



**ADVISORY BOARD FOR THE  
PREPARATION OF A  
MODEL LAW ON LEASING  
Third session  
Rome, 3-5 April 2006**

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**SUMMARY REPORT**

*(prepared by the UNIDROIT Secretariat)*

**(a) Introduction**

The third and final session of the Advisory Board for the preparation of a Model Law on leasing was held at the seat of UNIDROIT in Rome from 3 to 5 April 2006. The attending Advisory Board members were Mr Andrea Albeni (Leaseurope), Mr El Mokhtar Bey (France/Tunisia), Ms Isobel Cassidy (Equipment Leasing Association of the United States of America), Mr Rafael Castillo-Triana (Colombia), Mr Renato Clarizia (Leaseurope), Mr Ronald DeKoven (United Kingdom), Ms Rachel Freeman (International Finance Corporation (hereinafter "I.F.C.")), Ms Anna Normantovich, representing Mr Nikolai Zinoviev (Russian Federation), Chief Mrs Tinuade Oyekunle (Nigeria), Mr Fritz Peter (Switzerland), Mr Ralph Petta (Equipment Leasing Association of the United States of America), Ms Yanping Shi (People's Republic of China) and Mr Murat Sultanov (I.F.C.). Mr Carsten Dageförde (Germany) was unable to attend. Mr Spyridon Bazinas represented the United Nations Commission on International Trade Law (UNCITRAL) as an observer.

Chief Mrs Oyekunle, the Chairman of the Advisory Board, called the session to order. Mr Martin Stanford, Deputy Secretary-General of UNIDROIT, welcomed the members of the Advisory Board, stressing the importance of their deliberations on this occasion, destined as their were to result in the texts, in both English and French, of the preliminary draft Model Law to be laid before the UNIDROIT Governing Council at its 85th session, to be held in Rome from 8 to 10 May 2006. Mr DeKoven, the Reporter, gave a report on the response to his presentation regarding the future Model Law at the 24th Annual World Leasing Convention held in Dubai, U.A.E. on 14-15 March 2006 and noted in particular that Convention attendees expressed a desire that the future Model Law cover short-term, low-cost assets and that it comply with Shari'a requirements so that it could be implemented in the Gulf region.

The Advisory Board also appointed a Drafting Committee, consisting of the Reporter, Mr Bey and Mr Sultanov.

**(b) Main business of the session**

The main business of the session consisted in the Advisory Board's consideration of the second preliminary draft Model Law (UNIDROIT 2005, Study LIXA, Doc. 6) prepared by the Reporter, especially in the light of comments raised on the draft by members of the Advisory Board and observers (UNIDROIT 2006, Study LIXA, Doc. 7). The Advisory Board instructed the Drafting Committee to prepare a further draft on the basis of the following instructions:

- I. **Scope of future Model Law:** The notes that it was envisaged preparing to the future Model Law would provide guidance regarding various approaches to the issues of accounting, taxation and supervision.
- II. **Preamble**
  - A. The Preamble would include a reference to the Institute's commitment to the facilitation of international trade in capital equipment.
  - B. The Preamble would not include any references to the I.F.C.
- III. **Chapter I** (General provisions)
  - A. **Article 1** (Sphere of application): Article 1 would be retained.
  - B. **Article 2** (Definitions)
    1. Asset
      - a. The definition of "asset" would not exclude information.
      - b. The notes to the future Model Law would indicate that the term "asset" includes software.
    2. Financial lease
      - a. The terminology would be revised to eliminate any confusion between those provisions that apply to financial leases and those that apply to other kinds of leases.
      - b. The definition would be modified to make clear that a lease that contains an option to purchase may be a financial lease but is not necessarily a financial lease.
      - c. The phrase "without relying primarily on the skill and judgment of the lessor" in sub-paragraph b would be deleted.
      - d. Sub-paragraph c would be retained but modified to reflect that a financial lease need not be a full payout lease.
    3. Lease: The notes to the future Model Law would provide guidance on ensuring that the future Model Law was in line with relevant provisions of domestic legislation regarding security interests and the UNCITRAL draft Legislative Guide on Secured Transactions.
    4. Lessor: No requirement that a lessor be licensed or regulated would appear in the text of the future Model Law.

