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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT  
CONVENTION ON INTERNATIONAL FINANCIAL LEASING

OBSERVATIONS

by the Government of Sweden on the text of the preliminary  
draft uniform rules on international financial leasing  
as this emerged from the first session of governmental  
experts

Rome, April 1986

Stockholm, 21 March 1986

International Institute for  
the Unification of Private Law  
(UNIDROIT)  
Via Panisperna, 28  
I-00187 ROME  
Italy

Preliminary Draft Uniform Rules on International  
Financial Leasing

With reference to your Note of 3 January 1986 the Ministry of Justice of Sweden has the honour to submit the following comments.

The Ministry has invited interested authorities and organisations to give their opinions on the draft. The general opinion among the interested parties is that the project should be continued on the basis of the draft. However, some organisations, representing the industry and commercial circles, while accepting the draft at the same time stress the importance of the optional nature of the provisions.

The Swedish Government shares the general attitude that the project should be carried on, the draft and the commentary providing a good basis for the continuation of the work. Whether these draft uniform rules should result in a draft convention or uniform rules might be decided at a later stage.

As far as the scope of the draft is concerned matters would be considerably more complicated if the type of leasing transaction called sale and lease-back were to be included. However, as this type of leasing is

rather common - at least in Sweden - this special leasing situation should perhaps be dealt with more thoroughly before it is definitely rejected. The question of subleasing should perhaps also be more elaborated.

The following observations can be made concerning the individual articles.

Article 1, paragraph 1. As the sentence "on the specifications of another party (the lessee)" only refers to subparagraph (a) it should be incorporated in this subparagraph. As it now stands it also applies to subparagraph (b). It might be an advantage to stress the lessor's ownership of the equipment by adding the word "ownership" after "acquires" in subparagraph (a).

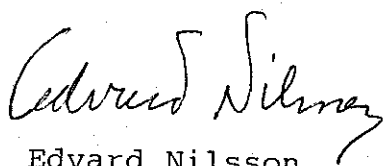
Article 5. The desirability of having an article regulating the relations to third parties in connexion with conflicts over the leased asset can be questioned. The fact that the connecting factor in determining the applicable law is the law of the lessee's principal place of business gives rise to more problems than it solves. The established principle of lex rei sitae ought to be kept.

Article 7. As for regulating the relations to third parties there are some reservations with regard to this article as well. The application of the common law term "bailor" will furthermore create problems in legal systems which do not differentiate between owner and bailor in the same way as the common law system does.

Articles 9 and 10. In these articles the Committee has tried to solve the important problems which arise from one of the main characteristics of the leasing situation, i.e. the triangular relationship. However, the articles present solutions to just some of the problems. A broader approach would be desirable.

Article 12. Perhaps more attention should also be given to the triangular relationship in situations treated in this article. In considering the right of the lessor to terminate the leasing agreement, a service contract between the supplier and the lessee or a guarantee of repurchase issued by the supplier must be taken into account.

Yours sincerely,



Edvard Nilsson

Under-Secretary for Legal Affairs