



PREPARATORY COMMISSION FOR THE INTERNATIONAL REGISTRY

DRAFT REGULATIONS WORKING GROUP

THIRD MEETING

(Montreal, 5 to 6 October 2004)

DRAFT REGULATIONS FOR THE INTERNATIONAL REGISTRY

The attachments hereto are presented by Aviareto.

ATTACHMENT A

**Third Meeting of the Draft Regulations Working Group of the
Preparatory Commission, 5 to 6 October 2004**

Comments on the Draft Regulations (Produced by the working group at its second meeting,
12 to 14 November 2002, Montreal)

Aviareto, Ltd. Dublin (**Aviareto**) was selected by the Preparatory Commission to establish the international registry (**International Registry**) under the Convention on International Interests in Mobile Equipment, as modified by the Protocol thereto on Matters Specific to Aircraft Objects. Aviareto has been asked to submit comments on the draft regulations for the International Registry (**draft Regulations**) produced by the second meeting of the Draft Regulations Working Group.

Such comments, prepared, for efficient purposes, as specific suggested amendments to the draft Regulations, are attached hereto. They are presented as clean text since, given the nature of the changes and re-ordering, an electronically marked text would be quite difficult to follow.

Representatives of Aviareto look forward to the opportunity to exchange views with the working group at its Third Meeting.

ANNEX

DRAFT REGULATIONS FOR THE INTERNATIONAL REGISTRY

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Section 1 AUTHORITY

1.1 These regulations are issued by the Supervisory Authority pursuant to Article 17(2)(d) of the *Convention on International Interests in Mobile Equipment* (“**Convention**”) and Article XVIII of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (“**Protocol**”).

Section 2 DEFINITIONS

2.1 In these regulations, capitalised terms shall have the meanings set out in the Convention and the Protocol. In addition, the following terms shall have the meanings set out below:

2.1.1 “**administrator**” means the person interacting with the International Register on behalf of a registry user entity on administrative matters, and an “**acting administrator**” has the meaning set out in Section 4.1.

2.1.2. “**authorisation**” means an electronic authorisation given by the administrator of a transacting user entity to one of its transaction users or to a professional user to transmit information to the International Registry to effect or consent to a registration or a filing on behalf of that transaction user entity.

2.1.3 “**consent**” means an electronic consent to a registration or filing.

2.1.4 “**filing**” means an electronic filing with the International Registry of a pre-existing right or interest, except in the case where registration thereof is required, by virtue of a declaration under Article 60(3) of the Convention, to retain its existing priority. For purposes of Section 6, the term has the extended meaning set in out Section 6.1. A “**filing person**” is the transacting user or professional user transmitting information to the International Registry to effect a filing.

2.1.5 “**identity**” means the name, address and electronic address of the entity or person for whom the identifying information is sought.

2.1.6 “**named party**” means the transacting user entity named as the holder, grantor, assignee or assignor, as the case may be, of an interest evidenced by a registration or filing, and a “**named representative**” means a named person holding, granting, assigning or assigned the evidenced interest for others in an agency, trust or other representative capacity.

2.1.7 “**professional user entity**” means a firm or other grouping of persons providing professional services to transacting user entities in connection with the transmission of information to the International Registry relating to registrations or filings, and a “**professional user**” is an individual employee, member, or partner of a professional user entity.

2.1.8 “**registration**” means an interest electronically registered under the Convention or the Protocol with International Registry, and includes a filing of a notice of a pre-existing right or interest required, by virtue of a declaration under Article 60(3) of the Convention, to retain its existing priority. For purposes of Section 6, the term has the extended meaning set out in Section 6.1. A “**registering person**” is the transacting user, professional user, or direct entry point transmitting information to the International Registry to effect a registration.

2.1.9 “**registry user entity**” means a transacting user entity or professional user entity, and a “**registry user**” means a transacting user or a professional user.

2.1.10 “**transacting user entity**” means a legal entity or natural person intending to be a named party in one or more registrations or filings, and a “**transacting user**” is a individual employee, member, or partner of a transacting user entity.

2.1.11 “**searching person**” means a person making a priority search or Contracting State search with the International Registry.

2.2 The terms:

- a) “**advisory board**”, “**deputy Registrar**”, “**International Registry**”, “**operating entity**”, and “**Registrar**” have the meanings set out in Section 3.
- b) “**entry point**”, “**authorising entry point**”, and “**direct entry point**” have the meanings set out in Section 12.1;
- c) “**international registry procedures**” has the meaning set out in Section 15.1; and
- d) “**priority search**”, “**priority search certificate**”, “**informational search listing**”, “**Contracting State search**”, and “**Contracting State search certificate**” have the meanings set out in Section 7.

Section 3 GENERAL PROVISIONS

3.1 The International Registry (“**International Registry**”) is established as the facility for effecting and searching registrations under the Convention and the Protocol. The International Registry may also be used (a) to make searchable filings thereby providing public notice thereof, or (b) for any other purpose approved in advance by the Supervisory Authority subject to the terms of that approval.

3.2 The entity operating the International Registry (“**operating entity**”) shall be establish and the office of registrar (“**Registrar**”) to perform functions specified in the Convention, the Protocol, these regulations, and the international registry procedures. The Registrar, a natural person, shall discharge such functions exercising independent judgement, seeking technical compliance with applicable legal requirements and the best interests of the system established by the Convention and the Protocol as a whole, rather than the interests of the operating entity, if divergent. The operating entity shall appoint (a) the Registrar, (b) a deputy Registrar, who may, to the extent formally delegated such power by the Registrar, serve as acting Registrar, and (c) any successor to the initial Registrar and deputy Registrar. Such persons shall be suitably qualified jurists.

3.3 The operating entity may establish an advisory board (“**advisory board**”) to provide advise to it and the Registrar on practical aspects relating to the use of the International Registry in the context of the system established by the Convention and the Protocol. All such advice may be followed or not in the sole discretion of the operating entity or the Registrar, as the case may be, subject to the terms of these regulations and the oversight of the Supervisory Authority. The advisory board and its members shall have no legal responsibilities and shall not be liable to any person or entity.

3.4 The International Registry shall be accessible 24 hours a day, 7 days a week, except for maintenance, performed outside peak periods, or technical or security problems, as set out in the international registry procedures.

3.5 Technical support shall be provided to registering persons, searching persons and administrators by a help desk of the International Registry, which shall be available 24 hours a day, 7 days a week via telephone and/or electronic mail, as set out in the international registry procedures.

3.7 The international registry procedures shall set out the technical and administrative processes for:

- a) effecting registrations and filings and making searches;
- b) obtaining the approvals and authorisations required to access the International Registry; and
- c) the Registrar changing any data on the International Registry at the direction of a court under Article 44(1) of the Convention or otherwise to correct a manifest error.

Section 4 ACCESS TO THE INTERNATIONAL REGISTRY

4.1 No registry user entity or administrator of that entity shall have access to the International Registry unless that entity and administrator are first approved as such by the Registrar and are otherwise in compliance with these regulations and the international registry procedures. For purposes of the preceding sentence, such approval shall be given when the Registrar reasonably concludes (a) that such entity and administrator are who they assert they are, and (b) on the basis of information submitted, and without undertaking specific legal analysis, that the latter is entitled to act as administrator of the former, in each case, following the standards and procedures set out in the international registry procedures. An administrator may electronically delegate its powers to an “**acting administrator**” from time to time for periods not to exceed three (3) months.

