

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: comments submitted by the delegation of the People's Republic of China to the first session of the Committee of governmental experts for the preparation of a Convention on international financial leasing

Rome, April 1985

ARTICLE 1, paragraph 2

The Chinese delegation proposes that the chapeau would be better put as follows:

"This Convention applies to a leasing agreement between the lessor and lessee whose principal places of business are situated in different States and when":

Argument

The first sentence of the original draft does not make it clear to what kind of agreement the uniform rules should apply. To put the sentence in the above mentioned proposed way can keep the drafting style of this paragraph possibly the same as that of Article 1, paragraph (1) of the Vienna Sales Convention of 1980.

ARTICLE 6

The Chinese delegation suggests that the beginning of the second sentence should be amended as follows:

"Where the lessor is responsible for the removal of the equipment, the lessor shall..."

Argument

The removal of the equipment is not always the responsibility of the lessor. Sometimes it may be the lessee's responsibility under the leasing agreement. In that case the lessor should be exempted from reimbursement of the cost of any damage caused by the removal.

ARTICLE 9, paragraph 1

1. Delete the first sentence and the word "However"; or
2. Draft the first sentence in a positive way as a new paragraph, worded as follows:

"The lessor shall ensure that the supplier delivers the equipment in accordance with the supply agreement".

The purpose of this amendment is to give the lessee a definite protection.

ARTICLE 9, paragraph 2

Delete the phrase "with reasonable diligence".

Reason: To keep the same criterion on the inspection of the equipment as Article 39, paragraph 2 of the Vienna Sales Convention.

ARTICLE 11, paragraph 1

We suggest amending this paragraph as follows:

"The lessee shall be entitled to withhold the payment of rentals for non-delivery of the equipment or for a non-conforming tender, regardless of whether this is due to the supplier's or the lessor's fault."

Reasons:

1. We think that it is sometimes difficult for the lessee to distinguish who is at fault for non-delivery or the making of a non-conforming tender.

2. If the supplier delivered defective equipment, we do not see why the lessee should still pay the rentals to the lessor according to the leasing agreement.

ARTICLE 11, paragraph 2

This paragraph should be amended as follows:

"The lessee shall be entitled to terminate the leasing agreement and recover any sums paid in advance where the supplier fails to make a valid tender of the equipment within the time specified in article 9 (1) of this Convention".

ARTICLE 11, proposed new paragraph 3

Add a new paragraph to ARTICLE 11

"The lessee shall be entitled to postpone the payment of its rentals where the supplier is late in its delivery of the equipment under the terms of the supply agreement."

ARTICLE 13

Add one paragraph:

"Where this would not be to the detriment of the lessor and would not result in a change in the condition of the leasing agreement, the lessee shall have the right to transfer all or any of its rights under the leasing agreement to an appropriate third party. The lessee must give the lessor prompt notice of such transfer."

Alternative:

"Subject to the consent of the lessor, the lessee can transfer all or any of its rights under the leasing agreement to an appropriate third party. However, the new lessee (or assignee) must undertake all the obligations under the leasing agreement".