

**TEXT OF THE [PRELIMINARY] DRAFT [UNIDROIT] CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**  
*as reviewed by the Drafting Committee in the light of the  
Joint Session's second reading thereof* \* <sup>1</sup>

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

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\* This document reproduces Attachment F to the Report on the second Joint Session, Appendix I.

<sup>1</sup> *Note by the Secretariats:*

Amendments made to the preliminary draft Convention as reproduced in Unidroit CGE/Int.Int./Report; ICAO Ref. LSC/ME-Report, Attachment D, Appendix I may be identified, in the case of deletions, by the striking through of the provisions in question and, in the case of additions, by the use of underlining.

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[ PREAMBLE

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use ~~high-value~~ 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,

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,

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

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~~ a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

[RECOGNISING that a Convention on asset-based financing must allow Contracting States the flexibility to make special declarations concerning 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 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; [(h)]

(b) «assignment» means a consensual transfer, whether by way of security or otherwise, which confers on the assignee rights in the international interest; [(d)]

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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.

(c) «associated rights» means all rights to payment or other performance by ~~the~~ an obligor under an agreement or a contract of sale secured by or associated with the object; [(p)]

(d) «buyer» means a buyer under a contract of sale; [(a)]

(e) «chargee» means ~~the~~ a grantee of an interest in an object under a security agreement; [(n)]

(f) «chargor» means ~~the~~ a grantor of an interest in an object under a security agreement; [(g)]

(g) «conditional buyer» means ~~the~~ a buyer under a title reservation agreement; [(b)]

(h) «conditional seller» means ~~the~~ a seller under a title reservation agreement; [(ff)]

(i) «contract of sale» means a contract for the sale of an object which is not an agreement; [(k)]

(j) «court» means a court of law or an administrative or arbitral tribunal established by a Contracting State; [(ee)]

(k) «Intergovernmental Regulator» means, in respect of any Protocol, the intergovernmental regulator referred to in Article 16(1); [(y)]

(l) «international interest» means an interest to which Article 2 applies and which is constituted in conformity with Article 7; [(t)]

(m) «International Registry» means the international registry referred to in Article 15(3); [(bb)]

(n) «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; [(j)]

(o) «object» means an object of a category to which Article 2 applies; [(c)]

(p) «obligee»<sup>3</sup> means ~~the~~ a chargee under a security agreement, ~~the~~ a conditional seller under a title reservation agreement or ~~the~~ a lessor under a leasing agreement; [(m)]

(q) «obligor»<sup>4</sup> means ~~the~~ a chargor under a security agreement, ~~the~~ a conditional buyer under a title reservation agreement, ~~the~~ a lessee under a leasing agreement [or ~~the~~ a person whose interest in an object is burdened by a registrable non-consensual right or interest]; [(o)]

(r) «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; [(e)]

(s) «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 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; [(u)]

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<sup>3</sup> It was noted by the Drafting Committee that consideration should be given in due course as to the desirability of replacing the term «obligee» by «creditor» with a view to simplifying the terminology employed in the preliminary draft Convention: the corresponding term «créancier» in the French text was, however, found satisfactory.

<sup>4</sup> Idem.

(t) «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; [(hh)]

(u) «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; [(aa)]

(v) [«qualified proceeds»] means proceeds of an object ~~payable by reason of arising from~~ the loss or physical destruction of the object or ~~payable by a Government or State entity in respect of the~~ its confiscation, condemnation or requisition of the object; }<sup>5</sup> [(z)]

(w) «registered» means registered in the International Registry pursuant to Chapter V; [(w)]

(x) «registered interest» means an international interest {for a registrable non-consensual right or interest} registered pursuant to Chapter V; [(s)]

(y) {«registrable non-consensual right or interest»} means a right or interest registrable pursuant to an instrument deposited under Article 37; [(q)]

(z) «Registrar»<sup>6</sup> means, in respect of any category of object and associated rights to which this Convention applies, the person designated under Article 16(3); [(f)]

(aa) «regulations» means regulations made, pursuant to the Protocol, by the Intergovernmental Regulator under Article 16(4); [(cc)]

(bb) «sale» means a transfer of ownership of an object pursuant to a contract of sale; [(gg)]

(cc) «secured obligation» means an obligation secured by a security interest; [(x)]

(dd) «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; [(i)]

(ee) «security interest» means an interest created by a security agreement; [(dd)]

(ff) «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; [(l)]

(gg) «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; [(v)] and

(hh) «writing» means a 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 [(r)].<sup>7</sup>

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<sup>5</sup> ~~Consideration should be given to an optional provision for compensation in respect of such governmental acts to be paid before they are performed in order to reduce political risk.~~

<sup>6</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.

