



**GOVERNING COUNCIL**  
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**Item No. 9 on the agenda: Model law on leasing**

(memorandum prepared by the Secretariat)

|                           |  |
|---------------------------|--|
| <i>Summary</i>            | <i>Status of the preliminary draft model law on leasing under preparation by a UNIDROIT Advisory Board</i>     |
| <i>Action to be taken</i> | <i>Authorisation of an extraordinary procedure for the approval and promulgation of a model law on leasing</i> |
| <i>Related documents</i>  | <i>UNIDROIT 2006 – Study LIXA – Doc. 9</i>   |

**DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT**

|                 |   |   |  |   |
|-----------------|---|---|--|---|
| <b>Priority</b> |  |  |  |  |
|                 | high  | medium  | low  | to be determined  |

**I. Strategic Plan**

Yes, because of (1) UNIDROIT'S unique position to carry out work on specific areas of secured transactions (cf. Strategic Objective No. 1) and, (2) its potential benefits for developing countries and economies in transition (cf. Strategic Objective No. 7).

**II. Work Programme 2006-2008**

Yes.

**III. Current assessment**

- Recent feedback from Member States

**Great interest** in certain States that have been involved through the participation of experts from their countries (People's Republic of China, Nigeria, Russian Federation and United States of America)

- Recent feedback from industry and other private stakeholders

Varied from **great interest** (International Finance Corporation and Equipment Leasing Association of the United States of America) to **moderate interest** (European Federation of Equipment Leasing Company Associations)

|   |  |                  |    |
|---|--|------------------|----|
| <b>On time</b>  |  | slightly delayed | no |
|   | yes  |                  |    |
|   | Timeframe determined by CGE/Governing Council/General Assembly <input type="checkbox"/>  |                  |    |
|   | Timeframe to be determined at this session <input checked="" type="checkbox"/>   |                  |    |
| <b>Staffing implications</b>  | Supervision externally funded associate officer by Principal Officer; translation; some clerical support   |                  |    |
| <b>Budget implications</b>  | Marginal   |                  |    |
| <b>Recommendations/<br/>Guidance sought/<br/>Decisions to be taken/<br/>Alternatives?</b> | Authorisation of transmission of preliminary draft model law to Governments and approval of extraordinary procedure for its approval and promulgation. |                  |    |

## BACKGROUND

### (a) *Circumstances leading to taking up of work on preparation of a model law on leasing*

1. At its 84<sup>th</sup> session, the Governing Council proposed including in the Institute's Work Programme for 2006/2008 the preparation of a model law on leasing, on condition that this was without impact on the Institute's regular Budget, a proposal that was accepted in the Work Programme decided upon by the General Assembly at its 59<sup>th</sup> session. Recent developments, in particular the drafting of new laws each time the International Finance Corporation (I.F.C.) embarked on the development of leasing industries in developing and emerging countries and countries with economies in transition and the fact that these laws invariably took as their model the UNIDROIT Convention on International Financial Leasing, had convinced the Secretariat as to the desirability of preparing a model law that could, *inter alia*, be used for such purposes. The Secretariat, moreover, anticipated that such a model law would probably stimulate afresh implementation of that Convention in those countries taking the model law. A UNIDROIT correspondent, Mr R.M. DeKoven, who had taken an active part in the development of the Convention and had acted as Reporter on Article 2A (Leases) of the Uniform Commercial Code of the United States of America, kindly offered to provide his own services on a complimentary basis and those of a young lawyer, to be seconded from his law firm in that country for the period 1 October 2005/30 June 2006, at the entire expense of that law firm, to carry forward the preparation of such a model law on an expedited basis. Mr DeKoven and Mr Stanford had conducted exploratory missions to Washington, D.C. and Edinburgh in June/July 2005 in order to meet representatives of the World Bank, the I.F.C. and the Equipment Leasing Association of the United States of America (E.L.A.) to ascertain their views on the usefulness and feasibility of the project. They had come away from these meetings with the clear idea that such a model law was urgently needed, especially in African countries, where there was a great shortage of infrastructure financing, in those countries in which the I.F.C. was and would be setting up leasing industries and in China, which was preparing its own law on leasing. They had also secured the commitment of the I.F.C. to provide its own legal expertise to the project, to assist in the securing of World Bank funding for an African chairman of the body to be entrusted with the project, to provide Arabic, Chinese, Russian and Spanish versions of the model law and generally to assist in the dissemination of the model law.

