

UNIDROIT 1987
Study LIX - Doc. 47
(Original: English)

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

Comments by the Japan Leasing Association on the text of
the draft Convention on international financial leasing as
this emerged from the third and final session of the
Unidroit committee of governmental experts for the
preparation of a draft Convention on international
financial leasing

Rome, July 1987

Note by the Unidroit Secretariat:

This paper, drafted by the Japan Leasing Association on the basis of its team of observers' participation in the third session of governmental experts, was handed to a member of the Unidroit Secretariat at the Fifth World Leasing Convention held in Toronto in June 1987. He had been invited to address the Convention on the subject of Unidroit's draft Convention on international financial leasing as this had emerged from the aforesaid session of governmental experts. This paper was also circulated amongst all delegates attending the Convention and formed part of the address delivered at the Convention by the Chairman of the Japan Leasing Association.

**A VIEW ON THE UNIDROIT DRAFT CONVENTION ON
INTERNATIONAL FINANCIAL LEASING**

1. We had understood that the aim of this draft was to formulate uniform rules to govern the triangular relationships of the parties concerned in international financial leasing transactions. This association is most eager to see established a set of uniform rules which will have great significance for the promotion of international leasing transactions.

2. However, a review of the draft leads us regrettably to conclude that certain of its provisions are considerably out of line with the realities of international financial leasing, where Japanese lessors are involved. Specifically it should be noted that the draft proposes quite a number of provisions which are unduly adverse to the interests of the lessor. If these were incorporated into an official convention, Japanese lessors would be discouraged from engaging in international financial leasing transactions. As a result, there is a risk that such transactions would be impeded in the long term.

We believe that lessors and lessor organizations in all countries should be fully aware of the impact that such a convention could have for future transactions which are governed by the draft convention if it were enacted in its present form.

3. This association acknowledges the need to formulate uniform rules governing international financial leasing transactions, but it feels it must point out that the draft convention, notably the provisions of Articles 7 and 10, contain certain points of principle, as referred to below, which we cannot possibly concede.

Basically, certain of the provisions fail to show due consideration for the financing orientation of financial leasing. In addition, they propose that the lessor's liability in relation to leased property should be similar to that of any lender in a traditional contract of hire. We consider that in the Japanese and international context these measures are excessive and indeed quite inappropriate.

(1) Article 7, paragraph 2

Opinion: Alternative II without paragraph 3 should be chosen.

Reason: An excessive liability would be imposed upon the lessor if provision were made for extending the lessor's warranty liability to cover cases where unavoidable factors relating to force majeure (such as government expropriation, labour disputes, etc.) could intervene, through no fault of the lessor's, to disturb the quiet possession of leased property.

(2) Article 10

Opinion: An addition should be made to paragraph 3, between the words "where" and "if" which reads: "it has intimated acceptance to the lessor or the supplier or where,"

Reason: For Japanese lessors engaged in international financial leasing transactions it is common practice to see that, once having accepted the equipment, the lessee loses its right to reject such. If the lessee were granted the right to reject equipment after having accepted it, it follows that the lessor would essentially be being asked to issue a perfect warranty guaranteeing the quality of the leased equipment.

4. All provisions should be made voluntarily applicable, as stated in paragraph 1 of Article 14, because in practice the way in which international financial leasing transactions are undertaken differs from country to country. We would agree to work toward unifying business practice as soon as possible, but suggest that moderate, instead of hasty and stringent provision should be made for such unification, because otherwise such changes will fail to reflect business realities and could eventually impede international financial leasing transactions.

5. Lessors and lessor organizations in all countries should be fully aware of the impediments to which certain of the provisions of this convention could give rise for international financial leasing transactions, and of the serious consequences that it could also have for domestic transactions. They should urge their respective Governments to give greater consideration to the need for protecting the lessor's rights.