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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Preliminary draft uniform rules on the sui generis type of  
leasing transaction as revised by the Unidroit Secretariat,  
with the assistance of Professor László Réczei, chairman of  
the Unidroit Study Group on the leasing contract, to take  
account of the proposals for amendment made at the programme  
of symposia organised to give exposure to the preliminary draft  
in compliance with the wish expressed by the Study Group at its  
third session.

Rome, December 1983

Preliminary draft uniform rules on the sui generis type  
of leasing transaction

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNISED the desirability of determining by agreement certain uniform rules relating to the sui generis transaction here referred to as "financial equipment leasing",

HAVING RECOGNISED the feasibility of dealing with the private law aspects of the said transaction,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

Article 1

1. - This Convention applies to an international tripartite transaction in which one party (the lessor), on the specifications of another party (the lessee), acquires from a third party (the supplier) plant, capital goods or equipment (hereinafter referred to as "equipment") the use of which the lessor grants to the lessee for business or professional purposes in return for the payment of rentals.

2. - Such transaction presents the following main characteristics:

(a) it consists of one or more contracts;

(b) the free choice of the equipment and of the supplier lies with the lessee and is the lessee's responsibility;

(c) the equipment is acquired by the lessor in connection with a contract (the leasing agreement) which either has been concluded or is to be concluded between the lessor and the lessee;

(d) the parties to the leasing agreement may choose from among three options (to buy the equipment, to renew the leasing agreement or to return the equipment) exercisable either during the course or at the end of the term thereof, to the extent that the inclusion of such an option would not alter the nature of the agreement.

3. - Such transaction is an international transaction for the purposes of paragraph 1 of this article if the principal places of business of the lessor and the lessee are in different States.

4. - This Convention applies only:

(a) when the States referred to in paragraph 3 of this article are Contracting States; or

(b) when the rules of private international law lead to the application to the leasing agreement of the law of a Contracting State.

#### Article 2

Where a transaction is regarded as being subject to this Convention according to the law of the State in which the leasing agreement is to be performed, it shall also be regarded as being subject to this Convention in any other Contracting State.

#### Article 3

Unless otherwise agreed:

(a) once the leasing agreement has been concluded, the agreement between the supplier and the lessor (the supply agreement) may not be varied without the consent of the lessee;

(b) once the supply agreement has been concluded, the specifications given by the lessee to the supplier may not be varied without the consent of the lessor.

#### Article 4

The lessor's title to the equipment shall be enforceable against all third parties provided that the lessor has complied with such rules (if any) as to public notice as may be prescribed by the law of the State of the lessee's principal place of business. /Where the lessor has not so complied, such title is not enforceable against either a person acquiring an interest in the equipment, by attachment or otherwise, or the lessee's trustee in bankruptcy or liquidator./

Article 5

Where the equipment has become a fixture and to the extent that the lessor has priority, under the law of the State where the fixture is situated, over the claim of any person having an interest in the real property concerned, the lessor may, in the conditions prescribed by the leasing agreement, remove the fixture from the real property. Upon removal the lessor shall reimburse any encumbrancer or owner of the real property who is not the lessee for the cost of any damage caused by the removal of the equipment from that part of the real property to which it was affixed. Such reimbursement shall make allowance for the normal wear and tear of the real property in question.

Article 6

1. - The lessor shall not, subject to the provisions of the second and third paragraphs of this article, be liable in respect of any of the contractual and tortious duties that would ordinarily flow from its position as bailor of the equipment.

2. - The lessor shall, notwithstanding the provisions of the first paragraph of this article, be liable to the lessee where the latter's quiet possession is disturbed by the lawful act of a person having a superior title or right not derived from any act or omission of the lessee.

3. - The lessor shall, notwithstanding the provisions of the first paragraph of this article, be liable in respect of any of the contractual and tortious duties that would ordinarily flow from its position as bailor of the equipment where and to the extent that it has materially and legally intervened, at a technical level, in the choice of the equipment to be supplied or in its use.

