



Legal Update
Singapore



ADSAN LAW

FLOOR STOCK FINANCING AGREEMENTS

Introduction

Over the years, there have been a spate of lawsuits involving vehicles subject to floor stock financing arrangements and wrongful dealing by rogue dealers with respect to the vehicles. Such dealers may take advantage of multiple financiers, purport to sell a vehicle to multiple parties and pocket ill-gotten gains at the expense of purchasers and financiers alike. This has, understandably, led to much uncertainty surrounding such financing arrangements and concern over the protection of purchasers and financiers.

This article seeks to shed some light on how a financier may protect itself in the course of negotiating and carrying out such arrangements. This is particularly important since financiers have little control over their main form of security (i.e. the vehicle being financed) as it is rarely kept in the financiers' possession, and there are loopholes in the registration of ownership.

Overview of the Legal Position

Under a typical floor stock financing agreement, financiers are the registered owners of the vehicle. Nevertheless, third party purchasers have asserted and succeeded in claims of ownership of the vehicle following the sale of the vehicle to a purchaser by a dealer.

Generally, the purchaser would premise its claim of ownership on section 25 of the Sale of Goods Act 1979 and sections 2(1) and 9 of the Factors Act 1889. These laws generally have the effect that if a dealer has possession of a vehicle with the owner's consent and sells the vehicle to a purchaser acting in good faith who is not aware that the dealer has no authority to sell the vehicle, the owner is deemed to have authorised this sale, and the sale is generally considered valid. The purchaser can then deal with the

vehicle as any owner would be able to. It is noteworthy that the term “good faith” is broadly interpreted and the courts have stated that even if the purchaser had been negligent, the purchaser is taken to have acted in good faith unless there is dishonesty or fraud.

This puts financiers in a disadvantageous position. This stance, however, is likely to endure, as the courts in Singapore have taken the position that companies like financiers are better positioned to institute safeguards and to protect and enforce their rights. It is, thus, important for financiers to be apprised of the practical protective steps that can be taken.

Tips to Safeguard Financiers’ Interests

1. Review and update the floor stock financing agreements

The floor stock financing agreement should state clearly that title to and ownership of the vehicle should vest in the financier at all times. This is particularly important where the floor stock financing agreement does not explicitly provide for the transfer of title in the vehicle, or if the floor stock financing agreement provides that such transfer will only take place upon the occurrence of certain events (e.g. breach of agreement). Title to and ownership of the vehicle should vest in the financier at all times, perhaps even before any monies are released to the dealer.

As is the case with most floor stock financing arrangements, it is best to ensure that there is a guarantor, who is ordinarily resident/registered in Singapore. Further, it may be prudent to stipulate that the guarantor and the dealer/main officers of the dealer should be different. Periodic checks on the whereabouts and financial status of the guarantor (e.g. by conducting periodic bankruptcy searches) should also be conducted, and provisions for contingencies in the event that the guarantor is uncontactable, migrates and/or becomes bankrupt should be made.

2. Transfer of vehicle via a Sale and Purchase Agreement

On top of including a term in the floor stock financing agreement that ensures that title vests in the financier upon disbursement of financing, as a matter of prudence, financiers should enter into a separate Sale and Purchase Agreement for the transfer of ownership of the vehicle each time a vehicle is financed.

3. Do not simply rely on the vehicle registration/log book (where applicable) or on the vehicle registration details in the LTA website (OneMotoring)

The courts have consistently taken the position that registration/log books and the vehicle registration details in the LTA website are not documents of title or ownership and are not conclusive evidence of ownership of the vehicle.

4. Conduct due diligence before financing

On top of joining and checking the Hire Purchase, Finance and Leasing Association of Singapore database and monitoring the vehicle to be financed, or sold, through the said database, financiers may wish to contact the party listed as the “previous owner” of the vehicle to confirm the party’s ownership status and keep records of such contact.

5. Take practical steps to notify purchasers of true ownership

For the law to aid the purchaser, the purchaser must not have known that the sale was not authorised by the true owner of the vehicle. To this end:

- (a) Financiers should consider specifying in the terms of the floor stock financing agreement that any advertisement and/or contract for the sale of the vehicle must include a declaration that the financier is the owner of the vehicle and that the sale of the vehicle is conditional upon the dealer obtaining the financier's approval.
- (b) Financiers may also consider putting decals/markings on the vehicle with the financier's name and logo, perhaps even including the words "Financier" or "Financed By:", along with including a term in the floor stock financing agreement stating that any decals/ markings placed on the vehicle cannot be altered, concealed or removed.

However, an errant dealer may just disregard these terms, wrongfully sell the vehicle, and abscond with the monies; financiers would then be left with little recourse as the terms of the floor stock financing agreement are not enforceable against a third party. Financiers may, thus, wish to take the extra step to periodically inspect the vehicle, the advertisements in showroom(s) and the dealer's contracts.

While these steps may seem onerous, putting in place such prudent practices may save much time and costs in the future. Pre-emptive measures are likely to be the best course of action in the context of floor stock financing agreements; this is because it is commonly the case that financiers are in the dark about dealings with the vehicle until it is too late and the dealer has already wrongfully dealt with the vehicle and fled the country. Financiers then unfairly bear the brunt of the blow when issues arise later on with regard to the ownership and possession of the vehicle, often with no recourse whatsoever.

Author: Lee Hui Yi

CONTACT

ADSAN LAW LLC

300 Beach Road Level 26

The Concourse

Singapore 199555

Tel: 68282828

www.adsanlaw.com

This publication is only intended to provide general information only and does not constitute any legal or other advice. While we endeavour to ensure that information contained herein is accurate at the time of publication, we do not warrant its accuracy or completeness or accept any liability for any loss or damages arising from reliance thereon.