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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:
observations submitted by the European Federation of
Equipment Leasing Company Associations
(Leaseurope)

Rome, February 1985

LEASEUROPE

OBSERVATIONS OF

LEASEUROPE

ON THE UNIDROIT DOCUMENT LIX 16 - 1984 110EF

"PRELIMINARY DRAFT UNIFORM RULES ON INTERNATIONAL FINANCIAL LEASING, AS ADOPTED BY THE UNIDROIT STUDY GROUP FOR THE PREPARATION OF UNIDROIT RULES ON THE LEASING CONTRACT"

Preliminary remark

The Federation stated that the UNIDROIT document is only concerned with international transactions.

The competent bodies of the Federation have examined the UNIDROIT document LIX 16 - 1984 110EF and would formulate the following suggestions and amendments.

ARTICLE 5

The Federation is in favour of the following alternative solutions, in order of preference:

- a. removal of this article;
- b. or if not, amendment to :
"The lessor's title shall be enforceable against all third parties of good faith";
- c. or to be more accurate in :
"..... the law of the State of the place where the good is used by the utiliser";

(in place of : "the State of the lessee's principal place of business.")

Argument (summary)

For the leasing industry the defence of the lessor's title of ownership, is a fundamental decisive point. The question of the enforceability of this right is only raised in regard to the third parties. The systems of public notice foreseen by the States which have one (France, Belgium) are not exempt from criticism, particularly in the event of removal the good. Consequently in cases where the third parties express any claims they would at least be of good faith.

In addition, an efficient public notice system can only be conceived in the country where the good is effectively used : the country which is not necessarily that of the lessee who could have given his good for use to another. But in this latter case, it must be considered that legislation concerning public notice is non-existent in the countries of use (e.g. developing country). A provision concerning public notice is however proving "psychologically" defensible in the context of negotiations on a convention similar to that of Unidroit where different interests are represented.

ARTICLE 6

The Federation is in favour of establishing a lessor's right against the lessee where the former shall be able to obtain refund of any indemnity paid for any damage caused by the repossession of the equipment.

The text could be amended as follows :

".... it was affixed. Nevertheless he disposes of the means to be reimbursed by the lessee for all amounts paid in this way".

Argument

These means were not foreseen in the initial text. It is justified by the fact that the lessee who preserved the use of the good should completely endorse the lessor's title of ownership particularly where it concerns the consequences of "repossession" of the equipment by the lessor.

The english text should be modified as follows

"such reimbursement shall take the normal use of the land into consideration".

(in place of : "such reimbursement shall make allowance for the normal wear and tear of the land in question").

Argument

conformity with the expression used in article 2-d.

ARTICLE 7

The Federation prefers to use the expression "owner-lessor" in place of "lessor" in the 1st and 3rd paragraphs of this article.

Argument

If the lessor accepts to restrict his prerogatives to those of a creditor supported by a title of ownership, it goes without saying that the lessee as the counterpart must accept all the obligations of a debtor respectful of this title. The amendment of the terms does not apply to paragraph 2 since the item concerned is the title of ownership.

ARTICLE 10

The Federation suggests beginning the 2nd paragraph with the word "Nevertheless".

Argument

On reading this text it is to be noticed that both paragraphs have clearly distinct subjects: on one hand, the direct action for damages of the lessee against the supplier in case of non-conforming delivery - and on the other hand, the lessee's action to compel the supplier to deliver the conforming tender to him.

ARTICLE 11

The Federation proposes completing the text as follows :

paragraph 1 : "..... for non-delivery of the equipment, delay in delivery or for a non-conforming tender either by an obvious or hidden default unless..."

paragraph 2 : "..... within the time specified in paragraph 1 of article 9 of this Convention, or to his obligation to deliver a conforming tender, the lessee, notwithstanding article 10 above, shall be entitled to terminate the leasing contract".

Argument

The text should be completed in order to make it coherent in comparison to article 10 aiming largely at "delivery of the equipment in accordance with the supply agreement", which covers more than a delivery carried out within the specified time.

The Federation points out that article 10 already endows the lessee with several rights which should not go against the terms foreseen in article 11.

The Federation regrets that article 11-2 (according to which the responsibility of the lessor obliges him to reimburse the lessee) is in regression compared to article 2 clearly fixing that "the choice of equipment and of the supplier lies with the lessee and is his responsibility".