4.2 No registry user shall have access to the International Registry unless that user is first electronically approved as such by the administrator of the subject registry user entity and is otherwise in compliance with these regulations and the international registry procedures. No approved registry user shall be entitled to transmit information to the International Registry to effect a registration or a filing unless it has first received authorisation to do so in respect on the subject aircraft object. For purposes of the preceding sentence, such electronic approval and authorisation in respect of the subject aircraft object may be given in the sole discretion of the relevant administrator and may be revoked by such administrator at any time.

4.3 Notwithstanding the preceding paragraphs:

- a) the administrator of an transacting user entity approved by the Registrar may electronically approve a related special purpose entity as a transacting user entity; and
- b) in such a case, the rights, powers and obligations of the administrator of the approving transacting user entity and its transacting users, respectively, shall apply equally to the approved transacting user entity.

4.4 Subject to these regulations and in accordance with the international registry procedures:

- a) a registration may only be effected, with an authorisation, by a registering person, on behalf of the transacting user entity which is a named party required or permitted to effect that registration under Article 20 of the Convention and Article III of the Protocol; and
- b) a filing may only be effected, with an authorisation, by a filing person, on behalf of the transacting user entity which is a named party in that filing.

4.5 No searching person shall have access to the International Registry unless that person is first in compliance with these regulations and the international registry procedures.

Section 5 INFORMATION REQUIRED TO EFFECT REGISTRATION OR FILING

5.1 Information required to effect a registration or filing shall be selected from electronic information provided by the International Registry. To the extent such information is not so provided, it shall be electronically entered by a registering person or filing person using the format prescribed in the international registry procedures, except as regards named parties (other than in connection with a registration referred to in Section 5.8), that must be approved transacting user entities. In the case where such information is so entered by a registering person or filing person and is that required by Section 5.3(c)(or a provision that refers thereto), the Registrar shall, after appropriate inquire confirming its accuracy, seek to add such information to that provided by the International Registry.

5.2 Identity information shall not be deemed complete unless it provides each of the three elements contained in the definition of identity.

5.3 The information required to effect a registration of an international interest, a prospective international interest, an international interest acquired through subrogation, a notice of a national interest, or a registerable non-consensual right or interest is:

- a) the identity and electronic signature of the registering person and a statement on whose behalf it is acting;
- b) the identity of the named parties;
- c) the following information identifying the aircraft object:
 - i) type of aircraft object;
 - ii) manufacturer's name;
 - iii) manufacturer's generic model designation; and
 - iv) manufacturer's serial number assigned to the aircraft object;
- d) in the case of an airframe (which is part of an aircraft) or helicopter, the following information, if known:

- i) the current, and, if different, intended State of registry for nationality purposes; and
 - ii) the current, and, if different, intended aircraft nationality and registration marks assigned pursuant to the Chicago Convention;
- e) the duration of the registration, if the registration is to lapse prior to the filing of a discharge;
 - f) in the case of an international interest or a prospective international interest, the consents of the named parties, given under an authorization;
 - g) in the case of an international interest acquired through subrogation, the file number of the registration of that interest; and
 - h) the names and electronic addresses of persons to which the Registrar is required to send information notices pursuant to Section 6.

5.4 The information required to effect a registration of a contract of sale or a prospective contract of sale is:

- a) the information referred to in Section 5.3(a)-(d) and Section 5.3 (h);
- b) the consents of the named parties, given under an authorization; and
- c) in the case of a prospective sale, the duration of the registration, if that registration is to lapse prior to the time of a discharge.

5.5 The information required to effect the registration of an assignment of an international interest, a prospective assignment of an international interest, the [assignment of a [notice] of national interest], or the assignment of a registerable non-consensual interest is:

- a) the information referred to in Section 5.3(a)-(d) and Section 5.3(h);
- b) the consents of the named parties, given under an authorization;
- c) if the interest being assigned is a registered interest, the file number of the registration relating to that interest; and
- d) if the interest being assigned is not a registered interest, a description of the interest assigned and original debtor thereunder, using the format prescribed by the international registry procedures.

5.6 The information required to discharge a registration, other than a registration relating to a contract of sale is:

- a) the information referred to in Section 5.3(a)-(d) and Section 5.3(h);
- b) the consents of the named parties benefiting from the registered interest, but not the party granting, assigning, selling, or subordinating it, given under an authorization;
- c) the file number of the registration to be discharged; and

- d) the date the discharge is to be effective.

5.7 The information required to effect the registration of a subordination of an international interest, a prospective international interest, a national interest, or a registerable non-consensual interest is:

- a) the information referred to in Section 5.3(a)-(d) and Section 5.3(h), and, for purposes of the foregoing reference to Section 5.3(b) and for purposes of Section 5.7(b), the "named parties" shall be the registry user entities subordinating its interest and benefiting from that subordination;
- b) the consent of the named party whose interest is subordinated, given under an authorization;
- c) if the interest being subordinated or benefiting from the subordination are registered interests, the file number relating to each such interests; and
- d) if the interest being subordinated or benefiting from the subordination are not registered interests, a description of such interest or interests and the original debtor thereunder, using the format prescribed by the international registry procedures.

5.8 The information required to effect a registration of pre-existing right or interest required, by virtue of a declaration under Article 60(3) of the Convention, to retain its existing priority is:

- a) the information referred to in Section 5.3(a)-(d)(in the case of Section 5.3(d), setting out the State of registry and aircraft nationality and registration marks only at the time the pre-existing right or interest was created) and Section 5.3(h);
- b) the consents of the named parties benefiting from that pre-existing right or interest, but not the party granting, assigning, selling, or subordinating it, given under an authorization;
- c) a description of such pre-existing right or interest, using the format prescribed by the international registry procedures;
- d) the termination date of the pre-existing right or interest, if any.

5.9 The information required to amend a registration, defined as any change to the information contained therein, is:

- a) the information referred to in Section 5.3(a)-(d) and Section 5.3(h);
- b) the consents of the named parties that consented to the registration to be amended, given under an authorization;
- c) the file number of the registration to be amended; and
- d) the amendments to be made.

5.10 The information required to effect a filing is:

- a) the information referred to in Section 5.3(a)-(d)(in the case of Section 5.3(d), setting out the State of registry and aircraft nationality and registration marks only at the time the pre-existing right or interest was created) and Section 5.3(h);
- b) the consents of the named parties, given under an authorization;
- c) a description of such pre-existing right or interest, using the format prescribed by the international registry procedures;
- d) the termination date of the pre-existing right or interest, if any.

5.11 The information required to discharge or amend a filing is the same required to discharge or amend a registration, as specified in Sections 5.6 and Section 5.9, respectively.

5.12 Without prejudice to Section 12.6, the lack of information referred to in Section 5.3(e), including where cross referenced in other Sections, does not invalidate a registration or affect a filing.

