



Department of Trade and Industry

**THE UNIDROIT/ICAO DRAFT  
CONVENTION ON INTERNATIONAL  
INTERESTS  
IN MOBILE EQUIPMENT**

*A CONSULTATION DOCUMENT*

AUGUST 2001



Department of Trade and Industry

## **SUMMARY**

### **Introduction**

1. The International Institute for the Unification of Private International Law (Unidroit) together with the International Civil Aviation Organisation (ICAO) has prepared a draft Convention on international interests in mobile equipment and a draft Protocol in respect of aircraft and aircraft equipment - airframes, engines and helicopters above a certain size other than ones used in military, customs or police services. The Convention will establish an international legal order for the creation, registration and enforcement of security and like interests in high value internationally mobile equipment. The aim of the Convention is to give greater certainty, clarity and confidence to those financing such equipment whilst at the same time safeguarding the position of the debtor. It is hoped that this will prove beneficial both to borrowers, by stimulating increased flows of capital at lower cost, and to equipment suppliers.

### **Diplomatic Conference**

2. A Diplomatic Conference is being convened in Cape Town, South Africa from 29 October - 16 November 2001 to finalise and open for signature the draft Convention and Aircraft Protocol. The Government would welcome your views so as to inform the development of policy in advance of the Conference and to enable a decision to be made whether or not the UK should sign the instruments at the end of the meeting. Signature of the instruments would not be binding; they would require to be ratified by the UK and be implemented by domestic legislation. However, it is Government policy not to sign international treaties which it is unlikely to ratify. A further consultation will be arranged following the Diplomatic Conference to decide whether the instruments should be ratified and implemented in UK law.

### **Questionnaire**

- 3(i) What are your views about the draft Convention and Aircraft Protocol in general?
- (ii) What impact might they have on your business or organisation?

- (iii) Are there any specific aspects of the instruments which give rise to concern?
- (iv) If so, what changes would you like to see made to the instruments?
- (v) Would you support signature of the instruments by the United Kingdom at the Diplomatic Conference?

### **Consultees**

4. Views are welcome from all those who have an interest in the subject matter of the draft Convention and Aircraft Protocol. In particular this document is being sent to UK airlines; financiers; aircraft, helicopter and aircraft engine equipment manufacturers; lien holders; legal practitioners; public bodies including the Civil Aviation Authority; the Department for Transport, Local Government and the Regions, ECGD and other Government Departments

### **How to respond**

5. Please send your responses to

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Further copies of this consultation document can be obtained from Paul Lennon at the above address, or telephone number or by e-mail.

### **The closing date for responses is Friday 28 September 2001.**

6. Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish

us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the internet.

7. This consultation is being conducted in line with the Code of Practice on Written Consultation issued by the Cabinet Office, although because of time constraints it has not been possible to comply with the requirement of a minimum consultation period of 12 weeks. The consultation criteria established by the Code are set out at Annex B.

## **DETAIL**

### **i) INTRODUCTION**

8. The texts of the draft Convention and Protocol are included at Annex A together with a text which combines these two instruments into a single text. This has been prepared to assist the reader, but the legal texts on which the application and interpretation of the Convention and Protocol depend are those of the Convention and Protocol themselves. A detailed commentary on the draft Convention and Aircraft Protocol is included below.

### **Overview of the draft Convention**

9. The Convention will provide a uniform legal basis amongst Contracting States for the creation and enforcement of security interests, called “international interests”, which will be recognised and enforced in other Contracting States. These international interests are granted by the chargor under a security agreement or vested in a conditional seller under a title reservation agreement or vested in a person who is the lessor. The Convention provides for protection of these interests by registration in an international public register.

10. Remedies for default are available to the chargee including rights to take possession or control of the charged object, to sell or grant a lease or collect or receive income or profits from its use. There is also provision for interim judicial relief where default occurs. The Convention also enables certain classes of interests (non-consensual rights or interests) which may arise other

than by agreement to enjoy priority based on registration (eg a judgment registered against an object) or to have priority without registration over existing registered interests (eg a repairer's lien or a statutory right to detain an aircraft for non-payment of airport charges).

### **The Convention and Protocol Structure**

11. The form of the instruments is a base Convention and a Protocol applying the Convention with modifications to a particular class of objects. The structure provides the flexibility to enable the general rules in the base Convention to be adapted to fit the particular needs of specific categories of equipment. At this stage only the Convention and a Protocol in respect of aircraft and aircraft equipment are nearing finalisation. Other Protocols on space objects (satellites) and railway objects (eg engines and railway wagons) are being developed.

### **Devolution**

12. The Convention and Protocol are in the form of treaties. As such they would need to be transposed into domestic law in order to apply in the United Kingdom. The law of securities over mobile property and certain aspects of insolvency law are devolved matters under the Scotland Act 1998 and the Northern Ireland Act 1998. Hence the subject matter of the main part of the Convention is devolved in respect of Scotland and Northern Ireland. This subject matter is not transferred in respect of Wales. However security over aircraft objects, the subject matter of the Protocol, is principally a reserved matter. The regulation of aviation and air transport is reserved (with some exceptions not here relevant) by the Scotland Act 1998 (sections E4 of Schedule 5): in respect of Northern Ireland civil aviation is reserved (paragraph 4 of Schedule 3 to the Northern Ireland Act 1998); civil aviation is not a transferred matter in respect of Wales.

### **Existing UK law on the mortgaging of aircraft.**

13. Aircraft, including helicopters, are subject to national registration as a result of the Chicago Convention<sup>1</sup>. The provisions for the registration of aircraft with UK nationality are set out in the Air Navigation Order 2000<sup>2</sup>. The Mortgaging of Aircraft Order 1972<sup>3</sup>, which applies to the three UK jurisdictions, provides for the creation and registration of mortgages over aircraft registered in the UK and any store of spare parts for that aircraft. The order disapplies the Bills of Sales Acts which would otherwise apply to the creation of a charge over a moveable object. Charges may be registered by a mortgagee and priority notices may be registered by a prospective mortgagee. The effect of registration is to provide express notice of the existence of the mortgage. The Order also provides that a registered charge has priority over any other mortgage or charge that is not registered, with the exception of possessory liens and rights to detain the aircraft under any Act of Parliament. This Order does not enable charges to be created and registered for aircraft engines separately. The aircraft and mortgage registers are maintained by the Civil Aviation Authority.

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<sup>1</sup> The Convention on International Civil Aviation opened for signature in Chicago on 7 December 1944.

<sup>2</sup> SI 2000 No. 1562 as amended by SI 1981/611.

<sup>3</sup> SI 1972 No. 1268 made under what is now section 86 of the Civil Aviation Act 1982.

ii) **COMMENTARY ON THE DRAFT CONVENTION AND PROTOCOL**

14. This commentary examines the terms of the Convention and how they are modified or supplemented by the Aircraft Protocol in respect of “aircraft objects”. The basic principle in the Convention is that where it has been applied to a particular class of objects then all “international interests” in objects in that class will be subject to the Convention and registrable. The reason for this is that the Convention applies to objects that are internationally mobile. Even if they are used only in one country they are capable of being moved to another. The Convention has therefore been drawn up to apply to a class of objects irrespective of whether they actually move internationally. Were the Convention only to apply to objects that were actually used internationally then a change of use would lead to the Convention applying and an interest then created and registered having priority over an unregistered interest. This would be an inequitable result; it would also result in uncertainty as to whether the Convention applied to an object. There is however a provision enabling a Contracting State to declare that it will not apply a Protocol to “internal transactions”. This is considered in paragraph 81 below.

**Relationship of the Convention and Protocol**

15. Article 1(aa) of the Convention says that references in the Convention to a Protocol are to the Protocol in respect of a particular category of objects. It also provides that the Convention and a particular Protocol are to be read and interpreted together as a single instrument. The provisions of the Convention therefore apply to a class of objects defined by a Protocol subject to the modifications in that Protocol. References below to the Protocol applying to aircraft objects means to the Convention as applied by the Aircraft Protocol. Articles in the Convention have arabic numbers and those in the Protocol roman numbers. References which follow are to the texts of the Convention and Protocol and not to the informal consolidated text.

**Applicable law**

16. The “applicable law” is the “national” law which applies to a matter as a result of the rules of private international law in the forum in which the matter is to be determined. Where

matters are not expressly covered by the Convention, then they are to be settled on the basis of the general principles on which the Convention is based or in their absence on the applicable law. National law will need to be amended to implement the Convention and Protocol. Where the Convention does not deal with a matter, or the Convention is not inconsistent with national law, then that will continue to apply.

