



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**ADVISORY BOARD FOR THE
PREPARATION OF A
MODEL LAW ON LEASING**

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**Preliminary draft
Model Law on leasing**

(prepared by the Drafting Committee on the basis of the guidelines provided by the Advisory Board at its third session (Rome, 3-5 April 2006))

CHAPTER I: GENERAL PROVISIONS

Article 1 Sphere of application

This Law applies to any lease of an asset, if the asset is within [the State], or the lessee's centre of main interests is within [the State], or the leasing agreement provides that [the State's] law governs the transaction.

Article 2 Definitions

In this Law:

Asset means all property used in trade or business, including plant, capital goods, equipment, future assets, specially manufactured assets, and living and unborn animals. The term does not include money or investment securities but no asset shall cease to be an asset for the sole reason that the asset has become a fixture to or incorporated in land.

Centre of main interests means the place where a person conducts the administration of its interests on a regular basis. In the absence of proof to the contrary, the person's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the person's main interests.

Financial lease means a lease, with or without an option to purchase, that includes the following characteristics:

- (a) the lessee specifies the asset and selects the supplier;
- (b) the lessor acquires the asset or the right to possession and use of the asset in connection with a lease and the supplier has knowledge of that fact; and
- (c) the rentals or other funds payable under the leasing agreement take into account the amortisation of the whole or a substantial part of the lessor's investment.

Lease means a transaction in which a person grants a right to possession and use of an asset to another person for a specific term in return for rentals. Unless the context indicates otherwise, the term includes a sub-lease.

Lessee means a person who acquires the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessee.

Lessor means a person who grants the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessor.

Person means any legal, private or public entity or an individual.

Supplier means a person from whom a lessor acquires an asset for lease under a financial lease.

Supply agreement means an agreement under which a lessor acquires an asset for lease.

Article 3 Other laws

A leasing agreement subject to this Law is also subject to any law of [this State] applicable to real property or public notice with respect to a leasing agreement or an asset subject to a leasing agreement. Failure to comply with such law has only the effect specified therein.

Article 4 Interpretation of this Law

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 5 Freedom of contract

Except as provided in Articles 11, 13, 15(1), 20(1)(a), 20(2), 26 and the law of [this State], the lessor and the lessee may derogate from or vary the effect of this Law and are free to determine the content of a leasing agreement.

[CHAPTER II: INTERPRETATION OF LEASING AGREEMENT¹**Article 6 Formation**

A leasing agreement may be created by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

Article 7 Interpretation

A leasing agreement shall be interpreted according to the common intention of the parties. If such intention cannot be established, the leasing agreement shall be interpreted according to the meaning that reasonable persons of the same kind as the parties to the leasing agreement would give to it in the same circumstances.

Article 8 Documentation

1. A leasing agreement is not enforceable against a party unless there is a record, signed by that party or that party's agent, sufficient to indicate that a leasing agreement has been made.
2. A record is not insufficient because it omits or incorrectly states a provision that is important for a determination of the parties' rights and duties.
3. When a record omits or incorrectly states such a provision, a provision that is appropriate in the circumstances shall be supplied. In determining what provision to supply, factors to consider should include the intention of the parties, good faith, fair dealing and reasonableness.

Article 9 Modification

A leasing agreement that contains a clause requiring modification or termination to be in a particular form may not be otherwise modified or terminated. A party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.]

CHAPTER III: EFFECT OF LEASING AGREEMENT**Article 10 Enforceability**

Except as otherwise provided in this Law, a leasing agreement is effective and enforceable according to its terms between the parties and against third parties, including an insolvency administrator.

¹ The explanatory notes shall indicate that this chapter, which derives from the UNIDROIT Principles of International Commercial Contracts 2004 and is to be inserted in brackets, is recommended only for those States lacking developed contract law.

