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The Impact of New Accounting Rules on the Operating Lease Contract

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Summary:

Today, interest in financial or operational leasing contracts has reached a new level of interest in the legislation of developed countries, as the Financial Accounting Standards Board issued an amendment under a new rule that has entered into force since the end of 2018, and according to this rule, public and private companies must recognize all lease contracts in their budgets. Provided that the duration of these contracts exceeds twelve months. This rule includes the operating lease. Prior to the amendment, operating leases were accounted for as off-balance sheet financing, meaning that the leased assets and liabilities associated with future operating lease payments were not included on the company's balance sheet. This previously allowed billions of dollars to be kept in American companies because they did not report their assets and liabilities on the general balance sheet. While we find that the Syrian legislator still does not fully observe the contract in its civil or commercial legislation, despite the economic and industrial power it has become in developed countries.

Key Words: Operating Lease Contract, Lease Contract, Lessee Contract, Lessor.

أثر القواعد المحاسبية الجديدة على عقد التأجير التشغيلي

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الملخص:

قد بلغ الاهتمام اليوم بعقود التأجير التمويلي أو التشغيلي مستواً جديداً من الاهتمام في تشريعات الدول المتقدمة، حيث أصدر مجلس معايير المحاسبة المالية تعديلاً بموجب قاعدة جديدة دخلت حيز التنفيذ منذ نهاية عام 2018، وبموجب هذه القاعدة يتعين على الشركات العامة والخاصة الاعتراف بجميع عقود الإيجار في ميزانياتها شرط أن تتعدى مدة هذه العقود الاثني عشر شهراً. تتضمن هذه القاعدة عقد الإيجار التشغيلي. قبل التعديل، كان يتم احتساب عقود الإيجار التشغيلية كتمويل خارج الميزانية العامة، وهذا يعني أن الأصول المستأجرة والالتزامات المرتبطة بمدفوعات الإيجار التشغيلي المستقبلية لم تكن مدرجة في الميزانية العامة للشركة. وهذا سمح، فيما سبق، بالاحتفاظ بمليارات الدولارات في الشركات الأمريكية لأنها لا تبلغ عن أصولها والتزاماتها في الميزانية العامة. بينما نجد أن المشرع السوري ما زال لا يلحظ العقد بشكل كامل في تشريعه المدني أو التجاري بالرغم ما أصبح يشكل من قوة اقتصادية وصناعية في الدول المتطورة.

الكلمات المفتاحية: عقد التأجير التشغيلي، عقد الإيجار، عقد المستأجر، المؤجر.

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Introduction:

The Financial Accounting Standards Board (FASB) has issued an amendment under a new rule to be in effect since December 15, 2018, under this rule public and private companies are required to recognize all leases on the balance sheet unless they are shorter than 12 months.

This rule involves operating lease, that is a contract which allows the employ of an asset without make over ownership rights to the lessee. Before the amendment, operating leases were accounted for as off-balance sheet financing - this meant that the leased asset and the liabilities associated with future lease payments were not on the company's balance sheet, to keep the debt-to-equity ratio low. Historically, operating leases have allowed U.S. companies to hold billions of dollars because they did not report their assets and liabilities on balance sheets.

Research question. The research lies in a very important question: defining the purpose and importance of this amendment?

To understand the impact of this amendment which illustrates its purpose and importance, we must answer these questions:

1- What is an operating lease?

2- How to distinguish an operating lease contract from a capital lease one?

3-What is the Financial Accounting Standards Board (FASB)?

4-And what is the impact of this applied amendment on operating lease contract؟

The importance of the research stems from the search for an answer to the question raised in determining the purpose of this amendment, the extent of its positive impact on developing the legislative structure of the operating lease contract, and its role in creating a new environment for investment in light of the general economic recession as a result of the many changes that have recently occurred in the global economy.

The research aims to find a balance between developing the legislative structure of the lease operating contract and encouraging investment, considering that the new amendment introduced by the American government would strengthen the large gains that the American investor had kept for himself.

Research Methodology. Based on the nature of the study and its objectives, this study relies on a theoretical aspect that utilizes both an comparative and analytical approach. This methodology includes concluding by extrapolating knowledge about the problem of the study. Then, analyses it in order to provide answers to the study questions.

