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THE EQUIPMENT LEASING REGISTRATION AUTHORITY: WHAT EVERY LESSOR AND LESSEE SHOULD KNOW

Authors



Oladiran Falore
Senior Partner



Promise Udochukwu
Associate Counsel

Introduction

Equipment leasing has become an important source of asset finance for businesses seeking access to vehicles, machinery, technology and other productive assets without the substantial upfront cost associated with outright acquisition. For businesses with significant capital expenditure requirements, leasing can offer a commercially attractive alternative to conventional asset acquisition and secured financing.

In Nigeria, the Equipment Leasing Act 2015 ("the Act") established the Equipment Leasing Registration Authority ("ELRA" or "the Authority") and introduced a statutory framework for the regulation of equipment leasing activities.

While the Act has been in force since 2015, the regulatory framework has assumed greater practical significance with the operationalisation of ELRA and the issuance of the Equipment Leasing Registration Authority Guidelines 2024. The regime is significant because equipment leasing is no longer simply a matter of contractual arrangement between a lessor and lessee. Lessors and leasing transactions may be subject to regulatory and registration requirements, with implications for the enforceability and protection of parties' interests in leased assets. Businesses entering into leasing arrangements must therefore consider regulatory compliance alongside the conventional commercial terms of the transaction.

The relevance of the framework also extends beyond lessors and lessees. Banks, financiers, investors, insolvency practitioners, prospective purchasers and other parties conducting due diligence on businesses or equipment in Nigeria may need to establish whether an asset is subject to an existing lease and the nature of the interests attaching to it.

Against this background, this article examines ELRA's regulatory role and powers, the registration requirements applicable to lessors and equipment leases, the principal rights and obligations of the parties, and the consequences of non-compliance. It also considers the wider implications of the regime for financing transactions, asset ownership and transactional due diligence in Nigeria.

Why Equipment Leasing requires a Registration Framework

The defining feature of an equipment lease is the separation of legal ownership from possession and use. The lessor retains title to the equipment while the lessee obtains possession and the right to use it for an agreed period in consideration for rental payments. Between the parties, that distinction is readily ascertainable. For third parties, however, it may be considerably less obvious. A creditor, prospective purchaser or financier dealing with the lessee may have no immediate means of knowing that vehicles, machinery or other equipment in the lessee's possession are owned by a third party.

This information asymmetry explains the commercial importance of a registration framework. By creating a formal record of leasing interests, registration provides greater visibility as to the ownership and status of leased equipment and reduces the risk of third parties dealing with such assets on the mistaken assumption that possession is evidence of ownership.

The Act provides the statutory framework for addressing this concern. Section 1 sets out the application of the Act to equipment lease agreements, while section 44 defines a lease agreement, broadly, as a written agreement under which a lessor grants a lessee the right to use equipment for an agreed period in consideration for rental payments. The ELRA established under section 7 of the Act, administers the regulatory and registration framework.

The distinction between ownership and possession has important commercial consequences. Where a business borrows to acquire equipment, it ordinarily takes title to the asset, which may consequently form part of its estate upon insolvency, subject to any security interests attaching to it. Under a lease, by contrast, title remains with the lessor. Accordingly, the leased equipment does not ordinarily form part of the lessee's assets available for distribution to its creditors.

A properly documented and registered lease therefore provides an important measure of protection for the lessor's proprietary interest, particularly where the lessee becomes insolvent or a third party asserts an interest in the equipment.

The Act accommodates different commercial structures. Section 3 recognises finance leases and operating leases, as well as arrangements including syndicated leases, sale-and-leaseback transactions, cross-border leases and leveraged leases. Although their commercial and financing characteristics may differ, the underlying principle remains the same: the lessee obtains possession and a contractual right to use the equipment, while legal ownership remains with the lessor.

This separation of ownership from possession is therefore central to understanding both the commercial utility of equipment leasing and the rationale for ELRA's registration regime. Registration gives third parties a means of identifying interests that may not be apparent from possession alone and provides greater certainty to lessors, lessees, financiers and other parties dealing with equipment in Nigeria.

ELRA's regulatory mandate and structure

Although the Act was enacted in 2015, its regulatory framework has assumed greater practical significance following the operationalisation of the ELRA in 2023 and the subsequent issuance of Equipment Leasing Registration Authority Guidelines 2024 (the "Guidelines").

