

# EQUIPMENT LEASING AND SECURED CREDIT TRANSACTIONS: THE MIX AND THE NEED FOR ALL INCLUSIVE LEGISLATION

By

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## **Abstract**

*Businessmen, corporate bodies and even government at all levels hardly carry out most of their projects by acquiring all equipment they need for all their ventures. There is always the need in the form of direct financing of equipment acquisition or other forms of equipment financing, the least being hiring of such equipment under hire purchase arrangement. This central role being played by credit financing due to its enormous benefits to our economy, has led to singling out every form of credit financing, naming it distinctly and making different forms of laws as though they are not the same, and, to proliferation of laws that brings confusion to practitioners instead of clarity of practice required in every law. The passing of Equipment Leasing Act in 2015 and subsequent passage of Secured Credit in Moveable Assets Act, 2017 are the most recent of this. This paper examined equipment leasing and secured credit transactions to see whether they are one and the same type of transaction but looked at from different perspectives. The paper concludes that equipment leasing is but a form of secured credit transaction, and makes recommendation for an all-inclusive law of secured credit transactions that will satisfy all forms of credit financing.*

**Keywords:** *Equipment, Lease, Secured Credit, Security, Hire purchase, Investment*

## 1. Introduction

World over today, equipment leasing is being practiced as a creative financing alternative for the acquisition of capital assets for productive ventures and enhancing the quality of life. Olubor, while tracing the origin of equipment leasing in Nigeria opined that it dates back to early 1960's when subsidiaries of British companies operating in Nigeria were benefitting from offshore leasing provided by foreign leasing companies<sup>1</sup>. Taken from this, this unique financing instrument, though relatively known in Nigeria has been contributing to the socio-economic development of the country and is even more relevant in our present reality, where outright purchase of assets is increasingly becoming difficult especially to the Small and Medium Scale Enterprises (SMEs).

Looking at equipment leasing as a business venture, Ehigiator<sup>2</sup> opined that 'equipment leasing can be much more expensive in the long term than purchasing equipment outright, but for cash-strapped small business owners, it's a means to access necessary equipment without much upfront money'. This is because leasing requires that you pay interest, which adds to the overall cost of a machine over time. Sometimes, leasing can be more expensive than if you were to purchase the equipment outright, especially if you purchase the equipment when the lease term has expired. In addition, some lenders enforce a specific term length as well as mandatory service

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<sup>1</sup> Olubor O, 'The Next Frontier for Finance Leasing in sub-Saharan Africa: Revisiting Secured Transactions Law in Nigeria' <[https://publications.aston.ac.uk/id/eprint/39366/1/84\\_OTAOR\\_OLUBOR\\_The\\_Next\\_Frontier\\_for\\_Finance\\_Leasing\\_in\\_sub\\_Saharan\\_Africa.pdf](https://publications.aston.ac.uk/id/eprint/39366/1/84_OTAOR_OLUBOR_The_Next_Frontier_for_Finance_Leasing_in_sub_Saharan_Africa.pdf)> accessed 15 May 2021

<sup>2</sup> Ehigiato E O, 'A review of legal nature of equipment leasing in Nigeria', *Gravitas Review of Business and Property Law*, June 2017, Vol. 8 No. 2 <<https://gravitasreview.com.ng/shop/legal-nature-of-equipment-leasing-in-nigeria/#:~:text=MEANING%20OF%20EQUIPMENTLEASING,as%20the%20lessee%20in>> accessed 29 April 2021

packages. This can add to the cost if the lease term extends beyond how long you need the equipment. In this scenario, you could get stuck with a monthly payment as well as storage costs associated with unused equipment.<sup>3</sup>

However, notwithstanding the earlier remark that equipment leasing can be traced to the sixties, there was no special legislation or code in Nigeria solely dealing with the subject of leasing until 2015 when the Equipment and Leasing Act was enacted. The said Act<sup>4</sup> in a bid to regulate all equipment leasing transactions, in its preamble stated that ‘this Act seeks to regulate the business of equipment leasing in Nigeria so that the relationship between the lessor and the lessee and other third parties is identified and protected. The Act further seeks to establish a regulation authority so as to provide for the registration of all equipment leases and the certification of equipment lessors.