Article 11 Lessee under financial lease as beneficiary of supply agreement

1. (a) In a financial lease, the duties of the supplier under the supply agreement shall also be owed to the lessee as if the lessee were a party to that agreement and as if the asset were to be supplied directly to the lessee. The supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

(b) The extension of the supplier's duties to the lessee under the preceding subparagraph does not modify the rights and duties of the parties to the supply agreement, whether arising therefrom or otherwise, or impose any duty or liability under the supply agreement on the lessee.

(c) Where the absence of privity of contract between the lessee and supplier prevents the lessee from enforcing the supplier's duties under the supply agreement, the lessor shall be bound to take commercially reasonable steps to assist the lessee. If the lessor does not take such steps, the lessor is deemed to have assumed such duties.

2. The lessee's rights under this Article shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless the lessee consented to that variation. If the lessee did not consent to such variation, then the lessor is deemed to have assumed the duties of the supplier to the lessor that were so varied to the extent of the variation.

3. Nothing in this Article shall entitle the lessee to modify, terminate or rescind the supply agreement without the consent of the lessor.

4. The parties may not derogate from or vary the effect of the provisions of this Article.

Article 12 Priority of liens

1. A creditor of the lessee and the holder of any interest in land or personal property to which the asset becomes affixed take subject to the leasing agreement and cannot attach any interest belonging to the lessee.

2. Except as otherwise provided by the law of [this State], a creditor of the lessor takes subject to the leasing agreement.

Article 13 Liability for death, personal injury, or property damage caused to third parties

1. In a financial lease, the lessor shall not, in its capacity of lessor, be liable to the lessee for death, personal injury, or damage to property caused by the asset or the use of the asset.

2. In a financial lease, the lessor shall not, in its capacity of lessor, owner or any other capacity, be liable to third parties for death, personal injury or damage to property caused by the asset or the use of the asset.

3. The parties may not derogate from or vary the effect of the provisions of this Article.

CHAPTER IV: PERFORMANCE

Article 14 Irrevocability

1. (a) In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement has been entered into.

(b) In a lease other than a financial lease, the parties may agree to make any of the lessee's duties to the lessor irrevocable and independent by specifically identifying each duty that is irrevocable and independent.

2. A duty that is irrevocable and independent must be performed, regardless of any other party's performance or non-performance, unless the party to whom the duty is owed terminates the leasing agreement or otherwise explicitly agrees.

Article 15 Risk of loss

1. In a financial lease, risk of loss passes to the lessee. If the time of passage is not stated, the risk of loss passes to the lessee when the leasing agreement has been entered into. The parties may not derogate from or vary the effect of the provisions of this paragraph.

2. In a lease other than a financial lease, risk of loss is retained by the lessor and does not pass to the lessee.

3. When an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement and the lessee invokes its remedies under Article 18, then the lessee, subject to Article 22(1), may treat the risk of loss as having remained with the lessor or, in a financial lease, the supplier, from the beginning.

Article 16 Damage to the asset

1. In a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee, the lessee may demand inspection and at the lessee's option either accept the asset with due compensation from the supplier for the loss in value but without further right against the supplier or, subject to Article 14, seek such other remedies as are provided by law.

2. In a lease other than a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee,

(a) if the loss is total, the leasing agreement is terminated; and

(b) if the loss is partial, the lessee may demand inspection and at the lessee's option either treat the leasing agreement as terminated or accept the asset with due allowance from the rentals payable for the balance of the lease term for the loss in value but without further right against the lessor.

Article 17 Acceptance

1. Acceptance of an asset occurs when the lessee, signifies to the lessor or supplier that the asset conforms to the agreement, fails to reject the asset after a reasonable opportunity to inspect it or uses the asset.
2. (a) Once a lessee in a financial lease has accepted an asset, the lessee is entitled to damages from the supplier if the asset does not conform to the supply agreement.

(b) Once a lessee in a lease other than a financial lease has accepted an asset, the lessee is entitled to damages from the lessor if the asset does not conform to the leasing agreement.

Article 18 Rejection

1. In a financial lease, when an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement, the lessee may demand a conforming asset from the supplier and seek such other remedies as are provided by law.
 2. (a) In a lease other than a financial lease, when an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement, the lessee has the right to accept the asset, to reject the asset, or subject to this paragraph and Article 27, to terminate the leasing agreement. Rejection or termination must be within a reasonable time after the non-conforming delivery.

