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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Preliminary draft uniform rules on international financial  
leasing, as adopted by the Unidroit Study Group for the  
preparation of uniform rules on the leasing contract.

Rome, April 1984

## INTRODUCTION

1. - The fourth session of the Unidroit Study Group for the preparation of uniform rules on the leasing contract was held in Rome at the seat of Unidroit from 27 to 30 March 1984. Those attending the session were as follows:

### Members of the Study Group

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|----------------------|--|
| Mr Laszlo RECZEI     | Professor of Law at the University of Budapest; Ambassador (retired); former member of the Unidroit Governing Council;<br><u>Chairman of the Study Group -</u><br>Szerb. u. 17 - <u>H-1056 BUDAPEST</u>  |
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| Mr Ronald M. DEKOVEN | Member of the Illinois bar; Representative of the Department of State, United States of America -<br>Messrs Shearman and Sterling, Citicorp Center,<br>153 E. 53 <sup>rd</sup> St., New York - <u>NEW YORK 10022</u>   |
| Mr Giorgio DE NOVA   | Professor of Civil Law, University of Pavia -<br>Corso Strada Nuova 65 - <u>27100 PAVIA</u>  |
| Mr Royston M. GOODE  | Crowther Professor of Credit and Commercial Law, Queen Mary College, University of London -<br>339 Mile End Road - <u>LONDON E1 4 NS</u>   |
| Ms Tinuade CYEKUNLE  | Director, International and Comparative Law Division, Federal Ministry of Justice -<br>New Secretariat, P.M.B. 12517, Ikoyi - <u>LAGOS</u>   |

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Mr Martin J. STANFORD

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Ms Frédérique MESTRE VANEGAS Assistant

2.- The Study Group had as its principal business the examination of the preliminary draft uniform rules on the sui generis type of leasing transaction as revised by the Unidroit Secretariat, with the assistance of Professor Laszlo Réczei, Chairman of the Study Group, to take account of the proposals for amendment made in the course of 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 (held in Rome, 30 September / 2 October 1980). This revised text was embodied in paper Study LIX - Doc. 14. The proposals for amendment of the preliminary draft as adopted by the Study Group at its third session to which this last paper had sought to give effect were embodied in paper Study LIX - Doc. 15, to wit a report on the aforesaid programme of symposia prepared by the Unidroit Secretariat.

3. - Following further discussion, the Study Group was able, at its final session on 30 March 1984, to adopt the text of preliminary draft uniform rules on international financial leasing set out below, in the form of an appendix. The Study Group thereby considered itself as having discharged the task assigned to it by the Unidroit Governing Council at its 56<sup>th</sup> session in 1977, namely the drafting of uniform rules on the leasing contract, and accordingly forwarded this text to the Governing Council for consideration at its 63<sup>rd</sup> session, scheduled to be held in Rome from 2 to 5 May 1984, with a recommendation that governmental experts be convened to hammer out the text of a draft international Convention on the subject.

APPENDIX

Preliminary draft uniform rules on international  
financial leasing

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNISED the desirability of determining certain uniform rules relating to the private law aspects of the sui generis transaction of international financial leasing,

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

Article 1

1.- This Convention governs a tripartite financial leasing 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 (the equipment) the use of which the lessor grants to the lessee for business or professional purposes in return for the payment of rentals.

2.- This Convention applies when the principal places of business of the lessor and the lessee are situated in different States and when:

- (a) the States are Contracting States; or
- (b) the rules of private international law lead to the application to the leasing agreement of the law of a Contracting State.

Article 2

A financial leasing transaction presents the following main characteristics:

- (a) it embodies one or more agreements;
- (b) the 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 an agreement (the leasing agreement) which either has been made or is to be made between the lessor and the lessee; and

(d) the leasing agreement takes the period of amortisation of the equipment into consideration.

### Article 3

This Convention applies whether or not the leasing agreement confers on the lessee the right to buy or re-lease the equipment.

### Article 4

1.- Except as provided by Article 12 (1) (e) of this Convention, once the leasing agreement has been made, the agreement between the supplier and the lessor (the supply agreement) may not be varied without the consent of the lessee.

2.- Once the supply agreement has been made, the specifications given by the lessee to the supplier may not be varied without the consent of the lessor.

### Article 5

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.

### Article 6

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

Article 7

1.- Except as provided in paragraphs 2 and 3 of this article, the lessor does not owe the lessee or third parties any of the contractual or tortious duties that would otherwise flow from its position as bailor of the equipment.

2.- The lessor warrants that the lessee's quiet possession will not be 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 owes the lessee and third parties 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 intervened, at a technical level, in the choice of the equipment.

Article 8

1.- The lessee shall take proper care of the equipment, use it in a manner consistent with that of a normal user and keep it in the condition in which it was delivered, subject to fair wear and tear.

2.- When the leasing agreement comes to an end the lessee shall return the equipment to the lessor in the condition specified in paragraph 1 of this article.

Article 9

1.- Except as provided by Article 11 of 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 a tender of the equipment:

(a) if the equipment fails to conform to the terms of the supply agreement; or

(b) if the tender is not made within a reasonable time after the delivery date stipulated in the leasing agreement or, if none, that stipulated in the supply agreement or, in the absence of any stipulation as to date, within a reasonable time after the making of the leasing agreement.

2.- The right to reject 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 tender of conforming equipment if made within a reasonable time after notice to reject.

#### Article 10

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.

2.- 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.

#### Article 11

1.- The lessee shall not be entitled to withhold payment of the rentals for non-delivery of the equipment or for a non-conforming tender, 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 tender of the equipment within the time specified in Article 9 (1) of this Convention, the lessee shall be entitled to terminate the leasing agreement and to recover any rentals and other sums paid in advance. It shall have no other 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.

#### Article 12

1.- In the event of default by the lessee, the lessor may exercise, separately or cumulatively, the following rights and remedies:



- (a) subject to paragraph 3 of this article, 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;
- (e) variation or termination of the supply agreement with the consent of the supplier.

2.- Where by the terms of the leasing agreement the lessor has the right to accelerate payment of all or any of the rentals, the lessor must elect between the exercise of such right and the exercise of the rights conferred by paragraph 1 (b) and (d) of this article.

3.- 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.

#### Article 13

The lessor may transfer all or any of its rights in the equipment or under the leasing agreement. Such a transfer is valid, but may not relieve the lessor of any of its duties under the leasing agreement or alter either the nature of the leasing agreement or its legal treatment as provided in this Convention.

#### Article 14

Except as otherwise provided by this Convention, (\*) the parties may, in their relations with each other, exclude the application of this Convention or derogate from or vary the effect of any of its provisions.

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(\*) 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.

Article 15

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

2.- Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.