<sup>7</sup> It was noted by the Drafting Committee that this definition would need to be reconsidered in the light of advice from specialists.

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 7, in an uniquely identifiable object of a category of such objects 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.

~~[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 41.]~~

~~[5. 4. — An international interest in an object extends to [qualified <sup>8</sup> proceeds] of that object.]~~

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<sup>8</sup> The term «qualified» is to be seen as a provisional label for the category of proceeds to be covered by the preliminary draft Convention.

Article 3  
*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 a connection, as specified in the Protocol, 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 4  
*Where obligor is situated*

{ 1. – } For the purposes of this Convention [other than the provisions of Article 40], the obligor is situated in any Contracting State where it:

- (a) is incorporated or formed;
- (b) has its registered office;
- (c) has its centre of ~~control~~ administration; 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 5  
*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 8(2)-(6), 9 (3) and (4), 12(1) and 13.

Article 6  
*Interpretation and applicable law*

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. – 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 domestic rules of 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 7

##### *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 of which the chargor, conditional seller or lessor has power to 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 determined, but without the need to state a sum or maximum sum secured.

## CHAPTER III

### DEFAULT REMEDIES

#### Article 8

##### *Remedies of chargee*

1. – In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time 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 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 or by Article 14 shall be exercised in a commercially reasonable manner ~~[and by lawful means]~~.<sup>9</sup> 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 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 9~~ For the purposes of this Convention, «interested persons» means<sup>10</sup>:

- (a) the chargor;
- (b) any 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;
- (c) any other person having rights subordinate to those of the chargee in or over the object.

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<sup>9</sup> In proposing the deletion of this phrase, the Drafting Committee agreed that the Explanatory Report on the future Convention, to be prepared in due course by the ICAO and UNIDROIT Secretariats, should include a reference to the fact that the Convention did not seek to override any rule on this point that might be laid down by the applicable law.

<sup>10</sup> This definition of «interested persons» should be moved to Article 1 in due course, with corresponding amendments to the cross-references in Article 8(3)(a) and (b).

Article 9  
*Vesting of object in satisfaction; redemption*

1. – At any time after default as provided in Article 11, the chargee and all the interested persons may agree 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. – 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. – At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 4 2, 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 8(1). Where, after such default, the payment of the amount secured 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 8(1) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 27.

Article 10  
*Remedies of conditional seller or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, 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
- (b) apply for a court order authorising or directing either of these acts.

Article 11  
*Meaning of default*

1. – The obligor and obligee may at any time agree as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 14.

2. – In the absence of such an agreement, «default» for the purposes of Articles 8 to 10 and 14 means a substantial default.

Article 12  
*Procedural requirements*

*Alternative A*<sup>11</sup>

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

2. – Any remedy available to the obligee under Articles 8 to 10 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.]

*Alternative B*

[1. – Subject to Article Y(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

~~2. – Any remedy available to the obligee under Articles 8 to 10 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 13

*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 5.

Article 14

*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 and to the extent that the obligor has at any time so agreed, 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 of the object;
- (c) immobilisation of the object;<sup>12</sup>

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<sup>11</sup> The Drafting Committee did not consider the drafting of the provisions of this Article nor those of Article Y(2) pending instructions from Plenary as to which Alternative was to be preferred; Alternative A of Article 12 and Alternative A of Article Y(2) represent the texts of these provisions as adopted at the first Joint Session whereas Alternative B of Article 12 and Alternative B of Article Y(2) represent a proposal by the Aviation Working Group designed to provide a more neutral formulation than the current formulation, considered to contain a presumption in favour of non-judicial remedies.

- (d) sale, 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~~ interested persons 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 the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.}

{3.} – Ownership or any other interest of the obligor passing on a sale under ~~the preceding paragraph 1~~ is free from any other interest over which the obligee's international interest has priority under the provisions of Article 27.

{4.} – Nothing in this Article affects the application of Article 8(2) or limits the availability of forms of interim judicial relief other than those set out in paragraph 1.

