

Study LIX - Doc. 2  
UNIDROIT 1976  
Original: English

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Q U E S T I O N N A I R E

ON THE LEASING CONTRACT

(WITH SPECIAL REFERENCE TO INTERNATIONAL LEASING)

Rome, March 1976

At its 53rd session in February 1974 the Governing Council of UNIDROIT included the study of an international unification of the applicable rules on leasing in the UNIDROIT Work Programme for the 1975-1977 triennium.

Work on this subject was given priority for the triennium in question and the President of UNIDROIT was empowered to convene a working group to commence this work on the basis of a preliminary report to be prepared by the Secretariat (cf. Uniform Law Review, 1975, I, 55). This working group held its first meeting in Rome at the seat of UNIDROIT on 21 April 1975 and was seized of a preliminary report on the contract of leasing (Study LIX - Doc. 1, UNIDROIT 1975), prepared by the Secretariat of UNIDROIT and concentrating essentially on the characteristics of purely national leasing operations. Both this preliminary report and a summary of the discussions of the said working group (C.D. 54 - Doc. 4/1, UNIDROIT 1975) are enclosed with the present questionnaire, in accordance with decision No. 7 of the working group, and the UNIDROIT Secretariat would be grateful for any comments you might care to make on the said report as on the general ambit of the work contemplated.

The present questionnaire is designed to give effect to decision No. 6 of the working group ("... to enable the Secretariat to seek out more information, in particular from the banks specialising in these operations, regarding the precise character of international leasing operations") and your assistance is therefore requested in replying to the following questions.

1.1. Leaving aside those operations affecting real estate, which is the form of leasing preponderantly used in practice: (a) financial leasing, (b) operating leasing, (c) sale-leaseback or (d) some other variation of leasing ?

1.2. Does the lessee's choice as to the form of leasing to be used differ according to the special type of goods concerned ?

2. Does the leasing operation respond, in your opinion, to overwhelmingly fiscal considerations or do you feel that it serves to fulfil important additional purposes and, if so, which ?

3. Does there exist in your country legislation governing the minimum qualifications for a firm to engage in leasing operations and, if not, what do you think such minimum qualifications should be and what factors should be reflected in such a requirement ?

4. Would you agree that the sole purpose of the finance lessor in a typical financial leasing operation is to advance the funds required for the lessee to obtain the use of certain goods ?

5. Are the leased goods in a typical financial leasing situation delivered direct from the supplier to the lessee and would you agree that the finance lessor normally has no means at his disposal for examining the technical qualities of the leased goods ?

6. Would you agree that two of the unique problems raised by the tripartite contractual relationship encountered in financial leasing are:

a) the question of the person to be sued and the basis of the action to be brought in the event of the leased goods proving to be defective or failing to meet the purpose for which their use was obtained, and

b) the question of liability for injury caused to third parties by the leased goods ?

How are such problems dealt with or likely to be dealt with in your experience ?

7. What criteria are adopted in your country for fixing the sum payable by the lessee upon his defaulting in payment of the rentals due under his contract and what validity is accorded to such minimum payment clauses in your country ?

8. Is an option to purchase regarded as an integral part of a financial leasing contract in your country ? Do such options to purchase ever appear in other types of leasing contract ? What level of price is normally fixed on the exercising of such an option in your country ?

9. What is the situation in your country where goods leased under a leasing contract are then affixed to realty, for instance, do such goods remain personalty ?

10. Are any encumbrances permitted over leased goods in your country ?

11. Does your national law permit a leasing contract to be assigned ?

12. Is there legislation in your country designed or apt to protect the lessor's title as against third parties ?

13. To what extent do you feel that leasing can be dealt with independently of security interests in general ?

14. Passing to the specifically international leasing situation, would your answer to questions 1.1. and 1.2. differ in respect of international leasing ?

15. What would you estimate as the proportionate incidence of the various forms of leasing employed in international operations ?

16. Is the lessee/user in international leasing operations usually a firm or is he sometimes, and to what extent, also a consumer ? What is the approximate ratio between the different types of lessee/user ?

17.1. In the light of the previous questions regarding leasing operations in general, what, in your opinion, are the aspects of international leasing operations that give rise to especial difficulty and/or differ from those commonly encountered in purely internal leasing operations ?

17.2. In particular, is the burden of the obligations arising under an international leasing operation distributed differently from or in much the same manner as for internal leasing operations as described in the Secretariat's preliminary report ?

18.1. In which of the various forms of leasing employed in international operations do you think that the need for the preparation of international uniform rules would be most useful and is most keenly felt ?

18.2. How far do you consider the various forms of leasing employed in international operations to merit special, individual treatment, or could they rather be dealt with adequately and conveniently at the same time and in the same instrument ?

19. To the extent that international rules are felt to be called for in this field, which form of unification would, in your view, be more fitting :

a) international uniform legislation or

b) some form of model contract or

c) a combination of the two (i.e. a) and b)), bearing in mind that certain subjects which at present are in practice normally covered by the lessor's general conditions or standard forms of contract should perhaps be subjected to some form of mandatory rules of law, without prejudice, however, to the basic principle of the parties' freedom of choice as to all other matters not subjected to such rules.