



DCME Doc No. 6  
5/10/01  
English and French only

## DIPLOMATIC CONFERENCE TO ADOPT A MOBILE EQUIPMENT CONVENTION AND AN AIRCRAFT PROTOCOL

(Cape Town, 29 October to 16 November 2001)

### CONSOLIDATED TEXT

(presented by the UNIDROIT Secretariat)

of the

### DRAFT [UNIDROIT] [~~UNIDROIT~~] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AS APPLIED TO AIRCRAFT EQUIPMENT

#### **Purpose of this document: A user-friendly working tool (“text of convenience”)**

To facilitate work of delegates at the diplomatic Conference who may wish to see how the two draft texts (Convention and Aircraft Protocol) function as applied to aircraft equipment.

- At the 3<sup>rd</sup> Joint Session of the UNIDROIT Committee of Governmental Experts and a Sub-Committee of the ICAO Legal Committee, the two-tiered structure (Convention and Aircraft Protocol) received almost unanimous support, only one delegation expressing another preference.
- The UNIDROIT Governing Council, at its 79<sup>th</sup> Session, authorised the two basic proposals to be submitted to the diplomatic Conference.
- At the 31<sup>st</sup> Session of the ICAO Legal Committee, there was a “strong preference... for a dual structure”, and “[t]he dual structure would therefore be maintained”. “The consolidated text could be given some more formal status by the [Diplomatic] Conference through a Resolution or through some other action”. “[The Chairman] emphasized the need for close cooperation between the two Secretariats in the preparation of the text.” (Cf. Report of the 31<sup>st</sup> Session of the Legal Committee, Doc 9765-LC/191, para. 3:132).

#### **Status of the document**

The Consolidated Text has no formal status yet. It is a working tool which will need to be revised under the auspices of the co-sponsoring organisations (UNIDROIT and ICAO) to reflect amendments to the draft Convention and draft Aircraft Protocol adopted at the Diplomatic Conference.

#### **Issue of the revised Consolidated Text**

The revised consolidated text will serve as a helpful working document which, prepared under the supervision of the two organisations and issued under their imprimatur, will be able to be used with confidence as accurately reflecting the combined effect of the two legal instruments.

**CONSOLIDATED TEXT**  
**of the**  
**DRAFT [UNIDROIT] [~~UNIDROIT~~] CONVENTION ON**  
**INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**  
**AS APPLIED TO AIRCRAFT EQUIPMENT**

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**DRAFT [UNIDROIT] [~~UNIDROIT~~] CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT  
AS APPLIED TO AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THE [UNIDROIT] [~~UNIDROIT~~] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND THE PROTOCOL TO THAT CONVENTION ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT,

AWARE of the need to acquire and use aircraft 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,

DESIRING to facilitate the work with and the application of the (base) Convention and the (equipment-specific) Aircraft Protocol for all interested parties,

HAVE AGREED to entrust the Secretariat of the International Institute for the Unification of Private Law – UNIDROIT – and the [Legal Bureau] [Chairman of the Legal Committee] of the International Civil Aviation Organization – ICAO – with the drawing up of an authoritative consolidated text (“text of convenience”, hereafter referred to as the “Convention”) whose provisions read as follows:

**CHAPTER I**

**SPHERE OF APPLICATION AND GENERAL PROVISIONS**

Article 1  
*Definitions*

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

(a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;

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

(c) “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;

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

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

(f) “airframes” means airframes (other than those used in military, customs and 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;

(g) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;

(h) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the aircraft object;

(i) “authorised party” means the party referred to in Article 24(2);

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

(k) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(l) “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;

(m) “conditional buyer” means a buyer under a title reservation agreement;

(n) “conditional seller” means a seller under a title reservation agreement;

(o) “contract of sale” means a contract for the sale of an aircraft object by a seller to a buyer which is not an agreement as defined in (a) above;

(p) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(q) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(r) “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 aircraft object is burdened by a registrable non-consensual right or interest;

(s) “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;

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

(u) “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;

(v) “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;

(w) “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;

(x) “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;

(y) “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;

(z) “interested persons” means:

(i) the debtor;

(ii) any guarantor under a guarantee;

