordan and Egypt, so analytical and comparative approach is used. The researcher compared the legislative provisions through explanation and analysis in order to get acquainted with the negative aspects and avoid them. The descriptive approach is used to observe and balance the legislative provisions. The analytical approach is employed to demonstrate these provisions. Afterwards the comparative approach is adopted as a means through which a decision can be made regarding what is appropriate for the operation on the one hand and what is justice fulfilling on the other hand.

## **5. End of the Financial Leasing Contract**

Since the financial leasing contract is a duration contract, it ends with the end of the period specified in contract , and this is the end of normal , considering that all of the parties to the implementation of the obligations imposed on it.

But what distinguish the financial leasing contract from other contracts that it gives the lessee three options at the end of the duration: the lessee may purchase the leased asset which means ownership of this asset with the price of the remaining value, or the lessee may renew the leasing contract on completely new conditions, and finally the lessee may return the leased assets to the financial lessor (Coillet, 1969).

### *5.1 The Lessee's Right of Purchasing the Leased Assets*

In reality, the lessee's right of purchasing the leased assets occurs most frequently. It is mostly considered the purpose for which people resort to financial leasing as a means of investment funding required by the financial lessee, especially if these assets are real estate or equipment slow technical perdition. Add to that the price paid by the lessee encounter owned leased funds is often negligible compared to the market prices, so that it is placed into account when estimating the price of rent that the lessee has paid for the duration of the contract

Therefore, the Egyptian legislator gives the financial lessee the right to purchase the leased assets at the end of the contract period.

Article (5/1) of Act No.95 for the year 1995, amended by Act No.16 for the year 2001 states that "The lessee has the right to buy the leased assets completely or partially at the date and price specified by the contract, on the condition that the money paid as a rent be taken into consideration"

Meanwhile the Jordanian legislator doesn't put the purchase option as a condition when considering the contract a financial leasing contract. This can be shown clearly through the provision of Article (3/a) of the Financial Leasing Law No. (45) For the year 2008 which states" A contract is considered a financial leasing contract if it contains these two terms regardless of its containing the purchase option or not: 1- That the lessor's ownership of the leased assets from the supplier with the aim of leasing it according to the leasing contract.2-That the lessor is committed to enable the lessee to benefit from the leased property in return for paying the rent"

The leasing contract shall specify the date, which must be in the lessee announce the lessor of his intention to use his option to buy (Al-Qallab, 2009). This date must be clear in the contract as the two parties agree on the necessity of announcing the desire to purchase within the last two months before the end of the contract period, or the two parties agree that the announcement shall be a day before the end of the contract.

### *5.2 Renewal of the Financial Leasing Contract*

The lessee may continue using the leased asset based on a request to renew the contract submitted to the lessor before the end of the original lease duration. This renewal is not considered an extension of the first leasing contract since its terms differ from the first contract's terms, especially the leasing payments which are often low compared with the original leasing contract payments (Radhwan, 1997).

The reason for this reduction is that the lessee through implementing the first contract has submitted to the financial lessor all the transaction costs; therefore the lease allowances in the second term will be less (Al-Saghir, 1994).

In addition to the fact that the life span of the leased assets will be near the end of life span when the new contract begins. It is also better that the financial leasing contract includes what indicates that the contract is renewed or at least to illustrate the conditions on which the renewed contract is based. So that the absence of such a provision may lead to disagreement between the parties, especially if the lessor states that the lessee does not have the right to renew the lease, which leads to reducing the options of the lessee of either to purchase the leased assets or to return the leased assets to its owner.

Contract renewal should be explicit according to the Egyptian legislation. Hence, the contract should not be implicitly renewed. This is stated in Article (5/2), which states that "In any case, a contract may not be implicitly renewed or extended whether the lessee is warned when the contract ends or not".

As for the Jordanian legislation attitude, we notice that this option is not mentioned since there is no provision in the Jordanian Financial Leasing Law giving the lessee the right to renew the contract.

Although we prefer that the Jordanian legislation includes a provision which states that the lessee has the right to renew the leasing contract exactly like the Egyptian legislation, we think that the parties of the contract may decide on this option in their contract, and so there is nothing to prevent providing this term especially that it is related to the General Provisions and both parties can agree explicitly to renew the contract or not.

### *5.3 Returning the Leased Assets*

The lessee is committed in the financial leasing contract to return the leased assets to the lessor if he didn't renew the contract or he did not announce his wish to purchase. If the period of the contract expired and the lessee doesn't wish to employ any of the two hither mentioned options, he has to return the leased assets to the lessee since he has lost the legal support of benefiting from the leased assets (Qarman, 1997; Al-Khasawneh, 2005 ). On the date set for the end of the contract, the lessee has to return the leased assets in good condition and so he is not responsible for the defects enacted on the leased assets resulting from the use or normal use (Coillot, 1969).