(b) In a lease other than a financial lease, once a lessee has accepted the asset, the lessee may reject the asset under the preceding sub-paragraph only if the non-conformity substantially impairs the value of the asset and either
 - (i) the lessee accepted the asset without knowledge of the non-conformity, owing to the difficulty of discovering it, or
 - (ii) the lessee's acceptance was induced by the lessor's assurances.
(c) In a lease other than a financial lease, when the lessee rejects an asset in accordance with this Law or the leasing agreement, the lessee is entitled to withhold rentals until the non-conforming delivery has been remedied and to recover any rentals and other funds paid in advance, less a reasonable sum corresponding to any benefit the lessee has derived from the asset.
3. If the lessee rejects an asset in accordance with this Article and the time for performance has not expired, the lessor or supplier has the right to remedy its failure within the agreed time.

Article 19 Transfer

1. The lessor's rights under the leasing agreement may be transferred without the consent of the lessee. The lessor's duties under the leasing agreement may be transferred without the consent of the lessee except when a transfer would impair the lessee's rights in the asset.

2. The lessee's rights and duties under the leasing agreement may be transferred only with the consent of the lessor, which may not be unreasonably withheld, and subject to the rights of third parties.

3. The lessee, lessor and third parties may consent to such transfers in advance.

Article 20 Warranty of quiet possession

1. (a) In a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right or who claims a superior title or right and acts under the authority of a court, where such title, right or claim derives from a negligent or intentional act or omission of the lessor. The parties may not derogate from or vary the effect of the provisions of this sub-paragraph.

(b) In a financial lease, a lessee that furnishes specifications to a lessor or a supplier holds the lessor and the supplier harmless against any claim of infringement or the like that arises out of compliance with the specifications.

2. In a lease other than a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right, who claims a superior title or right and acts under the authority of a court or who makes a claim by way of infringement. The parties may not derogate from or vary the effect of the provisions of this paragraph.

Article 21 Warranty of acceptability and fitness

1. In a financial lease, a warranty that the asset will be at least such as is accepted in the trade under the description in the leasing agreement and is fit for the ordinary purposes for which an asset of that description is used is implied in the supply agreement and is enforceable only against the supplier.

2. In a lease other than a financial lease, a warranty that the asset will be at least such as is accepted in the trade under the description in the leasing agreement and is fit for the ordinary purposes for which an asset of that description is used is implied in a leasing agreement if the lessor regularly deals in assets of that kind.

Article 22 Lessee's duties to maintain and return the asset

1. (a) The lessee shall take proper care of the asset, use the asset reasonably in the light of the manner in which such assets are ordinarily used and keep the asset in the condition in which it was delivered, subject to fair wear and tear.

(b) When a leasing agreement sets forth a duty to maintain the asset or the manufacturer or supplier of the asset issues technical instructions for the asset's use, the lessee's compliance with such agreement or instructions shall satisfy the requirements of the preceding sub-paragraph.

2. When the leasing agreement comes to an end or is terminated, the lessee, unless exercising a right to buy the asset or to hold the asset on lease for a further period, shall return the asset to the lessor in the condition specified in the preceding paragraph.

CHAPTER V: DEFAULT

Article 23 Definition of default

1. The parties may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in this Chapter.

2. In the absence of agreement, default for the purpose of this Law occurs when one party fails to perform or imperfectly performs a duty arising under the leasing agreement or this Law.

Article 24 Notice

Except as otherwise provided in the leasing agreement, an aggrieved party shall give a defaulting party notice of default, notice of enforcement, notice of termination and a reasonable opportunity to cure.

Article 25 Damages

Upon default, the aggrieved party is entitled to recover such damages as will, exclusively or in combination with other remedies provided by this Law or the leasing agreement, place the aggrieved party in the position in which it would have been had the agreement been performed in accordance with its terms.

