



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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**ADVISORY BOARD FOR THE  
PREPARATION OF A  
MODEL LAW ON LEASING**

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**Second preliminary draft**  
**Model Law on leasing**

*(prepared by Ronald DeKoven, the Reporter, on the basis of the guidelines provided by the Advisory Board at its second session (Rome, 6-7 February 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 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;

*Recognising* the pioneering work being conducted by the International Finance Corporation ("I.F.C.") to develop leasing industries in various areas of the world and the essential role that a legislative framework plays in those underpinning those efforts;

*Convinced* accordingly as to the usefulness of a model law on leasing as an example that is not compulsory to States legislators and that may be adapted to meet the specific circumstances of, or established methods of legislation in each State;

*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 minimal legal framework for leasing transactions 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;

*Noting*, however, the importance of the rights and duties of the parties as enshrined in such model law interacting harmoniously with the relevant accounting and taxation requirements but commending for this purpose the advice given to States by the I.F.C. on the proper accounting and taxation treatment of leases in such publications as “Leasing in Development: Lessons from Emerging Economies” (I.F.C. 2005),

*HAS APPROVED THE TEXT OF THE UNIDROIT MODEL LAW ON LEASING, the text of which is appended hereto.*

## 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], or 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 information, 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 that includes the following characteristics:

- (a) the lessee specifies the asset and selects the supplier without relying primarily on the skill and judgment of the lessor;
- (b) the lessor acquires the asset or the right to possession and use of the asset in connection with the lease or a previous lease, and the supplier has knowledge of that fact; and
- (c) the rentals or other funds payable under the leasing agreement are calculated to take into account the amortisation of the whole or a substantial part of the cost of the asset.

**Lease** means a transaction in which a person grants a right to possession and use of an asset to another person, with or without an option to purchase, for a term in return for rentals or other funds payable. The term includes a sub-lease.

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

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

**Operations lease** means a lease other than a financial lease.

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

**Supplier** means a person from whom a lessor acquires an asset to be leased under a financial lease.

### **Article 3 Other laws**

A leasing agreement subject to this Law is also subject to any law of [this State] applicable to land, registration of a leasing agreement, or public notice with respect to a leasing agreement or an asset subject to a leasing agreement.

### **Article 4 Freedom of contract**

Except as otherwise provided in this Law and the law of [this State], the lessor and the lessee are free to determine the content of and create a leasing agreement.

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

### **Article 5 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 6 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 (i) modify the rights and duties of the parties to the supply agreement,

whether arising therefrom or otherwise, or (ii) 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 disadvantages the lessee in its efforts to enforce the supplier's duties under sub-paragraph (a) against the supplier, the lessor shall be bound to take commercially reasonable steps to assist the lessee overcome that disadvantage. 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.

#### **Article 7 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 8 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, except to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the asset.

2. In a financial lease, the lessor shall not, in its capacity of lessor, be liable to third parties for death, personal injury or damage to property caused by the asset.

### **CHAPTER III: PERFORMANCE**

#### **Article 9 Irrevocability**

1. (a) In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement and supply agreement have been signed by the parties.

(b) In an operations 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 10 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 supply and leasing agreements have been signed by the parties.

2. In an operations 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 13, then the lessee, subject to Article 17(1), may treat the risk of loss as having remained with the lessor or, in a financial lease, the supplier, from the beginning.

#### **Article 11 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 9, seek such other remedies as are provided by law.

2. In an operations 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 12 Acceptance**

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

2. Once a lessee has accepted an asset, the lessee may still be entitled to damages if the asset does not conform to the agreement.

### **Article 13 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, subject to Article 9, demand a conforming asset and seek such other remedies as are provided by law.

2. (a) In an operations 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 21, to terminate the leasing agreement. Rejection or termination under this sub-paragraph must be within a reasonable time after the non-conforming delivery.

(b) In an operations 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 an operations 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 Law or the leasing agreement and the time for performance has not expired, the lessor or supplier has the right to remedy its failure within the agreed time.

### **Article 14 Transfer**

1. The lessor's rights and duties under the leasing agreement may be transferred 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 (a) with the consent of the lessor, which may not be unreasonably withheld, and (b) subject to the rights of third parties. The lessor and third parties may give their consent in advance.

3. A transfer that is prohibited is otherwise effective if made to one who purchases for value and did not know and reasonably should not have known that the transfer was prohibited.

