

Provisions Of The Lessee's Actions, Bankruptcy, And Reasons For The Termination Of The Financial Lease Contract A Study Of UAE Law No. 8 Of 2018

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Abstract :

The financial leasing contract is one of the modern contracts, and the law regulating the financial leasing contract in the United Arab Emirates was issued in 2018 in Federal Law No. (8). We will clarify the ruling on disposing of the leased property by explaining the ruling on the lessee's waiver of the contract, the ruling on sublease, and the ruling on leasing the leased property to Third parties and the reasons for the termination of the financial leasing contract, by explaining the cases of termination of the financial leasing contract and termination of the contract by the lessee, and the reasons for termination of the contract from a legal perspective, the most important of which are termination of the contract for non-payment of the rent, termination of the contract due to the bankruptcy of the lessee, termination of the contract due to the loyalty of the lessee or joint partner, and a statement of the effects resulting from termination. Contract.

Available words: financial lease contract, expiration of the financial lease contract, the lessee's waiver of the financial lease contract.

Introduction:

The financial leasing contract is established in stages and begins with the project owner, after obtaining the approval of the financial leasing company, unless otherwise agreed upon, by negotiating with the supplier or contractor, as the case may be, on the specifications and price of the asset. Accordingly, the financial leasing company purchases the agreed-upon asset from the supplier or contractor based on a supply contract, according to which the financial leasing company owns the asset and then leases it to the lessee based on the financial leasing contract, and the financial leasing company retains ownership of the leased property throughout the duration of the contract. The guarantees contained in the financial leasing contract differ from the guarantees contained in the lease contract because the financial leasing contract is a contract of a special nature. One of the most important guarantees in the financial leasing contract is that the lessor retains ownership of the leased property throughout the contract period. The financial lease contract is distinguished by its long duration, which The expected life of the leased property may be close to the same, and the three options that the legislator granted to the lessee at the end of the contract are either owning the leased property, renewing the contract for a new period, or returning the leased property to the lessor. The obligations of the lessee in the financial leasing contract differ from the obligations imposed on the lessee in the regular lease contract, as the legislator obligated the lessee to carry out work. Regular maintenance

At the end of the financial lease contract, the lessee is also obligated to return the leased property in good condition if the option of returning the leased property to the lessor is chosen.

Search scope:

The financial leasing contract, the obligations and rights stipulated by the UAE legislator on the financial lessee, and the cases and reasons for the termination of the financial leasing contract for the lessee.

research aims:

- 1 . A statement of the obligations and rights imposed by the UAE legislator on the lessee in the financial leasing contract.
- 2 . Explaining the points of disagreement between the obligations and rights of the tenant in the regular lease contract and the financial leasing contract.
- 3 . Statement of cases of termination of the financial leasing contract for the lessee.
- 4 . Reaching recommendations that will benefit the UAE legislator in future amendments.

Research problem:

1. The financial leasing contract is one of the modern contracts in the UAE, as it was regulated by Federal Law No. (8) of 2018. Therefore, the law is a fertile environment for development and modernization.
2. Some of the obligations imposed on the parties to the financial leasing contract need to be reconsidered, in order to strike a balance between the guarantees, obligations and rights imposed on its parties.

This research will be divided into two sections. In the first section, we address the ruling on the tenant's disposal of the rent, and in the second section, the reasons for the termination of the contract for the tenant.

1-Ruling on the tenant's disposal of the leased property

This section will be divided into four requirements. In the first requirement, we address the ruling on the tenant's waiver of the lease contract

In the second requirement is the ruling on sublease, in the third requirement is the ruling on transferring the ownership of the leased property or changing its location, and in the fourth requirement the loan of the leased property to others.

1.1 Ruling on the lessee's waiver of the financial leasing contract

This requirement will be divided into three branches. In the first section, we address the lessee's assignment of the financial leasing contract to another lessee, in the second section, the financial lessee's guarantee to the new lessee (assignee), and in the third section, announcing the lessee's waiver in the financial leasing contract.

1.1.1 Ruling on the lessee's assignment of the financial leasing contract to another lessee

Most legislators have stipulated that it is permissible for the financial lessee to assign the contract to another new lessee who will replace him in assuming the obligations and rights resulting from the contract, but on the condition of the lessor's approval, in contrast to what is stipulated in the general rules³.

The obligations shall be with the same conditions and rights stipulated in the contract before the assignment, unless the agreement between the parties stipulates otherwise⁴.

³ Muhammad Ayed Al-Shawabkeh, *Financial Leasing Contract (Comparative Study)*, Dar Al-Thaqafa for Publishing and Distribution, Amman, first edition, 2011, p. 250.

⁴ Muhammad Ayed Al-Shawabkeh, previous reference, p. 251.

The UAE legislator stipulates in Article (11) of the Financial Leasing Law the following:

1 . The tenant may assign his rights and obligations under the contract to another tenant to replace him, provided that the following is taken into account:

a. The lessor's prior written approval.

B. Noting the assignment made in accordance with the provisions of this law in the register of the leased property.

C. This waiver does not conflict with the legislation in force in the country.

2 . The new tenant to whom the contract has been assigned shall replace the original tenant in all rights and obligations arising from this contract, from the date the assignment is noted in the register.

An example of the lessee waiving the financial leasing contract to another lessee is when the financial lessee wants to sell a project he owns, but this project includes equipment and machinery that were rented based on the financial leasing contract. Accordingly, the lessee sells his project while waiving the financial leasing contract to the buyer (lessee). New) after the approval of the financial lessor⁵.

The reason why the legislator requires the lessor's approval of the financial lessee's waiver of the contract is that the financial leasing contract is based on personal consideration, where the personality of the lessee is a consideration for the lessor, who will often, before approving the waiver, conduct a comprehensive study of the new lessee and the extent of his ability to implement the obligations of the contract. The landlord will also take into account the cost and effort of the study before agreeing to transfer it to the tenant⁶.

The Emirati legislator did not stipulate the issue of guaranteeing the original financial lessee to the assigned financial lessee, but the Egyptian legislator took a different approach by stipulating that the original financial lessee be guaranteed to the assigned financial lessee after the lessor's approval of that, as stipulated in Article (16) of the repealed Financial Leasing Law No. 95 of 1995. Accordingly, the tenant may, with the consent of the lessor, assign the contract to another tenant, and the original tenant shall be the guarantor of the assignee in the implementation of his obligations arising from the contract, unless the lessor agrees otherwise, and the assignee shall be obligated to pay the lessor directly the rent due under the contract This is from the date the lessor notifies him of his agreement to assign, and the assignee may not hold back against the lessor the rent he has paid in advance before this date.”

It is clear from the previous text that the Egyptian legislator in that law stipulated that the original tenant guarantees the assignee in the obligations arising from the contract unless there is an agreement stipulating otherwise. This is in contrast to the Emirati legislator, which did not stipulate that the original tenant guarantee the assignee, but rather left that to the will of the parties, and it is agreed upon. The researcher agrees with the position of the Emirati legislator in not stipulating that the original tenant guarantees the assignee. It is sufficient for the landlord to agree to the original tenant's assignment of the contract to others. It is assumed that the landlord knows the consequences of his approval, and the original tenant's guarantee to the assignee constitutes a major injustice to the original tenant's right to bear responsibility despite his waiver of the contract. The contract and his failure to benefit from the contract and the rent after relinquishing it⁷.

The legal position of the new tenant (assignee) is in the position of the original debtor, and the legal position of the original tenant (assignor) is in the position of the sponsor, in accordance with the text of the Egyptian legislator in that law, unless there is an agreement stipulating otherwise between the parties to the contract⁸.

⁵ Najwa Ibrahim Al-Badali, Financial Lease Contract, New University Publishing House, Egypt, first edition, 2005 AD, p. 357.

