
February 2012

New act on lease of movable property?

In November 2007, Bertil Bengtsson was appointed to make an examination concerning the Consumer Services Act. In the memorandum he presented in conjunction with that examination, he concluded that the Consumer Services Act should not contain any rules on lease of movable property since lease of movable property does not legally constitute a service. Bertil Bengtsson was of the opinion that a separate examination regarding lease of movable property was required. Lease of movable property is very common in today's society and Bertil Bengtsson deems it to be important that there are clear rules on what applies between lessors and consumers.

In June 2010, Bertil Bengtsson submitted a memorandum to the Ministry of Justice called "Lease of Movable Property" (Sw. "Hyra av lös sak")(Ds 2010:24). The memorandum deals with questions concerning lease of movable property to consumers, e.g. boats and machines. It is proposed that the act shall apply to all agreements on lease of movable property which have a term shorter than one year. The act shall primarily be mandatory to the benefit of the consumer, and it shall hence not be possible to waive any of the rules, unless expressly permitted under the act.

From the proposal it is evident that the act only shall reflect those principles which already apply, and which thus now only are codified. However, there are some gaps where it is not clear what applies, and Bertil Bengtsson is of the opinion that clearer regulation is needed in such parts.

Some examples from the proposal:

- Agreements without any determined term applies until further notice, and may be terminated by the lessor on two weeks' notice and by the consumer with immediate effect. However, this rule is dispositive. It is thus important to agree on a notice period for when the consumer terminates the agreement in order to avoid immediate termination.
- If damage arises during the lease period to the degree that the property cannot be used for the intended purposes, the agreement lapses. For damage without that effect, the lessor has to remedy the damage. Sanctions in the event of damage rendering the leased property unusable may be waived or amended between the parties.
- In the event of faults in the property, the consumer is entitled to withhold a portion of the lease corresponding to the fault until the fault is remedied.
- The consumer may not assign the agreement to a third party without prior approval.

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One disadvantage of the proposal is that the act only shall apply to agreement with a term shorter than one year. This means that the protection which the act is supposed to provide will not comprise all lease agreements concluded with consumers. One example is leasing agreements regarding cars which usually apply for more than one year. However, all agreements regarding lease for a certain season, such as lease of a boat during the holidays, lease of skis during a trip to the mountains, lease of canoes, bicycles etc.

There is no schedule for when the parliament may make a resolution on a possible act on lease of movable property or when such an act may come into effect. If the proposal is adopted, it is however important that companies leasing out property to consumers examines their terms and conditions and routines as regards the lease, so that these comply with the non-dispositive rules.



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