5.13 The consent requirements of this Section shall be deemed satisfied:

- a) in the case of a registration effected through a direct entry point, for all named parties whose consent is required under the Convention, the Protocol and these regulations; and
- b) in the case of a registration or a filing submitted under an authorization, for the named party issuing that authorization.

5.14 A registration or filing shall, in connection with Articles 1(v) and 60 of the Convention, also specify the date that the interest “in or over” an aircraft object “created or arose”, such date, however, having no impact on the priority of such interest under the Convention and the Protocol, that being determined, in the case of a registration, by the date and time of that registration, and, in the case of a filing, under applicable national law.

Section 6 CONFIRMATION AND NOTICE OF REGISTRATION AND FILING

6.1 In this section, the term “**registration**” and “**filing**” include, where appropriate, an amendment or discharge of a registration or filing and an extension of a registration.

6.2 The operating entity shall provide prompt electronic confirmation of a registration or filing to the named parties, the registering person or filing person, as the case may be, and all other persons entitled to receive notice of that registration or filing under Section 5. A confirmation shall contain the information set forth in Article 22(2) of the Convention.

6.3 When a registration or a filing is effected with respect to an aircraft object, a notice thereof shall be sent to persons referred to Section 6.2 in any other registration or filing relating to that object.

6.4 The confirmation and notice referred to in Section 6.2 and Section 6.3, respectively, shall include information specified in Section 5 relating thereto and the file number of the registration or search.

Section 7 SEARCHES IN THE INTERNATIONAL REGISTRY

7.1 Searches of the International Registry may be performed against (a) a manufacturer's name, (b) a manufacturer's generic model designation, (c) a manufacturer's serial number of an aircraft object, (d) a State of registry of an aircraft, and/or (e) an aircraft nationality or registration mark. Such information may be searched by means of a priority search or informational search, as set out in Sections 7.2 and 7.3, respectively. A Contracting State search may also be made, as set out in Section 7.6. A search may be performed by any person that complies with the international registry procedures, whether or not that searching person has a specific interest. All searches shall be performed by electronic means.

7.2 A “**priority search**” is a search for registration information using all three criteria specified in Article XX(1) of the Protocol, that set out in Section 7.1(a)-(c), as contemplated in articles 19(2) and (6) of the Convention and Article XX(1) of the Protocol.

7.3 An “**informational search**” is a search, other than a priority search, against all or part of the criteria set out in Section 7.1. The results of an informational search, an “**informational search listing**”, shall be a list of all matching aircraft objects, described by the items set out in Section 7.1(a)-(c), and, if available in the International Registry, the items in Section 7.1(d)-(e). The facility to perform such an informational search does not make that information "searchable" for purposes of Articles 19(2) and (6) of the Convention and Article XX(1) of the Protocol.

7.4 A “**priority search certificate**” is a certificate issued in response to a priority search. It shall:

- a) set out the information required by Article 22(2)(a) or (b) of the Convention, as applicable, and comply with Article 22(3) of the Convention;
- b) in the case Article 22(2)(a) of the Convention applies, list the registered or filed information in both (i) chronological order, and (ii) a manner which indicates the transactional history of each registered or filed interest; and
- c) without affecting the chronological listing, differentiate registrations from filings, following the category, a registration or a filing, selected by the registering person or a filing person, as the case may be.

7.5 Notwithstanding Section 7.4(c):

- a) the International Registry shall provide an electronic warning to registering persons and filing persons, as the case may be, where, based on information submitted, an initiated registration appears to be a filing or an initiated filing appears to be a registration, but shall not electronically preclude such registration or filing, as the case may be.
- b) a filing, including one appearing as such on a priority search certificate, which is, in fact, a registration, is invalid for purposes of determining priority under the Convention and the Protocol, and a registration, including one appearing as such on a priority search certificate, which is, in fact, a filing, shall have no legal effect, and, in

either such case, the parties effecting or consenting to that such registration or filing shall make a corrective amendment and take steps to avoid recurrence in line with standards set out in the international registry procedures.

7.6 A “**Contracting State search**” is a search for all declarations and withdrawals of declarations made by under the Convention and the Protocol by the Contracting State specified in the search. A “**Contracting State search certificate**” is a certificate issued in response to a Contracting State search. A Contracting State search certificate shall:

- a) indicate, in chronological order, all declarations and withdrawals thereof by the specified Contracting State;
- b) list the effective of ratification, acceptance, approval or accession of the Convention and the Protocol, and of each declaration and withdrawal of declaration, by the specified Contracting State; and
- c) attach, in the electronic form set out in the international registry procedures, a copy of all instruments deposited by the specified Contracting State relating to items within the scope of Section 7.6(b).

7.7 All search certificate and listing shall be issued and made available in electronic form. Upon written request, a printed copy of a priority search certificate or Contracting State search certificate shall be provided by the Registrar.

Section 8 OPERATIONAL COMPLAINTS

8.1 Any person may submit a complaint to the Registrar concerning the operation of the International Registry. If not satisfactorily addressed by the Registrar, that complaint may be further submitted by that person to the Supervisory Authority.

8.2 For purposes of Section 8.1, a matter “**concerns the operation of the International Registry**” when the matter relates to general procedures and policies of the International Registry and does not involve specific adjudication by the Supervisory Authority.

8.3 A person making a complaint shall substantiate its assertions.

8.4 The Supervisory Authority shall promptly consider complaints and where, on the basis of that consideration, it determines changes in the procedures or policies are appropriate, it shall so instruct the Registrar and operating entity.

8.5 The international registry procedures shall set out details relating to the procedure contemplated by Section 8.1-8.4.

Section 9 CONFIDENTIALITY

9.1 All information in the International Registry, other than that referred to in sections 7.3, 7.4 and 7.6, shall be confidential except that the Registrar or the operating entity shall disclose such information (i) to the Supervisory Authority on the latter's request [or (ii) where otherwise required by law].

Section 10 STATISTICS

10.1 The Registrar and the operating entity shall maintain updated registration and filing statistics and shall publish them in an annual report. This report shall be electronically accessible to any person.

10.2 The registration and filing statistics under Section 10.1 shall consist of (i) transactional volumes and revenues, subdivided, in each case, by registration and filing type and geographic distribution, and (ii) other compilations of non-confidential information (as specified in Section 9) requested by the Supervisory Authority.

Section 11 RELATIONS WITH THE SUPERVISORY AUTHORITY

11.1 The Registrar and the operating entity shall prepare an annual report, including statistical data referred to in Section 10, and shall submit it to the Supervisory Authority. The annual report may include recommendations for changes in these regulations or in international registry procedures.

Section 12 RELATIONS WITH THE ENTRY POINTS

12.1 A Contracting State may designate an entry point (“**entry point**”) under Article XIX(1) of the Protocol:

- a) that shall or may authorise the transmission of information required for registration to the International Registry (“**authorising entry point**”); or
- b) through which information required for registration shall or may be directly transmitted to the International Registry (“**direct entry point**”).

