



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/3
ICAO Ref. LSC/ME/3- DCRG/WP/3

THIRD JOINT SESSION

(Rome, 20 – 31 March 2000)

DRAFTING COMMITTEE / RESTRICTED GROUP

Tuesday 21 March, 2.30 / 6.30 p.m.

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 PROTOCOL TO THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

PREAMBLE, ARTICLES I AND II

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the [UNIDROIT] Convention on International Interests in Mobile Equipment as it relates to aircraft equipment, in the light of the purposes set out in the preamble of the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I
SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article I *

Defined terms

1.— In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2.— In this Protocol the following terms are employed with the meanings set out below:

(a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters; [(a)]

(b) “aircraft engines” means aircraft engines [(other than those used in military, customs or police services)] ² powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,

together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto; [(l)]

(c) “aircraft objects” means airframes, aircraft engines and helicopters; [(d)]

(d) “airframes” means airframes [(other than those used in military, customs and police services)] ³ that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), ⁴ and all data, manuals and records relating thereto; [(e)]

(e) “authorised party” means the party referred to in Article XIII(2); [(m)]

* The alphabetical order of the entries of the definitions will be adjusted during the finalisation of the text.

² At the second Joint Plenary Session noted that the question whether there should be an opt-in or opt-out for all or certain categories of State aircraft (in particular, those used in military, customs or police services) was a policy question. The Drafting Group noted that, in the event that such categories of State aircraft are included in the preliminary draft Aircraft Protocol, specific rules will be required dealing with the manner in which such aircraft are to be identified and registered and with issues particular to priorities and enforcement. The Drafting Group noted that a paper would be submitted by the Aviation Working Group to the third Joint Session with specific proposals on this subject.

³ *Idem*

⁴ Consider the position of propellers.

(f) “Chicago Convention” means the Convention on International Civil Aviation, opened for signature at Chicago on 7 December 1944, as amended and its annexes; [(g)]

(g) “common mark registering authority” means the authority maintaining a the non-national register ~~in which an aircraft of an international operating agency is registered~~ in accordance with Article 77 of the Chicago Convention; [(b)]

(h) “de-register the aircraft” means delete or remove the registration of an aircraft from ~~its a-national~~ aircraft register; [(n)]

(i) “Geneva Convention” means the Convention on the International Recognition of Rights in Aircraft, opened for signature at Geneva on 19 June 1948; [(h)]

(j) “guarantee contract” means a contract entered into by a person as guarantor; [(f)]

(k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of an creditor obligee secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance; [(j)]

(l) “helicopters” means heavier-than-air machines [(other than those used in military, customs or police services)]⁵ supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

- (i) at least five (5) persons including crew; or
- (ii) goods in excess of 450 kilograms,

together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto; [(k)]

(m) “insolvency-related event” means:

- (i) the commencement of the insolvency proceedings; or
- (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under Chapter III of the Convention is prevented or suspended by law or State action; [(q)]

(n) “~~national~~ aircraft register” means ~~any~~ register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention; [(o)]

(o) “~~national~~ registry authority” means the national authority, or the common mark registering authority, maintaining an aircraft register in a Contracting State ~~which is the State of registry,~~ and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; [(c)]

⁵ Cf. Footnote 2, *supra*.

(p) “primary jurisdiction” means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be deemed to be the place of the debtor's statutory seat ⁶ or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise; [(p)] and

(q) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register, ~~or a State member of a common mark registering authority, on whose national aircraft register an aircraft is entered under the Chicago Convention.~~ [(i)]

Article II

Application of Convention as regards aircraft objects

1.– The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.

2.– The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the [UNIDROIT] Convention on International Interests in Mobile Equipment as applied to aircraft objects.

* * * * *

⁶- ~~The Insolvency Working Group suggested that the place of the debtor's incorporation be used in this connection. The Drafting Group, however, preferred the debtor's statutory seat in view of the fact that companies in a number of jurisdictions are not incorporated. The dDrafting Group noted that, where a company is incorporated in a particular jurisdiction, it will be able to elect to make its place of incorporation its statutory seat and thus take advantage of this presumption.~~