Hitherto equipment leasing was essentially governed by common law and equitable principles while the accounting, taxation and financial aspects of leasing were regulated by accounting and taxation laws and regulations in addition to guidelines issued by the Central Bank of Nigeria. The Equipment Leasing Bill was passed into law in May 2015 after receiving the assent of the President of the Federal Republic of Nigeria. The Act seeks to regulate the business of equipment leasing in Nigeria with a view to identifying the relationships between the lessor and the lessee and other third parties as well as establishing a Regulatory Authority to provide for the registration of all equipment leases and the certification of equipment lessors. Having passed the Equipment Leasing Bill which was signed into law by the President in 2015, the practice of Equipment Leasing in Nigeria is now properly regulated by the Act.

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<sup>3</sup> Fuscaldo and others, ‘Equipment Leasing Guide’, <<https://www.businessnewsdaily.com/8083-equipment-leasing-guide.html>> accessed 29 April 2021

<sup>4</sup> Equipment and Leasing Act, 2015.

This paper discusses equipment leasing practice in Nigeria with a view to see if it is an aspect of secured credit transaction. If the paper so finds, it will call for harmonization of operating laws of the seeming two transactions into a single Act instead of putting them into fragments that will negatively impact the overall contribution of secured credit transaction to the economy. This, the paper will look at what equipment leasing is, nature of equipment leasing, equipment leasing and hire purchase and types of equipment leasing on one ambit and what secured credit transactions and its nature is, on the other. The paper will consider the mix between the two, and draw out a summary, conclusion and make recommendations.

## **2. What is Equipment Leasing?**

According to Ehigiator<sup>5</sup> ‘although there is no specific definition of a lessee under the aforementioned provision of the Act it is clear that a lessee is the transferee of an equipment under a lease transaction. The lessee retains the possession of the equipment and uses same in line with the terms and conditions of the lease agreement’. Explaining further, the author said<sup>6</sup> ‘equipment leasing is a financing or capital acquisition device whereby a person known as the lessor transfers possession and the use of equipment to another known as the lessee’.

Equipment Leasing was defined as ‘a lease is in essence an extended rental agreement wherein the owner of the equipment (the lessor) allows the user (the lessee) to operate or otherwise make use of the equipment in exchange for periodic lease payments’<sup>7</sup>. According to Peden<sup>8</sup>

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<sup>5</sup> Ehigiator O, n2.

<sup>6</sup> Ibid

<sup>7</sup> “Referenceforbusiness.com” <<https://www.referenceforbusiness.com/small/Di-Eq/Equipment-Leasing.html#ixzz6uHviBXvR>> accessed 8 May 2021

<sup>8</sup> Peden J R., ‘The Treatment of Equipment Leases as Security Agreements Under the Uniform Commercial Code’, *Williams & Mary Law Review* 1971 (13 Wm. & Mary L. Rev. 110),

Like any other form of installment credit or loan transaction providing for the debtor's acquiring possession of goods, an equipment lease enables the lessee to obtain the use of goods without providing the full capital. Similar to a conditional sale or chattel mortgage, the equipment lease also enables the financier to protect his investment by retaining title to the leased goods".

An equipment lease agreement is a contractual agreement where the lessor, who is the owner of the equipment, allows the lessee to use the equipment for a specified period in exchange for periodic payments. The subject of the lease may be vehicles, factory machines, or any other equipment.<sup>9</sup> Equipment leasing is 'a contract between a lessor and lessee for the hire of a specific asset(s) selected from a manufacturer or vendor of such asset by the lessee'.<sup>10</sup> Agreeing with the foregoing, R.A. Brealey and S.C. Myers<sup>11</sup> opined that 'lease is in essence an extended rental agreement under which the owner of the equipment allows the user to operate or otherwise make use of the equipment in exchange for periodic lease payments. In leasing terminology, the owner is the lessor, the user is the lessee'.

Drawn from the various foregoing definitions, the writer holds the view that equipment leasing is a type of financing in which the small business owner rents the equipment rather than purchasing it.

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<<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2650&context=wmlr>> accessed 8 May 2021

<sup>9</sup> Goggle.com, 'meaning of equipment leasing'

<<https://www.google.com/search?q=meaning+of+equipment+leasing&oq=meaning+of+equipment+le&aqs=chrome.1.69i57j0j0i22i30i3j0i390i2.12709j1j15&sourceid=chrome&ie=UTF-8>> accessed 8 May 2021

<sup>10</sup> Samphina Academy, 'equipment leasing in Nigeria, problem and prospects'  
<<https://samphina.com.ng/equipment-leasing-nigeria-problem-prospects/>>  
accessed 8 May 2021

<sup>11</sup> Brealey and Myers, 'Equipment Leasing',

<<https://www.inc.com/encyclopedia/equipment-leasing.html>> accessed 16 May 2021

Business owners can lease expensive equipment such as machinery, vehicles, computers and other tools needed to run a business. The equipment is leased for a specific period. Once the contract is up, the business owner must return the equipment, renew the lease or buy the equipment.