12.2 A Contracting State may only designate an entry point in respect of (a) registrations relating to airframes (which is part of an aircraft) and helicopters for which it is the State of registry, and/or (b) registrations of prospective international interests, prospective sales, or prospective assignments of any airframe (which is part of an aircraft) or helicopter for which it has taken regulatory steps to become the State of registry. That designation shall be deemed a declaration permitted under the Protocol.

12.3 The Registrar shall maintain a current list of Contracting States with designated entry points, indicating which are direct entry points.

12.4 The operating entity shall establish general procedures applicable to the transmission of registration information from or authorised by entry points to the International Registry, and, after consultations with each designated entry point, shall specific procedures applicable to that entry point. The foregoing shall not require the establishment of electronically co-ordinated systems, but, rather, arrangements designed to enhance the efficient use of the International Registry by entry points.

12.5 The International Registry shall [establish electronic procedures designed to preclude][provide an electronic warning against the effecting of] a registration which is not made:

- i) through a direct entry point where use of thereof is mandatory; or

ii) in accordance with procedures required by an authorising entry point –

to the extent agreed between the International Registry and the Contracting State declaring that entry point.

12.6 A registration effected in violation of the terms of a designation under Sections 12.1-12.2 is invalid.

Section 13 FEES

13.1 The operating entity shall collect a fee prior to undertaking services relating to the International Registry.

13.2 Fees, including fees arising from operations through an entry point, must be paid to the operating entity prior to the requested operation, unless otherwise agreed between the operating entity and the that entry point.

13.3 Fees shall be collected according to a schedule, which shall state the amount of fees payable for each service, issued by the Supervisory Authority.

13.4 Fees shall be established and adjusted by the Supervisory Authority, as required by the Convention and Protocol, in accordance with ICAO recommended consultative procedures.

Section 14 LIABILITY AND INSURANCE

14.1 For purposes of Article 28 of the Convention:

- a) “loss suffered” means loss or damage suffered in reliance on the results of priority search certificate or a Contracting State search certificate, and, without restricting the foregoing, any other loss or damage covered by insurance or a financial guarantee obtained by the operating entity;
- b) any claim shall be made against the operating entity, not the Registrar, and must be made within six months of the date of the loss suffered;
- c) any such claim shall, within 30 days of receipt, be the subject of consultation between the claimant and the operating entity, at the location of the International Registry, facilitated by the Registrar; and
- d) if, after such consultations, the claim is not resolved and the claimant believes that such claim has merit, it may apply to court [for expedited adjudication] under the laws of place where the International Registry is located.

14.2 The international registry procedures shall set out details relating to the procedure contemplated by Section 14.1.

14.3 The amount of insurance or financial guarantee required under Article 28 of the Convention and Article XX(5) of the Protocol shall be established and may be revised by the Supervisory Authority in accordance with ICAO recommended consultative procedures.

Section 15 INTERNATIONAL REGISTRY PROCEDURES

15.1 The International Registry shall adopt procedures (“**international registry procedures**”) addressing items required by these regulations or otherwise relating to the operation of the International Registry which, when approved by the Supervisory Authority, shall be generally applicable.

15.2 The International Registry may from time-to-time amend the international registry procedures, as permitted by the Supervisory Authority.

Section 16 FINAL PROVISIONS

16.1 Requests for amendments to these regulations may be submitted to the Supervisory Authority, which shall consider such amendments in accordance with ICAO recommended consultative procedures.

16.2 The present regulations shall take effect on the date the Protocol enters into force.

16.3 These regulations and all international registry procedures shall be electronically available to the public.

16.4 Publication (to be determined, see Article 17 paragraph 2(d) of the Convention).

ATTACHMENT B**Third Meeting of the Draft Regulations Working Group
of the Preparatory Commission, 5 to 6 October 2004****(explanatory memorandum relating to comments on the draft Regulations)**

Aviareto Ltd. Dublin (**Aviareto**) submitted comments on the draft Regulations for consideration at the upcoming meeting of the Working Group. For efficiency, those comments took the form of suggested amendments to the draft Regulations (**submitted Revisions**).

We understand that a member of the Working Group, in suggesting that certain of the submitted Revisions may not be in line with the adopted international instruments (**text consistency**) and/or the understating of States regarding the features of modern electronic registries (**modern registry consistency**), has requested a written explanation of the submitted Revisions.

This paper provides that explanation. Part I discusses certain general points. Part II addresses specific points on which focused comment may be useful.

Part I General Points**1. Nature of Regulations**

1.1 Legal systems around the globe have differing views on the proper level of detail of, and which elements of a subject matter are susceptible to, regulations – rather than being determined by another legal norm (legislation or jurisprudence) or being considered ‘practice’, not rising to the level of an enforceable legal obligation. Such differing views have not been the object of international harmonization. Indeed, very few adopted international texts have regulations or their functional equivalent, and, to our knowledge, there are no such instruments in the field of commercial law. Accordingly, the Convention, prudently, provides the Preparatory Commission with maximum flexibility in determining the scope of, and proper detail for, the Regulations. *See* Convention, Art. 1(ff) (“regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol”). Neither Convention Art. 17(2)(d) nor Protocol Art. XVIII, the operative provisions, contain substantive restrictions.

1.2 What is clear, in fact logically compelled, is that regulations go beyond their source text. Otherwise, they would be superfluous. The fact that a regulation addresses a matter outside an express point in the source text is not a proper objection. The fundamental question to be asked – as to *scope* – is this: is a regulation *consistent* and *compatible* (i.e., not in contradiction) with the source text; and, if so, does it serve a legitimate and sufficiently related function under that text. This test, particularly given the breath of Convention Art. 17(2) (most notably, the “all things necessary” clause, Art. 17(2)(i)), further underscores the ability of the Preparatory Commission to take a functional view as to the scope of the Regulations. In other words, the concept of text consistency should be narrowly construed in this context, including for the reasons discussed below.

2. Regulations in the context of Operations

2.1 On the matter of *level of detail*, and, for purposes of this memorandum, the appropriateness of specificity and/or additive (consistent) implementing concepts, one must start by observing the particular need to “operationalize” an aspect (the registry) of the adopted texts and the implications of that process. Unlike most other adopted texts, the Protocol has an active, dynamic and evolving element, one based on interaction with users in the setting of transactions. In this context, a sufficient level of detail and clear rules of action, are needed. This argues in favour of a somewhat greater level of detail, as reflected in the suggested Revisions. It also underscores the need for user feedback and information sharing with the Registrar and Supervisory Authority, concepts discussed below in the context of the advisory board.

3. Relevance of the Tendering Process

3.1 Another unique element which must be taken into account in considering the scope and detail of the Regulation, where consistent and compatible with the source adopted instruments, are the result of the tendering process. That process was mandated by the Diplomatic Conference (*see* Resolution 2 of the Final Acts). While the Preparatory Commission – the Provisional Supervisory Authority – empowered ICAO to finalize the contract with the selected bidder, the former has taken a view on certain basic, structural points in the accepted proposal. They must be properly reflected. Three such concepts are: first, the contemplated advisory board; secondly, and as set out in section 15 of the draft Regulations, the registry procedures (in the suggested Revisions, the “international registry procedures”); and thirdly, the ability to place pre-existing interests on the international registry.