⁶ Muhammad Ayed Al-Shawabkeh, previous reference, pp. 250, 251

⁷ Muhammad Ayed Al-Shawabkeh, previous reference, p. 250

⁸ Najwa Ibrahim Al-Badali, previous reference, p. 359

The text of the Egyptian legislator that the original tenant guarantees the assignee is considered one of the complementary rules, as it is permissible to agree otherwise, but in the event that there is no agreement on the contrary and in the event of a failure by the assignee to implement his contractual obligations, the lessor can have recourse to the original tenant, as the latter is a guarantor of this. Negligence, and he must implement the obligations breached by the assignee, as the lessee is a guarantor of the assignee⁹.

The financial leasing contract is assigned after the lessor's approval and notifying the lessee, and the obligations in the contract are on the same conditions stipulated in the contract before the assignment, unless the agreement stipulates otherwise¹⁰.

However, the Egyptian legislator took a different approach in Article (24) of Law No. (176) of 2018 regarding the activities of financial leasing and factoring, as the article stipulates (The lessee in a financial leasing contract may assign the contract to another lessee on the condition of obtaining the lessor's written approval, and this results in 1- It is permissible for the original tenant to agree with the new tenant (assignee) that the original tenant will be a guarantor for the new tenant in implementing the terms of the contract. 2- The obligation of the new tenant (assignee) to pay the rental fees in accordance with what is stipulated in the financial leasing contract and the contract. The waiver begins from the date on which the lessor's notification reaches the new tenant of his approval of the waiver. 3- Solutions of the new tenant(The assignee) has all the rights and obligations stipulated in the contract in place of the original tenant, unless there is an agreement stipulating otherwise).

It is clear from the text of the previous article that the Egyptian legislator did not stipulate a guarantee for the original tenant for the new tenant (assignee), as it did in the repealed previous Law No. 95 of 1995, and left that to the will of the parties to choose the guarantee or not. The researcher believes that the Egyptian legislator did the best in amending the previous article, as The stipulation that the original tenant guarantees the new tenant (the assignee) is a major injustice from the researcher's point of view.

1.1.3. Announcement of the lessee's waiver in the financial leasing contract

The Emirati legislator regulated the assignment process with the administrative authority responsible for registering the assignment process, as it stipulated in Paragraph (B) of Article (11) of the Financial Leasing Law No. (8) of 2018 AD that the assignment must be noted in the register of the leased property. The Egyptian legislator also stipulated in Article (25) of Law No. (176) of the year

2018 Regulating Financial Leasing and Factoring Activities (The waiver must be recorded in the register of financial leasing contracts with the Financial Supervisory Authority, and the waiver may not be invoked against third parties except from the date of notation).

The legislators did the best, from the researcher's point of view, to stipulate that the assignment must be registered with the competent administrative authority because it preserves the rights of the parties, whether it is for the previous tenant (assignor), the lessor, or the new tenant (assignee).

The Egyptian legislator stipulated in the first paragraph of Article (31) of the executive regulations of the repealed Law No. 95 of 1995 that the waiver must be published in the registration sheet itself in the contract registration register with the Companies Department so that the waiver is effective vis-à-vis third parties. Failure to complete this procedure does not invalidate the waiver where it is Productive excitement and the waiver is valid against

⁹ Khaled Hassan Ahmed Lotfy, Financial Leasing Contract - Concepts and Legal Nature - A Comparative Study, Dar Al-Fikr Al-Jami'a, Alexandria, first edition, 2021, p. 175.

¹⁰ Muhammad Ayed Al-Shawabkeh, previous reference, p. 251

both parties only, but it is not possible to protest against third parties except from the date of noting the waiver as stated previously¹¹.

The Emirati legislator did not stipulate that the assignment must be announced, as the Egyptian legislator did in the previous law, in order for the argument to be established against others. The researcher believes that noting the assignment in the record of the leased property is a sufficient measure in order for the argument to be established against others, especially in light of the development of records until they have become electronic and accessible. to it easily.

1.2.Ruling on sublease

A sublease is a new lease contract based in its existence on the original lease contract. The contract consists of the lessor, the original tenant, and the subtenant. The sublease contract differs from the assignment of rent, which takes place in the form of a debt transfer and a right transfer, whereby the tenant transfers his obligations and rights. For the new tenant (assignee), the new tenant replaces the previous tenant in all rights and obligations. A distinction can be made between the sublease contract and the assignment of rent in that there is an original lease contract in addition to the sublease contract in the sublease. However, in the assignment of the lease contract, there is only a contract. Original rent¹².

We will divide this requirement into two sections. In the first section, we address the ruling on sublease in civil laws, and in the second section, the ruling on sublease in the financial leasing contract.

1.2.1. The ruling on sublease in civil laws

Most civil laws stipulate that the tenant has the right to sublease the property without obtaining the landlord's approval, subject to certain controls¹³ However, the UAE legislator took a different approach, as it did not allow the tenant to sublease the leased property except after obtaining the landlord's approval for this, as it stipulated in Article (787) of the Civil Transactions Law No. (5) of 1985 that "the tenant is not permitted to rent the thing." The property is leased in whole or in part to another person, except with the landlord's permission or permission." The local rental laws of the emirates also stipulate this¹⁴.

The Egyptian legislator stipulates in Article (593/1) of the Civil Code the following: (The tenant has the right to waive the lease contract or sublease the leased property, whether this is for the entire leased property or part of it, unless there is an agreement stipulating otherwise)

It is clear from the text of the Egyptian legislator that it permitted subletting in general, but on the condition that there is no agreement in the contract stipulating otherwise¹⁵.

The Iraqi legislator stipulates in Article (775/1) of the Civil Code the following: (The tenant has the right to lease the leased property in whole or in part, before the lessee receives the leased property or after that in movables and real estate. The tenant has the right to assign the lease to someone other than the lessor unless there is agreement or custom stipulating otherwise)

¹¹ Najwa Ibrahim Al-Badali, previous reference, p. 364

¹² Saleh Ahmed Al-Lahibi, *The Lease Contract in the UAE Civil Transactions Law and the Local Laws of the Emirates*, Ithra Publishing and Distribution, Jordan, first edition, 2012, pp. 134-135.

¹³ Shorouk Abbas Fadel Al-Saadi, Hoda Samir Daoud, *The Legal Center of the Tenant in the Financial Leasing Contract*, Arab Center for Publishing and Distribution, Arab Republic of Egypt, first edition, 2021., pp. 96-97.

¹⁴ Saleh Ahmed Al-Lahibi, previous reference, pp. 136-138

¹⁵ Shorouk Abbas Fadel Al-Saadi, Hoda Samir Daoud, previous reference, p. 97

It is noted that the Iraqi legislator made custom, if any, a prohibition against subletting, unlike the Egyptian legislator, which did not stipulate that, which is a good position for the Iraqi legislator. The legislators stipulated that subletting is permissible, but on the condition that there is no agreement stipulating otherwise.

However, the Iraqi legislator stipulated a prohibitive condition, as it did not give the tenant the right to sublease in an absolute manner, as Article (775/2) of the Iraqi Civil Code stipulated (if there is a condition for the tenant to rent or waive...

As for leasing to others, this should only be with the consent of the lessor. It is not permissible for the lessor to withhold consent except for a legitimate reason.

It is clear from the above that the Emirati legislator took a different position from the legislator in Egypt and Iraq, as it did not permit subletting unless there was approval from the lessor. The researcher agrees with the direction of the Emirati legislator, as previously mentioned, as the Emirati legislator took into account the personality of the lessee in relation to the lessor, as it is A consideration for the lessor.

1.2.2. Ruling on subleasing in the financial leasing contract

In the financing leasing contract, where the personality of the lessee is a consideration for the lessor, the lessee cannot sublease the leased property to others except after the lessor's approval to do so¹⁶.

The UAE legislator stipulated in Article (12) of Financial Leasing Law No. (8) of 2018 the following:

1 . The tenant may carry out any legal action for the benefit of others that involves the use, exploitation or benefit of the leased property, provided that the following is taken into account:

a. Obtain the landlord's prior written approval for this.

B. The tenant remains committed to the landlord with all terms of the contract.

C. The duration of the legal action carried out by the tenant shall not exceed the duration of the contract.

2 . Termination or invalidation of the contract shall result in the termination or invalidation of the legal transaction carried out by the tenant with others.