#### [CHAPTER IV <sup>13</sup>

### THE INTERNATIONAL REGISTRATION SYSTEM

#### Article 15

##### *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.]

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<sup>12</sup> It was proposed that the comment by a delegation seeking to ensure that Article 14(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; cf. also footnote to Article XXIII of the preliminary draft Aircraft Equipment Protocol.

<sup>13</sup> *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

[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.

#### [Article 16

#### *The Intergovernmental Regulator and the Registrar*

1. – The Protocol shall designate an Intergovernmental Regulator<sup>14</sup> 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.<sup>15</sup>

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

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<sup>14</sup> 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.]]

<sup>15</sup> It was noted by the Aircraft Protocol Group that Article 16(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.

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.

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 <sup>16</sup>

MODALITIES OF REGISTRATION

Article 17

*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 18

*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 19

*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:

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<sup>16</sup> *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

(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.

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 20

### *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 chargor or assignor, as the case may be. Any other type of international interest may be registered by the holder of that interest.]<sup>17</sup>

[2.] – The subordination of an international interest to another international interest may be registered by 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 21

### *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 20(3)] [agreed between the parties in writing].

## Article 22

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<sup>17</sup> Consideration should be given to whether the written consent of obligors under leasing and title reservation agreements should also be required for the registration of international interests.



### *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 23

#### *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 38 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 24

#### *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 20.

### Article 25

#### *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 <sup>18</sup>

LIABILITIES AND IMMUNITIES OF THE INTERNATIONAL REGISTRY

Article 26

*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.]

CHAPTER [VII]

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 27

*Priority of competing interests*

1. – A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. – The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

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<sup>18</sup> *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Registration Working Group (ICAO Ref. LSC/ME/2-WP/17; UNIDROIT CGE/Int.Int./2-WP/17).

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. – The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest;  
and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. – The priority of competing interests under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

5. – Any priority given by this Article to an interest in an object extends to [qualified proceeds].

~~[6. — For a registrable non-consensual right or interest to maintain its priority, the holder thereof must provide notice in writing, within ... days of the registration thereof, to all parties with registered interests in the same object.]<sup>19 20</sup>~~

[Article 28]<sup>21</sup>  
Effects of insolvency

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor if prior to the commencement of the bankruptcy that interest was registered in conformity with this Convention.<sup>22</sup>

2. – For the purposes of this Article and Article 35:

(a) «bankruptcy» includes a liquidation, administration or other insolvency proceeding involving the administration of the estate or affairs of the obligor for the benefit of the general body of the obligor's creditors;

(b) «trustee in bankruptcy» includes a liquidator, administrator or other person appointed to administer the estate or affairs of the obligor for the benefit of the general body of creditors.

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<sup>19</sup> The question was left open as to whether the more appropriate place for this provision would be Article 27(6) or Article 37.

<sup>20</sup> It is for consideration whether the Registrar should be required to provide the notice referred to in this paragraph.

<sup>21</sup> Note by the Secretariats:

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

<sup>22</sup> This paragraph is intended to state the substantive rights of the holder of the international interest but not to displace special rules of bankruptcy law restricting the exercise of remedies or avoiding unfair preferences.

3. – Nothing in this Article affects the validity of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.]<sup>22</sup>

## CHAPTER [VIII]

### ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

#### Article 29

##### *Formal requirements of assignment*

1. – The holder of an international interest («the assignor») may make an assignment of it to another person («the assignee») wholly or in part.

2. – An assignment of an international interest shall be valid only if it:

- (a) is in writing;
- (b) enables the international interest and the object to which it relates to be identified;
- (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol [but without the need to state a sum or maximum sum secured].

#### Article 30

##### *Effects of assignment*

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:

- (a) all the interests and priorities of the assignor under this Convention; and
- (b) all associated rights.

2. – Subject to paragraph 3, ~~an assignment made in conformity with the preceding paragraph shall take effect subject to:~~

- ~~(a) all defences of which the obligor could have availed itself against the assignor;~~
- ~~(b) any rights of set-off in respect of claims existing against the assignor and available to the obligor; and~~
- ~~(c) any restrictions on assignment contained in the agreement the applicable law shall determine the defences and rights of set-off available to the obligor against the assignee.~~<sup>23</sup>

3. – The obligor may by agreement in writing waive all or any of the defences and

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<sup>23</sup> It will be necessary to ensure that the proposed new drafting of Article 30 (2) covers adequately all the cases dealt with in the deleted provisions of Article 30 (2) (a)-(c).

rights of set-off referred to in the preceding paragraph.