Article 26 Liquidated damages

A provision in a leasing agreement that provides for the manner in which damages are to be computed is enforceable between the parties unless it would result in damages substantially in excess of those provided for under Article 25. The parties may not derogate from or vary the effect of the provisions of this Article.

Article 27 Termination

1. (a) Subject to sub-paragraph (b), a leasing agreement may be terminated by operation of law, by operation of Article 16 of this Law, by agreement of the parties or by an aggrieved party upon the lessee's or lessor's default.

(b) The lessee in a financial lease may not terminate the leasing agreement upon another party's default but is entitled to such other remedies as are provided by the agreement of the parties and by law.

2. Subject to Article 14, on termination, all duties under the leasing agreement that are executory on both sides, except for duties intended to take effect upon termination, are discharged but any right based on prior default or performance survives.

Article 28 Possession and disposition

1. After the leasing agreement comes to an end or is terminated, the lessor has the right to recover possession of the asset.

2. After the leasing agreement comes to an end or is terminated, the lessor has the right to dispose of the asset.

PREAMBLE

THE GENERAL ASSEMBLY OF THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT), meeting at its 60th session in Rome on 30 November 2006,

Recognising that leasing provides developing countries and countries in transition in particular with an important source of capital for the development of infrastructure and small- and medium-sized enterprises;

Aware that, while many States already possess leasing legislation and a well-developed leasing industry, many other States, and in particular those States with developing economies and economies in transition, require a legal framework that will foster the swift growth of a nascent or non-existent leasing industry;

Convinced accordingly as to the usefulness of proposing a model law on leasing for consideration by national legislators, which may adapt it to meet their specific needs;

Committed to the purpose of harmonising legal regulations of leasing on a global basis in order to facilitate international trade in capital goods;

Finding that the UNIDROIT Convention on International Financial Leasing (Ottawa, 28 May 1988) has not only removed certain legal impediments to the international financial leasing of equipment, while maintaining a fair balance of interests between the different parties to the transaction for States Parties thereto, but has also frequently served as a model for States drafting their first leasing laws;

Considering the legal regime enshrined in the aforementioned Convention as a useful starting point for the development of a comprehensive model law governing such transactions;

Being of the view that in the preparation of such a model law, priority must be given to the establishment of rules governing the civil and commercial law aspects of leasing,

HAS APPROVED THE FOLLOWING TEXT OF THE UNIDROIT MODEL LAW ON LEASING.

CHAPTER I: GENERAL PROVISIONS

Article 1 Sphere of application

This Law applies to any lease of an asset, if the asset is within [the State], or the lessee's centre of main interests is within [the State], or the leasing agreement provides that [the State's] law governs the transaction.

Article 2 Definitions

In this Law:

Asset means all property used in trade or business, including plant, capital goods, equipment, future assets, specially manufactured assets, and living and unborn animals. The term does not include ~~information, money, or investment securities,~~ but no asset shall cease to be an asset for the sole reason that the asset has become a fixture to or incorporated in land.

Centre of main interests means the place where a person conducts the administration of its interests on a regular basis. In the absence of proof to the contrary, the person's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the person's main interests.

Financial lease means a lease, with or without an option to purchase, that includes the following characteristics:

- (a) the lessee specifies the asset and selects the supplier ~~without relying primarily on the skill and judgment of the lessor;~~
- (b) the lessor acquires the asset or the right to possession and use of the asset in connection with ~~the lease or a previous~~ lease, and the supplier has knowledge of that fact; and
- (c) the rentals or other funds payable under the leasing agreement ~~are calculated to take into account the amortisation of the whole or a substantial part of the cost of the asset~~ lessor's investment.

Lease means a transaction in which a person grants a right to possession and use of an asset to another person, ~~with or without an option to purchase,~~ for a specific term in return for rentals ~~or other funds payable~~. Unless the context indicates otherwise, the term includes a sub-lease.

Lessee means a person who acquires the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessee.

Lessor means a person who grants the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessor.