(b) *Status of project*

2. Taking its inspiration from the technique successfully employed by the European Bank for Reconstruction and Development in the development of its Model Law on Secured Transactions, the Secretariat decided to entrust the preparation of a preliminary draft model law to an Advisory Board, composed of representatives of different legal and economic systems from all over the world, namely sub-Saharan Africa, North Africa, Asia, Europe, Latin America, North America and the Russian Federation, as well as key economic stakeholders, in particular the E.L.A., the European Federation of Equipment Leasing Company Associations (Leaseurope) and the I.F.C. The Advisory Board met thrice, on 17 October 2005, on 6 and 7 February 2006 and from 3 to 5 April 2006, in Rome. The Advisory Board elected Chief Mrs Tinuade Oyekunle (Nigeria), a longstanding correspondent of UNIDROIT, as Chairman and Mr DeKoven as Reporter. It agreed that the primary focus of the model law should be developing and emerging countries and countries in economic transition. Various versions of the preliminary draft model law that were laid before the Governing Council at its 85<sup>th</sup> session were prepared by the Reporter in the light of the discussions within the Advisory Board. At its third and final session the Advisory Board established the text of a preliminary draft Model Law on leasing, in English and French, for consideration by the Governing Council at its 85<sup>th</sup> session.

(c) *Further procedure and funding*

3. Three factors are particularly relevant in the decision that it falls to the Council to make in respect of the preliminary draft model law at its forthcoming session, namely the most appropriate follow-up action to be authorised. First, the economic stakeholders who have been particularly prominent in their support for the model law (the E.L.A. and the I.F.C.) have made it abundantly clear that they wish to see it available for implementation as soon as possible. In particular, the I.F.C. has a number of projects underway where it would like to be able to use the projected model law. Secondly, the Institute has a rare and unique opportunity to secure the early implementation of one of its products, through the I.F.C.'s declared intention of proposing the model law for implementation in its countries of operations. Thirdly, in line with the decision made by the General Assembly, on the basis of the Governing Council's recommendation, this project has been entirely self-financing. Each of the 13 members of the Advisory Board has either taken care of all his or her expenses or found support elsewhere for the covering of these expenses. It is noticeable that, when experts are spending their own money, they are all the more watchful as to the amount of time the efforts they are employed on take. The Secretariat would hope to be able to continue to count on the support of these friends of the Institute for the remainder of the project. Likewise, it would hope to be able to capitalise on the support pledged for the model law by the various stakeholders that have been involved in its preparation, and in particular the I.F.C.

#### **ACTION TO BE TAKEN**

4. *The Secretariat would propose that the Council authorise an extraordinary procedure for the approval and promulgation of the model law, namely its transmission to Governments with a view to its presentation and discussion, by a panel made up of members of the Advisory Board, at a conference (to be funded by the I.F.C.) to which member States (as well as a limited number of non-member States hailing, in particular, from Africa, in view of the Institute's limited membership in that continent) and representative bodies of leasing company associations would be invited in October 2006 and its finalisation and approval by member Governments at an extraordinary session of the General Assembly, to be held from 27 to 29 November 2006, that is immediately prior to the 60<sup>th</sup> session of that body. This would have the merit not only of greatly simplifying and shortening the procedure normally involved in the adoption of a model law but also of realising one of the objectives identified by certain of those participating in the joint brainstorming sessions of the Governing Council and member States, for greater involvement of the persons responsible for their countries' participation in UNIDROIT in the Assembly.*