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DRAFTING COMMITTEE

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PRELIMINARY DRAFT UNIDROIT CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

[PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use high-value mobile equipment and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish an international registration system as one of the essential features of the legal framework applicable to international interests in high-value mobile equipment,

HAVE AGREED upon the following provisions:]

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1
Definitions

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 the 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 (“the lessor”) grants a right to possession or control of an object (with or without an option to purchase) to another person (“the lessee”) in return for a rental or other payment;

“object” means an object of a category ~~listed in Article 3~~ to which Article 2 applies;

“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];

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

“prospective international interest” means an interest that is intended to be created or provided for as an international interest in the future, ~~whether or not upon the occurrence of an uncertain event~~ upon the occurrence of a stated event (which may include the obligor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;

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

“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 reason of the loss or physical destruction 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 of an object 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 (including an ownership 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 interest { 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/obtained by teletransmission) which is in tangible form or is capable of being reproduced in tangible form and which identifies/indicates by reasonable means the person sending the record and that person’s approval of it.]

Article 2 *The international interest*

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 uniquely identifiable object of a category of such objects listed in Article 3 designated in a Protocol:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

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

[4. – This Convention governs only:

- (a) the constitution of an international interest, its effects, its assignment and rights of subrogation;
- (b) matters relating to the international registration system and the modalities of registration;
- (c) questions of jurisdiction

as provided for in Articles 2 to 43.]

[5. – An international interest in an object extends to [qualified proceeds] of that object.]

Article 3

~~This Convention applies in relation to an object, and associated rights relating to an object, of any of the following categories:~~

- ~~(a) — airframes;~~
- ~~(b) — aircraft engines;~~
- ~~(c) — helicopters;~~
- ~~(d) — [registered ships;]~~
- ~~(e) — oil rigs;~~
- ~~(f) — containers;~~
- ~~(g) — railway rolling stock;~~
- ~~(h) — space property;~~
- ~~(i) — other categories of uniquely identifiable object.~~

Article 4
Sphere of application

[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 situated 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~~ with a Contracting State.

[2. – The fact that the obligee is situated in a non-Contracting State does not affect the applicability of this Convention.]

Article 5
Where obligor is situated

[1. – For the purposes of this Convention [other than the provisions of Article 42], a party the obligor is situated in a any Contracting State if where it:

- (a) is incorporated; or registered or has its principal place of business or
- (b) has its registered office;
- (c) has its centre of control; or
- (d) has its place of business

in that State.

[2. – A reference in this Convention to the obligor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.]

Article 6
Derogation

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of Chapter III, except as stated in Articles 9(2)-(6), 10(2)-(3) and (3) (4), 13(1) and 14.

Article 7
Interpretation

1. – In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

~~{2. – In the interpretation of this Convention, regard is to be had to the commentaries on the Convention and the Protocol}.~~

3 2.– Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. – References to the applicable law are [, except as provided in Articles ...,] to the law applicable by virtue of the rules of private international law of the forum State.

4. – Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 8
Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object ~~in respect~~ of which the chargor, conditional seller or lessor has power to ~~enter into the agreement~~ dispose;
- (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~~ determined [, but without the need to state a sum or maximum sum secured].

CHAPTER III

DEFAULT REMEDIES

Article 9

Remedies of chargee

1. – In the event of default ~~in the performance of a secured obligation~~ as provided in Article 12, the chargee may, to the extent that the chargor has so agreed, 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;

or (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 by lawful means]. 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 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:

- (a) interested persons specified in paragraph 6 (a) and (b); and
- (b) interested persons specified in paragraph 6 (c) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

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 person who, for the purpose of assuring performance of any of the obligations in favour of the chargee, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

~~(e) any person entitled to the benefit of any international interest which is registered after that of the chargee;~~

~~(c) 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

Vesting of object in satisfaction; redemption

1. – At any time after default in the performance of a secured obligation as provided in Article 12, 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.~~ 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.

~~4.~~ 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 [in full] 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.

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

Remedies of conditional seller or lessor

~~In the event of default by the conditional buyer under a title reservation agreement or by the lessee under a leasing agreement as provided in Article 12, 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; ~~or. The conditional seller or the lessor may also~~

(b) apply for a court order authorising or directing either of these acts.

Article 12
Meaning of default

1. – The parties may ~~provide in their agreement as to 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~~ and 15.

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

Article 13
Procedural requirements

1. – Subject to paragraph 2, any remedy provided by this Chapter shall be exercised in conformity with the ~~procedural~~ procedure prescribed by the law of the place where the remedy is to be exercised.

2. – Any remedy available to the obligee under Articles 9 to 11 which is not there expressed to require application to the court may be exercised without leave of the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article Y or in the Protocol.

Article 14
Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 6.