~~**Operations lease** means a lease other than a financial lease.~~

Person means any legal, private or public entity or an individual.

Supplier means a person from whom a lessor acquires an asset ~~to be leased for lease~~ under a financial lease.

Supply agreement means an agreement under which a lessor acquires an asset for lease.

Article 3 Other laws

A leasing agreement subject to this Law is also subject to any law of [this State] applicable to real property, ~~registration of a leasing agreement,~~ or public notice with respect to a leasing agreement or an asset subject to a leasing agreement. Failure to comply with such law has only the effect specified therein.

Article 4 Interpretation of this Law

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article ~~45~~ Freedom of contract

Except as ~~otherwise~~ provided in ~~this Law~~ Articles 11, 13, 15(1), 20(1)(a), 20(2), 26 and the law of [this State], the lessor and the lessee may derogate from or vary the effect of this Law and are free to determine the content of ~~and create~~ a leasing agreement.

[CHAPTER II: INTERPRETATION OF LEASING AGREEMENT²

Article 6 Formation

A leasing agreement may be created by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

Article 7 Interpretation

A leasing agreement shall be interpreted according to the common intention of the parties. If such intention cannot be established, the leasing agreement shall be interpreted according to the

² The explanatory notes shall indicate that this chapter, which derives from the UNIDROIT Principles of International Commercial Contracts 2004 and is to be inserted in brackets, is recommended only for those States lacking developed contract law.

meaning that reasonable persons of the same kind as the parties to the leasing agreement would give to it in the same circumstances.

Article 8 Documentation

1. A leasing agreement is not enforceable against a party unless there is a record, signed by that party or that party's agent, sufficient to indicate that a leasing agreement has been made.
2. A record is not insufficient because it omits or incorrectly states a provision that is important for a determination of the parties' rights and duties.
3. When a record omits or incorrectly states such a provision, a provision that is appropriate in the circumstances shall be supplied. In determining what provision to supply, factors to consider should include the intention of the parties, good faith, fair dealing and reasonableness.

Article 9 Modification

A leasing agreement that contains a clause requiring modification or termination to be in a particular form may not be otherwise modified or terminated. A party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.]

CHAPTER III: EFFECT OF LEASING AGREEMENT

~~Article 5~~Article 10 Enforceability

Except as otherwise provided in this Law, a leasing agreement is effective and enforceable according to its terms between the parties and against third parties, including an insolvency administrator.

~~Article 6~~Article 11 Lessee under financial lease as beneficiary of supply agreement

1. (a) In a financial lease, the duties of the supplier under the supply agreement shall also be owed to the lessee as if the lessee were a party to that agreement and as if the asset were to be supplied directly to the lessee. The supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

(b) The extension of the supplier's duties to the lessee under the preceding subparagraph does not ~~(i)~~ modify the rights and duties of the parties to the supply agreement, whether arising therefrom or otherwise, or ~~(ii)~~ impose any duty or liability under the supply agreement on the lessee.

(c) Where the absence of privity of contract between the lessee and supplier ~~disadvantages the lessee in its efforts to enforce prevents the lessee from enforcing~~ the supplier's duties under ~~sub-paragraph (a) against the supplier~~ the supply agreement, the lessor shall be bound to take commercially reasonable steps to assist the lessee ~~overcome that disadvantage~~. If the lessor does not take such steps, the lessor is deemed to have assumed such duties.

2. The lessee's rights under this Article shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless the lessee consented to that variation. If the lessee did not consent to such variation, then the lessor is deemed to have assumed the duties of the supplier to the lessor that were so varied to the extent of the variation.

3. Nothing in this Article shall entitle the lessee to modify, terminate or rescind the supply agreement without the consent of the lessor.

4. The parties may not derogate from or vary the effect of the provisions of this Article.

~~Article 7~~ **Article 12** Priority of liens

1. A creditor of the lessee and the holder of any interest in land or personal property to which the asset becomes affixed take subject to the leasing agreement and cannot attach any interest belonging to the lessee.

2. Except as otherwise provided by the law of [this State], a creditor of the lessor takes subject to the leasing agreement.