The Jordanian legislator stipulates in Article (11/A) of the Financial Leasing Law No. (45) of 2008 the following: (The financing lessee has the right to transfer his rights determined based on the financial leasing contract to a new financial lessee, provided that the lessor agrees to this)¹⁷.

The researcher believes that the UAE legislator is better at requiring the lessor's written consent in order to avoid future disputes and is considered a means of proof that the lessee can prove against the lessor in the event of a dispute. It is also better at taking into account the impermissibility of the lessee leasing the leased property to others except with the written consent of the lessor, as the financial leasing contract is considered a contract. Based on personal consideration.

1,2,3

Ruling on transferring ownership of a leased property or changing its location

This requirement will be divided into two sections. In the first section, we address the ruling on the tenant transferring ownership of the leased property to a third party, and in the second section, the ruling on the tenant changing the location of the agreed-upon leased property.

1.2.3.1. The ruling on the tenant transferring ownership of the leased property to a third party

¹⁶ Sakhr Ahmed Al-Khasawneh, previous reference, p. 218

¹⁷ Shorouk Abbas Fadel Al-Saadi, Hoda Samir Daoud, previous reference, p. 98

In a financial leasing contract, the lessor maintains ownership of the leased property throughout the contract period. Accordingly, the lessee cannot transfer ownership of the leased property to others or arrange any right in rem over it, because the lessee's possession of the leased property exists in his capacity as a lessee of the leased property and not in his capacity as its owner. In the event that the lessee disposes of The lessor, by transferring ownership or arranging any right in rem, whose disposal is invalid because he does not originally have the right to dispose of the lessor¹⁸.

1.2.3.2 Ruling on the tenant changing the location of the agreed-upon property

It is not permissible for the lessee, according to the financial leasing contract, to change the location of the agreed-upon leased property, in contrast to the general rules, where the lessee has the freedom to move the leased property. In the event that the lessee moves the leased property from the agreed-upon location, this does not lead to the permissibility of demanding cancellation of the contract unless the financial lease contract stipulates: Therefore, it is possible that the tenant's failure to commit to maintaining the leased property in the agreed-upon location may result in him demanding compensation for the damages that befell the leased property as a result of moving him from the agreed-upon location¹⁹.

The UAE legislator stipulated in Article (18) of Financial Leasing Law No. (8) of 2018 that "the lessee bears responsibility for any damages caused to the lessor or to third parties as a result of his possession of the leased property or his use of it."

1.2.3.3 Lending rented property to others

The Emirati legislator defined lending in Article (849) of the Civil Transactions Law No. (5) of 1985 as follows: "Lending is the ownership of a thing by someone else for the benefit of a thing without compensation for a specific period or for a specific purpose, provided that he returns it after use, and the loan is the thing whose benefit is owned." Article (786) states: From the same law, "The tenant may lend the leased item or enable others to use and benefit from it in whole or in part without compensation if it is of a nature that does not differ depending on the user." Accordingly, it becomes clear that the following conditions must be met in lending the leased property to others:

- 1 - The rented tenant must be loaned to others as a donation and without compensation.
- 2 - The rent must be something that is not affected by the difference between its user. It is not permissible for the bride who rents a wedding dress to lend the dress to others because the dress is affected by the difference in its user.
- 3 - That the tenant lends the leased property to others within the scope of his use of the leased property²⁰.

The lessee may, in accordance with the general rules, lend the leased property to others, provided that the loan does not result in harm to the leased property or the lessor. The loan may be used in return for the benefit of all or part of the leased property. Neither the Emirati, Jordanian, nor Egyptian legislators have stipulated the ruling on lending the leased property in the law regulating the financial leasing contract. Therefore, resort is made to the rules of leasing in civil law in the matter of the financial lessee lending the leased property to others, but by examining the financial leasing contract and its provisions, the writer finds that the practical reality of the financial lease contract does not permit the leased tenant to lend the leased property to others, because the conditions stipulated by the lessor in the contract

¹⁸ Najwa Ibrahim Al-Badali, previous reference, p. 347

¹⁹ Najwa Ibrahim Al-Badali, previous reference, p. 348

²⁰ Saleh Ahmed Al-Lahibi, previous reference, pp. 133-134.

prohibit The tenant may lend the leased property to others, whether with or without compensation²¹

The financial leasing contract is one of the contracts based on personal consideration, as the lessee's personality is the reason for the lessor agreeing to conclude the contract, and the lessee lending the leased property to others without the lessor's consent violates this²².

Most financial leasing laws stipulate that the lessor has the right to conduct inspection to ensure that the lessee has possession of the leased property²³.

It can be understood from this implicitly that it is not permissible for the lessee to lend the leased property²⁴, as the Jordanian legislator stipulated in Article (12/A/2) of the Financial Leasing Law No. (45) of 2008 the following: (The lessor may inspect the leased property to ensure its condition, suitability, and possession The tenant owns it, provided that this does not result in damages

The tenant may delegate in writing another person to carry out this task²⁵.

The UAE legislator stipulated in Clause (1) of Article (9) of the Financial Leasing Law that "Unless otherwise agreed upon in the contract, the lessor enjoys the following rights: 1. Inspection of the leased property, provided that this procedure does not cause any harm to the lessee. The lessor may delegate in writing any person on his behalf to carry out this task..."

The lessee's violation of the financial leasing contract by lending the leased property to others without the lessor's consent does not result in termination of the contract if the financial leasing contract does not stipulate this, as compensation in this case is sufficient to compensate for the damage caused and suffered by the lessor²⁶.

2. Reasons for termination of the contract for the tenant

This topic will be divided into four requirements. In the first requirement, we address the cases of termination of the financial leasing contract, in the second requirement the termination of the contract by the lessee, in the third requirement the reasons for canceling the financial leasing contract from a legal perspective, and in the fourth requirement the effects that result from termination of the financial leasing contract.

2.1. Cases of expiration of the financial leasing contract

The financial leasing contract ends at the end of the contract term, or with voluntary termination by its parties, or the termination is compulsory. Accordingly, the requirement will be divided into three branches. In the first section we address the expiration of the term of the financial leasing contract, in the second section the voluntary termination by the parties, and in the third section the compulsory termination. .

2.1.1. Expiration of the term of the financial leasing contract

This is the principle of the contract, as it ends at the end of its term. In the financial leasing contract, there are four cases when the term of the financial leasing contract expires, which are:

The first case: The tenant chooses the option of owning the contracted property at the end of the contract or before that, according to what is agreed upon in the contract.

²¹ Sakhr Ahmed Al-Khasawneh, previous reference, 216

²² Shorouk Abbas Fadel Al-Saadi, previous reference, 95

²³ Sakhr Ahmed Al-Khasawneh, *Financial Leasing Contract - A Comparative Study in Jordanian Law with Reference to the Provisions of Islamic Jurisprudence*, Dar Wael for Publishing and Distribution, Jordan, First, 2005, 217

²⁴ Shorouk Abbas Fadel Al-Saadi, Hoda Samir Daoud, previous reference, 96

²⁵ Shorouk Abbas Fadel Al-Saadi, Hoda Samir Daoud, previous reference, 96

²⁶ Sakhr Ahmed Al-Khasawneh, previous reference, 217

The second case: Returning the leased property to the lessor. In this case, ownership of the leased property remains in the hands of the lessor, as the lessee in this case does not wish to pay the purchase amount of the leased property and is satisfied with the period during which he leased the leased property under the financial leasing contract. Companies usually resort to this option because they do not want to inflate their capital assets. Financial losses, which cost it maintenance expenses, forcing it to rent assets instead of owning them²⁷.

Third case: Renewing the financial leasing contract for a new period based on the lessee's request. This can happen automatically when there is a text in the contract indicating the renewal of the contract for a new period in the event that the contract expires and the two parties to the contract have not been notified of their unwillingness to renew the contract.

Fourth case: The expected life of the leased item has expired, and as a result the leased item has no significant economic value²⁸.