### 3. What Is the Nature of Equipment Leasing

Explaining the nature of equipment leasing, Ehigiator<sup>12</sup> said, ‘Equipment leasing is different from equipment financing which is taking out a business loan to purchase the equipment and paying it off over a fixed term with the equipment as collateral. In that case, you own the equipment once you pay off the loan. With an equipment lease, the equipment is not yours to keep once the leasing term is over’. Agreeing with him Entrepreneur.com<sup>13</sup> said ‘*obtaining the use of machinery, vehicles or other equipment on a rental basis. This avoids the need to invest capital in equipment. Ownership rests in the hands of the financial institution or leasing company, while the business has the actual use of it*’. Making her contribution Accountlearning.com<sup>14</sup> said, “**equipment Leasing** provides a flexible, creative alternative to buying as a way of obtaining the necessary equipment to run a cash-short business. Leasing is used for a wide variety of equipment ranging from airplanes to vehicles to kitchen equipment for a restaurant to computers’. Accountlearning.com further said<sup>15</sup> ‘In the typical **equipment-leasing arrangement**, an equipment-leasing company (the lessor) buys equipment or other fixed assets. It then

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<sup>12</sup> Ehigiato O, n2

<sup>13</sup> Entrepreneur.com, ‘equipment leasing’

<<https://www.entrepreneur.com/encyclopedia/equipment-leasing>> accessed 8 May 2021

<sup>14</sup> Accountlearning.com, ‘equipment leasing, meaning, types’<<https://accountlearning.com/equipment-leasing-meaning-types/>>, accessed 8 May 2021

<sup>15</sup> Accountlearning.com, ‘equipment leasing’ <<https://accountlearning.com/equipment-leasing-meaning-types/>> accessed 8 May 2021

executes a contract with the entity (the lessee) that will use the asset. In return for the use of the asset, the lessee makes fixed payments to the lessor for a specified period’.

From a different perspective, Olubor<sup>16</sup> opined that ‘a lease agreement usually involves two parties, the lessor (financier) and the lessee (debtor). The lessor reserves title in the property and is often regarded as the legal owner of the property, while the lessee is given the right to use the property in return for instalment fees consensually agreed between both parties’. The lessee has the right to use the property for a set period of time while being able to control the use of the property exclusively. In most cases, the funds used to purchase the property is financed by the lessor of the equipment, or the lessor might be an independent third party, or an affiliate of the seller (a finance entity created by the lessor to facilitate lease transactions). The lessor is then granted a security interest in the acquired equipment in order to secure the repayment of the loan. Supporting this view, Lendingtree<sup>17</sup> held the view that:

Equipment financing allows business owners to fund equipment without paying the full price upfront. This enables business owners to secure necessary equipment such as industrial machinery, computers and commercial vehicles while spreading the expense over several years. The equipment you finance secures the loan, which means the financing company can seize the equipment to recoup losses if you default on the loan.

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<sup>16</sup> Olubor O, ‘The Next Frontier for Finance Leasing in sub-Saharan Africa: Revising Secured Transactions Law in Nigeria’, <<https://publications.aston.ac.uk/id/eprint/39366/1/84>> accessed 29 April 2021

<sup>17</sup> Lendingtree.com, ‘business equipment’ <<https://www.lendingtree.com/business/equipment/>> accessed 29 April 2021

R.A. Brealey and S.C. Myers<sup>18</sup> drawing out the nature of a lease opined that ‘companies can finance their capital equipment by debt or equity. Capital leases are a form of debt-equity financing since such leases act like loans, they must be recorded as liabilities on balance sheets, and are also treated as liabilities by the IRS. Operating leases, however, permit the company to obtain equipment with virtually no upfront capital outlay and with the lease payments treated as a deductible cost of business’.

*Section 3* of the Equipment and Leasing Act, 2015<sup>19</sup> provides as follows:

“(1) Equipment leasing is divided into three main classes: finance lease; (b) operating lease; (c) other variants of either (a) or (b)”

The necessary implication of the above provision is that Equipment Leasing in Nigeria can be such that the Lessee may or may not have interest in the leased equipment. Equipment leasing in Nigeria pursuant to our enabling law may be such that title may or may not be transferred to the Lessee at the end of the lease period, depending on the three main classes of equipment leasing as provided in *Section 3(1)*<sup>20</sup>.