~~Article 8~~ **Article 13** Liability for death, personal injury, or property damage caused to third parties

1. In a financial lease, the lessor shall not, in its capacity of lessor, be liable to the lessee for death, personal injury, or damage to property caused by the asset or the use of the asset, ~~except to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the asset.~~

2. In a financial lease, the lessor shall not, in its capacity of lessor, owner or any other capacity, be liable to third parties for death, personal injury or damage to property caused by the asset or the use of the asset.

3. The parties may not derogate from or vary the effect of the provisions of this Article.

CHAPTER ~~III~~IV: PERFORMANCE**~~Article 9~~Article 14 Irrevocability**

1. (a) In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement ~~and supply agreement have~~ has been ~~signed entered into by the parties.~~

(b) ~~In an operations lease~~In a lease other than a financial lease, the parties may agree to make any of the lessee's duties to the lessor irrevocable and independent by specifically identifying each duty that is irrevocable and independent.

2. A duty that is irrevocable and independent must be performed, regardless of any other party's performance or non-performance, unless the party to whom the duty is owed terminates the leasing agreement or otherwise explicitly agrees.

~~Article 10~~Article 15 Risk of loss

1. In a financial lease, risk of loss passes to the lessee. If the time of passage is not stated, the risk of loss passes to the lessee when the ~~supply and leasing agreements have agreement has~~ been ~~signed entered into by the parties.~~ The parties may not derogate from or vary the effect of the provisions of this paragraph.

2. ~~In an operations lease~~In a lease other than a financial lease, risk of loss is retained by the lessor and does not pass to the lessee.

3. When an asset is not delivered, is partially delivered, is delivered late, or fails to conform to the leasing agreement, and the lessee invokes its remedies under ~~Article 13~~Article 18, then the lessee, subject to ~~Article 17~~Article 22(1), may treat the risk of loss as having remained with the lessor or, in a financial lease, the supplier, from the beginning.

~~Article 11~~Article 16 Damage to the asset

1. In a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee, the lessee may demand inspection and at the lessee's option either accept the asset with due compensation from the supplier for the loss in value but without further right against the supplier or, subject to ~~Article 9~~Article 14, seek such other remedies as are provided by law.

2. ~~In an operations lease~~In a lease other than a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee,

(a) if the loss is total, the leasing agreement is terminated; and

(b) if the loss is partial, the lessee may demand inspection and at the lessee's option either treat the leasing agreement as terminated or accept the asset with due allowance from the rentals payable for the balance of the lease term for the loss in value but without further right against the lessor.

~~Article 12~~Article 17 **Acceptance**

1. Acceptance of an asset occurs when the lessee, ~~(a)~~ signifies to the lessor or supplier that the asset conforms to the agreement, ~~(b)~~ fails to reject the asset after a reasonable opportunity to inspect it, or ~~(c)~~ uses the asset.

2. (a) Once a lessee in a financial lease has accepted an asset, the lessee ~~may still be~~ is entitled to damages from the supplier if the asset does not conform to the supply agreement.

(b) Once a lessee in a lease other than a financial lease has accepted an asset, the lessee is entitled to damages from the lessor if the asset does not conform to the leasing agreement.

~~Article 13~~Article 18 **Rejection**

1. In a financial lease, when an asset is not delivered, is partially delivered, is delivered late, or fails to conform to the leasing agreement, the lessee may, ~~subject to Article 9,~~ demand a conforming asset from the supplier and seek such other remedies as are provided by law.

2. (a) ~~In an operations lease~~In a lease other than a financial lease, when an asset is not delivered, is partially delivered, is delivered late, or fails to conform to the leasing agreement, the lessee has the right to accept the asset, to reject the asset, or subject to this paragraph and ~~Article 21~~Article 27, to terminate the leasing agreement. Rejection or termination ~~under this sub-paragraph~~ must be within a reasonable time after the non-conforming delivery.