### **Article 15 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 holds the lessor and the supplier harmless against any claim of infringement or the like that arises out of compliance with the specifications.

2. In an operations 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, 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 16 Warranty of acceptability and fitness**

1. In a financial lease, a warranty that the asset will be at least such as (a) is accepted in the trade under the description in the leasing agreement and (b) 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 an operations lease, a warranty that the asset will be at least such as (a) is accepted in the trade under the description in the leasing agreement and (b) 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 17 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 IV: DEFAULT**

#### **Article 18 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 purpose of this Law occurs when one party fails to perform or imperfectly performs a duty arising under the leasing agreement or this Law.

#### **Article 19 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 20 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 19. The parties may not derogate from or vary the effect of the provisions of this Article.

### **Article 21 Termination**

1. (a) Subject to sub-paragraph (b), a leasing agreement may be terminated by operation of law, operation of Article 11 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 shall be entitled to such other remedies as are provided by the agreement of the parties and by law.

2. Subject to Article 9, 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.

3. The right of a party to terminate the leasing agreement is exercised by notice indicating the grounds for termination to the other party.

### **Article 22 Possession and disposition**

1. Subject to Article 14(3), after the leasing agreement comes to an end or is terminated, the lessor has the right to take possession of the asset. [The lessor may proceed without judicial process if it can be done without breach of the peace.]

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

**Second preliminary draft****Model Law on leasing*****Indicating modifications made to first preliminary draft***

*(prepared by Ronald DeKoven, the Reporter, on the basis of the guidelines provided by the Advisory Board at its second session (Rome, 6-7 February 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 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;

Recognising the pioneering work being conducted by the International Finance Corporation (“I.F.C.”) to develop leasing industries in various areas of the world and the essential role that a legislative framework plays in those underpinning those efforts;

Convinced accordingly as to the usefulness of a model law on leasing as an example that is not compulsory to States legislators and that may be adapted to meet the specific circumstances of, or established methods of legislation in each State;

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 minimal legal framework for leasing transactions 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;

Noting, however, the importance of the rights and duties of the parties as enshrined in such model law interacting harmoniously with the relevant accounting and taxation requirements but commending for this purpose the advice given to States by the I.F.C. on the proper accounting and taxation treatment of leases in such publications as “Leasing in Development: Lessons from Emerging Economies” (I.F.C. 2005),

HAS APPROVED THE TEXT OF THE UNIDROIT MODEL LAW ON LEASING, the text of which is appended hereto.

## CHAPTER I: GENERAL PROVISIONS

### Article 1 Sphere of application

This Law applies to any ~~transaction that creates a lease of~~ equipmentan asset, if the equipmentasset is within [the State], or 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, that is movable or that is a fixture, including plant, capital goods, equipment, future equipmentassets, specially manufactured equipmentassets, and the unborn young of living and unborn animals. The term does not include information, money, or investment securities, or software except to the extent that the software is so embedded in equipment as to become part of the equipment, but no equipmentasset shall cease to be equipmentan asset for the sole reason that it becomes attached or fixed to real estatethe 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.

~~Default is defined in Article 22.~~

**Financial lease** means a lease that includes the following characteristics:

(a) the lessee specifies the equipmentasset without relying primarily on the skill and judgment of the lessor;

(b) the lessor acquires the equipmentasset or the right to ~~possess~~possession and use of the equipmentasset in connection with the lease or a previous lease, and the supplier ~~is so notified; has knowledge of that fact; and~~

(c) the rentals or other funds payable under the leasing agreement are calculated ~~so as~~ to take into account the amortisation of the whole or a substantial part of the cost of the equipment; and asset.

~~\_\_\_\_\_ (d) \_\_\_\_\_ before the leasing agreement becomes effective, the lessee either~~

~~\_\_\_\_\_ (i) \_\_\_\_\_ receives an accurate and complete statement designating the promises, warranties, disclaimers of warranties, and limitations on remedies, including those of a third party, such as the manufacturer of equipment, provided to the lessor by the supplier in connection with the supply agreement, or~~

~~\_\_\_\_\_ (ii) \_\_\_\_\_ is informed that the lessee is entitled to all the promises and warranties provided in the supply agreement, is informed that the lessee may communicate with the supplier to receive an accurate and complete statement of those promises and warranties, and is informed of the supplier's identity unless the lessee selected the supplier.~~

**Lease** means a transaction in which a person grants a right to possession ~~and use~~ control of ~~equipment~~ an asset to another person, with or without an option to purchase, for use in trade or business for a term in return for rentals or other funds payable. ~~Unless the context indicates otherwise,~~ the term includes a sub-lease.