5. Operations lease: The definition would be deleted.
  6. Person: The Drafting Committee would consider whether the term "person" adequately reflects the commercial nature of most parties to leasing transactions.
  7. Supply agreement: The term "supply agreement" would be defined.
- C. **Article 3** (Other laws): The notes to the Model Law would provide guidance on ensuring that the future Model Law was in line with relevant provisions of domestic legislation and the UNCITRAL draft Legislative Guide on Secured Transactions regarding registration.
- D. A new Article would be inserted to instruct courts that the law should be interpreted with regard to its international origin and that gaps in the law should be interpreted in conformity with the law's general principles.
- E. **Article 4** (Freedom of contract): The Drafting Committee would consider whether the current language adequately reflected the parties' right to vary the effect of the Law's provisions.
- IV. **Former Chapter II** (Formation and documentation of leasing agreement): The provisions contained in Study LIXA, Doc. 3, regarding general principles of contract law would be re-inserted, in brackets and with the instruction that the provisions were recommended only for States that lacked developed contract law.
- V. **Chapter II** (Effect of leasing agreement)
- A. **Article 6** (Lessee as beneficiary of supply agreement)
1. The Drafting Committee would consider whether the language of Article 6(c) could be clarified to provide more certainty regarding the lessor's obligation.
  2. Article 6 would be mandatory.
- B. **Article 7** (Priority of liens): The notes to the Model Law would provide guidance on ensuring that the Model Law was in line with relevant provisions of domestic legislation and the UNCITRAL draft Legislative Guide on Secured Transactions regarding priority.
- C. **Article 8** (Liability for death, personal injury, or property damage caused to third parties)
1. Article 8(1)'s reference to the lessor's involvement in the selection of the asset would be revised to bring it into line with the corresponding change in the definition of "financial lease".
  2. Article 8(2) would be revised to limit the liability of the lessor in its capacity as owner or any other capacity.
  3. Article 8 would be mandatory.

**VI. Chapter III (Performance)****A. Article 9 (Irrevocability):**

1. The lessee's duties would become irrevocable when the leasing agreement was entered into, regardless of whether the supply agreement had been entered into at that time.
2. The requirement that duties intended to be irrevocable in a lease other than a financial lease must be specifically identified would be retained.

**B. Article 10 (Risk of loss)**

1. When the parties had not agreed on the time at which the risk of loss would pass, the future Model Law would provide that the risk passes when the leasing agreement was entered into, regardless of whether the supply agreement had been entered into at that time.
2. There was no need to indicate that in a financial lease the risk of loss passed directly from supplier to lessee.
3. Article 10 would be mandatory.

**C. Article 11 (Damage to the asset):** The future Model Law would leave to existing law the question of who was liable for damage to the asset when the asset was destroyed before delivery without fault of the lessee, lessor or supplier.**D. Article 12 (Acceptance):** The Drafting Committee would consider whether paragraph 2 should be clarified to reflect that in a financial lease, any damages are owed by the supplier.**E. Article 13 (Rejection)**

1. Paragraph 1 would be clarified to reflect that in a financial lease the lessee's demand for conforming equipment was made to the supplier.
2. The requirement in sub-paragraph 2(a) that rejection come within a "reasonable time" of delivery would be retained.
3. The Drafting Committee would consider whether sub-paragraph 2(b) could be clarified to provide a more certain test for when the lessee could reject a non-conforming asset after previously accepting it.

**F. Article 14 (Transfer)**

1. Paragraph 1 would be revised to protect the lessor's ability to transfer its right to receive funds.
2. Paragraph 3 would be deleted.
3. The future Model Law would not provide an explicit waiver of defences provision.

**Chapter IV** (Default)

- G. Parties would be required to provide notice and an opportunity to cure before exercising their rights under Chapter IV.
- H. The future Model Law would provide more clarity regarding the lessee's rights with respect to enforcement.
- I. **Article 22** (Possession and disposition)
  - 1. The Drafting Committee would consider whether Article 22 provided sufficient clarity regarding the lessor's right to dispose of the asset when the lessee exercised an option to purchase the asset.
  - 2. The notes to the future Model Law would provide guidance regarding various approaches to the lessor's right to recover possession of the asset.

The Advisory Board also agreed that the notes to the Model Law would provide guidance on those revisions necessary to make the law consistent with Shari'a principles.

