

DRAFTING COMMITTEE

PROPOSAL

(submitted by the Delegation Of the United States of America)

PRELIMINARY DRAFT UNIDROIT CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

*Article 4*

*Sphere of application: location of obligor and nationality of object*

1.- This Convention shall apply when at the time of the conclusion of the agreement creating or providing for the international interest:

- (a) the obligor is located in a Contracting State; or
- (b) the object to which the international interest relates has been registered in a nationality register ~~[, or a State authorised asset register,]~~ in a Contracting State or otherwise has a close connection, as specified in the Protocol, to a Contracting State.

2.- The applicability of this Convention is not affected by the location of the obligee, the location of the object, or any other factor not specified in paragraph 1.

*Article 8*

1.- 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 in respect of which the chargor, conditional seller or lessor has power to enter into and perform the agreement;
- (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 identified~~],~~ but without the need to state a sum or maximum sum secured~~].~~

2.- An international interest extends to qualified proceeds.

3.- An international interest may extend to an object acquired after an agreement is concluded.

4.- An international interest may secure obligations arising after an agreement is concluded.

#### *Article 9*

1.- ~~In~~ If the chargor has so agreed, in the event of a default in the performance of a secured obligation, the chargee may 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;
- (d) 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 shall be exercised in a commercially reasonable manner and not in a manner that contravenes public order. 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 the court determines that such a~~ unless the 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 interested persons [and to the international registry].

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 international interest registered immediately after its own or, if there is none, to the chargor.

6.- In this Article and in Article 10 “interested persons” means:

- (a) the chargor;
- (b) any surety;
- (c) any person entitled to the benefit of any international interest which is registered after that of the chargee [and more than XX days before the chargee gives notice under paragraph 3];
- (d) any other person having rights subordinate to those of the chargee in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by paragraph 1(b) or vesting of the object in the chargee under Article 10(1), as the case may be.

#### *Article 10*

1.- ~~At any time after a default in the performance of a secured obligation, the chargee and all the interested persons may agree, or 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.~~

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 reasonably 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.

3. ~~4.-~~ At any time after default in the performance of a secured obligation and before sale of the charged object or the making of an order under paragraph 1, the chargor or any interested person may discharge the security interest by paying the amount secured, subject to any lease granted by the chargee under Article 9(1). Where, after such default, the payment is made in full by an interested person, that person is subrogated to the rights of the chargee.

4. ~~5.-~~ Ownership or any other interest of the chargor passing on a sale under Article 9(1) or passing under paragraph 1 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 11*

In the event of default by the conditional buyer under a title reservation agreement or by the lessee under a leasing agreement 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. ~~The conditional seller or the lessor may also; and~~
- (b) apply for a court order authorising or directing either of these acts.

#### *Article 12*

1.- The parties may provide in their agreement for the kind of default, or any event other than default, that will give rise to the rights and remedies specified in Articles 9 to 11 or 15.

2.- ~~— In the absence of such an agreement, “default” for the purposes of Articles 9 to 11 and 15 means a substantial default.~~

[2.- In the absence of such an agreement, “default” for the purposes of Articles 9 to 11 and 15 means a substantial **[consider substituting fundamental default under CISG or Unidroit principles]** default.]

#### *Article 15*

1.- A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form of ~~one or more of~~ any of the following orders requested by the obligee:

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

2.- Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

3.- Nothing in this Article shall limit the availability of any form of interim judicial relief ~~under the applicable law.~~

#### *Article 18*

The Protocol and regulations may contain conditions and requirements, including the criterion or criteria for the identification of the object, which must be fulfilled in order:

- ~~(a) to effect a registration; or~~
- ~~(b) to convert the registration of a prospective international interest or a prospective assignment of an international interest into registration of an international interest or of an assignment of an international interest.~~

#### *Article 28*

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 ~~insurance~~ proceeds payable in respect of the loss or physical destruction of that object ~~[and to amounts paid or payable by any Government or State entity in respect of the confiscation, condemnation or requisition of that object.].~~

*Article 30*

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) relates to an international interest in respect of which the holder has power to enter into the assignment;
    - (c) enables the international interest and the object to which it relates to be identified;
    - (d) (e) in the case of an assignment by way of security, enables the obligations secured by the assignment to be identified.