17. The Protocol expressly recognises the freedom of the parties to an agreement to which the Convention applies to choose the law which is to govern their contractual rights and obligations (Article VIII).

### **Contractual Freedom**

18. The Convention gives freedom of contract to the parties to an agreement creating an international interest to derogate by agreement from various provisions in the Convention. The same applies to the Protocol.

### **When do the Convention and Protocol apply?**

19. There are three matters which must be determined in order to decide whether the Convention and Protocol apply to a transaction. The first is whether the equipment concerned is "mobile equipment" within the meaning of the Convention and Protocol; the second is whether the interest is an "international interest"; and the third is whether there is a connecting factor with a Contracting State.

### **Mobile equipment**

20. Article 2(3) of the Convention defines the categories of equipment to which the Convention may be applied by a Protocol as aircraft objects, railway, rolling stock and space property. To be subject to the Convention and Protocol an item of equipment must fall within a category to which the Convention has been applied by a Protocol and be "uniquely identifiable". Unless a particular object can be uniquely identified it will not be possible under the Convention

to create security interests in that object and register those interests in the International Registry. Article 2 also provides that an international interest in an object extends to "associated rights" and the proceeds of that object. Associated rights are "all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object" (Article 1(c)). The proceeds of an object will include insurance proceeds if the object is destroyed.

### **Mobile equipment: aircraft objects**

21. The Aircraft Protocol defines the class of aircraft objects to which the Convention is to be applied. Article I(2)(a) defines "aircraft" in terms of the Chicago Convention. However, the Protocol applies the Convention to "aircraft objects" not aircraft: aircraft objects are defined in Article I(2)(c) as airframes, aircraft engines and helicopters. The definitions of "airframes", "aircraft engines" and "helicopters" in Article I(2)(b), (e), and (f) limit these to ones above a certain size and excludes those in military, customs and police service. The size limits are designed to remove from the ambit of the Convention small aircraft, engines and helicopters. Applying the Convention to "aircraft objects" will enable separate international interests to be created in airframes and engines. This recognises the high value of engines, which are detachable from airframes, and their particular financing requirements. The Protocol, by providing for separate interests to be created in engines, is intended to displace any rule of accession which may apply in a Contracting State whereby attachment of an engine to an airframe would extinguish separate interests in respect of that engine.

22. The creation of charges over small aircraft in the UK will remain a matter for UK law – currently the Mortgaging of Aircraft Order 1972.

### **International interests**

23. Article 2 sets out those interests in categories of mobile equipment and associated rights which are "international interests" to which the Convention applies. They are interests:

- a) granted by the chargor under a security agreement;
- b) vested in a person who is the conditional seller under a title reservation agreement; and
- c) vested in a person who is the lessor under a leasing agreement.

"security agreement", "title reservation agreement" and "leasing agreement" are defined in Article 1.

24. The formal requirements for the creation of an international interest are set out in Article 6. These include requirements that the agreement must be in writing and enable the object to be identified in accordance with a protocol. Whilst a security agreement must enable the secured obligations to be determined it does not have to state a sum, or maximum sum, secured.

### **International interests: aircraft objects**

25. Article III of the Protocol applies a number of the provisions of the Convention to agreements for the sale of aircraft. Article V makes provision as to the formalities required for a contract of sale to constitute an international interest and Article VII provides how an aircraft object is to be identified for the purposes of the Convention and Protocol.

### **Sphere of application**

26. "International interests" may involve parties from different states and the subject matter of the interest (the mobile object) is itself internationally mobile. It is therefore necessary to define the connection that must exist between an international interest and a Contracting State in order for the Convention to apply. Article 3 sets out the basic rule which is that Convention will

apply where the debtor is situated in a Contracting State at the time the agreement is concluded (wherever the creditor may be situated). Article 4 defines where a debtor is situated.

### **Sphere of application: aircraft objects**

27. Article IV of the Protocol sets out an additional connecting factor which will apply in respect of an aircraft object, namely that it is registered in the aircraft register maintained by a Contracting State in accordance with the Chicago Convention.<sup>4</sup> Where there is a common mark registry (that is a registry covering more than one state) then the State of registry for the purposes of Article IV will be the state where the registering authority is located. The Convention will apply from the date of an agreement that the aircraft is to be registered in a Contracting State, or when it is actually registered, whichever is the earlier. This will, for example, enable international interests to be registered in respect of an aircraft that is being sold to an airline situated in a Contracting State, or in respect of an aircraft in the course of construction where it is to be registered in such a State.

### **Priority**

28. Fundamental to any system for the creation of security interests is the establishment of rules for priority between different interests. The priority rule is set out in Article 28 of the Convention. Registered interests have priority over unregistered interests and an earlier registered interest has priority over a later one. This is expressed to be the case even if the later interest was acquired with notice of the earlier interest. A buyer of an aircraft object acquires it subject to registered interests and free of unregistered interests. These provisions enable a person dealing with an object to rely upon the register. Some concerns have been expressed about registration in “bad faith” as a person may acquire an interest in an object free of unregistered interests of which he has actual knowledge. Two points should be noted. First, the Convention will only be applied to transactions involving objects of very high value. Those creating and acquiring interests will be sophisticated parties who can be expected to take all

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<sup>4</sup> The text needs some amendment here as the sphere of application is framed here in terms of the state of registration of aircraft whereas the Protocol applies the Convention to aircraft objects not aircraft.

necessary steps to protect their interests. Secondly, the Convention is concerned with civil matters. The application of the Convention will not affect criminal liability. Article 28 also provides for the variation of priority by agreement and for the priority to extend to the proceeds of an object.

29. Article 15 lists the interests which may be registered. This enables prospective international interests to be registered, so the parties to a proposed interest may make a prospective registration in order to secure priority. When the actual interest is registered it will enjoy the same priority as the prospective interest enjoyed (Article 18(3)). Assignments and prospective assignments of interests, acquisitions of interests by subrogation, subordination of interests, registrable non-consensual rights and interests and notices of national interests may also be registered.

### **Priority : the Aircraft Protocol**

30. The Aircraft Protocol makes special provision in Article XIV in respect of a buyer under a registered contract of sale. The buyer takes its interest free from subsequently registered interests and from any unregistered interest (but not free of previously registered interests). As was noted in paragraph 21 the existence of separate international interests in engines under the Protocol is intended to displace the accession rule.

31. In respect of engines the priority rules in Article 28(1) – (4) of the Convention are applied by Article XIV of the Protocol<sup>5</sup>. Article 28(6) which relates to the issue of priority between an interest in an item installed on an object and the holder of an interest in the object will only apply to other equipment installed on an airframe. The Convention does not determine priority in such circumstances.

### **Default Remedies**

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<sup>5</sup> We think that Article XIV(2) should be amended to make clear that Article 28(5) which is not mentioned (priority in respect of proceeds of an object) applies to engines.

32. Chapter III of the Convention sets out the remedies that are available to a chargee in the event of default. These include taking possession of the object, selling or leasing it, or collecting income from its use. Article 12 makes provision for interim judicial relief. The remedies may be exercised either consensually or pursuant to a court order. Article 52 requires a Contracting State to declare whether or not any remedy available to a creditor under the Convention (which is not expressed to require application to the court) may be exercised only with the leave of the court. Remedies under Chapter III are to be exercised in conformity with the procedural law of the place where the remedy is to be exercised. Article 53 enables a Contracting State to exclude either wholly or in part the provisions of Article 12 relating to interim relief pending final determination.

33. Article 7(2) requires the default remedies to be exercised in a “commercially reasonable manner” but provides that exercise in conformity with a provision of the security agreement will satisfy the requirement, unless the provision is “manifestly unreasonable”. Article 7 also provides for the chargee to give notice to other interested parties and for the use of the proceeds of exercising the remedies, including any surplus.

34. Article 8 makes additional provision in respect of the vesting of the object in or towards satisfaction of the secured obligation (with or without a court order), for the chargor to discharge the security interest and that sale of the object by the chargee is to be free of any other interests over which the chargee has priority.

35. Article 9 gives remedies to a conditional seller or lessor and Article 11 provides that the applicable law may permit additional remedies provided they are not inconsistent with the mandatory provisions of Chapter III as set out in Article 14.

### **Default Remedies : Aircraft Protocol**

36. The Aircraft Protocol additionally provides in Article IX that the creditor may, to the extent that the debtor has agreed, procure the de-registration of the aircraft and the export and physical transfer of the aircraft object from the territory in which it is situated.