3.2 The advisory board was an important and prominent aspect of the Aviareto proposal, and, we believe, was seen as such by States in accepting the bid. It was meant to serve the dual functions of (i) quality enhancement (through ensuring the availability of maximum information), and (ii) cost control (by minimizing the need for redundant information collecting procedures). In the case of the former, user information (software issues and other practical aspects) is needed on a regular and efficient basis. While the board is *purely advisory* – Aviareto taking and being responsible for all decisions, subject to the oversight and supervision by the Supervisory Authority – the fact is that this is a user-centric system. One should not lose sight of the actual purpose of the registry: to permit parties – that so wish – to make a notice filing which materially improves their position in case of dispute with third parties (priority, determined on a first in time basis). *As noted below, we would have no objection to, indeed would encourage, an arrangement where the board provided the same advice and information to, and meets regularly with the Supervisory Authority, as we all share the goal of maximizing information and transparency.* (Attached to this paper as annex 1 is a revised version of the Constitution of the advisory board. The revisions marked thereon, showing changes from an earlier version, reflect the foregoing adjustment.) On costs, the Aviareto proposal has a low fixed cost structure, which is essential to keeping user fees at a reasonable rate, which is an overriding objective. That was important to the Preparatory Commission. The advisory board was a key element in the costing by Aviareto.

3.3 The question of which operational elements should be included in the international registry procedures, rather than the Regulations, is subtle, requiring judgement. It should be discussed. Under section 15 of the draft Regulations, the registry procedures “when approved by the Supervisory Authority, shall be generally applicable”. Yet they are not Regulations. The international registry procedures, while not constituting hard legal rules, will be important in practice, and, thus, like the Regulations, fall under the supervisory control of the Supervisory Authority. Yet to a greater extent than the Regulations, such procedures (in addition to addressing very practical day to day items), need to have a reasonably flexible change mechanism designed to deal with operational issues, should they arise and without undue delay and/or cost implications.

3.4 As discussed in greater detail in Part II, the Aviareto proposal – like others – assumed the ability to place pre-existing interests on the international registry. That item was key to volume, costing and pricing. There are, of course, policy reasons supporting that ability as well, also summarized below, that have been discussed over the years in connection with the concepts of pre-existing interests, the function of an international registry, and the behaviour of professional and other users in practice. The foregoing was assumed in the registry selection process, and when the selection was made.

4. Basic Policy in the Adopted Texts

4.1 We now turn to the question modern registry consistency. We respectfully take issue with the assertion that aspects of the suggested Revisions do not reflect the features of modern electronic registries (and, given the absence of supporting particulars, will not attempt to refute the point), except on one fundamental matter. That matter is the requirement, to use simple terms, of two electronic consents to registrations. See Convention Art. 18(1)(a); see also Art. 20. These provisions reflect a basic policy decision of States: the need to balance the competing interests of (i) accuracy (and, one might say, fairness), and (ii) efficiency. A system, like the North American secured transactions systems, in which a creditor could simply make a unilateral registration would, undoubtedly, be more efficient. But that is not what States have decided, as set out in the adopted texts.

4.2 Much flows from that decision to have an incrementally greater emphasis on accuracy, including (a) general “user approval” to use the system (except for searches, which are open and unrestricted, provided payment is made), (b) authorization to make a registration, and (c) counterparty consent to the registration (the act of registration constituting consent by the party making it). The authorization and counterparty consent processes are electronic, as required by Convention, Arts. 18(1)(a) and 18(3) read together and in light of the history and intent of these provisions.

Part II Specific Points

With reference to the suggested Revisions (and, where noted, to the draft Regulations), and “Sections”, “S”, or “s” being to sections in the former and “dr/s” being to sections in the latter: –

Section 2

These definitions, like all definitions, must be read in light of the relevant substantive provisions, most notably s 4, 5 and 7.

As a threshold matter, perhaps it is best to view these as a whole, embodying an overall framework, with these key features:

A. Process - Methodology

(i) *Approval*: In order to interact with the registry (meaning: authorize, make or consent to a registration), an entity or person must be approved, that is, must be recognized by the registry (except in the case of searches, which are open). That approval applies (s. 4.1) for an entity using the registry (a “registry user entity” (s 2.1.9), being either (a) a party named in a registration (e.g., a debtor or creditor, a “transacting user entity” (s 2.1.10), when so named, a “named party” (s 2.1.6)), or (b) a law firm or other service provider making a registration for the named party, a “professional user entity” (s 2.1.7)). Under that same section, the approval process also applies to the “administrator” of that user (s 2.1.1), meaning the person with overall control and responsibility for that entity's interaction with the registry. In each of the foregoing cases, the Registrar is the approving entity, and a balance has been made on the extent of needed inquiry as to identity. This is a one-time process, and, as discussed below, is a key feature on the

“accuracy” objective of the registry. Finally, the approval process also applies (s. 4.2) to a person sub-approved by its entity’s administrator, for example, internal lawyers (in the case of a transacting party) or lawyers within a firm (in the case of a professional user). However, in this case, and serving the “efficiency” objective, that sub-approval is electronic, and is made by the administrator of the business or law firm, as the case may be. Approvals are general and provide status. They do not relate to a specific transaction (registration or filing), but are a condition thereto.

(ii) *Authorization*: An authorization (s 4.2), which is wholly electronic, is made by the administrator of the transacting user entity (e.g., the debtor or creditor) to the registry. In contrast with a status-approval, an authorization instructs the registry, on an aircraft object-by-aircraft object basis, as to which registry user (s 2.1.9) (i.e., its internal lawyers or other employees, a “transacting user” (s 2.1.10), or its outside lawyer or other professionals, a “professional user” (s 2.1.7)) may effect a registration or a filing on behalf of a transacting user entity. The administrator (of the transacting user entity) – the controlling person – can revoke or add to the authorization at any time. Naturally, this concept applies separately to each party to the transaction (each “named party”).

(iii) *Consent*: When a registry user (which has been authorized) initiates a registration on behalf of a transacting user entity, the authorized person at the counterparty whose electronic consent is required under the texts is electronically contacted asking if it consents (if the counterparty has not made an authorization, the administrator is the “default” person that is contacted). If the latter consents, the registration is made electronically searchable, is assigned a file number (Convention Art., 19(3)), and becomes a valid registration (Convention Art. 19(2)). (The registry procedures will have a time period by which the counterparty must respond in order to avoid an aborted registration. We are considering a 12 hour period.) The act of initiating a registration (which has been authorized) constitutes a consent by the transacting user entity on whose behalf the registration is so initiated. That avoids the need for an additional, redundant step of requiring consent from the initiating party.

(iv) *Representation*: Protocol Art. VI addresses action taken, including the making of a registration, in an “in agency, trust or other representative capacity”. In our view, there is some confusion in the draft Regulations on what Art. VI intends. Dr/s 2.1.1 defines an “authorized representative”. We believe that such term, as used, merges two distinct concept, namely (i) authorization (as addressed immediately, including, in particular, where a law firm is authorized to register on behalf of its client), and (ii) commercial agency or trusts where, for example, a bank is acting for, and is making a registration (assuming the approval, and following the authorization, processes outlined above) on behalf of, a syndicate of banks. Protocol Art. VI intended to address the latter category. The concept is covered where a registration sets out a “named representative” (s. 2.1.6).