The Jordanian legislation has adopted this option in the Financial Leasing Law and emphasized it as one of the options that the lessee can employ at the end of the contract. While counting the lessee's commitments in the financial leasing contract, Article (10/ b/ 6) of the Legislation pointed out that the lessee is obliged to return the leased assets as it states "returning the leased assets to the lessor in accordance with the provisions of the leasing contract, or in cases specified in this law."

## **6. Termination of the Financial Leasing Contract**

It is generally known that this contract is a binding contract for both Parties, if one party violates in performing the obligations placed upon him, the second party has the right to terminate the contract and in this way is considered exempt of his obligations.

Both Jordanian and Egyptian legislations of the financial leasing law enacted some of the special reasons for the annulment of the financial leasing contract which collectively form exemplification cases. This doesn't mean that these are the only cases that may cause a reason for terminating the contract, since there are other reasons that allow both parties to terminate the financial leasing contract.

Thus, we see that the provisions of the Jordanian legislation talked about the cases of the lessor or the lessee's defaulting any of the commitments imposed on them by the financial leasing contract. In this way, although the Jordanian Legislation specified some of the reasons for terminating the financial leasing contract, this specification is not understood as exclusive reasons, especially that Article (19/a/5) and Article (20/c) indicated that such commitments may differ according to the different terms in the leasing contract, and so any crucial violation to the contract terms or the effective legislation can make a reason to require for the contract termination whether by the lessor or by the lessee.

What is mentioned here cannot be applied on the Egyptian Legislator attitude. Article (19) mentioned some of the cases of financial leasing contract termination. But these cases were exclusive which means that they are the

only cases in which the contract may be terminated.

In this regard, we find that the Jordanian legislator was clear that there should be a warning a notification shall be sent to the lessee before resort to convention termination or judicial termination. This means that the lessor shall not terminate the financial leasing contract directly or through the court without warning the lessee that he breached the obligations imposed on him.

Egyptian legislator does not require a warning for the financial leasing contract termination. Instead, Article (19/a) requires a period of thirty days in one case which is not paying the rent allowances.

In conclusion, the Jordanian legislation expanded in giving the right to terminate for both the lessor and the lessee, but the Egyptian legislation, gives this right only to the lessor in accordance with the text of the previous article (19).

The wisdom in that the Egyptian legislation does not provide explicitly in the financial leasing law authorizing the lessee the right of termination is that the lessor rarely defaults any of his contract obligations towards the lessee, since the nature of this contract throws most of the obligations on the lessee as being the weaker party in the funding transaction.

#### *6.1 Termination Because of not Paying the Leasing Allowances*

The lessee's refrain of executing his basic commitment of the financial leasing contract is considered a reason to terminate the contract. If the lessee refrains from paying the leasing allowances agreed upon in the contract, the lessor has the right to demand dissolving the contract. Article (19/a) of the Jordanian Legislation provides that, "with accordance to the provisions of item (b) of this Article, a leasing contract may be terminated by a jurisdiction Judicial ruling or by a notification from the lessor (if authorized by the contract) in any of the following cases:

1. The failure of the lessee to pay the leasing allowances agreed upon in the financial leasing contract".

Article (19) of the Egyptian law also provides that "A contract is dissolved by itself without the need of excuse or judicial action at any of the following cases:

- a. The failure of the lessee to pay the renting allowances in appointment and in accordance with terms agreed upon in the lease after a period of 30 days, if not otherwise a longer period is mentioned in the contract."

The termination of the financial leasing contract is determined as soon as the financing lessor announces his wish to terminate, but he has first to excuse the financing lessee of the termination. Financial leasing contracts specify the duration within which the lessee has to pay the rents after excuse; otherwise the contract shall be terminated. This duration varies in contracts but it is usually not less than 8 days (Dweidar, 1998).

The Egyptian law did not require excuses for termination. In this case termination becomes valid once the financing lessor announces his wish to terminate the contract without the need to legal action. However, announcement is not considered from the General Provision since both parties may agree that termination doesn't become valid unless the lessee is excused for his default of not paying the rent Allowance.

#### *6.2 Bankruptcy or Insolvency of the Lessee*

Bankruptcy means the transmission of the debtor from convenience into hardship which indicates that he is financially broke. Legally speaking, it is a way provided by the law to lay execution on the debtor's money as a result of his failure to pay his debts with the aim of liquidating his funds a collective liquidation for the benefit of his creditors, so that what results from this liquidation is divided as adversaries division among the creditors (Al-Qalyoubi, 2008; Al-Aqili, 2008 ).

Bankruptcy is considered one of the cases for terminating the financial leasing contract regulated by the Egyptian legislation in the Financing Leasing Law, Article (19) explained that. It is clear that the lessor has the right, with regards to the Egyptian law to terminate the financial leasing contract without the need of sending a warning or notification or any judicial action in the case of a decision declaring the lessee bankruptcy or declaration of insolvency, In such case the contract terminates by itself.