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

**Operations lease** means a lease other than a financial lease.

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

**Supplier** means a person from whom a lessor ~~buys or leases equipment~~ acquires an asset to be leased under a financial lease.

### **Article ~~12~~ 3 Other laws**

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

### **Article 43 Freedom of contract**

Except as otherwise provided in this Law and the law of [this State], the lessor and the lessee are free to determine the content of and create a leasing agreement.

## **~~CHAPTER II: FORMATION AND DOCUMENTATION OF LEASING AGREEMENT~~**

### **~~Article 4~~ 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 5~~ 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 6 — Documentation**

~~1. — A leasing agreement is not enforceable against a party unless there is a record, signed by that party or that party's agent, 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.~~

~~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 7 — 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 8 5 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, ~~against purchasers of the equipment and against creditors of the parties~~, including an insolvency administrator.

### **Article ~~10~~ 6 Lessee under financial lease as beneficiary of supply agreement**

1. (a) ~~The benefit of a supplier's promises to the lessor under the supply agreement and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply agreement, extends to the lessee to the extent of the lessee's interest under a financial lease related to the supply agreement. 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 benefit of a supplier's promises and of warranties ~~duties~~ to the lessee under the preceding sub-paragraph does not (i) modify the rights and duties of the parties to the supply agreement, whether arising therefrom or otherwise, or (ii) 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 creates a deficiency ~~disadvantages the lessee~~ in the lessee's ~~sits~~ efforts to enforce the supplier's promises or warranties ~~duties under sub-paragraph (a)~~ against the supplier, the lessor shall be bound to

take commercially reasonable steps to assist the lessee overcome that disadvantage. If the lessor does not take such steps, the lessor is deemed to have assumed such ~~promises and warranties~~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 ~~promises and warranties~~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.

### **Article ~~11~~7 Priority of liens**

1. ~~Except as provided in paragraph 3, a~~ A creditor of the lessee and the holder of any interest in land or personal property to which the ~~equipment~~asset becomes affixed take subject to the leasing agreement and cannot attach any interest belonging to the lessee.

2. Except as ~~provided in paragraph 3 or~~ otherwise provided by the law of [this State], a creditor of the lessor takes subject to the leasing agreement.

~~3. If a person in the ordinary course of its business furnishes services or materials with respect to equipment subject to a leasing agreement, a lien upon that equipment in the possession of that person for the materials or services takes priority over any interest of the lessor or lessee unless the law governing that lien provides otherwise.~~

### **Article 12 — Other laws**

~~A leasing agreement subject to this Law is also subject to any law of [this State] requiring registration of a leasing agreement. Failure to comply with such law has only the effect specified therein.~~

*Moved to become Article 3*

### **Article ~~13~~8 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 or third parties for death, personal injury, or damage to property caused by the ~~equipment~~asset or the use of the ~~equipment~~asset, unless the lessor was involved in selecting the supplier or the equipment, in which case the lessor shall be liable to the extent of that involvement, except to the extent that the lessee has suffered loss as the result of its reliance on the lessor's skill and judgment and of the lessor's intervention in the selection of the supplier or the specifications of the asset.

2. In a financial lease, the lessor shall not, in its capacity of lessor, be liable to third parties for death, personal injury or damage to property caused by the asset.

## CHAPTER ~~IV~~III: PERFORMANCE ~~OF LEASING AGREEMENT~~

### Article ~~16~~9 Irrevocability

1. (a) In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement and supply agreement have been ~~created~~signed by the parties.

(b) In an ~~operations lease other than a financial~~ lease, the parties may agree to make any of the lessee's duties to the lessor irrevocable and independent ~~at any time~~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 ~~14~~10 Risk of loss

1. ~~Except in a financial lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a financial lease, risk of loss passes to the lessee.~~

2. ~~If risk of loss is to pass to the lessee and the time of passage is not stated, the risk of loss passes to the lessee upon the lessee's acceptance of the equipment.~~

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 supply and leasing agreements have been signed by the parties.