B. Substance – Categorization

Pre-existing rights and interests (for purposes of this memorandum, **existing interests**) are defined as interests in or over an object “created or arising before the ‘effective date’ ... defined by Convention Art. 60(2)(a)”. See Convention Art. 1(v). That cross-referenced article identifies a single jurisdiction, basically, a debtor’s main place of business. The treaty does not apply to existing interests (Convention Art. 60(1)), unless a declaration is made under Convention Art. 60(3), in which case it applies “for the purpose of determining priority”, as otherwise set out in Convention Art. 60(3). While the text is not express, the necessary inference is that, in order to “determine priority”, an existing interest subject to an Convention Art. 60(3) declaration must be registered like any other international interest. The definition of “registration” (s 2.1.8) makes that clear. For purposes of the Regulations, such an existing interest is treated as if it were a registration (except, as it mandatory in order to preserve priority, counterparty consent is not required, see s 5.8(b)).

On the matter of ensuring the ability to place existing interests on the registry, where no declaration was

made under Convention Art. 60(3), we have used the concept of a “filing” (s 2.1.4). That was necessary to differentiate it from a registration (see also discussion of s 7.5 below). Having this category – a filing – helps to bring these interests into the system – as noted above, something assumed by all in the tendering process – in an orderly manner. In point of fact, there really is no other choice. Given that this is an electronic registry without factual vetting, many parties would otherwise elect to “register” what are, essentially, non-Convention interests. The electronic registry could not police or otherwise block them, given their factual nature. Use of the concept of a filing thus permits the orderly regulation of existing interests (not subject to a declaration under Convention Art. 60(3)). It is expected that many in the aviation community intend to use the registry to provide public notice of their existing interests, the effect of which, if any, to be governed by non-Convention law. That use will increase the comfort level with, the experience gleaned from, and volumes to and revenues of, the registry, the last such fact permitting low transaction fees, an objective supported by States and users alike.

The treatment of filings, as different from registrations, will be noted, where appropriate, in the discussion of the substantive sections that follow.

Section 3

S 3.1 states the purpose of the registry, in line with the foregoing points, and, additionally, would permit the Supervisory Authority to allow other uses, which are not necessarily foreseeable at this time. One could envisage uses which have a safety or security benefit or provide revenues, thus permitting fee reductions.

S 3.2 addresses a point arising from the definition of “Registrar” (Convention Art. 1(ee)) as the “person or body” selected, particularly in light of the fact that the accepted Aviareto proposal had both the concept of an operating entity and natural person as registrar. However, based on informal comments received since the submission of our comments, and in view of the prevailing use of the term “Registrar” in the adopted instruments, we would suggest amending the first sentence of the suggested Revisions to read as follows: “**The entity operating the International Registry and acting as its registrar (“Registrar”) shall establish the office of chief registry official (“Chief Registry Official”)....**” (Corresponding changes to the Regulations would then be needed, changing (i) “operating entity” to “Registrar”, and (ii) “Registrar” to “Chief Registry Official”.) The purposes of the section – in line with the concept in the Aviareto proposal – is to ensure that an expert exercises technical and professional functions in the best system generally, not the interests of Aviareto, if divergent. That should provide a further element of comfort to States and users alike.

S 3.3 addresses the advisory board, noted above. As mentioned above, **annex 1** to this paper is a revised Constitution for the board, which produces cooperative arrangements with the Supervisory Authority. While we believe that this provision makes most sense in the Regulations, we would not object to it being in the international registry procedures or an element of the ICAO – Aviareto contract, if that is thought the more appropriate route.

S 3.5 adds a reference to security, as well as technical, problems as justifying temporary shut down. This is drafting change to dr/s 3.1. Section 3.6 provides a bit more detail than in the counterpart provision in the draft regulation, dr/s 3.2. S 3.7 refers to the international registry provisions on certain items requiring greater detail and/or which may be susceptible to change over time, subject to the approval of the Supervisory Authority.

Section 4

S 4.1 is explained above in the summary of the defined terms in s 2. Additional details include a standard for initial user approval, which seeks to balance accuracy and efficiency. This standard was suggested after review of similar methods employed by leading professionals in this field. So too is the concept of an “acting administration”, which will permit the continuation of normal operation by a registry user entity notwithstanding temporarily vacation or illness of its administrator. At some point, however, and we suggest a period of three months, a prolonged delegation would require separate approval of a new administrator.

S 4.2 is explained above in the summary of the defined terms in s 2. It elaborates on the provisions of dr/s 4.1.

S 4.3 address a real world issue which is essential to ensuring no delay in the context of normal aviation finance and leasing transactional practice. It deals with use of “special purpose entities” related to an approved transaction entity user. This is everyday practice. Often an entity, created just before a closing and whose corporate purpose is limited to a single transaction, is used in that transaction. It is neither practical nor cost efficient to have a separate approval process for that entity. If a user so elects, that entity is basically treated like its parent entity – as regards administration, authorization and consent procedural (without independent approval).

S 4.4 is the affirmative expression of the authorization concept. In addition, s 4.4(a), when combined with s 5.3-5.9, reflects the combined intent of Convention Arts. 18(1)(a) and 20 as regards consents, discussed above. S 4.4(b), when read in conjunction with s 5.10, extends the identical rule to filings, as the same reasoning and policy apply in that context: two-party consent is needed prior to a notice going on the registry.

S 4.5 is a standalone provision setting out what was contained as a part of dr/s 4.1.

Section 5

S 5.1 adds to dr/s 5.1 that named parties may not be provided by registering or filing parties. They must be picked from a selection (drop-down) list. That is an element of the approval and authorization processes discussed above, and, moreover, is needed given the counterparty consent required by the Convention. A narrow exception exists for a transaction to which a Convention Art. 60(3) declaration applies, as, in that case, the mandatory nature of the registration dictates a different rule. The last sentence in s 5.1 sets out a method designed to permit the Registrar to prudently add to the selection (drop-down) lists.

S 5.3 conforms the terminology to that suggested above and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.3.

S 5.4 conforms the terminology to that suggested above and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.4.

S 5.5 conforms the terminology to that suggested above and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.5, with two differences. First, the registration of assignments of notices of national interests has been placed in square brackets, as whether such is permitted, as a registration under Convention, should be discussed. We agree with sentiment expressed in the draft Regulations that the better policy argument (comprehensive priorities) favours their registrability. Secondly, dr/s 5.5 did not address the question of how to describe an assignment where the underlying

interest was not registered, either because (i) the parties simply elected not to so register, or (ii) the underlying interest was an existing interest. This is an interesting point. We suggest that the registry procedures have a selection (drop-down) list providing generic category descriptions (which will be similar to those in the Convention, but, as a matter of law, may not have the same (Convention) legal meaning).

S 5.6 conforms the terminology to that suggested above and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.6.