**(c) *Establishment of the text of the preliminary draft Model Law for consideration by the UNIDROIT Governing Council***

The Drafting Committee proposed revisions to the previous draft in accordance with the Advisory Board's instructions. Following discussion of the Drafting Committee's proposed revisions, the Advisory Board endorsed the proposed revisions in their entirety and thus established the text of the preliminary draft Model Law on leasing to be laid before the Governing Council at its 85th session. This text is reproduced in the Appendix to this report. It was agreed by the Advisory Board that this text should remain confidential until such time as it was transmitted to Governments.

**(d) *Future work***

The Deputy Secretary-General advised the Advisory Board that the preliminary draft Model Law as it emerged from the session would be submitted to the Governing Council for consideration as to the most appropriate follow-up action. The Secretariat would be recommending that the preliminary draft be transmitted to Governments for finalisation, first, through the holding of a special conference which it was hoped would be convened in October 2006 with the support of the I.F.C., and, secondly, at an extraordinary session of the General Assembly of UNIDROIT member States, to be held in Rome from 27 to 29 November 2006. The intention would be to present the future Model Law at the proposed special conference not only to UNIDROIT member Governments but also to those non-member Governments that might be especially interested in the subject-matter — especially developing countries and economies in transition — and to national and regional leasing associations. The idea would be for members of the Advisory Board to be in charge of presenting the future Model Law at the conference.

Ms Freeman advised that the I.F.C. would be holding a conference regarding small business financing in South Africa in October 2006 and she proposed that the conference be held in conjunction with it. She noted that the I.F.C. was currently promoting leasing in Central Asia, China, the Balkans, the Middle East and Africa and that it would be considering how the Model Law might be used to improve leasing legislation in those areas. She mentioned the project's special importance for French-speaking African countries.

**(e) *Closing of the session***

The Chairman closed the session on 5 April 2006.



**APPENDIX****PRELIMINARY DRAFT MODEL LAW ON LEASING**

*(established by the Advisory Board for the preparation of a model law on leasing at the concluding meeting of its third session, in Rome on 5 April 2006)*

**[PREAMBLE**

*THE GENERAL ASSEMBLY OF THE INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT), meeting at its 60th session in Rome on 30 November 2006,*

*Recognising* that leasing provides developing countries and countries in transition in particular with an important source of capital for the development of infrastructure and small- and medium-sized enterprises;

*Aware* that, while many States already possess leasing legislation and a well-developed leasing industry, many other States, and in particular those States with developing economies and economies in transition, require a legal framework that will foster the swift growth of a nascent or non-existent leasing industry;

*Convinced* accordingly as to the usefulness of proposing a model law on leasing for consideration by national legislators, which may adapt it to meet their specific needs;

*Committed* to the purpose of harmonising legal regulations of leasing on a global basis in order to facilitate international trade in capital goods;

*Finding* that the UNIDROIT Convention on International Financial Leasing (Ottawa, 28 May 1988) has not only removed certain legal impediments to the international financial leasing of equipment while maintaining a fair balance of interests between the different parties to the transaction for States Parties thereto, but has also frequently served as a model for States drafting their first leasing laws;

*Considering* the legal regimen enshrined in the aforementioned Convention as a useful starting point for the development of a comprehensive model law governing such transactions;

*Being of the view* that in the preparation of such a model law priority must be given to the establishment of rules governing the civil and commercial law aspects of leasing,

**HAS APPROVED THE FOLLOWING TEXT OF THE UNIDROIT MODEL LAW ON LEASING:]**\*

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\* The preamble to the preliminary draft Model Law as reproduced herein was prepared by the UNIDROIT Secretariat, in line with the decision taken by the Advisory Board at its second session. It is designed simply to demonstrate the fundamental objectives of the preliminary draft Model Law and is in no way intended to prejudge the decision on this issue to be taken by Governments.

## CHAPTER I: GENERAL PROVISIONS

### Article 1 – Sphere of application

This Law applies to any lease of an asset, if the asset is within [the State], the lessee's centre of main interests is within [the State] or the leasing agreement provides that [the State's] law governs the transaction.

### Article 2 – Definitions

In this Law:

**Asset** means all property used in trade or business, including plant, capital goods, equipment, future assets, specially manufactured assets and living and unborn animals. The term does not include money or investment securities but no asset shall cease to be an asset for the sole reason that the asset has become a fixture to or incorporated in land.