Under section 9 of the Act, ELRA's principal functions include registering lessors and equipment lease agreements, determining eligibility requirements for carrying on equipment leasing business, maintaining relevant registers, investigating registered companies where necessary and registering and investigating incidents of lessee default. The Guidelines provide the operational framework for implementing these functions.

ELRA's governing Board is populated by representation from key government and regulatory institutions, the business community and the Equipment Leasing Association of Nigeria, reflecting the cross-sectoral nature of the industry and providing for industry participation in its regulation.

For businesses, the practical implication is that equipment leasing in Nigeria is not merely a contractual arrangement between lessor and lessee. It operates within an increasingly formal regulatory and registration framework.

What Equipment Does the Framework Cover?
The Guidelines classifies leased equipment across seven broad categories, namely:

- Caategory A: vehicles, including cars, buses, motorcycles, trucks, trailers and tricycles
- Category B: construction equipment, such as excavators and bulldozers
- Category C: agricultural equipment, including tractors, harvesters and tower cranes
- Category D: office and IT equipment, such as computers and printers
- Category E: industrial equipment, including generators, forklifts and cooling systems
- Category F: healthcare equipment, such as diagnostic machines
- Category G: specialised equipment used in the oil and gas, maritime and aviation sectors

These categories are commercially significant because applicable registration fees vary according to the category and value of the leased equipment.
The breadth of the categories also illustrates the reach of the regime. It is relevant not merely to specialist leasing companies, but potentially to businesses across transportation, construction, agriculture, healthcare, manufacturing, technology, energy, aviation and maritime operations.

Why Registration Determines the Legal Effect of a Lease
Registration is central to the legal effectiveness and protection of an equipment lease. Section 13 of the Act requires every equipment lease agreement, irrespective of the value of the equipment, to be registered with ELRA within the prescribed period.

The consequences of non-registration are significant. Under section 17, an unregistered registrable lease is invalid between the parties, although it may remain enforceable against a third party who had notice of the lease or did not act in good faith for value. Paragraph 9(g) of the Guidelines goes further by providing that an unregistered lease is inadmissible in evidence before a court, tribunal or arbitral body. A lessor seeking to enforce an unregistered lease may therefore face serious difficulties when legal recourse becomes necessary.

Registration, conversely, provides important statutory protection. Under section 16, registration constitutes notice to third parties of the existence and terms of the lease.

Section 19 protects the lessor's legal ownership against claims by the lessee, its creditors and third parties, including where the equipment becomes affixed to land or a building. Section 20 further restricts the lessee from selling, assigning, pledging or otherwise dealing with the equipment inconsistently with the lessor's ownership.

REGISTRATION IN PRACTICE: LESSORS AND LEASE AGREEMENTS

Lessor registration. Section 6 of the Act restricts the carrying on of equipment leasing to Nigerian registered entities whose constitutional documents authorise the business and which meet ELRA's registration requirements. Paragraph 8(b) of the Guidelines requires an application to include the corporate registration documents, audited financial statements, and a corporate profile. Registration must be renewed annually, no later than the end of the first quarter of each year; failure to renew attracts a daily default charge equal to fifty percent of the annual registration fee. Registration fees are tiered:

Business Size	Registration Fee	Annual Renewal
Company with less than ₦100m share capital or with less than ₦500m annual value of leased portfolio	₦100,000.00	₦50,000.00
Company with less than ₦100m and above or ₦500m annual value of leased portfolio	₦250,000.00	₦100,000.00

Lease agreement registration. Each individual lease agreement must also be registered not later than fourteen days after the commencement of the lease agreement or within three months for a lease agreement made before the Commencement of the Act. The application is made in Form A, accompanied by evidence of the lessor's own registration, the executed lease agreement, evidence of title to the equipment, and payment of the prescribed fee. The fee is calculated as the higher of ₦10,000 or a percentage of the total lease value, which varies by equipment category:

Category	Equipment	Fee Rate
A	Vehicles	0.20%
B	Construction equipment	0.25%
C	Agricultural equipment	0.25%
D	Office and IT equipment	1.00%
E	Industrial equipment	0.50%
F	Healthcare equipment	0.20%
G	Oil, gas, maritime, aviation	0.05%

Notably, cross-border leases governed by Nigerian law are subject to the same registration requirements as domestic leases. Where equipment is brought into Nigeria under an unregistered cross-border lease, the transaction must also be reported to ELRA within thirty days of the equipment's arrival in Nigeria.

