**Citations for the Principles-Based Guide to the Official Commentary**

**Section 1**

**Section 1.1.1.1**

2.2. The Convention itself prescribes three categories of equipment, namely:

(1) airframes, aircraft engines and helicopters (collectively termed “aircraft objects” in Article I(2)(c) of the Aircraft Protocol); …

3.6. The Convention and Aircraft Protocol apply in relation to airframes, aircraft engines and helicopters, collectively termed “aircraft objects” (Convention, Article 2(3); Protocol, Article I(2)(c)). …

3.8. The Convention provisions as they relate to aircraft objects are limited by the definitions of airframes, aircraft engines and helicopters given in Article I(2) of the Aircraft Protocol. …

3.13. The definition of “airframes” in Article I(2)(e) means airframes that, when appropriate aircraft engines are installed on them, are type certified by the competent authority to transport at least eight persons or goods in excess of 2750 kilograms. …

5.4. **“aircraft engines”** – the definition incorporates a minimum engine capacity as a way of reflecting that the Convention and Aircraft Protocol are intended to be confined to objects of high unit value. …

5.7. **“airframes”** – the body of the aircraft excluding its engine but including the wings, fuselage and undercarriage. …

5.13. “helicopters” – defined in such a way as to encompass a minimum carrying capacity, again capturing the high-unit-value element, but excluding helicopters used in military, customs or police services. …

4.31. **“object”** – a generic term for any article of equipment within the scope of Article 2 of the Convention and therefore covering an airframe, aircraft engine, helicopter, …

5.6. **“aircraft objects”** – a compendious phrase to describe all three of the categories mentioned in Article 2(3)(a) of the Convention, namely airframes, aircraft engines and helicopters. …

5.7. **“airframes”** – the body of the aircraft excluding its engine but including the wings, fuselage and undercarriage. …

**Section 1.1.1.2**

2.39. Aircraft objects are defined in the Aircraft Protocol as including all components, …

3.10. Each of the three categories of aircraft object is defined to include installed, incorporated or attached accessories, parts and equipment (collectively referred to below as “components”) and all data, manuals and records relating thereto. …

3.12. The Convention and Protocol do not cover items (other than objects, which include data, manuals and records relating thereto) that are not installed on, incorporated in or attached to an airframe, aircraft engine or helicopter, …

5.4. **“aircraft engines”** … “Aircraft engine” includes all modules and other installed and attached accessories, parts and equipment: in short, all physical property on the aircraft engine. …

5.7. **“airframes”** … Again, all attachments (other than aircraft engines) are included in the definition of “airframe”, and the other points in paragraph 5.2 relating to attached and installed items and their removal, and to data, manuals and records, apply to this definition as well. …

5.13. “helicopters” … As with airframes and aircraft engines, attachments are also included, …

**Section 1.1.2.1**

2.38. … Aircraft engines are treated separately from the airframes on which they may be installed since they are highly valuable, mobile independent units and are increasingly dealt in and financed separately and frequently interchanged. …

3.6. … The Aircraft Protocol treats airframes and aircraft engines separately for the reason previously given (paragraph 2.38), and this is so even for an aircraft engine already installed on an airframe. …

3.9. As stated above, airframes and aircraft engines are treated as distinct objects under the Convention and Protocol. …

3.11. An aircraft engine, even when installed on an airframe, is not an accessory of the airframe but constitutes an independent object (see Article I(2)(a)) …

3.72. It is important to bear in mind that most of the provisions of the Convention and Protocol do not, except in the case of helicopters, apply to aircraft as a whole but only to airframes and aircraft engines. So even if a charge is taken over an aircraft as a whole, it is necessary to register separate international interests against the airframe and each aircraft engine. …

4.55. … Aircraft engines installed on an airframe do not form part of the airframe but are separate objects for the purposes of the Convention. …

5.3. **“aircraft”** – this is not a term used in the Convention, whether in defining its scope or otherwise, since airframes and aircraft engines are treated as distinct items of property. Aircraft engines are highly mobile and frequently interchanged and dealt in and financed separately from airframes. …

5.5. An aircraft engine does not form part of the airframe on which it is installed but is an independent object for the purposes of the Convention and Protocol and international interests in it are separately registrable. …

5.7. … However, aircraft engines, even when installed, do not constitute part of the airframe and are independent objects for the purposes of the Convention and Aircraft Protocol. …

4.31. … An engine installed on an airframe is a separate object and does not form part of the airframe. …

**Section 1.1.2.2**

2.38. … By contrast, aircraft engines installed on a helicopter are treated as components of the helicopter, not as distinct objects, and do not fall within the definition of “aircraft engines” in Article I(2)(b) of the Aircraft Protocol (see paragraphs 3.6, 3.9, 3.11). However, helicopter engines are aircraft engines prior to installation on a helicopter or after removal from a helicopter and before re-installation. …

3.6. … Aircraft as a whole are not aircraft objects except in the case of helicopters, where the engine is part of the helicopter (see paragraphs 3.9, 3.11). …

3.9. … This conclusion is reinforced by the fact that (a) if the intention had been to treat installed helicopter engines in the same way as engines installed on an airframe the reference would have been to a helicopter frame rather than a helicopter, (b) in the definition of “aircraft” in Article I(2)(a) there is a specific reference to aircraft engines installed on an airframe but no such reference to engines installed on a helicopter, and (c) in the definition of “airframes” in Article I(2)(e) there is a reference to installed accessories which expressly excludes aircraft engines, showing that but for this exclusion they would have been treated as installed accessories, but there is no such exclusion in the definition of “helicopters” in Article I(2)(l). However, prior to installation or after removal and before re-installation a helicopter engine is an aircraft engine, for its status as such cannot be made to depend on whether it is to be installed on an airframe or on a helicopter. …

3.11. … By contrast an engine already installed on a helicopter at the time an international interest is taken is not an aircraft engine but an accessory of the helicopter (see paragraph 3.9) and while so installed is not capable of being the subject of a separate international interest under the Convention. … The position is otherwise prior to the engine’s installation or subsequent to its removal, neither of which event affects the engine’s status as an independent object or the continuance of the international interest relating to it. …

3.72. … By contrast a helicopter is itself an aircraft object which includes any installed engines. …

4.55. … By contrast aircraft engines installed on a helicopter are components of the helicopter, not separate objects. See paragraphs 3.9-3.11. …

5.5. … However, helicopter engines already installed at the time an international interest is taken are not separate objects (see paragraphs 3.9, 3.11, 5.6-5.7), nor, indeed, are they aircraft objects at all within the definition in Article I(2)(c) while installed on a helicopter. …

5.7. … By contrast installed helicopter engines are not separate objects but components of the helicopter …

4.31. … By contrast an engine installed on a helicopter forms part of the helicopter, though any pre-installation rights and interests are preserved after installation. See paragraphs 3.9-3.11.

**Section 1.1.2.3**

2.38. … Since helicopter engines, like engines installed on airframes, may move in and out of the aircraft it is common practice to register international interests in them without regard to whether at the time of the agreement they were or were not installed on the helicopter. See further paragraphs 3.9-3.11.

2.61. … Where the only bar to an immediate international interest is that the agreement is not in writing, the debtor has not yet acquired a right to dispose of the identified aircraft object or the subject of the prospective international interest is an engine installed on a helicopter which does not become an object until its removal, the contract between the parties will create a prospective international interest to take effect as an international interest on reduction of the agreement to writing or on the debtor’s acquisition of a power of disposal or removal of the installed engine from a helicopter, without any such an event having to be expressed in their written or oral agreement. …

3.11. … What cannot be done, however, is to constitute and register an international interest in a helicopter engine while installed on a helicopter or to rely on such registration after its removal, when a new agreement will be needed and a new registration effected, otherwise the effect of Article XIV(3) is to preserve the helicopter financier’s interest in the whole helicopter, including the engines. This is an awkward consequence of the fact that engines installed on a helicopter are not treated as separate objects but rather as components of the helicopter on which they are installed, a matter that could usefully be addressed at any Review Conference convened under Article XXXVI of the Protocol to consider the practical operation of the Convention as amended by the Protocol. However, there is a practical solution to the problem, namely to register a prospective international interest in the installed engine which will become an “object” immediately upon its removal (which is the time when it is required to constitute an object), while what was previously a prospective international interest will at the same time become an international interest and will be treated as registered as from the time of its registration as a prospective international interest (Article 19(4)) and have priority accordingly.[[1]](#footnote-1) So if the prospective international interest is registered before registration of an international interest in the helicopter (including the engine) by another creditor, the holder of the prospective international interest will acquire priority over the helicopter financier or a purchaser of the aircraft the moment the engine is removed from the helicopter. …

5.5. … Moreover, there is nothing to preclude the registration of a prospective international interest in, or a prospective sale of, an installed helicopter engine which will take effect as an international interest as from the time of that registration as soon as the engine is removed from the helicopter, and such international interest will preserve its priority even after re-installation on a helicopter. …

**Section 1.2.1.1**

2.31. For the Convention to apply the following conditions must be satisfied:

(1) The parties have entered into a security agreement, a title reservation agreement (that is, a conditional sale agreement) or a leasing agreement (Article 2(1), (2)).

(2) The agreement relates to equipment which, as defined by the relevant Protocol, is:

(a) an airframe, an aircraft engine or a helicopter (Article 2(3)(a)),

…

(3) The equipment is uniquely identifiable (Article 2(2));

(4) The agreement is constituted in accordance with the formalities prescribed by the Convention (Articles 2(2), 7).

(5) The debtor is situated in a Contracting State at the time of conclusion of the agreement creating or providing for the international interest (Article 3). See paragraph 2.33. …

**Section 1.2.2.1**

2.44. An **agreement** means a security agreement, a title reservation agreement or a leasing agreement (Article 1(a)), …

2.48. … As noted earlier, an international interest may take one of three forms, namely an interest (a) granted by a 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 (see paragraph 2.40(1)). …

4.7. **“agreement”** – a term covering all three types of agreement creating or providing for an international interest, and used in those provisions where it is not necessary to distinguish one type from another, notably Articles 3(1), 7, and 60(3). …

4.27. **“leasing agreement”** – this covers leases and sub-leases of entire or fractional interests, with or without an option to purchase, and, indeed, embraces any agreement by which one person grants to another a right to possession or control of an object in return for a rental or other payment, …

4.45. **“security agreement”** is widely defined so as to cover an agreement for (a) a pledge (though the latter would be unusual as it involves delivery of actual or constructive possession to the creditor), (b) a security transfer of title, (c) a charge or other form of consensual security, and (d) a contractual lien, such as lien for repair or storage charges. It includes an agreement for security for future as well as existing obligations, and security for performance of the obligations of a third party as well as of the chargor. …

4.48. **“title reservation agreement”** – an agreement for sale (often called a conditional sale agreement) by which the transfer of ownership is retained by the seller until the fulfilment of payment and/or other conditions specified in the agreement. …

**Section 1.2.2.2**

2.63. … However, whether an interest falls within the Convention at all is to be determined by the Convention itself. So in the first instance it is necessary to determine if the interest invoked falls within the Convention’s definition of a security interest or the interest of a conditional seller or lessor under a title retention or leasing agreement. If it does, then it is for the applicable law to decide whether the interest is to be recharacterised for the purpose of subsequent provisions of the Convention. …

2.44. … the Aircraft Protocol requires unique identification even for the constitution of the international interest, thus confining the scope of a security interest to existing assets. … A leasing agreement must be distinguished from a “wet lease” agreement under which possession or control of the equipment is retained by the “lessor”. An agreement of this kind, however described, does not confer possession or control and is not a leasing agreement, …

4.27. … However, an agreement is not a leasing agreement, even if so called in commercial usage, if possession is retained by the lessor and the lessor is merely providing services. Thus a “wet lease” of an aircraft, by which the lessor provides not only the aircraft but the crew, maintenance and insurance, the aircraft remaining under the control of the lessor, is not a leasing agreement within the Convention. Again, a consignment agreement by which equipment is consigned to a wholesaler or retailer for resale and without a rental charge or other payment is not a leasing agreement.

2.24. … Thus whether an agreement falls within the Convention at all is a matter for interpretation of the definitions in the Convention, not of the applicable law. On the other hand, determination of the particular category to which the agreement belongs is a matter for the applicable law, since that is what Article 2(4) expressly provides (see paragraph 2.63). …

2.64. Characterisation is relevant primarily in relation to default remedies, which differ according to whether the agreement is a security agreement on the one hand or a title reservation or leasing agreement on the other. …

4.27. … though under Article 2(4) it is left to the applicable law to determine whether the agreement is to be recharacterised as a security agreement or a title reservation agreement for the purposes of the Convention (see paragraph 4.45). …

4.48. … It is for the applicable law to determine whether a title reservation agreement within the definition in Article 1(ll) is to be recharacterised as a security agreement for the purposes of the Convention (Article 2(4)). …

4.56. In order to fall within the Convention the interest must fall within one of the three categories specified in Article 2(2). That is to be determined by applying the Convention’s own definitions (Article 1(ii), (f) and (q)) and its autonomous rules of interpretation of these, not by reference to national law (see Article 5(1) and paragraph 2.63). Hence the initial characterisation is prescribed by the Convention itself. But this is purely for the purpose of determining whether the interest is a Convention interest at all. Once it is established that the interest does fall within one of the three categories specified in Article 2(2), its characterisation for the purposes of subsequent provisions of the Convention, and in particular those of Chapter III relating to default remedies, is determined by the applicable law. …

**Section 1.2.3.1**

2.79. All that is needed to constitute an international interest in an aircraft object is an agreement which conforms to the simple requirements of Article 7 of the Convention and Article VII of the Aircraft Protocol. …

2.80. However, the formal requirements for the agreement are determined not by the applicable law but by the Convention. Under Article 7 an interest is constituted as an international interest where the agreement creating or providing for[[2]](#footnote-2) the interest satisfies four conditions or, in the case of a security agreement, five conditions, failing which the international interest is not validly constituted and the Convention default remedies are not exercisable:

2.48. … Article 7 provides that an interest is constituted as an international interest under the Convention where the agreement creating or providing for the interest fulfils the requirements of that Article. So under the Convention, as in many legal systems, it is not necessary to have a grant distinct from the agreement itself. For example, if a security agreement meets the requirements of Article 7 it constitutes the grant of a security interest. If, however, the agreement does not conform to the requirements of Article 7 it remains a mere contract to grant a security interest and will at most create a prospective international interest (see paragraph 2.40(2)). …

4.73. Article 7 prescribes the formalities that are both necessary and sufficient for an agreement creating or providing for the international interest –“creates” in the case of a security agreement, “provides for” in the case of a title reservation agreement or leasing agreement, where the creditor’s interest does not derive from the agreement but precedes it. These formalities, which may not be added to by national law, are designed to be as simple as possible, but if they are not complied with then the interest is not validly constituted as an international interest under the Convention (see Article 2(2)) and a purported registration of it in the International Registry has no effect, even as a prospective international interest (see paragraph 2.40(2)). …

2.65. … However, the requirement of identifiability under Article VII of the Aircraft Protocol applies not only to the registration but to the constitution of an international interest, …

2.68. … In relation to aircraft objects identifiability is necessary not only for the registration but also for the constitution of the international interest, …

2.88. … Under the Aircraft and Space Protocols, unique identification is required not only for registration purposes but also for the constitution of the international interest. …

3.13. … An airframe in the course of manufacture is an object falling within the Convention and Protocol where the manufacturing process has reached the point where what is being made can be identified as an airframe. This is generally taken to be the time a serial number is allotted to it. …

3.23. Article VII of the Aircraft Protocol sets out the identification elements for an aircraft object, namely the manufacturer’s serial number, manufacturer’s name and its model designation, by which is meant the generic model designation, not a designation specific to a particular party. No other means of identification suffice or are necessary. …

5.36. This Article specifies three elements as necessary to satisfy the requirements of the Convention and Aircraft Protocol as to identifiability of an aircraft object. If any of those elements is lacking no interest is validly constituted under the Convention, whether as an international interest or as a contract of sale. …

2.81. The agreement must be in writing. …

4.50. **“writing”** is defined widely so as to embrace not only documents but also electronic and other forms of teletransmission. However, the teletransmission must indicate by reasonable means a person’s approval of the record and must be capable of reproduction in tangible form on a subsequent occasion. In most cases this will be by manual or electronic signature.

4.76. “Writing” covers any record of information which is either in tangible form or capable of being reproduced in tangible form on a subsequent occasion and indicates by reasonable means a person’s approval of the record (Article 1(nn)). It is thus not confined to agreements in document form but includes teletransmissions held in a permanent record. However, the record must be authenticated, for example by a manual or electronic signature.

2.82. The agreement must relate to an object of which the chargor, conditional seller or lessor has power to dispose. …

2.89. A security agreement must enable the secured obligations to be determined; in other words, it must be possible to ascertain from the agreement what obligations it is securing. However, it is not necessary to state a sum or maximum sum secured, nor is it necessary to identify each particular obligation; a general description suffices. …

4.79. A security agreement must enable the secured obligations to be deter-mined but need not state a sum or maximum sum secured. …

**Section 1.2.3.2**

2.82. The agreement must relate to an object of which the chargor, conditional seller or lessor has power to dispose. … The word “power” includes, but is not limited to, a right to dispose. An unauthorised disposition may nevertheless be effective to pass ownership or some other interest because of a rule of the applicable law or of the Convention itself to that effect. … The right to dispose arises primarily under the law governing the relationship pursuant to which the right arises. So if the right to dispose is given by contract then the law governing the contract will determine the right to dispose. The right may also arise under the provisions of the Convention, in particular those relating to the exercise of default remedies. A power to dispose is also by inference embedded in the Convention itself (see paragraph 2.84), in addition to which a power to dispose may be conferred by the otherwise applicable law, usually the law of the place where the object is situated at the time of the disposition (*lex situs*).

2.83. A right to dispose exists whenever the party making the disposition (a) is the unencumbered owner of the object or (b) where not precluded by the terms of the agreement transfers to a third party a limited interest no greater than the interest than it holds itself or (c) if transferring a greater interest, does so with the authority of all those having a superior right. So it is not necessary that the chargor, conditional seller or lessor should be the owner of the object. …

4.78. The right to dispose is governed by the law applicable to the contract, trust instrument or other authorisation from which the right is derived. …

4.78. … The power to dispose usually arises under the applicable law, which is typically the *lex situs* (*lex rei sitae*) of the object at the time of the disposition, but it may also arise under the Convention. It is, for example, implicit in the Convention rules governing the registration and priority of the interest held by a conditional seller or lessor that the conditional buyer or lessee, if in possession, is to be considered as having a power to dispose, and thus to grant a security interest which, if registered before the interest of the conditional seller or lessor, will take priority over a security interest granted by the conditional seller or lessor, for if the position were otherwise there would be little point in making the interest of the conditional seller or lessor a registrable international interest and in providing (contrary to the general rule in national legal systems) that the priority of a registered interest is not affected by knowledge of an earlier unregistered interest (Article 29(2)(a)). …

2.84. … A power to dispose thus exists whenever the transferor is able to transfer a better title than the transferor itself possesses. …

Even a debtor without a right to dispose under the applicable law must, if in possession of the object, be considered as having a power to dispose under the Convention itself, and thus to agree to grant a security interest, sell or sub-sell under a title reservation agreement or grant a lease or a sub-lease, for if the position were otherwise there would be little point in making the interest of the (head) chargee, conditional seller or lessor registrable as an international interest, … It may be noted that a person lacking a right to dispose will not have a power to dispose under the Convention unless in possession of the object, though it may have under the applicable law.

A thief has no power to dispose either under the Convention or under most legal systems. …

4.77. “Power to dispose” includes, of course, a right of disposal, as where the debtor, seller or lessor is either the owner of the object or authorised by the owner to dispose of it. But “power” is wider than “right” and covers all cases where, under the applicable law or under the Convention, the creditor has the ability to make a disposition which is binding on the owner even if the owner has not authorised it, …

**Section 1.2.4.1**

2.33. The Convention will not apply in the absence of the connecting factor referred to in paragraph 2.31(5) above, which must be satisfied at the time of the agreement. …

3.17. In the Convention the requisite connecting factor is the situation of the debtor in a Contracting State at the time of conclusion of the agreement (Article 3(1)). Article IV of the Aircraft Protocol specifies an alternative connecting factor, stating that the Convention is also to apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry. This alternative connecting factor does not apply to aircraft engines, for which there is no nationality registration; and the fact that the engine is located in a non-Contracting State does not affect the application of the Convention or Protocol where at the time of the agreement the debtor was situated in a Contracting State.

4.62. … Article IV of the Aircraft Protocol provides as an alternative ground of application the fact that the agreement relates to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry (as defined by Article I(2)(p) of the Aircraft Protocol). …

**Section 1.2.4.2**

2.31. …

(5) The debtor is situated in a Contracting State at the time of conclusion of the agreement creating or providing for the international interest (Article 3). See paragraph 2.33. …

2.33. … To give maximum scope to the application of the Convention Article 4 provides six alternative ways in which the test of situation of the debtor in a Contracting State may be satisfied. So the debtor is situated in a Contracting State (a) under the law of which it is incorporated or formed, (b) where it has its registered office or statutory seat, (c) where it has its centre of administration, or (d) where it has its place of business, or if more than one, its principal place of business, or if none its habitual residence. Any of these suffices as the connecting factor. …

2.34. The words “or formed” in Article 4(1)(a) include unincorporated associations organised under the law of a Contracting State. The terms “registered office” and “statutory seat” in Article 4(1)(b), though not identical, are broadly equivalent, signifying the place under the law of which the entity has chosen to be incorporated. “Statutory seat” (*siège statutaire*), like registered office, is the place designated as such in the company’s instrument of incorporation or by statute and is to be distinguished from “real seat”, which is the place where the entity has its centre of administration (*siège réal*, *siège effectif*, *siège social*)and is so described in Article 4(1)(c). “Centre of administration”, one of the definitions derived from the UNCITRAL Model Law, will usually be the place where the company’s head office functions are performed and control is exercised. This is a matter of autonomous interpretation of the Convention and is not necessarily the same as the “centre of main interests” (COMI) as defined by the EU Insolvency Regulation (recast)[[3]](#footnote-3) (the EIR), where there is in general a strong presumption equating the COMI with the company’s registered office and close regard is also had to the perception of creditors. as determined by the jurisprudence of the European Court of Justice, which, though not determinative, is nevertheless an important point of reference (see further paragraph 3.129). … “Place of business” and “principal place of business” apply both to individuals and to corporate entities and thus provide an alternative to the centre of administration, though the principal place of business and the centre of administration may coincide.

4.61. Article 3 provides the requisite connecting factor to a Contracting State, namely the fact that the debtor is situated in that State at the time the agreement is concluded. If this condition is not met, the Convention does not apply. If it is met, the Convention does apply. …

4.63. Article 4 sets out six alternative ways in which the test of situation of the debtor in a Contracting State may be satisfied. …

2.36. If the debtor is not situated in a Contracting State at the time of the agreement, the fact that it later relocates to a Contracting State does not bring the agreement within the Convention, so registration of the agreement would have no Convention effects; it would be necessary to conclude a new agreement. Conversely, where the debtor is situated in a Contracting State at the time the agreement is concluded the debtor’s change of location to a non-Contracting State does not affect the application of the Convention to the agreement in a Contracting State or preclude registration of the interest as an international interest. …

**Section 1.2.4.3**

3.17. In the Convention the requisite connecting factor is the situation of the debtor in a Contracting State at the time of conclusion of the agreement (Article 3(1)). Article IV of the Aircraft Protocol specifies an alternative connecting factor, stating that the Convention is also to apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry. This alternative connecting factor does not apply to aircraft engines, for which there is no nationality registration; and the fact that the engine is located in a non-Contracting State does not affect the application of the Convention or Protocol where at the time of the agreement the debtor was situated in a Contracting State. “State of registry” means, in respect of an aircraft, the State of the national register on which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register (Article I(2)(p)), that is, the authority maintaining a register in accordance with Article 77 of the Chicago Convention (Article I(2)(h)). …

3.7 … Re-registration remains within the exclusive province of the re-registering State. Re-registration in a non-Contracting State does not affect the continuing application of the Cape Town Convention and Aircraft Protocol under Article IV of the Protocol where at the time of the agreement the aircraft was registered in a Contracting State.

5.26. The connecting factor prescribed by Article 3(1) of the Convention is that the debtor is situated in a Contracting State at the time of conclusion of the agreement. As regards a helicopter, or an airframe pertaining to an aircraft, the present Article provides an alternative connecting factor, namely registration of the aircraft in the aircraft register of a Contracting State which is the State of registry (as defined by Article I(2)(p)). …

**Section 1.2.4.4**

2.33. … It is not necessary for the connecting factor to be satisfied in relation to a prospective international agreement; the relevant time is when the prospective agreement ripens into an actual agreement. …

4.34. **“prospective assignment”** – an assignment of associated rights intended to be made in the future upon the occurrence of a stated event and registrable under Article 16(1)(b). …

4.35. **“prospective international interest”** – an interest intended to be created or provided for as an international interest in the future on the occurrence of a stated event. …

4.36. **“prospective sale”** – a sale intended to be made in the future upon the occurrence of a stated event (Article 1(z)). …

**Section 1.3.1**

2.326. An important element of the Convention and its associated Protocols is the system of declarations allowing a Contracting State to make choices that will preserve adherence to their fundamental legal philosophy, for example, a rule against the exercise of self-help remedies. …

3.165. Like the Convention, the Aircraft Protocol precludes reservations (Article XXXII and see paragraph 2.340) but contains various provisions for declarations. Declarations made by a Contracting State determine how the Protocol and Convention are to be applied in that State.

2.73. … The Convention contains various provisions under which a Contracting State may make declarations of different kinds affecting the way in which the Convention will apply within that State. …

4.350. … The declaration system is designed to allow Contracting States freedom to opt out of certain provisions which would be contrary to their basic legal philosophy and to decide whether to opt in to certain other provisions which they might not want to apply automatically. …

4.351. All declarations made under the Convention except those made by a Regional Economic Integration Organisation under Article 48 are on an equipment-specific basis. The Convention therefore provides for all declarations to be made at the time of adherence to the Protocol, not the Convention. For example, Contracting States may, and undoubtedly will, make different declarations under Article 39 of the Convention in respect of different categories of equipment. All the Protocols provide that declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57 and 58, are deemed to have been made under the Protocol unless stated otherwise. …

2.328. Member States of the European Community (now the European Union) are not permitted by EC/EU law to make declarations on matters within the competence of the EC/EU.[[4]](#footnote-4) Instead, the EC/EU, if it so decides, makes any such declarations on behalf of itself and Member States, and as a matter of EU law Member States are required to apply provisions covered by the declarations in the manner specified in the decision of the Council on the conditions of accession to the Convention. …

2.329. The EU will make no declarations on matters outside its competence, such as declarations under Articles 39, 40, 50, 52, 53, 54, 57, 58 and 60. Members States are free to make declarations under those provisions if they so wish except that a declaration under Article 54(2) is mandatory. By contrast, where the EC/EU has decided to make no declaration on a matter within its competence Member States are precluded from making any declaration themselves on such matters.

4.351. … Declarations have been made by the European Community, and will in future be made by the European Union, only on matters within the competence of the EC/EU and where they are so made, or where no declaration is made by the EC/EU on matters within its competence, Member States are precluded from making declarations themselves. On other matters Member States have freedom of choice as to declarations except, of course, those that are mandatory.

4.168. … The purpose of the present Article is to make the International Registry a central point which users can consult to ascertain the existence of such declarations and withdrawals of declarations and non-consensual rights and interests instead of their having to make a separate search through the declarations held by the Depositary. …

4.354. Those wishing to ascertain the content of declarations made by Contracting States will be able to do so either by communicating with the Depositary, Unidroit, or any Contracting State (see Article 62(1), (2)(a)), or by searching in the International Registry (see Articles 23 and 62(2)(c)). The Depositary has issued a guide to forms of declaration (see footnote 59 to paragraph 2.326) which Contracting States will find very helpful.

4.381. Also imposed on the Depositary is the duty to provide the Supervisory Authority and the Registrar with a copy of each instrument and declaration so as to enable them to know which States have become Contracting States and to enable the Registrar to maintain a list of declarations as required by Article 23.

4.382. Similar duties are imposed on the Depositary in relation to the Aircraft Protocol under Article XXXVII of that Protocol.

**Section 1.3.2**

2.327. … Declarations are of five kinds: opt-in declarations, opt-out declarations, declarations relating to a Contracting State’s own laws, mandatory declarations and other declarations. …

2.330. Declarations under the Convention provisions are of five kinds: opt-in declarations, opt-out declarations, declarations relating to a Contracting State’s own laws, mandatory declarations and other declarations.

3.167. Declarations under the Protocol are of four kinds: opt-in declarations, opt-out declarations, declarations relating to the operation of the Protocol within a Contracting State and mandatory declarations. …

2.331. These are declarations which a Contracting State is required to make if a particular provision of the Convention, as applied by a Protocol, is to have effect within that State. Opt-in declarations are designed for provisions of the Convention of particular sensitivity to a State. There is only one such provision in the Convention, namely:

Article 60(3) Application of Convention priority rules to pre-existing rights or interests. …

3.168. Provisions of the Aircraft Protocol applicable in a Contracting State only if it makes a declaration to that effect are the following:

Article VIII Choice of law

Article X Modification of provisions regarding relief pending final determination, and time within which such relief to be granted

Article XI Remedies on insolvency and selection of Alternative A or Alternative B

Article XII Insolvency assistance

Article XIII De-registration and export request authorisation

However, the opt-in nature of Article XI is qualified by Article XXX(4). …

2.332. These are declarations which a Contracting State is required to make in order to exclude the application of a particular Convention provision, as applied by a Protocol, in that State or the availability of extra-judicial relief. Such declarations relate to provisions on which States are likely to be less sensitive than for opt-in declarations, so that the onus is on a Contracting State that has concerns about the provision in question to opt out of it. Opt-out declarations are required to exclude:

Article 13 Relief pending final determination (Article 55)

Article 43 Jurisdiction under Article 13 (Article 55)

Article 50 Application of the Convention to internal transactions (Article 56)

3.169. Provisions of the Aircraft Protocol applicable unless excluded by a declaration are:

Article XXI Modification of jurisdiction provisions

Article XXIV(2) Superseding of Rome Convention

2.333. These are the following:

Article 39 Non-consensual rights and interests having priority without registration (Article 56)

Article 40 Registrable non-consensual rights or interests (Article 56)

Article 53 Declaration of relevant court (Article 56).

3.170. Provisions of the Aircraft Protocol as to the application of a Contracting State’s own laws are the following:

Article XIX Designated entry points[[5]](#footnote-5)

Article XXIX Territorial units

2.334. There are two such declarations. The first is the declaration a Regional Economic Integration Organisation or a Contracting State is required to make in every case under Article 48(2) relating to the transfer of competence to a Regional Economic Integration Organisation. The declaration must be made at the time of ratification or adoption of the Convention in order for its instrument of ratification or adoption to be accepted. Such a declaration has been made by the European Community. The second is the declaration under Article 54(2) as to whether remedies may be exercised only with leave of the court, but such a declaration is required to be made at the time of ratification of the Protocol and as a condition of acceptance of the instrument of ratification of the Protocol and cannot be made before or after that time.

2.335. Where a State deposits an instrument of ratification of the Convention but not of the Protocol and subsequently deposits an instrument of ratification of the Protocol together with a declaration under Article 54(2), then if prior to the deposit of the declaration the Convention has entered into force for that State the declaration is a subsequent declaration for the purpose of Article 57 and takes effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary or such longer period as is specified in the declaration (Article 57(2)); and since the Protocol cannot take effect until the declaration becomes effective this means that the shorter period that would normally apply under Article 49(2) is not applicable.

3.171. Declarations which are required to be made in every case at the time of ratification or adoption in order for the instrument of ratification or adoption to be accepted are the following:

Article XXVII(2) Transfer of competence to a Regional Economic Integration Organisation

Article XXX(2) Time-period required by Article X(2) for speedy advance relief.

2.336. There is one declaration not falling within any of the above categories, namely:

Article 52 Application of the Convention to one or more territorial units (Article 56).

2.337. The effect of the declaration system is that a Contracting State must make a declaration if:

(a) it wishes to *adopt* the opt-in provisions of Article 60;

(b) it wishes to use one of the opt-out provisions to exclude a provision, wholly or partly, i.e. under Article 8(1)(b) (as to leases), 9(1), 10, 43 or 50;

(c) it wishes to make a declaration related to its own laws, i.e. under Articles 39, 40 or 53;

(d) the declaration is mandatory, i.e. under Articles 48(2) and 54(2);

(e) the Contracting State wishes to apply the Convention otherwise than to all its territorial units pursuant to Article 52; or

(f) it wishes to define the relevant court under Article 53.

3.172. The effect of the declaration system is that a Contracting State must make a declaration if:

(a) it wishes to adopt an opt-in provision, i.e. Article VIII, X, XI, XII or XIII;

(b) it wishes to use one of the opt-out provisions to exclude a provision, i.e. Article XXI or XXIV(2);

(c) the declaration is mandatory, i.e. under Article XXVII(2) and under XXX(2) where a declaration is made under Article X(2).

**Section 1.3.3**

2.327. … which Contracting State’s declaration is relevant (“the relevant declaration”) in any particular case and for that purpose what is the relevant time for answering this question? … The second question has to be answered by reference not to the time of the declaration itself but to the time at which and the forum in which the issue arises. …

3.166. … The second question has to be answered by reference not to the time of the declaration itself but to the time at which and the forum in which the issue arises. …

**Section 1.3.4**

2.327. … As regards the third question, the general principle is that a relevant declaration has to be respected by all other Contracting States and will also be respected by a non-Contracting State whose conflict of laws rules lead to the application of the law of a Contracting State, whether or not the declaring State. However, a declaration under Article 39(1) of the Convention has no effect in another Contracting State unless its conflict of laws rules lead to the application of the law of the declaring State. …

3.166. … As regards the third question, a relevant declaration has to be respected by all other Contracting States and will also be respected by a non-Contracting State whose conflict of laws rules lead to the application of the law of a Contracting State, whether or not this is the declaring State. Further, the courts of Contracting States must apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction (Article XXX(4)), while a Contracting State that has made a declaration under Article XII (insolvency assistance) has a duty, in relation to an aircraft object situated in that State, to co-operate with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI relating to insolvency remedies.

2.339. There is no requirement for a declaration made by one State to be accepted by other States in order to be effective (see paragraph 2.340) but the extent to which it binds other Contracting States depends on the particular provision (see paragraph 2.327) …

2.340. … A declaration does not require acceptance to bring it into force and to bind other States Parties. …

3.174. A relevant declaration (see paragraphs 2.327 *et seq*) made by one Contracting State is binding on other Contracting States. …

**Section 1.3.5**

2.338. … All declarations other than a mandatory declaration by a Regional Economic Integration Organisation under Article 48(2) or a declaration under Article 60 may be modified or replaced by subsequent declarations under Article 57 or withdrawn under Article 58. …

3.173. In all other cases the Contracting State need take no action. All declarations under the Protocol other than a mandatory declaration made by a Regional Economic Integration Organisation under Article XXVII(2) may be modified or replaced by subsequent declarations under Article XXXIII or withdrawn under Article XXXIV. A mandatory declaration under Article XXVII(2) may be made only at the time of ratification, etc., changes to the competence of the Regional Economic Integration Organisation to be promptly notified to the Depositary. Optional declarations, even if under Articles providing for them to be made at the time of ratification, need not be made at that time but may be made subsequently under Article XXXIII and thereafter replaced by a new declaration under that Article or withdrawn under Article XXXIV. The effect of Article XXXIII, therefore, is that such declarations may be made at any time.

