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Item No. 11 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 transmitted to a UNIDROIT Committee of governmental experts</i>
<i>Action to be taken</i>	<i>Confirmation of the extraordinary procedure anticipated for the approval and promulgation of the future model law on leasing</i>
<i>Related document</i>	<i>UNIDROIT 2007 – C.G.E. Leasing/1/W.P. 2 and W.P. 3</i>

DISCUSSION LEADING PARAMETERS AS PROPOSED BY THE SECRETARIAT

Priority				
	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)			
On time	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	yes	slightly delayed	no
	Timeframe determined by CGE/Governing Council/General Assembly		<input checked="" type="checkbox"/>
	Timeframe to be determined at this session		<input type="checkbox"/>
Potential benefits and beneficiaries	<p><i>Benefits:</i> through availability of a modern legal framework, an anticipated increase in the availability of lease financing for developing countries and countries in transition to a market economy</p> <p><i>Beneficiaries:</i> private sector in developing economies and economies in transition to a market economy</p>		
Staffing implications	One officer with support from another officer for translation and a secretary (part-time)		
Budget implications	Marginal		
Recommendations/ Guidance sought/ Decisions to be taken/ Alternatives?	Confirmation of extraordinary procedure for finalisation and promulgation of preliminary draft model law.		

BACKGROUND

(a) Status of project

1. At its 85th session, the Governing Council, subject to the making of certain amendments, authorised the Secretariat to transmit the text of the preliminary draft model law on leasing established by a UNIDROIT Advisory Board (hereinafter referred to as *the preliminary draft*) to Governments for finalisation.

2. Following the making of the amendments requested by members of the Council, the Secretariat, in late July 2006, transmitted the text of the preliminary draft to Governments and Organisations for information and comment. Given the special relevance of the preliminary draft for developing countries and countries engaged in the transition to a market economy, the text was transmitted not only to member States but also to developing States and States in transition to a market economy in general.

3. In line with the decision taken by the Governing Council at its 84th session, as ratified by the General Assembly at its 59th session, the Secretariat in the meantime sought to organise the intergovernmental consultation process in respect of the preliminary draft in such a manner as not to impact on the Institute's Budget. Given the special focus of the preliminary draft as a means of legal assistance to developing economies and economies in transition, it was, moreover, decided to seek to organise this process in the developing world, not only with a view to ensuring that these countries played an appropriately active role in determining the final shape of an instrument primarily intended for their benefit but also so as to avoid the typical situation whereby intergovernmental negotiations in respect of UNIDROIT preliminary draft instruments are invariably

conducted in fora where the vast majority of developing States and States in transition, if represented at all, are only represented by diplomatic agents of the States in question accredited to Rome and these agents normally have neither expertise in the subject-matter nor authorisation to negotiate fully with the representatives of other Governments participating in the process.

4. In these efforts the Secretariat found invaluable support from the International Finance Corporation (I.F.C.). The Secretariat having decided that, in the interest of ensuring maximum transparency, it was desirable to host the first session of the UNIDROIT Committee of governmental experts for the preparation of a draft model law on leasing (hereinafter referred to as *the* Committee) on the territory of a member State and having, therefore, approached the Government of South Africa to ascertain whether it would be prepared to host the session on its territory, Ms Rachel Freeman, one of the I.F.C. representatives who participated in the work of the UNIDROIT Advisory Board and who is Deputy General Manager and Sector Operations Manager for Financial Markets in respect of the PrivateEnterprisePartnershipAfrica (pepafrika), kindly offered to fund both the renting of the premises and the simultaneous interpreters needed for the session, as also to provide the necessary back-up staff (such as secretaries and messengers).

5. In January 2007 the Minister of Justice of South Africa informed the Secretariat of her approval of the first session of the Committee being held in South Africa. Immediately, the necessary premises were booked and the invitations sent out, it being indicated that the session was being held under the auspices of the Government of South Africa. The session will be held at the Protea Balalaika Hotel in Sandton, a suburb of Johannesburg, from 7 to 10 May 2007. It will be opened by a half-day seminar designed to familiarise those representatives of Governments and Organisations attending with the overall objectives and the basic features of the preliminary draft as intended by its authors. The seminar has been structured in such a way as to inform participants of the background to the preparation of the preliminary draft and the progress made to date and the basic features of the preliminary draft, as well as to essay a preliminary assessment of its relevance for developing and transition economies and to provide indications of the process for moving forward. The seminar will culminate in a 45-minute open forum discussion. The considerable body of comments already submitted on the preliminary draft (from the Governments of Austria, Bolivia, Bulgaria, Cameroon, China, Germany, Japan, Latvia, Mongolia, Morocco, the Russian Federation, Tunisia, the United Kingdom and the United States of America and from the International Civil Aviation Organization, the Equipment Leasing Association of America, the European Federation of Leasing Company Associations, the International Chamber of Commerce and the Latin American Leasing Federation) testify amply to the range and depth of interest aroused by the preliminary draft.

(b) Further procedure for finalisation, adoption and promulgation of future model law

6. The intention, as agreed at the conclusion of the Council's discussion of this item on its agenda at its 85th session, is for a second reading of the preliminary draft to be conducted at a second session of the Committee and the Secretariat has already launched discussions with the Authorities of a North African member State in order to see whether they would be willing to have the Committee hold its session on their territory. Following such second session, provided that a satisfactory consensus has in the meantime been built around the preliminary draft, the idea would be for it then to be laid before the UNIDROIT General Assembly, in extraordinary session, for approval. As indicated during the 85th session of the Council, one of the unique features of this project, apart, that is, from its essential non-incidence on the Institute's Budget, is the assured destiny that the I.F.C.'s keenness to see the planned model law implemented in its countries of operations would seem to herald.

7. One issue that was outstanding at the time of the Council's 85th session concerned the relationship between the preliminary draft, on the one hand, and the draft UNCITRAL legislative guide on secured transactions, on the other. As a result of intense dialogue between the

Secretariats of the two Organisations, in which experts involved in both projects have played a leading part and a significant part of which took place at the co-ordination meeting of the Hague Conference on Private International Law, UNCITRAL and UNIDROIT held in Rome on 18 September 2006, the two Secretariats expect to be in a position to lay a common proposal for the resolution of this issue before the Committee at its first session.

ACTION TO BE TAKEN

8. The Secretariat would invite the Council to confirm the extraordinary procedure for the approval of the model law agreed upon at its 85th session, namely, at such time as it may be considered to be the subject of consensus among the Governments participating in the Committee, and hopefully following the second session thereof, to lay it before member Governments at an extraordinary session of the General Assembly, for finalisation and approval.