#### 4. Types of Equipment Leasing Practices

There are basically two types of equipment leasing. They are:

- i. Operating lease; and
- ii. Finance lease.

**Operating Lease:** Most small value equipment, such as office machines, are leased with an operating lease. In an operating lease, the lessee can typically return the equipment to the lessor any time after proper notice. The lease payments are treated as operating

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<sup>18</sup> Brealey and Myers, n11.

<sup>19</sup> Equipment and Leasing Act, 2015

<sup>20</sup> Equipment and Leasing Act, n19

expenses, deducted immediately from operating revenues for accounting and tax purposes.

**Financial Lease:** In contrast, a lessee cannot cancel a finance lease (often called full payout or closed end lease). The lease payments recover most of the equipment cost for the lessor together with interest on the investment. Financial lease must be capitalised as a liability on the lessee's balance sheet.

Contributing to the types of equipment leases, Fuscaldo and others<sup>21</sup> observed that:

*There are two primary types of equipment leases. The first is known as an operating lease. In short, this structure allows a company to use an asset for a specific period of time without ownership. The lease period is usually shorter than the economic life of the equipment. At the end of the lease, the lessor can recoup additional costs through resale.*

*Unlike an outright purchase or equipment secured through a standard loan, equipment under an operating lease cannot be listed as capital. It's accounted for as a rental expense. This provides two specific financial advantages:*

- 1. Equipment is not recorded as an asset or liability.*
- 2. Equipment still qualifies for tax incentives.*

*Dealers' rates may vary widely, but in general, the average APR for an operating lease is 5% or lower. Average contracts last 12 to 36 months.*

*With the prevalence of leasing, new accounting regulations from the Financial Accounting*

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<sup>21</sup> Fuscaldo and others, 'equipment leasing guide'

<<https://www.businessnewsdaily.com/8083-equipment-leasing-guide.html>>  
accessed 29 April 2021.

*Standards Board require companies to reveal their lease obligations to avoid the false impression of financial strength. In fact, all but the shortest-term equipment leases must now be included on balance sheets. While leased equipment does not have to be reported as an asset under an operating lease, it's far from free of accountability. Finance lease or capital lease. Sometimes known as a finance lease or capital lease, this lease structure is similar to an operating lease in that the lessor owns the equipment purchased. It differs in that the lease itself is reported as an asset, increasing your company's holdings as well as its liability.*

In their further contribution, Fuscaldó<sup>22</sup> also agreed that there are two types of lease, namely the Operating lease and Finance lease or capital lease. According to them, the operating lease allows a company to use the leased equipment without ownership of the leased equipment at the end of the leased period. According to them,<sup>23</sup> while ‘unlike an outright purchase or equipment secured through a standard loan, equipment under an operating lease cannot be listed as capital. It's accounted for as a rental expense’ which according to them provides two financial advantages as the equipment is not recorded as an asset or liability and the equipment will still qualify for tax incentives. The finance lease or capital lease on the other hand has a lease structure ‘similar to an operating lease in that the lessor owns the equipment purchased. It differs in that the lease itself is reported as an asset, increasing your company's holdings as well as its liability. Commonly used by large companies, such as major retailers and airlines, this setup provides a unique advantage, as it allows the company to claim both the depreciation tax credit on the equipment and the interest expense associated with

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<sup>22</sup> n21.

<sup>23</sup> Ibid

the lease itself. In addition, the company may choose to purchase the equipment at the end of a finance lease<sup>24</sup>. Making its contribution to the discussion, R.A. Brealey and S.C. Myers<sup>25</sup> said:

The two primary types of leases are operating and long-term or "capital" leases. Operating leases are characterized by short-term, cancelable terms; the lessor bears the risk of obsolescence and enjoys such benefits as depreciation, including, if applicable, accelerated depreciation. These leases are generally preferable when the company needs the equipment for a short period of time. Under the usual terms of operating leases, a lessee can usually cancel the lease, assuming prior notice, without a major penalty. Long-term, "capital," non-cancelable leases, also known as full payout or financial leases, are sources of financing for assets the lessee company wants to acquire and use for longer periods of time. Most financial leases are "net" leases, meaning that the lessee is responsible for maintaining and insuring the asset and paying all property taxes, if applicable. Financial leases are often used by businesses for expensive capital equipment.