2.1.2. Voluntary termination by the parties

Voluntary termination occurs by both parties to the contract, where both parties to the lease contract and the lessee include conditions in the financial leasing contract that allow each of them to cancel the contract. However, termination of the financial leasing contract by the lessee may conflict with the characteristics of the contract, as the term in the financial leasing contract is non-cancelable. The time element is essential in the contract, as the contract period takes up most of the expected life of the renter, and the rent installments are determined based on²⁹

Voluntary termination occurs before the end of the contract period and at the will of its parties by canceling the contract. There are three cases of cancellation here:

The first case: The tenant owns the leased property before the end of the contract, which is called early termination, with the agreement of the parties on that. This is the greatest possibility that the parties to the contract will take in voluntary termination.

The UAE legislator stipulates in Clause (2) of Article (21) of the Financial Leasing Law No. 8 of 2018 that "during the validity of the contract and with the approval of the lessor, the lessee may own the leased property provided that he pays the agreed upon rent and any agreed upon fees, allowances or expenses." Therein, without prejudice to the provisions of the legislation in force in the country."

The second case: The contract is terminated and then the contract is concluded again under other conditions, such as amending the rent clause, the agreed-upon period, or other terms of the contract.

The third case: The tenant returns the rent to the landlord and the tenant is exempted from paying the rent for the following period³⁰.

2.1.3. Forced termination

The financial leasing contract is considered a term contract, so it does not differ in the general rules for the expiration of the lease contract. Both of them expire with the expiration of the period stipulated in the contract, and the contract also expires with the implementation by its parties of their obligations under the contract, but the financial

²⁷ Dr. Youssef bin Abdullah bin Saleh Al-Shubaili, Financial Leasing: A Jurisprudential Study Compared to the Financial Leasing System Project, Journal of the Saudi Jurisprudence Society, issue 11, 2011, p. 213.

²⁸ Dr. Youssef bin Abdullah bin Saleh Al-Shubaili, previous reference, p. 214.

²⁹ Sakhr Ahmed Al-Khasawneh, previous reference, p. 235.

³⁰ Rashid Abdul Rahman Ahmed Al-Asiri, Expiry of the Financial Leasing Contract (Jurisprudence Study), Journal of Arab Studies, Volume 39, Issue 4, 2019., p. 1802.

leasing contract differs in the end, as we mentioned, as it ends with one The three options are either owning the leased property, returning the leased property to the lessor, or renewing the contract for a new period of time.

But in real life, an incident may occur that prevents the parties to the contract from moving towards the intended end of the contract, and it ends

The contract before its specified period and before carrying out all the obligations resulting from the contract, by terminating the contract.

Termination of the contract may be by mutual consent, by resorting to the judiciary, or in accordance with applicable legislation.

In the event that one party does not implement the obligations imposed on it under the financial leasing contract, the other party has the right to demand that the defaulting party perform or terminate the contract. The court may oblige the defaulting party to comply with the obligations stipulated in the contract³¹.

By implementation, or for the court to give the violating party a period of time for implementation, or to rule for annulment. The annulment ruling may contain compensation if the court deems it appropriate³².

2.2. Termination of the contract by the tenant

Financial leasing contracts may include texts that give the lessee the right to terminate the contract before the expiration of its term. These texts do not correspond, realistically and legally, to what the financial leasing contract is and the characteristics of the financial leasing contract. In principle, the financial leasing contract is considered irrevocable because the contract is linked to the expected life of the leased item³³.

Since the duration of the contract takes up most of the expected life of the leased property, and the rental installments agreed upon in the contract must cover the value of the leased property, the profit margin, and other expenses, the presence of a provision in the financial leasing contract that allows the lessee to cancel the contract, which ultimately leads to a reduction in the guarantees granted to the lessor, and these provisions may lead to a loss. The financial leasing company in the end³⁴.

Accordingly, in the financial leasing contract, and for real protection, the lessor resorted to including conditions in the financial leasing contracts that reduce the possibility of the lessee canceling the contract, and among those conditions is a condition that obligates the lessee in the event that he wishes to cancel the contract.

To find a person who will buy the leased property or find a person who will rent the leased property. Accordingly, this requirement will be divided into two branches. We address in the first section the right of the lessor to oblige the tenant to find a buyer for the leased property in the event that he terminates the contract, and in the second section the right of the lessor to oblige the tenant to find a tenant for the leased property in If he terminates the contract³⁵.

2.2.1. The landlord's right to oblige the tenant to find a buyer for the leased property in the event that he terminates the contract.

In the event that the contract is terminated by the lessee based on the conditions stipulated in the financial leasing contract, and if the financial leasing contract contains a restriction that in the event of termination of the contract by the lessee, requiring him to provide a buyer for the leased property (the subject matter of the contract) to the lessor, the lessee can only terminate the contract. By implementing this obligation, the lessor usually guarantees

³¹ Sakhr Ahmed Al-Khasawneh, previous reference, p. 234

³² Sakhr Ahmed Al-Khasawneh, previous reference, p. 235

³³ Sakhr Ahmed Al-Khasawneh, previous reference, p. 236

³⁴ Sakhr Ahmed Al-Khasawneh, previous reference, p. 237

³⁵ Sakhr Ahmed Al-Khasawneh, previous reference, p. 237

this condition in financial leasing contracts in order to maintain the guarantees granted to him and avoid loss³⁶.

The lessee's obligation does not end with finding a buyer for the leased property and offering it to the lessor. Rather, the lessor must agree to sell the leased property to the buyer. Thus, a legal relationship is established between the lessor and the purchaser of the leased property through the sale contract. The sale price will be different from the sale price if the lessee continues until the end of the financial lease contract and chooses The option of owning the leased property, where he owns the leased property for the price previously agreed upon in the contract, which is often a small amount. However, in the event of selling the leased property in the first case, which is when the lessee cancels the contract and the contract obliges the tenant to provide a buyer for the leased property, the price of the leased property will be the price prevailing in the market³⁷.

The condition of finding a buyer for the leased property may raise a legal problem in bearing the risks arising from the leased property, as the lessor, according to the financing leasing contract, does not bear the risks and does not take possession of the leased property in the first place, which remains in the possession of the lessee³⁸.

Looking at Financial Leasing Law No. (8) of 2018, we find that the legislator has stipulated in Clause (C) of Article (27) the following: "1. The lessee may demand cancellation of the contract if any of the following reasons exist:

..c. Any other case stipulated in the contract."

Accordingly, the researcher finds that there is a problem if the tenant includes provisions in the contract that allow him to terminate the contract, as the UAE legislator, in the previously explained article, allowed the two parties to the contract to include provisions in the contract that allow them to

The contract was annulled and this was not restricted. In the event that the lessee included in the contract provisions allowing him to terminate the contract and the lessor included in the contract provisions obligating the lessee to find a buyer for the leased property, this will be done through the sales contract and based on the general rules in the sales contract, the lessor will guarantee the leased property before the buyer, who did not The lessor is not guaranteed and does not bear his risks vis-à-vis the lessee in the financial leasing contract. Accordingly, the researcher proposes to the Emirati legislator the following:

1 - Amending the Financial Leasing Law by canceling Clause (C) of Article (27) and limiting cases of cancellation to what is stipulated in Federal Law No. (8) of 2018 exclusively regarding financial leasing.

2 - Adding a text in the Financial Leasing Law obliging the financial lessee to guarantee the leased property against the buyer in the event that the lessee cancels the contract based on a condition stipulated in the financial leasing contract, and there was a condition that forced the latter to provide a buyer for the leased property, and thus the financial lessor does not guarantee the sale, and the The sales contract is derived from the financial leasing contract, and the buyer must know that, otherwise the contract will be invalid.

2.2.2. The landlord's right to oblige the tenant to find a tenant for the leased property in the event that he terminates the contract

Some financial leasing contracts may include conditions that allow the lessee to cancel the contract before the end of its term, but on the condition that the lessee provides the lessor with a new tenant. Accordingly, the financial leasing contract is not considered terminated unless the lessee presents the lessor with a new tenant that the latter accepts. The financial lease contract is considered terminated once the contract is signed. The new financial leasing, and the first lessee must carry out his obligations until the signing of the new

³⁶ Sakhr Ahmed Al-Khasawneh, previous reference, p. 237

³⁷ Sakhr Ahmed Al-Khasawneh, previous reference, p. 238

³⁸ Sakhr Ahmed Al-Khasawneh, previous reference, p. 238

financial leasing contract, as the first contract is considered terminated from the date of signing the new financial leasing contract, so the lessee must commit to paying Rental allowances and bearing the rental expenses of maintenance and other works until the financial leasing contract is signed with the new tenant.