The research was conducted in compliance with the following steps: collecting scientific material from its sources, then formulating the research in a precise and clear scientific manner, and avoiding ambiguous words and scientific terms mentioned in the research. Documenting texts and quotations from their sources, documenting opinions and ideas, and attributing them to their owners. The study recognized judicial applications required. At the end conclusion and was added that included the research results and appropriate recommendations.

Paragraph I. The definition of the operating lease contract and new rules accounting:

Perhaps it is worth studying it in the first place in order to understand well the impact of the new financial accounting rules approved by the United States on the operating lease contract is to study the definition of the contract on the one hand and what these rules are on the other.

In this part of the research, we will review the definition of the financing operating lease contract and what are the new accounting financial rules that affected this contract in preparation for clarifying the consequences of these rules.

1. Definition of the operating lease contract:

The US legislator did not provide a certain definition of the operating lease contract in the Unified Commercial Code (UCC) , but included its definition within the article 2A-103(1)(I)(x) of UCC that defined leases as " a transfer of the right to possession and use of the named goods for a set term in return for certain considerations" (Business Law, Henry.R. Cheeseman, fifth edition, Upper Saddle River, NewJersey07458, p384), by this definition operating lease contract is appeared as the most common form of lease contracts in commercial transactions.

The Black's Law Dictionary in the eighth edition defines it as " A lease of property (esp. equipment) for a term that is shorter than the property's useful life. Under an operating lease , the lessor is typically responsible for paying taxes and other expenses on the property."(Black's Law Dictionary (8th ed. 2004). Cf. LEASE-PURCHASE AGREEMENT. p.2835)

This definition indicates that the short term of this contract , which is relatively short in relation to the economic life of the leased property , is dominated by the nature of modern technological equipment , the responsibility of maintenance by the lessor , paying taxes and taking care of all other expenses of ownership , these all confirm the impossibility of owning the leased property at the end of the contract and give the operating lease contract flexibility in commercial transactions.

We mention some of the main points regarding the lease contract in general in Syrian law: Renting real estate: Renting real estate intended for housing, summer vacation, tourism, or recreation, or rented from official institutions, popular organizations, unions, associations, administrative units, municipalities, educational institutions, or schools, is subject to the will of the contractors as of the effective date of this law. Properties leased for commercial and industrial businesses:

- Properties leased under the provisions of Legislative Decree No. 111 of 1952, which were leased after the entry into force of this law for commercial, industrial, craft, or legally regulated liberal or scientific professions, and which were subject to a provisional extension and determination of the rental allowance, became subject to the amendment (Machine Translation of "Add Text To Legislative Decree No. 111 Of 1952, Enclosing The Lease Act" (Syria) (global-regulation.com). Issued in 2001 with regard to residential real estate and the law of 2005 with regard to commercial real estate with a fixed term, thus the term has become an element of the contract and must be specified in the contract, and the tenant cannot remain in the leased property once the term has expired.
- Specific real estate fees: Specific real estate fees are determined based on specific percentages of the value of the rented property, with the addition of a percentage of the value of the furniture included in the lease contract.
- Rental period and allowance: It is prohibited to collect rent in advance for a period exceeding three months.
- Registration of contracts: Lease contracts must be registered with administrative units.
- These contracts include the identity of the contracting parties, their address, signature, and lease duration.

This is all that has been addressed in Syrian law regarding rent and its amendments, the latest of which was issued by Law No. 20 of 2015. Consequently, operating leases remained unregulated in general, which required attention, and necessitated discussion of the American text regulating the operating lease contract (وزارة العدل | moj.gov.sy). <متضمناً التعليمات التنفيذية>قانون الإيجار رقم 6 لعام 2001 (المعدّل بالقانون 2006/10)

2. Distinguishing between operating lease and capital lease:

To distinguish between the two leases, we have first to acknowledge the different criteria between them both. For a lease to be classified as an operating lease, it must meet certain requirements in accordance with generally accepted accounting principles (GAAP) that exempts it from being considered as a capital lease. Firms and companies must have four criteria that determine whether leases should be classified as operating leases or capital lease.