Contributing further, R.A. Brealey and S.C. Myers<sup>26</sup> said 'in addition to these two basic leasing models, a considerable variety of

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<sup>24</sup> Bushnell M, Equipment Leasing: 'A Guide for Business Owners, Business News Daily',

<<https://www.businessnewsdaily.com/8083-equipment-leasing-guide.html>> accessed 29 April 2021

<sup>25</sup> Brealey and Myers, 'Equipment Leasing'<

<https://www.inc.com/encyclopedia/equipment-leasing.html>> accessed 16 May 2021.

<sup>26</sup> Ibid 'encyclopedia equipment leasing'

<<https://www.inc.com/encyclopedia/equipment-leasing.html>> accessed 15 May 2021

other lease arrangements are often used. These leases, each of which combine different financial and tax advantages, are actually hybrids of financial and operating leases that reflect the individual needs of lessor companies. For example, full-service leases are leases wherein the lessor is responsible for insurance and maintenance (these are commonplace with office equipment or vehicle leases). Net leases, on the other hand, are leases wherein the lessee is responsible for maintenance and insurance. Leveraged leases, meanwhile, are arrangements wherein the cost of the leased asset is financed by issuing debt and equity claims against the asset and future lease payments’.

## **5. What is Secured Credit Transaction**

Having so far discussed equipment leasing, it is thus ripe for us to have an understanding of what is secured credit transaction before looking at the mix between equipment leasing and secured credit transaction.

It is also the writer’s view that in order to have a thorough and indebt meaning of what is secured credit transaction, it is better to understand secured credit from this simple analogy a businessman. It is not at all times that a businessman has money to execute all his contracts. Therefore, most often businessmen resort to credit financing. In this credit financing a financier often times rely of the credit worthiness of a businessman and also oftentimes requires from the businessman to pledge collateral as a way of providing security for the debt. It is this later aspect of financing which requires the borrower to provide collateral that we refer and/or describe as secured credit transaction. Therefore, secured credit transaction, refers to the practice in which the debtor or a third party creates an interest in an asset in favour of the creditor, as a guaranty to repay a loan, which upon the debtor’s default entitles the creditor to possess and sell the asset to satisfy the financial exposure. Agreeing with this view, Nwuba and Others were of the opinion that

‘credit contracts often require borrowers to pledge collateral as a way of providing security for the debt.’<sup>27</sup> Such credits are described as secured. Secured credit transaction therefore refers to the practice in which the debtor or a third party creates an interest in an asset in favour of the creditor, as a guaranty to pay a loan, which upon the debtor’s default entitles the creditor to possess and sell the asset to satisfy the financial obligation. In contrast, unsecured credit transaction has no pledge of asset but considers the personal integrity, the social status and record of accomplishment of the borrower as well as guarantee of a third party’. As observed by Brown and Evangel ‘where one person lends money to another, he may be satisfied with the consequent personal obligation of the debtor to repay the loan and upon default sue for the money. In many cases, the lender requires security transcending the mere personal obligation of the debtor to repay the loan. As a result, the creditor is granted rights over a tangible or intangible asset of the debtor or of a third party.’<sup>28</sup>

It is good to point out that it is the transaction whereby a security is required in addition to assurance for payment that is referred to as secured credit transaction. In the view of Chianu,

Individual and corporate money lenders desire to recover the money they lend. They have a choice between relying on a borrower’s promise to repay without asking for something in addition to the bare promise. Most prudent lenders realize the precariousness of a bare promise: the borrower may drop dead, he may become bankrupt, or he may simply obdurately refuse to pay. Consequently, most

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<sup>27</sup> Nwuba and others, “The Application of Real Estate as Loan Collateral in Nigeria’s Banking Sector”, *Research Journal of Finance and Accounting*, 2013 (Vol. 4, No. 11), 63.

<sup>28</sup> Brown and Evangel ‘Mortgage, Pledge and Charge Transaction in Nigeria: Comparative/Distinctive Analysis and Legal Examination’, *IOSR Journal of Business and Management* 2013 (Vol. 13, Issue 6) 100.

shrewd lenders insist on something to assure them that on the borrower's default they would not have lost their investment.<sup>29</sup>

This is because, they will resort to such security given to them on the event of default by the borrower. The learned author further observed that 'foresightful lenders prefer security of a proprietary character, security that has property backing, real security. This elevates the creditor to the status of a secured creditor, giving him something out of which he is entitled to have his debt paid in preference to the unsecured creditor.'<sup>30</sup>