**Centre of main interests** means the place where a person conducts the administration of its interests on a regular basis. In the absence of proof to the contrary, the person's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the person's main interests.

**Financial lease** means a lease, with or without an option to purchase, that includes the following characteristics:

- (a) the lessee specifies the asset and selects the supplier;
- (b) the lessor acquires the asset or the right to possession and use of the asset in connection with a lease and the supplier has knowledge of that fact; and
- (c) the rentals or other funds payable under the leasing agreement take into account the amortisation of the whole or a substantial part of the lessor's investment.

**Lease** means a transaction in which a person grants a right to possession and use of an asset to another person for a specific term in return for rentals. Unless the context indicates otherwise, the term includes a sub-lease.

**Lessee** means a person who acquires the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessee.

**Lessor** means a person who grants the right to possession and use of an asset under a lease. Unless the context indicates otherwise, the term includes a sub-lessor.

**Person** means any legal, private or public entity or an individual.

**Supplier** means a person from whom a lessor acquires an asset for lease under a financial lease.

**Supply agreement** means an agreement under which a lessor acquires an asset for lease.



### **Article 3 – Other laws**

A leasing agreement subject to this Law is also subject to any law of [this State] applicable to real property or public notice with respect to a leasing agreement or an asset subject to a leasing agreement. Failure to comply with such law has only the effect specified therein.

### **Article 4 – Interpretation of this Law**

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

### **Article 5 – Freedom of contract**

Except as provided in Articles 11, 13, 15(1), 20(1)(a), 20(2) and 26 and the law of [this State], the lessor and the lessee may derogate from or vary the effect of this Law and are free to determine the content of a leasing agreement.

## **[CHAPTER II: INTERPRETATION OF LEASING AGREEMENT\*]**

### **Article 6 – Formation**

A leasing agreement may be created by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

### **Article 7 – Interpretation**

A leasing agreement shall be interpreted according to the common intention of the parties. If such intention cannot be established, the leasing agreement shall be interpreted according to the meaning that reasonable persons of the same kind as the parties to the leasing agreement would give to it in the same circumstances.

### **Article 8 – Documentation**

1. A leasing agreement is not enforceable against a party unless there is a record sufficient to indicate that a leasing agreement has been made.
2. A record is not insufficient because it omits or incorrectly states a provision that is important for a determination of the parties' rights and duties.

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\* The explanatory notes to be prepared shall indicate that this Chapter, which derives from the UNIDROIT Principles of International Commercial Contracts 2004 and is to be inserted in square brackets, is recommended only for those States lacking developed contract law.

3. When a record omits or incorrectly states such a provision, a provision that is appropriate in the circumstances shall be supplied. In determining what provision to supply, factors to consider should include the intention of the parties, good faith, fair dealing and reasonableness.

### **Article 9 – Modification**

A leasing agreement that contains a clause requiring modification or termination to be in a particular form may not be otherwise modified or terminated. A party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.]

## **CHAPTER III: EFFECT OF LEASING AGREEMENT**

### **Article 10 – Enforceability**

Except as otherwise provided in this Law, a leasing agreement is effective and enforceable according to its terms between the parties and against third parties, including an insolvency administrator.

### **Article 11 – Lessee under financial lease as beneficiary of supply agreement**

1. (a) In a financial lease, the duties of the supplier under the supply agreement shall also be owed to the lessee as if the lessee were a party to that agreement and as if the asset were to be supplied directly to the lessee. The supplier shall not be liable to both the lessor and the lessee in respect of the same damage.

(b) The extension of the supplier's duties to the lessee under the preceding subparagraph does not modify the rights and duties of the parties to the supply agreement, whether arising therefrom or otherwise, or impose any duty or liability under the supply agreement on the lessee.

(c) Where the absence of privity of contract between the lessee and supplier prevents the lessee from enforcing the supplier's duties under the supply agreement, the lessor shall be bound to take commercially reasonable steps to assist the lessee. If the lessor does not take such steps, the lessor is deemed to have assumed such duties.

2. The lessee's rights under this Article shall not be affected by a variation of any term of the supply agreement previously approved by the lessee unless the lessee consented to that variation. If the lessee did not consent to such variation, then the lessor is deemed to have assumed the duties of the supplier to the lessor that were so varied to the extent of the variation.