If the new financial leasing contract is signed, it will have the same terms, obligations and rights as the first³⁹ financial leasing contract, as the UAE legislator stipulates in Article (11) of Financial Leasing Law No. (8) of 2018 the following: "1. The lessee may waive his rights and obligations assigned to him According to the contract, another tenant will replace him, provided that the following is taken into account:

a. The lessor's prior written approval.

B. Noting the assignment made in accordance with the provisions of this law in the register of the leased property.

C. This waiver does not conflict with the legislation in force in the country.

2. The new tenant to whom the contract has been assigned shall replace the original tenant in all rights and obligations arising from this contract, from the date the assignment is noted in the register.

The researcher believes that the UAE legislator is better at requiring some formal matters in the process of transferring the financial tenant to another tenant who replaces him, by requiring written approval from the lessor, which is written evidence ready for use in the event that the lessee encounters a problem before the courts regarding the subject of the waiver. The legislator is also better at following the formalities. In the waiver process, the waiver must be registered with the competent authority

2.3. Reasons for terminating the financial leasing contract from a legal perspective

Financial leasing contracts often include conditions that allow the lessor to cancel the contract in the event that the lessee violates the conditions contained therein. Although legislators in countries have included provisions in financial leasing laws that allow termination in certain circumstances, this has not prevented the parties to the contract from including financial leasing contracts. It has conditions that allow both parties to terminate the contract in the event of non-compliance with the terms of the contract.

We will divide this requirement into three branches. In the first section, we address the cancellation of the financial leasing contract for non-payment of the rent, in the second section, the cancellation of the financial leasing contract in the event of the tenant's bankruptcy, and in the third section, the cancellation of the financial leasing contract in the event of the death of the lessee or joint partner.

2.3.1. Termination of the financial leasing contract due to the lessee not paying the rent

The obligation to pay the rent is one of the most important obligations imposed on the lessee in the financial leasing contract, as the financial leasing contract is one of the contracts binding on two sides, and the lessee's failure to pay the rent may cause the lessor to miss out on the profit and cause it to suffer significant losses⁴⁰.

The tenant is obligated to pay the rental fees according to the dates specified in the contract, even if the tenant does not benefit from the rent, unless the lack of benefit is due to the lessor⁴¹.

The UAE legislator stipulates in Clause (2) of Article (6) of the Financial Leasing Law No. (8) of 2018 that "Unless otherwise agreed upon in the contract, the lessee is obligated to do the following: 2. Pay the rent according to the payments and dates scheduled in contract

³⁹ Sakhr Ahmed Al-Khasawneh, previous reference, p. 240.

⁴⁰ Sakhr Ahmed Al-Khasawneh, previous reference, p. 241

⁴¹ Muhammad Ayed Al-Shawabkeh, previous reference, p. 202

even if he does not benefit from the leased property, unless the lack of benefit is due to the lessor.”

Based on the text of the previous article, the lessee cannot get rid of his obligation to pay the rent to the lessor according to the dates agreed upon in the contract, due to his inability due to circumstances beyond his control, such as failure to implement his obligation to pay the rent due to his not benefiting from the rent, unless the lack of benefit is due to a reason attributed to the lessor, such as the lessor’s failure to approve the papers. Accordingly, the financial lessee will carry out its activity⁴².

According to the general rules, the contract can be terminated based on the tenant’s failure to pay rent fees, but financial leasing contracts have traditionally given the tenant a grace period ranging from five to thirty days or in a number of installments, such as granting the tenant a maximum grace period that exceeds the deadline for paying two installments, and the tenant’s grace period has been implemented in France. Eight days in the event of failure to pay, and then the financial leasing contract is considered terminated based on the termination clause set in favor of the lessor⁴³.

Financial leasing contracts often stipulate that all rental fees agreed upon in the contract are due in the event that the lessee fails to pay one of the rental fees on time⁴⁴.

The provision of the tenant’s right to terminate the financial leasing contract includes the event of the tenant’s failure to pay the rental fees at all, failure to pay the rental fees on the agreed upon dates, and payment other than what was agreed upon⁴⁵.

The Egyptian legislator stipulated in Clause No. (1) of Article (26) of Law No. 176 of 2018 regulating the financial leasing contract that “the financial leasing contract is considered to have been terminated on its own without the need for an excuse or any action taken.”

Judicial procedures in any of the following cases: 1- The tenant’s failure to pay the agreed-upon rent value on the dates and in accordance with the terms agreed upon in the contract despite the lessor’s warning him to pay, and thirty days have passed since these dates have been missed, unless the lease contract includes anything to the contrary.

The Jordanian legislator stipulated in Article (17) of the repealed Financial Leasing Law No. 16 of 2002 that the financial lessee has the right to terminate the contract without warning or any judicial procedures in the event that the lessee fails to pay the rent on the dates agreed upon in the contract⁴⁶.

However, looking at the Jordanian Financial Leasing Law No. (45) of 2008, we find that the Jordanian legislator stipulated in Article (19/A) that (the financial leasing contract may be terminated by a decision by the court or through notice from the lessor if the financial leasing contract allows him This is in the event of non-payment of the rental fees agreed upon in the contract. The Jordanian legislator stipulates in Article 19/B of the same law that it is not permissible to cancel the contract by the landlord or by the court except after notifying the tenant with a judicial notice of the violation he committed and stipulated in In paragraph (a) of the same article and the tenant’s failure to rectify the situation within ten days from the day following the date on which he was notified of the judicial notification)

The UAE legislator stipulates in Article (26) of Financial Leasing Law No. (8) of 2018 the following: “1. The lessor may demand termination of the contract, when any of the following reasons are available:

⁴² Muhammad Ayed Al-Shawabkeh, previous reference, p. 204

⁴³ Sakhr Ahmed Al-Khasawneh, previous reference, p. 242

⁴⁴ Bassam Hilal Al-Qallab, *Financial Leasing (A Comparative Study)*, Al-Raya Publishing and Distribution House, Amman, first edition, 2009, p. 277.

⁴⁵ Muhammad Abdullah Al-Mahaira, previous reference, p. 333

⁴⁶ Muhammad Ayed Al-Shawabkeh, previous reference, p. 203

a. If the tenant violates the obligations stipulated in clauses (1,2,3,4,5) of Article (6) of this law.

B. If the tenant breaches any fundamental obligation stipulated in the contract.

C. If the tenant causes serious damage to the leased property.

Dr. Any other case stipulated in the contract.

2. The lessor may not request termination of the contract for any of the reasons referred to in Clause (1) of this Article except after notifying the lessee in writing of this, and his refusal to correct the breach committed by him within (60) sixty working days from the date of his notification.

3. If the lessor exercises his right to cancel the contract in accordance with the provisions of this article, he has the right to claim the amounts owed to him, if any, in accordance with special accounting standards.

The court's ruling in the event of termination of the contract due to non-payment of rental fees is determined and not established, because the court only verifies the existence of a reason for termination⁴⁷.

The researcher believes that the Emirati legislator is better at stipulating that a period of (60) days must pass after the landlord notifies the tenant of his failure to pay the rent as a condition that allows the lessor to cancel the contract, which is a sufficient period and provides acceptable facilitation for the tenant. This is in contrast to the Egyptian legislator, which stipulated the passage of a period of (30) days, which is A short period of time, and the landlord did not require the landlord to notify the tenant of his breach by not paying the rent on the scheduled date. The Emirati legislator did well in comparison to the Jordanian legislator as well, which gave the tenant a relatively short period of (10) days to correct the violation committed.

However, the Jordanian legislator was better in the amendment made in Law No. (45) of 2008, which did not allow the lessor to cancel the contract through notice issued by him, except in the case of the financial leasing contract stipulating that the financial leasing contract may be canceled by the lessor with notice in the event of a violation of the stipulated cases. In law or contract.