(iii) any other person having rights in or over the aircraft object;

(aa) “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 aircraft object under Article 3(4) is deemed to be located, in the same Contracting State at the time of the conclusion of the transaction;

(bb) “international interest” means an interest to which Article 2 applies;

(cc) “International Registry” means the international registration facilities established for the purposes of this Convention ;

(dd) “leasing agreement” means an agreement by which a lessor grants a right to possession or control of an aircraft object (with or without an option to purchase) to a lessee in return for a rental or other payment;

(ee) “national interest” means an interest in an aircraft object created by an internal transaction;

(ff) “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;

(gg) “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 under Article 64(1);

(hh) “pre-existing right or interest” means a right or interest of any kind in an aircraft 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 52 and to the extent of that declaration;

(ii) “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 owned, unless proved otherwise;

(jj) “proceeds” means money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition;

(kk) “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;

(ll) “prospective international interest” means an interest that is intended to be created or provided for in an aircraft 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 aircraft object), whether or not the occurrence of the event is certain;

(mm) “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;

(nn) “registered” means registered in the International Registry pursuant to Chapter V;

(oo) “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;

(pp) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 51;

(qq) “Registrar” means, the person or body appointed under Articles 26(2)(b) and 27(1);

(rr) “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;

(ss) “regulations” means regulations made or approved by the Supervisory Authority;

(tt) “sale” means a transfer of ownership of an aircraft object pursuant to a contract of sale;

(uu) “secured obligation” means an obligation secured by a security interest;

(vv) “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 aircraft object to secure the performance of any existing or future obligation of the chargor or a third person;

(ww) “security interest” means an interest created by a security agreement;

(xx) “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;



(yy) “Supervisory Authority” means the Supervisory Authority referred to in Article 26(1);

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

(aaa) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 52 applies) which has not been registered, whether or not it is registrable under this Convention; and

(bbb) “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>1</sup>

## Article 2

### *The international interest*

1. - This Convention provides for the constitution and effects of an international interest in aircraft objects and associated rights.

2. - For the purposes of this Convention, an international interest in aircraft objects is an interest, constituted under Article 10, in airframes, aircraft engines or helicopters:

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

4. - An international interest in an aircraft object extends to proceeds of that aircraft 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.

3. - Without prejudice to paragraph 1 of this article, the Convention shall also apply if an aircraft is registered in an aircraft register of a Contracting State. In such circumstances the application of the Convention shall be from the earlier of:

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

- (a) the date the aircraft is so registered; and
  - (b) the date of an agreement providing that the aircraft shall be so registered.<sup>2</sup>
4. - For the purposes of the definition of “internal transaction” in Article 1:
- (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.

#### 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.

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<sup>2</sup> This paragraph should be reviewed by the Diplomatic Conference with regard to the question whether in its line 2 it should also make reference to joint registration facilities under Article 77 of the Chicago Convention of 1944.

Article 6

***Application to sale and prospective sale***

The following provisions of this 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<sup>3</sup>:

Articles 3 and 4;  
Article 25(1)(a);  
Article 30;  
Article 31(3);  
Article 32(1) (as regards registration of a contract of sale or a prospective sale);  
Article 37(2) (as regards a prospective sale); and  
Article 42.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 41 (other than Article 41(3), Chapter X, Chapter XI (other than Article 54), Chapter XII and Chapter XIII (other than Article 75) shall apply to sales and prospective sales.<sup>4</sup>

Article 7

***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 this Convention.

Article 8

***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 aircraft object for the purposes of Articles 10(c), 11(1)(c) and 43(2)(b) of this Convention.

Article 9

***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.

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<sup>3</sup> The following alternative wording should be considered: "The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively."

<sup>4</sup> The drafting of this Article should be reviewed by the Diplomatic Conference.

## CHAPTER II

### CONSTITUTION OF AN INTERNATIONAL INTEREST; CONTRACTS OF SALE

#### Article 10

##### *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 aircraft object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the aircraft object to be identified; 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.

