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Tentative draft uniform rules on the sui generis form of  
leasing transaction, drawn up by the UNIDROIT Secretariat,  
with the assistance of Professor László Réczei, Chairman  
of the Study Group on the leasing contract, in the light  
of the discussions of the Study Group at its first session

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## Article 1

Financial leasing is a triangular transaction in which a financier, on the specifications of the user, purchases from a supplier plant, capital goods or equipment (hereinafter referred to as "equipment") the use of which the financier grants to the user for business or professional purposes. This transaction presents the following particular characteristics:

- the choice of the equipment and the supplier lies with the user;
- the equipment is purchased by the financier on the basis of a contract providing for its use which has either been concluded or is to be concluded between the financier and the user;
- the financier is owner of the equipment throughout the term of the contract providing for its use;
- the contract between the financier and the user is concluded for a term of not less than ..... years;
- the contract between the financier and the user is concluded for a term which takes the period of depreciation of the equipment into consideration;
- the parties may choose from among various options either during the course or at the end of the contract between the financier and the user.

## Article 2

The fact that the leasing transaction is concluded on the basis of one or on the basis of more than one contract shall not affect its qualification for the purposes of Article 1.

## Article 3

(1) A transaction which is recognised in one Contracting State as a valid leasing transaction for the purposes of Article 1 shall also be so recognised for the purposes of the present Convention in any other Contracting State.

(2) Where a leasing transaction which meets the criteria set out in Article 1 has been validly concluded under the law of the place of business of the user, provided that the last-mentioned law is that of a Contracting State, it shall be recognised as a valid leasing transaction in any other Contracting State, except in a State which avails itself of the reservation set out in Article ... of the Convention.(1).

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(1) Such an article, as yet not drafted, would form part of the Final Clauses of the Convention.

Article 4

Once the leasing transaction referred to in Article 1 has been concluded the agreement between the supplier and the financier may not be varied without the consent of the user, just as the specifications given by the user to the supplier may not be varied without the consent of the financier.

Article 5

(1) The financier's title to the equipment provided for the use of the user shall only be enforceable against third parties if the financier has deposited with the competent authorities a notice signed by the financier and the user, giving both the address of the financier from which information concerning his title to the equipment may be obtained and a mailing address of the user and containing a statement which indicates the types or describes the items of equipment. Where the equipment is to become a fixture, the latter statement shall also contain a description of the real property concerned.

(2) The competent authorities for the purposes of the first paragraph of the present article shall be laid down by each Contracting State for its own territory.

(3) Where the equipment provided for use is to become a fixture the notice referred to in the first paragraph of the present article shall be deposited with the authorities where a mortgage on the real property concerned would be filed or recorded.

(4) A purchaser of equipment from a user who sells it in the ordinary course of business shall take it free from the financier's title, notwithstanding that this has been notified in accordance with the provisions of the present article and even if the purchaser actually knows of the financier's title.

Article 6

Where the equipment provided for use has become a fixture and to the extent that the financier has priority over the claim of any person having an interest in the real property concerned, the financier may upon breach by the user of his contractual duties remove his equipment from the real property if, unless otherwise agreed, he reimburses any encumbrancer or owner of the real property who is not the user for the cost of restoring the real property to the condition it was in up until the time when his equipment became a fixture thereof.

Article 7

The financier has the right to require that a plaque of a sufficient size should be affixed to the equipment indicating legibly his title to the equipment in question.

Article 8

(1) The financier shall not, subject to the provisions of the third and fourth paragraphs of the present article, be liable in respect of any of the contractual and tortious duties that would ordinarily flow from his ownership of the equipment provided for the use of the user.

(2) The financier shall in particular not be liable for any injuries or damage caused by or to the equipment during the term of his contract with the user, unless the said injuries or damage resulted from a latent defect which could not reasonably have been discovered at the time when the user took delivery.

(3) The financier shall, notwithstanding the provisions of the first paragraph of the present article, be liable in respect of the duty to ensure that the user shall have and enjoy quiet possession of the equipment provided for his use.

(4) The financier shall, notwithstanding the provisions of the first paragraph of the present article, be liable in respect of any of the contractual and tortious duties that would ordinarily flow from his ownership of the equipment to the extent that he or his agents or servants have actively intervened at a technical level as regards the equipment to be supplied.

Article 9

(1) The user shall be enabled to exercise a direct right of action against the supplier in respect of any damage sustained by him as a result of failure by the supplier to deliver the equipment contracted for.

(2) Where the supplier has failed to deliver the equipment in accordance with the terms of the contract concluded between him and the financier, he shall be allowed a further reasonable period of time in which to make delivery before the remedies mentioned in the first, third and fifth paragraphs of the present article may be exercised.

(3) The exercise by the user of the direct right of action given by the first paragraph of the present article shall in no way prejudice the remedies available to the financier, under the terms of his contract with the supplier, in respect of any damage sustained by him as a result of failure by the supplier to deliver the equipment contracted for.

(4) Any action in respect of failure by the supplier to deliver the equipment contracted for shall be brought in the joint names of the financier and the user. Failure by the financier to join his name to any such action brought by the user shall not prevent the exercise by the latter of the remedy given him by the first paragraph of the present article.

(5) Where the supplier has failed to deliver the equipment contracted for, the user may only declare the contract between the financier and the supplier avoided if he has been expressly authorised to do so by the financier.

(6) Where the supplier only fails to make delivery in accordance with the terms of his contract with the financier because of a breach by the latter of his contract with the supplier, the financier shall be liable for any damage sustained as a result thereof by the user.

Article 10

(1) The user on delivery shall have the duty to check the conformity of the equipment with that contracted for and its fitness for the purpose for which it is intended. Where the user fails to perform this duty the supplier or the financier shall not be liable for any defect which could reasonably have been discovered at the time when the user took delivery.

(2) The user shall be enabled to exercise a direct right of action against the supplier in respect of any damage sustained by him as a result of delivery by the supplier of equipment which is not in conformity with that contracted for or which is unfit for the purpose for which it is intended.

∩ (3) The exercise by the user of the direct right of action given by the second paragraph of the present article shall in no way prejudice the remedies available to the financier, under the terms of his contract with the supplier, in respect of any damage sustained by him as a result of delivery by the supplier of equipment which is not in conformity with that contracted for or which is unfit for the purpose for which it is intended. ∩

(4) Any action in respect of the delivery by the supplier of equipment which is not in conformity with that contracted for or which is unfit for the purpose for which it is intended shall be brought in the joint names of the financier and the user. Failure by the financier to join his name to any such action brought by the user shall not prevent the exercise by the latter of the remedy given him by the second paragraph of the present article.

#### Article 11

(1) In the event of default by the user in the performance of his contractual duties toward the financier the latter shall, subject to the provisions of the second paragraph of the present article, have the right to terminate the contract between him and the user and to possession of the equipment. He shall in addition have the right to such compensation from the user as will put him back as nearly as possible into the position in which he would have been had his contract with the user run its full term, after account has been taken both of the sum which he should obtain by disposing of the equipment in a commercially reasonable manner and of such residual value as the equipment would have had on the expiry of the contract providing for their use by the user.

(2) Notwithstanding the provisions of the first paragraph of the present article, the financier shall not automatically have the right to terminate his contract with the user upon default by the latter in the payment of one of his rentals until he has given the user notice of his duty to bring his rentals up to date timeously. The user in such a case shall be liable to the financier for interest on the said payment to be calculated at the discount rate current in the State of payment.