Subsequently, if any of the following criteria is found, the contract will be a capital lease, and if not, then it is an operating lease:

1) There is a transfer of ownership to the lessee at the end of the lease agreement.
2) The lease contains an option to purchase the property at a bargain price.
3) "The lease term exceeds 75% of the economic life of the asset.
4) The present value (PV) of the lease payments exceeds 90% of the asset's fair market value.(CAPITAL AND OPERATING LEASES-A RESEARCH REPORT-Susan S. K. Lee - Federal Accounting Standards Advisory Board-October 2003- p10-11. \ Also see 1.12.2021 https://www.investopedia.com/terms/o/operatinglease.asp)

On the other hand, the accounting treatments of GAAP in the United States for operating and capital leases need more clarification. Before the adoption of ASC 842 on 2018, lease classification determined how lease expense was recorded in the income statement, and whether a lessee was required to record an asset and a liability associated with its obligations under the lease. Classification was based on a number of criteria, including specific bright lines and numerous interpretations. Under ASC 842, virtually all leases require balance sheet recognition as a right-of-use asset and lease liability. However, lease classification will impact the amount and timing of lease income and expense (PWC Leases Updated December 2018/ 3-1, Financial Accounting Foundation, 401 Merritt 7, Norwalk, CT 06856, p 67) .

So for more illustration we can add this table about operating and capital leases' characteristics:

Type of Lease		Capital Lease	Operating Lease
Ownership		may be transferred to the lessee at the end of the lease term.	It is retained by the lessor during and after the lease term.
Bargain Price Option		enables the lessee to purchase the asset for less than the fair market value.	It cannot contain an option to buy the leased property.
Estimated Economic Life		equal to or greater than 75% of the estimated useful life of the asset.	Less than 75% of the estimated economic life of the asset.
		equal to or greater than 90% of the original cost of the asset.	The PV of lease payments is less than 90% of the asset's fair market value.
Taxes	Befor2018	As a landlord, the lessee claims depreciation and interest expenses.	the rent payment is a rental expense transaction.
	After2018	require balance sheet recognition as a right-of-use asset and lease liability.	
Risk \ benefits		Transfer to the lessee. He\she pays maintenance, insurance and taxes	Right to use only. Risks/benefit remain with the lessor. The lessee pays maintenance costs if he\she cause the damage (Merrill, T. W. (2020). The economics of leasing. Journal of Legal Analysis, 12, 221-272).

3. The Financial Accounting Standards Board (FASB):

The Financial Accounting Standards Board (FASB) is an independent, private- sector and not-for-profit organization, it was established in 1973 and based in Norwalk, Connecticut (E.Brigham etd (2001) Financial management Theory and Practice New York. Cullum.).

The FASB is recognized by the U.S. Securities and Exchange Commission as the designated accounting standard setter for public companies. Further, FASB standards are recognized as authoritative by many other organizations, including state Boards of Accountancy and the American Institute of CPAs (AICPA).

Noteworthy its mission is to establish financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles (GAAP), and to provide useful information to investors and other users of financial reports and educate stakeholders

on how to most effectively understand and implement those standards , we can say that this organization is charged with setting the highest-quality standards through a process that is robust, comprehensive, and inclusive (1.12.2021www.fasb.org).

FASB issues ASU on leases between entities under common control

On March 27, 2023, the Financial Accounting Standards Board issued Accounting Standards Update (ASU) 2023-01, Leases (Topic 842): Common Control Arrangements. The ASU addresses two issues:

1. The terms and conditions to be considered when classifying and accounting for leases between entities under common control; and
2. Accounting for leasehold improvements in leases between entities under common control.

Private company stakeholders expressed concern that determining the legally enforceable terms and conditions of a common control arrangement would likely be costly and difficult. This ASU provides private companies, not-for-profit entities that are not conduit bond obligors, and employee benefit plans that file or furnish financial statements with or to the U.S. Securities and Exchange Commission with a practical expedient to use the written terms and conditions of a common control arrangement to determine whether a lease exists and, if one does, the classification and accounting for that lease.

This expedient is available on an arrangement-by-arrangement basis, but if an entity elects not to apply it (or if no written terms and conditions exist for another reason), the entity is required to evaluate the legal enforceability of the terms and conditions of the arrangement.

An entity that adopts the practical expedient at the same time it adopts ASC 842 must adopt the expedient using the same transition method used to adopt ASC 842. For all other entities, the expedient may be adopted either:

- Prospectively to all leases that commence on or after the date of adoption of the final ASU; or
- Retrospectively to the beginning of the earliest period presented in accordance with ASC 842 for all arrangements that exist at the date of adoption of the final ASU. The amendments are not applicable for arrangements no longer in place at the date of adoption of the final ASU (FASB issues final ASU on common control leases (kpmg.us), FINANCIAL REPORTING INSIGHTS | APRIL 12, 2023).