37. Article X excludes the rule in Article 7(2), which limits the exercise of remedies where “manifestly unreasonable”, by providing that any agreement between the debtor and creditor as to what is “commercially reasonable” shall be conclusive. Article X of the Protocol also modifies the provisions in the Convention regarding interim relief. This Article only applies where a Contracting State has made a declaration that it will apply this Article in whole or in part. Article X enables a Contracting State to specify the number of calendar days from the filing of an application within which relief will be given. If the UK were to make a declaration applying Article X (in principle this would be likely as the provisions in general reflect existing law in the various jurisdictions of the United Kingdom) it would not be the intention to indicate the period within which the court must act. We consider that this is a matter for the court. Article X also provides that sale and application of the proceeds of the object may be ordered by the court as interim relief.

38. Article X(5) allows the creditor and the debtor or other interested persons to agree in writing to exclude Article 12(2). We consider the scope and purpose of this provision needs to be clarified.

39. Article X(6) is intended to impose a deadline on the registry authorities of the State of Registry in respect of the remedy of procuring de-registration and export under Article IX(1). It requires the authorities to co-operate expeditiously with the creditor in exercising those remedies in conformity with applicable safety laws and regulations.

### **Insolvency**

40. Article 29 of the Convention deals with insolvency. Registered international interests will be valid against the insolvency administrator. This provision is intended to disapply any existing rule of the applicable law which might avoid such an interest in insolvency proceedings. This Article further provides that the rule as to validity is without prejudice to rules in the applicable law under which the international interest may be valid and which might enable a transaction to be avoided for example, as a preference or fraud on creditors. The Aircraft

Protocol contains alternative additional provisions in respect of insolvency in the two versions of Article XI (A) and (B). A Contracting State can choose to opt into either (A) or (B) (or neither), but if it does it has to accept the provision in its entirety. A Contracting State can choose the types of insolvency proceedings which will be covered by either regime.

### **Insolvency : the Aircraft Protocol**

41. Article XI(A) and (B) will only apply where a Contracting State that is the primary insolvency jurisdiction has made a declaration under Article XXVIII. The concept of the “primary insolvency jurisdiction” is intended to ensure that choices made by a Contracting State in regard to the application of this Article must be respected where aircraft of that State are within the jurisdiction of other Contracting States which may have made different choices. Article XXVIII(3) allows a Contracting State to choose how the insolvency provisions in the Protocol will apply under its law. Article XXVIII(4) provides that the courts of a Contracting States is to apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

### **Alternative A**

42. Alternative A enables a Contracting State to specify a period (“the waiting period”) as the period at the end of which the insolvency administrator or the debtor must give up possession of the aircraft object to the creditor unless the insolvency administrator or the debtor has cured all defaults and agreed to perform all future obligations under the agreement. This provision reflects the special rule in US bankruptcy law under which a debtor in default under a security instrument in respect of an aircraft must give up possession of the aircraft within a fixed period of days unless the default is cured. Alternative A also makes provision in respect of the preservation of the aircraft object prior to its re-delivery to the creditor. The application of the waiting period and the provisions in Article XI(A)(8) in respect of the making available of the remedies in Article IX(1) of de-registration and export of the aircraft from the territory where it is situated, are designed to provide a system under which a creditor may be assured that in the event of default the aircraft object can be recovered within a fixed period.

43. The intention of the UK is to apply Article XI Alternative A to insolvency proceedings with the exception of administration proceedings under which a company may be given a period of respite whilst a court appointed administrator seeks to obtain creditors' agreement to continue the business as a going concern (Insolvency Act 1986). The application of Alternative A would conflict with this procedure.

### **Alternative B**

44. Alternative B provides that the insolvency administrator or the debtor (as applicable) are to give notice to the creditor either that they will cure the defaults and perform all future obligations or give possession of the object to the creditor. The applicable law may permit the court to require additional steps or guarantees to be provided and, if the insolvency administrator or debtor fails to give notice of his intention, then the court may permit the creditor to take possession of the aircraft object upon such terms as the court orders. The intention of Alternative B, reinforced by paragraph 6 which excludes sale of the aircraft object pending a decision by court, is to enable the applicable law to require realisation by the creditor of its security to be subject to the control of the court. These provisions reflect a civil law approach to insolvency proceedings and do not fit well with current UK law.

### **Assignment of International Interests**

45. Chapter IX of the Convention makes provision for the assignment of international interests and rights of subrogation. As will be seen from the footnotes to the text, further work still needs to be done on these provisions with a view to bringing the provisions more into line with national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. Article 30 sets out the formal requirements for an assignment of an international interest. Such an assignment is registrable under Article 15 (1)(b). The formalities follow those required by Article 6 for the creation of the international interest itself. Article 31 provides for the effect of an assignment. It is to transfer to the assignee, to the extent agreed by the parties to the assignment, all the interests and priorities of the assignor under the

Convention and all “associated rights”. “Associated rights” are defined in Article 1 as all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object. Provided therefore the agreement so provides associated rights will be assigned with the interests and priorities of the assignor. The Convention does not however provide for an assignment of associated rights independently of the international interest. Defences and rights of set off that the debtor may enjoy against the assignee are left to be determined by the applicable law. The debtor may waive such rights (except in respect of fraud by the assignee(Article 31(3)). The provisions of Article 31(2) concerning defences must however be read in the light of Article 32 which provides that where an international interest is assigned in accordance with the provisions of Chapter IX of the Convention then that is effective to impose on the debtor the duty to make payment, or give other performance, to the assignee. Article 32 (1)(a) requires the debtor to be given notice in writing of the assignment. The Article then contains two alternatives. Should the consent of the debtor to the assignment be required, either generally to assignments or specifically to a particular assignment? Alternatively, (the second square bracketed clause in sub-paragraph C) should the failure of the assignor to give the debtor prior notice in writing of an assignment relieve the debtor of the obligation to pay the assignee?

46. Article 33 gives an assignee of an international interest, which has been assigned by way of security, default remedies. These apply in the relations between the assignor and the assignee. For example, where an international interest is assigned to secure repayment of a loan by the assignor – who then defaults – the assignee may exercise default remedies in respect of the security. However the rights of the debtor under the international interest will not be affected by the exercise of those rights – a sale of the object will for example be subject to the debtor’s rights. As the footnote to Article 33 notes this Article needs further consideration to ensure that it carries out the policy described.

47. Article 34 provides for the priority of competing assignments. The priority rule in Article 28 applies so that where an assignment is registered, it will have priority over an unregistered assignment. Subject to the issue of competing assignments the assignee will enjoy the same priority as the assignor (Article 31(1)(a)).

48. Article 35 limits the assignee's priority in respect of associated rights to sums related to the sum advanced and used to buy the object, the price paid for the object or rental payable for the object and reasonable costs. The purpose of Article 5 is to avoid the assignee obtaining a priority under the Convention in respect of rights to payment that are secured on the object but are not related to its acquisition or rental.

49. Article 36 applies the provisions of Article 29 to insolvency proceedings against the assignor. As paragraph 40 notes in relation to Article 29 this provides a rule of validity (so that an assignment registered before the commencement of the insolvency proceedings will be effective) but does not displace national rules such as those on fraudulent preference.

50. Article 37 provides that the Convention is not to affect the acquisition of an international interest by subrogation. The priority between a right acquired by subrogation and any competing interest may be varied by written agreement. The acquisition of an international interest by subrogation may be registered in the International Registry (Article 15(1)(c)).

### **Assignments : The Aircraft Protocol**

51. Article XV of the Protocol modifies the assignment provision so far as aircraft objects are concerned by making it a requirement for an assignment that the debtor consents to an assignment taking place. It also modifies the rule in Article 35 so that the limitation on the priority to the sums advanced etc. does not apply.

### **Non-consensual rights or interests**

52. Chapter X of the Convention (Articles 38 and 39) make provision for non-consensual rights and interests. These are defined in Article 1(s) as rights or interests conferred by law to secure the performance of an obligation, including an obligation to a State or "State entity". The Convention provides for two classes of non-consensual rights and interests – those that may be

registered and have priority by date of registration and those that will have priority over existing interests.

53. Article 38 enables a Contracting State to make a declaration as to the categories of non-consensual rights or interests that are to be registrable as if they were international interests. Such interests will have priority according to the date of their registration – and if not registered, will be postponed to any right or interest that is registered. An example of an interest that might be registered is a charging order on an object to secure a judgment debt. It would not have priority over an existing charge but once registered in the International Register would enjoy priority according to when it was registered.

