



UNIDROIT Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment

Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)

UNIDROIT CGE/Int.Int./3-DCRG/WP/2\*  
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### **THIRD JOINT SESSION**

(Rome, 20 – 31 March 2000)

### **DRAFTING COMMITTEE / RESTRICTED GROUP**

Tuesday 21 March, 2.30 pm / 6.30 pm

Members of the Drafting Committee are kindly requested to give the Chairman of the Restricted Drafting Group any written comment they wish to make on this document within 24 hours after its being circulated

## **[PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

### **PREAMBLE AND ARTICLE 1**

THE STATES PARTIES TO THIS CONVENTION,

**AWARE** of the need to require and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

and desiring to facilitate these types of transaction by establishing clear rules to govern them,

**MINDFUL** of the need to ensure that interests in such equipment are recognised and protected universally,

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\* This document includes Working Paper 1 which was only internal to the restricted group of the Drafting Committee.

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DESIRING to provide broad economic benefits for all interested parties,  
based financing and leasing and provide the autonomy of the parties necessary in these  
transactions,

CONSCIOUS of the need to establish a legal framework for international  
interests in such equipment and for that purpose to create an international registration  
system for their protection,

~~Contracting States the flexibility to make special declarations under the Convention  
concerning matters affecting important national policies, ]<sup>2</sup>~~

HAVE AGREED upon the following provisions:

## CHAPTER I

### SPHERE OF APPLICATION AND GENERAL PROVISIONS

#### Article 1

##### *Definitions*

In this Convention, except where the context otherwise requires, the  
following words are employed with the meanings set out below:

(a) “agreement” means a security agreement, a title reservation  
agreement or a leasing agreement; [(k)]

(b) “assignment” means a ~~contract which consensual transfer~~, whether  
by way of security or otherwise, ~~which~~ confers on the assignee rights in the international  
interest; [(g)]

(c) “associated rights” means all rights to payment or other  
performance by a debtor under an agreement ~~or a contract of sale~~ which are secured by  
or associated with the object; [(s)]

(d) “buyer” means a buyer under a contract of sale; [(a)]

(e) “chargee” means a grantee of an interest in an object under a  
security agreement; [(q)]

(f) “chargor” means a grantor of an interest in an object under a  
security agreement; [(j)]

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<sup>2</sup> ~~This clause of the preamble, while not adopted by the Drafting Committee, is transmitted to  
Plenary, in square brackets, with a view to seeking the advice of that body as to the desirability of its  
inclusion in the preamble.~~

(g) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law from which an insolvency administrator is authorised to administer the reorganisation or liquidation; [(cc)]

agreement; [(b)] (h) “conditional buyer” means a buyer under a title reservation

agreement; [(mm)] (i) “conditional seller” means a seller under a title reservation

is not an agreement as defined in (a) above; [(n)] (j) “contract of sale” means a contract for the sale of an object which

tribunal established by a Contracting State; [(ll)] (k) “court” means a court of law or an administrative or arbitral

conditional seller (l) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement; [(p)]

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

(n) “insolvency administrator” means a person or body,<sup>3</sup> including one appointed on an interim basis, authorised to administer the reorganisation or liquidation, including one authorised on an interim basis; [(c)]

(o) “insolvency proceedings” means collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation; [(gg)]

(p) “interested persons” means:

(i) the debtor;

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

(iii) any other person having rights subordinate to those of the creditor in or over the object; [(dd)]

[(x)] (q) “international interest” means an interest to which Article 2 applies;

(r) “International Registry” means the international registration facilities established for the purposes of this Convention or of any Protocol; [(ii)]

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<sup>3</sup> The words “person or body” are to be understood as including a debtor in possession under the applicable insolvency law.

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

(t) “lessee” means a lessee under a leasing agreement; [(ee)]

(u) “lessor” means a lessor under a leasing agreement; [(e)]

(v) “non-consensual right or interest” means a right or interest conferred by law to secure the performance of an obligation; [(t)]

[(f)] (w) “object” means an object of a category to which Article 2 applies;

(x) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition; [(ff)]

(y) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(h)]

(z) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain; [(y)]

(aa) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain; [(oo)]

(bb) “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; [(hh)]

to Chapter V; [(aa)] “registered” means registered in the International Registry pursuant

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

(ee) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to an instrument deposited under Article 37; [(u)]

(ff) “Registrar” <sup>4</sup> means, in respect of any Protocol, the person or body designated by the Protocol or appointed under Article 16(2)(b); [(i)]

(gg) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol; [(jj)]

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<sup>4</sup> It was noted by the Drafting Committee that it would be desirable to seek a better definition of this term in due course. This definition should indicate that the term was designed to include not only a natural person but also a legal person.

(hh) “sale” means a transfer of ownership of an object pursuant to a contract of sale; [(nn)]

(ii) “secured obligation” means an obligation secured by a security interest; [(bb)]

(jj) “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; [(l)]

(kk) “security interest” means an interest created by a security agreement; [(kk)]

(ll) “Supervisory Authority” means, in respect of any Protocol, the Supervisory Authority referred to in Article 16(1); [(d)]

(mm) “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; [(o)]

(nn) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 38 applies) which has not been registered, whether or not it is registrable under this Convention; [(z)] and

(oo) “writing” means a record of information (including information communicated by teletransmission) which is in tangible form or is in electronic <sup>5</sup> form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means the person initiating the record and that person’s approval of it]. [(v)]<sup>6</sup>

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<sup>5-</sup> ~~Consideration should be given to the question whether reference should also be made to a digital teletransmission.~~

<sup>6-</sup> ~~It was noted by the Drafting Committee that this definition would need to be reconsidered in the light of advice from specialists.~~