Paragraph II. The impact of FASB new amendment on the operating lease contracts.

We will study the impact of modern accounting and financial rules through three points. Achieve transparency. Evaluation of old operating finance contracts. At last lessee accounting.

1. Achieve transparency:

The Financial Accounting Standards Board (FASB) released on February 25, 2016 an Accounting Standards Update (ASU) aims at improving financial reporting around lease transactions (The Financial Accounting Standards Board and the International Accounting Standards Board (IASB) first embarked on a joint project in 2006 to improve financial reporting for leasing activities. Since that time, the FASB and IASB have issued three public comment documents, which have resulted in more than 1,700 letters of comment. Throughout the project, FASB and IASB also had extensive contact with diverse groups of shareholders. This communication included more than 200 meetings with preparers and users of financial statements; 15 public round tables, with over 180 representatives and organizations; 15 preparatory workshops attended by representatives of more than 90 organizations; and 14 meeting with bailiffs. The FASB and IASB have met with more than 500 users of financial statements spanning a wide range of industries.

Finally, the IASB issued its final standard on leases (IFRS, International Financial Reporting Standard 16) on January 13, 2016. https://www.fasb.org/jsp/FASB/FASBContent_C/NewsPage&cid=1176167901466). ASU affects all companies and other organizations that lease assets such as real estate, aircraft and manufacturing equipment.

The ASU on leases was put in effect for public corporations for fiscal years, and interim periods during those years, beginning after December 15, 2018. For all other organizations, ASU on leases became effective for fiscal years beginning after December 15, 2019 and for periods temporary during the fiscal years beginning after December 15, 2020. Early application was allowed for all organizations.

The ASU required organizations that lease assets — referred to as "lessees" — to include assets and liabilities on the balance sheet to show the rights and obligations arising from those contracts.

Under the new amendment, lessees are required to recognize assets and debts related to leases for periods longer than 12 months. Under current GAAP principles, the recognition, measurement and presentation of expenses and cash flows arising from a lease by a lessee depend primarily on its classification as a capital or operating lease. However, unlike previous GAAP—which only required capital leases to be recognized on the balance sheet—the new ASU require that both types of leases be recognized on the balance sheet (Harms, C. (2020). FASB Lease Accounting Standard Update 2016-02: An Exploration of Similarities and Differences to IFRS 16).

ASU also need disclosures to help investors and other users of financial statements understand the amount, timing and uncertainty of cash flows arising from leases. These disclosures include both qualitative and quantitative requirements, which provide additional information about the amounts reported in the financial statements (Johnson S. (1989) Leasing and Asset Finance Edited by Chris Boobyer. London).

The FASB aimed by issuing this amendment to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements (Financial Accounting Series, FASB Accounting Standards Update, No. 2016-02, February 2016, Leases (Topic 842), p 1). And that is what the Chairman of the FASB Board of Directors. Russell G. Golden (Russell G. Golden began his term as the seventh chairman of the Financial Accounting Standards Board (FASB) on July 1, 2013, reappointed in 2016 to a second term that extends his chairmanship to June 30, 2020. He was originally named to the FASB in 2010, after serving six years on the FASB staff. https://www.fdic.gov/news/events/accounting/2019-speakers/golden.pdf) emphasized by illustrating that the new guidance addresses the requests of investors and other users of financial statements for a more honest representation of the organization's leasing activities, it ends what the US Securities and Exchange Commission and other stockholders have identified as one of the largest forms of off-balance sheet accounting.

2. Evaluation of old operating finance contracts:

Previous leases accounting was criticized for failing to achieve the wants of financial statements users because it did not always provide a faithful representation of leasing transactions, while it really is important that financial statements users have a complete and understandable picture of an entity's leasing activities. Also, there had been long-standing requests from many financial statements users and others to change the accounting requirements so that lessees would be required to recognize the rights and obligations resulting from leases as assets and liabilities. Considering that the Boards decided to not fundamentally change lessor accounting with the amendments in this Update because the request focused mostly on lessee ([1] Financial Accounting Series, FASB Accounting Standards Update, No. 2016-02, February 2016, Leases (Topic 842), p 1-2).