3. Nothing in this Article shall entitle the lessee to modify, terminate or rescind the supply agreement without the consent of the lessor.

4. The parties may not derogate from or vary the effect of the provisions of this Article.

### **Article 12 — Priority of liens**

1. A creditor of the lessee and the holder of any interest in land or personal property to which the asset becomes affixed take subject to the leasing agreement and cannot attach any interest belonging to the lessee.
2. Except as otherwise provided by the law of [this State], a creditor of the lessor takes subject to the leasing agreement.

### **Article 13 — Liability for death, personal injury or property damage caused to third parties**

1. In a financial lease, the lessor shall not, in its capacity of lessor, be liable to the lessee for death, personal injury or damage to property caused by the asset or the use of the asset.
2. In a financial lease, the lessor shall not, in its capacity of lessor, owner or any other capacity, be liable to third parties for death, personal injury or damage to property caused by the asset or the use of the asset.
3. The parties may not derogate from or vary the effect of the provisions of this Article.

## **CHAPTER IV: PERFORMANCE**

### **Article 14 — Irrevocability**

1. (a) In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement has been entered into.  
  
(b) In a lease other than a financial lease, the parties may agree to make any of the lessee's duties to the lessor irrevocable and independent by specifically identifying each duty that is irrevocable and independent.
2. A duty that is irrevocable and independent must be performed, regardless of any other party's performance or non-performance, unless the party to whom the duty is owed terminates the leasing agreement or otherwise explicitly agrees.

### **Article 15 — Risk of loss**

1. In a financial lease, risk of loss passes to the lessee. If the time of passage is not stated, the risk of loss passes to the lessee when the leasing agreement has been entered into. The parties may not derogate from or vary the effect of the provisions of this paragraph.
2. In a lease other than a financial lease, risk of loss is retained by the lessor and does not pass to the lessee.

3. When an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement and the lessee invokes its remedies under Article 18, then the lessee, subject to Article 22(1), may treat the risk of loss as having remained with the lessor or, in a financial lease, the supplier from the beginning.

### **Article 16 – Damage to the asset**

1. In a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee, the lessee may demand inspection and at the lessee's option either accept the asset with due compensation from the supplier for the loss in value but without further right against the supplier or, subject to Article 14, seek such other remedies as are provided by law.

2. In a lease other than a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the asset is delivered to the lessee,

(a) if the loss is total, the leasing agreement is terminated; and

(b) if the loss is partial, the lessee may demand inspection and at the lessee's option either treat the leasing agreement as terminated or accept the asset with due allowance from the rentals payable for the balance of the lease term for the loss in value but without further right against the lessor.

### **Article 17 – Acceptance**

1. Acceptance of an asset occurs when the lessee signifies to the lessor or supplier that the asset conforms to the agreement, fails to reject the asset after a reasonable opportunity to inspect it or uses the asset.

2. (a) Once a lessee in a financial lease has accepted an asset, the lessee is entitled to damages from the supplier if the asset does not conform to the supply agreement.

(b) Once a lessee in a lease other than a financial lease has accepted an asset, the lessee is entitled to damages from the lessor if the asset does not conform to the leasing agreement.

### **Article 18 – Rejection**

1. In a financial lease, when an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement, the lessee may demand a conforming asset from the supplier and seek such other remedies as are provided by law.

2. (a) In a lease other than a financial lease, when an asset is not delivered, is partially delivered, is delivered late or fails to conform to the leasing agreement, the lessee has the right to accept the asset, to reject the asset or, subject to this paragraph and Article 27, to terminate the leasing agreement. Rejection or termination must be within a reasonable time after the non-conforming delivery.

(b) In a lease other than a financial lease, once a lessee has accepted the asset, the lessee may reject the asset under the preceding sub-paragraph only if the non-conformity substantially impairs the value of the asset and either

(i) the lessee accepted the asset without knowledge of the non-conformity, owing to the difficulty of discovering it, or

(ii) the lessee's acceptance was induced by the lessor's assurances.

(c) In a lease other than a financial lease, when the lessee rejects an asset in accordance with this Law or the leasing agreement, the lessee is entitled to withhold rentals until the non-conforming delivery has been remedied and to recover any rentals and other funds paid in advance, less a reasonable sum corresponding to any benefit the lessee has derived from the asset.