#### Article 11

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

1. - For the purposes of this Convention, 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.
2. - A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

## CHAPTER III

### DEFAULT REMEDIES

#### Article 12

##### *Remedies of chargee*

1. - In the event of default as provided in Article 17, 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 aircraft object charged to it;
  - (b) sell or grant a lease of any such aircraft object;
  - (c) collect or receive any income or profits arising from the management or use of any such aircraft object,or apply for a court order authorising or directing any of the above acts.

2. - A chargee proposing to sell or grant a lease of an aircraft object under the preceding paragraph 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(z)(i) and (ii); and
- (b) interested persons specified in Article 1(z)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

3. - 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 the preceding paragraph. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

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 13

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

1. - At any time after default as provided in Article 17, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any aircraft 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 aircraft 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 aircraft 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 17 and before sale of the charged aircraft 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 12(1). 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 12(1) 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 41.

Article 14  
***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 17, the conditional seller or the lessor, as the case may be, may terminate the agreement and take possession or control of any aircraft object to which the agreement relates or apply for a court order authorising or directing either of these acts.

Article 15  
***Additional remedies of creditor***

1. - In addition to the remedies specified in Article 12 and in Articles 14 and 18, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in such provisions:

- (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.

Article 16  
***Additional remedies under applicable law***

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 21.

Article 17  
***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 12 to 16 and 18.

2. - In the absence of such an agreement, “default” for the purposes of Articles 12 to 16 and 18 means a substantial default.

Article 18  
***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 aircraft object and its value;

- (b) possession, control or custody of the aircraft object;
- (c) immobilisation of the aircraft object;
- (d) lease or management of the aircraft object and the income therefrom; and/or
- (e) sale and application of proceeds therefrom.

2. - For the purposes of the preceding paragraph, “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. - Ownership or any other interest of the debtor passing on a sale under sub-paragraph e) of paragraph 1 of this article is free from any other interest over which the creditor's international interest has priority under the provisions of Article 41 of this Convention.

4. - In making any order under paragraph 1 of this Article, 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
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

5. - The creditor and the debtor or any other interested person may agree in writing to exclude the application of the preceding paragraph.

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

7. - Nothing in this Article affects the application of Article 19 or limits the availability of forms of interim relief other than those set out in paragraph 1.

8. - With regard to the remedies in Article 15(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 15(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<sup>5</sup> authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

#### Article 19 *Standard for exercising remedies*

Any remedy given by this Convention shall be exercised in a commercially reasonable manner. An agreement between the debtor and the creditor as to what is a commercially reasonable manner shall be conclusive.

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<sup>5</sup> The alternatives “relevant” or “competent” should be considered. Cf. also Article 22(8)(b).

Article 20  
***Procedural requirements***

Subject to Article 67(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 21  
***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 12(3) to (5), 13(3) and (4), 19 and 20.6.<sup>6</sup>

Article 22  
***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 68(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.

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<sup>6</sup> This wording reflects the wording of Article 14 draft Convention as drafted by the Joint Sessions. The wording chosen by the Consolidated Text as attached to the Report on the 31<sup>st</sup> Session of the LC is drafted differently. The Rapporteur notes that “This Article should be reviewed by the Diplomatic Conference with a view to determining the provisions to be inserted”.



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 15(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 co-operate 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 this Convention 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 52(1), shall have priority in the insolvency over registered interests.

13. - The provisions of this Convention 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 68(3) whether it will:

(a) cure all defaults and to 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 23

##### *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 22.

#### Article 24

##### *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 Convention 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 15(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 15(1).

### **CHAPTER IV**

#### **THE INTERNATIONAL REGISTRATION SYSTEM**

#### Article 25

##### *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. - For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 26

***The Supervisory Authority***

1. - There shall be a Supervisory Authority which shall be [ ].
2. - The Supervisory Authority shall:
  - (a) establish or provide for the establishment of the International Registry;
  - (b) appoint or re-appoint the Registrar in accordance with the provisions of Article 27;
  - (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 dealing with the operation of the International Registry<sup>7</sup>;
  - (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
  - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention.
3. - The Supervisory Authority may enter into any agreement requisite for the performance of its functions including any agreement referred to in Article 39(3).
4. - The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.
5. - The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Convention.