2.339. … A Contracting State may make a subsequent declaration, other than one authorised under Article 60, but not so as to affect rights and interests arising prior to the effective date of the subsequent declaration (Article 57) and the same applies to the withdrawal of declarations (Article 58(2)) and the denunciation of the Protocol (Article 59(3)). …

2.340. … A declaration under Article 60(3) may not be modified by a subsequent declaration under Article 57 or withdrawn under Article 58. …

2.341. Articles 39, 40 and 60(1), all of which depend on declarations by a Contracting State, provide that such declarations may be made under them at any time. Articles 50, 52, 53, 54 and 55 provide for declarations under them to be made at the time of ratification, etc. However, it is open to a Contracting State that does not do this to make a declaration subsequently under Article 57, so that the effect is the same as in the phrase “at any time”. By contrast, declarations under Articles 48(2) and 54(2) are mandatory and must be made at the time of ratification or accession to a protocol, without which the deposit of the instrument of ratification or accession for that protocol cannot be accepted by the Depositary.

3.174. … A Contracting State may make a subsequent declaration, other than one authorised under Article 60, but not so as to affect rights and interests arising prior to the effective date of the subsequent declaration (Article XXXIII) and the same applies to the withdrawal of declarations (Article XXXIV) and the denunciation of the Protocol (Article XXXV). …

4.355. A State which has made a declaration may make a subsequent declaration supplementing, replacing or modifying the earlier declaration but not so as to affect rights and interests arising prior to the effective date of the subsequent declaration. …

4.356. By way of exception, once a declaration has been made under Article 60 no subsequent declaration may be made under that Article.

4.357. As to the effective date of a subsequent declaration, see paragraph 4.352.

4.358. Similarly a declaration may be withdrawn but not so as to affect rights or interests arising prior to the effective date of the withdrawal. A declaration under Article 60 may not be withdrawn.

4.359. As to the effective date of withdrawal of a declaration, see paragraph 4.352.

**Section 1.4.1**

2.4. The financing of aircraft objects takes three principal forms: a loan secured by a security interest in the object; a sale under an agreement (title reservation, or conditional sale, agreement) in which the seller reserves ownership until payment in full; and a lease, which may be either a finance lease or an operating lease and may or may not include an option to purchase. These financing instruments need to be underpinned by a sound legal regime if they are to function efficiently so as to induce the assumption of risk and the release of funds by the private sector. The huge outlays involved in the financing of objects of the kinds covered by the Convention make it essential for the creditor (the financier, seller or lessor) to be able to have confidence that if the debtor defaults in payment or other performance the relevant legal regime will respect the creditor’s contractual and proprietary rights and provide the creditor with efficient and effective means to enforce those rights, and to secure priority for its international interest against competing claimants.

2.6. The Convention and its supporting Protocols are designed to fulfil five key objectives:

* To facilitate the acquisition and financing of economically important items of mobile equipment by providing for the creation of an international interest which will be recognised in all Contracting States
* To provide the creditor with a range of basic default and insolvency-related remedies and, where there is evidence of default, a means of obtaining speedy relief pending final determination of its claim on the merits
* To establish an electronic international registry for the registration of international interests which will give notice of their existence to third parties and enable the creditor to preserve its priority against subsequently registered interests and against unregistered interests and creditors in the debtor’s insolvency
* To ensure through the relevant Protocol that the particular needs of the industry sector concerned are met
* By these means to give intending creditors greater confidence in the decision to grant credit, enhance the credit rating of equipment receivables and reduce borrowing costs and credit insurance premiums to the advantage of all interested parties.

2.23. … **Predictability** in the application of the Convention, a feature which is specifically mentioned in the interpretation provisions of Article 5(1), replacing the normal reference to good faith, and is reflected in the concise and clear priority rules, which give pre-eminence to certainty and simplicity and a rule-based rather than standards-based approach …

4.2. The second paragraph of the Preamble reflects the importance attached to predictability through clarity of rules. …

4.3. The third paragraph, which focuses on the need to recognise and protect interests in high-value mobile equipment, goes to the very raison d’être of the Convention, namely to provide a set of uniform rules for the creation, perfection and priority of international interests in such equipment, in order to overcome the serious problems arising from differences among legal regimes on these issues and the inadequacy of the traditional *lex rei sitae* principle when applied to equipment constantly moving from one State to another.

**Section 1.5.1**

2.8. At the heart of the Convention is the registration system it establishes, enabling a creditor to register an international interest and thereby secure priority. …

2.27. A third principle is preservation of the integrity of the registration system. Hence priority is given to a registered interest over an unregistered interest, and to an assignment of associated rights related to a registered assignment of an international interest over one related to an unregistered assignment of an international interest, whether or not the registering party had knowledge of a prior unregistered interest or assignment.

4.129. Article 16 provides for the establishment of the International Registry, which occupies a central role in the Convention. … The primary purpose of the registration system is to provide a means for safeguarding the priority of international interests, assignments, and the like, priority depending on the order of registration. …

2.48. … “Registered” means registered in the International Registry pursuant to Chapter V and “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V. …

2.49. … It is also important to bear in mind that the International Registry is not a title registry (see paragraph 2.152). …

3.57. The registration system is based on the concept of notice filing. That is, no transaction documents are filed, essential information concerning the parties, etc., is given so as to put third parties on notice but no further details of the transaction or the documents embodying it, and it is for the person making the search to obtain the information from the registrant or the other party shown.

4.130. … The International Registry is a registry of international interests, not a title registry, so that entry as the holder of an international interest does not necessarily mean that the holder is the owner of the aircraft object; …

4.131. … The system is thus a “notice filing” system, not one requiring the filing of documents or the registration of specific transactions, …

4.143. … Accordingly, as stated earlier, the system is based on “notice filing”, that is, the filing of particulars which give notice to third parties of the existence of a registration, …

4.26. **“International Registry”** – the registry established under the Convention by the Supervisory Authority to record international interests and other registrations provided by Article 16. Article 16(2) of the Convention envisages separate international registries for different categories of object. The international registry for aircraft objects, which is the only one so far established is based in Dublin and run by Aviareto. …

4.130. Registration in the International Registry is against an identified asset, not against the debtor. …

4.143. The registration system for registrations affecting aircraft objects is an asset-based system, that is, registrations are effected against uniquely identified assets, not against the names of debtors. …

**Section 1.5.2**

3.59. … The Regulations distinguish between registry user entities and registry users on the one hand (see below) and “searching persons” on the other. Under the Regulations there is open access for searches. Any member of the public is entitled to search the International Registry on applying for an account as a guest user (Section 2.1.19). By contrast access for the purpose of effecting, amending and discharging registrations is, for obvious reasons, tightly controlled, …

4.177. This Article makes it clear that any person, whether or not situated in a Contracting State, who complies with the requisite regulations and procedures and payment of the prescribed fees may have access to the International Registry to make registrations and searches. However, in terms of access to the International Registry a distinction is to be drawn between registrations and searches. The principle of open access applies to searches, so that any member of the public may be a “searching person” on opening an account with the International Registry as a “guest user”. This is not true of matters relating to registrations. On the contrary, for reasons which are self-evident the most elaborate provisions have had to be taken to ensure that only those authorised to enter data are able to do so. …

2.192. The effect of Article 26 is that no person is to be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the requirements of the Convention, the Protocol, the Regulations and the Procedures. The principle of open access must, of course, be limited in order to ensure that registrations are made on behalf of organisations entitled to make them by a person duly authorised by the organisation concerned. …

**Section 1.5.3**

3.65. Article XIX empowers a Contracting State, pursuant to Article 18(5) of the Convention, to designate an entity or entities in its territory as the entry point or entry points for aircraft objects through which information required for registration shall or may be transmitted to the International Registry.[[6]](#footnote-6) … Accordingly Section 12.2(a) of the Regulations specifies that a Contracting State may designate a mandatory entry point only in respect of airframes and helicopters of which it is the relevant Contracting State, this being defined as a Contracting State which is either (a) the State of registry, at time of submission of a registration to the International Registry, of an airframe or helicopter or (b) if the airframe or helicopter is not currently registered in a Contracting State, the intended State of registry chosen by agreement in accordance with Article IV(1) of the Protocol, if applicable (Section 2.1.20). …

2.192. … Secondly, under Article 18(5) of the Convention the relevant Protocol may empower a Contracting State to designate an entity or entities as the national entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. … Section 12.7 of the Aircraft Registry Regulations provides that a registration is invalid if effected in violation of the terms of a designation or without an authorization code issued by the relevant Contracting State when such an authorization code is required by Section 12.1(a) (section 12.7 does not apply to registration of a discharge). … Moreover, the exception for a discharge registered without an authorization code results from the view of the Registrar that because a searching party cannot determine from a search whether a registration was effected with or without an authorization code it would not, in the language of Article 16(3) of the Convention, be “appropriate” to extend the registration rules to discharges because it would then be the non-complying party that would benefit to the detriment of the party relying on the accuracy of the Registry.

3.66. Where a declaration has been made under Article XIX designating an entry point Section 12.1 of the Regulations comes into play. This provides for two categories of designated entry point, namely an “authorizing entry point” (AEP), which shall or may authorize the transmission by the holder of the international interest or buyer to the International Registry of information required for registration under the Convention and the Protocol, and a “direct entry point”(DEP), through which information required for registration under the Convention shall or may be directly transmitted by the designated entry point to the International Registry. …

2.193. Article 18(5) applies only to registrations, not to searches, which are made direct by the parties themselves or their agents.

2.194. Where registration is through a designated entry point, it remains the case that the only relevant registration for the purposes of the Convention is that made in the International Registry. The filing of particulars locally for transmission to the International Registry does not of itself have any effect under the Convention.

3.70. The provisions and procedures relating to designated entry points apply only to registrations, not to searches, which are made direct to the International Registry.

3.166. …

(7) Article XIX (designation of entry point) is relevant only in the State which is the State of Registry of the aircraft; …

3.66. … Registrations of an international interest in aircraft engines may always be registered direct because use of an entry point may not be made compulsory.

3.69. … Moreover, a designation by a Contracting State may permit but may not compel use of a designated entry point or entry points for information for registrations in respect of aircraft engines. This is because, in contrast to the position as regards aircraft, there is no international system of nationality registration for aircraft engines. …

**Section 2**

**Section 2.1.1**

2.40. … The Convention provides for protection of seven different categories of original[[7]](#footnote-7) right or interest, each of which is defined in Article 1: …

(1) **International interests** …

(2) **Prospective international interests** …

(3) **National interests** …

(4) **Non-consensual rights or interests arising under national law and given priority without registration** …

(5) **Registrable non-consensual rights or interests arising under national law** …

(6) **Associated rights** …

(7) Pre-existing rights or interests which are the subject of a declaration by a Contracting State under Article 60(3). …

3.104. The fact that a sale is registrable may lead to a situation in which the same person holds two distinct registrable interests in the same aircraft object. …

3.107. In short, there is no cross-over protection; registration of one interest does not secure priority for the other. In policy terms, too, this is the right result; each interest should be perfected in the manner prescribed for that interest. …

5.25. A person may have a registrable interest in an aircraft object in two different capacities. … The two registrations have separate functions and protect different interests; … Registration of only one such interest does not protect the registrant against the consequences of failure to register the other. …

**Section 2.2.1**

2.40. …

(1) **International interests**, that is, interests granted by the chargor under a security agreement, or vested in a person who is the conditional seller under a title reservation agreement or a lessor under a leasing agreement (Article 2(2)), other than interests arising under an internal transaction in respect of which a State has made a declaration excluding the application of certain aspects of the Convention (see (3) below). The international interest is the primary category of interest with which the Convention and the relevant Protocol are concerned. The nature of the international interest is discussed in more detail in paragraph 2.48. International interests may be **sub-interests**, that is, international interests in favour of a person that has itself granted a higher-tier international interest. Examples of such sub-interests are the international interest arising in favour of a conditional buyer who has granted a lease and of a lessee who has granted a sub-lease. In contrast to transferred interests, which simply constitute the original interest in new hands, sub-interests are distinct lower-tier interests the registration or absence of registration of which has in itself no impact on the position of the holder of the higher-tier interest from which they are derived. …

2.48. An international interest is a right *in rem* arising under or resulting from an agreement. …

2.49. The provisions of the Convention relating to an international interest reflect a central purpose of the Convention, which is to create a new and *sui generis* interest which is neither derived from nor dependent on national law …

4.24. **“international interest”** – a key phrase, meaning an interest to which Article 2 applies, and therefore an interest arising under an agreement which conforms to the formalities prescribed by Article 7 (as to prospective international interests, see paragraph 4.35). An international interest is a right in rem and is constituted when the agreement creating or providing for it fulfils the requirements of Article 7. … An international interest may be held by a single creditor or by multiple creditors, including creditors holding international interests in different fractional interests, …

**Section 2.2.2**

2.40(3) **National interests**, that is, interests registered under a national registration system which would be registrable as international interests but for the fact that they are created by internal transactions (as defined in the Convention) in respect of which a Contracting State has made a declaration under Article 50 excluding the application of the Convention. … Secondly, while it cannot be registered as an international interest, notice of it can be registered in the International Registry, thereby securing its priority in the same way as if it were a registered international interest.

2.48. … “Registered” means registered in the International Registry pursuant to Chapter V and “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V. It may seem odd to include reference to a national interest, given that national interests are not themselves registrable. Nevertheless the inclusion is necessary in order to preserve the application to a national interest of the priority rules of the Convention (Article 50(2),(3)) governing internal transactions under which such national interests arise. …

2.304. Though in principle the Convention applies even where all the elements of a transaction are located in one jurisdiction, Article 50(1) permits a Contracting State, when adopting the Protocol, to make a declaration excluding the application of the Convention to a transaction which is internal in relation to that State. … An internal transaction is a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to the transaction is situated, and the relevant object located, in that State at the time of conclusion of the transaction and the national interest created by the transaction has been registered in a national registry in the declaring State (Article 1(n), (r)). … “National interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1). …

4.330. The requirements of mobility and internationality are considered inherent in the nature of the equipment covered by the Convention and are not specifically stated. This allows the possibility of the Convention applying to a transaction which is purely internal in that all the parties and the object itself are situated in the same Contracting State at the time of conclusion of the contract (see Article 1(n)). … Nevertheless it is open to a Contracting State to make a declaration under Article 50(1) that the Convention is not to apply to a transaction which is an internal transaction in relation to that State with regard to all types of object or some of them. …

4.23. **“internal transaction”** – a definition relevant only to Article 50, under which a Contracting State may by declaration exclude, albeit within narrow limits, the application of the Convention to internal transactions. In summary, an internal transaction is a security agreement, title reservation agreement or leasing agreement in respect of which (a) the centre of main interests of all parties is situated and the equipment is located in the same Contracting State at the time of conclusion of the contract and (b) the interest created by the transaction has been registered in a national registry in the declaring State. Such an interest is referred to as a national interest (see paragraph (r) of the present Article and paragraph 4.28). … The national interest arising under an internal transaction cannot be registered as an international interest, but it can be protected by registration of notice of a national interest, to which the priority rules apply in the same way as to registered international interests. …

2.304. Though in principle the Convention applies even where all the elements of a transaction are located in one jurisdiction, Article 50(1) permits a Contracting State, when adopting the Protocol, to make a declaration excluding the application of the Convention to a transaction which is internal in relation to that State. … An internal transaction is a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to the transaction is situated, and the relevant object located, in that State at the time of conclusion of the transaction and the national interest created by the transaction has been registered in a national registry in the declaring State (Article 1(n), (r)). … “National interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1). …

4.24. … Similarly, national interests arising under internal transactions are not international interests but if protected by a notice in the International Registry enjoy the same priority status as a registered international interest. …

4.30. **“notice of a national interest”** – the means by which a national interest arising under an internal transaction can be protected by entry of the notice in the International Registry. The first-in-time rule applies to the registration of a notice of a national interest as it does to registration of an international interest.

4.28. **“national interest”** – an interest created by an internal transaction covered by a declaration under Article 50(1). An interest arising under the law of a Contracting State but not registered in a national registry of that State is not a national interest for the purposes of the Convention because the transaction under which it arises is not an internal transaction as defined by Article 1(n). …

2.304. … “National interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1). …

**Section 2.2.3**

2.40(2) **Prospective international interests**, that is, interests intended to be taken over identifiable equipment as international interests in the future but which have not yet become international interests, … The definition of this requires that the interest be one which is intended to be created or provided for as an international interest “upon the occurrence of a stated event, whether or not the occurrence of the event is certain” (Article 1(y)). …

2.61 The mere fact that the grant of an international interest is contemplated at some time in the future is not enough to constitute a prospective international interest. It is necessary that the parties should be negotiating with respect to uniquely identified equipment and with a view to the creation of an international interest in that equipment. … Where the only bar to an immediate international interest is that the agreement is not in writing, the debtor has not yet acquired a right to dispose of the identified aircraft object or the subject of the prospective international interest is an engine installed on a helicopter which does not become an object until its removal, the contract between the parties will create a prospective international interest to take effect as an international interest on reduction of the agreement to writing or on the debtor’s acquisition of a power of disposal or removal of the installed engine from a helicopter, without any such an event having to be expressed in their written or oral agreement. Any other conditions will, of course, need to be agreed, in line with the definition in Article 1(y) which refers to “the occurrence of a stated event.” …

2.159. Where a prospective international interest is registered and later becomes a completed international interest it is deemed to have been registered at the time of registration of the prospective international interest and ranks for priority accordingly (Article 19(4)), no fresh registration being required. However, this is the case only if the registration information supplied was sufficient for a registration of an international interest (Article 18(3)). …

2.195. … Where a prospective international interest has been registered the search certificate must be neutral as to whether it relates to a completed international interest or merely a prospective international interest, indicating only that the creditor named in the certificate has acquired or intends to acquire an international interest in the object (Article 22(3)). This avoids the need for a fresh registration when a prospective international interest becomes an international interest. …

2.256. … Where a prospective assignment of an international interest has been registered and later crystallises into an assignment the registration dates back to the time of registration of the prospective assignment without the need for any new registration (Article 18(3) as applied by Article 19(4)), …

4.35. **“prospective international interest”** – an interest intended to be created or provided for as an international interest in the future on the occurrence of a stated event. … It is necessary that the prospective international interest relate to an object which is identifiable in accordance with the identification criteria prescribed by the relevant Protocol. … So long as the registered particulars are sufficient for a completed international interest no second registration is required when the international interest comes into being …

**Section 2.2.4**

2.51. Under Article 2(5) an international interest in an object extends to proceeds of that object, and this is complemented by Article 29(6), which provides that any priority given by Article 29 to an interest in an object extends to proceeds. However, the term “proceeds” is confined by Article 1(w) to insurance and other loss-related proceeds and does not cover general proceeds, but this limitation is of relatively little significance. See paragraph 2.62.

2.62. Article 2(5) of the Convention provides that an international interest in an object extends to proceeds of that object but with two major limitations. First, the definition of “proceeds” restricts these to money or non-money proceeds of an aircraft object arising from the total or partial loss or physical destruction of the aircraft object or its total or partial confiscation, condemnation or requisition (Article 1(jj)). So the definition does not extend to proceeds resulting from a disposition of the aircraft object, lawful or unlawful. Second, it is limited to priority issues arising under Article 29 of the Convention (Article 29(6)). So it is the applicable law, not the Convention, that will govern proceeds claims by the creditor against the debtor and proceeds claims arising from lawful or unlawful dispositions of the object, … As will be seen, the Convention remedies do in fact apply to proceeds of sale, for example, the position is simply that in most cases the remedial provisions either do not use the words “proceeds” at all or use them in a context indicating that the restricted meaning is not to apply. … It is important to note that the definition does not preclude claims to proceeds in the normal, wider, sense from falling within the Convention, since it is to be applied only where the term “proceeds” is used and even then only where the context does not otherwise require. So it does not affect the creditor’s right under Article 8 to retain (a) the proceeds of sale received after the exercise of the remedy of sale under Article 8(1)(b) of the Convention (which is made obvious by the provisions of Article 8(5) and (6) that refer not to “proceeds” but to “sums collected or received by the chargee as the result of exercise of any remedy set out in paragraph 1 or 2” [of Article 8] and prescribe how those sums are to be applied by the creditor) or (b) any proceeds captured by the definition of “associated rights” in Article 1(c) and their assignment under Article 31, none of which provisions contains any reference to “proceeds”. Moreover, the definition does not apply where the context otherwise requires, for example in relation to the additional remedy of sale and the application of proceeds therefrom given by the Protocols where the debtor and the creditor specifically so agree. …

4.59. An international interest in an object extends to its proceeds, though this term is narrowly defined by Article 1(w) (see paragraph 4.33). In consequence any priority enjoyed by the holder of the international interest under Article 29 covers the proceeds, a point expressly made by Article 29(6).

4.33. **“proceeds”** – narrowly defined so as to be limited to proceeds arising from total or partial loss or destruction of the object (e.g. insurance proceeds) or total or partial confiscation, condemnation or requisition. An international interest in an object extends to proceeds (Article 2(5)) and any priority given by Article 29 to an interest in the object extends to proceeds (Article 29(6)). General proceeds, such as receivables arising from sale of an object subject to a security agreement, are not as such within the definition. …

**Section 2.3.1**

2.40(4) **Non-consensual rights or interests arising under national law and given priority without registration**. A Contracting State may make a declaration under Article 39(1) specifying those categories of non-consensual right or interest which under national law would be given priority over interests equivalent to an international interest and which, to the extent specified in the declaration, are to have priority over a registered international interest even though such non-consensual rights or interests are not themselves registered in the International Registry. The relevant declaration is that of the Contracting State in whose territory the aircraft object is situated at the time the non-consensual right or interest is sought to be exercised (see paragraph 2.263). … The appellation “non-consensual right or interest”, a phrase defined in Article 1(s), denotes a right or interest created by law, not by agreement. …

2.40(5) **Registrable non-consensual rights or interests arising under national law**. A registrable non-consensual right or interest is defined by Article 1(dd) as “a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40”. A Contracting State may make a declaration under Article 40 that non-consensual rights or interests arising under its law may be registered in the International Registry, and any such right or interest that is so registered is then treated for the purposes of the Convention as a registered international interest. … Nevertheless, registrable non-consensual rights or interests rank for priority under the Convention only when registered and this is the primary feature distinguishing them from non-consensual rights or interests falling under Article 39. … But the Convention remedies themselves are not available to the holder of a registrable non-consensual right or interest, which secures only those rights conferred by the law of the declaring State. …

2.234. A non-consensual right or interest covered by a declaration under Article 39 has priority over a registered international interest, whether in or outside insolvency proceedings (Article 39(1)(a)) and *a fortiori* has priority over an unregistered interest (see paragraph 2.267). …

2.265. The priority over the registered international interest to which such a declaration relates is a priority given not under the Convention itself but under the law of the Contracting State in respect of non-consensual rights or interests in an aircraft object situated within that State, and such priority is not entitled to recognition in another State to which the aircraft object has moved except to the extent provided by that State’s conflict of laws rules.

2.267. Article 39(1)(a) refers only to priority over a registered international interest and says nothing about the priority of non-consensual rights or interests vis-à-vis unregistered international or other interests. However, given that (a) a registered international interest has priority over an unregistered interest and (b) a non-consensual right or interest declared under Article 39 has priority over a registered international interest, it seems clear that the intention is to give a non-consensual right or interest priority over an unregistered interest, and that Article 39(1)(a) should be read in a non-exclusive way as saying that a non-consensual right or interest has priority even over a registered (and therefore necessarily over an unregistered) international interest. That conclusion is reinforced by Article 39(3), which refers simply to “priority over an international interest”, i.e. whether registered or not.

4.278. … Non-consensual rights or interests covered by a declaration under this Article have priority over registered interests and by necessary implication unregistered international and other interests as well (see paragraph 2.267). …

4.279. The non-consensual rights or interests capable of a declaration under the present Article are limited to those which, under the law of the Contracting State, have priority without registration over an interest equivalent to that of the holder of an international interest, that is, equivalent to the interest of a chargee, conditional seller or lessor. Such non-consensual rights or interests may be in respect of either secured or unsecured claims. The Convention may not be used as a vehicle to expand such preferred rights. … The basic principle is that of retention or restriction of priority by publicising preferred non-consensual rights and interests, thus permitting financing parties to assess and price these risks.

4.283. The purpose of requiring the declaration is to alert holders and prospective holders of international interests to categories of non-consensual right or interest which, contrary to the general rule in Article 29(1), will have priority even though unregistered and, indeed, even if unsecured. Two conditions are necessary to attract the application of this Article. First, the equivalent consensual interest must be one over which the non-consensual right or interest has priority under the applicable law. Secondly, the Contracting State must declare the non-consensual right or interest as one which is to have priority over a registered international interest. …

4.293. This Article enables a Contracting State to extend the application of the Convention by making a declaration listing categories of non-consensual right or interest to be registered as if they were international interests. … Articles 39 and 40 are mutually exclusive in that a Contracting State cannot make a declaration under both Articles covering the same rights or interests. However, rights or interests of the same nature can be covered by declarations under both Articles if they are differentiated from each other, e.g. by time. …

2.264. Rights or interests covered by a declaration under Article 39(1)(a) have priority over a registered international interest under the law of the declaring State even though not themselves registrable. The extent of that priority is determined by the declaration, which may retain or restrict but not expand national law. …

4.279. The non-consensual rights or interests capable of a declaration under the present Article are limited to those which, under the law of the Contracting State, have priority without registration over an interest equivalent to that of the holder of an international interest, that is, equivalent to the interest of a chargee, conditional seller or lessor. Such non-consensual rights or interests may be in respect of either secured or unsecured claims. The Convention may not be used as a vehicle to expand such preferred rights. …

4.283. … It is therefore open to a Contracting State to make a declaration covering a narrower range of non-consensual rights or interests than that provided under its law for an equivalent interest but not a broader range.

2.271. … Almost all Contracting States ratifying or acceding to the Aircraft Protocol have made declarations under Article 39 and/or Article 40. Several Contracting States have made declarations under Article 39(1)(a) expressed to cover *all* categories of non-consensual right or interest in which priority is given over interests equivalent to international interests, others have specified liens in favour of unpaid repairers on aircraft objects in their possession, either generally or limited to aircraft repairers, and/or liens in favour of unpaid employees (though these are usually limited to wages arising since the time of a declared default under a contract to finance or lease an aircraft object). A minority of States have added liens for government unpaid taxes or levies relating to aircraft objects and some of these States have preserved rights of arrest and detention under Article 39(1)(b) for the same kind of taxes, so that after or in addition to detaining the aircraft the State or State entity concerned could take and retain possession by way of exercise of a non-contractual lien. A few States have made declarations relating to the same type of lien under both Article 39 and Article 40 but distinguishing declarations as to post-default liens (which are made under Article 39) from declarations as to pre-default liens (which are made under Article 40). Many Contracting States have also made the second form of declaration permitted by Article 39(1) relating to the preservation of rights of arrest or detention (see Article 39(1)(b) and paragraph 2.268). As regards liens or other rights for sums due in respect of taxes, some Contracting States have made a declaration under Article 39, whilst others have made a declaration under Article 40 (see paragraph 2.273). … The majority of Contracting States have made declarations under Article 40, most of these covering the rights of a person obtaining a court order permitting attachment of an aircraft object in satisfaction of a legal judgment or relating to liens or other rights of a State or State entity relating to taxes or other unpaid charges on an object. A few States have used Article 40 rather than Article 39 to cover liens in favour of workers for unpaid wages, whilst a small number of States have made declarations under Article 40 covering all non-consensual rights or interests not subject to their declarations under Article 39.

2.274. Article 40 relates only to registration and consequential priorities and protection from insolvency under Article 30. It does not touch relations between the parties or entitle the registrant to the exercise of Convention remedies.

4.24. … Registrable non-consensual rights or interests are not international interests but may be registered in the International Registry and then rank for priority as if they were international interests, though the default provisions of Chapter III do not apply to them or to non-consensual rights or interests under Article 39. …

**Section 2.3.2**

2.40(4) **Non-consensual rights or interests arising under national law and given priority without registration**. A Contracting State may make a declaration under Article 39(1) specifying those categories of non-consensual right or interest which under national law would be given priority over interests equivalent to an international interest and which, to the extent specified in the declaration, are to have priority over a registered international interest even though such non-consensual rights or interests are not themselves registered in the International Registry. …

4.29. **“non-consensual right or interest”** – this definition is confined to non-consensual rights or interests falling within Article 39 and therefore having priority without registration if covered by a Contracting State’s declaration under that Article. … A non-consensual right or interest is one created by law and is to be contrasted with a right or interest created by agreement of the parties, which falls outside the definition even if entry into the agreement requires approval of the court, as may be the case where the debtor is a debtor in possession in insolvency proceedings. …

4.278. … The relevant declaration for this purpose is that of the Contracting State where the aircraft object is located at the time the non-consensual right or interest is sought to be exercised. This also applies to the declaration under Article 39(4).

4.280. Examples of rights under Article 39(1)(a) are non-consensual liens in favour of repairers for repairs to objects in their possession or for unpaid wages due from insolvent employers (which, though usually unsecured, are in some States given priority even over the claims of secured creditors) and non-consensual liens on aircraft for unpaid air navigation charges. Another possible example is a lien for unpaid taxes. …

4.281. Rights of arrest or detention given by the law of a State for payment of amounts due to a provider of public services, e.g. to arrest or detain an aircraft for unpaid air navigation charges, can be covered by a declaration under paragraph 1(a) if given priority under the relevant national law over interests equivalent to that of the holder of a registered international interest. Alternatively a Contracting State can make a declaration under Article 39(1)(b) (see paragraph 4.285). …

4.282. While the definition of non-consensual right or interest includes one securing an obligation to an intergovernmental or private organisation, for example, the European Organisation for the Safety of Air Navigation (“EUROCONTROL”), to qualify for a declaration under Article 39(1)(a) or (b), the priority (in the case of (1)(a)) or right of detention or arrest (in the case of (1)(b)) must arise under the national law of the declaring State. …

4.284. It is not necessary for a declaration to list such categories individually. It would, for example, be open to a Contracting State to declare that all non-consensual rights or interests which under the law of that State have priority over security interests in the same aircraft object are to have priority, without registration, over international interests that are security interests in that aircraft object.

4.288. A Contracting State may also make a declaration that is expressed to cover not only categories of non-consensual right or interest then having priority under its national law but any new categories that are created in the future. This avoids the need to deposit a new declaration, or a modification of an existing declaration, to add a new category each time there is a change in the law.

4.289. *Illustration 51*

Debtor, situated in Domitia, a Contracting State, has given Creditor a mortgage over an aircraft engine to secure an advance which has been registered under the Convention. The engine is stored in a warehouse in Domitia belonging to W. Domitia had previously made a declaration under Article 39(1)(b) stating that statutory liens over goods to secure payment for warehousing and repairs, which under Domitian law had priority over mortgages of the goods, were to have priority over registered international interests. D owes money to W for warehousing charges. W’s statutory lien has priority over C’s mortgage. The position would be otherwise if the declaration by Domitia had been made after the registration of C’s mortgage unless Domitia had made a declaration under Article 39(4).

4.290. *Illustration 52*

The facts are as in Illustration 51 except that insolvency proceedings have been taken against D in Urbania and under Urbanian law statutory liens do not enjoy priority over mortgages. The insolvency administrator should therefore treat C’s mortgage as having priority over W’s lien unless Urbanian conflict of laws rules lead to the application of Domitian law to determine the priority issue.

4.291. *Illustration 53*

Under the law of Domitia, a Contracting State, claims for taxes have priority over the claims of secured creditors capped at 6 per cent of the net proceeds of the assets given in security. Before Domitia has deposited a declaration under this Article covering such claims, D gives C1 a charge over identified aircraft objects to secure an advance and C1 registers the charge as an international interest. Later Domitia makes a declaration under this Article that claims for unpaid taxes, capped as above, are to have priority over a registered international interest. Thereafter D gives a second charge over the same equipment to C2, from whom it has also borrowed money, and C2 registers the charge as an international interest. Some time afterwards D, having made default in respect of both loans, goes into insolvent liquidation, and C1 sells the equipment. The preferential claims for unpaid taxes are subordinate to the charge in favour of C1 but have priority over the charge to C2 up to the six per cent cap.

4.292. *Illustration 54*

Under the laws of Domitia, an airport authority has the right to detain an aircraft for unpaid landing fees accrued in relation to the use that specific aircraft. Domitia makes a declaration under Article 39(1)(b) that purports to cover a right of detention for amounts due to an aviation authority relating to the entire fleet of an airline. Domitia International Airlines owes 100,000 euro to an airport authority in Domitia in respect of the landing fees for its fleet of two aircraft, aircraft 1 and aircraft 2. Of that 100,000 euro owed, 70,000 euro relates to the use of aircraft 1 and 30,000 euro relates to the use of aircraft 2. The aviation authority in Domitia detains aircraft 2. It may only detain that aircraft until 30,000 euro is paid, not 100,000 euro. If the government attempts to arrest aircraft 1 in Ruritania, another Contracting State, in order to recover the additional 70,000 euro the law selected by the conflicts of laws rules of Ruritania, not the Convention, will determine whether to recognise such asserted extraterritorial right of detention.

**Section 2.3.3**

2.40(5) **Registrable non-consensual rights or interests arising under national law**. A registrable non-consensual right or interest is defined by Article 1(dd) as “a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40”. A Contracting State may make a declaration under Article 40 that non-consensual rights or interests arising under its law may be registered in the International Registry, and any such right or interest that is so registered is then treated for the purposes of the Convention as a registered international interest. … The registration of a non-consensual right or interest pursuant to a Contracting State’s declaration under Article 40 is effective only in those cases where the applicable law is that of the declaring State. Most declarations under Article 40 relate to the attachment of aircraft objects under a court order to satisfy a judgment debt and liens or other rights relating to taxes or unpaid charges, and the applicable law will usually be the law of the State where the object is situated at the time the registrable non-consensual right or interest attaches to it. … But the Convention remedies themselves are not available to the holder of a registrable non-consensual right or interest, which secures only those rights conferred by the law of the declaring State. …

4.293. … For this purpose the relevant declaring State is the State whose law is applicable under the conflict rules of the forum, which will usually be the law of the State where the object is situated at the time the non-consensual right or interest attaches to it; and the registration will be effective only in those cases where that State’s law is applicable. Examples of registrable non-consensual rights or interests under this Article are judgments or orders for the attachment of the debtor’s equipment, whether by way of execution of a judgment debt or otherwise. State liens for unpaid taxes and liens in favour of unpaid workers have also been made the subject of declarations by Contracting States. In contrast to Article 39, which permits a general description of categories in a declaration made under that Article, the present Article requires the categories of registrable non-consensual right or interest to be listed. …

**Section 2.4.1**

2.43. The Aircraft Protocol extends the registration and priority provisions of the Convention to outright **sales** and **prospective** **sales** (see paragraphs 2.276 and 3.16) of aircraft objects. …

2.49. … under the Aircraft Protocol the registration and priority provisions are extended to such sales and it is important for buyers to utilise such extension in order to preserve priority. …

4.295. The purpose of this Article is to enable a Protocol to allow outright buyers of equipment to obtain the benefit of the registration system and the priority secured by registration. It also permits use of the Protocol to allow registration of a sale which has only to conform to the formal requirements of the Protocol. So both the Aircraft Protocol and the Space Protocol have extended the Convention to cover outright sales. However, some parts of the Convention – in particular, the provisions of Chapter III dealing with default remedies – are not appropriate to outright sales. Thus in extending the Convention to sales and prospective sales the Aircraft Protocol (Article III) and the Space Protocol (Article IV) do not include Chapter III in the list of applied provisions. …

3.1. … Again, although outright sales are outside the scope of the Convention, which is directed at security interests and conditional sale and leasing transactions, the provisions of the Aircraft Protocol extending the registration and priority rules to sales of aircraft objects are designed to take advantage of the registration system to provide a means of giving public notice of outright sales and of ensuring the buyer’s priority. …

3.15. … Article III of the Aircraft Protocol extends to outright sales and prospective sales of aircraft objects those provisions of the Convention that are relevant to such transactions. These include the definitions and the provisions relating to the connecting factor, the International Registry and registration, priorities, protection on insolvency, non-consensual rights and interests and jurisdiction. But Articles 2 and 7, relating to the constitution of an international interest, do not apply, since an outright sale does not constitute an international interest, and Chapter III of the Convention, relating to default provisions, is likewise disapplied since it has no relevance to outright sales. Again, the special priority rule for the protection of buyers in Article 29(3) is excluded since the buyer will be able to protect its rights by registration, a facility not open to an outright buyer under the Convention itself. Rights to payment under contracts of sale are not associated rights within the definition in Article 1(c) of the Convention, and none of the provisions of Chapter IX, relating to the assignment of associated rights, applies to sales. Finally, Article 60, dealing with pre-existing rights or interests, is not applicable to sales, being excluded by Article III.

