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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:
comments submitted by the Governing Council of the
Asian Leasing Association (Asialease)

Rome, January 1985.

A copy of the preliminary draft uniform rules adopted by the last session of the UNIDROIT Study Group was circulated to the Asialease Governing Council members for their perusal.

While the general feeling was that more time was required for an in-depth study of the draft, the Council felt that some corrections or modifications of the wording of the draft were necessary.

Their comments are tabled below:

Article 5

In order to ensure that the lessor's title against third parties is enforceable, the following should be included:

"To give effect to the foregoing, the title of the lessor in the equipment shall be declared to and confirmed by any person having interest in the land to which the equipment may be a fixture."

Article 7

The following addition to paragraph two is suggested:

"For this purpose, the lessor shall advise creditors holding an interest in the equipment of the lessee's rights to the unrestricted use of the equipment during the period of the lease."

Article 9

In order to avoid unnecessary dispute, paragraph (1b) should be more specific instead of the present use of "a reasonable time".

Paragraph two should include the following sentence:

"The lessor is not liable for any expenses resulting from the non-confirmation of the equipment under the supplier's agreement."

The following could follow as paragraph three:

"The foregoing rights of the lessee as against the lessor shall not prejudice the rights of the lessor to be compensated for payments made to the supplier by way of advance provided such payments have been specifically authorised to be made by the lessee."

Article 11

As the supplier and equipment specifications are stipulated by the lessee in a financial lease, the failure of the supplier cannot be held against the lessor. Thus, the clause in paragraph two stating that "... and to recover any rentals and other sums paid in advance" should be deleted.

Article 12

The following should be added to paragraph (1b):

"... and recovery of the difference between the lessor's investment and the remarketed price of the equipment."

The order of paragraphs(1c) and (1d) should be interchanged.

In order to avoid disagreement in the future, the phrase "reasonable opportunity" in paragraph three should be more specific.