S 5.7 conforms the terminology to that suggested above and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.7, with one difference. That is the same point addressed (“secondly”) in connection with s 5.5 – and it treated in the same manner in this section.

S 5.8 is new, and addresses a registration of an existing interests to which a declaration under Convention Art. 60(3) applies. The requirements are those applicable to other registrations, save that (i) as noted in connection with s 5.5 and 5.7, a (non-Convention) generic description is required (from a selection (drop-down) list), (ii) no counterparty consent is required, for the reasons discussed above, and (iii) more definitive information is justifiably required for the State of registry and nationality mark since they are known in this context.

S 5.9 combines and simplifies dr/s 5.8 and 5.9, conforms the terminology with that suggested above, and tightens the drafting. Save for stating that *any change* is an amendment (we cannot identify a fact pattern in which that is not the case), this section otherwise retains the substantive elements set out in dr/s 5.9.

S 5.10 is new, and addresses a filing of an existing interest, that is, where no applicable declaration was made under Convention Art. 60(3). The requirements are those applicable to registrations, save that (i) as noted in connection with s 5.5, 5.7, and 5.8, a (non-Convention) generic description is required (from a selection (drop-down) list), and (ii) as noted in connection with s 5.8, more definitive information is justifiably required for the State of registry and nationality mark since they are known in this context. Unlike S 5.8 (where registration of existing interests in, in effect, mandatory), following the general policy of the Convention, counterparty electronic consent is required for filings. S 5.11 correspondingly addresses amendments to and discharge of filings, and does so following the approach taken thereto in the context of registrations under s 5.6 (discharge) and s 5.9 (amendment).

S 5.12 adds (to dr/s 5.10) a needed cross-reference to s 12.6.

S 5.13 conforms the terminology to that suggested above, tightens the drafting, but otherwise retains the substantive elements set out in dr/s 5.11, save that it differentiates between consents in the context of (i) direct entry points, and (ii) authorizing entry points. In the latter case, as contemplated by dr/s 12, there is no deemed consent of the counterparty, that continuing to be required under the normal Convention rules.

S 5.14 is new, adding the requirement for stating the date an existing interested arose or was created (which will typically be the dividing line between a registration and a filing). It makes clear, however, that such date has no impact on the Convention's priority rules, which are based on the date of registration.

Section 6

S 6 conforms the terminology to that suggested above and simplifies and tightens the drafting, but otherwise retains the substantive elements set out in dr/s 6, with one change. A confirmation is not

deemed a “primary search certificate”. The registering person would, following its registration, conduct a search, yielding that certificate. It is a more reliable method, lowering risk of error, and, secondarily, is an element of the pricing model, which is designed to keep each category of fees as low as possible. (There is also a typo in s 6.4: the final word should be “filing” not “search”.)

Section 7

S 7.1 adds details to, and enhances the precision of, dr/s 7.1, but otherwise retains its substantive elements. It is drafted for ease of use and understanding in the provisions that follow. S 7.2 tracks dr/7.2, making only conforming drafting amendments.

S 7.3, in addition to enhancing the precision of dr/s 7.3, sets out an important point not contained in the latter. The results of an “informational search” can only be a listing of “matching objects”, not the entire file for each. Otherwise, if one typed in “Airbus”, they would, literally, receive every file for every transaction involving every Airbus aircraft. That was not intended; rather, the results of an informational search should be to put the searcher party in a position to do a precise priority search (yielding full-file results), if it wishes. Accordingly, the product of an informational search, a listing of matching objects, is described as an “informational search listing” rather than an “informational search certificate. Dr/s 7.6 is correspondingly deleted.

S 7.4, in addition to slight drafting conformity and simplification, adds to dr/s 7.5 a reference to Convention Art. 22(3), which expressly states that search results shall not indicate whether an interest is an international interest or a prospective international interest. (Protocol Art. V applies the same rule to sales or prospective sales.) Furthermore, s 7.4 calls for a listing of filings (as well as registrations), as searchers have an interest in seeing them on the chronological list. Filings will, however, be differentiated from registrations with an appropriate notation. *See also* s 7.5.

S 7.5 is new. It addresses two distinct issues arising by virtue of the reality and treatment of existing interests, which, depending on the facts (i.e., the time the interest “arose or was created” and whether an applicable declaration was made under Convention Art. 60(3)), may be a registration or a filing. In S 7.5(a), an electronic warning would be given if, on its face (in electronic terms), an initiated registration or filing appeared to be the other category. S 7.5(b) deals with the effect of a mis-categorization. There are two scenarios. The first is where a purported filing is, in point of fact, a registration. In that case, the result – very much like the rule contained in s 12.6 (which is the same as dr/s 12.6) regarding by-passed mandatory entry points – is invalidity. That is justified since (i) it is misleading (giving the impression of a non-Convention interest when, in fact, there is a Convention interest), and (ii) the parties have complete control to avoid the problem by properly labelling it as a registration. Our due diligence shows that this item does not concern the finance and leasing community, which is able to easily self-protect, and like States, wishes the registry to be as accurate as possible. The other case, where a purported registration is, in point of fact, a filing, does not implicate the Convention’s priority rules. In that case, S 7.5(b) sets out a procedure designed to avoid recurrence.

S 7.6, in addition to enhancing the precision of dr/s 7.7, augments the results of a Contracting State search by permitting access to a pdf type file containing the actual declarations, as set out in the ratification instruments. The reason for that is a listing of the declarations, without their express text, may not provide the needed information. For example, and there are others, a declaration under Convention Art. 39, preferred non-consensual rights and interests, is as meaningful as it is detailed. Without attaching the pdf-type file, parties would turn to the Depositary requesting the information, which was not intended. Convention Art. 62(2)(c) and Protocol Art. XXXVII(2)(c) are quite straight-forward that this information should be sent to the Registrar to be made “easily and fully available”.

S 7.7 adds to dr/s 7.8 that requests for printed search results must be in writing, for purposes of proper record keeping and administrative ease.

Section 8

S 8 does not make any substantive change to dr/s 8. In line with the intent of that provision, a general reference is made to the international registry procedures (s 8.5).

Section 9

S 9 does not make any substantive change to dr/s 9.

Section 10

S 10 does not make any substantive change to dr/s 10. It adds a reference to filings, for completeness.

Section 11

S 11 does not make any substantive change to dr/s 11.

Section 12

S 12.1 establishes textual parallelism between the wording applicable to direct entry points and authorizing entry points, and adds (from dr/s 12.1) to the latter, the ability to distinguish between mandatory and permissive use of that procedure.

S 12.2 retains the substantive elements in dr/s 12.3, but spells out, in greater detail, the meaning of the words “intended to be” in the latter section. To make sense of it while ensuring sufficient clarity, those words must (i) mean intent, as gauged by the State taking some regulatory action with a view towards becoming the State of registry, and (ii) as a matter of logic, be limited to registrations in respect of prospective interests.

S 12.4 amends dr/s 12.4, while retaining its basic intent, to make clear that direct entry points will not be “electronically coordinated” with the registry. As set out in the tendering documents, they will be users, albeit special ones (in particular, one in which consent requirements are deemed satisfied). Anything else would be a fundamentally different system from that intended. It would be much more prone to error and breakdown, as well as increased costs. However, s 12.4 retains the requirement that general procedures are established for direct entry points, and, in the case an of actual direct entry point, that specific procedures be established.