It is noticed that the Egyptian legislator based this ruling on considering that the financial leasing contract is based on the personal consideration. The lessor doesn't implement a contract without the lessee's submitting the entire guarantee to be trusted. The lessor funds the required money within the agreed upon duration on the condition that he gets back his money plus the profits. Thus, Personal consideration and trust in the lessee is the term of beginning and ending from the point of view of the lessor. It is noted that the Egyptian legislator did not give the lessee the right to terminate the leasing contract in any way.

Going back to Article (18/c) of the Jordanian law, we find that the legislator was clear in giving the lessor the right to terminate the financial leasing contract in case of the lessee's bankruptcy. The legislator also states in the same article that in the case of such decision is taken, the leased assets is not included in the general guarantee of creditors or in the bankruptcy funds. Here we would like to emphasize that the Jordanian text came to the interest of both the lessor and the lessee, so that allowed each terminate the leasing contract.

We see that both Jordanian and Egyptian resolutions are similar in giving the funding lesser the right to terminate the contract in case of the lessee's bankruptcy. Also both of them order the same effect regarding not including the leased assets into the general guarantee of creditors or in the bankruptcy funds.

### *6.3 Death of Lessee or the Solidarity Partner in the Leased Persons Company*

In accordance with the General Provisions of the civil law, the death of the lessee does not entail the expiration of the leasing contract. However, if the lessee dies, his heirs have the right to demand the end of the contract if they proved that the burden of the contract is heavier than their supplies could bear.

The Egyptian legislator adopted the case of the lessee's death in the financial leasing contract and made it one of the cases in which the financial lessor may terminate the contract. Article (19) provides that "The contract is considered terminated by itself without a need for excuse or legal action in any of the following cases: - (d) the death of the lessee or the solidarity partner in a leased company of persons, unless the heirs or the new solidarity partner ask to continue the execution of the contract within 30 days from the death date".

The termination of the financial leasing contract by the death of the lessee is justified by the entity of the lessees' personality. The funding lessor depends on executing the contract on the personal elements of the lessee and his ability to bear the financial burdens arising from the contract. Therefore no one is authorized to take the place of another one in executing the leasing commitments (Dweidar, 1998; Nasif, 2008).

While justifying The termination of the financial leasing contract by the death of the solidarity partner in the company of persons by fact that the partner's personality in this kind of companies is considered in place of other partners. Hence any cause leads to the demise of this consideration such as the death of one of the partners, leads to the expiration of this company. The continuation of the financial leasing contract is connected with the existence of this company. If it is ended, the lessor has the right, without warning, to terminate the financial leasing contract although the case of death in itself is not a reason for the leasing contract termination; it is a reason for expiration.

It is clear from the provisions of this item aforementioned that although the Egyptian Legislator gave the lessor the right to terminate the financial leasing contract in the case of the death the lessee or the solidarity partner, it, in return, gave the right to the heirs to ask to continue the execution of the contract provided that it is carried out within thirty days from the death date. In this case the heirs take the place of the inherited in all the rights and liabilities he was committed to. In contrast The Jordanian Leasing Law does not provide any provision regarding the death of the lessee or the solidarity partner in the financial leasing contract.

Finally It is noted that the Jordanian Leasing law did not contain any text on the status of the death of the lessee or solidarity in the financial leasing contract.

## **7. Summary and Conclusions**

This research tried to shed light on the cases in which the financial leasing contract ends in the provisions of the Jordanian Legislation and comparing it with Egyptian Legislation. The researcher has reached the following conclusions:

- Both the Jordanian legislation and the Egyptian legislation have regulated the financial leasing contract with special rules that bear various benefits in that they acknowledge the financial lessee's right to choose the purchase of the leased assets; moreover, the Egyptian legislation provided details of how to purchase the leased assets whether all of it or part of it provided that when deciding the price the amounts paid for the rent shall be taken into consideration. This provision is overlooked by the Jordanian Legislation.
- The Egyptian Legislation acknowledges the financial lessee to renew the contract by announcing this explicitly to the lessor before the end of the contract's duration, while the Jordanian Legislation does not point to this option at all.
- The Jordanian Legislation adopts the financial lessee's option of returning the leased asset. While recounting the lessee's obligations in the financial leasing contract, he pointed to the necessity of the

lessee's commitment of returning the leased asset; this option is even emphasized when recounting the lessor rights. This is specially provided in Article (12/a/3).

- The Jordanian Legislation has extended in giving the right to terminate the contract since both the lesser and the lessee is given this right. Meanwhile, the Egyptian Legislation excluded this right to the lesser only.
- The Jordanian Legislation did not regulate the bankruptcy of the financial lessee as a case of financial leasing contract termination, while the Egyptian Legislation regulated this case and even authorized the lessor to terminate the financial leasing contract without the need to warning or notification in case of the lessee's bankruptcy or insolvency.
- In addition the Jordanian Legislation doesn't adopt the case of liquidation or the death of the financial lessee, while the Egyptian Legislation adopted both cases and included them in the cases that entail contract termination.

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