3.16. … Sales by contrast are outside the Convention except so far as the Protocol otherwise provides. Certain provisions of the Convention, particularly those relating to registration, priorities and protection against insolvency, are applied to sales by Article III of the Aircraft Protocol. …

4.24. … The interest of an outright buyer is not an international interest but is protected against prior unregistered interests by Article 29(3) as regards railway rolling stock and MAC equipment, and as regards aircraft objects is brought within the registration and priority provisions of the Convention by Articles III and XIV of the Aircraft Protocol. …

4.295. The purpose of this Article is to enable a Protocol to allow outright buyers of equipment to obtain the benefit of the registration system and the priority secured by registration. It also permits use of the Protocol to allow registration of a sale which has only to conform to the formal requirements of the Protocol. So both the Aircraft Protocol and the Space Protocol have extended the Convention to cover outright sales. However, some parts of the Convention – in particular, the provisions of Chapter III dealing with default remedies – are not appropriate to outright sales. Thus in extending the Convention to sales and prospective sales the Aircraft Protocol (Article III) and the Space Protocol (Article IV) do not include Chapter III in the list of applied provisions. …

5.20. The Aircraft Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. The first part of this Article lists Articles which apply with the deemed substitution of a contract of sale, a sale, a prospective seller, the seller and the buyer. The second part of this Article designates the Articles or Chapters which apply in full in relation to sales and prospective sales of aircraft objects except as otherwise specified. The overall effect of the present Article is to place the Convention provisions into three categories as regards sales and prospective sales, namely those that are general in nature and thus apply as they stand in the Convention; those that apply with modifications; and those that do not apply. …

5.24. The provisions of the Convention that apply to sales and prospective sales are set out in the last part of this Article. They include Chapters V and XII (except Article 43, which is not relevant to sales). …

**Section 2.4.2**

3.20. Article V of the Aircraft Protocol prescribes formalities for a contract of sale matching those for an international interest which is not a charge (Article V(1)(c)) and also states the effect of the contract, namely to transfer the interest of the seller in the aircraft object to the buyer according to the terms of the contract (Article V(2)). In other words, the Aircraft Protocol creates a *sui generis* sale which is not dependent on national law, although, as with an international interest, national law applies to questions such as whether an agreement was reached and whether the seller had a power to dispose. …

5.31. Paragraph 1 prescribes in relation to contracts of sale formalities which track the provisions of Article 7 of the Convention. Like an international interest and an assignment under the Convention, this paragraph provides for a *sui* *generis* sale which for the most part is not dependent upon or derived from national law and thus avoids the need for any reference to the *lex situs*. …

**Section 2.4.3**

2.276. … Under Article 1(gg) of the Convention “sale” means a transfer of an object pursuant to a contract of sale and Article 1(g) defines a contract of sale as “a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above”, i.e. is not a security agreement, a title reservation agreement or a leasing agreement. In other words, it is an outright sale. …

2.52. The meaning of the terms “sale” and “contract of sale” is discussed in paragraph 2.276.

2.276. … Under Article 1(gg) of the Convention “sale” means a transfer of an object pursuant to a contract of sale and Article 1(g) defines a contract of sale as “a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above”, i.e. is not a security agreement, a title reservation agreement or a leasing agreement. In other words, it is an outright sale. …

3.16. For the meaning of “sale”, “contract of sale” and "prospective sale" see paragraphs 2.276, 5.21. …

3.20. … The definition of “contract of sale” in Article 1(g) of the Convention excludes (*inter alia*) a title reservation agreement, and Article V(2) does not apply to such an agreement. …

3.21. … “Sale” is defined as a transfer of ownership of an object pursuant to a contract of sale (Convention, Article 1(gg)). …

4.16. **“contract of sale”** – this phrase appears elsewhere in the Convention only in the definition of sale (see paragraph 4.43), though it also features in Articles III and V of the Aircraft Protocol. It denotes a contract for the sale of an object by a seller to a buyer which is not a security agreement, a title reservation agreement or a leasing agreement (Convention, Article 1(g)). …

4.43. **“sale”** – a transfer of ownership pursuant to a contract of sale. …

5.23. A sale means a transfer of ownership pursuant to a contract of sale (see the definition of “sale” in Article 1(gg) of the Convention). This denotes an outright transfer for a price, though not necessarily a money price and thus excludes a transfer by way of gift or mortgage. …

5.21. It is necessary to be precise as to the equivalents prescribed by Article III and in particular to distinguish a contract of sale, which is merely an agreement to sell, from a sale, which is a transfer of ownership. The following is a table of equivalents:

|  |  |
| --- | --- |
| Agreement (as defined in Article 1(a) of the Convention | Contract of sale |
| International interest | Sale |
| Prospective international interest | Prospective sale |
| Debtor | Seller |
| Creditor | Buyer |

…

**Section 2.4.4**

5.22. It may seem odd to treat the buyer under a sale as the creditor rather than the debtor but this is correct because it is the buyer who, like the creditor under an agreement, is entitled to be registered. Moreover, the seller is in the same position as the debtor for other purposes. For example, the connecting factor which must be satisfied for the Convention to apply is that the debtor is situated in a Contracting State (Article 3) and in the case of a sale under the Aircraft Protocol is, by virtue of the present Article, that the seller is situated in a Contracting State. This is appropriate since in both cases the connecting factor relates to the party who is granting or reserving an interest.

**Section 2.4.5**

3.20. Article V of the Aircraft Protocol prescribes formalities for a contract of sale matching those for an international interest which is not a charge (Article V(1)(c)) …

4.16. … Contracts of sale are not as such regulated by the Convention at all, but formalities are prescribed for them by Article V of the Aircraft Protocol, which parallels the provisions of Article 7 of the Convention relating to agreements creating or providing for an international interest. …

5.31. Paragraph 1 prescribes in relation to contracts of sale formalities which track the provisions of Article 7 of the Convention. …

5.30. … Moreover, the chapeau to Article III makes it clear that a contract of sale is equated with an agreement creating or providing for an international interest and that the equivalent of an international interest is a sale. Accordingly while Article V(1) correctly prescribes the formalities for a contract of sale in much the same way as Article 7 of the Convention does for an agreement, what is registrable in the International Registry is the sale, not the contract under which it is made. …

**Section 2.4.6**

2.276. … A prospective sale is 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 (Article 1(z)), and it may be registered, with potential priority effects (see paragraph 3.108). …

3.21. … When a prospective sale is registered and a sale is later concluded the sale is deemed to be registered as from the time of registration of the prospective sale provided that the registered information would have been sufficient for registration of a sale (Article 18(3) as applied by Article III of the Protocol). …

3.108. An intending buyer may register a prospective sale of an identified aircraft object and if a sale later results it is deemed to have been registered as from the time of registration of the prospective sale (Article 19(4) as applied by Article III of the Protocol), which may, of course, have priority effects.

3.52. Article III of the Aircraft Protocol extends the registration provisions of the Convention to cover outright sales and prospective sales of aircraft objects. One effect of this is that although a lessee does not as such have a registrable interest, a lessee of an aircraft object under a lease containing an option to purchase can register its potential interest as buyer under a prospective sale. …

4.36. …An agreement for sale under which ownership is to pass on when certain subsequent contractual or legal conditions for the transfer of ownership have been fulfilled is registrable as a prospective sale. So too is an option to purchase in a lease of an aircraft object.

5.23. … A mere agreement to sell under which ownership has not yet passed to the buyer cannot be registered as a sale, but it can be registered as a prospective sale or, if contains an express reservation of title, as a title reservation agreement. So also can a lease containing an option to purchase. Although the lease is not itself a contract of sale (see Article 1(g) of the Convention), exercise of the option to purchase results in a sale, so that the lessee is a prospective buyer. Accordingly the lessor registers its interest as lessor while the lessee can register a separate interest as prospective buyer. Exercise of the option to purchase extinguishes the lessor’s interest and entitles the lessee exercising the option to have this discharged and to be registered as buyer but this is not necessary if the lessee has already registered its interest as a prospective buyer in order to avoid being displaced by another buyer or prospective buyer to whom the lessor sells or agrees to sell the object and who might otherwise register first. If the option to purchase is not exercised or is extinguished by the lessor’s termination of the leasing agreement for default the lessor is entitled to have the lessee’s registration as prospective buyer discharged.

4.36. **“prospective sale”** – a sale intended to be made in the future upon the occurrence of a stated event (Article 1(z)). …

**Section 2.5.1**

2.40(6) **Associated rights**, that is, rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object (see paragraph 2.241). …

4.12. **“associated rights”** – these are rights to payment or other performance secured by or associated with the object. Associated rights are “secured by” a security agreement or “associated with” a title reservation or leasing agreement. They include rights to repayment of a loan or to payment of the price under a title reservation agreement or rentals under a leasing agreement, as well as rights to other forms of performance, such as insurance and repair of the object, breakage costs, indemnities, and the observance of negative obligations, such as a prohibition on the disposal of leased objects without the lessor’s consent. …

**Section 2.5.2**

2.242. It also follows from the definition that associated rights do not include (a) rights to performance by a third party or (b) rights to performance by the debtor under another contract or engagement (“agreement B”), which might consist merely of a promissory note, unless in either case the debtor is liable under agreement A to perform the obligations of the third party or of the debtor itself imposed by agreement B. However, it is not necessary for agreement A to refer specifically to agreement B. It suffices that the obligations secured by agreement A include those arising under other agreements or promissory notes. …

4.12. **“associated rights”** – these are rights to payment or other performance secured by or associated with the object. Associated rights are “secured by” a security agreement or “associated with” a title reservation or leasing agreement. They include rights to repayment of a loan or to payment of the price under a title reservation agreement or rentals under a leasing agreement, as well as rights to other forms of performance, such as insurance and repair of the object, breakage costs, indemnities, and the observance of negative obligations, such as a prohibition on the disposal of leased objects without the lessor’s consent. …

**Section 3**

**Section 3.1.1**

2.24. … Except where otherwise provided, the Convention provisions are to be accorded an autonomous interpretation and should be construed according to the intention of the States Parties as expressed in the text, not according to the canons of interpretation of domestic law. …

The principle of autonomous interpretation applies as much to definitions as to the substantive provisions. …

2.71. The purpose of the Convention is to provide uniform rules which make it both unnecessary and impermissible to resort to the conflict of laws on matters within the scope of the rules, … , except so far as the Convention otherwise provides or as regards issues on which it is silent and cannot be determined by the general principles on which it is based. …

4.68. Paragraph 1 is an instruction to national courts to avoid national concepts in interpreting the texts.

**Section 3.1.2**

2.30. Article 1 of the Convention contains a long list of definitions, and these are supplemented by definitions in the Aircraft Protocol. It is important to keep these in mind at all times when reading the Convention and Aircraft Protocol, because ordinary words are sometimes given a special meaning, such as “agreement,” “creditor” and “debtor,” while a number of phrases have been specially coined for the two instruments, such as “associated rights”, “interested persons”, “internal transaction”, “international interest”, “national interest”, “non-consensual right or interest”, “object”, “proceeds” and “writing”, and therefore can be understood only by reference to their respective definitions. …

**Section 3.2.1**

2.24. … Article 5(2) provides a cascade approach to interpretation. …

**Section 3.2.2**

2.24. … The primary rule is that questions expressly settled by the Convention are to be determined according to the natural and ordinary meaning of the Convention’s provisions themselves …

**Section 3.2.3**

2.24. … Questions arising from gaps in the Convention are to be settled in accordance with the general principles on which it is based. …

2.71. … Questions concerning matters governed by the Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based …

2.25. Party autonomy is an underlying principle of the Convention, so that in their relations with each other the parties are free to derogate from or vary the provisions of the Convention or otherwise fashion their own rules so long as their agreement does not contravene the mandatory provisions of the Convention or the overriding mandatory rules of the forum, that is, rules which apply regardless of the otherwise applicable law.

2.26. Another principle is that parties on whom a right is conferred should have a remedy for its enforcement. …

2.27. A third principle is preservation of the integrity of the registration system. Hence priority is given to a registered interest over an unregistered interest, and to an assignment of associated rights related to a registered assignment of an international interest over one related to an unregistered assignment of an international interest, whether or not the registering party had knowledge of a prior unregistered interest or assignment.

4.67. … The general principles on which the Convention is based include, as stated in the Preamble, predictability, party autonomy, and the protection and ready enforceability of security, title retention and lessor interests in equipment, all of which are designed to promote the overriding objective of the Convention, namely to promote the asset-based financing of mobile equipment.

4.69. Under paragraph 2, the “general principles” described in the comments on the Preamble are the first and primary source for gap-filling. These principles are those that underlie asset-based financing and leasing, namely, prompt enforcement, visibility of transactions through registration in the International Registry and clear priorities, together with predictability and party autonomy.

2.29. … Among the supplementary means of interpretation are the *travaux préparatoires*, such as successive drafts of a treaty, conference records, explanatory statements by experts, and the like, where these reflect the common understanding of participating States. But regard may also be had to other materials, such as Explanatory Reports presented to a Diplomatic Conference and Official Commentaries prepared afterwards.

**Section 3.2.4**

2.28. Only if a question relating to matters governed by the Convention cannot be determined either from its express provisions or in conformity with the general principles on which it is based is it legitimate to refer to the applicable law, by which is meant the domestic rules of the law applicable by virtue of the rules of private international law of the forum State (Article 5(3)). But domestic law should be resorted to only as a last resort and on matters that cannot be resolved by a purposive interpretation of the Convention or recourse to the general principles underlying its provisions (see paragraph 2.23). …

2.71. … However, though recourse to the applicable law should only be as a last resort there are various matters on which resort to the applicable law is expressly mandated by the Convention or is otherwise necessary. Reference has already been made to the relationship between the Convention and national law (paragraph 2.10). Questions concerning matters governed by the 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 (Article 5(2)), that is, the domestic rules of the law applicable by virtue of the rules of private international law of the forum State (Article 5(3)), thus excluding *renvoi*. …

2.5. … There are various matters which the Convention expressly leaves to the applicable law under the rules of private international law of the forum State (see paragraph 2.72), in addition to which resort to the conflict of laws is necessary on matters not expressly dealt with by the Convention or covered by the general principles on which it is based. But as is made clear by Article 5, the conflict of laws should be invoked only as a last resort.

4.70. Where there are matters which are not settled by the express terms of the Convention or the principles on which it is based, these must be settled by the applicable law, by which is meant the *domestic* law of the State whose law is applicable by the rules of private international law of the forum, so that problems of *renvoi* are avoided. … Reference to the applicable law should be seen only as a last resort where the issues cannot be resolved by the text of the Convention or the principles on which it is based. …

**Section 3.3.1**

2.71. … However, though recourse to the applicable law should only be as a last resort there are various matters on which resort to the applicable law is expressly mandated by the Convention or is otherwise necessary. Reference has already been made to the relationship between the Convention and national law (paragraph 2.10). Questions concerning matters governed by the 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 (Article 5(2)), that is, the domestic rules of the law applicable by virtue of the rules of private international law of the forum State (Article 5(3)), thus excluding *renvoi*. The cases involving recourse to the applicable law fall broadly into two groups: matters which the Convention expressly refers to the applicable law and other matters which are not addressed by the Convention and cannot be determined from the general principles on which it is based.

2.28. Only if a question relating to matters governed by the Convention cannot be determined either from its express provisions or in conformity with the general principles on which it is based is it legitimate to refer to the applicable law, by which is meant the domestic rules of the law applicable by virtue of the rules of private international law of the forum State (Article 5(3)). But domestic law should be resorted to only as a last resort and on matters that cannot be resolved by a purposive interpretation of the Convention or recourse to the general principles underlying its provisions (see paragraph 2.23). …

4.70. Where there are matters which are not settled by the express terms of the Convention or the principles on which it is based, these must be settled by the applicable law, by which is meant the *domestic* law of the State whose law is applicable by the rules of private international law of the forum, so that problems of *renvoi* are avoided. The law thus determined need not be the law of a Contracting State. … Reference to the applicable law should be seen only as a last resort where the issues cannot be resolved by the text of the Convention or the principles on which it is based. …

2.72. The Convention expressly leaves it to the applicable law (which may be the substantive law or the procedural law of the relevant State, depending on the issue to be resolved) to determine:

* whether an agreement falling within Article 2(2) is to be recharacterised and the time when it is considered made (see paragraph 2.63);
* what remedies are available additional to those provided by the Convention (Article 12);
* what procedure must be followed in the exercise of remedies (Article 14), subject, however, to the mandatory declaration under Article 54(2) as to whether the leave of the court is required where not so provided by the Convention;
* acquisitions of international interests by legal or contractual subrogations for the purpose of registration (Article 16(1)(c));
* the continuance, upon installation on an object, of rights in an item (other than an object) created prior to installation (Article 29(7)(a));
* the creation, after removal from an object, of rights in an item (other than an object) previously installed on the object (Article 29(7)(b));
* the effectiveness in the debtor’s insolvency of an international interest not registered in the International Registry (Article 30(2));
* the defences and rights of set-off available to a debtor against an assignee of associated rights (Article 31(3), (4));
* the priority of competing assignments of associated rights in cases falling outside Article 36(1) and (2) (Article 36(3));
* the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law (Article 38(1), and see Article 50(3));
* the range of non-consensual rights or interests provided by its law which are to have priority over a registered international interest (Article 39) or are to be registrable as if they were international rights or interests (see paragraphs 2.40(4),(5)); and
* the priority of pre-existing rights and interests (Article 60(1)).

3.24. … As with the Convention (see paragraph 2.71) it is impermissible to resort to the conflict of laws on matters governed by the Protocol except so far as this otherwise provides or as regards issues on which it is silent and which cannot be determined by the general principles on which it is based.

Like the Convention the Aircraft Protocol contains various provisions referring matters to the applicable law. These are as follows:

(1) Under Article VIII, subject to a declaration by a Contracting State, the parties are free to choose the law governing their relations inter se, by which is meant the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit (see paragraph 3.25). The choice may be express or implied. See paragraph 2.76.

(2) Under Article XI, Alternative A, paragraph 5(b), unless and until the creditor is given the opportunity to take possession of an aircraft object after the occurrence of an insolvency-related event it is entitled to apply for any other forms of interim relief available under the applicable law (see paragraphs 3.143-3.144).

(3) Under Article XI, Alternative A, paragraph 11, the provision in paragraph 10 that no obligations of the debtor under the agreement may be modified without the creditor’s consent does not affect any authority of the insolvency administrator under the applicable law to terminate the agreement (see paragraph 3.145).

(3) Article XI, Alternative B, provides in paragraph 2(b) that upon the occurrence of an insolvency-related event the insolvency administrator or the debtor, as applicable, is to give the creditor the opportunity to take possession in accordance with the applicable law (see paragraph 3.147).

(4) Paragraph 3 of Alternative B provides that the applicable law may permit the court to require the taking of any additional step or the provision of any additional guarantee (see paragraph 3.148).

(5) Under Article XVI(2), nothing in the Convention or Protocol affects the liability of the creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object (see paragraph 3.116).

In most cases any Contracting State can make an opt-in or opt-out declaration under a declaration provision of the Protocol. But in contrast to the Convention, where any Contracting State may make any declaration, there are certain provisions of the Protocol which prescribe the Contracting State that can make the declaration, for example, Article XI, which can be triggered only by the Contracting State that is the primary insolvency jurisdiction (Article XI(1)) or alternatively leave the relevant Contracting State to be determined by the conflict of laws, for example, the *lex fori* will determine which other Contracting State’s declaration under Article 40 is the relevant declaring State.

2.73. On matters where the issue is not determinable from the text of the Convention or the principles on which it is based, resort is to be had to the applicable law as the residual rule under Article 5(2). For example, it is for the applicable law to determine:

(1) whether an agreement alleged to create or provide for an international interest satisfies the conditions for a valid contract, including capacity to contract, consensus *ad idem* and conformity with fundamental public policy, but not the validity of an international interest constituted under a valid agreement falling within Article 2 and in accordance with the formalities prescribed by Article 7 of the Convention;

(2) the time at which the agreement is to be considered concluded, which may be relevant for certain purposes of the Convention (see paragraph 2.91);

(3) the circumstances in which proceeds in respect of which a creditor’s interest had priority under the Convention have ceased to be traceable;

(4) except in cases within Article 9(4), whether an international interest has been acquired by legal or contractual subrogation;

(5) the scope and effect of assignments by operation of law;

(6) who bears the risk of loss of or damage to objects disposed of under a contract of sale or leasing agreement or the duties of suppliers under such contracts;

(7) the validity of a trust purporting to establish a trust capacity under Article VI of the Protocol.

The Convention contains various provisions under which a Contracting State may make declarations of different kinds affecting the way in which the Convention will apply within that State.[[8]](#footnote-8) Mandatory declarations must be made at the time of ratification. Permissive declarations may be made at any time even if the provision relating to them refers to the time of ratification (see paragraph 2.341).

**Section 3.3.2**

2.10. The Convention applies to the exclusion of otherwise applicable law where the two conflict. … Conformity with the Convention and Protocol requires also that the implementing provisions override existing inconsistent legislation and that any subsequent legislation is, or is to be construed as, conforming legislation.

2.293. … Conformity with the Convention and Protocol requires also that the implementing provisions override existing inconsistent legislation and that any subsequent legislation is, or is to be construed as, conforming legislation.

3.24. As previously noted (paragraph 2.80), while the validity of an agreement is in general governed by the applicable law this is true only to the extent to which that law is consistent with the Convention and Protocol. …

**Section 3.3.3**

2.145. In a Contracting State the procedural law to be applied in accordance with Article 14 must be applied in a manner that is compatible with the substantive provisions of the Convention. …

2.108. … The phrase “in conformity with the procedure prescribed ...” does not allow a bar on self-help remedies to be invoked if the State in question has made no declaration requiring leave of the court. …

**Section 3.3.4**

2.74. … However, a Contracting State may not impose conditions in its private law incompatible with the provisions of the Convention, …

2.108. A Contracting State has complete freedom as to the Convention remedies within Article 54(2) that are to be covered by its declaration, so that this may relate to any one or more of the Convention remedies, or all of them, so far as falling within Article 54(2). The phrase “in conformity with the procedure prescribed ...” does not allow a bar on self-help remedies to be invoked if the State in question has made no declaration requiring leave of the court. …

**Section 3.4.1**

2.14. … However, under Article 49(1) the Convention does not come into force as regards any category of equipment until a Protocol has been made relating to that equipment (and for categories of equipment other than aircraft objects the deposit with the Depositary of a certificate that the International Registry is fully operational) and takes effect subject to the terms of that Protocol, so that in the case of any inconsistency it is the Protocol that prevails, a point already made explicit by Article 6(2). …

2.15. … The Convention and Protocol are to be read and interpreted together as a single instrument (Article 6(1)).

2.16. The provisions of the Convention cannot operate independently of a Protocol to the extent that they relate to objects. …

**Section 4**

**Section 4.1.1**

2.102 In the absence of agreement to the contrary “default” means a breach of the agreement. However, the parties may at any time agree in writing on the events that constitute default or otherwise give rise to the remedies set out in Chapter III. … In the absence of such contractual provision “default” means a default which substantially deprives the creditor of what it is entitled to expect under the agreement (Article 11).

2.95 … The parties may agree in writing as to the events that constitute a default, otherwise it must be a default which substantially deprives the creditor of what it is entitled to expect under the agreement. …

4.85 … The parties are free to agree on the events constituting default or otherwise giving rise to default remedies (Article 11). … However, in the absence of agreement “default” means a default which substantially deprives the creditor of what it is entitled to expect under the agreement (Article 11). …

4.114 In the unusual case where the agreement does not specify the default or other events giving rise to remedies, the default must be serious in the sense of substantially depriving the creditor of its legitimate contractual expectation. …

**Section 4.1.2**

2.102 … Such stipulated events may include acts or omissions which are not in themselves breaches of the agreement, for example, the debtor’s insolvency. …

4.113 … Typically these are not confined to the debtor’s failure to perform its obligations but extend to non-default events reflecting the allocation of risk, whether internal (such as the debtor’s insolvency) or external (such as adverse changes in taxation law). …

3.113 … That Article permits the parties to agree on what constitutes a default. …

4.85 … It would, for example, be open to them to say that the lessor under a leasing agreement can terminate it for any delay in payment by the lessee or upon the occurrence of an event which may not in itself be a breach of the agreement at all, such as the transfer of control of the lessee company to a third party or the advent of the lessee’s insolvency. This is a further example of the principle of party autonomy underlying the Convention. …

5.80 … That Article permits the parties to agree on what constitutes a default. …

**Section 4.2.1**

2.103 Under Article 8(1) of the Convention a chargee may 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.

Alternatively, the chargee may, with or without the agreement of the chargor, apply for a court order authorising or directing any of the above. …

2.106 The Aircraft Protocol adds two further remedies to those set out in Chapter III, namely de-registration and export and physical transfer (see paragraphs 3.31 *et seq*.). …

2.121 In the case of a conditional sale agreement or leasing agreement, the only remedies designated (by Article 10) are termination of the agreement, possession or control of the object or a court order authorising or directing either of the above. …

**Section 4.2.2**

2.122. Article 12 provides that additional remedies permitted by the applicable law, including any remedies agreed by the parties, may be exercised to the extent that they are in conformity with the mandatory provisions listed in Article 15. By the applicable law is meant the domestic rules (i.e. excluding conflict of laws rules) of the law applicable by virtue of the rules of private international law of the forum State (Article 5(3)). Depending on those rules, substantive remedies will be governed either by the *lex causae* (typically the law governing the contract between the parties) or by the *lex fori*. In the case of purely procedural remedies the applicable law is always that of the *lex fori*.

4.115 … Where the applicable law confers additional remedies or permits the additional remedies agreed by the parties, then those remedies may be exercised in addition to the Convention remedies to the extent that they are not inconsistent with the provisions of Articles 8(3)-(6), 9(3) and (4), 13(2) and 14, which are mandatory (Article 15). Such remedies would typically include the right to payment of accrued sums, acceleration of liability for future sums, damages for breach of the agreement (including liquidated damages, so far as these are recoverable under the applicable law), interest, and specific performance of non-monetary obligations. …

2.106 … Under Article 12 the parties are free to agree on remedies additional to those specified in the above provisions so far as these are permitted by the applicable law and are not inconsistent with the mandatory provisions of Chapter III (see paragraphs 2.122 and 4.115).

2.123 It is therefore open to the parties to agree on cumulation of Convention remedies and those additional remedies provided or permitted by the applicable law which are not inconsistent with the mandatory provisions of the Convention. …

4.128 This Article embodies the general principle of party autonomy. The parties are free to exclude or vary any of the provisions of this Chapter except for those listed in the present Article as mandatory, namely those relating to:

…

(g) exercise of any additional remedies agreed by the parties under Article 12 to the extent that they are related to any of the remedies listed above; …

2.124 Article 12 is not confined to substantive remedies but extends to procedural remedies given by the *lex fori*, for example, the grant of an injunction or an order for specific performance, an interim payment or the preservation of property, and such procedural remedies conferred by the agreement of the parties as are permitted by the *lex fori*.

2.125 Separate from the additional remedies referred to in Article 12 are forms of interim relief under the *lex fori* the application of which is preserved by Article 13(4) (see paragraph 2.140).

**Section 4.3.1**

2.107 … under Article 8(3) any remedies set out in Articles 8(1) and 13 must be exercised in a commercially reasonable manner (see paragraph 2.112), a provision extended by all the Protocols to cover all remedies (the relevant provision in the Aircraft Protocol is Article IX(3)). …

2.123 … However, the requirement of commercial reasonableness imposed by Article 8(3) is a mandatory provision the effect of which the parties cannot derogate from or vary. This applies also to additional remedies agreed by the parties under Article 12 to the extent to which these are linked to the non-derogable remedies under Article 15, …

3.48(1) *…* Article IX(3) replaces Article 8(3) of the Convention with a more general duty of commercial reasonableness. This cannot be excluded by agreement (Article IV(3)). The duty imposed on a chargee to exercise remedies in a commercially reasonable manner is extended to cover all remedies in relation to aircraft objects …

5.52 Article 8(3) of the Convention requires that the extra-judicial remedies given by Article 8(1) be exercised in a commercially reasonable manner. This provision is mandatory and the parties cannot derogate from it by agreement (Article IV(3)). Article IX(3) disapplies Article 8(3) in relation to aircraft objects and instead extends the requirement of commercial reasonableness to embrace all remedies given by the Convention. This provision is also mandatory and cannot be excluded by agreement (Article IV(3)).

**Section 4.4.1**

4.343 Paragraph 2 of this Article requires a Contracting State to make a declaration whether remedies which under the Convention would be available without leave of the court (for example, possession and sale) are to be exercisable only with leave of the court or whether on the other hand such remedies may be exercised without such leave. … A declaration may provide that some specified remedies are to be exercisable only with leave of the court while others may be exercisable without leave. A declaration under Article 54(2) is mandatory. … It is for each Contracting State to decide which of the Convention remedies falling within Article 54(2) should be covered by its declaration. …

2.334 … The second is the declaration under Article 54(2) as to whether remedies may be exercised only with leave of the court, but such a declaration is required to be made at the time of ratification of the Protocol and as a condition of acceptance of the instrument of ratification of the Protocol and cannot be made before or after that time.

4.86 … Article 54(2) requires a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. …

4.344 A declaration under Article 54(1) may be made, and a declaration under Article 54(2) must be made, at the time of ratification, etc., but if a declaration under Article 54(1) is not made then it may be made subsequently. …

**Section 4.4.2**

2.107 … Secondly, any remedy provided by the Convention is to be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised (Article 14). So the remedy of possession of an aircraft object will generally have to be exercised in conformity with the procedural law of the place where the object is located (see paragraph 2.144). However, where the law of that place would otherwise permit a Convention remedy to be exercised without leave of the court it is open to the Contracting State in question to state in its declaration under Article 54(2) – a declaration which is required to be made at the time of ratification of the Protocol – that the remedy is to be exercisable only with leave of the court (Article 54). Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

2.108 A Contracting State has complete freedom as to the Convention remedies within Article 54(2) that are to be covered by its declaration, so that this may relate to any one or more of the Convention remedies, or all of them, so far as falling within Article 54(2). The phrase “in conformity with the procedure prescribed ...” does not allow a bar on self-help remedies to be invoked if the State in question has made no declaration requiring leave of the court. …

2.109 A declaration under Article 54(2) can distinguish between remedies by providing, for example, that the exercise of the remedy of possession requires leave of the court while the remedy of termination of a title reservation or leasing agreement does not. …

4.343 … It is for each Contracting State to decide which of the Convention remedies falling within Article 54(2) should be covered by its declaration. …

4.86 In principle, all the remedies listed in Articles 8 and 9 which do not refer to the court may be exercised by extra-judicial means or by recourse to the court, as the creditor chooses. But to accommodate the concerns of those States where extra-judicial remedies are considered objectionable, Article 54(2) requires a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. …

4.109 … However, leave of the court is required in order to exercise these or other Convention remedies where the Contracting State in which the remedies are to be exercised has made a declaration to that effect under Article 54(2). …

4.111 The remedies given by this Article may be exercised without a court order except so far as stated otherwise in a declaration made by a Contracting State under Article 54(2).

4.343 Paragraph 2 of this Article requires a Contracting State to make a declaration whether remedies which under the Convention would be available without leave of the court (for example, possession and sale) are to be exercisable only with leave of the court or whether on the other hand such remedies may be exercised without such leave. … A declaration may provide that some specified remedies are to be exercisable only with leave of the court while others may be exercisable without leave. …

**Section 4.4.3**

2.107. … Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

2.108. … The phrase “in conformity with the procedure prescribed ...” does not allow a bar on self-help remedies to be invoked if the State in question has made no declaration requiring leave of the court. …

2.109. A declaration under Article 54(2) can distinguish between remedies by providing, for example, that the exercise of the remedy of possession requires leave of the court while the remedy of termination of a title reservation or leasing agreement does not. …

4.343. … The declaration has priority over any inconsistent rules of procedure applicable under Article 14.

2.144 … However, Article 14 takes effect subject to Article 54(2), so that if a Contracting State has made a declaration under Article 54(2) stating that leave of the court is not required for the exercise of remedies which under the Convention do not require an application to the court this overrides any procedural requirement for leave that would otherwise apply. …

4.124. Any remedy provided by Chapter III is to be exercised in accordance with the procedural law of the place of exercise. This Article is concerned with procedure, not with substantive law, and therefore does not affect the exercise of extra-judicial remedies under Article 8 except in a Contracting State which has made a declaration under Article 54(2) requiring leave of the court, in which case the remedy may be exercised only with such leave … Conversely, where a State makes a declaration under Article 54(2) that remedies are to be available without leave of the court, then the creditor cannot be required to institute court proceedings to enforce a remedy. …

4.125. *Illustration 17*

Under the pre-Convention law of State X, a creditor may not take possession of an aircraft or any part thereof without first obtaining a court order and then, if possession is ordered, obtaining administrative approval of the airport authority. Under Article 54(2), State X declares that leave of the court is not required. Thus, the creditor merely needs the administrative approval of the airport authority, which may not deny the same on grounds of there being no court order.

**Section 4.4.4**

2.108 … But non-Convention remedies, such as remedies under the applicable law preserved by Articles 12 and 13(4), fall outside the scope of Article 54(2) and their exercise is subject to any restrictions imposed by the law of the place of enforcement.

4.343 … Article 54(2) does not apply to additional remedies agreed upon by the parties under Article 12. The exercise of these will be governed by the law of the place where their enforcement is sought and no declaration either need or can be made under Article 54(2) in relation to them. …

**Section 4.4.5**

2.107 … In the case of insolvency proceedings in a Contracting State which has made a declaration under Article 54(2) requiring leave of the court for the exercise of remedies and has then gone on to opt for Alternative A of Article XI of the Aircraft Protocol, the Contracting State must be taken to have intended to exclude the creditor’s remedies under Alternative A from the scope of its declaration under Article 54(2). …

4.124 … In relation to aircraft objects, where a Contracting State has made a declaration adopting Alternative A of Article XI of the Aircraft Protocol or the equivalent provisions of one of the other Protocols the Contracting State must be taken to have intended to exclude the creditor's remedies under Alternative A from the scope of any declaration by the State under Article 54(2) requiring leave of the court. …

**Section 4.5.1**

2.107 … Secondly, any remedy provided by the Convention is to be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised (Article 14). … However, where the law of that place would otherwise permit a Convention remedy to be exercised without leave of the court it is open to the Contracting State in question to state in its declaration under Article 54(2) – a declaration which is required to be made at the time of ratification of the Protocol – that the remedy is to be exercisable only with leave of the court (Article 54). Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

2.144 Under Article 14 any remedy provided by the Convention, including a remedy under Article 13, is to be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised. So for the purposes of the Convention the exercise of remedies is a procedural matter to be governed by the procedural rules of the *lex fori*, not by those of the *lex causae*. … However, Article 14 takes effect subject to Article 54(2), so that if a Contracting State has made a declaration under Article 54(2) stating that leave of the court is not required for the exercise of remedies which under the Convention do not require an application to the court this overrides any procedural requirement for leave that would otherwise apply. …

4.124 Any remedy provided by Chapter III is to be exercised in accordance with the procedural law of the place of exercise. This Article is concerned with procedure, not with substantive law, and therefore does not affect the exercise of extra-judicial remedies under Article 8 except in a Contracting State which has made a declaration under Article 54(2) requiring leave of the court, in which case the remedy may be exercised only with such leave (see Illustration 18, paragraph 4.126). Conversely, where a State makes a declaration under Article 54(2) that remedies are to be available without leave of the court, then the creditor cannot be required to institute court proceedings to enforce a remedy. …

**Section 4.5.2**

2.145 In a Contracting State the procedural law to be applied in accordance with Article 14 must be applied in a manner that is compatible with the substantive provisions of the Convention. For example, procedural law must not be utilised to undermine the substantive remedies given by Articles 8 to 10 of the Convention. …

2.108. … But non-Convention remedies, such as remedies under the applicable law preserved by Articles 12 and 13(4), fall outside the scope of Article 54(2) and their exercise is subject to any restrictions imposed by the law of the place of enforcement.