Furthermore, giving a conceptual view of secured credit transaction, Smith said that 'a lender has two options in providing credit facility. Reliance may be placed on the borrower's covenant to repay having been satisfied of the viable purpose for which the credit facility is required and the certainty of the source of repayment'<sup>31</sup>. He went further to balance his position when he said 'another option is for the lender to take, in addition to the debtor's covenant to repay, tangible assets and personal assurances in the form of guarantee or indemnity as security for the loan'.<sup>32</sup>

In his contribution Dugger opined that 'when a debtor borrows money, the credit transaction can be secured or unsecured. A secured transaction is any deal in which a creditor receives a security interest in the debtor's property. The creditor is known as the secured party. The secured party holds a security interest in the debtor's property in order to ensure the debtor's payment.'<sup>33</sup>

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<sup>29</sup> Chianu E, *Law of Securities for Bank Advances: (Mortgage of Land)*, (Ambik Press, 2007), 1

<sup>30</sup> Ibid

<sup>31</sup> Smith I O, *Nigerian Law of Secured Credit* (Ecowatch Publishers Limited, 2001)1

<sup>32</sup> Ibid

<sup>33</sup> Dugger A. 'Academy lesson', <<http://study.com/academy/lesson/secured-transactions-examples-explanations.html>> accessed 30 August 2016

Secured credit transaction drawing from the foregoing, therefore, refers to the practice in which the debtor or a party creates an interest in an asset in favour of the creditor as a guaranty to pay loan, which upon the debtor's default entitles the creditor to take possession of the asset and sells same to satisfy the financial obligation. In contrast thereto, unsecured credit transaction has no pledge of asset but considers the personal integrity of the borrower as well as guarantee of a third party.

## **6. Whether there is a Mix Between Equipment Leasing and Secured Credit Transaction**

The mix refers to the confluence of the two concepts. The question then arises, is there where the two concepts touch each other? Is a correlation between the two concepts at all? If there is, are they mutually exclusive or can they be brought under one umbrella with a view for a call to deepen the scope of their practice in order to derive from the strong points the two divides present to the economy which will act as a tool to strengthen our economic development, instead of having them fragmented and eventually not practicing them in-depth thereby losing the essence of their combined economic effect? The central discussion on whether there is a mix in the practice of equipment leasing and secured credit transaction, we will rely more on how equipment leasing is practiced in Nigeria, since the practice is the same world over.

From our earlier discussions, equipment leasing practice in Nigeria can be said to be divided into two types, the Operating lease and Finance lease or what we may also call capital lease. Notwithstanding the type of equipment leasing, there are typically some elements common in any of them. These common elements are:

- i) That there is an asset that is the subject of the lease; the lessor who holds title to the asset, and

- ii) there is a lessee who exchanges something of value for use and enjoyment of the asset.

In all these elements, there is often a fourth element that may have provided the funds used for the purchase of the equipment for the lease who hold on the equipment as security for his loan and has the power to get hold of the equipment and who has the capacity to dispose same to recoup his investment.<sup>34</sup> On all fours, this is a form of secured credit transaction. Again, when you consider equipment financing as a form of equipment leasing which involves making periodic payments over a period of time. Where the total sum to be eventually paid for the equipment is agreed that it be paid in instalments, as to cover the cost of investment and return on investment, typically, it is also a form of secured credit transaction as the lessor holds title to the property as security over his investment. More so, such investor is empowered to take back his equipment, sell same to recoup his investment in the event of non instalment payments as agreed by the lessee. Even under the operating lease which may not end in making the lessee the owner of the equipment leased, this type of lease still possesses a form of holding the leased equipment by the lessor as a form of security for payment by the lessee and the equipment is often taken away from the lessee in the event of the lessee renegeing and/or refusing to make the periodic installment payments. Therefore, drawing from these, one can simply hold the view that equipment leasing is a form of secured credit transaction.

Apart, from the foregoing which has explained the mix between equipment leasing transaction and secured credit transaction, the wider call in discussing the mix between equipment leasing transaction and secured credit transaction is the view that since equipment leasing transaction in Nigeria, vice a vice our findings

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<sup>34</sup> Bloomberg Law: Finance, 'Overview-Equipment Leveraged Leasing (Pre-Transaction Considerations)', <[www.bloomberglaw.com](http://www.bloomberglaw.com)> accessed 26 October, 2025.

that equipment leasing is a form of secured credit transaction, therefore, benefits accruing to the economy of Nigeria from the practice of equipment leasing in Nigeria should be at par with what accrues to other economies like the United States of America where equipment leasing is also practiced.