Once the financing lease contract is terminated by the court with a final judicial ruling, the lessee cannot avoid termination by paying the rent fees prescribed to him unless the lessor agrees to that⁴⁸.

The writer believes that the tenant must be deprived of this grace period in the event of the tenant's repeated failure to pay the rent, in order to protect the lessor's rights in the financial leasing contract, or to grant the judge the authority to set the grace period in the event of the tenant's repeated failure to pay the rent⁴⁹.

The researcher agrees with the writer's opinion on this point, so the researcher suggests that the Emirati legislator amend the text of Article (26), which stipulates that the financial lessor may request termination of the contract in the event that sixty days have passed from the date of notifying the lessee of non-payment of the rental allowance, by reducing the period in the event of repetition to Thirty days for the second time and depriving the tenant of any period in the event of repeated failure to pay for the third time, but with a notification requirement.

The researcher believes that the Emirati legislator was better at making the cancellation matter left to the discretion of the court, unlike the Jordanian and Egyptian legislators, which allowed the lessor to cancel the contract without resorting to the court. The court can rule to reject the cancellation, such as if it saw that the financial lessee was committed for

⁴⁷ Najwa Ibrahim Al-Badali, previous reference, p. 397

⁴⁸ Muhammad Ayed Al-Shawabkeh, previous reference, p. 203.

⁴⁹ Muhammad Ayed Al-Shawabkeh, previous reference, pp. 203, 204

a very long period and that his failure to pay the rent was for a reason beyond its control. His will and give him a new period to pay.

2.3.2. Termination of the financial leasing contract in the event of the lessee's bankruptcy

The lessor has the right to terminate the financial lease contract if a court ruling is issued to liquidate the lessee or declare him bankrupt, without the need to notify or warn the financial lessee, the liquidator, or the bankruptcy agent. The leased property is not included in the general guarantee for the creditors because the lessee did not own the leased property based on the lease contract. Financing where the lessor is the owner of the leased property. The liquidator or bankruptcy agent may, during the period stipulated in the contract or law, notify the lessor of his desire to continue the financial leasing contract in accordance with the conditions stipulated in the financial leasing contract⁵⁰.

The UAE legislator stipulates in Article (24) of Financial Leasing Law No. (8) of 2018 that "Without prejudice to any rules regulating liquidation and bankruptcy processes in the country, the following shall be followed regarding the liquidation of the lessee or the declaration of his bankruptcy or death:

- 1 . The leased property is not included in the general guarantee of the tenant's creditors and is not considered part of the assets of liquidation, bankruptcy, or the estate.
- 2 . The liquidator, bankruptcy trustee, or the tenant's heirs must return the leased property to the lessor within (90) ninety working days from the date of issuance of the liquidation, bankruptcy, or death decision, unless the liquidator, bankruptcy trustee, or the tenant's heirs, as the case may be, announce during this period their desire to continue implementing the The contract, in which case this contract continues to exist in accordance with its terms and conditions."

Bankruptcy is a system of enforcement against the debtor's funds, provided that the debtor is a merchant in the event that he fails to pay his commercial debts on their due dates to the extent that his financial position or credit becomes apparent.

It is clear from the above that the financial leasing company can recover the rent in the event of the tenant's bankruptcy, without bankruptcy procedures⁵¹.

The bankruptcy system aims to sell the debtor's assets, liquidate them, and distribute the amounts resulting from this process to creditors in accordance with the procedures established by the law, which aim for equality between creditors.

The insolvency system differs from the bankruptcy system, as the latter is specific to the category of merchants only, unlike the insolvency system, and bankruptcy occurs as soon as the debtor stops paying his debts, even if the total of his funds exceeds his debts. This is in contrast to the insolvency system, where the debtor's outstanding debts are higher than the total of his funds.

It is not permissible to declare the merchant debtor bankrupt if his debts exceed the funds he has, if he is committed to paying his debts on time. The point in the bankruptcy system is the debtor's failure to pay his debts, which indicates the existence of a disturbance in his financial position⁵².

The Egyptian and Jordanian legislators have regulated, among the cases of termination of a financial leasing contract, the event of the lessee being liquidated or declaring his bankruptcy. The reason for this is that financial leasing contracts are contracts based on

⁵⁰ Sakhr Ahmed Al-Khasawneh, previous reference, p. 245

⁵¹ Muhammad Abdullah Al-Mahaira, previous reference, p. 12.

⁵² Dr. Tariq Fahmy Al-Ghannam, Commercial Papers, Bankruptcy, and Protective Settlements in the Saudi System, University Book House for Publishing and Distribution, Kingdom of Saudi Arabia, first edition, AH 1439-2018 AD, p. 327.

personal consideration, where the personality of the lessee is taken into account, as the lessor, before contracting, studies and researches the credit status of the lessee and the extent of His ability to commit to paying rent and other expenses in the future⁵³

Terminating the financial leasing contract in the event of the tenant's bankruptcy is not obligatory, as the bankruptcy agent can notify the lessor within ninety days of the declaration of bankruptcy of his desire to continue the financial leasing contract in accordance with the terms and conditions stipulated in the contract. The financial lessor can claim the rental fees that the lessee did not pay a month ago. Bankruptcy with all creditors⁵⁴.

The legislator's aim in giving the bankruptcy trustee the right to request the continuation of the financial leasing contract is to take into account the tenant's circumstances beyond his control and to protect the business owner (lessee) from collapse, which will harm his creditors⁵⁵.

Some jurisprudence stipulates that the ruling declaring the tenant's bankruptcy be a final ruling that cannot be appealed, in order to stabilize transactions and protect the tenant, whose reputation and business may be harmed by the termination of the contract based on a revocable ruling. The court of first instance would rule on the bankruptcy of the financial lessee, and the ruling would be appealed by the lessee and a ruling would be issued. The ruling of the court of second instance overturns the ruling of the court of first instance⁵⁶.

The lessor cannot demand termination of the contract in the event that the lessee is declared bankrupt in the event that the latter obtains a settlement protecting against bankruptcy, as the lessee is given a period of time to pay his debts based on this settlement, even if the lessee does not pay the rent fees due from him⁵⁷.

Although the law gives the bankruptcy agent the right to notify the lessor of his desire to continue implementing the financial leasing contract in accordance with the terms and texts contained therein, the lessor is not forced to accept that, as he has the choice between accepting that or not accepting it, since the financial leasing contract is in The asset is based on personal consideration, and this requires the lessor's explicit approval to continue implementing the financial leasing contract⁵⁸.

The lessor or lessee whose bankruptcy has been ruled cannot ask the bankruptcy trustee to continue the financial leasing contract, as this right is granted to the bankruptcy trustee alone, and it is a matter of public order, and the parties to the financial leasing contract may not agree otherwise⁵⁹.

2.3.3. Termination of the financial leasing contract in the event of the death of the lessee or joint partner

The UAE legislator did not stipulate in Law No. (8) of 2018 that the contract be terminated in the event of the death of the lessee or joint partner, as the financial leasing contract is terminated by the death of the lessee or joint partner in the partnership, as the contract is not transferred to the heirs, because financial leasing contracts are based on personal consideration. The law does not stipulate otherwise, so the personality of the tenant is taken into account, so it was self-evident that the contract should not be transferred to the heirs, taking into account this basis⁶⁰

The Egyptian legislator stipulated in Paragraph (2) of Article (26) of Law No. 176 of 2018 regulating the financial leasing contract that the financial leasing contract is considered

⁵³ Sakhr Ahmed Al-Khasawneh, previous reference, p. 246

⁵⁴ Sakhr Ahmed Al-Khasawneh, previous reference, p. 248

⁵⁵ Muhammad Abdullah Al-Mahaira, previous reference, p. 352

⁵⁶ Najwa Ibrahim Al-Badali, previous reference, p. 400

⁵⁷ Sakhr Ahmed Al-Khasawneh, previous reference, p. 248

⁵⁸ Sakhr Ahmed Al-Khasawneh, previous reference, p. 249

⁵⁹ Muhammad Abdullah Al-Mahaira, previous reference, p. 352

⁶⁰ Muhammad Ayed Al-Shawabkeh, previous reference, p. 217

terminated on its own without the need to resort to an excuse or follow judicial procedures in the event of the death of the lessee or the joint partner in the contract. Companies of tenants, unless the heirs of the tenant or the new joint partner request completion of the contract within thirty days from the date of death, contrary to what is stipulated in the general rules⁶¹.