**Section 4.5.3**

2.107 … Given that Articles 8(2) and 9(2) confer on the creditor a right to apply to the court for an appropriate default remedy even where self-help would be available, there is an obligation on the forum to ensure that its rules of procedure make any such remedy available.

2.26 Another principle is that parties on whom a right is conferred should have a remedy for its enforcement. … It is the duty of a Contracting State to ensure that for the infringement of any right created by the Protocol an adequate remedy is available, whether it be damages, the payment of liquidated damages or the grant of an injunction …

2.145 In a Contracting State the procedural law to be applied in accordance with Article 14 must be applied in a manner that is compatible with the substantive provisions of the Convention. For example, procedural law must not be utilised to undermine the substantive remedies given by Articles 8 to 10 of the Convention. …

**Section 4.6.1**

2.112 … Commercial reasonableness is based on an autonomous Convention interpretation, not on the concept of commercial reasonableness in any particular national legal system, so that in a Contracting State the exercise of a remedy which meets the Convention test of reasonableness cannot be struck down because of a more stringent test under national law. …

**Section 4.6.2**

2.112 … It is the manner of exercise of the remedy that is required to be reasonable, not the outcome from the viewpoint of the debtor, and the creditor is entitled to have regard to its own interests, for example, as to the time and method of disposal, in exercising the remedy of sale. However, the test is an objective one - whether the manner of exercise would be considered reasonable by the neutral observer familiar with the usages of the market - not whether it is considered reasonable in the mind of the creditor. …

4.93 … Commercial reasonableness is to be determined objectively on the basis of the manner of enforcement, not the outcome, and the creditor is entitled to give priority to its own interests even if the result is to prejudice the debtor.

**Section 4.6.3**

5.53 Under both Articles 8(3) of the Convention and IX(3) of the Protocol a remedy is deemed to be exercised in a commercially reasonable manner where exercised in conformity with a provision of the agreement except where such a provision is “manifestly unreasonable”. This wording embodies a strong presumption in favour of the reasonableness of a contractual provision as to the mode of exercise of a remedy and is designed to encourage reliance on contract wording, particularly where the wording is customary in international aircraft financing and leasing contracts.

2.107 … Under both provisions a remedy is 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. …

3.48(1) *Exclusion of Article 8(3)*

Article IX(3) replaces Article 8(3) of the Convention with a more general duty of commercial reasonableness. This cannot be excluded by agreement (Article IV(3)). The duty imposed on a chargee to exercise remedies in a commercially reasonable manner is extended to cover all remedies in relation to aircraft objects and thus to embrace not only remedies of the creditor under the security agreement but those conferred on the assignee of associated rights qua transferee of the international interest under Article 34 but not remedies in relation to the associated rights themselves. But a remedy given in relation to an aircraft object is deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable (Article IX(3)). …

3.48(2) A chargee giving ten or more working days’ prior written notice to interested parties of a proposed sale or lease is deemed to satisfy the requirement of “reasonable prior notice” specified in Article 8(4) (Article IX(4)). While Article IX(3) extends the requirement of commercial reasonableness to the exercise of remedies under Articles 9, 10 and 12 of the Convention and, by extension, Article IX of the Protocol (see Article II(1)), some of these provisions will rarely be caught by the requirement. It can hardly apply to the remedies given by Article 9, which require either the consent of the debtor or a court order and incorporate various provisions for the protection of the debtor but otherwise do not specify a mode of proceeding to which the requirement of reasonableness could apply. Similarly the requirement will not usually apply to remedies under Article 10, because the creditor is in principle entitled to terminate the agreement for default and to repossess, sell or do what he likes with his own property. Article IX(3) does not apply to the additional remedies referred to in Article 13 of the Convention as remedies given by the applicable law or the agreement since these are not remedies “given by the Convention”.

4.94 The phrase “manifestly unreasonable” is a signal to courts that they should not lightly disturb the bargain made by the parties. Established commercial practice is relevant to whether a provision in a security agreement is “manifestly unreasonable”. A provision that is in line with accepted international practice will normally be regarded as not manifestly unreasonable.

4.120 … but by the terms of Article 8(3) itself the exercise of a remedy in conformity with a provision of the security agreement is deemed to be exercised in a commercially reasonable manner except where such a provision is manifestly unreasonable. The phrase “manifestly unreasonable” is a signal to courts to be cautious before intervening to disturb the bargain made by the parties. …

**Section 4.6.4**

3.48(1) … The general requirement of commercial reasonableness gives way to specific provisions restricting interference with the exercise of creditors’ remedies. So the debtor’s duty to give possession as prescribed by paragraph 2 of Alternative A of Article XI is not qualified by any requirement of commercial reasonableness, nor is the waiting period prescribed by a Contracting State’s declaration under Article XI(3) (see paragraph 3.139).

**Section 4.7.1.1**

3.109. Article XVI of the Aircraft Protocol establishes a quiet possession regime which is in principle dependent on registration of the creditor’s international interest before registration of a chargee’s interest and follows the priority rule in Article 29(4) (see paragraphs 2.215 *et seq*.). Under Article XVI the right to quiet possession and use (“quiet possession”) is conferred on a debtor who is a conditional buyer or lessee vis-à-vis its creditor, the conditional seller or lessor, and vis-à-vis the holder of another interest in the object. In all cases the right of quiet possession depends on the terms of the agreement between debtor and creditor. … Subject to the terms of the agreement the debtor is given the right to quiet possession as against:

(a) its creditor and the holder of any interest from which the debtor takes free under Article 29(4) of the Convention (see paragraph 2.215) and, in the capacity of buyer, Article XIV(1) of the Aircraft Protocol (see paragraph 3.99); and

(b) the holder of any interest to which the debtor’s right or interest would be subject under the above provisions, to the extent that such holder has so agreed. …

3.110. The effect of Article XVI is that (a) where the debtor who is a conditional buyer or lessee has priority over a chargee because the debtor’s creditor (conditional seller or lessor) registered its international interest before the creditor registered its charge that priority, unless and to the extent that the debtor has otherwise agreed, will carry with it a right of quiet possession as against the chargee (thus making explicit what is anyway implicit in the priority rule itself), and (b) the debtor will also have a right of quiet possession as against a chargee to whose interest the debtor’s right of quiet possession would otherwise be subject, to the extent that the chargee has so agreed. Such an agreement is in effect a subordination corresponding to the subordination provided for in Article 29(5) and qualifying the priority rule in Article 29(4). … Article XVI extends the protection of the conditional buyer and lessee to the debtor “in the capacity of buyer”, that is, an outright buyer given priority under Article XIV(1). Such a buyer is technically not a debtor at all but for ease of drafting is treated as a debtor for the purpose of Article XVI.

2.215. … Where Article 29(4) does apply its implicit effect is to give the debtor a right of quiet possession as against the chargee as well as the creditor, a point made explicit in Article XVI of the Aircraft Protocol. …

2.216 Article 29(4) also protects a sub-lessee where its sub-lessor’s international interest was registered before that of the head lessor. This follows from the fact that the sub-lessor is considered to have a power of disposal (see paragraph 2.82) and this enables it to constitute an international interest by leasing to the sub-lessee, who thus becomes entitled to quiet possession against the head lessor even in cases where its sub-lessor has no such entitlement (see paragraph 2.221). …

4.198 In this first situation a conditional seller or lessor charges its interest to its creditor under a security agreement and, following default, the chargee seeks to recover the object from the conditional buyer or lessee in possession. The rule here is that the conditional buyer or lessee is protected if the interest of its conditional seller or lessor was registered before the registration of the charge but is not protected if the charge was registered first. This rule, which is in substance a rule of priority as between chargee and conditional buyer or lessee, is designed to protect the integrity of the registration system. …

4.212 *Illustration 29*

O leases an airframe to L, who in breach of the lease grants a sub-lease to SL and then registers its international interest. Subsequently O registers its interest. O’s international interest under the lease has priority over the international interest of L under the sub-lease (since L cannot supplant its own lessor) but holds its interest subject to the lease to L, which may, however, be terminable because of L’s wrongful behaviour. Nevertheless, O cannot exercise default remedies against SL, who is protected by Article 29(4). For the effect of termination of the head lease on the sub-lease see paragraph 2.175.

4.213 *Illustration 30*

O leases an airframe to L, registers its international interest and then charges the airframe to C. C takes its charge subject to the lease to L, whose lessor, O, registered first and who is thus protected under Article 29(4)(b). The position would be otherwise if C had registered first, whether because O had not then granted the lease to L and therefore had no registrable interest or because it failed to register before C.

5.80 Article XVI establishes a quiet possession regime which is based on transparency through use of the International Registry and is directly linked to the priority rule in Article 29(4); … Assuming no such default, a debtor is entitled to quiet possession, on the terms of the agreement, as against (a) its creditor, (b) the holder of any interest from which the debtor takes free under Article 29(4)(a) of the Convention but only to the extent, if any, that such holder has agreed (see paragraph 2.215 and 3.110), and (c) the holder of any interest to which the debtor would otherwise be subordinated where the holder of that interest agrees to the debtor’s quiet possession (see Illustration 73, paragraph 5.84) and (d) any interest from which, in its capacity of buyer, it takes free under Article XIV(1) of the Aircraft Protocol (see paragraphs 3.109 *et seq*.). Article XVI thus extends the protection of the conditional buyer and lessee to the debtor “in the capacity of buyer”, that is, an outright buyer given priority under Article XIV(1). Such a buyer is technically not a debtor at all but for ease of drafting is treated as a debtor for the purpose of Article XVI.

5.81. Conversely, a debtor is not entitled to quiet possession as against the holder of any interest to which the debtor takes subject. …

5.85 *Illustration 74*

The facts are the same as in Illustration 73 except that HL did not consent to the sub-lease, there was no assignment to C, and L defaulted in its obligations under the head lease. HL is entitled to recover possession of the airframe from SL, who under Article XVI(1)(b) is not entitled to quiet possession vis-à-vis HL.

3.113 Article XVI applies only where a debtor is not in default within the meaning of Article 11 of the Convention. … Assuming no such default, Article XVI entitles the debtor to quiet possession, in accordance with the agreement, as against (a) its creditor, and (b) the holder of any interest from which the debtor takes free under Article 29(4) of the Convention …

5.80 Article XVI establishes a quiet possession regime which is based on transparency through use of the International Registry and is directly linked to the priority rule in Article 29(4); … It applies only where a debtor is not in default within the meaning of Article 11 of the Convention. …

3.115 The right of quiet possession of a conditional buyer or lessee as against a chargee where the interest of the conditional seller or lessor was registered before registration of the charge is brought to an end by subsequent discharge of the former registration …

4.201 Since the right of quiet possession of the conditional buyer or lessee vis-à-vis the chargee is dependent on the fact that the conditional seller or lessor registered its international interest before the chargee registered its own international interest, discharge of the registration of the former international interest extinguishes the right of quiet possession as against the chargee (though not as against the conditional seller or lessor), in line with the principle that priorities and other rights against third parties derived from a registration come to an end when the registration is discharged. This rule is necessary to protect the integrity of the registration system.

**Section 4.7.1.2**

None

**Section 4.7.1.3**

3.112 The Protocol does not define quiet possession or state what kinds of act constitute an infringement of the right of quiet possession, but the concept of quiet possession denotes freedom from interference with the debtor’s possession, use or enjoyment of the aircraft object. Accordingly any such act of interference constitutes a breach of the right to quiet possession, whether it takes the form of physical seizure, disablement of the aircraft object, restriction of access to it or otherwise. …

3.116 Under Article XVI(2) nothing in the Convention or the Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to the aircraft object. So if the agreement makes the creditor’s right to possession after default dependent on the fulfilment of certain conditions, for example, failure to comply with a default notice requiring a breach to be remedied within a specified time, and the creditor repossesses the aircraft object when those conditions have not been fulfilled, the fact that the creditor would otherwise have been entitled to possession under the Convention does not preclude a claim by the debtor for breach of its right to possession under the applicable law.

5.82 Article XVI does not state which acts constitute a breach of the debtor’s right to quiet possession once it is in possession. In the relations between the debtor and the creditor this is left to the agreement between them. Questions not dealt with by the agreement or arising in the relationship between the debtor and third parties are left to the applicable law. Seizure or attempted seizure of the aircraft object by the creditor (in the absence of default) or by a lessor’s chargee under a charge registered after registration of the lessor’s interest would clearly be an infringement of the right to quiet possession. So too would seizure, absent a default, by a third party at the request or by the authority of the creditor or chargee, or arrest of the object by the third party for sums due to it from the creditor, or a taking of the object in execution of a judgment obtained by the third party against the creditor or chargee.

**Section 4.7.1.4**

5.83 Quite independently of Article XVI, the debtor may have remedies against the creditor for any interference with the debtor’s possession which is a breach of the agreement under the applicable law.

3.116 Under Article XVI(2) nothing in the Convention or the Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to the aircraft object. …

4.86 … Moreover, the Convention does not affect rules of criminal law or tort law in national legal systems. …

**Section 4.7.2.1**

2.119 … Under Article 9(4), which is mandatory, at any time before sale or the making of a vesting order under Article 9(2) the debtor may discharge the security interest by paying the secured amount in full, subject to any lease granted by the chargee under Article 8(1) or ordered by the court under Article 8(2). …

4.101. The chargor continues to have a right to discharge the security interest by paying the amount of the secured debt in full before the chargee has exercised its power of sale. While paragraph 3 of the Article refers only to payment of the amount secured rather than discharge of the secured obligations and therefore does not in terms cover non-monetary obligations, the position ultimately as regards breaches of these is that the debtor must either cure them or pay compensation, so that in almost every case the secured obligations are discharged by payment. …

**Section 4.7.3.1**

2.119 … Where, after such default, the payment is made by an interested person other than the debtor, that person is subrogated to the rights of the chargee (Article 9(4)) and thus acquires the security interest automatically and without any need for an assignment. Only one who is an “interested person” within Article 1(m)(ii) or (iii) is entitled to make a payment attracting rights of subrogation. …

4.102. An interested person other than the debtor who discharges the debtor’s obligation in full is subrogated to the rights of the chargee. This reflects a rule common in national legal systems and one which is preserved by Article 38 (see Illustration 14, paragraph 4.107). The acquisition of an international interest by legal or contractual subrogation is registrable under Article 16(1)(c) if it arises “under the applicable law.” Normally in an international Convention references to the applicable law are used to denote a law other than the Convention itself. But in this particular case there seems no reason why, in a Contracting State, the right of subrogation given by Article 9(4) should not be treated as a right given by the applicable law so as to enable the acquisition of the chargee’s interest by an interested person paying off the debt to be registered under Article 16(1)(c). …

4.107 *Illustration 14*

C advances USD 30 million to D on the security of an airframe and a guarantee of the debt by S. The debt is repayable by five instalments of USD 6 million each and on default in payment of any one instalment the full outstanding balance becomes immediately payable. D defaults in payment of the second instalment and C calls upon S as surety to pay USD 24 million together with outstanding interest and charges. Upon making this payment S becomes subrogated to C’s rights to the benefit of the charge to secure the amount it has paid under its guarantee and can register its acquisition of C’s international interest by subrogation as provided by Article 16(1)(c).

**Section 4.8.1**

2.100 … Chapter III of the Convention provides a chargee with a set of basic remedies in the event of the debtor’s default. For this purpose it is not necessary for the international interest to have been registered, since registration is required only to give notice of the international interest to third parties and to protect the priority of the international interest. It is, however, necessary that the international interest shall have been validly constituted in accordance with Article 7, for the remedies are available only to a Convention creditor as defined in Article 1(i). …

**Section 4.8.2**

2.111 An enforcing creditor must respect priorities. …

2.117 … Accordingly if the senior chargee has become or becomes entitled to exercise default remedies, its enforcement rights prevail over those of the junior chargee, who will have to give way and, if it has already taken possession, to give up possession to the senior chargee. …

4.88 … Where the object is in the hands of the debtor the creditor may take possession of the object, let it out on lease and collect the rentals. But these remedies are exercisable not only against the debtor but also against a conditional buyer or lessee from the debtor whose interest is subordinate to that of the creditor because the creditor’s international interest was registered before the debtor registered its own international interest (see Article 29(4)(a)). …

**Section 4.9.1**

2.63 … However, whether an interest falls within the Convention at all is to be determined by the Convention itself. So in the first instance it is necessary to determine if the interest invoked falls within the Convention’s definition of a security interest or the interest of a conditional seller or lessor under a title retention or leasing agreement. …

4.56 In order to fall within the Convention the interest must fall within one of the three categories specified in Article 2(2). That is to be determined by applying the Convention’s own definitions (Article 1(ii), (f) and (q)) and its autonomous rules of interpretation of these, not by reference to national law (see Article 5(1) and paragraph 2.63). Hence the initial characterisation is prescribed by the Convention itself. But this is purely for the purpose of determining whether the interest is a Convention interest at all. …

**Section 4.9.2**

2.63 … So in the first instance it is necessary to determine if the interest invoked falls within the Convention’s definition of a security interest or the interest of a conditional seller or lessor under a title retention or leasing agreement. If it does, then it is for the applicable law to decide whether the interest is to be recharacterised for the purpose of subsequent provisions of the Convention. …

2.64 Characterisation is relevant primarily in relation to default remedies, which differ according to whether the agreement is a security agreement on the one hand or a title reservation or leasing agreement on the other. …

2.100 … It should, however, be borne in mind that an agreement which is a title reservation agreement or a leasing agreement within the definitions given by Article 1 of the Convention may be recharacterised by the applicable law as a security agreement, in which case it is Articles 8 and 9, not Article 10, which will apply.

4.56 … Once it is established that the interest does fall within one of the three categories specified in Article 2(2), its characterisation for the purposes of subsequent provisions of the Convention, and in particular those of Chapter III relating to default remedies, is determined by the applicable law. So for those purposes the Convention does not determine whether an agreement is a security agreement, a title reservation agreement or a leasing agreement. …

4.58 In Illustration 4 (paragraph 4.60) the title reservation agreement is also a security agreement under New York law. If New York law applies, the effect of Article 2(2) is that the agreement is to be treated only as a security agreement and not also as a title reservation agreement for the purposes of the Convention. In other words, once category (a) of Article 2(2) is found to be applicable, neither (b) nor (c) can be applied. So a New York court would not apply Article 10 and a French court would not apply Article 8 or 9.

4.60 *Illustration 4*

S in Dublin agrees to sell an aircraft object to B in New York under a title reservation agreement to which the Convention applies. If a New York court were to apply New York law to characterise the agreement it would treat it as a security agreement. If a Dublin court were to apply Irish law to the characterisation issue it would treat the agreement as a title reservation agreement. Accordingly if a question were to arise under Chapter III of the Convention relating to default remedies, then on the assumption that each court was applying its own law a New York court would apply Article 8 or 9, as appropriate, while an Irish court would apply Article 10.

4.87 … It should, however, be borne in mind that in a number of jurisdictions (see paragraph 2.63) conditional sale agreements and certain types of lease are treated as security agreements, so that in proceedings involving the law of any such jurisdiction the court will apply Articles 8 and 9, not Article 10.

**Section 4.10.1**

2.327 … Secondly, where two or more Contracting States have power to make a declaration, which Contracting State’s declaration is relevant (“the relevant declaration”) in any particular case and for that purpose what is the relevant time for answering this question?

**Section 4.10.2**

None

**Section 4.10.3**

2.129 By Article 55 a Contracting State may by declaration exclude Article 13, wholly or in part …

5.58 Article X applies in proceedings in a Contracting State only if and to the extent that the Contracting State has made an affirmative declaration to that effect and as regards Article X(6) is applicable only in relation to a declaration made by the Contracting State which is the State of Registry of the aircraft as defined by Article I(2)(p) of the Protocol. … A Contracting State which makes a declaration under Article X is required by Article XXX(2) to specify a binding time-period for the purpose of paragraph 2 of the present Article within which the speedy relief sought is to be given. …

**Section 4.10.4**

2.327 … Article 14 provides that subject to Article 54(2) any remedy provided by the Convention is to be exercised in accordance with the procedure prescribed by the law of the place where the remedy is to be exercised. The Convention remedies - possession, control or management of the object under Article 8 or 10, vesting of title under Article 9 and advance relief under Article 13(1)(a)-(c) - are all object-related remedies and accordingly, in the absence of party choice of jurisdiction under Article 42 or Article 43(1), will be exercisable only in accordance with the procedural rules of the Contracting State where the object is located and where the courts will have control (see Article 43(1)). This is true also of any additional forms of interim relief sought under Article 13(4) so far as these are in rem remedies, whereas the exercise of *in personam* remedies such as payment will normally have to be given by the applicable law of a Contracting State and conform to the procedural rules of the place where the debtor is situated (see paragraph 2.101), though if the parties have chosen another forum under Article 43(1) where such remedies are exercisable it will be that forum. By contrast to remedies under Article 13(1)(a)-(c), the remedy of lease or management of the object under Article 13(1)(d) is conceived as being *in personam*, the grant of a lease (as opposed to delivery under the lease) being contractual in nature, so that in the absence of party choice of jurisdiction under Article 42 or Article 43(2)(b) it is the courts of the Contracting State on the territory of which the debtor is situated that have jurisdiction, though any order must provide that it is to be enforceable only in the territory of that Contracting State. …

4.343 … The relevant declaration is that of the Contracting State in which the remedy is sought to be exercised (Article 14). …

**Section 4.11.1**

2.117 Any sum collected or received by the chargee as a result of exercising any of the above remedies is to be applied towards discharge of the amount of the secured obligations (Article 8(5)). Where, after discharge of that amount and reasonable costs incurred in exercise of the remedy, there is a surplus then unless otherwise ordered by the court the chargee must distribute the surplus among holders of subsequently ranking interests which have been registered, or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor (Article 8(6)). …

4.96 To underline the accessory nature of those international interests which are security interests, and to prevent the chargee receiving a windfall from the exercise of the remedies given by Article 8, any sum collected or received by the chargee in exercise of its remedies goes towards discharge of the amount of the secured obligations and any surplus goes to the holder of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, with any remaining balance being paid to the chargor (Article 8(5) and (6)). …

4.97. Where there are successive security interests, the remedies can be exercised not only by the senior chargee but by any one of the chargees. A sale by the senior chargee overrides junior security interests, which then attach to the proceeds. By contrast a sale by a junior chargee takes effect subject to a senior registered security interest, unless this is released or the senior creditor is paid in full. However, the junior creditor cannot contract to sell the charged object free from the senior security interest without first obtaining the consent of the senior chargee and, where so required, paying the senior charge the amount necessary to discharge the senior charge.

4.98. *Illustration 10*

Debtor charges an airframe successively to C1, C2, C3 and C4. The charges to C1, C2 and C4 are registered in the order in which they were created, while C3 did not register its charge but gave notice of it to C1, who also has notice of a non-consensual right or interest in favour of C5 under Article 39. Debtor having defaulted, C1 gives notice to all the other creditors referred to above of its intention to sell the airframe and then sells it and collects the proceeds. These must, so far as sufficient, be distributed in the following order: C5, C1, C4, C3, Debtor. If the sale had been effected by C2 the purchaser would obtain a title overriding the interests of C3 and C4 but subject to the interests of C5 and C1. There is one qualification. The non-consensual right or interest held by C5 will only be recognised and take priority if it arises under the law of the Contracting State making the declaration under Article 39(1). It will not be entitled to recognition in another Contracting State unless that State’s conflict of laws rules lead to the application of the law of the declaring State.

**Section 4.12.1**

5.53 Under both Articles 8(3) of the Convention and IX(3) of the Protocol a remedy is deemed to be exercised in a commercially reasonable manner where exercised in conformity with a provision of the agreement except where such a provision is “manifestly unreasonable”. …

3.48(1)  *…*  But a remedy given in relation to an aircraft object is deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable (Article IX(3)). …

3.48(2) A chargee giving ten or more working days’ prior written notice to interested parties of a proposed sale or lease is deemed to satisfy the requirement of “reasonable prior notice” specified in Article 8(4) (Article IX(4)). While Article IX(3) extends the requirement of commercial reasonableness to the exercise of remedies under Articles 9, 10 and 12 of the Convention and, by extension, Article IX of the Protocol (see Article II(1)), some of these provisions will rarely be caught by the requirement. It can hardly apply to the remedies given by Article 9, which require either the consent of the debtor or a court order and incorporate various provisions for the protection of the debtor but otherwise do not specify a mode of proceeding to which the requirement of reasonableness could apply. Similarly the requirement will not usually apply to remedies under Article 10, because the creditor is in principle entitled to terminate the agreement for default and to repossess, sell or do what he likes with his own property. Article IX(3) does not apply to the additional remedies referred to in Article 13 of the Convention as remedies given by the applicable law or the agreement since these are not remedies “given by the Convention”.

4.94 The phrase “manifestly unreasonable” is a signal to courts that they should not lightly disturb the bargain made by the parties. Established commercial practice is relevant to whether a provision in a security agreement is “manifestly unreasonable”. A provision that is in line with accepted international practice will normally be regarded as not manifestly unreasonable.

4.120 … The phrase “manifestly unreasonable” is a signal to courts to be cautious before intervening to disturb the bargain made by the parties. …

**Section 4.12.2**

2.122 Article 12 provides that additional remedies permitted by the applicable law, including any remedies agreed by the parties, may be exercised to the extent that they are in conformity with the mandatory provisions listed in Article 15. …

4.115 … Where the applicable law confers additional remedies or permits the additional remedies agreed by the parties, then those remedies may be exercised in addition to the Convention remedies to the extent that they are not inconsistent with the provisions of Articles 8(3)-(6), 9(3) and (4), 13(2) and 14, which are mandatory (Article 15). …

2.124 Article 12 is not confined to substantive remedies but extends to procedural remedies given by the *lex fori*, for example, the grant of an injunction or an order for specific performance, an interim payment or the preservation of property, and such procedural remedies conferred by the agreement of the parties as are permitted by the *lex fori*.

**Section 4.12.3**

2.103 Under Article 8(1) of the Convention a chargee may 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.

…

2.105 Under Article 9 the chargor may also agree to the vesting of the object in the chargee in satisfaction of the secured obligations but such agreement is not effective unless given after default and it is also necessary to have agreement from other “interested persons” as defined by Article 1(m) of the Convention (Article 9(1)). …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. …

**Section 4.12.4**

2.105 Under Article 9 the chargor may also agree to the vesting of the object in the chargee in satisfaction of the secured obligations but such agreement is not effective unless given after default and it is also necessary to have agreement from other “interested persons” as defined by Article 1(m) of the Convention (Article 9(1)). …

4.99 This Article provides machinery by which the object given in security can be vested in the chargee in or towards satisfaction of the secured obligations. For the protection of the debtor and interested persons, particularly in cases where the object substantially exceeds the value of the secured debt, this remedy is exercisable only with the agreement of all the interested persons, including the debtor itself, or alternatively on an order of the court. Moreover (and this is in contrast to all other remedies under the Convention), such agreement cannot be made in advance, but only after the default has occurred. Though paragraph 2 is not expressly limited to cases where the debtor is in default, it provides for a court order as an alternative to the agreement of all parties under paragraph 1 after default has occurred, and paragraph 2 must likewise be taken to be conditioned on the debtor’s default.

**Section 4.12.5**

2.126 Article 13(1), which may be excluded wholly or in part by a Contracting State by a declaration under Article 55, provides the creditor who adduces evidence of default with the right to speedy relief, pending final determination of its claim,[[9]](#footnote-9) to the extent that the debtor has at any time so agreed. … Advance relief may be given by any court having jurisdiction under Article 43 of the Convention so far as that Article is not disapplied by a Contracting State’s declaration under Article 55 (see paragraphs 2.277 *et seq*). …

2.127 It will be noted that if so agreed by the parties some of the remedies listed in Article 13(1) are exercisable by the creditor upon the debtor’s default (as defined by Article 11) without the need to resort to the court at all for advance relief unless this is required by a Contracting State’s declaration under Article 54(2). These are most of the remedies listed in Article 8(1), namely the taking of possession or control, the grant of a lease (but not sale) and management of the object and the income therefrom. …

4.119 The remedies listed in Article 13(1) do not include sale of the object and application of the proceeds of sale. Such remedies are, however, available in relation to aircraft objects if at any time the debtor and the creditor specifically agree (Aircraft Protocol, Article X(3)). The court has no power to make a vesting order under Article 9 in proceedings for advance relief.

5.58 … Paragraph 3 adds sale and application of the proceeds of sale to the speedy relief that can be sought under Article 13(1) of the Convention, subject, however, to the requirement that the debtor and the creditor “specifically agree”, that is, agree expressly (though not necessarily in writing) to the court’s ordering a sale and application of the proceeds of sale on the creditor’s application. This agreement may be made at any time. …

**Section 4.12.6**

5.46 Paragraph 1 adds two remedies to those given in the Convention, namely de-registration of an aircraft and export and physical transfer of an aircraft object from the territory where it is situated. … These additional remedies, which are designed to reinforce the control exercisable by the creditor on the debtor’s default, are only available (a) to the extent agreed by the debtor (the agreement can be given at any time), (b) when the debtor is in default (as defined by Article 11) and (c) with the consent in writing of the holder of any registered interest ranking in priority to that of the creditor. This last condition is mandatory and cannot be excluded by agreement (Article IV(3)).

**Section 4.12.7**

2.95 The only provision of the Convention dealing with termination of the agreement is Article 10, which provides that in the event of default under a title reservation agreement or a leasing agreement the conditional seller or lessor may (a) subject to any declaration that may be made by a Contracting State under Article 54 (that is, a declaration that leave of the court is required) 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 any of these acts. The parties may agree in writing as to the events that constitute a default, otherwise it must be a default which substantially deprives the creditor of what it is entitled to expect under the agreement. These provisions relate only to termination for default and are not exhaustive. Termination may thus occur pursuant to the applicable law or under the terms of the agreement so far as in conformity with the applicable law. So a security interest is extinguished where all the obligations it secures have been discharged or the security has been realised and its proceeds distributed or has been released or become vested in the creditor or some other event has occurred which by the terms of the security agreement results in discharge of the security. The mere fact that at a particular time no money is owing to the creditor does not necessarily mean that the security interest is extinguished, for it may have been given to secure continuing obligations, for example sums due on an overdrawn current account. A title reservation or leasing agreement comes to an end not only by termination for default under Article 10 of the Convention but (in the case of a lease) by expiry, exercise of an option to purchase or as otherwise provided by the agreement or the applicable law, and a title reservation agreement also ends on completion of payments and acquisition of title by the buyer. The exercise of an option to purchase replaces the lessor’s international interest with a sale, and the same applies to completion of payments under a title reservation agreement. Sales are outside the Convention except in the case of aircraft objects and space assets, in respect of which the registration and priority provisions of the Convention have been extended to sales by the Aircraft Protocol and the Space Protocol. As will be seen (see paragraphs 2.96-2.97) termination of the agreement does not by itself extinguish the international interest or the creditor’s right to maintain its registration. …

2.105 … By contrast, the remedies of termination and repossession under Article 10 do not require the debtor’s agreement, though a Contracting State may make a declaration under Article 54 requiring leave of the court.

2.110. … Article 54(2) does not apply to additional remedies agreed upon by the parties under Article 12. …

**Section 5**

**Section 5.1.1**

2.95 The only provision of the Convention dealing with termination of the agreement is Article 10, which provides that in the event of default under a title reservation agreement or a leasing agreement the conditional seller or lessor may (a) subject to any declaration that may be made by a Contracting State under Article 54 (that is, a declaration that leave of the court is required) 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 any of these acts. … These provisions relate only to termination for default and are not exhaustive. …

2.121 In the case of a conditional sale agreement or leasing agreement, the only remedies designated (by Article 10) are termination of the agreement, possession or control of the object or a court order authorising or directing either of the above. …

4.112 Article 10 deals only with termination for default and does not preclude other events causing termination, for example, those provided by the agreement or the applicable law. …

2.105 … By contrast, the remedies of termination and repossession under Article 10 do not require the debtor’s agreement, though a Contracting State may make a declaration under Article 54 requiring leave of the court.

4.109 As owner of the object, the conditional seller or lessor needs only the remedies of termination of the agreement and possession. The creditor may apply to the court for the exercise of these remedies or may resort to self-help without recourse to the court and in the latter case the consent of the debtor is not required. …

2.121 … The conditional seller or lessor may not terminate the agreement or repossess an object without a court order where this is required by a declaration made by a Contracting State under Article 54(2) and the remedy is to be exercised in that State. …

2.144 … This applies not only to remedies relating to the object but also the remedy of termination under Article 10 in those jurisdictions (mostly civil law jurisdictions) in which leave of the court is required for termination of a contract and the requirement has not been dispensed with by a declaration under Article 54(2). …

4.109 … The creditor may apply to the court for the exercise of these remedies or may resort to self-help without recourse to the court and in the latter case the consent of the debtor is not required. In this respect also Article 10 differs from Articles 8 and 9. However, leave of the court is required in order to exercise these or other Convention remedies where the Contracting State in which the remedies are to be exercised has made a declaration to that effect under Article 54(2). …

**Section 5.1.2**

2.95 … These provisions relate only to termination for default and are not exhaustive. Termination may thus occur pursuant to the applicable law or under the terms of the agreement so far as in conformity with the applicable law. …

2.101 It is necessary to distinguish Convention remedies from those given by the otherwise applicable law. National laws typically confer rights and prescribe remedies for infringement of those rights. …

2.121 … Whether the agreement must be expressly terminated before possession is taken or whether on the other hand the act of taking possession is to be regarded as an implied termination of the agreement are matters to be determined by the applicable law and the terms of the agreement. …

4.112 Article 10 deals only with termination for default and does not preclude other events causing termination, for example, those provided by the agreement or the applicable law. …

**Section 5.1.3**

2.95 … As will be seen (see paragraphs 2.96-2.97) termination of the agreement does not by itself extinguish the international interest or the creditor’s right to maintain its registration.

2.96 An international interest in an object terminates when (a) the agreement creating or providing for it comes to an end (whether under the Convention or under the applicable law) and (b) the creditor has been paid in full or has recovered possession or control of the object and/or any proceeds and has exhausted all other default remedies conferred on it by the Convention in relation to the object (see paragraph 2.97). Only then is any other interested person entitled to apply for registration of the international interest to be discharged (see paragraph 2.97). …

2.97 As indicated above, termination of the agreement does not by itself put an end to the international interest created or provided for by the agreement. This is because the effect of termination is only prospective, ending the rights and duties of the parties as to future performance but not affecting their pre- termination rights and obligations. Accordingly the creditor is entitled to exhaust all the remedies provided by the Convention under Articles 8-11, so far as these relate to the object, before the debtor or any other interested party can apply for discharge of the registration, and until such discharge or expiry of a time-limited registration (as to which see paragraph 2.98) this remains effective (Article 21). Article 10 itself makes it clear that the Convention remedy of repossession survives termination of the agreement. Moreover, until the creditor has exhausted its remedies under the Convention in relation to the object and/or its proceeds continued registration of the international interest is essential to preservation of the creditor’s priority. For example, so long as the lessee remains in possession it retains a power of disposal and the lessor needs continued priority as against a transferee from the lessee. Further, the creditor’s priority extends to proceeds (as defined by Article 1(w) of the Convention), so that even after total destruction of the object or its total or partial confiscation, condemnation or requisition the creditor remains entitled to assert its priority as regards any insurance proceeds or compensation paid. Even repossession of the object in an undamaged state does not necessarily extinguish the international interest, because there may remain uncollected income or profits arising from the lease of the object under Article 8(1)(b) or the management or use of the object which are recoverable under Article 8(1)(c).