Article 27

***The Registrar***

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

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<sup>7</sup> The following alternative wording should be considered: “In the event of a change of Registrar, take such steps, including procuring the transfer of rights in software and communications systems, as may be expedient for the continuing efficient functioning of the Registry”.

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

3. - The fees referred to in Article 26(2)(h) 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 26(2) of this Convention.

#### Article 28

##### *Designated entry points*

1. - At the time of ratification, acceptance, approval of, or accession to this Convention, 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 29

##### *Working hours of the registration facilities*

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.

## CHAPTER V

### MODALITIES OF REGISTRATION

#### Article 30

##### *Registration requirements*

1. - In accordance with this Convention, the regulations shall specify the requirements:

(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 32(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.

#### Article 31

##### *When registration takes effect*

1. - A registration shall be valid only if made in conformity with Article 32 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 manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

#### Article 32

##### *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 33  
***Duration of registration***

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

2. - 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 34  
***Searches***

1. - Any person may, in the manner prescribed by the 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 regulations, shall issue a registry search certificate with respect to any aircraft 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 35  
***List of declarations and declared non-consensual rights or interests***

The Registrar shall maintain a list of declarations, withdrawals of declarations, and of the categories of non-consensual right or interest communicated to the Registrar by the depositary as having been declared by Contracting States in conformity with Article 52 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 regulations to any person requesting it.

Article 36  
***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 37  
***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. -- For the purpose of the preceding paragraph 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.

4. - 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 38

#### *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 39

#### *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 40(1) and in relation to any claim made under that paragraph and for the purposes of Article 55:

(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 the preceding paragraph.

## **CHAPTER VII**

### **LIABILITY OF THE REGISTRAR**

#### Article 40

##### *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. - The Registrar shall provide insurance or a financial guarantee covering all liability of the Registrar under this Convention.

## **CHAPTER VIII**

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

#### Article 41

##### *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. - A buyer under a registered contract of sale acquires 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.

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 aircraft object extends to proceeds.

6. - Subject to the following paragraph, this Convention does not determine priority as between the holder of an interest in an item held prior to its installation on an aircraft object and the holder of an international interest in that aircraft object.



7.- The provisions of paragraphs (1) to (4) of the present Article shall determine the priority of the holders of interests in an aircraft engine, whether or not installed on an airframe.

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

#### Article 42

#### *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 43

#### *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 aircraft 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 this Convention but without the need to state a sum or maximum sum secured;

(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>9</sup>

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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 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 31<sup>st</sup> Session of the ICAO Legal Committee.

<sup>9</sup> The removal of square brackets in Article 45(1)(c) may have implications for this provision.

Article 44  
*Effects of assignment*

1. - An assignment of an international interest in an aircraft 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 45  
*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 44(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 46  
*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 12 to 14 and 16 to 20<sup>10</sup> 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:

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<sup>10</sup> Cross-references to be confirmed.

- (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 aircraft object were references to the assigned rights relating to the aircraft object.<sup>11</sup>

#### Article 47

#### ***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 41 apply as if the references to an international interest were references to an assignment of an international interest.

#### Article 48

#### ***Assignee's 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 41 [only to the extent that such associated rights relate to:

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

and the reasonable costs referred to in Article 12(5).]

#### Article 49

#### ***Effects of assignor's insolvency***

The provisions of Article 42 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

#### Article 50

#### ***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.

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<sup>11</sup> The Drafting Committee of the third Joint Session noted that this provisions would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31<sup>st</sup> Session of the ICAO Legal Committee.

## CHAPTER X

### NON-CONSENSUAL RIGHTS OR INTERESTS

#### Article 51

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

A Contracting State may at any time in a declaration deposited with the depositary of this Convention list the categories of non-consensual right or interest which shall be registrable under this Convention 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 52

##### *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 this Convention declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 51 applies) which under that State's law would have priority over an interest in the aircraft 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

### JURISDICTION

#### Article 53

##### *Choice of forum*

Subject to Articles 54 and 55, 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 54

##### *Jurisdiction under Article 18(1)*

1. - The courts of a Contracting State chosen by the parties and the courts on the territory of which the aircraft object is situated or in which the aircraft is registered may exercise jurisdiction to grant relief under Article 18(1)(a), (b), (c), and Article 18(7) in respect of that aircraft object.