It is clear from the text of the article that the Egyptian legislator gave the right to the heirs to continue the financial leasing contract on the condition that they request the continuation of the implementation of the contract within thirty days from the date of the death of their legator, as accordingly they replace their legator and bear all the obligations and rights stipulated in the contract⁶².

The Egyptian legislator also gave personal consideration great importance in partnerships, as the contract was considered void unless the joint partner in the partnership requests the continuation of the contract within thirty days from the date of death. This is because each partner in partnerships is considered to have a personality important to the other partner⁶³. The writer believes that the provisions of the previous article and paragraph apply to the financial leasing contract in the event of the general partner's withdrawal or resignation from the company or the company's termination for any other reason, since the reason is the same as the death of the lessee⁶⁴.

It is also clear that the Egyptian legislator has taken into account that the financial leasing contract is based on personal consideration, as according to the general rules in the lease contract, the contract is not based on personal consideration, as the lessor leases the leased property to the lessee, and the personality of the lessee in this contract is not a consideration for the lessor, and based on that The lease contract does not end with the death of the landlord or tenant, as these obligations are transferred to the heirs according to their legal shares⁶⁵.

The Emirati and Jordanian legislators did not stipulate a text similar to the Egyptian legislator, and thus we are faced with two hypotheses:

The first assumption: If the financial leasing contract includes a condition allowing the contract to be annulled in the event of the death of the lessee or joint partner in private companies, then the contract will be annulled according to what is stipulated in the contract. The second assumption: General rules are resorted to in the absence of an agreement in the financial leasing contract, and according to the general rules, the lease contract does not end with the death of one of the contracting parties⁶⁶.

The UAE legislator stipulates in Article (793) of the Material Transactions Law No. (5) of 1985 that "1- The lease does not end with the death of one of the contracting parties.

2-However, the tenant's heirs may request termination of the contract if they prove that the burdens of the contract have become too heavy due to the death of their inheritor to be borne by their resources or have exceeded the limits of their need.

3-If the lease was not concluded except because of the tenant's profession or other considerations related to his person and then he died, his heirs or the lessor may request termination of the contract."

It is clear from the text of the previous article that the UAE legislator did not stipulate the expiration of the lease contract in the event of the death of the tenant or lessor as well, but it included two exceptions, namely:

- 1 – It is permissible for the heirs of the deceased tenant to request termination of the contract by proving that the rented property exceeds the limits of their benefit or

⁶¹ Muhammad Abdullah Al-Mahaira, previous reference, 358

⁶² Sakhr Ahmed Al-Khasawneh, previous reference, 253

⁶³ Sakhr Ahmed Al-Khasawneh, previous reference, 253

⁶⁴ Muhammad Ayed Al-Shawabkeh, previous reference, p. 217

⁶⁵ Sakhr Ahmed Al-Khasawneh, previous reference, 252

⁶⁶ Sakhr Ahmed Al-Khasawneh, previous reference, 254

exceeds their financial capabilities, such as that the deceased had a social status that required him to live in a large residence, in contrast to the situation of the heirs, or for the heirs to prove their inability to pay the rent due to their limited resources. The funds are not sufficient for this, so the heirs can request termination of the contract.

2 -The heirs of the deceased may request termination of the contract if the rental of the wage-earner was received because of the deceased's profession, such as if he was a doctor, lawyer, or engineer who rented an office or workshop for the purposes of his work⁶⁷.

The Jordanian legislator also stipulated in Article (709) of the Civil Law that the death of one of the contracting parties is not considered one of the reasons for the termination of the lease contract. Accordingly, the financing lease contract in Jordanian law does not terminate with the death of the tenant, but rather all rights and obligations are transferred to the heirs⁶⁸.

As for the general rules for partnerships, they stipulate that the company ends immediately, as soon as one of the joint partners dies by force of law, even if the end of the company has not yet come⁶⁹.

Article (303) of Federal Decree Law No. (32) of 2021 regarding commercial companies stipulates the following:

“Without prejudice to the rights of others and taking into account the provisions of this Decree Law and the contracts concluded between partners, the joint liability company and the limited partnership shall be dissolved for one of the following reasons:

1 . The death, bankruptcy, or insolvency of any of the partners in it, or his loss of his legal capacity, unless otherwise agreed upon in the company contract. It is permissible to stipulate in the company contract that it continues with the heirs of the deceased partner, even if the heirs or some of them are minors. If the deceased was a joint partner and the heir was a minor. The minor is considered a limited partner to the extent of his share in the share of his inheritor. In this case, the continuation of the company is not required for a court order to keep the minor's money in the company.

2 . Withdrawal of the sole general partner in the limited partnership company.

3 . Six months have elapsed for the joint-liability company with one partner and the company has not corrected its legal status during that period.

Therefore, the researcher believes that the financial leasing company, before signing the financial leasing contract, must take the legal form of the legal person into account. Contracting with a public joint-stock company is not as risky as contracting with a joint-liability company and a limited partnership, whose legal form may end as soon as bankruptcy, death, or Insolvency of any of its partners or loss of legal capacity by any of the partners.

2.3.4. The effects of canceling the financial leasing contract

The Emirati and Jordanian legislators also did not stipulate the effects of terminating the financial leasing contract in the law regulating the contract except for only one effect, which is the return of the leased property to the lessee. The rest of the effects can be dealt with by referring to the general rules.⁷⁰ The Emirati legislator stipulated in Article (29) of the Financial Leasing Law No. (8) of 2018 stipulates that “unless otherwise agreed upon in the contract, the lessee is obligated to return the leased property to the lessor without delay, taking into account any changes that occur to it as a result of appropriate use, in the event that he does not exercise the option of owning the leased property upon expiration.” contract, without prejudice to any expenses incurred therefrom.”

⁶⁷ Saleh Ahmed Al-Lahibi, previous reference, pp. 155-156

⁶⁸ Sakhr Ahmed Al-Khasawneh, previous reference, 254

⁶⁹ Sakhr Ahmed Al-Khasawneh, previous reference, 255

⁷⁰ Bassam Hilal Al-Qalab, previous reference, p. 358

The financial leasing contract is one of the contracts binding on both sides, as each party is committed to the other with obligations determined based on the text of the law and what is agreed upon in the contract. Terminating the contract results in the contracting parties returning to the state they were in before the contract. If that is impossible, compensation is resorted to⁷¹, as Article 1 stipulates (274) of the UAE Civil Transactions Law No. (5) of 1985 stipulates, “If the contract is annulled or annulled, the contracting parties shall be returned to the state they were in before the contract. If this is impossible, compensation shall be ruled.”

This request will be divided into two sections. In the first section, we address restoring the act to what it was before incorporation, and in the second section we address compensation for termination of the contract.

2.3.4.1 Restore the situation to what it was before subscription

According to the general rules, annulling the contract results in returning the contracting parties to the state they were in before, in order to prevent all contracting parties from taking from each other in the concluded contract. If this is impossible, the judge will implement this with compensation, which has been agreed to place the contracting parties in a position similar to their position before the conference was held, and thus it will be dissolved. The association is not only connected to the future, but also has a retroactive contribution to the past since the date of the sixth decade⁷².

It is easy to apply the rule of restoring the situation to what it was before contracting to immediate contracts such as the sales contract, where the buyer is obligated to return the sold item to the seller and the seller is obligated to return the price to the buyer. However, this rule is difficult for term contracts such as a financial leasing contract in which time is an essential element⁷³.