In order to determine the impact equipment leasing has brought to bear on secured credit transaction, it is necessary to look at the state of secured credit transaction in Nigeria before the enactment of the Equipment and Leasing Act<sup>35</sup>. According to Iheme<sup>36</sup> ‘Nigerian secured transactions law is in dire need of reform because it no longer provides easy access to credits, especially to the SMEs, due to its compartmentalized form, which lacks predictability and comprehensiveness’. This was the state of secured credit transaction before now. More explicitly, the author<sup>37</sup> further said:

First, the existing laws provide vague requirements with respect to the creation and registration of security interests in personal property of which in some cases, registration is not even required, thereby creating the ostensible ownership problems between a secured party and a third party. Second, due to the complex and outdated formalities that exist, lenders often lose out on technical grounds or would have to always hire professionals to comb through the compartmentalized and not-easily-comprehensible secured transactions law that increases transactions cost, which is eventually borne by the debtor through high interest rates. Third, the compartmentalized and

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<sup>35</sup> Equipment and Leasing Act, n19.

<sup>36</sup> Iheme W, ‘A Critical Review of the Current Laws on Secured Transactions in Nigeria’,  
<[https://www.researchgate.net/publication/306231592\\_A\\_Critical\\_Review\\_of\\_the\\_Current\\_Laws\\_on\\_Secured\\_Transactions\\_in\\_Nigeria](https://www.researchgate.net/publication/306231592_A_Critical_Review_of_the_Current_Laws_on_Secured_Transactions_in_Nigeria)> accessed 18 May 2021

<sup>37</sup> Ibid.

unlinked nature of the various applicable laws often leads to conflicting priority rules among secured creditors and other lien holders worsened also by the lack of a collateral registry that would have served both a publicity function as well as a system of perfection. As lenders are faced with these problems, coupled also by a weak enforcement mechanism a slow judicial system, plus a legal framework that has not expressly allowed self-help repossession of collateral the overall effect is the severe apathy towards lending, refusal to accept personal property as collateral, increase in lenders' monitoring costs.

Having brought out the issues bedeviling secured credit transactions in Nigeria, the question still subsists 'how has equipment leasing' impacted on secured credit transaction. In order to answer this question, we will explore if equipment leasing is a secured credit transaction or not. From our discussions on the categories of equipment lease, it is clear from the works of several authors that equipment lease is made up of two types, namely, Operating lease and Finance lease. While it could be said that operating lease at first sight do not have the characteristics of a secured lending as its intension is not to create a security interest through the lease, the finance lease in all intents and purposes is a secured credit transaction as it creates security interest in the leased property.

The combined provisions of Sections 2 and 3 of the Act<sup>38</sup> hitherto cited classify finance lease as equipment lease. The implication of this classification is that finance lease as a transaction that creates security interest in a leased property, is a secured credit transaction since the Lessor did not want to solely rely on the mere promise of the Lessee as the only assurance for the repayment of his investment and also is at liberty to sell the leased property in the event that the

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<sup>38</sup> Equipment and Leasing Act, n19.

lessee is unable to fulfill the installmental payment at the end of the lease period in order to recoup his investment. Buttressing this point Olubor<sup>39</sup> said “A financial lease can serve a security purpose, and thus would qualify as a security device in a legal system with a functional approach of taking security, but an operating lease will not qualify as such”.

Having established that equipment leasing is a secured credit transaction and that the business of equipment leasing is regulated by the Equipment and Leasing Act, 2015, it is now ripe to find out how equipment leasing has impacted secured credit transaction. We will now consider the various aforesaid problems bedeviling secured credit transaction before the enactment of the Equipment and Leasing Act in 2015 to see how the Act has which regulates the practice of equipment leasing, has through its regulations impacted on secured credit transaction in Nigeria.

Firstly, making his contribution on this, Olubor<sup>40</sup> said ‘Leasing allows businesses to make use of equipment’s which they have not purchased out-rightly, while using the financial benefits arising from using the leased equipment as the means to pay the lease installment payment. Additionally, equipment leasing helps businesses to manage their financial resources prudently since they can use the cash for other pressing needs such as employee remuneration, developing marketing strategies, procuring raw materials etc., with a higher return on investment, as against investing an immediate property acquisition which could stifle their business operations.’ It is important to note that equipment leasing as a secured credit transaction by doing these has impacted positively on secured lending. Notwithstanding the above, the positive impact of

