

DRAFTING COMMITTEE

Article 15
Relief pending final determination

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim, obtain speedy judicial relief in the form of such {one or more of} the following orders [as the obligee requests]:

- (a) preservation of the object and its value;
- (b) possession, control, or custody ~~or management~~ of the object;
- (c) immobilisation of the object; ¹
- (d) sale, ~~or~~ lease or management of the object;
- (e) application of the proceeds or income of the object.

2. – In making any order under sub-paragraphs (d) or (e) of the preceding paragraph, the court may impose such terms as it considers necessary to protect the obligor in the event that the obligee:

- (a) in implementing any order granting such relief, fails to perform any of its obligations to the obligor under this Convention; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

¹ It was proposed that the comment by a delegation seeking to ensure that Article 15(1)(c) should not run counter to any other international instrument on the subject should be dealt with at the appropriate time in the Final Provisions.

~~2.3.~~ – Ownership or any other interest of the obligor passing on a sale under the preceding paragraph is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

~~3.4.~~ – Nothing in this Article ~~shall limit~~ limits the availability of ~~any~~ forms of interim judicial relief ~~under the applicable law~~ other than those set out in paragraph 1.

[CHAPTER IV ²

THE INTERNATIONAL REGISTRATION SYSTEM

Article 16

The International Registry

1. – An International Registry shall be established for registrations of:

- (a) international interests, prospective international interests [and registrable non-consensual rights and interests];
- (b) assignments and prospective assignments of international interests; and
- (c) subordinations of interests referred to in sub-paragraph (a) of this paragraph.

2. – [The International Registry shall have international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes under this Convention.]

3. – Different registries may be established for different categories of object and associated rights. For the purposes of this Convention, “International Registry” means the relevant international registry.

4. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

² The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.

[Article 17
The Intergovernmental Regulator and the Registrar

1. – The Protocol shall designate an Intergovernmental Regulator³ to exercise the functions assigned to it by this Chapter, Chapter V and the Protocol.

2. – The Protocol may provide for Contracting States to designate operators of registration facilities in their respective territories. Such operators shall be transmitters of the information required for registration and, in such capacity, shall constitute an integral part of the registration system of this Convention. The Protocol may specify the extent to which the designation of such an operator shall preclude alternative access to the International Registry.

3. – The Intergovernmental Regulator shall establish the International Registry, designate the Registrar and oversee the International Registry and the operation and administration thereof.⁴

4. – The manner in which such oversight is conducted, the responsibilities of the Registrar and operators of registration facilities and the fees to be paid by users of the international registration system shall be prescribed in the Protocol and/or from time to time in the regulations.

5. – The Registrar shall:

- (a) operate the International Registry efficiently and responsibly;
- (b) perform the functions assigned to it under this Convention, the Protocol and the regulations;
- (c) report to the Intergovernmental Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the Intergovernmental Regulator;
- (d) maintain financial records relating to its functions in a form specified by the Intergovernmental Regulator; and
- (e) insure against liability for its acts and omissions in a manner acceptable to the Intergovernmental Regulator.

6. – The Intergovernmental Regulator shall have power to require acts and omissions which are in contravention of this Convention, the Protocol or the regulations to be rectified.

³ The present text assumes that the Intergovernmental Regulator and the operators of the International Registry will be different bodies. However, as indicated in the preliminary draft Protocol on Matters specific to Aircraft Equipment, an alternative to be considered is an unitary International Registry Authority which would act as both operator and regulator (cf. Article XVI(1) of that text which provides as follows:

ALTERNATIVE A

[1. – [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator and operated by the Registrar.]]

⁴ It was noted by the Aircraft Protocol Group that Article 17(3) is an example of the type of provision which was envisaged as being within Article U(b) and which may therefore find itself modified by the terms of a Protocol.

7. – The Protocol and/or the regulations may prescribe the procedures pursuant to which the Registrar and operators of registration facilities may request advice from the Intergovernmental Regulator regarding the exercise of their respective functions under this Convention, the Protocol and the regulations.]]

[CHAPTER V ⁵

MODALITIES OF REGISTRATION

Article 18

Registration requirements

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

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

Article 19

Transmission of information

The information required for a registration shall be transmitted, by any medium prescribed by the Protocol or regulations, to the International Registry or registration facility prescribed therein.

Article 20

When registration takes effect

1. – A registration shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of the preceding paragraph at any time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration, including the file number, may be accessed at the International Registry and at each registration facility in which searches may be made at that time.

⁵ The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.

3. – If an interest first registered as a prospective international interest becomes an international interest, the international interest shall be treated as registered from the time of registration of the prospective international interest.

4. – The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. – The International Registry shall record the date and time a registration takes effect.

6. – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 21

Who may register

1. – An international interest which is a security interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered by or with the consent in writing of the chargor or assignor or intending ~~grantor~~ chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.

2. – The subordination of an international interest to another international interest may be registered by, ~~the person in whose favour the subordination is made~~ or with the written consent of the person whose interest has been subordinated.

3. – A registration may be amended, extended prior to its expiry or discharged, by or with the consent in writing of the party in whose favour it was made.

[4. – A registrable non-consensual right or interest may be registered by the holder thereof].

Article 22

Duration of registration

Registration of an international interest remains effective for the period of time [specified in the Protocol or the regulations as extended in conformity with Article 21(3)] [agreed between the parties in writing].

Article 23

Searches

1. – A person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry concerning interests registered therein.

2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate with respect to any object:

- (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
- (b) stating that there is no information in the International Registry relating thereto.

[Article 24
List of declared non-consensual rights or interests

The Registrar shall maintain a list of the categories of non-consensual right or interest declared by Contracting States in conformity with Article 40 and the date of each such declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.]

Article 25
Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is *prima facie* proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration under Article 21.

Article 26
Removal of registration

1. – When the obligations secured by a security interest [or the obligations giving rise to a registrable non-consensual right or interest] have been discharged, or the conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may, by written demand delivered to the holder of such a registered interest, require the holder to remove the registration relating to the interest.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending grantor or assignor may by notice in writing, delivered to the intended grantee or assignee at any time before the latter has given value or incurred a commitment to give value, require the relevant registration to be removed.]

[CHAPTER VI ⁶

LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY

Article 27

Indemnity and immunity

1. – Any person suffering loss by reason of any error or system malfunction in the International Registry shall be entitled to an indemnity in respect of such loss. The measure of liability shall be compensatory damages for loss incurred as the result of the act or omission.

2. – The courts [of the Contracting State[s] in which the Registrar or the operators of registration facilities, as the case may be, [is] [are] situated] shall have jurisdiction to resolve any disputes arising under this Article.

3. – Subject to paragraph 1, the International Registry, the Registrar and staff of the International Registry, the Intergovernmental Regulator and the operators of registration facilities and the staff thereof shall, in the exercise of their functions, enjoy immunity from legal process except:

- (a) to the extent that the International Registry expressly waives such immunity; or
- (b) as otherwise provided by agreement with a State in which the International Registry is situated.

4. – The assets, documents and archives of the International Registry shall be inviolable and immune from seizure or legal process except to the extent that the International Registry expressly waives such immunity.]

⁶ The provisions of this Chapter are presented in square brackets in that they were not the subject of consideration by the Drafting Committee pending the outcome of their consideration by the Registration Working Group. It should be noted that the Registration Working Group has proposed considerable amendments to the provisions of this Chapter.