3. If the lessee rejects an asset in accordance with this Article and the time for performance has not expired, the lessor or supplier has the right to remedy its failure within the agreed time.

### **Article 19 – Transfer**

1. The lessor's rights under the leasing agreement may be transferred without the consent of the lessee. The lessor's duties under the leasing agreement may be transferred without the consent of the lessee except when a transfer would impair the lessee's rights in the asset.

2. The lessee's rights and duties under the leasing agreement may be transferred only with the consent of the lessor, which may not be unreasonably withheld, and subject to the rights of third parties.

3. The lessee, lessor and third parties may consent to such transfers in advance.

### **Article 20 – Warranty of quiet possession**

1. (a) In a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right or who claims a superior title or right and acts under the authority of a court, where such title, right or claim derives from a negligent or intentional act or omission of the lessor. The parties may not derogate from or vary the effect of the provisions of this sub-paragraph.

(b) In a financial lease, a lessee that furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim of infringement or the like that arises out of compliance with the specifications.

2. In a lease other than a financial lease, the lessor warrants that the lessee's quiet possession will not be disturbed by a person who has a superior title or right, who claims a superior title or right and acts under the authority of a court or who makes a claim by way of infringement. The parties may not derogate from or vary the effect of the provisions of this paragraph.

### **Article 21 — Warranty of acceptability and fitness**

1. In a financial lease, a warranty that the asset will be at least such as is accepted in the trade under the description in the leasing agreement and is fit for the ordinary purposes for which an asset of that description is used is implied in the supply agreement and is enforceable only against the supplier.

2. In a lease other than a financial lease, a warranty that the asset will be at least such as is accepted in the trade under the description in the leasing agreement and is fit for the ordinary purposes for which an asset of that description is used is implied in a leasing agreement if the lessor regularly deals in assets of that kind.

### **Article 22 — Lessee's duties to maintain and return the asset**

1. (a) The lessee shall take proper care of the asset, use the asset reasonably in the light of the manner in which such assets are ordinarily used and keep the asset in the condition in which it was delivered, subject to fair wear and tear.

(b) When a leasing agreement sets forth a duty to maintain the asset or the manufacturer or supplier of the asset issues technical instructions for the asset's use, the lessee's compliance with such agreement or instructions shall satisfy the requirements of the preceding sub-paragraph.

2. When the leasing agreement comes to an end or is terminated, the lessee, unless exercising a right to buy the asset or to hold the asset on lease for a further period, shall return the asset to the lessor in the condition specified in the preceding paragraph.

## **CHAPTER V: DEFAULT**

### **Article 23 — Definition of default**

1. The parties may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in this Chapter.

2. In the absence of agreement, default for the purposes of this Law occurs when one party fails to perform or imperfectly performs a duty arising under the leasing agreement or this Law.

### **Article 24 — Notice**

Except as otherwise provided in the leasing agreement, an aggrieved party shall give a defaulting party notice of default, notice of enforcement, notice of termination and a reasonable opportunity to cure.

### **Article 25 – Damages**

Upon default, the aggrieved party is entitled to recover such damages as will, exclusively or in combination with other remedies provided by this Law or the leasing agreement, place the aggrieved party in the position in which it would have been had the agreement been performed in accordance with its terms.

### **Article 26 – Liquidated damages**

A provision in a leasing agreement that provides for the manner in which damages are to be computed is enforceable between the parties unless it would result in damages substantially in excess of those provided for under Article 25. The parties may not derogate from or vary the effect of the provisions of this Article.

### **Article 27 – Termination**

1. (a) Subject to sub-paragraph (b), a leasing agreement may be terminated by operation of law, by operation of Article 16 of this Law, by agreement of the parties or by an aggrieved party upon the lessee's or lessor's default.

(b) The lessee in a financial lease may not terminate the leasing agreement upon another party's default but is entitled to such other remedies as are provided by the agreement of the parties and by law.

2. Subject to Article 14, on termination, all duties under the leasing agreement that are executory on both sides, except for duties intended to take effect upon termination, are discharged but any right based on prior default or performance survives.

### **Article 28 – Possession and disposition**

1. After the leasing agreement comes to an end or is terminated, the lessor has the right to recover possession of the asset.

2. After the leasing agreement comes to an end or is terminated, the lessor has the right to dispose of the asset.