4.112 … Termination of the agreement, whether under Article 10 or otherwise, does not by itself bring an end to the international interest, which continues for the creditor’s protection until its remedies under the Convention have been exhausted (see paragraph 2.97).

**Section 5.2.1**

2.95 The only provision of the Convention dealing with termination of the agreement is Article 10, which provides that in the event of default under a title reservation agreement or a leasing agreement the conditional seller or lessor may (a) subject to any declaration that may be made by a Contracting State under Article 54 (that is, a declaration that leave of the court is required) 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 any of these acts. …

2.103 Under Article 8(1) of the Convention a chargee may exercise any one or more of the following remedies:

(a) take possession or control of any object charged to it; …

Alternatively, the chargee may, with or without the agreement of the chargor, apply for a court order authorising or directing any of the above. …

2.107 … So the remedy of possession of an aircraft object will generally have to be exercised in conformity with the procedural law of the place where the object is located (see paragraph 2.144). However, where the law of that place would otherwise permit a Convention remedy to be exercised without leave of the court it is open to the Contracting State in question to state in its declaration under Article 54(2) – a declaration which is required to be made at the time of ratification of the Protocol – that the remedy is to be exercisable only with leave of the court (Article 54). Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

4.86 In principle, all the remedies listed in Articles 8 and 9 which do not refer to the court may be exercised by extra-judicial means or by recourse to the court, as the creditor chooses. But to accommodate the concerns of those States where extra-judicial remedies are considered objectionable, Article 54(2) requires a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. …

2.114 A creditor taking possession of the object and then leasing it is, of course, entitled to collect the lease rentals and apply these in reduction of the amount due under the agreement. Alternatively the creditor may control the object directly or through an agent and collect the income, as where the creditor repossesses an aircraft from the debtor and continues it in service, collecting revenues for passenger fares or freight. Where the debtor has granted a lease of the object and the creditor has priority over the rights of the lessee because the creditor’s interest was registered before that of the debtor (see Article 29(4)) the creditor can either repossess the object from the lessee[[10]](#footnote-10) or, on giving notice of its rights to the lessee, take over the lease and collect the rentals payable under the lease or alternatively terminate the lease (as an exercise of the creditor’s management powers) and grant a new lease. Powers of possession and control would also include making arrangements for custody, repair and insurance. Each of the foregoing remedies has to be exercised in a commercially reasonable manner.

2.121 In the case of a conditional sale agreement or leasing agreement, the only remedies designated (by Article 10) are termination of the agreement, possession or control of the object or a court order authorising or directing either of the above. The provisions are much simpler because in contrast to the chargee, who has merely a security interest, the conditional seller or lessor retains full rights in the equipment. There is therefore no requirement that the remedies shall have been agreed by the debtor (though in practice every well-drawn agreement will prescribe default remedies); it suffices that there has been default, the remedies then becoming exercisable by virtue of Article 10 itself. … The conditional seller or lessor may not terminate the agreement or repossess an object without a court order where this is required by a declaration made by a Contracting State under Article 54(2) and the remedy is to be exercised in that State. …

4.109 As owner of the object, the conditional seller or lessor needs only the remedies of termination of the agreement and possession. The creditor may apply to the court for the exercise of these remedies or may resort to self-help without recourse to the court and in the latter case the consent of the debtor is not required. In this respect also Article 10 differs from Articles 8 and 9. However, leave of the court is required in order to exercise these or other Convention remedies where the Contracting State in which the remedies are to be exercised has made a declaration to that effect under Article 54(2). …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. Where the object is in the hands of the debtor the creditor may take possession of the object, let it out on lease and collect the rentals. …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. …

4.92 The extra-judicial remedies specified in Article 8 are not automatic; they are given only to the extent that the chargor has at any time so agreed. The chargor’s consent may be given in the security agreement itself or at any time thereafter. However, no agreement is required for recourse to the court. …

4.109 As owner of the object, the conditional seller or lessor needs only the remedies of termination of the agreement and possession. The creditor may apply to the court for the exercise of these remedies or may resort to self-help without recourse to the court and in the latter case the consent of the debtor is not required. …

**Section 5.3.1**

2.103 Under Article 8(1) of the Convention a chargee may exercise any one or more of the following remedies: …

(b) sell or grant a lease of any such object; …

Alternatively, the chargee may, with or without the agreement of the chargor, apply for a court order authorising or directing any of the above. …

2.107 … However, where the law of that place would otherwise permit a Convention remedy to be exercised without leave of the court it is open to the Contracting State in question to state in its declaration under Article 54(2) – a declaration which is required to be made at the time of ratification of the Protocol – that the remedy is to be exercisable only with leave of the court (Article 54). Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

4.86 In principle, all the remedies listed in Articles 8 and 9 which do not refer to the court may be exercised by extra-judicial means or by recourse to the court, as the creditor chooses. But to accommodate the concerns of those States where extra-judicial remedies are considered objectionable, Article 54(2) requires a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. … So if the debtor has granted a lease of the object, the creditor is entitled to take over the lease and give notice to the lessee requiring it to pay the rental income to the creditor rather than to the debtor or alternatively negotiate a new lease with the lessee or terminate the lease and repossess the object or grant a new lease to another lessee. …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. …

4.92 The extra-judicial remedies specified in Article 8 are not automatic; they are given only to the extent that the chargor has at any time so agreed. The chargor’s consent may be given in the security agreement itself or at any time thereafter. However, no agreement is required for recourse to the court. …

**Section 5.3.2**

2.103 Under Article 8(1) of the Convention a chargee may exercise any one or more of the following remedies: …

(b) sell or grant a lease of any such object;[[11]](#footnote-11) …

4.91 Of the four remedies available to a chargee under this Article, one, the right to grant a lease of the object, is subject to Article 54(1), by which a Contracting State may declare that the chargee shall not a grant a lease of the object while it is situated within or controlled from that State’s territory.

4.342 One of the default remedies conferred on the chargee by Article 8(1) and on any creditor by Article 13(1) is the granting of a lease of the object. Paragraph 1 of the present Article empowers a Contracting State to make a declaration excluding this remedy while the charged object is situated within or controlled from its territory. … The purpose of Article 54(1) is to allow a Contracting State whose laws include mandatory provisions as to leases to preserve the effectiveness of those provisions. The relevant declaration for the purpose of Article 54(1) is that of the Contracting State of the forum, which will almost always coincide with the applicable law as the *lex situs*.

**Section 5.3.3**

2.115 A chargee proposing to sell or grant a lease of an object under Article 8(1) is required to give notice to interested persons as provided by Article 8(4). This too is a mandatory provision (Article 15). … “Interested persons”, defined in Article 1(m), embraces three categories.

(1) The first category is the debtor itself. …

(2) The second category of interested persons covers issuers of suretyship and demand guarantees, standby letters of credit and any other form of credit insurance. …

(3) The third category covers “any other person having rights in or over the object”. This category is very wide. It includes the holders of other registered or unregistered charges (whether senior or junior to the enforcing chargee), buyers, conditional buyers and lessees (even if their rights are junior to those of the enforcing chargee), the holders of non-consensual rights or interests under Article 39, registrable non-consensual rights or interests under Article 40, national interests notice of which has been registered under Article 20(6) and even unregistrable interests outside Article 39. … However, the duty to give prior notice to interested persons in this last category is confined to those who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease (Article 8(4)(b)). …

2.40(5) … A registrable but unregistered non-consensual right or interest thus has a very limited impact under the Convention. Indeed, its only significance lies in the fact that the holder of such an interest falls within category (iii) of the list of “interested persons” defined in Article 1(m) (see paragraph 2.115) and as such is entitled to benefit from those provisions of Chapter III of the Convention which confer rights on interested persons where the creditor is proposing to exercise default remedies. For example, the holder of a registrable but unregistered non-consensual right or interest has a right to be given notice of a chargee’s intended sale or lease of the object on default by the debtor provided that the chargee has been given notice of the rights of the holder of the non-consensual right or interest within a reasonable time prior to the sale or lease (Article 8(4)(b)). …

3.48(2) *Crystallisation of requirements of Article 8(4)*

A chargee giving ten or more working days’ prior written notice to interested parties of a proposed sale or lease is deemed to satisfy the requirement of “reasonable prior notice” specified in Article 8(4) (Article IX(4)). …

5.54 Article IX(4) crystallises the meaning of “reasonable prior notice” in Article 8(4) of the Convention. There is a safe-haven of ten working days. Parties may select and rely on that time-period. Alternatively, it is open to the parties to agree a longer period but not a shorter one, since Article IV(3) precludes derogation from Article IX(4). …

2.291 Examples of breach of a Convention provision by a party to an agreement are the following: …

(2) A chargee’s failure to give prior notice in writing to interested parties of a proposed sale or lease as required by Article 8(4). …

the Convention does not itself prescribe the remedies for breaches of the above provisions. Where the applicable law is that of a Contracting State these will simply constitute breaches of that State’s law and will attract whatever remedies that law provides, which could include payment of an amount due, damages for loss suffered through the breach, a restitutionary remedy, specific performance or injunctive relief. A Contracting State is under a duty to ensure that its law provides an adequate remedy for breach of a duty imposed by the Convention or the Protocol.

4.22 **“interested persons”** – the definition of “interested persons” is relevant to denote the persons who (a) have to be notified under Article 8(4) of an intended sale or lease of the charged object by the chargee, … The definition covers three categories of interest holder. In the first is the debtor itself, which includes not only the agreement debtor but a person whose interest is burdened by a registrable non-consensual right or interest (see paragraphs 4.19, 2.40(5), 2.115); in the second, issuers of suretyship and demand guarantees, standby letters of credit and other forms of credit insurance; in the third, “any other person having rights in or over the object.”. This last category is very wide. It includes chargees under security agreements (other than chargees whose interest is burdened by – i.e. subordinated to – the registrable non-consensual right or interest and who is thus a debtor within the first category), buyers, conditional buyers and lessees, holders of non-consensual rights and interests under Article 39, and holders of non-consensual rights or interest registrable under Article 40 and of national interests notice of which is registrable under Article 20(6). All these categories of interest holder are covered by the definition, whether they are senior or junior to the enforcing creditor. Even the holders of unregistered rights or interests fall within the third category of “interested persons” and as such are entitled to receive notice under Article 8(4) of a chargee’s intention to sell or grant a lease of an object provided that the creditor has been given notice of their rights within a reasonable time prior to the sale or lease. …

**Section 5.3.4**

4.103 Upon sale of the object by the chargee or its vesting in the chargee, the buyer or the chargee (as the case may be) takes free from any interest subordinate to that of the chargee but subject to any interest having priority over that of the chargee (see Illustration 15, paragraph 4.108).

4.108 *Illustration 15*

D charges an airframe successively to A, B and C, whose interests are registered as international interests in that order. D defaults in its obligations to B, who sells the airframe to T in accordance with Article 8. T obtains ownership free from C’s charge but subject to the charge given to A. The position would be otherwise if A had not registered its charge until after B’s registration, for B would then have priority under Article 29(1) and would sell free from A’s charge.

**Section 5.4.1**

2.103 Under Article 8(1) of the Convention a chargee may exercise any one or more of the following remedies: …

(c) collect or receive any income or profits arising from the management or use of any such object.

Alternatively, the chargee may, with or without the agreement of the chargor, apply for a court order authorising or directing any of the above. …

2.107 … However, where the law of that place would otherwise permit a Convention remedy to be exercised without leave of the court it is open to the Contracting State in question to state in its declaration under Article 54(2) – a declaration which is required to be made at the time of ratification of the Protocol – that the remedy is to be exercisable only with leave of the court (Article 54). Conversely, where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. …

4.86 In principle, all the remedies listed in Articles 8 and 9 which do not refer to the court may be exercised by extra-judicial means or by recourse to the court, as the creditor chooses. But to accommodate the concerns of those States where extra-judicial remedies are considered objectionable, Article 54(2) requires a Contracting State to declare whether or not any remedy which under the Convention does not require application to the court is to be exercisable only with leave of the court. …

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. … The creditor may also recover from the debtor any such income received by the debtor after the creditor has given notice to the debtor of its intention to collect the income.

4.88 The remedies available under Article 8(1), to the extent that the chargor has so agreed, are: to take possession or control of any charged object; to sell or grant a lease of any such object; and to collect or receive any income or profits arising from the management or use of any such object. …

4.92 The extra-judicial remedies specified in Article 8 are not automatic; they are given only to the extent that the chargor has at any time so agreed. The chargor’s consent may be given in the security agreement itself or at any time thereafter. However, no agreement is required for recourse to the court. …

**Section 5.5.1.1**

3.30 The default rules of the Convention are supplemented by Articles IX, X, XI (Alternative A, paragraph 8) and XIII of the Aircraft Protocol in certain respects to meet the particular needs of the aviation industry. One set of these provisions adds two new remedies, de-registration of the aircraft and export and physical delivery of the aircraft object; … Like the other Convention remedies the additional remedies are given for the debtor’s breach of rights conferred not by the Convention or Protocol but by the agreement and the applicable law.

3.31 Article IX(1) provides that in addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:

(a) procure the de-registration of the aircraft; and

(b) procure the export and physical transfer of the aircraft object from the territory in which it is situated. …

3.32 The purpose of these additional remedies is to remove the aircraft or aircraft objects still further from the debtor’s control and transfer control to the creditor. In the case of de-registration, the remedy also permits a subsequent re-registration in accordance with the Chicago Convention, which may be essential to the sale or re-deployment of the aircraft. … The de-registration provisions are among the few that are concerned with an aircraft, as opposed to an aircraft object, because it is only aircraft that are registered. “Aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters (Article 1(2)(a)) (but see paragraph 3.36). By contrast the separate remedy of export and physical delivery is given in respect of an aircraft object and thus extends to both installed aircraft engines and uninstalled engines located in the State of registry of the aircraft, which is the State responsible for certification of aircraft engines as well as aircraft. Of course in both cases the aircraft engine must be one in which the creditor has an international interest. …

2.106 The Aircraft Protocol adds two further remedies to those set out in Chapter III, namely de-registration and export and physical transfer …

3.36 As stated above, de-registration is available only for aircraft. Aircraft engines are not subject to nationality registration, so that the Aircraft Registry authorities have no relevance to them, and the only administrative authorities involved with regard to engines are those concerned with exports and imports.

5.46 Paragraph 1 adds two remedies to those given in the Convention, namely de-registration of an aircraft and export and physical transfer of an aircraft object from the territory where it is situated. … The provisions relating to de-registration are among the few applying to aircraft as opposed to aircraft objects. …

5.47 … Though the form envisages de-registration and export and physical transfer in combination, de-registration relates to the aircraft as a whole while export and physical transfer relate to aircraft objects, so that there seems no reason why the creditor cannot invoke the IDERA procedure to procure assistance for export of installed or uninstalled aircraft engines so long as these are situated in the State of registry of the aircraft and are engines the primary right to which is vested in the creditor, not a third party.

3.37 The purpose of the additional remedy of export and physical transfer is to remove the equipment still further from the debtor’s control and transfer control to the creditor. The effect of the provisions is to enable the creditor to invoke the duty of expeditious co-operation and assistance on the part of the relevant administrative authorities of the State where the equipment is situated in effecting export and physical transfer. A Contracting State may opt out of this duty (Article VIII(6)) by a declaration under Article XXX(1). …

**Section 5.5.1.2**

3.38 If the creditor wishes to avail itself of the procedures laid down in the Protocol for procuring de-registration and export, then in addition to meeting the conditions specified in Article IX(1) and (2) (described in conditions (2) to (4) in paragraph 3.39 below) it must follow one of the two routes prescribed, the conditions varying somewhat according to which route is taken. Neither route is available unless the appropriate declaration has been made by the Contracting State in which the aircraft is registered (see below). However, Article IX(1) is not itself dependent on a declaration by a Contracting State and may therefore be invoked independently of the Protocol routes to de-registration and export; indeed, this will be necessary if the requisite declaration has not been made. In such a case it suffices that the creditor satisfies the requirements of Article IX(1) and (2) and follows the procedure prescribed by the *lex registri* (see the Convention, Article 14 and paragraph 5.47). But it is likely that in most cases the creditor will wish to follow one of the routes set out in the Protocol itself where the necessary declaration has been made by a Contracting State and the requisite conditions are satisfied, because the registry authority is then obliged to provide the remedies and cannot impose additional procedural requirements of its own. … The first route via Article X(6), which is referred to below as the “court route”, … The second route, via Articles XIII and IX(5) and (6), is for the creditor to procure from the debtor the issue in favour of the creditor of an irrevocable de-registration and export request authorization (IDERA) …

5.47 The Protocol itself provides machinery for procuring the remedies of de-registration and export via one of two routes, both of which are, however, dependent on a declaration by the Contracting State which is the State of registry of the aircraft. However, Article IX(1), which prescribes the remedies, is not itself dependent on a declaration, so that whether or not a Contracting State has made the requisite declaration it is open to the creditor to fulfil the conditions of Article IX(1) and (2) which are prerequisites to the substantive remedies (see paragraph 5.48) and then procure these in conformity with the procedural requirements of the *lex registri* (see Article 14 and paragraph 4.124). But if the necessary declaration has been made it is likely that the creditor will prefer to use the Protocol machinery, which obliges the registry and export authorities to provide the remedies if the conditions prescribed by the Protocol are met and precludes them from imposing separate procedural requirements or conditions of its own. There are two alternative routes to securing de-registration and export under the Protocol provisions. The first, via Article X(6), is for the creditor to obtain an order for advance relief under Article 13 from a court in the jurisdiction where the aircraft is registered … The second, via Articles XIII and IX(5) and (6), is for the creditor to procure from the debtor an irrevocable de-registration and export request authorisation (IDERA) substantially in the form of the Annex to the Protocol …

**Section 5.5.1.3**

3.39 Whether the creditor proceeds via the court route or the IDERA route, certain conditions common to the two routes must be observed. Additional conditions are then specified for each route as described below. The common conditions are as follows:

3.39(3) It is not, however, necessary that the creditor shall have terminated the agreement, nor may the Registry authorities require evidence of the debtor’s default or the completion of any formalities other than those prescribed the Protocol before proceeding with de-registration.

5.50 A creditor who chooses to follow the IDERA route otherwise than pursuant to a court order must first, if a chargee, give interested parties reasonable prior notice under Article IX(5) (this follows Article 8(4) of the Convention) and then obtain the IDERA from the debtor in the form annexed to the Protocol and transmit it to the registry authorisation for recordation (Article XIII(2)). Subject to any applicable safety laws and regulations the registry authority must honour the IDERA if the creditor or other authorised party certifies to the registry authority, where so required by the authority, that all registered interests ranking in priority to that of the creditor have been discharged or that the holders of such interests have consented to the de-registration and export (Article IX(5)). In other words, the IDERA machinery is purely documentary, dispensing with the need for the regulatory authority to investigate external facts. Moreover, except as provided by safety laws and regulations, which apply only to export, not to de-registration, the registry authorities may not impose any additional requirements, for example, further consents by the debtor. …

5.46 … These additional remedies, which are designed to reinforce the control exercisable by the creditor on the debtor’s default, are only available (a) to the extent agreed by the debtor (the agreement can be given at any time), (b) when the debtor is in default (as defined by Article 11) and (c) with the consent in writing of the holder of any registered interest ranking in priority to that of the creditor. This last condition is mandatory and cannot be excluded by agreement (Article IV(3)).

5.48 Whether the creditor follows the court route or the IDERA route it is first necessary that the Contracting State shall have made a declaration applying the relevant Article – under Article XXX(2) applying Article X or under Article XXX(1) applying Article XIII. The debtor must have agreed to the additional remedies and must be in default (Article IX(1)) within the meaning of Article 11. This is not expressly stated but follows from the fact that the whole Article is dealing with default remedies. The creditor must also obtain the prior written consent of the holder of any registered interest ranking in priority to that of the creditor (Article IX(2)). This last condition is mandatory and cannot be excluded by agreement (Article IV(3)). …

3.38 … Neither route is available unless the appropriate declaration has been made by the Contracting State in which the aircraft is registered (see below). However, Article IX(1) is not itself dependent on a declaration by a Contracting State and may therefore be invoked independently of the Protocol routes to de-registration and export; indeed, this will be necessary if the requisite declaration has not been made. …

5.47 The Protocol itself provides machinery for procuring the remedies of de-registration and export via one of two routes, both of which are, however, dependent on a declaration by the Contracting State which is the State of registry of the aircraft. However, Article IX(1), which prescribes the remedies, is not itself dependent on a declaration, so that whether or not a Contracting State has made the requisite declaration it is open to the creditor to fulfil the conditions of Article IX(1) and (2) which are prerequisites to the substantive remedies (see paragraph 5.48) and then procure these in conformity with the procedural requirements of the *lex registri* (see Article 14 and paragraph 4.124). …

**Section 5.5.1.4**

5.46 … Such remedies may be exercised independently from one another – that is, a creditor may seek to deregister an aircraft without concurrently seeking to export and physically transfer it, and vice versa. …

3.34 Though the provisions relating to de-registration and export and physical transfer and the form prescribed by the Annex envisage a composite authorisation as regards aircraft, there seems no reason why the procedure could not be used to procure export of the aircraft without de-registration, and vice versa. …

5.55 *Illustration 69*

An aircraft supplied on lease by LR is registered and situated in Urbania, a Contracting State. Following the debtor’s default LR wishes to repossess the aircraft and send it to Ruritania without changing its nationality registration. If the debtor has given an IDERA which has been registered with the administrative authorities of Urbania, LR may require those authorities to assist in the export of the aircraft even though de-registration is not sought.

3.34 … Moreover, not all the necessary steps have to be taken in the same Contracting State, though it is only the State of nationality registration that can de-register the aircraft. Where the aircraft is situated in the State of nationality registration, both de-registration and export and physical transfer can be procured in that State. But the aircraft may be situated in another Contracting State, in which case application may be made to the courts of that State for an order for possession by way of advance relief under Article 13(1)(a), with any necessary export assistance being provided by that State’s administrative authorities (Articles X(6)(b), XIII(4)). It is then necessary for the order to be recognized by a court of the State of nationality registration (Article X(6)(a)), for which purpose it would seem necessary to apply to that court for an order for recognition. Following this, the remedies of de-registration and export must be made available from the registry authority and other administrative authorities of the State of registry in conformity with Article X(6)

**Section 5.5.1.5**

None

**Section 5.5.1.6**

None

**Section 5.5.2.1**

3.40 Article X(6) provides the trigger for action by the authorities where the creditor follows the court route. A creditor invoking Article X(6) must have obtained an order for advance relief under Article 13(1) from a court in a Contracting State which is the State of registry or an equivalent order from a foreign court, which need not itself be a court of a Contracting State. In effect the order must be one which gives possession or control to the creditor or otherwise removes control from the debtor. In the case of an order by a foreign court the relief must be “recognised” by a court of the State of registry. “Recognised” denotes recognition of the foreign court’s jurisdiction to make the order granting the relief, whether under the Convention or under other rules of recognition of the law of the State of registry. The basic idea is that any order should be either made or recognised by a court in a Contracting State which is the State of registry. The relevance of Article 13 is not apparent from Article X(6) because of a drafting slip. The second reference to Article IX(1) makes no sense because nowhere in the Convention or Protocol is there any reference to the grant by a court of relief under Article IX(1). The reference should be to an order granting relief under Article 13(1) of the Convention, as is clear from (a) an earlier draft presented by the Aviation Working Group in which the precursor of Article X(6) referred back to the relief specified in what became Article 13 and (b) the fact that, as indicated by its heading, the whole of Article X is concerned with the modification of provisions regarding relief pending final determination. …

5.47 … The first, via Article X(6), is for the creditor to obtain an order for advance relief under Article 13 from a court in the jurisdiction where the aircraft is registered (the second reference to Article IX(1) in Article X(6) is a mistake and should be a reference to Article 13 of the Convention), or equivalent relief from a foreign court whose jurisdiction is recognised by the home court, and notify the registry and other authorities of the grant of the order. …

5.49 Article X(6) contains a drafting slip in that the reference to Article IX(1) of the Protocol should be a reference to Article 13 of the Convention. A creditor following the court route under Article X(6) must obtain an order for advance relief under Article 13(1) from a court of the State in which the aircraft is registered, or equivalent relief from a court whose jurisdiction is recognised by the home court, and notify the registry and other administrative authorities, as applicable, that the relief has been granted and that the creditor is entitled to pursue the remedies of de-registration and export in accordance with the Convention. …

3.34 … But the aircraft may be situated in another Contracting State, in which case application may be made to the courts of that State for an order for possession by way of advance relief under Article 13(1)(a), with any necessary export assistance being provided by that State’s administrative authorities (Articles X(6)(b), XIII(4)). It is then necessary for the order to be recognized by a court of the State of nationality registration (Article X(6)(a)), for which purpose it would seem necessary to apply to that court for an order for recognition. Following this, the remedies of de-registration and export must be made available from the registry authority and other administrative authorities of the State of registry in conformity with Article X(6)

**Section 5.5.2.2**

3.39(1) The Contracting State must have made a declaration under Article XXX(2) applying Article X (court route) …

3.48(3) … However, Article X applies only in a Contracting State that has made a declaration to that effect under Article XXX(2) and only to the extent of that declaration. …

5.47 … The first, via Article X(6), is for the creditor to obtain an order for advance relief under Article 13 from a court in the jurisdiction where the aircraft is registered (the second reference to Article IX(1) in Article X(6) is a mistake and should be a reference to Article 13 of the Convention), or equivalent relief from a foreign court whose jurisdiction is recognised by the home court, and notify the registry and other authorities of the grant of the order. The remedies must then be made available within five working days. …

5.49 … A creditor following the court route under Article X(6) must obtain an order for advance relief under Article 13(1) from a court of the State in which the aircraft is registered, or equivalent relief from a court whose jurisdiction is recognised by the home court, and notify the registry and other administrative authorities, as applicable, that the relief has been granted and that the creditor is entitled to pursue the remedies of de-registration and export in accordance with the Convention. The purpose of this notification is to trigger an automatic duty on the authorities to give effect to the remedies within five working days without the burden of investigating the facts. …

**Section 5.5.2.3**

3.40 … To trigger Article X(6) the creditor must notify the relevant authority (a) that relief has been granted under Article 13(1) and (b) that the creditor is entitled to procure the remedies of de-registration and export. The purpose of this requirement is to dispense with the need for the authority to investigate external facts and to require it to rely solely on the creditor’s notification. In short, the process is perceived as purely documentary. …

**Section 5.5.3.1**

3.41 Article XIII, which applies only where the relevant Contracting State has made a declaration under Article XXX(1), provides for the recording in and recognition by the registry authority (defined in Article I(2)(o) of the Aircraft Protocol) of any IDERA issued by the debtor. This relates to the creditor’s additional remedy of de-registration and export conferred by Article IX(1). … The IDERA is an irrevocable authorisation by the debtor to the requisite registry authority:

(a) to recognise a named authorised party or the person that party certifies as its designee as being the sole person entitled to procure the de-registration of an aircraft from the register maintained by the registry authority and its export and physical transfer from the country where the register is maintained (this is to permit re-registration in another country selected by such authorised party or its designee);

(b) to confirm that the authorised party or its designee may take the above action on written demand without the debtor’s consent; and

(c) to record the IDERA in its registry.

The relevant authority for de-registration is that responsible for nationality registration of aircraft in the State of registry. But other administrative authorities may be involved in the export of aircraft objects, for example, in the grant of export licences.

**Section 5.5.3.2**

3.41 Article XIII, which applies only where the relevant Contracting State has made a declaration under Article XXX(1), provides for the recording in and recognition by the registry authority (defined in Article I(2)(o) of the Aircraft Protocol) of any IDERA issued by the debtor. …

5.73 This Article applies only where a Contracting State has made a declaration to that effect (Article XXX(1)). If the relevant Contracting State, that is, the State which is the State of Registry of the aircraft as defined by Article I(2)(p), makes no declaration, the Article does not apply. …

**Section 5.5.3.3**

3.42 Article XIII prescribes the first step towards securing de-registration and export through the IDERA route, providing for the recording of the IDERA by the requisite authorities. The recording, coupled with a certificate by the authorised party, if so required by the registry authorities, that prior-ranking registered interests have been discharged or that the holders have consented to the de-registration and export, triggers the duty of the registry authority under Article IX(5) to honour the IDERA. Only when an IDERA has been issued does Article IX(5) come into play, as is clear from its references to “the authorised party”, defined in Article I(2)(f) as the party referred to in Article XIII(3). … The IDERA, which cannot be revoked without the written consent of the authorised party, must identify the airframe or helicopter by manufacturer’s name, model number and serial number.

5.50 A creditor who chooses to follow the IDERA route otherwise than pursuant to a court order must first, if a chargee, give interested parties reasonable prior notice under Article IX(5) (this follows Article 8(4) of the Convention) and then obtain the IDERA from the debtor in the form annexed to the Protocol and transmit it to the registry authorisation for recordation (Article XIII(2)). …

**Section 5.5.3.4**

3.41(a) to recognise a named authorised party or the person that party certifies as its designee as being the sole person entitled to procure the de-registration of an aircraft from the register maintained by the registry authority and its export and physical transfer from the country where the register is maintained (this is to permit re-registration in another country selected by such authorised party or its designee);

3.44 The effect of issue of the IDERA is that no one other than the authorised party or its designee is entitled to exercise the remedies of de-registration and export (Article XIII(3)). Accordingly the creditor’s assignee cannot do so unless designated by the creditor. It also follows that there can be only one IDERA relating to a given aircraft at any one time. …

5.8 **“authorised party”** – the creditor in whose favour the debtor has issued an irrevocable de-registration and export request authorisation (IDERA) in order to give effect to these additional remedies, which are conferred on the creditor by Article IX(1). See paragraph 3.44. The creditor may designate someone else to exercise the authorisation. No person other than the debtor may issue the authorisation and only the creditor or its designee may exercise it. So if an international interest is later assigned the assignee, if not itself the designee, will need to obtain a new IDERA. …

**Section 5.5.3.5**

3.45 … Thirdly, whether the recording of the debtor’s authorisation has taken place under Article XIII or otherwise, the registry authority must honour the IDERA if the conditions set out in Article IX(5) are satisfied. This it must do even if the general law of the Contracting State in which the registry authority is situated does not otherwise recognise the irrevocability of an authority or sets out circumstances in which it can be revoked. …

3.39(3) The circumstances specified in Chapter III of the Convention, relating to default remedies, must exist (Article IX(1)). This means that the debtor must be in default of its obligations under the agreement before the creditor may lawfully exercise an IDERA. … So unless and until the debtor is in default the creditor is not entitled to act on an IDERA and the debtor retains the freedom to de-register the aircraft itself, subject to any limitations imposed by the applicable law, e.g. pursuant to Article IX of the Geneva Convention …

3.44 The effect of issue of the IDERA is that no one other than the authorised party or its designee is entitled to exercise the remedies of de-registration and export (Article XIII(3)). Accordingly the creditor’s assignee cannot do so unless designated by the creditor. It also follows that there can be only one IDERA relating to a given aircraft at any one time. …

3.42 … The IDERA, which cannot be revoked without the written consent of the authorised party, must identify the airframe or helicopter by manufacturer’s name, model number and serial number.

**Section 5.5.3.6**

3.42 … The recording, coupled with a certificate by the authorised party, if so required by the registry authorities, that prior-ranking registered interests have been discharged or that the holders have consented to the de-registration and export, triggers the duty of the registry authority under Article IX(5) to honour the IDERA. … If the creditor is a chargee it must give reasonable prior notice in writing of the proposed de-registration and export to (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention, that is, the debtor and guarantors (including issuers of demand guarantees and standby credits and insurers) and (b) interested persons specified in Article 1(m)(iii) of the Convention, that is, others who have rights in or over the aircraft object, being persons who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export (Article IX(6)). …

3.38 … The second route, via Articles XIII and IX(5) and (6), is for the creditor to procure from the debtor the issue in favour of the creditor of an irrevocable de-registration and export request authorization (IDERA) and lodge this with the requisite authorities, who must then co-operate “expeditiously”. This route, which does not involve a court order, is that envisaged by Article IX(5) and is referred to below as “the IDERA route”. …

3.39(3) … It is not, however, necessary that the creditor shall have terminated the agreement, nor may the Registry authorities require evidence of the debtor’s default or the completion of any formalities other than those prescribed by the Protocol before proceeding with de-registration.

3.41 … Exercise of this remedy is dependent on the debtor’s default but not on prior termination of the agreement by the creditor or the fulfilment of any other conditions beyond those specified in the Protocol …

5.50 … Subject to any applicable safety laws and regulations the registry authority must honour the IDERA if the creditor or other authorised party certifies to the registry authority, where so required by the authority, that all registered interests ranking in priority to that of the creditor have been discharged or that the holders of such interests have consented to the de-registration and export (Article IX(5)). In other words, the IDERA machinery is purely documentary, dispensing with the need for the regulatory authority to investigate external facts. Moreover, except as provided by safety laws and regulations, which apply only to export, not to de-registration, the registry authorities may not impose any additional requirements, for example, further consents by the debtor. …

**Section 5.5.3.7**

3.35 … Registration of an IDERA in respect of a pre-existing interest, excluded from the Convention by Article 60(1), has no effect under the Convention though it may have an effect under national law.

**Section 5.6.1**

2.126 Article 13(1), … provides the creditor who adduces evidence of default with the right to speedy relief, pending final determination of its claim,[[12]](#footnote-12) to the extent that the debtor has at any time so agreed. Such relief (the nature of which is examined in paragraph 2.132) takes the form of an order for preservation of the object or its value, possession, control or custody of the object, immobilisation of the object or lease or management of the object and the income from it but not sale and application of the proceeds of sale (although Article X(3) of the Aircraft Protocol, as with the other Protocols, adds these remedies as regards aircraft objects if the parties specifically so agree). …

4.117 … Where the creditor’s right to exercise a default remedy under the Convention is disputed by the debtor, it may take some considerable time – perhaps years – before the court is able to make a final determination on the merits of the claim. Meanwhile the creditor risks loss or deterioration of the object and is deprived of the opportunity to obtain income from it. Such delays obviously reduce the value of the security, and the prospect of their occurring would influence a prospective creditor’s evaluation of the risk. This Article is intended to address these problems by providing speedy judicial relief pending such final determination. … The essential characteristic of such relief is that it does not prejudge the outcome of the dispute. It follows that the creditor is not required to meet the standard of proof needed for a decision on the merits, which make the final hearing otiose. It is necessary only that sufficient evidence of default is adduced to enable the court, having regard to the need for prompt action to protect the creditor’s interests, to conclude that it is proper to grant the relief sought.

2.127 It will be noted that if so agreed by the parties some of the remedies listed in Article 13(1) are exercisable by the creditor upon the debtor’s default (as defined by Article 11) without the need to resort to the court at all for advance relief unless this is required by a Contracting State’s declaration under Article 54(2). These are most of the remedies listed in Article 8(1), namely the taking of possession or control, the grant of a lease (but not sale) and management of the object and the income therefrom. …

2.132 … advance relief is available to the creditor only “to the extent that the debtor has at any time so agreed” …

2.138 Article 13(1) is not listed as a mandatory provision in Article 15, so that the parties are free to derogate from or vary it by an agreement in writing. It is therefore open to the parties to exclude or restrict all or any of the forms of relief listed in Article 13(1). It would also seem to be open to them to agree on additional forms of advance relief to the extent that these are compatible with the concept of advance relief, for example, interim payment, entry on to premises, the conduct of searches or the provision of information by the debtor concerning the whereabouts of the asset. …

4.119 The remedies listed in Article 13(1) do not include sale of the object and application of the proceeds of sale. Such remedies are, however, available in relation to aircraft objects if at any time the debtor and the creditor specifically agree (Aircraft Protocol, Article X(3)). …

3.48(3) *Modification of provisions regarding relief pending final determination (advance relief)*

The provisions for speedy relief pending final determination of the creditor’s claim under Article 13 of the Convention are modified by Article X so as … (b) to add the remedy of sale and application of the proceeds of sale if the parties specifically agree and … However, Article X applies only in a Contracting State that has made a declaration to that effect under Article XXX(2) and only to the extent of that declaration. …

5.58 … Paragraph 3 adds sale and application of the proceeds of sale to the speedy relief that can be sought under Article 13(1) of the Convention, subject, however, to the requirement that the debtor and the creditor “specifically agree”, that is, agree expressly (though not necessarily in writing) to the court’s ordering a sale and application of the proceeds of sale on the creditor’s application. This agreement may be made at any time. …

4.121 The creditor remains entitled to invoke any other form of interim relief that may be available under the *lex fori*, e.g. an order for interim payment by the debtor.

