

Unidroit CGE / Int.Int./
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(Original: English)

DRAFTING COMMITTEE
PROPOSAL
(submitted by the Delegation of Japan)

N.B. This proposal was submitted by way of amendments to, and notes regarding the proposal submitted by the Delegation of the United States of America in DC-WP/1. The amendments are indicated by the use of underlining.

PRELIMINARY DRAFT UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

THE CONTRACTING STATES TO THIS CONVENTION AND THE ACCOMPANYING
PROTOCOL ON [SPECIFY PROTOCOL],

AWARE of the need to acquire and use high-value mobile equipment and the need to finance 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 transactions by establishing clear rules to govern them, both of which help substantially to reduce the risk and transactional cost therein and ultimately to benefit travellers in the world;

MINDFUL that the domestic laws of many States are inadequate for, and do not conform to efficient asset-based financing transactions;

BELIEVING that such rules must (i) reflect the principles underlying asset-based financing and leasing of mobile business equipment and (ii) legally ensure the autonomy of parties to allocate risks and benefits to the extent consistent with the policy decisions made by Contracting States in this Convention and the accompanying Protocol on [specify protocol];

CONSCIOUS of the need for an international registration system as an essential feature of the legal framework applicable to international interests in mobile business equipment;

CONSIDERING it necessary to implement the Unidroit Convention on International Interests in Mobile Equipment so as to meet the requirements of financing [specify] equipment and the purposes described above;

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

Defined terms

1. – In this Convention the following words are employed with the meanings set out below:

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

“applicable law” means the law applicable by virtue of the rules of private international law;

“assignment” means a consensual transfer, whether by way of security or otherwise, which confers on the assignee rights in the international interest;

“associated rights” means all rights to payment or other performance by the obligor under an agreement or a contract of sale secured by or associated with an object;

“buyer” means a buyer under a contract of sale;

“chargee” means the grantee of an interest in an object under a security agreement;

“chargor” means the grantor of an interest in an object under a security agreement;

“conditional buyer” means the buyer under a title reservation agreement;

“conditional seller” means the seller under a title reservation agreement;

“contract of sale” means a contract for the sale of an object which is not an agreement;

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

“Intergovernmental Regulator” means, in respect of any Protocol, the intergovernmental regulator referred to in Article 17(1);

“international interest” means an interest to which Article 2 applies and which is constituted in conformity with Article 8;

“International Registry” means the international registry referred to in Article 16(3);

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

“object” means a uniquely identifiable object of a category covered by a protocol;

“obligee” means the chargee under a security agreement, the conditional seller under a title reservation agreement or the lessor under a leasing agreement;

“obligor” means the chargor under a security agreement, the conditional buyer under a title reservation agreement, the lessee under a leasing agreement [or the person whose interest in an object is burdened by a registrable non-consensual right or interest];

“officially organized obligor” means an obligor organized solely under the laws of a single State or political subdivision of a State if the State or subdivision must maintain a public record indicating that the obligor has been organized.

“prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of an event, whether or not the occurrence of the event is uncertain;

“prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future, upon the occurrence of an event, whether or not the occurrence of the event is uncertain;

“prospective sale” means a sale which is intended to be made in the future, upon the occurrence of an event, whether or not the occurrence of the event is uncertain;

“Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;

“Qualified proceeds” means proceeds of an object payable by virtue of the loss or physical destruction (N.B. This covers more than insurance proceeds, for example claims arising out of maintenance) of the object or payable by a Government or State entity in respect of the confiscation, condemnation, or requisition of the object;

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

“registered interest” means an international interest [or a registrable non-consensual right or interest] registered pursuant to Chapter V;

“registrable non-consensual right or interest” means a right or interest registrable pursuant to an instrument deposited under Article 39;

“Registrar” means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 17(3);

“regulations” means regulations made, pursuant to the Protocol, by the Intergovernmental Regulator under Article 17(4);

“sale” means a transfer of ownership pursuant to a contract of sale;

“secured obligation” means an obligation secured by a security interest;

“security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

“security interest” means an interest created by a security agreement;

“surety” means any guarantor, surety or other credit insurer under a guarantee (including a demand guarantee and a standby letter of credit) or credit insurance given to the chargee;

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

“unregistered interest” means a consensual [or non-consensual right or] interest [(other than an interest to which Article 40 applies)] which has not been registered, whether or not it is registrable under this Convention; and

“writing” means an authenticated record of information (including information sent by teletransmission) which is in tangible form or is capable of being reproduced in tangible form. [**Consider conforming to UNCITRAL or other definition.**]

2. – In this convention words in the singular include the plural and words in the plural include the singular.

Article 2

Sphere of application: general

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

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest constituted under Article 8 in an object:

- (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.

3. – This Convention does not determine whether an interest to which the preceding paragraph applies falls within-sub-paragraph (a), (b) or (c) of that paragraph. An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

Article 3

Sphere of application: protocols

This Convention applies in relation to an object, and associated rights relating to an object. ~~of a category covered by a protocol.~~ (N.B. The definition of “object” already includes a reference to a “Protocol”).

Article 4

Sphere of application: location of obligor and nationality of object

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-authorized asset register,] in a Contracting State or otherwise has a close connection, as specified in the Protocol, to a Contracting State.

— END —