54. Article 39 provides for non-consensual rights and interests that are to have priority without registration. The Contracting State will have to deposit a declaration declaring generally or specifically the categories of non-consensual rights or interests that are to have priority over registered international interests. The declaration will be effective to give non-consensual rights and interests covered by the declaration priority over international interests created after the declaration is deposited. Article 39(2) allows for declaration to be expressed in general terms so that future interests may be created in defined categories that will have priority over existing international interests. We have identified a problem with Article 39(3). When a State ratifies the Convention this paragraph will mean non-consensual rights or interests that are covered by a declaration made by that State will not be able to take priority over existing international interests that have been registered following the earlier ratification of another State. We consider an amendment to the transitional provisions in Article 55 is required to provide for this.

### **Existing law in the UK**

55. The Mortgaging of Aircraft Order 1972 currently provides that the priority provisions in the Order do not give a registered mortgage any priority over any possessory lien in respect of

work done on an aircraft or over any right to detain aircraft under any Act of Parliament –(for example, for non-payment of landing fees). Contractual liens, which may confer more extensive rights than possessory liens, would not fall within the definition. Article 15 of the Mortgaging of Aircraft Order only gives priority over registered mortgages to possessory liens in respect of work done on an aircraft. The Mortgaging of Aircraft Order extends to Scotland. Scottish law also recognises an aircraft possessory lien, giving a repairer the right to retain possession of an aircraft until paid for repairs.

### **Statutory rights of detention**

56. The law currently gives the Authority owning or managing designated airports the power to detain a particular aircraft in respect of unpaid aircraft charges (even if the aircraft has changed hands) or any other aircraft operated by the debtor. There are further statutory rights to detain aircraft for non-payment of navigation fees for example.

### **Conclusions**

57. The UK would intend to make a declaration in respect of possessory liens and statutory rights of detention in order that they would maintain priority over registered international interests. Contractual liens do not per se enjoy priority under UK law over registered mortgages and as the text of the Convention stands, could not be the subject of a declaration. Repairers would be able to rely on their possessory liens for security. It is intended that UK's declaration would cover categories of non-consensual rights or interests so as to include any that were created after the declaration had been made.

### **Transitional provisions**

58. Article 55 contains two alternative drafts of transitional provisions for consideration by the diplomatic conference. Alternative A provides that the Convention does not apply to a pre-existing right or interest which retains the priority it had before the Convention came into force. Alternative B further provides that a pre-existing right or interest will only maintain its priority

for ten years unless within that period it is registered in the International Registry. The effect of Alternative A will be that holders of existing interests will neither need to (nor be able to) register those interests. Priority between an existing right or interest will be determined by the applicable law not Article 28. The effect of Alternative B would be to require any holder of an existing pre-Convention interest to register that interest within ten years in order to maintain priority. The need to register will not apply to interests created or arising under the law of a non-Contracting State. Our view is that no holders of existing rights should be prejudiced by the new system and our intention is to support Alternative A. This approach has the disadvantage that the International Registry will contain an incomplete picture of pre-existing rights.

### **The international registration system**

59. The international registration system is a key part of the proposed regime. The registration system allows (but does not compel) the holder of an international interest to protect his priority against interests registered subsequently and interests which have not been registered. At the same time the Register will provide a public record of registered interests so that information is made available about existing charges over a particular item of equipment.

60. Article 15 of the Convention specifies the type of registrations which may be made in the international registry. This includes both international interests and notices of interests held on national registries. This is designed to enable “national interests” – that is interests arising from “internal transactions” to be registered in order that they may maintain priority. The Convention allows for the possibility of setting up separate registries for different classes of high value mobile equipment. However, the basic characteristic of the registry system, that it will be notice-based and operated electronically, is specified in the Convention. The Protocol requires the registry facilities in respect of aircraft equipment to be operational on a twenty-four hour basis.

### **Structure of the registration system**

61. The registration system is based on a two-tier structure with a Supervisory Authority and the registry itself. The Aircraft Protocol requires the Supervisory Authority to be named in the instrument. It is expected that selection of the body will be finalised at the Diplomatic Conference. The functions of the Supervisory Authority, which are wide-ranging, are set out in Article 16 of the Convention. It is the responsibility of the Supervisory Authority to set up the registry and appoint and dismiss the Registrar. In the case of the registry for aircraft equipment the Registrar will be appointed for an initial period of five years and the appointment will be reviewed at regular five yearly intervals thereafter. The Supervisory Authority is charged in addition with the drawing up of the regulations under which the registry will operate. In the case of aircraft equipment Article XVII of the Protocol requires the regulations to take effect at the same time as the Protocol itself enters into force. The Convention gives the Supervisory Authority the power to set and review the fees to be charged for use of the registry. Article XIX requires the fees to be set at a level to recover the reasonable costs of setting up and operating both the registry and the costs of the Supervisory Authority. Once the registry has been established the Supervisory Authority is charged with supervision of its operation and with the setting up a complaints mechanism.

### **Modalities of registration**

62. Article 17 requires the Protocol and the regulations issued by the Supervisory Authority to specify the requirements for making a registration, searching the registry and the issue of search certificates. The first to file priority rule means that the timing of registration is critical. The Convention lays down that registration is to be effected in chronological order of receipt at the registry and the file is required to be noted with the date and time of receipt of the registration for record purposes.

63. Article 17 also provides for the possibility that Contracting States may wish to designate a particular entity based in their territory to act as a conduit for information to be registered in the international registry. These national registries will not form part of the international registration system and there is no legal relationship between the two registry systems. This possibility is taken up in Article XVIII of the Protocol in regard to certain categories of equipment but does

not extend to aircraft engines. These national registry facilities are not specified in the Protocol but could cover, for example, the registries established under the Chicago Convention.

64. Article 18 says when registration takes effect. It leaves to the Protocol provisions on the criteria by which a registration is to be searchable. In the case of aircraft equipment the main criterion will be the manufacturer's serial number, with supplementary information to ensure uniqueness being specified in the regulations issued by the Supervisory Authority. Rules about who may apply to the registry for registration of an international interest are to be found in Article 19. Article 21 gives effect to the principle that the information in the registry is publicly available. Article 25 has been included as a general provision to guard against any discrimination in access to the registration and search facilities other than on the specific grounds laid down in the Convention. The manner in which searches are to be made or requested to be made is to be laid down in the Protocol or in regulations. The Registrar is required to provide a search certificate regarding the information which is held on the registry. Again the detail of the manner in which such a certificate is to be issued is to be laid down in the Protocol or the regulations.

65. Article 22 requires the Registrar to keep a list of the declarations of non-consensual interests made by Contracting States under Article 39 of the Convention (see paragraphs 52-54). The list is to be made available for search purposes; again the details are to be set out in the Protocol or regulations.

66. Article 24 sets out the circumstances in which discharge of a registration can be effected both in regard to international interests and notices of national interests. Where a prospective international interest, or a prospective assignment of an international interest, has been registered but value has not been given, Article XIX of the Protocol requires the intending creditor or intending assignee to take such steps as are within its power to procure the discharge of the registration no later than five calendar days after receipt of the written demand by the intending debtor or assignor.

## **Privileges and immunities of the Supervisory Authority and the Registrar**

67. The Convention lays down that that the Supervisory Authority will have international legal personality. An agreement with the host state of the Authority will also be necessary to determine the degree to which exemption from taxes and other privileges is granted.

68. It has been recognised that it will be necessary for the Supervisory Authority to have some level of immunity to encourage an organisation to accept that role. The question of the scope of this immunity for the Supervisory Authority and its officers and employees will be decided finally by the Diplomatic Conference when more information is available about the organisation which might be willing to take on the role.

69. The scope of the immunity to be enjoyed by the Registrar, its officers and employees will be limited to “functional immunity”. The Convention establishes that the assets, documents, databases and archives of the international registry shall be inviolable and immune from seizure or other legal or administrative process. This will prevent its assets being seized and the registry being disrupted or put out of action. However Article 27 of the Convention lays down an important exception to this rule. The Registrar is to be liable for the loss suffered as a direct result of an error or omission of the Registrar and its officers and employees or from a malfunction of the registry system. This is necessary to engender confidence in the registry system. Such liability is to be based on the principle of strict liability.

70. The issue of whether this strict liability should exclude “force majeure” remains to be decided by the Diplomatic Conference. Related issues are how “force majeure” might be defined and what the effect of such a limitation on the Registrar’s liability might be on the cost of insurance. Insurance or a financial guarantee covering liability is required by Article 27(2) of the Convention. Article XIX (5) of the aircraft equipment Protocol makes it clear that such insurance or financial guarantee must be comprehensive in its coverage of the liability of the Registrar.