2. In an operations lease, risk of loss is retained by the lessor and does not pass to the lessee.

3. ~~If the lessee revokes acceptance of the equipment in accordance with this Law~~When an asset is not delivered, is partially delivered, is delivered late, or fails to conform to the leasing agreement, and the lessee, to the extent of any deficiency in, invokes its insurance coverage, remedies under Article 13, then the lessee, subject to Article 17(1), may treat the risk of loss as having remained with the lessor or, in a financial lease, the supplier, from the beginning.

### Article ~~15~~11 Damage to ~~equipment~~the asset

1. In a financial lease, when an asset subject to a leasing agreement is damaged without fault of the lessor 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 9, seek such other remedies as are provided by law.

2. ~~Except in a financial lease~~In an operations lease, when ~~equipment~~an asset subject to a leasing agreement is damaged without fault of the lessee or lessor before the ~~equipment~~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 equipmentasset 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 16—Irrevocability**

~~1. In a financial lease, the lessee's duties to the lessor become irrevocable and independent when the leasing agreement and supply agreement have been created.~~

~~2. In a lease other than a financial lease, the parties may agree to make the lessee's duties to the lessor irrevocable and independent at any time.~~

*Moved to become Article 9*

### **Article ~~17~~ 12 Acceptance**

1. Acceptance of equipmentan asset occurs when the lessee (a) signifies to the lessor or supplier that the equipmentasset is conformingconforms to the agreement, (b) fails to reject the equipmentasset after a reasonable opportunity to inspect it, or (c) uses the equipment in a manner inconsistent with the lessor's or supplier's rights.asset.

2. Once a lessee has accepted equipmentan asset, the lessee may still be entitled to damages ~~for any non conformityif the asset does not conform to the agreement, but the lessee may reject the equipment under Article 27 only if the non conformity substantially impairs the value of the equipment and either (a) the lessee accepted the equipment without knowledge of the non conformity, owing to the difficulty of discovering it, or (b) the lessee's acceptance was induced by the lessor's or supplier's assurances.\*~~

### **Article ~~27~~ 13 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, subject to Article 9, demand a conforming asset and seek such other remedies as are provided by law.~~

~~±2. (a) In an operations lease, When the equipment an asset is not delivered, is partially delivered, or is delivered late, or fails to conform to the leasing agreement, the lessee has the right to accept the equipmentasset, to reject the equipment assetin whole or in part, or, in a lease other than a financial lease, and, subject to this paragraph and Article 21, paragraph 1 of this Article, Article 22 and Article 26(1), to terminate the leasing agreement. (b) Rejection of equipment or termination of the leasing agreement under the preceding this sub-paragraph must be within a reasonable time after the non-conforming delivery.~~

~~(b) In an operations 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~~

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\* The last portion of this sentence, which is here crossed out, appears slightly modified at new Article 13(2)(b).

the non-conformity, owing to the difficulty of discovering it, or (ii) the lessee's acceptance was induced by the lessor's assurances.

~~2. (a) In an operations lease, when the lessee rejects equipment an asset in accordance with this Law or the leasing agreement while the lessee's duties are revocable, the lessee is entitled to withhold rentals until the non-conforming delivery has been remedied. (b) When a lessee terminates a leasing agreement in accordance with the preceding paragraph or the leasing agreement while the lessee's duties are revocable, the lessee is entitled and to recover any rentals and other funds paid in advance, less a reasonable sum for corresponding to any benefit the lessee has derived from the equipment asset.~~

~~(c) When a lessee, in accordance with this Law or the leasing agreement, rejects equipment in its possession, the lessee has a duty to hold the equipment with reasonable care for a time sufficient to permit the lessor or supplier to remove it.~~

3. If the lessee rejects ~~equipment an asset or revokes acceptance of equipment~~ in accordance with this Law or the leasing agreement and the time for performance has not expired, the lessor or, ~~in a financial lease, the~~ supplier, has the right to remedy its failure within the agreed time.

#### **Article ~~9~~ 14 Transfer**

1. The lessor's rights and duties under the leasing agreement may be transferred except when a transfer would impair the lessee's rights in the ~~equipment asset~~.

2. The lessee's rights and duties under the leasing agreement may be transferred only (a) with the consent of the lessor, which may not be unreasonably withheld, and (b) subject to the rights of third parties. The lessor and third parties may give their consent in advance.