As mentioned, the financing leasing contract is one of the contracts that continues to be implemented, and accordingly, the rule of retroactive effect of termination cannot be applied, so that the contracting parties return to the situation they were in before contracting, as the effect of termination in the financial leasing contract is only on the future, not the past, and the situation applies. Previous to the lease contract as well, as the lease contract is one of the continuous contracts in which it is impossible for the contracting parties to return to the state they were in before the contract was concluded, because it is impossible to turn back time.

The landlord's obligation to deliver the leased property and enable the tenant to benefit from it cannot be returned to the past, because that has already been done in the past⁷⁴.

Accordingly, the lessee is obligated to pay the rent to the lessor for the period that preceded the termination of the contract. These amounts paid are not considered compensation, as they are considered rent allowances due and owed by the lessee, due to the lack of retroactive effect of the termination⁷⁵.

Based on the above, if the financial leasing contract is terminated, the financial lessor recovers the rent from the lessee, and the lessor is entitled to rent allowances for the period that preceded the cancellation due to the lack of retroactive effect of the cancellation, and the lessor cannot

Claiming rent allowances subsequent to termination, since the effect of termination in continuous contracts applies to the future and not the past⁷⁶, and the tenant must deliver the leased property in good condition or as stipulated in the contract without delay, as delay in

⁷¹ Sakhr Ahmed Al-Khasawneh, previous reference, 257

⁷² Sakhr Ahmed Al-Khasawneh, previous reference, 258

⁷³ Bassam Hilal Al-Qalab, previous reference, p. 359

⁷⁴ Sakhr Ahmed Al-Khasawneh, previous reference, 258

⁷⁵ Bassam Hilal Al-Qalab, previous reference, 359

⁷⁶ Miraj Hawari, Haj Saeed Omar, Lease Finance Concepts and Foundations, Treasures of Scientific Knowledge for Publishing and Distribution, Jordan (Amman), first edition, 2013, p. 123.

delivering the leased property to the lessor leads to the tenant bearing responsibility. For this, he is obligated to compensate for the damage.

2.3.4.2 Compensation for termination of the contract

In the financial leasing contract, the parties to the contract resort to including in the contract conditions that cover the value of the losses that they may be exposed to as a result of terminating the contract, by stipulating a penalty clause in the event of terminating the contract if certain circumstances and conditions are met⁷⁷.

The principle of compensation is to be issued by a judicial ruling, but the parties to the contract may agree in advance on the amount of compensation, which is called the penal clause⁷⁸.

The penal clause helps the court in estimating the amount of compensation in the event that one of the parties to the contract resorts to it, especially if the agreed upon compensation is contrary to the form of the penal clause and jurisprudence⁷⁹ is based on considering the agreed upon compensation synonymous with the term penal clause, but from the writer's point of view it is possible to distinguish between them as follows:

1 - The penalty clause is stipulated by one of the parties to the contract, in contrast to the contractual compensation that is made by agreement of the contracting parties.

2 - It is possible for the agreement compensation to be received independently of the original contract, unlike the penalty clause that is linked to the original contract⁸⁰.

The penalty clause is stipulated in the financial leasing contract because of its importance from an economic perspective, and in order for the financial leasing companies to avoid the high risk of loss in the event that the financial lessee does not comply with the obligations imposed on him under the law and the contract. The penalty clause represents a means of deterrent pressure for the lessee in the event that he To think about canceling the contrac⁸¹t, and placing a penalty clause in the contract is considered evidence of the seriousness of the contracting parties. It is customary in the financial leasing contract to determine the value of the penalty clause by the total remaining rental fees until the end of the contract⁸², where the largest part of the amount of the penalty clause is included as compensation⁸³.

Conclusion

At the end of the research, the following results and recommendations were reached:

Results:

1. The financial lessee has three options at the end of the contract, which are either expressing a desire to own the leased property, renewing the contract for a new period, or returning the leased property to the lessor in good condition.

- The rent is at the price agreed upon in the contract or at the price that will be determined taking into account it

What was paid in terms of rental fees if the purchase price was not stipulated in the contract, or the contract was renewed for a new period, or the rent was returned to the lessor.

3. The financial leasing contract is a good way to invest, as it provides the lessee with the assets he needs to carry out the production process without compromising the capital. The

⁷⁷ Sakhr Ahmed Al-Khasawneh, previous reference, 259

⁷⁸ AhSakhr med Al-Khasawneh, previous , 25reference9

⁷⁹ Rashid bin Abdul Rahman Ahmed Al-Asiri, Expiration of the Financial Leasing Contract (A Jurisprudential Study), Journal of Arab Studies, Volume 39, Issue 4, 2019, p. 234.

⁸⁰ Muhammad Ayed Al-Shawabkeh, previous reference, p. 222

⁸¹ Sakhr Ahmed Al-Khasawneh, previous reference, 259

⁸² Muhammad Ayed Al-Shawabkeh, previous reference, p. 222

⁸³ Sakhr Ahmed Al-Khasawneh, previous reference, 259

contract also avoids the lessee from resorting to borrowing and the resulting risks of raising interest rates and others.

4. The financial leasing contract gives great guarantees to the lessor, as the latter retains ownership of the leased property throughout the contract period, which avoids dividing debts in the event of the lessee's bankruptcy.

5. The financial leasing contract is of a special nature and not all general rules in the law apply to it.

6. The financial leasing contract may not be canceled before the end of the period stipulated in the contract except by agreement of the parties, as the financial leasing contract is considered a fixed-term contract.

7. The United Arab Emirates knew financial leasing before the issuance of Federal Law No. 8 of 2018, as there were companies specialized in financing that practiced financial leasing among the services they provided, and there was a company specialized in financial leasing, which is the National Abu Dhabi Financial Leasing Company, affiliated with the National Bank of Abu Dhabi. Abu Dhabi National.

8. It is not required that the financial leasing company refuse to finance the asset if financing has previously been rejected from banks. This is because the guarantees of the financial leasing contract differ from the guarantees found in other contracts, as the guarantees in the financial leasing contract are less compared to the rest of the contracts, because the lessor It shall be owned by the financial leasing company.

Recommendations:

1. We recommend that the UAE legislator stipulate that it is not permissible for the lessee to explicitly lend the leased property to others, since the financial leasing contract is based on personal consideration, where the personality of the lessee is a matter of consideration for the lessor.

2. We recommend that the UAE legislator stipulate that the financial lessee bear the expenses of returning the leased property due to several considerations, the most important of which is that he is the one who has the three options at the end of the contract and that he is the one who used the leased property throughout the contract period.

3. We recommend that the Emirati legislator amend the text of Article (13) of the Financial Leasing Law by replacing the word "improvements" with unnecessary improvements, as the legislator stipulated the word "improvements" in general, where there are improvements necessary for the work of the leased person or to ensure his safety. In this case, the lessee who has made Necessary improvements are at his expense by demanding from the lessor these necessary improvements that he made if they are capable of being separated from the lessor without harming him. He is not permitted to claim compensation if the necessary improvements were made with the lessor's written approval.

4. Amending the Financial Leasing Law by canceling Clause (C) of Article (27) and limiting cases of cancellation to what is stipulated in Federal Law No. (8) of 2018 regarding financial leasing exclusively, or stipulating that the financial lessee is obligated to guarantee the leased property in exchange for The buyer, in the event that the lessee cancels the contract based on a condition stipulated in the financial leasing contract, and there is a condition that forces the latter to provide a buyer for the leased item. Thus, the financial lessor does not guarantee the sale, and the sale contract is derived from the financial leasing contract, and the buyer must know that, otherwise the contract will be signed. Invalidity.

5. Financial leasing companies usually reserve their right to amend the rent item up or down in order to protect their right and protect the lessee's right from market fluctuations up or down by stipulating it in the contract. Therefore, we recommend that the UAE legislator regulate the process of amending the rent item by setting an upper limit for the amendment that does not It exceeds a certain percentage of the rental allowance in order to protect the financial lessee.

6. The researcher recommends that the Emirati legislator amend the text of Article 26, which stipulates that it is permissible to ask the financial lessor to terminate the contract in the event that sixty days have passed from the date of notifying the lessee of non-payment

of the rental allowance, by reducing the period in the event of repetition to thirty days for the second time and depriving the lessee of any period in The event of a third default, but with a notification requirement

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