## **Jurisdiction : the Convention**

71. Chapter XII of the Convention makes provision in respect of jurisdiction. Article 41 contains the general principle that the courts of a Contracting State chosen by the parties has exclusive jurisdiction unless otherwise agreed between the parties. In addition to the jurisdiction chosen by the parties the court of the territory on which the object subject to the international interest is situated will also have jurisdiction in respect of default remedies. (Article 42).

72. Article 43 limits the jurisdiction to make orders against the Registrar for damages to the courts of the place where the Registrar has its centre of administration. These courts will also have exclusive jurisdiction to make orders to discharge a registration where the person who has registered an interest no longer exists or cannot be found. The same courts may also make orders to amend or discharge a registration where a person has failed to comply with an order made against him in another jurisdiction.

73. Article 44 provides that where Articles 41-43 do not make provision for jurisdiction the courts of a Contracting State having jurisdiction under the law of that state may exercise jurisdiction in respect of a claim brought under the Convention.

### **Jurisdiction : Aircraft Protocol**

74. Article XX of the Aircraft Protocol provides that for the purposes of Articles 42 and 44 the courts of the State of Registry of an aircraft also have jurisdiction. This is expressed to be subject to Article 41, that is to say subject to the choice of forum by the parties which may exclude this additional forum.

### **Relationship with other Conventions**

75. Article 45 provides that the Protocol may determine the relationship between the Convention and the Unidroit Convention on International Financial Leasing. Article XXIV of the Aircraft Protocol provides that the Convention supersedes the Unidroit Convention on International Financial Leasing so far as aircraft objects are concerned.

76. Article 46 provides that the Convention is to supersede the Uncitral Convention on Assignment of Receivables in International Trade so far as it relates to the assignment of receivables which are associated rights related to international interests in objects to which the Convention applies. The final form of the provision will depend on the final form of this Uncitral Convention. The Convention was agreed by the 34<sup>th</sup> session of Uncitral from 28 June-6 July 2001 and will be submitted to the UN General Assembly for final adoption.

77. Article XXII of the Aircraft Protocol provides that the Convention is to supersede the 1948 Geneva Convention on the International Recognition of Rights in Aircraft so far as Contracting States are concerned with respect to aircraft and aircraft objects covered by the Aircraft Protocol and in respect of rights and interests to which the Unidroit Convention applies.

78. Article XXIII provides that the Convention is to supersede the 1933 Rome Convention for the unification of certain Rules relating to the Precautionary Attachment of Aircraft so far as that Convention relates to aircraft as defined in the Protocol. However a Contracting Party to the Aircraft Protocol may declare that it will not apply Article XXIII.

### **Entry into force of the Convention and Protocol**

79. Article 47 says that the Convention is to enter into force in respect of any particular category of objects only when a Protocol enters into force, subject to the terms of that Protocol, and between the Contracting States' parties to that Protocol. The number of instruments of ratification<sup>6</sup> required to bring the Convention and the Aircraft Protocol into force will be decided by the Diplomatic Conference. It is envisaged that the number will be small – 3/5 has been written into Article 47 of the draft text – in line with similar private law treaties. However the Convention will not have any effect without a Protocol which provides for the application of the Convention to a specific class of objects. The Aircraft Protocol provides that it is to come into

force three months after the third/fifth instrument of ratification etc. The coming into force of the Aircraft Protocol is dependent on the International Registry being operational at that time.

### **Options available to Contracting States**

80. The Convention allows Contracting States at the time of ratifying a particular Protocol to make certain declarations both in regard to the Convention and the Protocol itself. This gives Contracting States a degree of flexibility in respect of certain aspects of the regime established by the Convention and Protocol. This approach is designed to encourage adoption of the Convention by as many States as possible. However, it does add complexity to the system and will make it necessary for those with an interest to check the extent to which declarations have been made by individual Contracting States. The Registrar of the international registry system will maintain a searchable list of declarations and withdrawals of declarations made by Contracting States (see Article 22). It appears to us that it would be desirable for the Registrar also to have details of the entry into force of the Convention in Contracting States and of reservations and any denunciations in order to give users of the Registry comprehensive information.

### **Internal transactions**

81. Article 48 enables a Contracting State to declare that the Convention will not apply to a transaction which is internal to that State. This provision will enable a Contracting State to disapply the Convention to transactions which it considers are purely internal to that State, subject to certain provisions which cannot be disappplied - most importantly the rules regarding the priority of competing interests in Article 28. This means that a creditor under such a transaction would still need to register the interest with the international registry in order to secure his priority.

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<sup>6</sup> In international law there are a number of different ways in which a state may become bound by a treaty - i.e. ratification, acceptance and approval. For simplicity we use here the single term ratification to indicate a Contracting State becoming bound by the Convention and Protocol.

### **Choice of courts**

82. Article 51 enables a Contracting State to specify to which court or courts the definition of "court" in Article 1 and references to Courts or courts in Chapter XII (which deals with jurisdiction) are to relate. This option has been inserted for the benefit of federal states where a declaration may be required to assign matters to federal or state courts. So far as the UK is concerned we consider no declaration would be required as allocation of matters within the three UK jurisdictions and their court systems is clear from existing law (the Civil Jurisdiction and Judgments Act 1982 as amended) and rules of court.

### **Leasing and judicial control of interim remedies**

83. Article 52 enables a Contracting State to declare that while a charged object is situated within or controlled from its territory the chargee may not grant a lease of the object in that territory. The term "controlled from" is primarily directed at satellites. Article 52 also provides that a Contracting State is to declare whether any remedies under the Convention which are not expressed to require applications to the court are nevertheless to require such application.

### **Reciprocity**

84. Article 54 provides that where a Contracting State makes a reservation or declaration it is binding on it alone. This displaces the rule of reciprocity in international law. This provides that where a state makes a reservation modifying a treaty as it applies to the relations of the reserving state to another state, then that reservation also modifies the treaty to the same extent as it applies to that other party's relations to the reserving State.

### **The Aircraft Protocol**

85. There are a number of important declarations specified in the Aircraft Protocol which Contracting States can choose to make. These enable Contracting States to opt into certain provisions of the Protocol, as set out below.

86. A Contracting State can opt into:

- Article VIII (choice of law)
- Article XII (Co-operation of a Contracting State where an aircraft object is situated with foreign courts and foreign insolvency administrators in carrying out the remedies on insolvency provided for in Article XI)
- Article XIII which provides for the procedure for de-registration of an aircraft object and authorisation for its export.
- Article X which modifies certain provisions of the Convention regarding relief pending final determination. A Contracting State can choose to opt into these provisions either wholly or in part. (See paragraph 37 above)
- Article XI on insolvency. (See paragraphs 41-43 above)

87. The declarations and reservations arrangements are subject to the following provisions.

- Articles XXIX and XXX of the Protocol enable a Contracting State both to make a fresh declaration after the entry into force of the Protocol in that Contracting State, and to withdraw either a declaration or reservation which has already been made. In the case of such new declarations, rights and interests arising as a result of the application of the Protocol prior to the effective date of the declaration will continue to apply.
- Article XXXI enables a Contracting state to denounce the Protocol. The time at which such a denunciation would take effect will be decided by the Diplomatic Conference. Either six or twelve months are the options written into the current draft. A Contracting State could specify a longer (but not shorter) period in its denunciation. All rights and interests arising prior to the date the denunciation takes effect will be preserved.
- Article XXXIII names the body which will act as the depository, which has yet to be decided, and sets out its responsibilities.

- Article XXVII enables those Contracting States which have more than one territorial unit with different systems of law to specify upon ratification, acceptance, approval or accession to the Protocol to which such territorial units the Protocol applies. A fresh declaration can be made at any time.

88. Article XXXII of the Protocol envisages the establishment of a Review Board which, as long as not less than twenty-five per cent of Contracting States make a request, will consider the operation of the Convention, Protocol and the Regulations including the international registration system. Interpretation by the courts of the instruments will also be studied. The Review Board will consider whether the Protocol or the international registry system require modification. The Review Board is required to report annually to Contracting States on these matters

89. Protocols on Railway Rolling Stock and Space Property are in the course of preparation. Article 49 of the Convention sets out the arrangements for the negotiation and adoption of these Protocols. Article 50 enables Unidroit to set in motion work in similar Protocols covering other categories of high value mobile equipment.