**Section 5.6.2**

2.132 While Article 13(4) refers to “interim relief” this description was intentionally avoided in the heading to Article 13 and in Article 13(1) so as to make it clear that the relief is a *sui generis* Convention relief and should not be characterised by reference to concepts of municipal procedural law. … Again, Article 13(4), which preserves the availability of “forms of interim relief other than those set out in paragraph 1” does not imply that relief under Article 13(1) is to be equated with interim relief as understood (albeit in different ways) in national legal systems, it simply reflects the fact that such interim relief is likely to include some or all of the items listed in Article 13(1). …

4.117 This Article builds on forms of relief pending final determination (which for brevity will be referred to as advance relief) commonly available in national legal systems but it is to be interpreted in accordance with the Convention, not by reference to national law (see paragraph 2.132). So advance relief should not be treated as synonymous with interim relief or provisional relief available under domestic law. …

**Section 5.6.3**

2.126 Article 13(1), which may be excluded wholly or in part by a Contracting State by a declaration under Article 55, provides the creditor who adduces evidence of default with the right to speedy relief, pending final determination of its claim …

2.135 Article 13 is silent as to the standard of proof required to be adduced by the creditor. The initial question is whether the standard of proof is to be determined as a matter of autonomous interpretation of the Convention or, as a matter of substantive law, by the applicable law or alternatively, as a matter of procedure, by the *lex fori*, with characterisation being determined by the latter. The fact that advance relief is a distinct Convention concept clearly indicates that the court entertaining the application is free to make its own evaluation of the evidence without reference to its own domestic law, though in practice it may well find it convenient to apply the latter, and without considering the otherwise applicable law. This conclusion is reinforced by the fact that the very limited time available to the court, under declarations made pursuant to the Aircraft Protocol, for making its decision precludes reference to substantive national law, particularly where this would have to be established by expert evidence; …

2.136 Since the purpose of Article 13 is to safeguard the creditor’s position pending final determination it seems clear that the creditor is not required to meet the standard of proof that would be required for a hearing on the merits, because this would render the final hearing otiose and would, indeed, be inconsistent with the concept of speedy relief, since in a contested case where the facts are complex it may take a considerable time and expense to gather the evidence required for a hearing on the merits. …

2.137 Four factors need to be borne in mind in considering the standard of proof of default the creditor should meet. The first is that if sufficient evidence is adduced the court has no discretion but is required to grant the creditor the order or orders it seeks. So the court is concerned only with the evidence of default, not with considerations such as whether the creditor’s need for the order outweighs the debtor’s interest in preserving its own rights until the final determination or whether it is likely or unlikely that the debtor would be able to satisfy a final judgment. The second factor is that Article 13 is designed for situations of great urgency where prompt relief is necessary to avoid damage to the creditor’s interests, e.g. because the object is in danger of removal, cannibalisation or physical or commercial deterioration. The third, equally important, factor is that the time available for the adducing of evidence is extremely limited. … The fourth factor is that under Article 13(2) (which in the case of aircraft objects may be excluded by agreement of the parties under Article X(5) of the Aircraft Protocol) the court may impose such terms as its considers necessary to protect the debtor and other interested persons in the event of the creditor failing to perform its obligations to the debtor under the Convention or Protocol in implementing any order or failing to establish its claim at the substantive hearing. So even if the debtor raises substantial grounds of defence which cannot be investigated in time for the hearing of an application under Article 13 the debtor is not left unprotected.

4.117 … The essential characteristic of such relief is that it does not prejudge the outcome of the dispute. It follows that the creditor is not required to meet the standard of proof needed for a decision on the merits, which make the final hearing otiose. It is necessary only that sufficient evidence of default is adduced to enable the court, having regard to the need for prompt action to protect the creditor’s interests, to conclude that it is proper to grant the relief sought.

5.58 … So if the creditor adduces evidence of non-payment, the most common form of default, an order under Article 13 is almost invariably likely to be granted, since examination of defences such as late delivery or defects cannot be conducted within the very limited time available and will have to await the substantive hearing. …

**Section 5.6.4**

2.126 Article 13(1), which may be excluded wholly or in part by a Contracting State by a declaration under Article 55, provides the creditor who adduces evidence of default with the right to speedy relief, pending final determination of its claim,[[13]](#footnote-13) to the extent that the debtor has at any time so agreed. …

2.129 By Article 55 a Contracting State may by declaration exclude Article 13, wholly or in part.[[14]](#footnote-14) Such an exclusion operates only to preclude applications under Article 13 in the declaring State. … Where Article 13(1) applies (see paragraph 2.126) the Convention does not allow the parties to exclude Article 13(2), which is mandatory, but as stated above the Aircraft Protocol allows the parties to exclude Article 13(2) by an agreement in writing.

2.277 … Moreover, it is open to a Contracting State to disapply Articles 13 and 43, wholly or in part. The declarations must specify under what conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied. …

4.116 Article 13, together with its related Aircraft Protocol provision, Article X, as regards aircraft objects, is considered a particularly important one from an economic perspective. Yet it may raise policy issues, and thus may be excluded by a Contracting State by a declaration under Article 55. …

4.117 … The relief may be given by any court having jurisdiction under Article 43 of the Convention so far as that Article has not been disapplied by a declaration under Article 55 of the Contracting State in whose courts the application for relief is made . …

4.347 Articles 13 and 43 may be excluded wholly or in part by a Contracting State’s declaration. …

2.130 Jurisdiction to make an order under Article 13 and grant other forms of interim relief is governed by Article 43 of the Convention, discussed in paragraphs 2.277 *et seq*.

2.277 … Accordingly in the absence of party choice of jurisdiction only claims under Article 13 and claims against the Registrar are covered by the Convention, and jurisdiction over other claims is determined by the *lex fori*. …

4.117 … The relief may be given by any court having jurisdiction under Article 43 of the Convention so far as that Article has not been disapplied by a declaration under Article 55 of the Contracting State in whose courts the application for relief is made . …

4.123 *Illustration 16*

O supplies an airframe to B pursuant to a title reservation agreement under which the price is repayable by 10 annual instalments of USD 2 million. The agreement provides that on default in payment of any instalment the entire balance of the price shall immediately become repayable. B pays the first instalment but nothing thereafter, despite repeated reminders. Meanwhile the aircraft has been grounded because of B’s failure to pay airport charges relating to the aircraft. O institutes proceedings against B in Ruritania, where the aircraft is situated, for recovery of the aircraft and the outstanding balance of the price. Anxious to ensure that the aircraft is brought back into service as quickly as possible so as to generate revenue, O agrees to pay the airport charges and applies to a court in Urbania, where B has its centre of main interests, for an order under Article 13 for possession of the aircraft pending final determination of O’s claim. B does not deny non-payment of instalments after the first but contests O’s claim, asserting for the first time that there were serious defects in the aircraft and that the losses B has suffered could exceed the amount of the instalments in arrear. Examination of this claim, which O disputes, is likely to take some considerable time while experts are engaged, reports exchanged, the alleged losses quantified, pleadings finalised and arrangements made for the hearing. On these facts O is entitled to the relief it seeks, subject to such terms as the court may impose for B’s protection in the event that O’s claim at the trial is unsuccessful. The fact that the final determination of the proceedings will be by a court in Ruritania does not preclude the court in Urbania from granting such relief (Article 44(3)).

4.303 This Article is confined to jurisdiction to entertain claims by a creditor to speedy judicial relief under Article 13(1) pending final determination of the creditor’s claim and other forms of interim relief available under the *lex fori*. The forms of relief set out in Article 13(1)(a), (b) and (c), together with other forms of interim relief in respect of the object (see paragraphs 4.304-4.305) are seen as being of an in rem nature, and thus in the absence of party agreement are dependent on the object being within the territory of the Contracting State from whose courts relief is sought. By contrast, relief under Article 13(1)(d) is conceived as operating *in personam*, so that in the absence of party agreement what is required is that the debtor be situated in the territory of the forum State and the enforcement sought limited to that territory by the terms of the order granting relief. In either case the jurisdiction is concurrent with that chosen by the parties under Article 42(1). For the purpose of this Article a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry (Protocol, Article XXI).

**Section 5.6.5**

2.128 In making an order under Article 13(1) the court may under Article 13(2) impose such terms as it considers necessary to protect the interested persons (as defined by Article 1(m)) in the event that the creditor:

(a) in implementing any order granting such relief fails to perform any of its obligations to the debtor under the Convention or Protocol (e.g. fails to exercise in a commercially reasonable manner a remedy given by the order), or

(b) fails to establish its claim, wholly or in part, on the final determination of that claim (for example, the court could as a condition of making the order require the creditor to undertake to compensate the debtor for any loss suffered by the debtor in consequence of the order if the creditor’s claim is ultimately unsuccessful).

However, except as stated above the court has no discretion to refuse the order for which the creditor has applied or to suspend the order for a period to allow the debtor time to discharge any arrears outstanding, and the fact that the grant of an order for speedy relief would not allow the debtor time to remedy its default is irrelevant. …

2.126 … Before making the order the court may require notice of the request for the order to be given to any of the interested persons. These include a chargee subordinated to the holder of a registered non-consensual right or interest under Article 40, who is both a debtor within Article 1(m)(i) (see the definition of “debtor” in Article 1(j) and paragraph 2.46) and an “other person having rights in or over the object” within Article 1(m)(iii). …

4.118 There are two qualifications designed for the protection of the debtor and other interested persons. First, the court may impose such terms as it considers necessary to protect them where the creditor:

(a) in implementing any order, fails to perform an obligation under the Convention, e.g. by selling the object in a manner that is not commercially reasonable, resulting in a sale at a gross undervalue or otherwise in a manner which is not commercially reasonable (see also paragraph 4.120); or

(b) fails to establish its claim, wholly or in part, on the final determination of the claim, as where the court concludes that the debtor was not in default at all.

Such protection could take various forms, including an undertaking to pay damages to the debtor, or to the holder of a non-consensual right or interest under Article 39 or a registrable non-consensual right or interest under Article 40, for loss resulting from the order if the creditor fails to establish default on the substantive hearing or the provision by the creditor of a bond or demand guarantee covering its potential liability for breach of a Convention obligation and/or damages pursuant to the above undertaking. Secondly, the court may, before making the order, require notice of the creditor’s request to be given to any of the interested persons as defined in Article 1(m). This is as far as the discretionary power of the court goes. It has no general power to refuse a requested order or to suspend an order to allow the debtor time to pay any arrears outstanding.

2.126 … Article X(5) of the Protocol provides that the creditor and the debtor may agree in writing to exclude the application of Article 13(2) of the Convention (see paragraph 5.59).

2.129 … Even where Article 13 applies the creditor may waive its rights under that Article or elect to seek interim relief under the applicable law rather than under the Convention. In such a case Article 13(2) does not come into play, and the protection of the debtor and other interested parties will depend on the exercise of the court’s powers under the applicable law. Where Article 13(1) applies (see paragraph 2.126) the Convention does not allow the parties to exclude Article 13(2), which is mandatory, but as stated above the Aircraft Protocol allows the parties to exclude Article 13(2) by an agreement in writing.

2.139 … while Article X(5) of the Aircraft Protocol permits the parties to exclude the application of Article 13(2) by an agreement in writing (see paragraph 3.48(3)).

4.122 Where Article 13(1) applies the parties cannot exclude Article 13(2), which is mandatory (Article 15), except that under each of the Protocols they may agree in writing to exclude it (in the Aircraft Protocol, Article X(5)). …

5.59 Article 13(2) of the Convention provides protection for the debtor but imposes transaction costs. In relation to aircraft objects Article X(5) enables that concern to be addressed by permitting the relevant parties to exclude Article 13(2) by an agreement in writing. This would not otherwise be allowed, since under Article 15 of the Convention Article 13(2) is a mandatory provision. …

2.128 In making an order under Article 13(1) the court may under Article 13(2) impose such terms as it considers necessary to protect the interested persons (as defined by Article 1(m)) in the event that the creditor:

(a) in implementing any order granting such relief fails to perform any of its obligations to the debtor under the Convention or Protocol (e.g. fails to exercise in a commercially reasonable manner a remedy given by the order), or

(b) fails to establish its claim, wholly or in part, on the final determination of that claim (for example, the court could as a condition of making the order require the creditor to undertake to compensate the debtor for any loss suffered by the debtor in consequence of the order if the creditor’s claim is ultimately unsuccessful).

However, except as stated above the court has no discretion to refuse the order for which the creditor has applied or to suspend the order for a period to allow the debtor time to discharge any arrears outstanding, and the fact that the grant of an order for speedy relief would not allow the debtor time to remedy its default is irrelevant. …

2.137 … The first is that if sufficient evidence is adduced the court has no discretion but is required to grant the creditor the order or orders it seeks. So the court is concerned only with the evidence of default, not with considerations such as whether the creditor’s need for the order outweighs the debtor’s interest in preserving its own rights until the final determination or whether it is likely or unlikely that the debtor would be able to satisfy a final judgment. …

4.117 … The essential characteristic of such relief is that it does not prejudge the outcome of the dispute. It follows that the creditor is not required to meet the standard of proof needed for a decision on the merits, which make the final hearing otiose. It is necessary only that sufficient evidence of default is adduced to enable the court, having regard to the need for prompt action to protect the creditor’s interests, to conclude that it is proper to grant the relief sought.

4.118 There are two qualifications designed for the protection of the debtor and other interested persons. First, the court may impose such terms as it considers necessary to protect them where the creditor:

(a) in implementing any order, fails to perform an obligation under the Convention, e.g. by selling the object in a manner that is not commercially reasonable, resulting in a sale at a gross undervalue or otherwise in a manner which is not commercially reasonable (see also paragraph 4.120); or

(b) fails to establish its claim, wholly or in part, on the final determination of the claim, as where the court concludes that the debtor was not in default at all.

Such protection could take various forms, including an undertaking to pay damages to the debtor, or to the holder of a non-consensual right or interest under Article 39 or a registrable non-consensual right or interest under Article 40, for loss resulting from the order if the creditor fails to establish default on the substantive hearing or the provision by the creditor of a bond or demand guarantee covering its potential liability for breach of a Convention obligation and/or damages pursuant to the above undertaking. Secondly, the court may, before making the order, require notice of the creditor’s request to be given to any of the interested persons as defined in Article 1(m). This is as far as the discretionary power of the court goes. It has no general power to refuse a requested order or to suspend an order to allow the debtor time to pay any arrears outstanding.

2.141 Reference has already been made (paragraph 2.128) to the power of the court entertaining an application under Article 13(1) to provide safeguards for the debtor and other “interested persons” in the event of the creditor failing to perform any of its obligations to the debtor under the Convention or Protocol or failing to establish its claim, wholly or in part, at the substantive hearing (Article 13(2)). Such safeguards are designed in particular for cases where there is doubt whether the creditor’s financial position is such that it will be able to meet any compensatory claim subsequently established by the debtor. It would clearly be unjust to make an order in favour of a creditor that is teetering on the brink of insolvency without imposing conditions, because the order has the potential to damage the debtor’s business, if not force the debtor into insolvency. The court’s protective power is very wide; it may “impose such terms as it considers necessary to protect the interested persons”. For example, it could not only exact an undertaking from the creditor to pay damages in the event that it fails to succeed but require this to be reinforced by a guarantee or performance bond from a third party. It is not only the debtor who can be protected by such an order. Any “interested person” as defined by Article 1(m) of the Convention may invoke Article 13(2). A guarantor of the debtor’s obligations obviously has a particular interest in receiving protection.

4.118 … Such protection could take various forms, including an undertaking to pay damages to the debtor, or to the holder of a non-consensual right or interest under Article 39 or a registrable non-consensual right or interest under Article 40, for loss resulting from the order if the creditor fails to establish default on the substantive hearing or the provision by the creditor of a bond or demand guarantee covering its potential liability for breach of a Convention obligation and/or damages pursuant to the above undertaking. …

4.123 *Illustration 16*

O supplies an airframe to B pursuant to a title reservation agreement under which the price is repayable by 10 annual instalments of USD 2 million. The agreement provides that on default in payment of any instalment the entire balance of the price shall immediately become repayable. B pays the first instalment but nothing thereafter, despite repeated reminders. Meanwhile the aircraft has been grounded because of B’s failure to pay airport charges relating to the aircraft. O institutes proceedings against B in Ruritania, where the aircraft is situated, for recovery of the aircraft and the outstanding balance of the price. Anxious to ensure that the aircraft is brought back into service as quickly as possible so as to generate revenue, O agrees to pay the airport charges and applies to a court in Urbania, where B has its centre of main interests, for an order under Article 13 for possession of the aircraft pending final determination of O’s claim. B does not deny non-payment of instalments after the first but contests O’s claim, asserting for the first time that there were serious defects in the aircraft and that the losses B has suffered could exceed the amount of the instalments in arrear. Examination of this claim, which O disputes, is likely to take some considerable time while experts are engaged, reports exchanged, the alleged losses quantified, pleadings finalised and arrangements made for the hearing. On these facts O is entitled to the relief it seeks, subject to such terms as the court may impose for B’s protection in the event that O’s claim at the trial is unsuccessful. The fact that the final determination of the proceedings will be by a court in Ruritania does not preclude the court in Urbania from granting such relief (Article 44(3)).

**Section 5.6.6**

2.133 Article 13(1) does not define “speedy”. That is left to the Protocol, which defines “speedy” as “such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.” …

3.48(3) *Modification of provisions regarding relief pending final determination (advance relief)*

… Most declarations under Article X have specified 10 working days from the time of the application for an order for speedy relief within which the order must be granted, emphasizing the urgent nature of the proceedings. It is not open to a debtor to complain that the exercise of a remedy of repossession, for example, within the time period specified in a Contracting State’s declaration would do damage to the debtor’s business and is commercially unreasonable.

4.117 … Article 13 does not define “speedy”. In the case of aircraft objects that is left to Article X(2) of the Aircraft Protocol, which in turn leaves this to be determined by a declaration by the Contracting State (see paragraph 3.48). …

5.58 … For the purposes of the Convention “speedy” in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made. …

2.135 Article 13 is silent as to the standard of proof required to be adduced by the creditor. The initial question is whether the standard of proof is to be determined as a matter of autonomous interpretation of the Convention or, as a matter of substantive law, by the applicable law or alternatively, as a matter of procedure, by the *lex fori*, with characterisation being determined by the latter. The fact that advance relief is a distinct Convention concept clearly indicates that the court entertaining the application is free to make its own evaluation of the evidence without reference to its own domestic law, though in practice it may well find it convenient to apply the latter, and without considering the otherwise applicable law. This conclusion is reinforced by the fact that the very limited time available to the court, under declarations made pursuant to the Aircraft Protocol, for making its decision precludes reference to substantive national law, particularly where this would have to be established by expert evidence; and this may well provide the pattern for declarations under the later Protocols.

2.137 … The second factor is that Article 13 is designed for situations of great urgency where prompt relief is necessary to avoid damage to the creditor’s interests, e.g. because the object is in danger of removal, cannibalisation or physical or commercial deterioration. The third, equally important, factor is that the time available for the adducing of evidence is extremely limited. For example, where the application is for an order for possession of an aircraft object most States have made a declaration that the time within which an order is to be made is ten working days. …

**Section 5.7.1**

2.118 Article 9 empowers the chargee to take ownership of the object in or towards satisfaction of the debt. However, the chargor and other interested persons, such as prior or subsequent chargees and guarantors, are provided with a number of safeguards. Under Article 8(4) notice of a proposed sale or lease must be given to interested persons, including the debtor. Under Article 9(1) and (2), vesting of ownership in satisfaction of the debt can occur only with the consent of all the interested persons or on an order of the court and, in the latter case, only if the court is satisfied that the amount of the secured obligations to be discharged is commensurate with the value of the object (Article 9(3), which is mandatory). …

4.99 This Article provides machinery by which the object given in security can be vested in the chargee in or towards satisfaction of the secured obligations. For the protection of the debtor and interested persons, particularly in cases where the object substantially exceeds the value of the secured debt, this remedy is exercisable only with the agreement of all the interested persons, including the debtor itself, or alternatively on an order of the court. Moreover (and this is in contrast to all other remedies under the Convention), such agreement cannot be made in advance, but only after the default has occurred. Though paragraph 2 is not expressly limited to cases where the debtor is in default, it provides for a court order as an alternative to the agreement of all parties under paragraph 1 after default has occurred, and paragraph 2 must likewise be taken to be conditioned on the debtor’s default.

**Section 5.7.2**

2.118 … However, the chargor and other interested persons, such as prior or subsequent chargees and guarantors, are provided with a number of safeguards. Under Article 8(4) notice of a proposed sale or lease must be given to interested persons, including the debtor. Under Article 9(1) and (2), vesting of ownership in satisfaction of the debt can occur only with the consent of all the interested persons or on an order of the court …

4.22 **“interested persons”** – the definition of “interested persons” is relevant to denote the persons who … (b) in the absence of a court order, have to give their consent under Article 9(1) to the vesting of the object in the chargee in satisfaction of the debt, … The definition covers three categories of interest holder. In the first is the debtor itself, which includes not only the agreement debtor but a person whose interest is burdened by a registrable non-consensual right or interest (see paragraphs 4.19, 2.40(5), 2.115); in the second, issuers of suretyship and demand guarantees, standby letters of credit and other forms of credit insurance; in the third, “any other person having rights in or over the object.”. This last category is very wide … All these categories of interest holder are covered by the definition, whether they are senior or junior to the enforcing creditor. Even the holders of unregistered rights or interests fall within the third category of “interested persons” …

**Section 5.7.3**

4.100 The effect of paragraph 3 is that an order under paragraph 2 can be made only if, first, the chargee has applied for the remedy and, secondly, the court is satisfied that the amount of the secured debt is 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, e.g. a higher-ranking chargee (see Illustration 12, paragraph 4.105). The purpose of this provision is to avoid a situation in which, without the consent of all interested persons, the chargee obtains a windfall as the result of the chargor’s default. Where the value of the object is greatly in excess of the debt owed to the chargee the court must refuse to make a vesting order (see Illustration 11, paragraph 4.104). If the amount of the secured debt exceeds the value of the object, the court may permit vesting “towards satisfaction” of that debt. In that case, the creditor retains its deficiency claim. …

4.104 *Illustration 11*

The chargee has a charge over an aircraft engine to secure a debt of one million euro. The engine has a value of five million euro. The chargee wishes to take the engine in satisfaction of the debt but the chargor objects. The court must refuse to make an order under Article 9, since the value of the engine greatly exceeds the amount of the debt.

4.105 *Illustration 12*

The facts are as in Illustration 11 except that, to secure full ownership of the aircraft engine, the chargee has to pay a little under four million euro to discharge a security interest having priority over its own security interest. The value of the engine is only a little over the aggregate of the amount due to the chargee and the sum paid to discharge the prior security, and there is no objection to the court making a vesting order.

**Section 5.7.4**

2.119 Since Article 9 provides for vesting of ownership in the chargee “in or towards” satisfaction of the debt, the creditor remains entitled, if the value of the asset is less than the amount owing, to recover the deficiency from the debtor. …

4.100 … If the amount of the secured debt exceeds the value of the object, the court may permit vesting “towards satisfaction” of that debt. In that case, the creditor retains its deficiency claim. …

4.106 *Illustration 13*

The facts are as in Illustration 11 except that the value of the aircraft engine is 500,000 euro less than the outstanding debt. Upon the court making an order vesting in the chargee ownership of the engine the chargee remains entitled to sue the debtor for the shortfall.

**Section 5.7.5**

4.103 Upon sale of the object by the chargee or its vesting in the chargee, the buyer or the chargee (as the case may be) takes free from any interest subordinate to that of the chargee but subject to any interest having priority over that of the chargee (see Illustration 15, paragraph 4.108).

**Section 6**

**Section 6.1.1.1**

2.157. Under Article 16 the registration system is intended to accommodate registrations of:

• international interests;

• prospective international interests (see paragraph 2.159);

• registrable non-consensual rights and interests (explained in paragraphs 2.273 et seq.);

• assignments (which by definition means contractual assignments, as opposed to assignments by operation of law);

• prospective assignments;

• subordinations;

• the acquisition of international interests by legal or contractual subrogation under the applicable law;

• notices of national interests (see Article 50(2));

• other items registrable by virtue of the Aircraft Protocol, namely outright sales or prospective sales.

Article 16 is not quite exhaustive even of items registrable under the Convention. Thus pre-existing rights or interests, though not falling within the above list, are registrable as a distinct category if covered by a declaration by a Contracting State under Article 60(3). See paragraph 2.325. Also registrable are subordinations of non-registrable interests to which the priority rules of Article 29(1) apply, namely the interest of an outright buyer, a conditional buyer or a lessee under Article 29(3), (4) (see paragraph 4.134).

The Aircraft and Space Protocols add sales and prospective sales to the list of registrable categories, while the regulations provide for the registration of transfer of a right to Aircraft Registry consent to discharge of a registration. …

2.40(1) **International interests**, that is, interests granted by the chargor under a security agreement, or vested in a person who is the conditional seller under a title reservation agreement or a lessor under a leasing agreement (Article 2(2)), other than interests arising under an internal transaction in respect of which a State has made a declaration excluding the application of certain aspects of the Convention (see (3) below). …

2.40(2) … A prospective international interest may be registered as such in the International Registry but does not have effect until it becomes an international interest, in which case it ranks for priority purposes as from the time of its registration as a prospective international interest if that registration has not been discharged (Article 19(4)). …

2.40(3) … Secondly, while it cannot be registered as an international interest, notice of it can be registered in the International Registry, thereby securing its priority in the same way as if it were a registered international interest. …

4.159. … The registration and priority rules will continue to apply. So the holder of a national interest may secure the benefit of the registration provisions and priority rules by registering a notice of its national interest, in which event the national interest will prevail over a subsequently registered international interest under Article 29(1) as applied by Article 50(2).

2.40(5) … The registration of a non-consensual right or interest pursuant to a Contracting State’s declaration under Article 40 is effective only in those cases where the applicable law is that of the declaring State. … Nevertheless, registrable non-consensual rights or interests rank for priority under the Convention only when registered and this is the primary feature distinguishing them from non-consensual rights or interests falling under Article 39. …

2.273. … As regards the Aircraft Protocol most States have made a declaration under Article 40, typically covering judgments or orders permitting attachment of equipment covered by the relevant Protocol and State liens for taxes or unpaid charges or other non-consensual rights or interest not covered by the relevant Contracting State’s declaration under Article 40.. Registration of such a non-consensual interest would, as in the case of a registered international interest, give it priority over subsequently registered interests and over unregistered interests and would also give protection under Article 30 if insolvency proceedings were opened against the debtor or the creditor. … Registration of a non-consensual right or interest, though protecting its priority under the Convention, does not convert it into an international interest. …

4.132. Sub-paragraphs (a)-(e) of paragraph 1 list the types of agreement underlying the international interest that may be entered in the International Registry. …

4.133. Assignments and prospective assignments of an international interest are registrable under sub-paragraph (b). …

5.20. The Aircraft Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. …

5.74. The registration provisions of the Convention have been extended to cover outright sales of aircraft objects, so that (in contrast to the position under the Convention itself) the buyer can register the sale in the International Registry. …

5.24. … Thus Article 19(5) of the Convention, which enables registration of a prospective international interest to constitute registration of an international interest without need of a separate registration applies to prospective sales, …

**Section 6.1.1.2**

2.149. The registration system lies at the heart of the Convention’s system of priorities. Registration gives public notice of an international interest or a prospective international interest and enables the creditor to preserve its priority and the effectiveness of the international interest in insolvency proceedings against the debtor. … registration of an international interest validly created ensures the priority of the international interest against subsequently registered interests and unregistered interests, regardless whether the first to register knew of an earlier unregistered interest (see Article 29(2)(a), (3)(b)). …

2.202. The general priority rules are set out in Article 29 and are few in number and for the most part simple. The only method of perfection of an international interest recognised by the Convention is registration in the International Registry. Subject to a number of exceptions discussed below, a registered interest has priority over a subsequently registered interest and over an unregistered interest. “Registered” means registered in the International Registry pursuant to Chapter V of the Convention (Article 1(bb)) and “registered interest” means a registered international interest, a non-consensual right or interest registrable and registered under Article 40 or a registered national interest specified in a notice of a national interest (Article 1(cc)). See paragraph 2.48. By extension it also includes a registered assignment (Article 35(1)), a registered right of subrogation (Article 38, and see paragraphs 2.260 and 4.274) and a pre-existing right or interest covered by a Contracting State’s declaration under Article 60(3). …

2.40(3) … In the first place, the national interest remains governed by the priority rules of the Convention, not those of national law (Article 50(2)), and by various other provisions of the Convention. Secondly, while it cannot be registered as an international interest, notice of it can be registered in the International Registry, thereby securing its priority in the same way as if it were a registered international interest.

4.159. … The registration and priority rules will continue to apply. So the holder of a national interest may secure the benefit of the registration provisions and priority rules by registering a notice of its national interest, in which event the national interest will prevail over a subsequently registered international interest under Article 29(1) as applied by Article 50(2).

2.40(5) … registrable non-consensual rights or interests rank for priority under the Convention only when registered and this is the primary feature distinguishing them from non-consensual rights or interests falling under Article 39. …

2.273. … Registration of such a non-consensual interest would, as in the case of a registered international interest, give it priority over subsequently registered interests and over unregistered interests and would also give protection under Article 30 if insolvency proceedings were opened against the debtor or the creditor. …

2.325. Registration of a pre-existing right or interest under an agreement within the period specified in a Contracting State’s declaration does not convert the right or interest into an international interest, nor does the registration constitute a priority point as regards earlier competing interests, it is merely a step necessary to preserve the priority of the pre-existing right or interest under the applicable law, so that thereafter third parties dealing with the object are alerted to the existence of the pre-existing right or interest. … While failure to register the right or interest under Article 60(3) risks its being subordinated to a subsequent registered interest, the priority of a pre-existing right or interest, registered under the Convention, in relation to earlier interests is not governed by Article 29(1) but remains a matter for the applicable law. …

4.192. This Article lays down a set of priority rules governing a registered interest in relation to other registered interests and to every kind of unregistered interest, whether or not registrable, except a non-consensual right or interest covered by a declaration by a Contracting State under Article 39(1)(a) (see paragraphs 4.278 *et seq*.) and a pre-existing right or interest (see Article 60 and paragraphs 4.361 *et seq*.). By virtue of the definition of “registered interest” in Article 1(cc), these rules apply not only to a registered international interest but also to a registrable non-consensual right or interest registered in the International Registry and a national interest notice of which has been so registered. Article 29 also applies to determine the priority of competing assignments falling within Article 35. …

4.146. … Registration, if valid, is complete when the registered data become searchable within the meaning of Article 19(3) and this will determine the priority of the international interest under Article 29, as well as the priority of other interests appearing on the register, i.e. registered notices of national interests and registrable non-consensual interests registered under Article 40. …

5.20. The Aircraft Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. …

5.74. The registration provisions of the Convention have been extended to cover outright sales of aircraft objects, so that (in contrast to the position under the Convention itself) the buyer can register the sale in the International Registry. …

**Section 6.1.1.3**

2.168. … In all cases of registration of a supposed international interest which does not exist or is not a Convention interest (see paragraph 2.163) the entry in the International Registry is without effect under the Convention. …

2.74. … Finally, registration in the International Registry of interests or notices which are not Convention interests or registrable non-consensual rights or interests, though of no effect under the Convention, may suffice under the applicable law to constitute notice of the existence of the interest, which may be relevant to priority under the applicable law. …

2.197. … With a view to ensuring that those searching the International Registry are not misled, Section 3.2 of the Regulations relating to the registration of interests in aircraft objects emphasises that whether a registration falls within the scope of the Convention or Aircraft Protocol depends on the underlying facts, and that while, for example, there is no technical impediment to the registration of pre-existing interests such registrations have no effect under the Convention or Protocol except where, by virtue of a declaration under Article 60(3) of the Convention, registration is required.

2.163. Registration of data is no guarantee that the interest exists, the data are correct or that the registration was otherwise validly made. Article 19 plainly recognises that a registration may be invalid, in the sense that though it exists it has no effect under the Convention. … So, as stated earlier, registration of an international interest does not necessarily mean that the interest exists. …

4.136. … Registration of a purported international interest which does not in fact exist or has ceased to exist has no legal effect under the Convention (see generally paragraphs 2.163 *et seq*.). …

**Section 6.1.1.4**

2.74. … Finally, registration in the International Registry of interests or notices which are not Convention interests or registrable non-consensual rights or interests, though of no effect under the Convention, may suffice under the applicable law to constitute notice of the existence of the interest, which may be relevant to priority under the applicable law. However, improper or improperly continued registration, by casting a shadow on the title of the owner, may expose the registrant to liability under the applicable law, e.g. for slander of title or a similar tort.

2.167. … Where a registration is improperly made or is incorrect, as where the purported agreement was not validly concluded or the purported consent was not in fact given, the party affected has various options. In the first instance its remedy is to make written demand requiring the other party to procure discharge or amendment of the registration without delay (Article 25(4)). If this demand is not complied with the party affected can apply to any court of competent jurisdiction for an order *in personam* requiring the other party to procure registration of a discharge. If that order is not complied with, the party obtaining it can take whatever action is available in the jurisdiction concerned for disobedience to court orders, and make a request, either directly or through the court that made the order, to a court in the Registrar’s jurisdiction to make an order directing the Registrar to discharge the registration. What the aggrieved party cannot do is to apply directly to the court of the Registrar’s jurisdiction in proceedings involving the other party, against whom that court has no jurisdiction under the Convention, though it may be able to make an order under its general jurisdiction (see paragraphs 2.282-2.284). …

2.169. Particular problems have arisen in several cases involving aircraft objects in respect of improper registrations of a non-consensual right or interest under Article 40 of the Convention (improper registration by the purported holder of an international interest), the remedies for which are discussed in paragraph 2.171. Under the regulations governing the International Registry for aircraft objects registration of such interests requires the digital signature of the registrant but not the consent of anyone else, since the registrant is not a debtor and there is no relationship between the creditor and the registrant unless the creditor is itself the registrant. So it is not unknown for a non-consensual interest to be registered which has not been the subject of a declaration by a Contracting State. The International Registry for aircraft objects now maintains records of all Contracting States and of all declarations, so that the system requires the person attempting to register a non-consensual right or interest to identify the Contracting State by whom the declaration purports to have been made as the State under whose law the non-consensual right or interest is said to arise and to provide documentary evidence pertaining to it (see paragraph 3.60). Further, a non-consensual right or interest can only be registered by a person approved by the Registrar (see generally paragraph 3.60 and paragraph 4.177). …

2.170. The fact that an improper registration by a third party has no effect under the Convention is of little consolation to the holder of an international interest, since the registration casts a shadow on the holder’s title. Whether and in what conditions this is actionable is to be determined by the applicable law as determined by the conflict rules of the *lex fori*. In proceedings for rectification of the register this is likely to be the law of the place where the International Registry is established, the courts of that place having exclusive jurisdiction to deal with claims against the Registrar; and within the EU Article 24(3) of Brussels I (recast) provides that in proceedings which have as their object the validity of entries in public registers the courts of the Member States in which the register is kept are to have exclusive jurisdiction. As regards aircraft objects, on the basis that an improper registration adversely affecting the holder of an international interest is a tort under Irish law committed in Ireland the Irish courts have in several cases assumed general jurisdiction to make an *in* *personam* order directing the registrant to have the improper registration discharged and where this is not done within the time permitted the High Court has then made an order directing the Registrar to discharge the registration (see paragraphs 2.171, 2.282-2.284, and notes 49-50). When the Hague Judgments Convention enters into force this may also become relevant.