(b) ~~In an operations lease~~In a lease other than a financial lease, once a lessee has accepted the asset, the lessee may reject the asset under the preceding sub-paragraph only if the non-conformity substantially impairs the value of the asset and either

(i) the lessee accepted the asset without knowledge of the non-conformity, owing to the difficulty of discovering it, or

(ii) the lessee's acceptance was induced by the lessor's assurances.

(c) ~~In an operations lease~~In a lease other than a financial lease, when the lessee rejects an asset in accordance with this Law or the leasing agreement, the lessee is entitled to withhold rentals until the non-conforming delivery has been remedied and to recover any rentals and other funds paid in advance, less a reasonable sum corresponding to any benefit the lessee has derived from the asset.

3. If the lessee rejects an asset in accordance with this ~~Law or the leasing agreement~~ Article and the time for performance has not expired, the lessor or supplier has the right to remedy its failure within the agreed time.

~~Article 14~~Article 19 **Transfer**

1. The lessor's rights ~~and duties~~ under the leasing agreement may be transferred without the consent of the lessee. The lessor's duties under the leasing agreement may be transferred without the consent of the lessee except when a transfer would impair the lessee's rights in the asset.

2. The lessee's rights and duties under the leasing agreement may be transferred only ~~(a)~~ with the consent of the lessor, which may not be unreasonably withheld, and ~~(b)~~ subject to the rights of third parties.

3. The lessee, lessor and third parties may ~~give their~~ consent to such transfers in advance.

~~3. — A transfer that is prohibited is otherwise effective if made to one who purchases for value and did not know and reasonably should not have known that the transfer was prohibited.~~

~~Article 15~~Article 20 **Warranty of quiet possession**

1. (a) In a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right⁷ or who claims a superior title or right and acts under the authority of a court, where such title, right or claim derives from a negligent or intentional act or omission of the lessor. The parties may not derogate from or vary the effect of the provisions of this sub-paragraph.

(b) In a financial lease, a lessee that furnishes specifications to a lessor or a supplier holds the lessor and the supplier harmless against any claim of infringement or the like that arises out of compliance with the specifications.

2. ~~In an operations lease~~In a lease other than a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right, ~~or~~ who claims a superior title or right and acts under the authority of a court⁷ or who makes a claim by way of infringement. The parties may not derogate from or vary the effect of the provisions of this paragraph.

~~Article 16~~Article 21 **Warranty of acceptability and fitness**

1. In a financial lease, a warranty that the asset will be at least such as ~~(a)~~ is accepted in the trade under the description in the leasing agreement and ~~(b)~~ is fit for the ordinary purposes for which an asset of that description is used is implied in the supply agreement and is enforceable only against the supplier.

2. ~~In an operations lease~~In a lease other than a financial lease, a warranty that the asset will be at least such as ~~(a)~~ is accepted in the trade under the description in the leasing agreement and ~~(b)~~ is fit for the ordinary purposes for which an asset of that description is used is implied in a leasing agreement if the lessor regularly deals in assets of that kind.

~~Article 17~~Article 22 **Lessee's duties to maintain and return the asset**

1. (a) The lessee shall take proper care of the asset, use the asset reasonably in the light of the manner in which such assets are ordinarily used⁷ and keep the asset in the condition in which it was delivered, subject to fair wear and tear.

(b) When a leasing agreement sets forth a duty to maintain the asset⁷ or the manufacturer or supplier of the asset issues technical instructions for the asset's use, the

lessee's compliance with such agreement or instructions shall satisfy the requirements of the preceding sub-paragraph.

2. When the leasing agreement comes to an end or is terminated, the lessee, unless exercising a right to buy the asset or to hold the asset on lease for a further period, shall return the asset to the lessor in the condition specified in the preceding paragraph.

CHAPTER ~~IV~~: DEFAULT

~~Article 18~~Article 23 Definition of default

1. The parties may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in this Chapter.

2. In the absence of agreement, default for the purpose of this Law occurs when one party fails to perform or imperfectly performs a duty arising under the leasing agreement or this Law.