S 12.5 raises the question, for discussion, as to whether electronic blocking (more feasible here than in the case of existing interests, given the limited factual question) or warning is the appropriate rule. In either case, wording was added to permit a State that made a declaration to agree (on a general basis) on the extent to which such blocking or warning is done. That is in line with the policy objective of this provision.

Section 13

S 13 makes two minor amendments to dr/s 13. First, 13.2 adds a clause permitting flexibility on the timing and method of payment between direct entry points and the registry. Secondly, s 13.4 makes clear (in line with the tendering documents and the result of that process) what was previously implied, namely, that up or down fee adjustments by the Supervisory Authority are permitted.

Section 14

S 14 adds a provision on liability to that contained on insurance, as they have a relation. There are substantive and procedural elements. On substance, the suggested wording makes clear that the liability is focused on the central point contemplated by the texts and required by States and transaction parties, that is, *liability for lost priority in reliance on a search certificate* which, based on an error or omission (or system malfunction), produces loss. That focus will permit the procurement of the maximum amount of insurance to cover that central item. By so doing, insurance against more general “business interruption” claims will not be needed, thus permitting better allocation to the central item. It will also lower the risk of nuisance claims, which would otherwise divert attention from the core objectives of the registry. As importantly, it will ensure that the Registrar has no disincentive to temporarily shut down if there is any tampering or security issue. The desirability of this approach has become clear in the contract negotiations with ICAO following the selection process. The procedural element seeks to ensure an orderly and efficient process to handle claims. One detail, the bracketed wording in S 14.1(d), may depend on the anticipated approach of the Irish courts in this context.

S 14.3 makes clear (in line with the tendering documents and the result of that process) what was previously implied by Protocol Art. XX(5), namely, that the Supervisory Authority may increase or decrease insurance requirements. Doing so may impact the fee structure.

Section 15

S 15 does not make any substantive change to dr/s 15.

Section 16

S 16 only makes one substantive change to dr/s 16. It deletes the exception in dr/s 16.3 which limits electronic publication of the regulations or international registry procedures. The confidentiality exception in the current text is inapplicable, as no matters covered by these documents are confidential.

Annex 1 to Aviareto Explanatory Memorandum

Amended and Restated Constitution of the International Registry Advisory Board

This Amended and Restated Constitution of the International Registry Advisory Board (**Advisory Board**) supersedes Constitution of the Implementation Advisory Board relating to the International Registry (**Registry**), operated by Aviareto, as Registrar (**Registrar**), approved by the Aviareto Board of Directors on [insert date].

1 Establishment of the Advisory Board

The Advisory Board relating to the Registry, constituted under the Convention on International Interests in Mobile Equipment and its Aircraft Protocol (**Cape Town Convention**), to be operated by the Registrar, is hereby established.

2 Functions of the Advisory Board

The functions of the Advisory Board are to provide advice to the Registrar and the Supervisory Authority on: –

- a) the policies of the Registry and its operation;
- b) actions relating to effective implementation and on-going operation of the Registry;
- c) the needs of the users of the Registry in connection with its operations;
- d) the Regulations or international registry procedures applicable to the Registry;
- e) any other operational requirements of the Registry set out by the Supervisory Authority under the Cape Town Convention; and
- f) review conferences under the Cape Town Convention as regards rules applicable to or the operation of the Registry.

Representatives of the Advisory Board shall meet with the Registrar and the Supervisory Authority at least twice a year to provide advice and information on the foregoing items. Unless otherwise mutually agreed, such semi-annual meetings shall be held at the headquarters of the Supervisory Authority.

3 Composition and Operating Procedures of the Board

3.1 Composition

3.1.1 The Advisory Board shall be directed by a Chairman, who shall speak on its behalf. The Chairman shall be appointed by the Registrar, and shall serve for a period of five years. That appointment may be renewed from time-to-time on the terms set by the Registrar in consultation with the Supervisory Authority. The Chairman, who may resign at any time with two week's prior notice, may be removed by the Registrar in consultation with the Supervisory Authority at any time for cause.

3.1.2 The Advisory Board shall be composed of not more than 10 members, selected or removed at any time by the Registrar in consultation with Supervisory Authority and the Chairman. Advisory Board members may resign at any time with two week's prior notice.

3.1.3 The Chairman ~~may~~ appoint a Secretary to carry out administrative functions for the Advisory Board, as determined from time to time by the Chairman. The Chairman ~~may~~ dismiss the Secretary at any time.

3.1.4 The Chairman, the other Advisory Board members, and the Secretary may be organisations or individuals, ~~and may be non-governmental or governmental.~~

3.15 Non-members may be invited by the Chairman to participate in the work of the Advisory Board and attend its meetings, including government officials in the context of collecting and analyzing user views on direct entry points to the Registry.

3.2 **Operating Procedures**

3.2.1 Meetings (which may be telephonic or physical), communications, and the decision-making process of the Advisory Board shall be set organised and documented as determined by the Chairman.

3.2.2 Absent the appointment of a Secretary under clause 3.1.3, the Registrar shall provide secretariat services to the Advisory Board, and shall conduct such services as instructed by the Chairman.

3.2.3 ~~The Advisor Board may receive such documents from the Registrar or Supervisory Authority relating the Registry as either such body deems appropriate Chairman shall be invited to attend meetings of the board of directors of the Aviareto as an observer and shall receive all documents relating to such meetings.~~

3.3 **No Compensation or Expense Reimbursement**

Neither the Chairman nor any other Advisory Board member nor the Secretary shall receive compensation or expense reimbursement for work in these capacities. Any non-member participating in the meetings or work of the Advisory Board shall do so at their own cost and expense.

4 **Advisory Nature**

The nature of the Advisory Board's activities, including, without restriction, its recommendations, are purely advisory in nature. The Registrar or the Supervisory Authority may ~~accept them~~ accept them, or not, as it deems fit.

5 **No Liability**

The Advisory Board, the Chairman, all other members of the Board, and the Secretary, in each case, whether organisations or individuals ~~and whether non-governmental or governmental~~, shall have no liability whatsoever for actions or inactions connected with or taken or not by the Advisory Board, the Registrar, the Supervisory Authority or otherwise related to the Registry or its operation. Such non-liability shall extend to individuals acting for organisations and all member companies (or partners or other associated entities) of any organisations and individuals representing them. Without limiting the

foregoing, no person or entity set out in this clause 5 shall have any obligation or duty, implied or otherwise, to any party, including, without limitation, any user of the Registry. The terms of this clause 5 shall be posted on the Registry to provide public notice thereof.

6 **Duration**

The duration of the Advisory Board shall be a period of 5 years, the period of the initial contract between ICAO and Aviareto, and may extended should Aviareto operate the Registry beyond such 5 year period.

7 **Amendments**

This Constitution may by amended from time-to-time by the Registrar in consultation with the Chairman subject to the approval of the Supervisory Authority. |

— END —