The registration regime also serves as important third-party and due diligence function. ELRA maintains an electronic public register, searchable for a prescribed fee of ₦5,000, which contains relevant information on the registered leases, including the lessor's identity, a description of the leased equipment, and the duration of the lease. This enables prospective purchasers, creditors, and other financiers to verify whether equipment in a counterparty's possession is already subject to a registered leasebefore proceeding with a transaction.

Rights and Obligations of Lessors and Lessees

The statutory framework protects both parties to a lease. Under section 22 of the Act, a lessee that complies with its obligations is entitled to quiet enjoyment of the equipment, and the lessor may not unilaterally terminate the lease, including where the lessor subsequently becomes insolvent. The lessor must also deliver the equipment in accordance with the agreed terms, provide the lessee with a copy of the lease agreement within the prescribed period and refrain from interfering with the lessee's lawful possession.

Correspondingly, the lessee must pay rentals when due, use the equipment in accordance with the lease and, in a finance lease, assume responsibility for its maintenance. Sections 31 to 34 allocate liability for defective equipment according to the circumstances, including who selected the equipment or supplier and whether the lessee relied on the lessor's skill or judgement.

The Act also imposes sanctions for specified breaches. These include failure, without reasonable cause, to provide requested information concerning leased equipment and removing equipment from Nigeria without the lessor's prior written consent. The latter may attract both financial penalties and criminal liability.
Enforcement and Repossession.

Enforcement and Repossession
The Act provides different enforcement procedures depending on the nature of the lesse's default. For non-payment of rentals, section 37 requires the lessor to serve a default notice giving the lessee not less than fifteen days to remedy the default. If the default remains uncured, the lessor may terminate the lease under section 38 and, under section 39, apply ex parte to the Federal High Court for a warrant to repossess the equipment, without prejudice to its right to recover outstanding rentals and pursue other available remedies.

For other breaches, the lessor must give written notice identifying the breach before commencing proceedings for recovery of the equipment. The Act also provides protective remedies where there is reason to believe that leased equipment may be removed or dealt with in a manner intended to defeat the lessor's ownership rights.

These enforcement protections reinforce the importance of registration. A lessor seeking judicial enforcement will ordinarily need to rely on the lease before the court; where the agreement is registrable but unregistered, the restrictions on its validity and admissibility may significantly undermine the lessor's ability to obtain an effective remedy.

Commercial Significance
Beyond the insolvency protection, the framework delivers several further commercial advantages:

- **Balance sheet treatment:** sections 36(2) and (3) keep equipment under an operating lease on the lessor's balance sheet,

allowing the lessee to keep the asset and corresponding liability off its own books preserving borrowing capacity in a way that a debt-financed outright purchase would not.

• **Market integrity filter:** registration requirements under section 6 and paragraph 8 ensure that every registered lessor has submitted audited accounts, director particulars, and evidence of corporate governance providing counterparties with some assurance that they are dealing with a vetted entity.

• **Specialised credit history:** the default register maintained under section 9(g) builds, over time, a track record for lessees analogous to a credit reference bureau entry, enabling lessors to price risk more accurately.

• **Expanded financing structures:** syndicated leases distribute default risk across multiple lessors; sale-and-leaseback arrangements convert fixed assets into working capital without operational disruption; cross-border leases admit foreign capital and equipment within a known legal framework; and leveraged leases allow lessors to extend their capital across a greater number of transactions.

Conclusion

The regulatory framework for equipment leasing in Nigeria makes one point clear: registration should not be treated as a mere administrative requirement or an afterthought to the transaction. For lessors and lessees, compliance with the prescribed registration requirements should form part of the transaction from the outset, alongside the execution of the lease and other completion formalities.

For lessors, registration provides important protection for their ownership interests and strengthens their ability to enforce their rights in the event of default. Lessees, on the other hand, benefit from statutory protections relating to possession, quiet enjoyment and defective equipment. The ELRA register is also relevant to lenders, investors and prospective purchasers seeking to ascertain whether equipment is subject to an existing lease before proceeding with a financing or acquisition.

In practical terms, businesses entering into equipment leasing arrangements in Nigeria should build ELRA compliance into their transaction process rather than seek to address it when a dispute arises. Existing registrable leases that have not been registered should also be reviewed and regularised promptly, as the consequences of non-registration may become particularly significant when enforcement, financing, insolvency or a third-party claim arises.

Ultimately, proper registration gives greater certainty to the parties and better protects the commercial bargain they have agreed.

References

1. The Equipment Leasing Act 2015
2. Equipment Leasing Registration Authority Guidelines 2024.

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info@syntegrallp.com

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