4. – In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the security interest has been discharged.

#### Article 31<sup>24</sup>

##### *Obligor's duty to assignee*

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 30(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:

(a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;

(b) the notice identifies the international interest [; and

(c) the obligor ~~does not have [actual] knowledge of any other person's superior right to payment or other performance~~ has not been given prior notice in writing of an assignment in favour of another person].

2. – Irrespective of any other ground on which payment or performance by the obligor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

#### Article 32

##### *Default remedies in respect of assignment by way of security*

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;

(b) to the chargee and chargor were references to the assignee and assignor of the international interest;

(c) to the holder of the international interest were references to the holder of the assignment; and

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<sup>24</sup> — A question to be considered is whether these provisions should be left to the Protocol, which might in turn refer to the applicable law.

(d0 to the object included references to the assigned rights relating to the object.

Article 33

Priority of competing assignments

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 27 apply as if the references to an international interest were references to an assignment of an international interest.

Article 34

Assignee's priority with respect to associated rights

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of the assignment, have priority over the ~~holder~~ assignee of associated rights [or other rights] not held with an international interest to the extent that the first-mentioned associated rights relate to:

- (a) a sum advanced and utilised for the purchase of the object;
- (b) the price payable for the object; or
- (c) the rentals payable in respect of the object,

and the reasonable costs referred to in Article 8(5).

[Article 35<sup>25</sup>  
*Effects of assignor's insolvency*

1. – An assignment of an international interest is valid against the trustee in bankruptcy of the assignor if prior to the commencement of the bankruptcy that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects the validity of an assignment of an international interest against the trustee in bankruptcy where that interest is valid against the trustee in bankruptcy under the applicable law.]

[Article 36<sup>26</sup>  
*Legal subrogation*

1. – Subject to paragraph 2, nothing in this Convention affects rights or interests arising in favour of any person by operation of principles of legal subrogation under the applicable law.

2. – The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests.]

[ CHAPTER [IX]

NON-CONSENSUAL RIGHTS AND INTERESTS

Article 37<sup>27</sup>  
*Registrable non-consensual rights and interests*

A Contracting State may at any time in an instrument deposited with the depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and be regulated accordingly.

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<sup>25</sup> *Note by the Secretariats:*

The provisions of this Chapter are presented in square brackets in that the Drafting Committee did not have time to give effect to the decisions taken by the Plenary during its consideration of the Report by the Insolvency Working Group (ICAO Ref. LSC/ME/2-WP/19; UNIDROIT CGE/Int.Int./2-WP/19).

<sup>26</sup> It will be necessary to clarify the sphere of application of this provision.

<sup>27</sup> Consideration should be given to restricting this provision to non-consensual rights and interests that involve a right to payment or obligations that could result in the deprivation of the proprietary interest of an obligee.

Article 38<sup>28</sup>

Priority of non-registrable non-consensual rights and interests

~~[1. — A non-consensual right or interest (other than a registrable non-consensual right or interest) which under the law of a Contracting State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent that:~~

~~(a) — such priority is specified by that State in a declaration; and<sup>29</sup>~~

~~(b) — the non-consensual right or interest would, under the domestic law of that State, have priority over a registered interest of the same type as the international interest without any act of publication.~~

~~[2. — The non-consensual interest has priority only over an international interest registered after the declaration takes effect.]~~

1. — A Contracting State may declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 37 applies) which under that State's law would have priority over an interest in the object equivalent to that held by the holder of the international interest and are to have priority over a registered international interest, whether in or outside the insolvency of the obligor. Such a declaration may be modified from time to time.

2. — A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. — An international interest registered before the deposit of a declaration made pursuant to paragraph 1 or a modification thereof has priority over a non-consensual right or interest of a category specified in such declaration or modification.]<sup>30 31 32</sup>

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<sup>28</sup> Idem

<sup>29</sup> This sub-paragraph will need to be reviewed in the context of the Final Provisions, so as to state that such a declaration could be made at any time.

<sup>30</sup> This paragraph will need to be reviewed in the context of the Final Provisions. It will be necessary to prepare transitional provisions on this matter.

<sup>31</sup> It will be necessary to consider the need for an amendment to Article XXII of the preliminary draft Protocol so as to ensure that it does not permit the expansion of preferred non-consensual rights and interests.

