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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A CONVENTION

ON INTERNATIONAL FINANCIAL LEASING

(First session, 15 - 19 April 1985)

Summary report

prepared by the Unidroit Secretariat

Rome, April 1985

1.- Pursuant to the decision of the Unidroit Governing Council, taken at its 63<sup>rd</sup> session held in Rome from 2 to 4 May 1984, to set up a committee of governmental experts to finalise the text of the preliminary draft uniform rules on international financial leasing adopted by the Unidroit Study Group for the preparation of uniform rules on the leasing contract, the first session of the committee of governmental experts for the preparation of a Convention on international financial leasing was held in Rome at the seat of the Institute from 15 to 19 April 1985. Mr László Réczei, who had chaired the aforementioned study group, was appointed chairman of the committee.

2.- The following Governments and international organisations delegated representatives to attend the session:

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3.- The committee was seized of the following materials:

- 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 and approved by the Unidroit Governing Council on 3 May 1984 in the course of its 63<sup>rd</sup> session (Study LIX - Doc.17);
- Preliminary draft uniform rules on international financial leasing adopted by the Unidroit Study Group for the preparation of uniform rules on the leasing contract: Explanatory report prepared by the Unidroit Secretariat (Study LIX - Doc. 18);
- 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) (Study LIX - Doc.19);
- 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 Chairman and one member of the Unidroit Study Group on the comments submitted by the Governing Council of the Asian Leasing Association (Asialease) (Study LIX - Doc. 20);
- 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) (Study LIX - Doc.21);
- 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 made by members of the Unidroit Governing Council at its 63<sup>rd</sup> session (held in Rome, 2 - 4 May 1984) (Study LIX - Doc. 22);
- 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 (Study LIX - Doc. 23).

4.- After a first reading of the preliminary draft uniform rules, the committee of governmental experts referred examination of the various points raised in the course of this reading to a drafting committee made up of the chairman of the committee and the representatives of France and the United Kingdom. This examination yielded a redraft of the preliminary draft uniform rules which is set out below as an appendix to this report. This revised text was laid before the committee of governmental experts at its final session on 19 April. In accordance with a proposal by the chairman, it was decided not to examine this revised text on this occasion but to convey it to Governments, supported by a commentary, with a request for comments, following the receipt of which the President of Unidroit should reconvene the committee of governmental experts. In the meantime the Unidroit Secretariat was given responsibility for the drawing up of draft final clauses for embodiment in the text of an international Convention to be built around the preliminary draft uniform rules.

APPENDIX

Preliminary draft uniform rules on international financial leasing adopted by the Unidroit Study Group for the preparation of uniform rules on the leasing contract as revised by the drafting committee following the Committee of governmental experts' first reading thereof

PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the importance of removing legal impediments to international financial leasing, while maintaining a fair balance of interests between the different parties to the transaction,

AWARE of the need to make international financial leasing more available to developing countries,

CONSCIOUS of the fact that the rules of law governing the traditional contract of hire are ill-suited to the distinctive triangular relationships created by the financial leasing transaction,

RECOGNIZING therefore the desirability of formulating certain uniform rules relating primarily to the civil law aspects 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 financial leasing transaction in which one party (the lessor), on the specifications of another party (the lessee),

(a) enters into an agreement (the supply agreement) under which it acquires plant, capital goods or equipment (the equipment) from a third party (the supplier) and

(b) enters into an agreement (the leasing agreement) granting to the lessee the use of the equipment for business or professional purposes in return for the payment of rentals.

2.- The financial leasing transaction referred to in the previous paragraph is a transaction which typically possesses the following main characteristics:

(a) the lessee relies on its own skill and judgment in specifying the equipment and in selecting the supplier;

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

(c) the rentals payable under the leasing agreement are fixed so as to take into account the amortisation of the whole or a substantial part of the cost of the equipment.



Article 2

1.- This Convention applies when the lessor and the lessee have their places of business in different States and when:

(a) those States and the State in which the supplier has its place of business are Contracting States; or

(b) both the supply agreement and the leasing agreement are governed by the law of a Contracting State.

2.- For the purposes of this Convention, if a party to the supply agreement or the leasing agreement has more than one place of business, the place of business is that which has the closest relationship to that agreement and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of that agreement.

Article 3

This Convention applies whether or not the leasing agreement confers on the lessee the right to buy the equipment or to hold it on lease for a further period.

Article 4

1.- Once the leasing agreement has been made, 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

1.- The lessor's title to the equipment shall be enforceable against the lessee's trustee in bankruptcy and creditors 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.

2.- This article shall not apply in relation to a creditor having a lien or a security interest in the equipment.

Article 6

/Deleted/

Article 7

1.- The lessor does not owe the lessee or third parties any of the duties in contract or tort that would otherwise flow from its position as bailor of the equipment.

2.- Nevertheless:

(a) the lessor owes the lessee and third parties the duties in contract and tort that would ordinarily flow from its position as bailor of the equipment where and to the extent that it has influenced the choice of the supplier or the choice or specifications of the equipment;

(b) 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.- Nothing in this article shall affect the liability of the lessor in its capacity of owner 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, unless exercising its right to buy the equipment or to hold the equipment on lease for a further period, shall return the equipment to the lessor in the condition specified in the preceding paragraph.

Article 9

1.- Where the supplier knows the purpose for which the lessee requires the equipment, the duties of the supplier under the supply agreement shall also be owed to the lessee as if it were a party to that agreement and as if the equipment were to be supplied directly to the lessee for its professional or business purposes.

2.- Nothing in this article shall entitle the lessee to terminate the supply agreement.

Article 10

1.- The lessee shall have the right, as against the lessor, to reject the equipment:

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

(b) if delivery is not tendered 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 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.

3.- Where the supplier fails to deliver the equipment in accordance with paragraph 1 or paragraph 2 of this article, the lessee shall be entitled to terminate the leasing agreement and to recover any rentals and other sums paid in advance.

4.- The lessee shall not be entitled to withhold the payment of the rentals, or have any other claim against the lessor, for non-delivery, delay in delivery or delivery of non-conforming equipment except to the extent to which this results from the act or omission of the lessor.

Article 11

/Incorporated in new Article 10/

Article 12

1.- In the event of default by the lessee, the lessor may:

(a) subject to paragraph / 4 / of this article, terminate the leasing agreement;

(b) after such termination, repossess the equipment;

(c) recover accrued unpaid rentals, together with interest;

(d) recover 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, to the extent that the lessor has taken all reasonable steps to mitigate its loss.

2. - The leasing agreement may provide for the manner in which the compensation referred to in paragraph 1 (d) of this article is to be computed and such provision shall be enforceable between the parties in all Contracting States, unless the court finds that it is unreasonable./

3. Where the lessor has terminated the leasing agreement or repossessed the equipment it shall not be entitled to enforce a term of the leasing agreement accelerating payment of the rentals.

4. The lessor shall only be entitled to terminate the leasing agreement or accelerate payment of the rentals 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 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, (\*) t/he 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.

#### 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 and in conformity with the law applicable by virtue of the rules of private international law.

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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.