2.184. Article 25 suffers from a major lacuna in that the only persons entitled to procure a discharge are the debtor, an intending debtor and an intending assignor. But the holder of an international interest has, if anything, at least as great an interest in procuring discharge of an improper registration adversely affecting the holder’s interest, for example, one who has registered an international interest it does not hold or the registrant of a purported non-consensual right or interest wrongly registered under Article 40. Where Article 24(3) of Brussels I (recast) relating to improper registrations does not apply (see paragraph 2.283) these cases have to be addressed instead through a broad interpretation of Article 44(1) under which the courts of the jurisdiction where the Registrar has its centre of administration (in the case of the Registrar of the International Registry for interests in aircraft objects, the Irish High Court) should be treated as having jurisdiction to enforce an *in personam* order of a competent jurisdiction requiring discharge of the registration, by analogy with Article 44(3). …

4.136. … Whether the improper registration gives rise to a claim for damages by the person against whom the registration was wrongfully made or any other person adversely affected by the registration is not answered by the Convention and is a matter for the applicable law as determined by the rules of private international law of the Contracting State in which the proceedings are brought. The Irish High Court has exclusive jurisdiction to make orders against the Registrar of the International Registry relating to aircraft objects, the registry being based in Dublin (Article 44(1)), and has regularly assumed jurisdiction to make an order against a wrongful registrant to procure discharge of the improper registration in exercise of the court’s general jurisdiction (see paragraphs 2.282-2.284).

**Section 6.1.1.5**

2.220. A party in whose favour a subordination has been made should register the subordination in the International Registry, otherwise it will not bind an assignee of the subordinated interest (Article 29(5)). A subordination of an interest may be registered even if the subordinated interest itself has not been registered, though usually the failure to register will itself result in subordination, rendering a subordination agreement unnecessary. But a subordination agreement is required where the interest to be subordinated is one which would otherwise have priority without itself being registered and in this case the subordination agreement should be registered. … A subordination agreement between two creditors affects only the creditors themselves and, if the subordination agreement is registered, an assignee of the subordinated creditor. …

**Section 6.1.1.6**

2.255. … The key point to bear in mind is that contrary to what is stated in Article 35 assignments of associated rights are not registrable, only assignments of the related international interest, and it is the order of registration of the latter that determines the priority of competing assignments of the associated rights. The starting point, under Article 35, is that where there are competing assignments of associated rights, at least one of the assignments includes the related international interest and the assignment of that international interest is registered (see (2) below), the provisions of Article 29 apply mutatis mutandis, so that failure to register the assignment of an international interest subordinates the assignee to a subsequent registering assignee not only as to the international interest but also as to the associated rights. … For Article 35 to apply two conditions must be satisfied:

*(1) At least one of the assignments includes the related international interest*

…

*(2) The assignment of the related international interest is registered*

…

**Section 6.1.2.1**

2.149. … Registration is not, however, either necessary for the creation of an international interest or proof of its existence.[[15]](#footnote-15) It is of no effect under the Convention if the purported international interest has not been validly created. … Just as registration is no guarantee of the creation or validity of the international interest, so also the fact that a registration is current does not necessarily mean that the international interest is still in existence. …

2.163. Registration of data is no guarantee that the interest exists, the data are correct or that the registration was otherwise validly made. … So, as stated earlier, registration of an international interest does not necessarily mean that the interest exists. … Similarly, a registration initially valid may cease to be effective because the international interest no longer exists and no remedies remain exercisable in respect of it. …

4.136. … discharge of an international interest does not bring the international interest to an end, it merely converts it into an unperfected interest.

**Section 6.1.3.1**

2.232. The general rule is that in insolvency proceedings against the debtor (see Article 1(l) and paragraphs 3.125 and 4.21 for the definition of “insolvency proceedings”) an international interest is effective if registered prior to the commencement of the proceedings (Article 30(1)). …

4.217. An international interest is in principle effective in insolvency proceedings against the debtor (which would seem to include proceedings initiated by the debtor itself) if registered in the International Registry prior to the commencement of the insolvency proceedings, that is, the time at which those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). …

4.218. The effect of Articles 40 and 50(2) is that the protection given by paragraph 1 of the present Article extends to registered non-consensual rights or interests and to national interests protected by notice on the International Registry, in either case where the registration was effected prior to the commencement of the insolvency proceedings and was in conformity with the Convention.

2.273. … Registration of such a non-consensual interest would, as in the case of a registered international interest, give it priority over subsequently registered interests and over unregistered interests and would also give protection under Article 30 if insolvency proceedings were opened against the debtor or the creditor. …

2.309. … the insolvency provisions of Article 30 of the Convention and Article XI of the Protocol do not apply to a pre-existing right or interest. …

2.324. … Unless covered by a declaration under Article 60 an interest remains a pre-existing interest, and therefore outside the Convention, even if assigned after the effective date, for the assignee succeeds to the position previously held by the assignor. It follows that the assignment itself is not covered by the Convention and its registration has no Convention effects. The same is true of the acquisition of a pre-existing interest by subrogation after the effective date. …

5.20. The Aircraft Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. …

5.24. The provisions of the Convention that apply to sales and prospective sales are set out in the last part of this Article. They include Chapters V and XII (except Article 43, which is not relevant to sales). Thus Article 19(5) of the Convention, which enables registration of a prospective international interest to constitute registration of an international interest without need of a separate registration applies to prospective sales, …

**Section 6.1.4.1.1**

2.202. The general priority rules are set out in Article 29 and are few in number and for the most part simple. The only method of perfection of an international interest recognised by the Convention is registration in the International Registry. Subject to a number of exceptions discussed below, a registered interest has priority over a subsequently registered interest and over an unregistered interest. …

2.8. At the heart of the Convention is the registration system it establishes, enabling a creditor to register an international interest and thereby secure priority. …

2.48. … Though an international interest is a proprietary interest it needs to be perfected by registration in order to preserve its priority against subsequently registered international interests and unregistered interests (see paragraph 2.8). …

4.192. This Article lays down a set of priority rules governing a registered interest in relation to other registered interests and to every kind of unregistered interest, whether or not registrable, except a non-consensual right or interest covered by a declaration by a Contracting State under Article 39(1)(a) (see paragraphs 4.278 *et seq*.) and a pre-existing right or interest (see Article 60 and paragraphs 4.361 *et seq*.). …

2.205. So far as the courts of a Contracting State are concerned a registered interest has priority over an unregistered interest (other than a pre-existing right or interest – see Article 60) even if the latter was not capable of registration for Convention purposes, for example because it was not of a registrable category or because at the time it was granted the debtor was not situated in a Contracting State (see paragraphs 2.31(5), 2.33 *et seq*.). Article 29(1) thus overrides priority rules under national law, whether those rules are of a Contracting State or non-Contracting State. …

**Section 6.1.4.2.1**

2.43. The Aircraft Protocol extends the registration and priority provisions of the Convention to outright **sales** and **prospective** **sales** (see paragraphs 2.276 and 3.16) of aircraft objects. …

2.276. The Convention does not apply to outright sales, for these do not involve a debtor or the assertion of any security or proprietary interest vis-à-vis the debtor. Article 41 provides for the possibility of an extension of the Convention to outright sales as provided for in the relevant Protocol, thereby enabling outright buyers to take advantage of the registration machinery to register their acquisitions. The Aircraft and Space Protocols extend the registration and priority provisions to cover outright sales[[16]](#footnote-16) and, as a consequence, prospective sales. …

5.20. The Aircraft Protocol extends the Convention to outright sales and prospective sales but only so far as the Convention provisions are appropriate to these. The first part of this Article lists Articles which apply with the deemed substitution of a contract of sale, a sale, a prospective seller, the seller and the buyer. The second part of this Article designates the Articles or Chapters which apply in full in relation to sales and prospective sales of aircraft objects except as otherwise specified. The overall effect of the present Article is to place the Convention provisions into three categories as regards sales and prospective sales, namely those that are general in nature and thus apply as they stand in the Convention; those that apply with modifications; and those that do not apply.

The provisions of the Convention that do not apply at all in relation to contracts of sale, sales and prospective sales, and the reasons for their exclusion, are:

Articles 2 and 7 The interest of an outright buyer is not an international interest

Chapter III Asset-based default remedies do not feature in outright sales

Article 29(3) An outright buyer of an aircraft object can register its interest

Chapter IX No rights to payment are secured on an outright sale

Chapter XI Its effect is provided by Article III

Article 43 Article 13 does not apply to outright sales

Article 60 On an outright sale no pre-existing interest is retained.

These exclusions apply only in relation to sales and prospective sales. …

5.21. It is necessary to be precise as to the equivalents prescribed by Article III and in particular to distinguish a contract of sale, which is merely an agreement to sell, from a sale, which is a transfer of ownership. The following is a table of equivalents:

|  |  |
| --- | --- |
| Agreement (as defined in Article 1(a) of the Convention | Contract of sale |
| International interest | Sale |
| Prospective international interest | Prospective sale |
| Debtor | Seller |
| Creditor | Buyer |

…

5.24. The provisions of the Convention that apply to sales and prospective sales are set out in the last part of this Article. They include Chapters V and XII (except Article 43, which is not relevant to sales). …

**Section 6.1.4.3.1**

2.273. A Contracting State may also make a declaration that specified categories of non-consensual right or interest shall be registrable as if they were international interests (Article 40). … Registration of such a non-consensual interest would, as in the case of a registered international interest, give it priority over subsequently registered interests and over unregistered interests and would also give protection under Article 30 if insolvency proceedings were opened against the debtor or the creditor. … Registration of a non-consensual right or interest, though protecting its priority under the Convention, does not convert it into an international interest. It retains its character as a non-consensual lien or right of detention and as such is typically exercisable only where the aircraft object is in the possession of the person asserting the lien or right of detention. Moreover, even where the law of the declaring Contracting State allows the right to be exercisable without possession it is territorially limited and cannot be enforced while the aircraft object is outside that State’s jurisdiction. However, the right in such cases is not lost, it is simply latent, becoming exercisable again when the aircraft object returns to the jurisdiction, the priority secured by registration being maintained. …

2.40(5) … A Contracting State may make a declaration under Article 40 that non-consensual rights or interests arising under its law may be registered in the International Registry, and any such right or interest that is so registered is then treated for the purposes of the Convention as a registered international interest. … The registration of a non-consensual right or interest pursuant to a Contracting State’s declaration under Article 40 is effective only in those cases where the applicable law is that of the declaring State. … registrable non-consensual rights or interests rank for priority under the Convention only when registered and this is the primary feature distinguishing them from non-consensual rights or interests falling under Article 39. … But the Convention remedies themselves are not available to the holder of a registrable non-consensual right or interest, which secures only those rights conferred by the law of the declaring State. …

4.40. **“registrable non-consensual right or interest”** – a right or interest created by the law of a Contracting State, as opposed to agreement, which by virtue of a declaration made by that State under Article 40 can be registered in the International Registry as if it were an international interest. …

**Section 6.1.4.3.2**

2.305. The effect of this exclusion of internal transactions is limited. In general terms, Article 50 disapplies most of the default provisions in Chapter III, but not the basic system for perfecting and prioritising interests. The default provisions in Articles 8(4) and 9(1) restricting sale of an object or vesting of ownership of it in the creditor apply to the national interest created by the internal transaction. The national interest may be protected by notice in the International Registry, and is then given the same priority as a registered international interest. The priority of an assignment of a national interest notice of which has been entered in the International Registry is controlled by the rules governing the priority of an assignment of a registered international interest. …

2.40(3) … the national interest remains governed by the priority rules of the Convention, not those of national law (Article 50(2)), and by various other provisions of the Convention. Secondly, while it cannot be registered as an international interest, notice of it can be registered in the International Registry, thereby securing its priority in the same way as if it were a registered international interest.

4.30. **“notice of a national interest”** – the means by which a national interest arising under an internal transaction can be protected by entry of the notice in the International Registry. The first-in-time rule applies to the registration of a notice of a national interest as it does to registration of an international interest.

4.159. … The registration and priority rules will continue to apply. So the holder of a national interest may secure the benefit of the registration provisions and priority rules by registering a notice of its national interest, in which event the national interest will prevail over a subsequently registered international interest under Article 29(1) as applied by Article 50(2).

2.304. … An internal transaction is a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to the transaction is situated, and the relevant object located, in that State at the time of conclusion of the transaction and the national interest created by the transaction has been registered in a national registry in the declaring State (Article 1(n), (r)). …

2.306. … Registration of notice of a national interest confers in all Contracting States the priority prescribed by Article 29.

4.28. … An interest arising under the law of a Contracting State but not registered in a national registry of that State is not a national interest for the purposes of the Convention because the transaction under which it arises is not an internal transaction as defined by Article 1(n). …

4.331. … the reference to Article 8(4) as to notice of an intended sale is puzzling, given that the remedy of sale and other remedies do not apply to an internal transaction, so it is hard to see how Article 8(4) could ever come into play. …

4.334. *Illustration 56*

C and D both have their centres of main interest in Ruritania, a Contracting State that has made a declaration under Article 50. C as lessor enters into an agreement with D as lessee for the lease of an airframe which is located in Ruritania. The leasing agreement is recorded in the Ruritanian registry in the name of D as operator and notice of C’s national interest as lessor is registered in the International Registry. The transaction is an internal transaction creating a national interest. Subsequently C mortgages the airframe to A, to whom it assigns the lease by way of security. A registers its mortgagee in the Ruritanian registry in accordance with Ruritanian law and then registers notice of its national interest as mortgagee, together with the assignment, in the International Registry.

Relations between C and D fall outside the Convention, as do relations between C and A and between D and A. D’s rights as lessee prevail over those of A by virtue of the fact that C’s notice of its national interest was registered before registration by A of notice of its own national interest (Article 29(4)(b)), and D is entitled to quiet enjoyment as against A (Protocol, Article XVI(1)(a)). A succeeds to any priority enjoyed by C in respect of its registered international interest as lessor.

If A had not been situated in Ruritania at the time of the mortgage and assignment of lease to A then the mortgage would not be an internal transaction, it would be registrable by A as an international interest, entitling A as mortgagee to exercise Convention remedies against C , D’s rights would have priority over those of A, as before, but in relation to the lease A would stand in the position of C as C’s assignee of a national interest and would therefore not have rights under the Convention as against D.

**Section 6.1.4.3.3**

2.309. … The general principle embodied in Article 60 is that unless otherwise declared by a Contracting State at any time a pre-existing right or interest is not affected by the Convention and retains the priority it enjoyed under the applicable law before the effective date of the Convention (Article 60(1)). Article 60(1) thus has both a general effect and a specific effect. The Convention “does not apply” to a pre-existing right or interest, and this “retains the priority” it enjoyed under the applicable law. So the general effect is not confined to priorities. It means, among other things, that the insolvency provisions of Article 30 of the Convention and Article XI of the Protocol do not apply to a pre-existing right or interest. This is so even where a Contracting State has made a declaration under Article 60(3) (see paragraphs 2.324 et seq.), since such a declaration can only relate to priorities and, furthermore, to priorities outside insolvency, because it is aimed at priority rules arising under the registration system, not the disturbance of pre-insolvency entitlements by rules of insolvency law.

2.310. The effect of Article 60(1) is that, subject to any declaration under Article 60(3), the holder of a pre-existing right or interest preserves its pre-Convention priority without the need to register under the Convention, even if the right or interest is of a registrable category and even if it would ordinarily be overridden by a previously registered interest under Article 29(1) of the Convention. … Article 60(1) does not confine the concept of pre-existing interest to one arising under the law of a State that has become a Contracting State; even a pre-existing interest arising under the law of a non-Contracting State falls within Article 60(1) if the debtor was situated in a Contracting State at the time of the agreement creating or providing for the international interest. …

2.218. … For example, where the chargor of an aircraft object is situated in a Contracting State but the lessee is not, then so far as concerns the courts of a Contracting State the charge is an international interest that is governed by the Convention, which, however, is inapplicable to the lease except as a pre-existing right or interest to which the Convention is potentially extended by a declaration by a Contracting State under Article 60(3). Subject to this only the security agreement given by the chargor is registrable as a Convention registration in the International Registry. Conversely, if the lessee is situated in a Contracting State but the chargee is not, the lease constitutes an international interest while the charge is a pre-existing right or interest, In both cases the priority of the international interest, which is registrable under the Convention, over the pre-existing right or interest is governed by Article 60. Subject to any declaration by the relevant Contracting State under Article 60(3) the pre-existing right or interest will retain its priority under the applicable law over any subsequently registered international interest. …

2.311. A pre-existing right or interest is defined by Article 1(v) as a right or interest *of any kind* in or over an object created or arising before the effective date of the Convention as defined by Article 60(2)(a). So Article 60(1) preserves not only the priority of a creditor under a security agreement, title reservation agreement or leasing agreement but also the priority of the holder of other rights in or over the object, including non-consensual rights or interests. …

2.312. What is preserved by Article 60(1) is the existing priority of a right or interest under the applicable law. What is the meaning of “applicable law” in Article 60(1)? … the reference to “applicable law” must be taken to mean the applicable law as determined by the conflict rules of the forum, that is, the applicable domestic law (see Article 5(3)). So in proceedings in a Contracting State which has not made a declaration, under Article 60(3) a pre-existing right or interest retains its priority under the applicable law as determined by the conflict rules of that State. …

2.313. By “effective date of this Convention” is meant in relation to a debtor the time when (i) the Convention enters into force or (ii) the State in which the debtor is situated becomes a Contracting State, whichever is the later (Article 60(2)(a)). … It follows that a right or interest will be a pre-existing right or interest where (a) the debtor was not situated (and for aircraft objects, the aircraft was not subject to nationality registration) in a Contracting State at the time of the agreement, or (b) the debtor was situated in a Contracting State (or, for aircraft objects, the aircraft is registered in a Contracting State) at the time of the agreement but the Convention had not entered into force as regards the relevant object, which in the case of aircraft objects is 1 March 2006.

2.314. Under Article 60(2)(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if has no place of business, its habitual residence. …

2.315. A Contracting State may make a declaration specifying a date not less than three years after the declaration when the Convention and Protocol will become applicable to a pre-existing right or interest for the purpose of determining priority, including the protection of any existing priority, where the right or interest arises under an agreement made at a time when the debtor was situated in a Contracting State (Article 60(3)). So the holder of a pre-existing interest affected by a declaration will have at least three years in which to protect its pre-Convention priority by registration in the International Registry. …

2.224. Unless otherwise declared by a Contracting State under Article 60(3) the Convention does not apply to a pre-existing right or interest, as defined by Article 1(v), which retains the priority it enjoyed under the applicable law before the effective date of the Convention. … Article 60(3) provides for extension of the Convention and Protocol to pre-existing rights or interests for priority purposes, but in this case registration within the period prescribed by the declaration is not a priority point, only a perfection requirement for the preservation of priority of the pre-existing right or interest under the applicable law (see further paragraphs 2.325 *et seq*.). …

2.325. Registration of a pre-existing right or interest under an agreement within the period specified in a Contracting State’s declaration does not convert the right or interest into an international interest, nor does the registration constitute a priority point as regards earlier competing interests, it is merely a step necessary to preserve the priority of the pre-existing right or interest under the applicable law, so that thereafter third parties dealing with the object are alerted to the existence of the pre-existing right or interest. So pre-existing rights or interests constitute a distinct registrable category and are treated as such by the International Registry for aircraft objects even though they do not feature in the list of registrable items in Article 16(1). …

4.32. **“pre-existing right or interest”** – a right or interest created or arising before the effective date of the Convention (as defined by Article 60(2)(a)) and therefore unaffected by the Convention except in a Contracting State that has made a declaration under Article 60 and then only for the purposes of determining priority under the Convention. …

**Section 6.1.5.1**

2.40(2) … A prospective international interest may be registered as such in the International Registry but does not have effect until it becomes an international interest, in which case it ranks for priority purposes as from the time of its registration as a prospective international interest if that registration has not been discharged (Article 19(4)). …

2.256. … Where a prospective assignment of an international interest has been registered and later crystallises into an assignment the registration dates back to the time of registration of the prospective assignment without the need for any new registration (Article 18(3) as applied by Article 19(4)), so long as the registration information supplied would have sufficed for registration of an international interest (Article 19(4) as applied by Article 19(5)), and this may affect priorities of the assignments of the related associated rights in accordance with Article 29 as applied by Article 35.

3.21. … When a prospective sale is registered and a sale is later concluded the sale is deemed to be registered as from the time of registration of the prospective sale …

2.41(1) **Assignments and prospective assignments** of international interests, which are registrable under Article 16(1)(b). …

4.34. **“prospective assignment”** – an assignment of associated rights intended to be made in the future upon the occurrence of a stated event and registrable under Article 16(1)(b). Under Article 35 the priority rules governing international interests apply mutatis mutandis to assignments, with the result that when the assignment is in due course made it is treated as registered as from the time of registration of the prospective assignment and ranks for priority accordingly. For the meaning of “prospective” see paragraphs 4.35 and 4.36.

2.238. … The conversion of a registered prospective assignment into an actual assignment does not require fresh registration and the assignment is treated as registered from the time of registration of the prospective assignment provided the registration was current immediately before the assignment (Article 19(4),(5)) This follows the rule for registration of a prospective international interest. However, by a drafting oversight the neutrality of a search certificate as to international interests under Article 22(3) (see paragraph 2.195) is not expressly extended to prospective assignments but should be treated as applicable by analogy to these, for otherwise Article 19(5), designed to obviate the need for a second registration, will be undermined. For brevity the search certificate issued by the International Registry refers only to “assignment” but an explanatory note states that this is not intended to indicate whether what is registered is an assignment or a prospective assignment. …

2.61. … Where a prospective international interest ripens into an actual international interest it will require separate registration, operative for priority purposes from the time of that registration, unless the registration information supplied at the time the prospective international interest was registered was sufficient for registration of an international interest (Article 18(3)), as will almost invariably be the case because of the Registry regulations and the system itself (see paragraph 2.159). So if a prospective creditor wishes its international interest to be treated as registered retrospectively to the registration of the prospective international interest it will need to ensure that such registration contains the particulars required by the regulations for a registration of a completed international interest. … Where, following registration of a prospective international interest that has not yet ripened into an international interest, an international interest is granted to another party this will initially have priority over the prospective international interest but will become subordinated to the latter when it becomes an international interest, this being treated as registered as from the time of registration of the prospective international interest (Article 19(4)).

2.159. Where a prospective international interest is registered and later becomes a completed international interest it is deemed to have been registered at the time of registration of the prospective international interest and ranks for priority accordingly (Article 19(4)), no fresh registration being required. …

2.223. The priority of an international interest which comes into existence after the registration of a prospective international interest departs from the normal rule only in the sense that the international interest itself is never actually registered, it is merely treated as registered as from the time of registration of the prospective international interest (Article 19(4)). This means that a subsequent international interest registered before the prospective international interest has ripened into an actual interest has initial priority, but this will be displaced if and when the earlier, prospective, international interest becomes an actual international interest. However, if at the time the international interest comes into existence the registration of the prospective international interest has lapsed or been discharged the international interest must be separately registered and such registration has no retrospective effect. …

4.35. … The mere intention of the parties to create an international interest at some time in the future is not sufficient to give rise to a prospective international interest. It is necessary that the prospective international interest relate to an object which is identifiable in accordance with the identification criteria prescribed by the relevant Protocol. … So long as the registered particulars are sufficient for a completed international interest no second registration is required when the international interest comes into being (for example, when the only element lacking was the debtor’s power of disposal and the debtor acquires a power to dispose of the object). …

4.154. … So long as the registration particulars suffice to cover the completed international interest (see paragraph 4.145) and the registration of the prospective international interest was still current immediately before the international interest was constituted (i.e. any period specified in the registration as its duration has not expired), no further registration is required to reflect the transformation of the prospective international interest into an actual international interest. …

4.155. *Illustration 20*

Debtor grants Creditor X an international interest in helicopter #1 and a prospective international interest in engine A installed in helicopter #1. These interests are registered in the International Registry on Day 1. Debtor grants Y and international interest in helicopter #2 and a prospective international interest in engine B installed on it. These interests are registered in the International Registry on Day 10. No other interest appeared on the International Registry at the time of these various registrations. Debtor removes engine A from helicopter #1and engine B from helicopter #2 and subsequently re-installs both engines, engine B now being placed on helicopter #1 and engine A being placed on helicopter #2. Creditor X has a first priority interest in helicopter #1 and engine A now installed on helicopter #2. Its interest in engine A transformed from a prospective interest to a live interest when engine A was removed from helicopter #1 and assuming that the registered particulars adequately and accurately covered what would be required for registration of C’s international interest, this live interest did not need to be separately registered. The installation of engine A on helicopter #2 did not extinguish Creditor X’s interest under the applicable law and therefore under Article 29(7) does not displace the interest granted to Creditor X, who therefore has priority over Creditor Y with respect to engine A. On the same reasoning Creditor Y has priority over Credit X as to engine B even though Creditor A held an international interest in helicopter #1 that was registered prior to the date that Creditor Y registered its prospective international interest in engine B.

4.156. *Illustration 21*

The facts are as in Illustration 20 except that after the charge in favour of X and before C has given value or committed itself to give value to D, D breaks off negotiations for the loan and at D’s request C procures discharge of the registration of the prospective international interest. Subsequently negotiations between C and D are resumed and C advances funds on the security of the aircraft object and registers an international interest. X has priority over C, whose registration of its prospective international interest had been discharged before its international interest was created and that international interest was registered after the registration of X’s international interest.

4.193. … Where a registered prospective international interest becomes an actual international interest it is deemed to have been registered at the time of registration of the prospective international interest, and to have priority from that time, if the registered information would have been sufficient for the registration of an international interest (see Article 18(3) as applied by 19(4) and paragraph 4.154 and Illustrations 20 and 21, paragraphs 4.155-4.156). In these cases there is no actual registration of the international interest as such. …

3.108. An intending buyer may register a prospective sale of an identified aircraft object and if a sale later results it is deemed to have been registered as from the time of registration of the prospective sale (Article 19(4) as applied by Article III of the Protocol), which may, of course, have priority effects.

4.36. **“prospective sale”** – a sale intended to be made in the future upon the occurrence of a stated event (Article 1(z)). The Convention does not itself contain provisions governing sales or prospective sales but Article 41 provides that it may be applied to them by virtue of a Protocol (as has been done under the Aircraft and Space Protocols but not the Luxembourg or Pretoria Protocol) with the effect that where a prospective sale is registered and the sale is duly completed it is treated as registered from the time of registration of the prospective sale. The discussion in paragraph 4.35 as to the meaning of “prospective” applies also to a prospective sale. …

**Section 6.1.6.1**

None

**Section 6.1.6.2**

2.209. A transferred interest (see paragraph 2.41) retains its original priority, that is to say, the priority of the transferee is that of its transferor. So if a charge given by Debtor and registered in favour of A is followed by a second charge registered in favour of B and A sub-charges its interest to C, C has priority over B, whether or not the sub-charge is registered. Similarly, if two international interests are registered over the same object, the first in favour of A and the second in favour of B, and A assigns its interest to C and B assigns its interest to D, C has priority over D, whether or not the assignment to C was registered (see Article 31(1)(b)). Nevertheless, C should register the sub-charge in the first case and the assignment in the second, not to protect itself against the grantee of another international interest from Debtor but to secure protection against a second sub-charge or a second assignment of the same interest. So if C fails to register and A makes a second sub-charge or assignment to E, E obtains priority over C. Similar considerations apply to transfers by way of legal or contractual subrogation.

2.253. There may be more than one assignment of associated rights. In a Contracting State priority is determined by the Convention priority rules, not by the otherwise applicable law. In determining the priority of competing assignments it is necessary to distinguish assignments of associated rights related to different international interests from competing assignments of the same associated rights. The former are governed by Article 31 and the assignees have the same rank as their assignors; the latter are governed by Article 35 and priority is given to the first assignee to register its assignment of the related international interest, though the priority is qualified by Article 36. We take each of these in turn.

4.229. It is important to distinguish assignments of two sets of associated rights related to different international interests in the same object from successive assignments of the same set of associated rights arising in relation to a single international interest. Where there are two sets of associated rights which are related to different international interests in the same object it is the international interests, not the assignments themselves, that are in competition, the priority is governed by Article 31 and each assignee stands in the shoes of its assignor in terms of priority (Article 31(1)(b)). Accordingly priority as regards the associated rights depends in this instance not on the order of registration of the assignments of the related international interests but on the order of registration of the international interests themselves. … The situation is quite different where there is a single set of associated rights related to the same international interest. Here the competition is between the assignments themselves, and assuming that at least one of the assignments is registered Article 35 applies, it is irrelevant whether the international interests have been registered, and priority goes to the assignee who is the first to register, …

2.255. An example is where the debtor has granted an international interest to A, who assigns that interest and the associated rights first to X and then to Y. Thus the competition is not between claimants to different associated rights related to different international interests but between claimants to the same associated rights. … The key point to bear in mind is that contrary to what is stated in Article 35 assignments of associated rights are not registrable, only assignments of the related international interest, and it is the order of registration of the latter that determines the priority of competing assignments of the associated rights. …

4.233. … Registration of the assignment of an unregistered international interest would protect the assignee against subsequently registered and unregistered assignees who do not procure registration of the international interest but not against displacement by the holder of a subsequent international interest who registers its international interest first or the assignee of such holder or against creditors in the debtor’s insolvency (see paragraph 2.240).

2.254. Suppose that the debtor has granted an international interest to A under agreement number 1 and a subsequent international interest in the same asset to B, under agreement number 2, A’s interest being registered first and thus having priority. A assigns its international interest and associated rights under agreement 1 to X, while B assigns its international interest and associated rights under agreement 2 to Y. Who has priority as between X and Y? The position here is straightforward. Under Article 31(1)(b) each assignee enjoys the same priority as its assignor. It follows that X has priority over Y and this is so even if X has not registered the assignment in its favour and Y has registered its assignment. Since the two assignments relate to different international interests and thus have a different content, they are not in fact competing assignments at all but assignments of competing international interests, and registration of an assignment of one such interest has no relevance to the rights of the assignee of the other interest. The priority of the two assignments of associated rights is governed by the order of registration of their respective international interests, not by the order of registration of the assignments of those interests.

4.234. Where, as will be the case in the absence of agreement to the contrary, the assignment of the associated rights carries with it the related international interest, the assignee obtains the same priority status as its assignor. So if an airframe is given in security to A, B and C under successive security agreements and registrations are effected in the same order, then an assignment by A of the associated rights under its security agreement with the debtor transfers to the assignee A’s international interest and the priority of that interest over the interests of the later registrants, B and C. Despite this, A’s assignee should register the assignment in order to safeguard itself against the possibility of its interest being lost or subordinated in favour of a subsequent assignee of the same international interest who registers first. However, in this case the priority of the subsequent assignee is dependent on the contract under which the associated rights arise stating that they are secured by or associated with the object and is limited by Article 36 to object-related rights as set out in Article 36(2).

4.241. *Illustration 37*

O, the owner/lessor of an aircraft object, registers its international interest and subsequently assigns its rights under the leasing agreement (associated rights) to A by way of an outright assignment. The effect of the assignment is to transfer to A not only the associated rights but also, in the absence of agreement to the contrary, the international interest previously vested in O. Absent such agreement A becomes entitled to be registered as assignee of the international interest, enjoying the same priority as that previously enjoyed by O, and to collect the rentals under the lease, subject to any defences or rights of set-off available to the lessee under the applicable law, e.g. for nonconformity of the equipment with the specifications in the leasing agreement, so far as these have not been waived by the lessee by the terms of the lease or in some other writing.

2.261. A party acquiring associated rights and/or the international interest by way of subrogation stands in much the same position under the Convention as an assignee. Where there are two subrogees whose subrogatory rights relate to different international interests it is the international interests, not the subrogatory rights as such, that are in competition. Accordingly each subrogee stands in the shoes of its subrogor and thus has priority over the subrogee of a junior international interest, whether or not the first subrogee has registered its subrogation (see paragraph 2.254 for the comparable position in relation to an assignment). However, if there are two subrogees acquiring from the same subrogor in relation to the same international interest the competition is between the two rights of subrogation and priority goes to the first to register its acquisition by subrogation. This is not expressly provided by the Convention but must follow from the general principle in Article 29(1) that the order of registration determines priorities.

**Section 6.2.1.1**

2.202. … Subject to a number of exceptions discussed below, a registered interest has priority over a subsequently registered interest and over an unregistered interest. …

2.205. So far as the courts of a Contracting State are concerned a registered interest has priority over an unregistered interest (other than a pre-existing right or interest – see Article 60) even if the latter was not capable of registration for Convention purposes, for example because it was not of a registrable category or because at the time it was granted the debtor was not situated in a Contracting State (see paragraphs 2.31(5), 2.33 *et seq*.). Article 29(1) thus overrides priority rules under national law, whether those rules are of a Contracting State or non-Contracting State. …

2.208. The same rules apply to the priority of a non-consensual right or interest registered under Article 40 of the Convention vis-à-vis another non-consensual right or interest or a competing international interest as apply to registered consensual interests. …

3.99. Article XIV includes a provision designed to give the outright buyer of an aircraft object the same priority on registration as is enjoyed under Article 29 of the Convention by the holder of an international interest. …

4.209. *Illustration 26*

D, whose principal place of business is in Ruritania, a Contracting State, is the owner of an aircraft of which the nationality registration is Ruritanian. Under Ruritanian law X has a non-possessory lien to secure a judgment debt. Subsequently D charges the airframe and engines to C to secure an advance and C registers the charge. C’s registered international interest has priority over X’s earlier lien even though this is not registrable under the Convention. The position would be otherwise if Ruritania had made a general declaration under Article 39 covering the priority of unregistered judgment debts or had made a declaration under Article 40 of the Convention providing for the registration of judgment debts in the International Registry and X had registered its judgment debt before C had registered its charge.

**Section 6.2.1.2**

2.202. … Subject to a number of exceptions discussed below, a registered interest has priority over a subsequently registered interest and over an unregistered interest. …

2.205. So far as the courts of a Contracting State are concerned a registered interest has priority over an unregistered interest (other than a pre-existing right or interest – see Article 60) even if the latter was not capable of registration for Convention purposes, for example because it was not of a registrable category or because at the time it was granted the debtor was not situated in a Contracting State (see paragraphs 2.31(5), 2.33 *et seq*.). … Moreover, since registration in the International Registry is the only mode of perfection recognised by the Convention, a creditor whose interest is unregistered and whose debtor retains a power to dispose will be subordinate to a later creditor whose interest has been registered even if at the time of registration the earlier creditor had taken possession of the object, whether by way of pledge or by way of enforcement of its security. …

2.208. The same rules apply to the priority of a non-consensual right or interest registered under Article 40 of the Convention vis-à-vis another non-consensual right or interest or a competing international interest as apply to registered consensual interests. …

3.99. Article XIV includes a provision designed to give the outright buyer of an aircraft object the same priority on registration as is enjoyed under Article 29 of the Convention by the holder of an international interest. …

4.193. Paragraph 1 embodies two priority rules. First, as between registered interests priority goes to the first to be registered (Illustration 25, paragraph 4.208). Registration is therefore a priority point, not merely a perfection requirement. …

4.208. *Illustration 25*

D gives a charge over an airframe to C1 on 1 February and to C2 on 2 March. C2 registers its charge on 3 March, while C1 registers its own charge on 6 March. In proceedings in a Contracting State C2 has priority and this is so even if it knew of the charge in favour of C1 and even if the domestic law governing priority is that of a different Contracting State or of a non-Contracting State.