Article 7 (°)

1. - The lessee shall have a direct right of action for damages against the supplier for any loss or damage sustained by it as a result of the supplier's failure to deliver the equipment in accordance with the terms of the supply agreement. This right shall in no way prejudice the lessor's rights of action against the supplier under the supply agreement.

(°) It was agreed by the Study Group at its third session that Articles 7, 8 and 9 would have to be revised in the light of the adoption of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

2. - Except as otherwise provided by this Convention, the lessor shall not be liable to the lessee for the non-performance or imperfect performance of the leasing agreement resulting from the supplier's breach of the supply agreement. However, the lessee shall have the right, as against the lessor, to reject equipment which is not delivered within a reasonable time after the delivery date stipulated in the supply agreement (or if none, within a reasonable time after the making of that agreement) or which otherwise fails in a material respect to conform to the terms of the supply agreement. The right to reject in respect of non-conforming equipment shall be exercised, by notice to be given to the lessor, within a reasonable time after the lessee has discovered the non-conformity or ought with reasonable diligence to have discovered it. Rejection for non-conformity of the equipment under the supply agreement shall not preclude a fresh delivery of conforming equipment if made within a reasonable time after notice to reject.

3. - The lessee shall have the right to bring legal proceedings to compel the supplier to make delivery of the equipment in accordance with the terms of the supply agreement and shall give prompt notice of such proceedings to the lessor.

4. - Once the equipment has been delivered it is placed in the care of the lessee whose use of it shall be consistent with that of a normal user of such equipment and who shall ensure that it is kept in good condition.

#### Article 8

1. - The lessee shall not be entitled to withhold payment of the rentals due under the leasing agreement for non-delivery of the equipment or for a delivery of non-conforming equipment, unless this results from the fault of the lessor and only to the extent that the lessee has sustained loss thereby.

2. - Where the supplier fails to make a valid delivery of the equipment within the time specified in Article 7 (2) the lessee shall, subject to the provisions of paragraph 3 of this article, be entitled to terminate the leasing agreement and to recover any rentals or other sums paid in advance. It shall have no claim against the lessor for non-delivery, delay in delivery, or the delivery of non-conforming equipment except to the extent to which this results from the lessor's fault referred to in paragraph 1 of this article.

3. - Exercise by the lessee of the right to terminate the leasing agreement under paragraph 2 of this article shall be conditional upon the lessor being entitled to terminate the supply agreement.

Article 9

1. - In the event of default by the lessee under the leasing agreement, the lessor may, subject to the provisions of paragraph 2 of this article and unless otherwise agreed, exercise any one or more of the following rights and remedies:

(a) termination of the leasing agreement;

(b) repossession of the equipment;

(c) recovery of accrued and unpaid rentals, together with interest;

(d) recovery of such compensation as will place the lessor in the position in which it would have been had the lessee performed the leasing agreement in accordance with its terms. The leasing agreement may provide for the manner in which this compensation is to be computed and such provision shall be enforceable between the parties in all Contracting States, unless the court finds that it is wholly unreasonable;

(e) variation or termination of the supply agreement with the consent of the supplier.

2. - The lessor shall only be entitled to terminate the leasing agreement if it has by notice given the lessee a reasonable opportunity of remedying the default so far as the same may be remedied.

3. - Upon termination of the leasing agreement, the lessee shall return the equipment to the lessor in good working order, subject to normal wear and tear; failing this, the lessee shall be liable to the lessor for equivalent compensation.

Article 10

Unless otherwise agreed, the lessor may transfer its right, title and interest in the leasing agreement to one or more third parties. Such an assignment may alter neither the nature of the leasing agreement nor its legal treatment as provided in this Convention.

Article 11

Except as otherwise provided by this Convention (<sup>o</sup>), the parties may vary or exclude any duties incumbent on them under its terms.

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(<sup>o</sup>) It was agreed to leave any decision as to which provisions of the uniform rules are to be regarded as mandatory to be taken at a later stage.