~~Article 24~~ Article 24 Notice

Except as otherwise provided in the leasing agreement, an aggrieved party shall give a defaulting party notice of default, notice of enforcement, notice of termination and a reasonable opportunity to cure.

~~Article 1~~Article 25 Damages

Upon default, the aggrieved party is entitled to recover such damages as will, exclusively or in combination with other remedies provided by this Law or the leasing agreement, place the aggrieved party in the position in which it would have been had the agreement been performed in accordance with its terms.

~~Article 20~~Article 26 Liquidated damages

A provision in a leasing agreement that provides for the manner in which damages are to be computed is enforceable between the parties unless it would result in damages substantially in excess of those provided for under ~~Article 19~~Article 25. The parties may not derogate from or vary the effect of the provisions of this Article.

~~Article 21~~Article 27 Termination

1. (a) Subject to sub-paragraph (b), a leasing agreement may be terminated by operation of law, by operation of ~~Article 11~~Article 16 of this Law, by agreement of the parties, or by an aggrieved party upon the lessee's or lessor's default.

(b) The lessee in a financial lease may not terminate the leasing agreement upon another party's default but ~~shall be is~~ entitled to such other remedies as are provided by the agreement of the parties and by law.

2. Subject to ~~Article 9~~Article 14, on termination, all duties under the leasing agreement that are executory on both sides, except for duties intended to take effect upon termination, are discharged but any right based on prior default or performance survives.

~~3. The right of a party to terminate the leasing agreement is exercised by notice indicating the grounds for termination to the other party.~~

~~Article 22~~Article 28 **Possession and disposition**

1. ~~Subject to Article 14(3), a~~After the leasing agreement comes to an end or is terminated, the lessor has the right to take-recover possession of the asset. ~~[The lessor may proceed without judicial process if it can be done without breach of the peace.]~~

2. After the leasing agreement comes to an end or is terminated, the lessor has the right to dispose of the asset.

PREAMBLE

THE GENERAL ASSEMBLY OF THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT), meeting at its 60th session in Rome on 30 November 2006,

Recognising that leasing provides developing countries and countries in transition in particular with an important source of capital for the development of infrastructure and small- and medium-sized enterprises;

Aware that, while many States already possess leasing legislation and a well-developed leasing industry, many other States, and in particular those States with developing economies and economies in transition, require a legal framework that will foster the swift growth of a nascent or non-existent leasing industry;

~~*Recognising the pioneering work being conducted by the International Finance Corporation ("I.F.C.") to develop leasing industries in various areas of the world and the essential role that a legislative framework plays in those underpinning those efforts;*~~

~~*Convinced* accordingly as to the usefulness of proposing a model law on leasing for consideration by national legislators, which as an example that is not compulsory to States legislators and that may be adapted may adapt it to meet their specific needs circumstances of, or established methods of legislation in each State;~~

~~*Committed to the purpose of harmonising legal regulations of leasing on a global basis in order to facilitate international trade in capital goods;*~~

Finding that the UNIDROIT Convention on International Financial Leasing (Ottawa, 28 May 1988) has not only removed certain legal impediments to the international financial leasing of equipment, while maintaining a fair balance of interests between the different parties to the transaction for States Parties thereto, but has also frequently served as a model for States drafting their first leasing laws;

~~*Considering* the minimal legal framework for leasing transactions legal regime enshrined in the aforementioned Convention as a useful starting point for the development of a comprehensive model law governing such transactions;~~

Being of the view that in the preparation of such a model law, priority must be given to the establishment of rules governing the civil and commercial law aspects of leasing;

~~*Noting, however, the importance of the rights and duties of the parties as enshrined in such model law interacting harmoniously with the relevant accounting and taxation requirements but commending for this purpose the advice given to States by the I.F.C. on the proper accounting and taxation treatment of leases in such publications as "Leasing in Development: Lessons from Emerging Economies" (I.F.C. 2005);*~~

HAS APPROVED THE FOLLOWING TEXT OF THE UNIDROIT MODEL LAW ON LEASING, the text of which is appended hereto.