



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

**JOINT SESSION OF THE UNIDROIT GENERAL
ASSEMBLY AND THE UNIDROIT COMMITTEE
OF GOVERNMENTAL EXPERTS
FOR THE FINALISATION AND ADOPTION OF
A DRAFT MODEL LAW ON LEASING
Rome, 10/13 November 2008**

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DRAFT MODEL LAW ON LEASING

**as reviewed and authorised for transmission to Governments and Organisations, for
finalisation and adoption, by the UNIDROIT Governing Council, at its 87th session, held in
Rome from 21 to 23 April 2008:**

COMMENTS

submitted by Governments and Organisations

INTRODUCTION

Further to the comments on the draft model law on leasing transmitted to Governments and Organisations, pursuant to a decision taken by the UNIDROIT Governing Council at its 87th session, held in Rome from 21 to 23 April 2008, for finalisation and adoption by a Joint Session of the UNIDROIT General Assembly and the UNIDROIT Committee of governmental experts (hereinafter referred to as *the draft model law*) contained in J.S. Leasing/W.P. 5 and J.S. Leasing/W.P. 5 Add. 1, representing the comments of the Governments of Burkina Faso, Canada, the People's Republic of China, Germany, Latvia, Rwanda, Turkey and the United States of America and the Equipment Leasing & Finance Association of America, the UNIDROIT Secretariat has subsequently received additional comments from the Government of Burundi. These additional comments are reproduced hereunder.

COMMENTS SUBMITTED BY GOVERNMENTS

Burundi

I. Regarding form

We have noted some glitches in the drafting, which we would propose correcting as follows:

Re: Article 2 – Definitions

In the eighth definition, the preposition "à" should be replaced by "par" in the French text.

Re: Article 3 – Other laws

The full name of UNCITRAL (the United Nations Committee on International Trade Law) should appear in Article 3(1), for the guidance of readers not familiar with the acronym by which that Organisation is known.

Re: Article 11 – Risk of loss

We find the words “from the beginning” in Article 11(1)(b) difficult to understand and would, therefore, propose that they be replaced by “from the time when the agreement was entered into”, in order to make the text clearer.

Re: Article 18 – Duties of the lessee to maintain and return the asset

In the second line of the French text of Article 18(1)(a) the word “maintien” is mis-spelled.

Re: Article 20 – Notices

We would propose the following reformulation of this Article in French to make it both clearer and less cumbersome:

“Notification est faite par le créancier à son cocontractant, de l’inexécution du contrat et de l’exercice éventuel contre lui de tout recours lorsqu’il ne remplit pas ses engagements dans un délai raisonnable. Le créancier ne pourra résilier son contrat qu’après avoir notifié à son cocontractant de son inexécution et lui avoir accordé un délai raisonnable pour s’exécuter”.

Re: Article 21 – Damages

We would recommend amending the third line of the French text of Article 21 so as to read :

“... la situation où elle se serait trouvée si le contrat ...”.

Re: Article 23 – Termination

We would propose moving the adjective “autres” in the French text of Article 23(1)(b) in front of the noun that it qualifies so as to read:

“... la mise en oeuvre d’autres mesures convenues ...”.

II. Regarding substance

1. The title of the draft model law does not call for any special remarks, in that the subject-matter of the draft model law, “*la location des choses*” (personal property leasing), is governed by a decree of 30 July 1988 rendered enforceable in Burundi by the O.R.U. No. 10 of 8 March 1927. At that time, such a decree had the force of law.

Under Article 159(2) of the Constitution, questions related to the regimen of property, real rights and obligations and the objectives of the social and economic activity of the State fall within the scope of the law.

The draft model law will certainly be incorporated into domestic law by ratification through legislation.

Consequently, the draft model law corresponds perfectly with the provisions of our Constitution.

2. The preamble to the draft model law brings out the need for the harmonization of the legal rules governing leasing above all in developing countries and transition economies because this is a sector deemed capable of generating important new capital for development in such countries. The ideal of facilitating trade in capital goods and ensuring a fair balance of interests between the lessor and the lessee also constitutes one of the yearnings striven for by the people of Burundi.

For that reason, it calls for no particular comment.

3. Article 2 defines "financial lease" in three sub-paragraphs, (a), (b) and (c). The Government of Burundi would propose replacing the term "lessor" by "lessee" in sub-paragraph (b) with a view to ensuring that the clause makes sense legally and is in line with the definition of the term "lessee" proposed in the same Article.

4. In the French text of Article 3 the Government of Burundi has noted a pointless repetition of the words "sûreté réelle mobilière". In this connection, we would stress that neither does the draft model law apply to a leasing agreement that creates an acquisition security right in real property.

5. In the French text of Article 6(b), dealing with the enforceability of the rights and duties of the parties, the Government of Burundi would prefer the words "sont opposables", which translate better the concept of enforceability than the verb "s'imposent".

We would propose, therefore, that Article 6(b) be reformulated as follows in French:

"Les droits et les recours de ces parties sont opposables aux acquéreurs du bien, aux créanciers des parties et à l'administrateur d'insolvabilité".

III. Conclusions

The rights and obligations arising under a "contrat de bail" (hire agreement) are governed by the decree of 30 July 1988 as modified to date.

From our analysis of the draft model law, it has emerged that the definitions of the key terms, with the exception of those referring to financial leases, the sphere of application of the leasing agreement and the leading principles guiding the contractual relations between the parties (the lessor and the lessee), already appear in our Civil Code, in Articles 370 to 426 and in Article 657.

It is the provisions dealing specially with financial leases that constitute the novelty of the draft model law.

These provisions, for the most part, enshrine rules which are in conflict with existing laws, such as the preferential lien granted to the lessor and the lessee, the right for the lessee to stand in the shoes of the lessor in order to go directly against the supplier (Articles 8, 9 etc.).

As a solution to this situation, the draft model law gives States the opportunity to adapt their domestic laws in terms of the special features of each of these and authorises the parties

themselves, in accordance with the principle of freedom of contract, to derogate therefrom, to vary the effects thereof and to fix the contents of their agreements in the manner which corresponds best to their intentions.

Consequently, the applicability in practice of the future draft model law will not encounter any obstacles, given the safeguard provided for the parties to this agreement to get round those provisions which are deemed troublesome, although conceived by UNIDROIT, with a view to re-establishing the balance of interests between the lessor and the lessee.