3. A transfer that is prohibited is otherwise effective if made to one who purchases for value and did not know and reasonably should not have known that the transfer was prohibited.

#### **Article ~~18~~ 15 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 holds 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~~ an operations 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, 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 ~~19~~ 16 Warranty of ~~merchantability~~ acceptability and fitness**

~~21.~~ In a financial lease, a warranty that ~~the equipment will be merchantable~~ the asset will be at least such as (a) is accepted in the trade under the description in the leasing agreement and (b) is fit for the ordinary purposes for which an asset of that description is used is implied in a supply agreement ~~if the supplier is a merchant with respect to equipment of that kind and is enforceable only against the supplier.~~

~~12.~~ ~~Except in a financial~~ In an operations lease, a warranty that ~~the equipment will be merchantable~~ asset will be at least such as (a) is accepted in the trade under the description in the leasing agreement and (b) is fit for the ordinary purposes for which an asset of that description is used is implied in a leasing agreement if the lessor ~~is a merchant with respect to equipment regularly deals in assets~~ of that kind.

~~3.~~ ~~Equipment to be merchantable must be at least such as (i) is accepted in the trade under the description in the leasing agreement; and (ii) is fit for the ordinary purposes for which equipment of that description is used.~~

### **Article ~~20~~ — Warranty of fitness for a particular purpose**

~~1.~~ ~~Except in a financial lease, if the lessor at the time the leasing agreement is created has reason to know of the particular purpose for which the equipment is required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable equipment, there is in the leasing agreement an implied warranty that the equipment will be fit for that purpose.~~

~~2.~~ ~~In a financial lease, if the supplier at the time the supply agreement is created has reason to know of the particular purpose for which the equipment is required and that the lessee is relying on the supplier's skill or judgment to select or furnish suitable equipment, there is in the supply agreement an implied warranty that the equipment will be fit for that purpose.~~

### **Article ~~21~~ 17 Lessee's duty to maintain and return the equipment ~~asset~~**

1. (a) The lessee shall take proper care of the ~~equipment~~ asset, use the ~~equipment~~ asset reasonably in the light of the manner in which such ~~equipment is~~ assets are ordinarily used, ~~and in the light of any additional understanding the parties have regarding the particular purpose for which the equipment will be used,~~ and keep the equipment in the condition in which it was delivered, subject to fair wear and tear ~~and to any modification of the equipment agreed by the parties.~~

(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 ~~equipment~~ asset or to hold the ~~equipment~~ asset on lease for a further period, shall return the ~~equipment~~ asset to the lessor in the condition specified in the preceding paragraph ~~1.~~

## CHAPTER ~~V~~ IV: DEFAULT

### Article ~~22~~ 18 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 purpose of this ~~Chapter~~ Law occurs when one party ~~substantially deprives the other party of what it is entitled~~ fails to expect perform or imperfectly performs a duty arising under the leasing agreement ~~and or~~ this Law.

### ~~Article 23~~ Notice

~~Except as otherwise provided in this Law or the leasing agreement, the lessor or lessee in default is not entitled to notice of default or notice of enforcement.~~

### Article ~~24~~ 19 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 ~~25~~ 20 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 ~~24~~ 19. The parties may not derogate from or vary the effect of the provisions of this Article.

### Article ~~26~~ 21 Termination

1. ~~Notwithstanding Article 16, (a)~~ Subject to sub-paragraph (b), a leasing agreement may be terminated by operation of law, operation of Article 11 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 shall be entitled to such other remedies as are provided by the agreement of the parties and by law.

2. Subject to Article 9, 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.

3. The right of a party to terminate the leasing agreement is exercised by notice indicating the grounds for termination to the other party.

**Article 28\_22 ~~Lessor's right to the equipment~~ Possession and disposition**

1. Subject to ~~the rights of a transferee under Article 914(3), upon termination of the leasing agreement by the lessor~~after the leasing agreement comes to an end or is terminated, the lessor has the right to take possession of the asset. [The lessor may proceed without judicial process if it can be done without breach of the peace.]
  
2. ~~Upon termination of the leasing agreement by the lessor~~After the leasing agreement comes to an end or is terminated, the lessor has the right to dispose of the ~~equipment in its possession~~asset.