**DRAFT CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

HAVE AGREED upon the following provisions:

**CHAPTER I**

## **SPHERE OF APPLICATION AND GENERAL PROVISIONS**

### Article 1

#### *Definitions*

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

- (a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;
- (b) "assignment" means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;
- (c) "associated rights" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) "commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) "conditional buyer" means a buyer under a title reservation agreement;
- (f) "conditional seller" means a seller under a title reservation agreement;
- (g) "contract of sale" means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) "court" means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) "creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) "debtor" means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;
- (k) "insolvency administrator" means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) "insolvency proceedings" means collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) "interested persons" means:

- (i) the debtor;
- (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (iii) any other person having rights in or over the object;
- (n) "internal transaction" means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object is located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the transaction;
- (o) "international interest" means an interest to which Article 2 applies;
- (p) "International Registry" means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) "leasing agreement" means an agreement by which a lessor grants a right to possession or control of an object (with or without an option to purchase) to a lessee in return for a rental or other payment;
- (r) "national interest" means an interest in an object created by an internal transaction;
- (s) "non-consensual right or interest" means a right or interest conferred by law to secure the performance of an obligation, including an obligation to a State or State entity;
- (t) "notice of a national interest" means a notice that a national interest has been registered in a public registry in the Contracting State making a declaration to the Protocol pursuant to Article 48(1);
- (u) "object" means an object of a category to which Article 2 applies;
- (v) "pre-existing right or interest" means a right or interest of any kind in an object created or arising under the law of a Contracting State before the entry into force of this Convention in respect of that State, including a right or interest of a category covered by a declaration pursuant to Article 39 and to the extent of that declaration;
- (w) "proceeds" means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) "prospective assignment" means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) "prospective international interest" means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) "prospective sale" means a sale which is intended to be made in the future,

upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

(aa) "Protocol" means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;

(bb) "registered" means registered in the International Registry pursuant to Chapter V;

(cc) "registered interest" means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;

(dd) "registrable non-consensual right or interest" means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 38;

(ee) "Registrar" means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 16(2)(b);

(ff) "regulations" means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) "sale" means a transfer of ownership of an object pursuant to a contract of sale;

(hh) "secured obligation" means an obligation secured by a security interest;

(ii) "security agreement" means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

(jj) "security interest" means an interest created by a security agreement;

(kk) "Supervisory Authority" means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) "title reservation agreement" means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

(mm) "unregistered interest" means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and

(nn) "writing" means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person's approval of the record.<sup>7</sup>

## Article 2

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<sup>1</sup> It was noted that this definition should be further reviewed.

### *The international interest*

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.

2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 6, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. The categories referred to in the preceding paragraphs are :

- (a) airframes, aircraft engines and helicopters;
- (b) railway rolling stock; and
- (c) space property.

4. This Convention does not determine whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph .

5. An international interest in an object extends to proceeds of that object.

### Article 3

#### *Sphere of application*

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

#### Article 4

##### *Where debtor is situated*

1. For the purposes of this Convention, the debtor is situated in any Contracting State:
  - (a) under the law of which it is incorporated or formed;
  - (b) where it has its registered office or statutory seat;
  - (c) where it has its centre of administration; or
  - (d) where it has its place of business.
2. A reference in this Convention to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

#### Article 5

##### *Interpretation and applicable law*

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.
4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

## CHAPTER II

### CONSTITUTION OF AN INTERNATIONAL INTEREST

#### Article 6

##### *Formal requirements*

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

## CHAPTER III

### DEFAULT REMEDIES

#### Article 7

##### *Remedies of chargee*

1. In the event of default as provided in Article 10, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
  - (b) sell or grant a lease of any such object;
  - (c) collect or receive any income or profits arising from the management or use of any such object,
- or apply for a court order authorising or directing any of the above acts.

2. Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 12 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of

the security agreement except where such a provision is manifestly unreasonable.

3. A chargee proposing to sell or grant a lease of an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed sale or lease to:

(a) interested persons specified in Article 1(m)(i) and (ii); and

(b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

4. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out under paragraph 1 shall be applied towards discharge of the amount of the secured obligations.

5. Where the sums collected or received by the chargee as a result of the exercise of any remedy given in paragraph 1 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall pay the excess to the holder of the registered interest ranking immediately after its own or, if there is none, to the chargor.

## Article 8

### ***Vesting of object in satisfaction; redemption***

1. At any time after default as provided in Article 10, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. At any time after default as provided in Article 10 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 7(1)(b). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. Ownership or any other interest of the chargor passing on a sale under Article 7(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

## Article 9

### ***Remedies of conditional seller or lessor***

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 10, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

#### Article 10

##### *Meaning of default*

1. The debtor and the creditor 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 Articles 7 to 9 and 12.

2. In the absence of such an agreement, default for the purposes of Articles 7 to 9 and 12 means a substantial default.

#### Article 11

##### *Additional remedies*

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 14.

#### Article 12

##### *Relief pending final determination*

1. A Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object; and/or
- (d) lease or management of the object and the income therefrom.

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

(a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or

(b) fails to establish its claim, wholly or in part, on the final determination of that claim.

3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. Nothing in this Article affects the application of Article 7(2) or limits the availability of forms of interim relief other than those set out in paragraph 1.

### Article 13

#### *Procedural requirements*

Subject to Article 52(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

### Article 14

#### *Derogation*

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 7(2) to (5), 8(3) and (4), 12(2) and 13.

## CHAPTER IV

### THE INTERNATIONAL REGISTRATION SYSTEM

#### Article 15

##### *The International Registry*

1. An International Registry shall be established for registrations of:
  - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
  - (b) assignments and prospective assignments of international interests;
  - (c) acquisitions of international interests by legal or contractual subrogation;
  - (d) subordinations of interests referred to in sub-paragraph (a) of this paragraph;  
and
  - (e) notices of national interests.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration.

#### Article 16

##### *The Supervisory Authority and the Registrar*

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:
  - (a) establish or provide for the establishment of the International Registry;
  - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
  - (c) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
  - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;

(e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;

(f) supervise the Registrar and the operation of the International Registry;

(g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;

(h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;

(i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and

(j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 26(3).

4. The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.

5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

## CHAPTER V

### MODALITIES OF REGISTRATION

#### Article 17

##### *Registration requirements*

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

(a) for effecting a registration;

(b) for making searches and issuing search certificates, and, subject thereto;

(c) for ensuring the confidentiality of information and documents of the International Registry.

2. Such requirements shall not include any evidence that a consent to registration required by Article 19(1), (2) or (3) has been given.

3. Registration shall be effected in chronological order of receipt at the International Registry data base, and the file shall record the date and time of receipt.

4. The Protocol may provide that a Contracting State may designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.

## Article 18

### *When registration takes effect*

1. A registration shall be valid only if made in conformity with Article 19 and shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

(a) the International Registry has assigned to it a sequentially ordered file number;  
and

(b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

3. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest.

4. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

## Article 19

### *Who may register*

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.

#### Article 20

##### *Duration of registration*

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

#### Article 21

##### *Searches*

1. Any person may, in the manner prescribed by the Protocol or regulations, make or request a search of the International Registry concerning interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol or regulations, shall issue a registry search certificate with respect to any object:

- (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

- (b) stating that there is no information in the International Registry relating thereto.

#### Article 22

##### *List of declarations and declared non-consensual rights or interests*

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the depositary State as having been declared by Contracting States in conformity with Article 39 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol or regulations to any person requesting it.

Article 23

***Evidentiary value of certificates***

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 24

***Discharge of registration***

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall procure the discharge of the registration upon written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

Article 25

***Access to the international registration facilities***

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

## CHAPTER VI

### PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY AND THE REGISTRAR

#### Article 26

##### *Legal personality; immunity*

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.
2. The Supervisory Authority and its officers and employees shall enjoy [functional] immunity from legal or administrative process.
3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.  
(b) For the purposes of this paragraph, "host State" means the State in which the Supervisory Authority is situated.
4. Except for the purposes of Article 27(1) and in relation to any claim made under that paragraph and for the purposes of Article 43:
  - (a) the Registrar and its officers and employees shall enjoy functional immunity from legal or administrative process;
  - (b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. The Supervisory Authority may waive the immunity conferred by paragraph 4.

## CHAPTER VII

### LIABILITY OF THE REGISTRAR

#### Article 27

##### *Liability and insurance*

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system [except ...]

2. B The Registrar shall provide insurance or a financial guarantee covering the liability referred to in the preceding paragraph to the extent provided by the Protocol.

## CHAPTER VIII

### EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

#### Article 28

##### *Priority of competing interests*

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest; and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5. Any priority given by this Article to an interest in an object extends to proceeds.

6. This Convention does not determine priority as between the holder of an interest in an item held prior to its installation on an object and the holder of an international interest in that object.