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<sup>39</sup>Olubor O, ‘The Next Frontier for Finance Leasing in sub-Saharan Africa: Revisiting Secured Transactions Law in Nigeria’, <[https://publications.aston.ac.uk/id/eprint/39366/1/84\\_OTAOOR\\_OLUBOR\\_The\\_Next\\_Frontier\\_for\\_Finance\\_Leasing\\_in\\_sub\\_Saharan\\_Africa.pdf](https://publications.aston.ac.uk/id/eprint/39366/1/84_OTAOOR_OLUBOR_The_Next_Frontier_for_Finance_Leasing_in_sub_Saharan_Africa.pdf)> accessed 15 May 2021

<sup>40</sup> Ibid

equipment leasing on secured credit transaction can further be seen as follows:

- a. On the issue of existing laws providing vague requirements with respect to the creation and registration of security interests in personal property which creates the ostensible ownership problems between a secured party and a third party. Equipment leasing by the singular regulating Act<sup>41</sup> made vivid provisions as to how equipment leasing is to be created and how it is to be registered in Sections 13 and 14 of the Act<sup>42</sup>.
- b. On the issue of complex and outdated formalities which exist in laws governing secured credit transactions which make lenders often lose out on technical grounds or would have to always hire professionals to comb through the compartmentalized and not-easily-comprehensible secured transactions law which increases transactions cost that is eventually borne by the debtor through high interest rates, the equipment leasing which is a singular Act is very easy to comprehend. More so, the Act from the beginning of the lease agreement makes it clear that the lessor is the owner of the leased equipment all through the duration of the lease period.
- c. The issue of conflicting priority rules among secured creditors and other lien holders and also lack of a collateral registry that would have served both a publicity function as well as a system of perfection are issues that Equipment and Leasing Act has solved. The Act in Section 13 made it clear that equipment leasing be registered and in its Section 7 provides a central Registry for the registration of equipment leasing agreements known as Registration Authority.

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<sup>41</sup> Equipment and Leasing Act, n19

<sup>42</sup> Ibid

From the foregoing, the extent equipment leasing has impacted secured credit transaction can be ascertained.

## **7. Summary**

In summary, this unique financing instrument in Nigeria, though relatively unknown to many has been contributing to the socio-economic development of the country and is even more relevant in our present economic reality, where outright purchase of assets is increasingly becoming difficult especially to the Small and Medium Scale Enterprises (SMEs)<sup>43</sup>. This success can be traced to how equipment leasing is practiced pursuant to its enabling law. Drawn from the various discussions in this paper, it is the opinion of the writer that since secured credit transaction is a transaction which enables the debtor create an interest in an asset in favour of the creditor, as a guaranty to repay a loan, which upon the debtor's default entitles the creditor to possess and sell the asset to satisfy his financial obligation and equipment leasing also creates an interest in the leased equipment in favour of the lessor which empowers the lessor in the event of failure of the lessee to fully pay off the leased sum, to repossess the leased equipment as to sell same in order to recoup his investment, the two types of transactions are therefore, the same. This argument is further to the effect that the enactment of equipment leasing Act in 2015 and subsequent enactment of the Act in moveable properties should have been made to jointly address the issues as contained in the equipment leasing Act and make the two Acts one singly enforceable Act that will generally impact positively on secured credit transaction. After all, equipment being leased are all moveable properties and the later Act is meant to regulate secured credit transactions using moveable properties.

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<sup>43</sup> Elannigeria.org, 'Lease financing in Nigeria' <<https://elannigeria.org/lease-financing-in-nigeria/>> accessed 29 April 2021

## **8. Conclusion**

In conclusion, it is the writer's view that since equipment leasing is a security-based transaction whereby the equipment is used as security for the money advanced for the purchase of the equipment, then it is safe to say that equipment leasing is nothing but an aspect of secured credit transaction. This is the mix that this paper is set out to find. The writer therefore, having found this, then calls for harmony both in practice and laws regulating both credit-based transactions.

## **9. Recommendations**

As has been observed in this paper, equipment leasing is but an aspect of secured credit transaction. It is the position of this paper that if the following recommendations are followed, the practice of equipment leasing will not only be impacted positively but the entire spectrum of secured credit transaction will be harmonized:

- a. That the entire secured credit transactions should have and be regulated by a central singular law that will regulate the practice of secured credit transactions in Nigeria. Doing this will help secured credit transaction practitioners to overcome the challenges that have in the past impacted negatively on secured credit transactions.
- b. Enforcement rules upon default should be made more stringent so as to give lessors confidence in the practice of equipment leasing.
- c. Proper enlightenment should be made as many businessmen in Nigeria are not aware of the numerous benefits that are derivable in equipment leasing.