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

(Cape Town, 29 October to 16 November 2001)

COMMENTS ON DRAFT CONVENTION, DRAFT PROTOCOL AND CONSOLIDATED TEXT^{*}

(Presented by China)

1. “A Convention on international interests in mobile equipment”, by virtue of its very nature, should cover the respective rights and interests of both the creditor and the debtor. In reality, the latter also has certain rights that require legal protection. For instance, the creditor should not be allowed to abuse the remedies provided in the proposed Convention/Protocol, and the debtor should have the right to use the aircraft object lawfully and without interference. Based on the above view, we offer three options to amend the draft texts. Option 1: redefine international interests by adding “recognition of the debtor’s right to use the aircraft object lawfully and without interference”; Option 2: add a clause in the proposed Convention/Protocol, specifying that the creditor shall not abuse the remedies provided in the Convention/Protocol, and that liability shall occur where a violation of such rule causes losses to the debtor; or Option 3: rename the proposed Convention to read “the Convention on Creditors’ International Interests in Mobile Equipment”.

2. It is suggested that a new clause be added to the text to the effect that “when the debtor vests the aircraft object as guarantee or security in satisfaction, the creditor shall discharge gradually the guarantee in favor of the debtor provided by a bank (banks) or another enterprise (other enterprises).”

3. With respect to Article 12(2) of the “Draft Convention on International Interests in Aircraft Equipment”, on the obligation of the chargee to give prior notice to interested persons, whereas the present text reads “interested persons specified in Article 1(cc)(i) and (ii); and ... in Article 1(cc)(iii),” we believe after verification that reference should probably be to “Article 1(z)(i), (ii) and (iii) respectively.

4. In reference to Article 64(2) of the same “Draft Convention” which stipulates that notwithstanding a declaration by a Contracting State that the Convention/Protocol shall not apply to an internal transaction, “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”, we suggest that the phrase “any provisions of this Convention relating to registered interests” be deleted because this provision is too broad and may give rise to difficulties when applying the Convention/Protocol in practice.

(2 Pages)

^{*} *Draft Convention on International Interests in Aircraft Equipment* set out in DCME Doc No. 5 and Corrigendum.

5. To facilitate its operation, it is suggested that the “Draft Convention on International Interests in Aircraft Equipment” be adopted as an official legal instrument at the forthcoming Diplomatic Conference.

6. It is further suggested that the authentic Chinese version be adopted as the official legal text at the said Diplomatic Conference.

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