Article 29

*Effects of insolvency*

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. Nothing in this Article affects any rules of insolvency law relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or any rules of insolvency procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

**CHAPTER IX**<sup>8</sup>

**ASSIGNMENTS OF INTERNATIONAL INTERESTS  
AND RIGHTS OF SUBROGATION**

Article 30

*Formal requirements of assignment*

1. The holder of an international interest ("the assignor") may make an assignment of it to another person ("the assignee") wholly or in part.

2. An assignment of an international interest shall be valid only if it:

(a) is in writing;

(b) enables the international interest and the object to which it relates to be identified;

(c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

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<sup>8</sup> At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with those national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two alternatives was discussed but there was insufficient time to give the alternatives full consideration. Substantial support for the approach taken in the proposal was expressed. However, it was agreed that the alternatives required further careful study by experts and a number of delegations expressed their wish to proceed with further informal consultations. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

## Article 31

### *Effects of assignment*

1. An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

- (a) all the interests and priorities of the assignor under this Convention; and
- (b) all associated rights.

2. Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

3. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.

4. In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

## Article 32

### *Debtor's duty to assignee*

1. To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the debtor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 31(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the international interest [; and
- (c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person]].

2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in the preceding paragraph shall affect the priority of competing assignments.

## Article 33

### ***Default remedies in respect of assignment by way of security***

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 7, 8 and 10 to 13 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;
- (b) to the chargee and chargor were references to the assignee and assignor of the international interest;
- (c) to the holder of the international interest were references to the holder of the assignment; and
- (d) to the object were references to the assigned rights relating to the object.<sup>9</sup>

#### Article 34

### ***Priority of competing assignments***

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of an international interest.

#### Article 35

### ***Assignees priority with respect to associated rights***

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of or in connection with the assignment, have priority under Article 28 only to the extent that such associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object,

and the reasonable costs referred to in Article 7(5).

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<sup>3</sup> The Drafting Committee of the third Joint Session noted that this provision would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

Article 36

***Effects of assignors insolvency***

The provisions of Article 29 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Article 37

***Subrogation***

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of an international interest by legal or contractual subrogation under the applicable law.

2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.

**CHAPTER X**

**NON-CONSENSUAL RIGHTS OR INTERESTS**

Article 38

***Registrable non-consensual rights or interests***

A Contracting State may at any time in a declaration deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly. Such a declaration may be modified from time to time.

Article 39

***Priority of non-registrable non-consensual rights or interests***

1. A Contracting State may at any time in a declaration deposited with the depositary of the Protocol declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 38 applies) which under that State's law would have priority over an interest in the object equivalent to that of the holder of the international interest and shall have priority over a registered international interest, whether in or outside the insolvency of the debtor. Such a declaration may be modified from time to time.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. An international interest has priority over a non-consensual right or interest of a category not covered by a declaration deposited prior to the registration of the international interest.

## **CHAPTER XI**

### **APPLICATION OF THE CONVENTION TO SALES**

Article 40

#### ***Sale and prospective sale***

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

## **CHAPTER XII**

### **JURISDICTION**

Article 41

#### ***Choice of forum***

Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

Article 42

#### ***Jurisdiction under Article 12(1)***

1. The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.

2. The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum.

3. A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 12(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.

#### Article 43

##### ***Jurisdiction to make orders against the Registrar***

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages against the Registrar under Article 27.

2. Where a person fails to respond to a demand made under Article 24(1) or (2) and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in paragraph 1 shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

#### Article 44

##### ***General jurisdiction***

Except as provided by Articles 41, 42 and 43, the courts of a Contracting State having jurisdiction under the law of that State may exercise jurisdiction in respect of any claim brought under this Convention.

## CHAPTER XIII

### RELATIONSHIP WITH OTHER CONVENTIONS

#### Article 45

##### *Relationship with the UNIDROIT Convention on International Financial Leasing*

The Protocol may determine the relationship between this Convention and the *UNIDROIT Convention on International Financial Leasing*, opened for signature in Ottawa on 28 May 1988.

#### Article 46

##### *Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]*

[This Convention shall supersede the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] as it relates to the assignment of receivables which are associated rights related to international interests in objects of the categories referred to in Article 2(3).]<sup>4</sup>

## CHAPTER XIV

### FINAL PROVISIONS

#### Article 47

##### *Entry into force*

1. This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

- (1) as from the time of entry into force of that Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. This Convention and the Protocol shall be read and interpreted together as a single

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<sup>4</sup> This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

instrument.

## Article 48

### *Internal transactions*

1. A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol that this Convention shall not apply to a transaction which is an internal transaction in relation to that State.

2. Notwithstanding the preceding paragraph, the provisions of Articles 7(3) and 8(1), Chapter V, Article 28, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

## [Article 49

### *Protocols on Railway Rolling Stock and Space Property*

1. The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects falling within Article 2(3)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT.

4. The procedure for the adoption of Protocols covered by this Article shall be determined by the States participating in their preparation.]

## Article 50

### *Other future Protocols*

1. UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article 49.

## Article 51

### *Determination of courts*

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant court or courts for the purposes of Article 1 and Chapter XII of this Convention.

## Article 52

### *Declarations regarding remedies*

1. A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

## Article 53

### *Declarations regarding relief pending final determination*

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 12, wholly or in part.

## Article 54

### *Reservations, declarations and non-application of reciprocity principle*

1. No reservations are permitted except those expressly authorised in this Convention and the Protocol.

2. No declarations are permitted except those expressly authorised in this Convention and the Protocol.

3. The provisions of this Convention subject to any reservation or declaration shall be binding on the Contracting States that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring Contracting State.

## Article 55

### *Transitional provisions*

#### *Alternative A*

[This Convention does not apply to a pre-existing right or interest, which shall retain the priority it enjoyed before this Convention entered into force.]

#### *Alternative B*<sup>5</sup>

[1. Except as provided by paragraph 2, this Convention does not apply to a pre-existing right or interest.

2. Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [10 years] after the entering into force of this Convention in the Contracting State under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 28.

3. The preceding paragraph does not apply to any right or interest in an object created or arising under the law of a State which has not become a Contracting State.]

**[Remaining Final Provisions to be prepared by the Diplomatic Conference]**

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<sup>5</sup> The ICAO Legal Committee, while maintaining both alternatives A and B, expressed the view that in case alternative B was selected, the fees charged with respect to these transactions should be nominal.

**DRAFT PROTOCOL TO THE CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON  
MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

HAVE AGREED upon the following provisions relating to aircraft equipment:

**CHAPTER I**

**SPHERE OF APPLICATION AND GENERAL PROVISIONS**

Article I

*Defined terms*

1. + In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2. + In this Protocol the following terms are employed with the meanings set out below:

(a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

(b) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records

relating thereto;

(c) “aircraft objects” means airframes, aircraft engines and helicopters;

(d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;

(e) “airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;

(f) “authorised party” means the party referred to in Article XIII(2);

(g) “Chicago Convention” means the *Convention on International Civil Aviation*, opened for signature in Chicago on 7 December 1944, as amended, and its annexes;

(h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;

(i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;

(j) “guarantee contract” means a contract entered into by a person as guarantor;

(k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

(l) “helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

(i) at least five (5) persons including crew; or

(ii) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;

(m) “insolvency-related event” means:

(i) the commencement of the insolvency proceedings; or

(ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise

remedies under the Convention is prevented or suspended by law or State action;

(n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

(o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and

(p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

## Article II

### *Application of Convention as regards aircraft objects*

1. + The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2. + The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

## Article III

### *Application of Convention to sales*

The following provisions of the Convention apply in relation to a sale and shall do so as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a contract of sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;  
Article 15(1)(a);  
Article 17;  
Article 18(3);  
Article 19(1) (as regards registration of a contract of sale or a prospective sale);  
Article 24(2) (as regards a prospective sale); and  
Article 29.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 28 (other than Article 28(3) which is replaced by Article XIV(1)), Chapter X, Chapter XII (other than Article 42), Chapter XIII and Chapter XIV (other than Article 55) shall apply to contracts of sale and prospective sales.

## Article IV

### *Sphere of application*

1. + Without prejudice to Article 3(1) of the Convention, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State. And in such circumstances the application of the Convention shall be from the earlier of:

- a) the date the aircraft is so registered; and
- b) the date of an agreement providing that the aircraft shall be so registered.