2. - The courts of a Contracting State chosen by the parties and the courts of a Contracting State on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 18(1)(d) and (e) and Article 18(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 18(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.<sup>12</sup>

#### Article 55

##### ***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 40.

2. - Where a person fails to respond to a demand made under Article 37(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 56

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

1.- Except as provided by Articles 53, 54 and 55, 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.

2. - For the purposes of this Article, and of Article 54, and subject to Article 53, a court of a Contracting State also has jurisdiction where that State is the State of registry.

#### Article 57

##### ***Waivers of sovereign immunity***

1. - Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 53, 54 or 56 of this 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

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<sup>12</sup> The following alternative wording for Article 54 should be considered: "Jurisdiction to grant relief under Article 18(d) and (e) and Article 18 (4) may be exercised:

(a) by the courts chosen by the parties; or

(b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which by the terms of the order granting it is enforceable only in the territory of that Contracting State."

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 XII

### RELATIONSHIP WITH OTHER CONVENTIONS

#### Article 58

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

This 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 Convention, 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 59

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

1. - This 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 Convention.

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

#### Article 60

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

This Convention shall supersede the UNIDROIT Convention on International Financial Leasing, opened for signature in Ottawa on 28 May 1988, as it relates to aircraft objects.

#### Article 61

#### *Relationship with the [draft] UNCITRAL Convention on Assignment 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 aircraft objects.]<sup>13</sup>

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<sup>13</sup> This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.

**CHAPTER XIII**  
**FINAL PROVISIONS**

[On **Adoption** cf. Article XXV of the draft Protocol on Matters Specific to Aircraft Equipment]

[On **Entry into force** cf. Article 47 of the draft Convention on International Interests in Mobile Equipment and Article XXVI of the draft Protocol]

Article 62

***Internal transactions***

1. - A Contracting State may declare at the time of ratification, acceptance, approval or accession 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 12(2) and 13(1), Chapter V, Article 41, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

Article 63

***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 Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention 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 Convention extends.
3. - If a Contracting State makes no declaration under paragraph 1, this Convention is to extend to all territorial units of that Contracting State.

Article 64

***Determination of courts***

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

Article 65

***Declarations regarding remedies***

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

accession to the Convention 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 66

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

1. - A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention that it will apply any one or more of Articles 9, 23 and 24 of this Convention.

2. - A Contracting State may declare, at the time of ratification, acceptance, approval of, or accession to this Convention, that it will apply Article 18 wholly or in part. If it so declares with respect to Article 19(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 Convention, that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article 22 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 22.

4. - The courts of Contracting States shall apply Article 22 in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

#### Article 67

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

1. - No reservations are permitted except those expressly authorised in this Convention.

2. - No declarations are permitted except those expressly authorised in this Convention.

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 68

##### *Subsequent declarations*

1. - A Contracting State may make a subsequent declaration at any time after the date on which this Convention 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 Convention 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 69

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

Any Contracting State which makes a declaration under, or a reservation to this Convention 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 70

##### ***Denunciations***

1. - This Convention 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 Convention 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 71

##### ***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) to (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 Convention and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;

(b) the judicial interpretation given to the terms of this Convention 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 Convention or the arrangements relating to the International Registry are desirable.

Article 72  
***Depositary arrangements***

1. - This [Convention] shall be deposited with the [.....].
2. - The [depositary] shall:
  - (a) inform all Contracting States of this [Convention] 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 Convention;
    - (iii) the withdrawal of any declaration;
    - (iv) the date of entry into force of this Convention; and
    - (v) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
  - (b) transmit certified true copies of this [Convention] to all signatory States, to all States acceding to the [Convention] 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.

Article 73  
***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>14</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 41.

3. - The preceding paragraph does not apply to any right or interest in an aircraft 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>14</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.

Annex

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

Annex Referred to in Article 24(1)

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]\* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's 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 24 of the [UNIDROIT] [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to Aircraft Equipment (in its authoritative consolidated version). 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]

\_\_\_\_\_  
[insert relevant notational details]