



**GOVERNING COUNCIL**  
**88<sup>th</sup> session**  
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**Item No. 8 on the agenda: UNIDROIT Model Law on Leasing**

(Memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Progress report</i>
<i>Action to be taken</i>	<i>See para. 9 below</i>
<i>Mandate</i>	<i>Work Programme 2006-2008</i>
<i>Priority level</i>	<i>High</i>
<i>Status</i>	<i>On target for completion in 2009</i>
<i>Related documents</i>	<i>UNIDROIT 2008 – Study LIXA – Docs. 16 and 17; Implementation of the Strategic Plan (C.D. (87) 6, p. 6); Annual Report 2008 (C.D. (88) 2)</i>

**BACKGROUND**

*(a) Completion of the Model Law and lessons to be drawn therefrom*

1. The UNIDROIT Model Law on Leasing was adopted on 13 November last. Further details of the process leading up to its adoption are recorded in the *Annual Report 2008*.

2. Several lessons are, it is submitted, to be learned from the way in which this project was brought to completion in record time, with so little impact on the UNIDROIT Budget, and enabled the Institute to reach out to a constituency, namely the developing world and transition economies, in a way in which it had never previously managed to do.

3. First, the fact that the budgetary implications of the project and the time required for completion were kept down so successfully was, in large measure, due to the Secretariat's harnessing of the network of correspondents that UNIDROIT had built up and nurtured during and since preparation of the UNIDROIT Convention on International Financial Leasing: the vast majority of members of the UNIDROIT Advisory Board that prepared the preliminary draft model law transmitted to Governments for finalisation were UNIDROIT correspondents, who not only met their

own travel and subsistence expenses but also were correspondingly all the keener to see the work completed as expeditiously as possible. One correspondent in particular, Mr R.M. DeKoven, one of the world's leading legislative draftsmen in the leasing field, not only assumed the exacting functions of Reporter throughout the process but also obtained the seconding of a young lawyer from his United States' law firm, Mr B. Hauck, to the Secretariat for a nine-month period at the inception of the project, assistance which Mr Hauck continued to provide thereafter, as Secretary to, first, the Committee of governmental experts and, latterly, the Joint Session. Furthermore, he regularly reported on the project to the Governing Council and played a key role in resolving the potential conflict between the Model Law, on the one hand, and the UNCITRAL Legislative Guide on Secured Transactions, on the other, and the concerns of the aviation industry in respect of the application of the Model Law to large aircraft brought to the attention of the Governing Council at its 87<sup>th</sup> session, hosting the *ad hoc* meeting in London at which this last problem was resolved.

4. Secondly, the project enabled the Institute to respond to the concerns expressed recently by the Ambassadors of African member States in Italy when drawing attention to the way in which the Institute's Work Programme was lacking in projects of direct relevance to, and interest for developing countries. Through this project, the Institute has been able to reach out to whole parts of the developing world, whether in Africa and Asia, as well as transition economies, that had previously been largely unaware of the Institute's existence. That this was possible was largely due to the hosting of the first session of the UNIDROIT Committee of governmental experts by the Government of South Africa and the hosting of the second session by the Government of Oman, as well as the generous support provided by the International Finance Corporation, which funded the first session.

5. The Secretariat would propose that the Council consider recognising the extraordinary contribution made to the Model Law by Mr DeKoven by the passing of a Resolution, the text of a proposal for which is set forth in the Appendix to this memorandum.

*(b) Future work to be carried out in respect of the Model Law*

*(i) Preparation of an Official Commentary*

6. As recorded in the *Annual Report 2008*, the Secretariat has been entrusted with the task of preparing an Official Commentary on the Model Law. Following soundings taken by the Secretariat from the Chairman of the Committee of governmental experts, the Reporter to the Joint Session, the Secretary to the Joint Session and members of the Drafting Committee – the parties with whom it is to work in the accomplishment of this task under the Resolution passed by the Joint Session – it has been agreed that the Official Commentary should concentrate on those points specifically referred for clarification by the Committee of governmental experts and the Joint Session. This procedure has been chosen both in view of the widely expressed desire to see the Official Commentary available as rapidly as possible and in the light of the decision that the Secretary to the Joint Session had to take, following his appointment to a senior post in the United States' Administration, to distance himself from the project.