2. + For the purposes of the definition of “internal transaction” in Article 1 of the Convention:

- (a) an airframe is located in the State of registry of the aircraft of which it is a part;
- (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and
- (c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

3. + The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

#### Article V

##### *Formalities, effects and registration of contract of sale*

1. + For the purposes of this Protocol, a contract of sale is one which:

- (a) is in writing;
- (b) relates to an aircraft object of which the seller has power to dispose; and
- (c) enables the aircraft object to be identified in conformity with this Protocol.

2. + A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

3. + Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

#### Article VI

##### *Representative capacities*

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

## Article VII

### *Description of aircraft objects*

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Articles 6(c) and 30(2)(b) of the Convention and Article V(1)(c) of this Protocol.

## Article VIII

### *Choice of law*

1. + The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations under the Convention, wholly or in part.

2. + Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

## CHAPTER II

### DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

## Article IX

### *Modification of default remedies provisions*

1. + In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

- (a) procure the de-registration of the aircraft; and
- (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.

2. + The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

- 3. + (a) Article 7(2) of the Convention shall not apply to aircraft objects.
- (b) In relation to aircraft objects the following provisions shall apply:
  - (i) any remedy given by the Convention shall be exercised in a commercially

reasonable manner;

(ii) an agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

4. + A chargee giving ten or more calendar days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 7(3) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

## Article X

### *Modification of provisions regarding relief pending final determination*

1. + This Article applies only where a Contracting State has made a declaration to that effect under Article XXVIII(2) and to the extent stated in such declaration.

2. + For the purposes of Article 12(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. + Article 12(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

"(e) sale and application of proceeds therefrom",

and Article 42(2) applies with the insertion after the words "Article 12(1)(d)" of the words "and (e)".

4. + Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 28 of the Convention.

5. + The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 12(2) of the Convention.

6. + With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than [five] working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

## Article XI

### *Remedies on insolvency*

1. + This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVIII(3).

*[Alternative A]*

2. + Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. + For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. + References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. + Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. + Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. + The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. + With regard to the remedies in Article IX(1) :

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with this Convention; and

(b) the applicable authorities shall expeditiously cooperate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. + No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. + No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. + Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. + No rights or interests, except for preferred non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in the insolvency over registered interests.

13. + The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

*[Alternative B]*

2. + Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVIII(3) whether it will:

(a) cure all defaults and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.

3. + The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. + The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. + If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when he has declared that he will give possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. + The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

## Article XII

### *Insolvency assistance*

The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

## Article XIII

### ***De-registration and export authorisation***

1. + Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

2. + The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.

3. + The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

## Article XIV

### ***Modification of priority provisions***

1. + A buyer under a registered contract of sale takes its interest free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest, but subject to a previously registered interest.

2. + The provisions of Article 28(1) - (4) of the Convention shall determine the priority of the holders of interests in an aircraft engine and Article 28(6) shall not apply.

3. + Ownership of an aircraft engine shall not pass by virtue of its installation on, or removal from, an airframe or an aircraft.

## Article XV

### ***Modification of assignment provisions***

1. + Article 30(2) of the Convention applies with the following being added immediately after sub-paragraph (c):

“(d) is consented to in writing by the debtor, whether or not the consent is given in advance of the assignment or identifies the assignee.”<sup>10</sup>

[2. + Article 35 of the Convention applies as if the words following the phrase “under

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<sup>1</sup> The removal of square brackets in Article 32(1)(c) Convention may have implications for this provision.

Article 28” were omitted].

### **CHAPTER III**

#### **REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AIRCRAFT OBJECTS**

##### Article XVI

##### *The Supervisory Authority and the Registrar*

1. + The Supervisory Authority shall be Y .
2. + The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-yearly intervals by the Supervisory Authority.

##### Article XVII

##### *First regulations*

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

##### Article XVIII

##### *Designated entry points*

1. + At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2, designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.
2. + A Contracting State may make a designation under the preceding paragraph only in relation to:
  - (a) international interests in, or sales of, helicopters or airframes pertaining to aircraft for which it is the State of registry;
  - (b) registrable non-consensual rights or interests created under its domestic law;

and

- (c) notices of national interests.

#### Article XIX

##### *Additional modifications to Registry provisions*

1. + For the purposes of Article 18(5) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

2. + For the purposes of Article 24(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than five calendar days after the receipt of the demand described in such paragraph.

3. + The fees referred to in Article 16(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 16(2) of the Convention.

4. + The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated during working hours in their respective territories.

5. + The insurance or financial guarantee referred to in Article 27(2) shall cover all liability of the Registrar under the Convention.

## CHAPTER IV

### JURISDICTION

#### Article XX

##### *Modification of jurisdiction provisions*

For the purposes of Articles 42 and 44 of the Convention and subject to Article 41 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

Article XXI

***Waivers of sovereign immunity***

1. + Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 41, 42 or 44 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. + A waiver under the preceding paragraph must be in a writing that contains a description of the aircraft object.

**CHAPTER V**

**RELATIONSHIP WITH OTHER CONVENTIONS**

Article XXII

***Relationship with the Convention on the International Recognition of Rights in Aircraft***

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, opened for signature in Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIII

***Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft***

1. + The Convention shall, for a Contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, opened for signature in Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.

2. + A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

Article XXIV

## ***Relationship with the UNIDROIT Convention on International Financial Leasing***

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing* as it relates to aircraft objects.

### **CHAPTER VI**

#### **FINAL PROVISIONS**

##### Article XXV

##### ***Adoption of Protocol***

1. + This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the adoption of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [...] until [...].

2. + This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3. + This Protocol is open for accession by all States which are not signatory States as from the date it is open for signature.

4. + Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.

##### Article XXVI

##### ***Entry into force***

1. + This Protocol enters into force on the first day of the month following the expiration of three months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession.

2. + For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

##### Article XXVII

##### ***Territorial units***

1. + If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may substitute its declaration by another declaration at any time.

2. + These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. + If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

#### Article XXVIII

##### *Declarations relating to certain provisions*

1. + A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.

2. + A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply Article X of this Protocol wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

3. + A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. + The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

#### Article XXIX

##### *Subsequent declarations*

1. + A Contracting State may make a subsequent declaration at any time after the date on which the Protocol enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. + Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. + Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no

such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

#### Article XXX

##### *Withdrawal of declarations and reservations*

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

#### Article XXXI

##### *Denunciations*

1. + This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. + Any such denunciation shall take effect on the first day of the month following the expiration of [six/twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. + Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.

#### Article XXXII

##### *Establishment and responsibilities of Review Board*

1. + A five-member Review Board shall promptly be appointed to prepare yearly reports for the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2.

2. + At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations;

(c) the functioning of the international registration system and the performance of the Registrar and its oversight by the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

#### Article XXXIII

##### *Depositary arrangements*

1. + This Protocol shall be deposited with the [...].
2. + The [depositary] shall:
  - (a) inform all Contracting States of this Protocol and [...] of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) each declaration made in accordance with this Protocol;
    - (iii) the withdrawal of any declaration;
    - (iv) the date of entry into force of this Protocol; and
    - (v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;
  - (b) transmit certified true copies of this Protocol to all signatory States, to all States acceding to the Protocol and to [...];
  - (c) provide the Registrar with the contents of each instrument of ratification, acceptance, approval, accession, declaration or withdrawal of a declaration, so that the information contained therein may be made publicly accessible; and
  - (d) perform such other functions customary for depositaries.

**FORM OF IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORISATION**

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]<sup>\*</sup> of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and

(b) procure the export and physical transfer of the aircraft from [insert name of country];  
and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]  
\_\_\_\_\_

Agreed to and lodged this  
[insert date]

By: [insert name of signatory]  
Its: [insert title of signatory]

---

\* Select the term that reflects the relevant nationality registration criterion

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[insert relevant notational details]

The Consolidated Text of the Draft Convention on International Interests in Aircraft Equipment is not available electronically. Hard copies may be obtained from:

Paul Lennon  
Business Law Unit  
Department of Trade and Industry  
Room 503  
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SW1H 0NN

Tel: 020 7215 3243

Fax: 020 7215 3244

e-mail: [Paul.Lennon@dti.gov.uk](mailto:Paul.Lennon@dti.gov.uk)

## Code of practice on written consultation

### The consultation criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation coordinator who will ensure the lessons are disseminated.
8. The complete code is available on the Cabinet Office's web site, address [www.cabinet-office.gov.uk/servicefirst/index/consultation.htm](http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm)
9. Any complaint or comments on the conduct of this consultation should be directed to the Department's Consultation Coordinator

Andrew Dobbie  
Room 550  
1 Victoria Street  
London SW1H 0ET

Telephone 020 7215 6509

E-mail [Andrew.Dobbie@dti.gov.uk](mailto:Andrew.Dobbie@dti.gov.uk)

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