<sup>32</sup> It will be necessary to clarify the meaning of Article 38 (3).



{CHAPTER [X]}

APPLICATION OF THE CONVENTION TO SALES

Article 39

Sale and prospective sale

The Protocol may provide for the application of this Convention, wholly or in part and with such modifications as may be necessary, to the sale or prospective sale of an object-}

[CHAPTER [XI]

JURISDICTION <sup>33</sup>

Article 40 <sup>34</sup>

1. – A court of a Contracting State has jurisdiction to grant judicial relief under Article 14(1) where:

- (a) the object is within [or is physically controlled from] the territory of that State;
- (b) the defendant is situated within that territory; or
- (c) the parties have agreed to submit to the jurisdiction of that court.

2. – A court may exercise jurisdiction under the preceding paragraph even if the trial of the claim referred to in Article 14(1) will or may take place in a court of another State or in an arbitral tribunal.

[Article 41

A court of a Contracting State to which Article 40(1) applies has jurisdiction in all proceedings relating to this Convention, but no court may make orders or give judgments or rulings against or purporting to bind the International Registry.] ]

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<sup>33</sup> *Note by the Secretariats:*

The provisions of this Chapter were not considered by the Drafting Committee pending completion of their review by the Jurisdiction Working Group.

<sup>34</sup> Article 40 will be amended in order to make it clear that it is intended to operate independently of Article 14(1). This Article and Article 41 will be comprehensively reviewed in the light of advice from the Hague Conference on Private International Law and the remarks made by some delegations.

[CHAPTER [XII]  
RELATIONSHIP WITH OTHER CONVENTIONS] <sup>35 36</sup>

CHAPTER [XIII]  
[OTHER] FINAL PROVISIONS <sup>37</sup>

Article U

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the ... instrument of ratification, acceptance, approval or accession but only applies as regards any category of object ~~listed in Article 3~~ <sup>38</sup> to which a Protocol applies:

- (a) as from the time of entry into force of the Protocol;
- (b) subject to the terms of that Protocol; and
- (c) as between Contracting States Parties to that Protocol.

2. – This Convention and the Protocol shall be read and interpreted as a single instrument.

Article V<sup>39</sup>

[If the Protocol so provides, a] A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply this Convention in relation to [a purely domestic internal transaction] <sup>40</sup> [In such a case, that State may specify in its declaration which types of transaction are to be considered purely internal transactions]. <sup>41</sup> ~~Such a declaration shall be respected by the courts of all other Contracting States.~~

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<sup>35</sup> It is thought that the only existing Conventions needing to be dealt with in Chapter XII are the UNIDROIT Convention on International Financial Leasing and, possibly, the UNIDROIT Convention on International Factoring. It is thought that relations between this Convention and other equipment-specific Conventions should be left to each Protocol.

<sup>36</sup> This Chapter was not reviewed by the Drafting Committee in line with the decision taken by the Joint Session not to consider this Chapter at this stage.

<sup>37</sup> Of this Chapter only Articles V and Y were reviewed by the Drafting Committee.

<sup>38</sup> *Note by the Secretariat:*

~~This reference to the former Article 3 will need to be reviewed in the light of the decision to delete that Article at the first Joint Session.~~

<sup>39</sup> If this Article is not found acceptable, it will be necessary to restore Article III (2) of the preliminary draft Protocol.

<sup>40</sup> ~~To be defined by taking account of the location of the object and the parties.~~

<sup>41</sup> Add a paragraph inserting as a connecting factor the situation of the transferor under a contract of sale.

## Article W

[Insert provision for accelerated procedure to finalise further Protocols] <sup>42</sup>

## [Article X

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant «court» or «courts» for the purposes of Article 1 of this Convention.]

## Article Y

1. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

### *Alternative A* <sup>43</sup>

[2. – A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.]

### *Alternative B*

[2. – A Contracting State at the time of signature, ratification, acceptance, approval of, or accession to the Protocol shall declare whether or not any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may only be exercised with leave of the court.]

## Article Z

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 14, wholly or in part.

[Remaining Final Provisions to be prepared by the Diplomatic Conference]

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<sup>42</sup> These provisions are to be the subject of consideration by a Final Clauses Working Group.

<sup>43</sup> Cf. footnote 11 *supra*.