7. It is anticipated that a first draft of the Official Commentary will be available for comment, in both English and French, by the end of February 2009 and that one month will be allowed for comments, with a meeting of those invited to assist the Secretariat in the preparation of the Official Commentary being held in Rome on 22 May 2009 (and also, perhaps, 21 May 2009, depending on the volume of comments) to consider how best to incorporate those comments received in respect of the first draft.

8. The preparation of the Official Commentary is in no way intended to preclude the possibility of a more detailed explanatory report being prepared subsequently.

(ii) Promotion of the Model Law

9. One of the single biggest drawbacks for the Institute in the past in seeking to promote its instruments has, to a large extent, been removed in respect of the Model Law. As reported in the *Annual Report 2008*, both the International Finance Corporation, which uses leasing as a particularly apt means of developing the private sector in its countries of operations, and the Commonwealth Secretariat have expressed their full commitment to co-operate with UNIDROIT in promoting the Model Law. Discussions are already underway with the Commonwealth Secretariat with a view to including the Model Law in a seminar to be organised in a Commonwealth jurisdiction.

(a) *Preparation of Arabic, Chinese, Russian and Spanish versions*

10. As requested by a number of member Governments during the Joint Brainstorming Sessions of the UNIDROIT Governing Council and General Assembly, the Secretariat is making arrangements for unofficial versions of the Model Law to be prepared in Arabic, Chinese, Russian and Spanish, not least as a means of promoting it in those parts of the world where it is most eagerly awaited. The Secretariat has already secured the agreement of experts familiar with the process for the preparation of the Model Law to prepare Arabic and Spanish versions.

(b) *Organisation of regional seminars*

11. The Secretariat has been asked by a number of Governments to organise seminars on the Model Law. These include the Governments of Indonesia, Kuwait and the Islamic Republic of Pakistan. The Secretariat believes that it would be politic to hold off on the organisation of such promotional seminars until the different unofficial language versions of the Model Law are ready, not least because of the pressures on the Secretariat's limited manpower resources that would be involved in the organisation of such seminars at the present time.

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

12. *The Secretariat would invite the Council:*

(a) *to take note of the procedure that it has put in place for the preparation of the Official Commentary and for the preparation of unofficial Arabic, Chinese, Russian and Spanish versions of the Model Law;*

(b) *to confirm its view that it is best for it to hold off from organising promotional seminars for the time being; and*

(c) *to pass a Resolution recognising the extraordinary contribution to the timeous completion of the Model Law made by UNIDROIT correspondents and by Mr R.M. DeKoven in particular.*

**APPENDIX**

PROPOSAL FOR A RESOLUTION  
to be passed by the Governing Council  
in recognition of the extraordinary contribution to the UNIDROIT Model Law on Leasing  
made by Mr R.M. DeKoven

(prepared by the UNIDROIT Secretariat)

*THE GOVERNING COUNCIL, meeting at its 88<sup>th</sup> session, in Rome on .. April 2009,*

*MINDFUL* of the extraordinary role that Mr R.M. DeKoven, a UNIDROIT correspondent, played in the development of the UNIDROIT Model Law on Leasing, adopted in Rome on 13 November 2008, as Reporter to the UNIDROIT Advisory Board, the UNIDROIT Committee of governmental experts and the Joint Session of the UNIDROIT General Assembly and the UNIDROIT Committee of governmental experts, as well as in the intersessional meetings organised to resolve special problems arising in the negotiations,

*NOTING*, with keen appreciation, that Mr DeKoven's seamless contribution and expert advice played an instrumental role in assisting the Committee of governmental experts to conclude its deliberations on the Model Law expeditiously,

*RECOGNISING* that this contribution was at all times made, as requested by the Governing Council at its 84<sup>th</sup> session (Rome, 18-20 April 2005), without repercussion on the UNIDROIT Budget,

*RESOLVES:*

*TO EXPRESS* its deep gratitude to Mr R.M. DeKoven for the way in which he gave so generously of his time and expertise to the development of the Model Law and to request the Secretary-General to give full recognition to Mr DeKoven's unique role in the process that led to the development of the Model Law, in an appropriate manner, when publishing the Model Law.