According to what mentioned above, it is essential to discuss the lessee and lessor accounting one after another.

3. Lessee Accounting.

The fundamental principle of Topic 842 is that a lessee should recognize the assets and liabilities that arise from leases – including operating lease -in the statement of financial position to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. When measuring assets and liabilities arising from a lease, a lessee should include payments to be made in optional periods only if the lessee is reasonably certain to exercise an option to extend the lease or not to exercise an option to terminate the lease.

For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expense for such leases generally on a straight-line basis over the lease term.
So for operating leases, a lessee is required to do the following:
1. Recognize a right-of-use asset and a lease liability, initially measured at the present value of the lease payments, in the statement of financial position.
2. Recognize a single lease cost, calculated so that the cost of the lease is allocated over the lease term on a generally straight-line basis.
3. Classify all cash payments within operating activities in the statement of cash flows (Financial Accounting Series, FASB Accounting Standards Update, No. 2016-02, February 2016, Leases (Topic 842), p 2-4).
Lessees are most affected if they have a significant portfolio of assets held under operating leases, especially those with leases of property (Financial Accounting Series, Exposure Draft, Proposed Accounting Standards Update ASU, 2010, Leases (Topic 840), p 3).

Lessor Accounting:

The accounting applied by a lessor is largely unchanged from that applied under previous GAAP. For example, the vast majority of operating leases should remain classified as operating leases, and lessors should continue to recognize lease income for those leases on a generally straight-line basis over the lease term (Financial Accounting Series, FASB Accounting Standards Update, No. 2016-02, February 2016, Leases (Topic 842), p 4).
The lessors are affected with a different accounting approach, depending on the extent to which a lessor retains exposure to risks or benefits associated with the underlying asset, by the following division:
1- If a lessor retains exposure to significant risks or benefits associated with the underlying asset, the lessor would continue to recognize the underlying asset and in addition recognize a right to receive lease payments and a lease liability.
2-If a lessor does not retain exposure to significant risks or benefits associated with the underlying asset, the lease would be accounted for in a way similar to the current accounting for capital leases (Financial Accounting Series, Exposure Draft, Proposed Accounting Standards Updates, 2010, Leases (Topic 840), p 3-4).
In addition to what have been mentioned above about this amendment and how it provides investors around the world with more transparent and comparable information about lease obligations held by companies and other organizations, it is figured that it effects operating lease contracts in both cut ways, shortens its importance, erases some of its positive sides and limits the verity that specialize leases.
Such an amendment also deprives the operating lease contract of an important advantage that is - the off-balance sheet recording - which led to the huge circulation of this contract, it reduces its term and contributes to two opposite important things; first ,operating lease contracts will tend to become short-term, i.e. less than a year, which will reduce the demand for investors who have long enjoyed the advantages of off-balance sheet registration , and second it will prevent the smuggling of billions of dollars, but at the same time it will deprive the production market of a contract that enjoys advantages that suit medium and small financing fields in particular. All these presumptions need to be studied in a separated study clarifies the results of the ASU on business market.

Conclusion:

In conclusion, it is worth emphasizing the following remarks:

1- Although this amendment contrasts with the main principle of "free will of parties "that distinguish operating lease contract, it was released under the request of many investors, stakeholders and users of financial statements to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements.

2- a lessee should recognize the assets and liabilities that arise from operating leases in the statement of financial position to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term.

3- The lessor's accounting recognition is largely unchanged from that applied under previous GAAP.

4- This amendment will effect operating lease contracts in a both cut ways. One way is that operating lease contracts will tend to become less than a year, which will affect the demand of these contracts, and other is to prevent smuggling of taxes dollars.

5- Such contracts are valuable for business market particularly for medium and small financing fields.

Recommendations:

The necessity of developing the Syrian legislative structure with regard to the operating lease contract, by diagnosing the Syrian economic reality, making an approach to it with developed countries, and finding the most appropriate system for it and adopting it, after taking into account the special nature of some legal texts in the Syrian Arab Republic that constitute Peremptory texts that may not be violated in the course of developing the legal texts related to the operating lease contract.

Reconsidering the legal philosophy of the Civil Law after more than seventy years of application, in order to make its texts more flexible and capable of managing emerging civil and commercial relations. Taking into account the new rules that are being adopted at the international level in the field of business, and perhaps the new standard adopted by the American government regarding the operating lease constitutes one of them.

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