4.213. *Illustration 30*

O leases an airframe to L, registers its international interest and then charges the airframe to C. C takes its charge subject to the lease to L, whose lessor, O, registered first and who is thus protected under Article 29(4)(b). The position would be otherwise if C had registered first, whether because O had not then granted the lease to L and therefore had no registrable interest or because it failed to register before C.

**Section 6.2.1.3**

2.210. The priority of the first to register applies even if the holder of the registered interest took with actual knowledge of the unregistered interest, a rule necessary to avoid factual disputes as to whether a holder did or did not have knowledge and also to obviate the inconvenience and expense of inquiries to determine whether a prior unregistered interest exists. …

4.194. A registered interest has priority over an earlier unregistered interest even if this was known to the holder of the registered interest at the time of registration. … By the same token, registration of an interest in a national registry is irrelevant to the ordering of priorities under Article 29.

4.210. *Illustration 27*

D charges an airframe to C1 to secure present and future advances. C1 advances 20 million euro and registers the charge. Subsequently D charges the airframe to C2, which advances 15 million euro and gives notice of its charge to C1. Later C1 makes a further advance to D of 5 million euro. C1 has priority over C2 both as to the 20 million euro advance and as to the 5 million euro advance. C2 could avoid this situation by negotiating a subordination of C1’s charge to the extent of C2’s advance.

**Section 6.2.1.4**

2.205. … Article 29(1) thus overrides priority rules under national law, whether those rules are of a Contracting State or non-Contracting State. …

4.194. … By the same token, registration of an interest in a national registry is irrelevant to the ordering of priorities under Article 29.

4.208. *Illustration 25*

D gives a charge over an airframe to C1 on 1 February and to C2 on 2 March. C2 registers its charge on 3 March, while C1 registers its own charge on 6 March. In proceedings in a Contracting State C2 has priority and this is so even if it knew of the charge in favour of C1 and even if the domestic law governing priority is that of a different Contracting State or of a non-Contracting State.

**Section 6.2.2.1**

2.221. A principle that is self-evident, though not expressly stated in Article 29, is that a debtor who itself holds an international interest cannot use its registration of that interest to assert priority over its own creditor in a manner inconsistent with the rights it has granted to the creditor. In short, it cannot deny its own creditor’s title. …

4.195. … Registration is not necessary to protect the creditor against its own debtor, who will, of course, be aware of the agreement into which it has entered. So the fact that a chargee or lessor fails to register its international interest does not in any way affect its rights against its chargor or lessee. …

**Section 6.2.2.2**

2.215. Article 29(4) deals with priority as between a conditional buyer under a title reservation agreement or a lessee under a leasing agreement (to both of whom the label “debtor” can be applied) and the holder of a registered interest, by which, of course, is meant a holder (“creditor”) other than the conditional buyer’s or lessee’s own conditional seller or lessor. … However, registration of the interest held by the creditor will give notice of the existence of the title reservation agreement or lease and thus of the interest of the debtor thereunder. Accordingly the effect of the rule laid down in Article 29(4) is that, subject to any subordination agreement between the debtor and the chargee, the priority of the former vis-à-vis the chargee is determined according to whether the international interest held by its creditor was registered before the chargee registered its interest. If it was, then the chargee takes its interest subject to the debtor’s rights. If, on the other hand, the chargee registers its interest before the creditor has registered its own interest the chargee has priority over the debtor, whose existence the chargee will not have been able to discover from a registry search. …

2.216. Article 29(4) also protects a sub-lessee where its sub-lessor’s international interest was registered before that of the head lessor. …

4.198. … So while a conditional buyer or lessee does not itself possess a registrable interest, it can rely on the registration of its conditional seller or lessor …

**Section 6.2.2.3**

2.223. The priority of an international interest which comes into existence after the registration of a prospective international interest departs from the normal rule only in the sense that the international interest itself is never actually registered, it is merely treated as registered as from the time of registration of the prospective international interest (Article 19(4)). This means that a subsequent international interest registered before the prospective international interest has ripened into an actual interest has initial priority, but this will be displaced if and when the earlier, prospective, international interest becomes an actual international interest. However, if at the time the international interest comes into existence the registration of the prospective international interest has lapsed or been discharged the international interest must be separately registered and such registration has no retrospective effect. …

2.40(2) … A prospective international interest may be registered as such in the International Registry but does not have effect until it becomes an international interest, in which case it ranks for priority purposes as from the time of its registration as a prospective international interest if that registration has not been discharged (Article 19(4)). …

2.61. … Where a prospective international interest ripens into an actual international interest it will require separate registration, operative for priority purposes from the time of that registration, … Where, following registration of a prospective international interest that has not yet ripened into an international interest, an international interest is granted to another party this will initially have priority over the prospective international interest but will become subordinated to the latter when it becomes an international interest, this being treated as registered as from the time of registration of the prospective international interest (Article 19(4)).

4.154. … The purpose of Article 19(4) is to allow an intending creditor to protect its priority pending the creation of the international interest, so that when that interest comes into being its priority will run from the time of registration of the prospective international interest. …

4.155. *Illustration 20*

Debtor grants Creditor X an international interest in helicopter #1 and a prospective international interest in engine A installed in helicopter #1. These interests are registered in the International Registry on Day 1. Debtor grants Y and international interest in helicopter #2 and a prospective international interest in engine B installed on it. These interests are registered in the International Registry on Day 10. No other interest appeared on the International Registry at the time of these various registrations. Debtor removes engine A from helicopter #1and engine B from helicopter #2 and subsequently re-installs both engines, engine B now being placed on helicopter #1 and engine A being placed on helicopter #2. Creditor X has a first priority interest in helicopter #1 and engine A now installed on helicopter #2. Its interest in engine A transformed from a prospective interest to a live interest when engine A was removed from helicopter #1 and assuming that the registered particulars adequately and accurately covered what would be required for registration of C’s international interest, this live interest did not need to be separately registered. The installation of engine A on helicopter #2 did not extinguish Creditor X’s interest under the applicable law and therefore under Article 29(7) does not displace the interest granted to Creditor X, who therefore has priority over Creditor Y with respect to engine A. On the same reasoning Creditor Y has priority over Credit X as to engine B even though Creditor A held an international interest in helicopter #1 that was registered prior to the date that Creditor Y registered its prospective international interest in engine B.

**Section 6.2.2.4**

4.205. Article 29 does not regulate priority between competing unregistered interests. That is left to the applicable law, though any priority given by the applicable law is liable to be displaced if the holder of one such interest subsequently registers it in the International Registry.

**Section 6.2.2.5**

2.201. As a preliminary point, priority rules almost invariably contain exceptions to the principle *nemo dat quod non habet (nemo plus juris ad alium transferre potest quam ipse habet)*. So where a debtor grants an international interest to A and then grants an international interest over the same object to B, it does not follow that B acquires only what the debtor still holds, that is, an object encumbered by the international interest to A. The question is one of priority, not of validity. However, for brevity the term “priority” is here used in an extended sense to cover cases where a party is not merely subordinated but loses its interest altogether, as where a lessor fails to register its international interest and the lessee, being in possession, sells the object outright to a third party. In such a case the lessor’s unregistered interest in the object, which could be the interest of an absolute owner, is extinguished. …

4.196. Paragraph 3 introduces the first of two exceptions to the general rule that even an unregistrable interest is displaced by a subsequent registered interest. The case of purchase by an outright buyer is considered so common and important as to justify a special rule giving the buyer’s interest priority over an interest not registered until after the time of the buyer’s acquisition of the object. … Where the buyer acquires priority under this rule the effect is to extinguish any unregistered security interest in the object and any title of the conditional seller or lessor whose interest was unregistered, since its displaced interest is not as conditional seller or as lessor (see paragraph 4.56) but simply whatever interest it had at the time of entering into the conditional sale or leasing agreement. However, this special rule does not apply in relation to aircraft objects, since under the Aircraft Protocol the interest of an outright buyer is registrable. Accordingly Article III of the Protocol disapplies Article 29(3) of the Convention.

4.211. *Illustration 28*

O, the owner of an airframe, leases it to L, who takes possession under the lease. Before O has registered its interest L wrongfully sells the airframe to B. Under Article III of the Aircraft Protocol sales of aircraft objects are registrable. B’s priority will depend on its registering its interest before O registers its own interest.

2.205. So far as the courts of a Contracting State are concerned a registered interest has priority over an unregistered interest (other than a pre-existing right or interest – see Article 60) even if the latter was not capable of registration for Convention purposes, for example because it was not of a registrable category or because at the time it was granted the debtor was not situated in a Contracting State (see paragraphs 2.31(5), 2.33 *et seq*.). … Moreover, since registration in the International Registry is the only mode of perfection recognised by the Convention, a creditor whose interest is unregistered and whose debtor retains a power to dispose will be subordinate to a later creditor whose interest has been registered even if at the time of registration the earlier creditor had taken possession of the object, whether by way of pledge or by way of enforcement of its security. …

4.212. *Illustration 29*

O leases an airframe to L, who in breach of the lease grants a sub-lease to SL and then registers its international interest. Subsequently O registers its interest. O’s international interest under the lease has priority over the international interest of L under the sub-lease (since L cannot supplant its own lessor) but holds its interest subject to the lease to L, which may, however, be terminable because of L’s wrongful behaviour. Nevertheless, O cannot exercise default remedies against SL, who is protected by Article 29(4). For the effect of termination of the head lease on the sub-lease see paragraph 2.175.

**Section 6.2.2.6**

3.102. It will be apparent that registration of a sale works quite differently from registration of an international interest. In the case of the international interest priority goes to the first to register. By contrast, buyers in a chain of sales are not in competition with each other. Each buyer takes the title of its predecessor, so if registrations are made in due order it is the last registration that will indicate the current holder of the asset. But as between buyers in a chain title vests in the last buyer pursuant to the contract of sale provided that the seller had a power to dispose. So whether a sale has been registered and the order of registrations are irrelevant to the transfer of title. For example, in a chain of sales A-B-C-D it may happen that B has not registered its purchase. This does not affect D’s title as between buyers in the chain. D’s title depends solely on whether C had a power to dispose under the applicable law or under the Convention (see paragraph 2.82), which could be the case even if C’s predecessor B did not have the power to dispose. However, failure of a buyer in the chain to register may lead to its subordination to (a) a buyer from any seller retaining a power to dispose where the buyer registers the sale first, (b) the holder of a previously registered international interest or (c) the holder of a registered non-consensual right or interest, and this subordination will affect subsequent buyers. Again, it could happen in practice that the sale by C to D is registered before the sales by A to B and B to C, but since the registry is not a title registry and the sellers in the chain are not in competition with each other the chronology of registrations does not raise any priority issue. However, to cover the situation where the order of registrations does not follow the order of sales D, if satisfied that none of the prior sellers retained a power to dispose, may wish simply to register the last sale in the chain and not the prior sales.

**Section 6.2.3.1**

3.97. It has been seen earlier in relation to international interests that under Article 29 of the Convention, in the absence of an agreement for subordination, a registered interest has priority over an unregistered interest and as between two registered interests priority is determined by the order of registration. However, successive sales do not raise a priority issue at all unless made by the same seller or another seller retaining a power to dispose. …

2.208. The same rules apply to the priority of a non-consensual right or interest registered under Article 40 of the Convention vis-à-vis another non-consensual right or interest or a competing international interest as apply to registered consensual interests. Article 29 does not deal with priority as between two or more unregistered interests. That is a matter for the applicable law.

3.100. The effect of Article 29 of the Convention, as applied by Article III of the Aircraft Protocol, is that the registered buyer has priority qua buyer over all subsequently registered sales by any seller retaining a power to dispose (see paragraph 3.97) and over all subsequently registered or unregistered international interests and all unregistrable interests – such as those of attachment or execution creditors – with the exception of non-consensual rights or interests protected by Article 39. Registration of a sale is thus almost as important for buyers as is registration of an international interest for chargees, conditional sellers and lessors. There are two significant differences. First, whereas under Article 29(1) international interests rank in order of registration, this is true of sales only where the same seller or another seller retaining a power to dispose makes two or more sales of the same object to different buyers. By contrast registrations of successive sales do not fall within Article 29 at all (see paragraph 3.102). Secondly, in the case of the international interest the debtor against whose acts protection may be needed by registration enjoys possession, whereas in the case of a sale possession will usually pass to the buyer in the absence of a near-simultaneous chain of sales, so that the risk is somewhat reduced because a seller who has transferred both ownership and possession will not usually have a power to dispose. …

**Section 6.2.3.2**

2.264. Rights or interests covered by a declaration under Article 39(1)(a) have priority over a registered international interest under the law of the declaring State even though not themselves registrable. The extent of that priority is determined by the declaration, which may retain or restrict but not expand national law. …

2.222. Where a Contracting State has made a declaration under Article 39 as to non-consensual rights or interests which enjoy priority under its law over the equivalent of an international interest and are to enjoy priority even over registered international interests, any registered international interest will be subordinate to a non-consensual right or interest covered by the declaration in a case where the applicable law is that of the declaring State. This is so even if the debtor is the subject of insolvency proceedings (Article 39(1)(a)). See paragraphs 2.234 *et seq*.

2.265. The priority over the registered international interest to which such a declaration relates is a priority given not under the Convention itself but under the law of the Contracting State in respect of non-consensual rights or interests in an aircraft object situated within that State, and such priority is not entitled to recognition in another State to which the aircraft object has moved except to the extent provided by that State’s conflict of laws rules.

**Section 6.2.3.3**

2.224. Unless otherwise declared by a Contracting State under Article 60(3) the Convention does not apply to a pre-existing right or interest, as defined by Article 1(v), which retains the priority it enjoyed under the applicable law before the effective date of the Convention. This means that despite Article 29(1) a registered international interest is junior to an earlier pre-existing right or interest[[17]](#footnote-17) which is given priority under the applicable law. … Article 60(3) provides for extension of the Convention and Protocol to pre-existing rights or interests for priority purposes, but in this case registration within the period prescribed by the declaration is not a priority point, only a perfection requirement for the preservation of priority of the pre-existing right or interest under the applicable law (see further paragraphs 2.325 *et seq*.). …

2.315. A Contracting State may make a declaration specifying a date not less than three years after the declaration when the Convention and Protocol will become applicable to a pre-existing right or interest for the purpose of determining priority, including the protection of any existing priority, where the right or interest arises under an agreement made at a time when the debtor was situated in a Contracting State (Article 60(3)). So the holder of a pre-existing interest affected by a declaration will have at least three years in which to protect its pre-Convention priority by registration in the International Registry. The purpose of these provisions is to avoid a situation in which post-Convention rights or interests are indefinitely subordinated to pre-Convention rights or interests the existence of which may not be readily ascertainable, while at the same time allowing creditors holding pre-Convention rights or interests a reasonable time to perfect or re-perfect their rights or interests by registering them in the International Registry so as to preserve their priority. Registration in such a case is not itself a priority point for a pre-existing right or interest, simply a condition of preserving its existing priority under the applicable law over international interests, whether such interests are registered before or after the creditor’s registration under the declaration. …

4.193. … Pre-existing rights or interests covered by a declaration under Article 60(3) constitute an exception to this (see paragraphs 2.315 *et seq*.). …

2.316. Although the definition of “pre-existing right or interest” in Article 1(v) covers any right or interest, not necessarily the equivalent of an international interest, Article 60(3) confines the scope of the declaration to pre-existing rights or interests “arising under an agreement”, that is, under a security agreement, a title reservation agreement or a leasing agreement. Other rights or interests, including non-consensual rights or interests, retain their priority under the applicable law without the need for registration under the Convention, and a declaration which purports to cover them will to that extent be ineffective. …

**Section 6.2.3.4**

None

**Section 6.2.3.5**

None

**Section 6.2.3.6**

None

**Section 6.2.3.7**

None

**Section 6.2.3.8**

None

**Section 6.2.4.1**

2.176. Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration (Article 21). … Where the registration itself specifies the period of its duration it ceases to be effective upon expiry of the specified period without any action having to be taken by any party. …

2.177. Article 21 is not exhaustive of the events in which a valid registration ceases to have effect. Where, for example, a registered international interest has come to an end (see paragraph 2.96) its registration automatically ceases to be effective even if there has been no expiry of a specified period of registration and no discharge has been registered.

2.98. … Where a registration is time-limited (and there have been no such registrations to date in the International Registry for aircraft objects, the only registry currently operative), as where the registration of a five-year lease is limited to that period, the registration ceases to have effect (Article 21).

4.136. … Conversely, discharge of an international interest does not bring the international interest to an end, it merely converts it into an unperfected interest. …

4.162. This Article does not prescribe any period for the duration of a registration. Instead, the parties may agree on the period and incorporate this into the registered data. Whether or not they do so, registration ceases to be effective after it has been discharged. No time-limited registrations have yet been made.

4.163. Under Article 20(1) any period of registration agreed by the parties may be extended prior to its expiry by either party with the written consent of the other. … But once the agreed period has expired it is too late to extend it, and it will be necessary to effect a new registration which will rank for priority from the time it takes effect. Registration can be extended only as regards a currently registered interest. …

**Section 6.2.4.2**

3.91. … Section 5.8 of the Regulations sets out the information required to discharge a registration. When a registration is created, other than a discharge, the beneficiary is deemed to be the sole holder of a right to discharge (“RTD”). However, the RTD can be transferred to any other party, a facility which on an assignment enables the RTD to be transferred to the assignee. …

2.188. … Moreover, the system for registering a discharge, as for registering an international interest, is purely electronic and involves no human intervention at the Registry end. So the Registrar has no role to play in relation to a discharge dispute and can act only on an order of the court, that is, a court of the place in which the Registrar has its centre of administration (Article 44(1)), which in the case of the Aircraft Registry is the High Court in Dublin. …

2.189. On jurisdictional issues relating to orders against the Registrar the Convention strikes a delicate balance. Except in cases of insolvency exclusive jurisdiction is conferred on the courts of the place where the Registrar has its centre of administration – in the case of the International Registry for aircraft, Ireland. No other court can make an order against the Registrar. As a corollary, the courts where the Registrar is situated have no jurisdiction under the Convention over parties other than the Registrar, for example, parties to the agreement or alleged agreement pursuant to which a registration has been made. However, such a court may have jurisdiction under its own jurisdiction rules. Thus the Irish High Court has, in relation to aircraft objects, implicitly upheld in a number of cases the argument advanced on behalf of the holder of an adversely affected international interest that it has jurisdiction over a foreign registrant under its Rules of Court (see paragraphs 2.282-2.284); indeed within the EU the Irish High Court has exclusive jurisdiction to order amend or discharge of a registration under Article 24(3) of Brussels I (recast) (see paragraph 2.283).

4.310. Article 44(2) and (3) make specific provision for the following awards and orders against the Registrar:

…

(b) orders under Article 44(2) directing the Registrar to discharge a registration where the discharge is one to which a debtor is entitled under Article 25(1) or an intending debtor or intending assignor is entitled under Article 25(2) and the creditor fails to take the necessary action or has ceased to exist or cannot be found;

(c) orders under Article 44(3) to amend or discharge a registration following the failure of the registrant to comply with an order of a foreign court having jurisdiction under the Convention or, in the case of a national interest, a court of competent jurisdiction, directing the registrant to effect the amendment or discharge of the registration.

4.312. … The courts of the Registrar’s jurisdiction should therefore be treated as having (under paragraph 1 and by analogy with paragraph 3 of the Article) a residual power, on the application of any person who has obtained an *in personam* order as described above or at the request of the court making the order, to direct the Registrar to amend or discharge an improper or incorrect registration. Article 44 envisaged that the applicant for an order under Article 44(1) would usually have obtained an *in personam* order from a foreign court which the courts of the Registrar’s jurisdiction would then enforce. But in the case of aircraft objects the Irish High Court has regularly used its general jurisdiction to make orders *in personam* against a foreign party wrongly registering a non-consensual right or interest (see paragraph 2.282-2.284), the case then usually being transferred to the Commercial Court to exercise its jurisdiction under Article 44 of make an order directing the Registrar to discharge the improper registration.

4.313. … The fact that an interest registered in the International Registry is not an international interest, and was therefore not registrable under the Convention, far from depriving the court of jurisdiction under Article 44 to discharge the registration, is a good ground for the court to make a discharge order.

4.158. Article 20(3) provides that a registration may be discharged “by or with the consent in writing of the party in whose favour it was made.” Where a registered international interest has not been assigned it may be discharged by or with the consent of the creditor. Where, however, it has been assigned the position is a little more complex. There are two discharges that may have to be considered, discharge of the international interest and discharge of the assignment. In relation to the former the phrase “in whose favour it was made” must be taken as covering the creditor and any assignee. Therefore where a registered international interest has been assigned, the registration of the international interest can in principle be capable of discharge only with the consent not only of the assignor (i.e. the original creditor) but also of the assignee. If the position were otherwise the assignor, by giving its consent to a discharge, could extinguish the assignee’s priority. If the assignment was by way of security only, so that the assignor retains an interest in what has been assigned, the assignor’s consent is also required to registration of a discharge of the international interest. …

**Section 6.2.4.3**

2.181. A registration may and should be discharged (a) when the creditor has exhausted its remedies under the Convention in relation to the object and its proceeds (see paragraph 2.97), (b) in the case of a time-registered lease by its reaching the lapse date, (c) following an agreement for discharge or (d) pursuant to a court order where the registration is invalid or otherwise improperly made or, though validly made, has been improperly maintained when the interest to which it relates no longer exists. A prospective international interest or assignment may be discharged before the creditor or assignee has given value or incurred a commitment to give value. …

2.182. Article 25(1) contains provisions by which a person against whom a registration has been made in respect of a security agreement, a registered non-consensual right or interest or a title reservation agreement can procure its discharge where that person no longer owes any obligations under the agreement or in respect of the non-consensual right or interest, Article 25(3) contains similar provisions in respect of discharged obligations arising in connection with a registered notice of a national interest. Under Article 25(2) a prospective creditor or a prospective assignee must without undue delay, procure discharge of the registration after demand by the intending debtor or assignor where the intending creditor or assignee has not given value or contracted to give value. This is important to the intending debtor or assignor, for without its discharge that person may find it difficult to raise alternative sources of finance on the security of the object. The Protocols give precision to the time factor. See, for example, the Aircraft Protocol, Article XX(2), which requires the registrant to take such steps as are within its power to procure discharge of the registration no later than five working days after receipt of the demand. … Finally, under Article 25(4), where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made must without undue delay procure discharge or amendment of the registration after written demand by the debtor. …

2.97. As indicated above, termination of the agreement does not by itself put an end to the international interest created or provided for by the agreement. This is because the effect of termination is only prospective, ending the rights and duties of the parties as to future performance but not affecting their pre- termination rights and obligations. Accordingly the creditor is entitled to exhaust all the remedies provided by the Convention under Articles 8-11, so far as these relate to the object, before the debtor or any other interested party can apply for discharge of the registration, and until such discharge or expiry of a time-limited registration (as to which see paragraph 2.98) this remains effective (Article 21). Article 10 itself makes it clear that the Convention remedy of repossession survives termination of the agreement. …

**Section 6.2.4.4**

2.182. Article 25(1) contains provisions by which a person against whom a registration has been made in respect of a security agreement, a registered non-consensual right or interest or a title reservation agreement can procure its discharge where that person no longer owes any obligations under the agreement or in respect of the non-consensual right or interest, Article 25(3) contains similar provisions in respect of discharged obligations arising in connection with a registered notice of a national interest. …

2.183. There are two other cases, which fall outside Article 25. First, in the case of sales, to which the Convention is extended by the Aircraft Protocol, the period of registration is unlimited and the provisions on discharge do not normally apply, since the transfer to the buyer is an outright transfer and not limited in time. The rule is different, however, in the case of a prospective sale, which may be discharged pursuant to the electronic consent of the buyer or the transferee of the right to consent to discharge. Second, in exceptional cases, such as system malfunction, a registration may be discharged by the Registrar on its own initiative (see paragraph 3.91).

3.91. … Exceptionally a sale registration is discharged:

(a) if it is amended by the parties to the original registration, at which time the system automatically discharges it (Regulation 5.11(a)), or

(b) by the buyer or the seller with the consent of the other (Regulation 5.16), typically where the registration was made in error, e.g. because the supposed sale never occurred or the wrong category was registered (such as a sale when it should have been an international interest), or

(c) by the Registrar in the case of system malfunction or if ordered to do so by the court (Regulations, Section 5.15). …

2.184. Article 25 suffers from a major lacuna in that the only persons entitled to procure a discharge are the debtor, an intending debtor and an intending assignor. But the holder of an international interest has, if anything, at least as great an interest in procuring discharge of an improper registration adversely affecting the holder’s interest, for example, one who has registered an international interest it does not hold or the registrant of a purported non-consensual right or interest wrongly registered under Article 40. Where Article 24(3) of Brussels I (recast) relating to improper registrations does not apply (see paragraph 2.283) these cases have to be addressed instead through a broad interpretation of Article 44(1) under which the courts of the jurisdiction where the Registrar has its centre of administration (in the case of the Registrar of the International Registry for interests in aircraft objects, the Irish High Court) should be treated as having jurisdiction to enforce an *in personam* order of a competent jurisdiction requiring discharge of the registration, by analogy with Article 44(3). …

2.185. Though Article 44(3) envisages an order by a foreign court what has happened in practice under the Aircraft Protocol is that the Irish High Court has assumed jurisdiction under its general jurisdictional rules and has then made an order which results in transfer to the Commercial Court to exercise jurisdiction under Article 44(1) to order the discharge (see paragraphs 2.282-2.284). …

2.188. What is the position where a party who is under a duty to procure discharge of a registration fails or refuses to do so? The Registrar’s function is essentially administrative; it cannot take a position as between contesting parties or engage in fine judgments as to whether an application for registration which appears on its face to be in order is defective. Moreover, the system for registering a discharge, as for registering an international interest, is purely electronic and involves no human intervention at the Registry end. So the Registrar has no role to play in relation to a discharge dispute and can act only on an order of the court, that is, a court of the place in which the Registrar has its centre of administration (Article 44(1)), which in the case of the Aircraft Registry is the High Court in Dublin. Alternatively the party seeking the discharge can apply for an *in personam* order requiring the other party to consent to the discharge, as described below. The question then is which courts have jurisdiction to grant such relief.

2.189. … Thus the Irish High Court has, in relation to aircraft objects, implicitly upheld in a number of cases the argument advanced on behalf of the holder of an adversely affected international interest that it has jurisdiction over a foreign registrant under its Rules of Court (see paragraphs 2.282-2.284); indeed within the EU the Irish High Court has exclusive jurisdiction to order amend or discharge of a registration under Article 24(3) of Brussels I (recast) (see paragraph 2.283).

4.136. … The Irish High Court has exclusive jurisdiction to make orders against the Registrar of the International Registry relating to aircraft objects, the registry being based in Dublin (Article 44(1)), and has regularly assumed jurisdiction to make an order against a wrongful registrant to procure discharge of the improper registration in exercise of the court’s general jurisdiction (see paragraphs 2.282-2.284).

4.173. Paragraph 4 deals with registrations incorrectly made and provides that the debtor is entitled to require these to be removed or amended. It is unfortunate that only the debtor can require an invalid registration to be discharged, whereas there are other potentially interested parties, for example the holder of a registered international interest, who wish to have an improper registration of a non-consensual right or interest discharged but cannot do so under Article 25. Fortunately, in relation to aircraft objects, the Irish High Court has effectively resolved the problem by exercising its general jurisdiction over the registrant under its Rules of Court. See paragraphs 2.282-2.284. …

2.190. Since none of the jurisdiction rules applies in insolvency proceedings (Article 45) it would in theory seem open to a court dealing with insolvency proceedings in a place other than that in which the Registrar has its centre of administration to make an order against the Registrar requiring an entry of discharge where the court has jurisdiction to do so under its own jurisdiction rules. However, it is thought that in practice the insolvency court is very unlikely to have such jurisdiction or, if it has, to exercise it, given that the Registrar is in a foreign country and outside the control of the insolvency court. Moreover, even where a court would otherwise have jurisdiction under its own rules it is likely to want to defer to the courts having jurisdiction where the Registrar has its centre of administration and thus confine itself to an order *in personam* which the party obtaining the order or the court itself can ask a court having jurisdiction in the Registrar’s country to enforce by a direction to the Registrar.

4.174. Although Article 25 says nothing about the enforcement of a duty imposed by that Article it is clear that a court of competent jurisdiction under the Convention, if applicable, or under national law if the Convention jurisdiction provisions do not apply, can make an order against any person in whose favour a registration has been made to procure its amendment or discharge, whether the registration relates to an international interest, a prospective international interest, an assignment, a prospective assignment, or anything else on the register. The only case in which a court has jurisdiction to make such an order under the Convention is where the parties have so agreed in conformity with Article 42(2). In such a case the party affected by the improper registration should apply to the court on which jurisdiction has been so conferred for an order directing the defendant to take the necessary steps. If that order is not complied with then in addition to the sanctions available for non-compliance a court in the place where the Registrar has its centre of administration may (but is not obliged to) order the Registrar to take such steps as will give effect to the order made in the defendant’s jurisdiction (Article 44(3)). …

**Section 7**

**Section 7.1.1.1**

3.125. "Insolvency proceedings", the first limb of the definition of insolvency-related event, means bankruptcy, liquidation or other 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 (Convention, Article 1(l)). …

(1) The proceedings must be collective proceedings, that is, proceedings for the benefit of creditors generally, or a group of creditors representing a significant part of the indebtedness. For this purpose creditors unaffected by the proceedings (for example, secured creditors whose rights are protected in the insolvency proceedings) are not taken into account. …

(2) The proceedings may be judicial or administrative, covering both court proceedings and proceedings before an administrative tribunal, …

(3) The assets and affairs of the debtor must be subject to control or supervision by a court. … the definition covers institutions such as court-supervised restructuring plans or schemes of arrangement in an insolvency setting, and the "debtor in possession", where possession and management remain with the debtor company but the proceeding is conducted under the overall control of creditors or a supervisor and the court, whether the supervision or control takes the form of a requirement of approval of the plan or scheme or of steps leading up to it or otherwise.

(4) The proceedings must have as their purpose reorganisation or liquidation in insolvency. … where the reorganisation or liquidation occurs in an insolvency setting for the debtor it is irrelevant that the law pursuant to which such proceedings are initiated is equally available for solvent and insolvent debtors, as where that law allows for a scheme of arrangement for solvent organisations as well as those in financial distress. …

4.21. "insolvency proceedings" – this phrase covers all forms of collective proceedings, including interim proceedings, in which the debtor’s assets are subject to control or supervision by a court for the purposes of reorganisation in insolvency or liquidation. … All these are covered by the definition in Article 1(l) so long as:

(1) the proceeding is a collective proceeding, as opposed to an enforcement remedy primarily available to a particular creditor, such as receivership;

(2) the debtor’s assets and affairs are subject to control or supervision by a court (which as defined in Article 1(h) includes a State administrative tribunal), as opposed to control solely by the debtor and its creditors in an informal moratorium or "workout"; and

(3) the purpose of the control or supervision is either:

(a) reorganisation of the debtor, namely a reordering of its affairs with a view to its restoration to profitable trading or to improving the position of creditors on a subsequent liquidation (this would include schemes of arrangement or other restructuring plans under the control of the court and concluded in an insolvency setting where the schemes cover a substantial part of the indebtedness and do not involve creditors outside the scheme); or

(b) immediate liquidation, involving collection and realisation of the debtor’s assets and distribution of the proceeds among creditors in accordance with the relevant insolvency law. …

**Section 7.1.1.2**

3.125. "Insolvency proceedings", the first limb of the definition of insolvency-related event, means bankruptcy, liquidation or other 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 (Convention, Article 1(l)). …

… the definition covers institutions such as court-supervised restructuring plans or schemes of arrangement in an insolvency setting, and the "debtor in possession", where possession and management remain with the debtor company but the proceeding is conducted under the overall control of creditors or a supervisor and the court, whether the supervision or control takes the form of a requirement of approval of the plan or scheme or of steps leading up to it or otherwise.

… where the reorganisation or liquidation occurs in an insolvency setting for the debtor it is irrelevant that the law pursuant to which such proceedings are initiated is equally available for solvent and insolvent debtors, as where that law allows for a scheme of arrangement for solvent organisations as well as those in financial distress. …

**Section 7.1.1.3**

3.125. … Proceedings designed primarily for the benefit of a particular secured creditor, such as receivership, are excluded. … Excluded, therefore, are informal workouts and contractual restructuring arrangements where the debtor is left in control of its assets and affairs, subject only to the terms of the contract. Also excluded are moratoria imposed by judicial, legislative or governmental action where the debtor’s assets and affairs are not under the control or supervision of a court. … The winding up, reorganisation or dissolution of a solvent company falls outside the scope of Article XI. …

**Section 7.1.2.1**

2.236. Under Article 30(3)(b) nothing in Article 30 affects rules of insolvency procedure relating to the enforcement of rights to property under the control or supervision of an insolvency administrator, for example, rules which, with a view to facilitating a reorganisation of the debtor, suspend or restrict enforcement of a security interest. But in a Contracting State which has made a declaration under Alternative A of the insolvency provisions of the relevant Protocol Article 30(3)(b) does not apply, being overridden by those provisions. Article 30(3)(b) is solely concerned to preserve restraints imposed by the relevant insolvency law on the ability of the creditor to enforce its international interest against the object to which that interest relates. The pursuit of purely personal claims by the creditor, e.g. for sums due under the agreement, is not subject to any Convention rules and is governed by the ordinary rules of the applicable insolvency law. …

2.237. The Convention does not deal with insolvency jurisdiction. That is a matter for national law, … However, Article XI of the Aircraft Protocol contains provisions for the enforcement of creditors’ rights in insolvency under a declaration made by the Contracting State that is the primary insolvency jurisdiction as defined by Article I(2)(n) of the Protocol (see paragraphs 3.118 *et seq*.).

2.259. The assignment is also subject to any rules of procedure relating to the enforcement of rights of property which is under the control or supervision of the insolvency administrator (Article 30(3)(b)). This provision is most likely to be triggered where the assignment is by way of security and the assignor has not discharged its obligations to the assignee. Article 30(3)(b) only restricts the pursuit of claims by the assignee to property under the control of the assignor’s insolvency administrator. …

4.220. Paragraph 3 preserves the effect of certain specific rules of insolvency law, namely those relating to the avoidance of preferences (see paragraph 4.221) and transfers in fraud of creditors, and of rules of insolvency procedure designed to limit the enforcement of security or other property rights in the interests of the general body of creditors, for example, by imposing an automatic stay on the enforcement of security and other in rem rights in order to facilitate a reorganisation (see paragraph 4.222 and Illustration 35, paragraph 4.224). However, in relation to aircraft objects paragraph 3 gives way to Article XI, Alternative A, paragraphs 9 and 10, in a Contracting State which has made a declaration applying Alternative A, with the effect that in such a case no stay or other impediment to the exercise of the creditor’s remedies may be imposed.

4.221. Article 30(3)(a) is confined to the avoidance of preferences and transfers in fraud of creditors. It follows that other grounds of avoidance that would ordinarily be applicable, such as failure to register a security interest in a national register, cannot be invoked to impeach an international interest effective under Article 30(1), though they can as regards an interest effective only under Article 30(2) (see paragraph 4.219). Similarly the international interest cannot be subordinated to another right or interest under the insolvency law unless that other right or interest is a non-consensual right or interest covered by a declaration under Article 39(1)(a) deposited prior to the registration of the international interest (Article 39(3)) or is a right of arrest or detention preserved under Article 39(1)(b). However, it is for the applicable insolvency law to determine what constitutes a preference or a transaction in fraud of creditors and also the time at which the insolvency proceedings are deemed to have commenced (see Article 1(d)).

4.223. *Illustration 34*

In January C1 advances 3 million euro to D on the security of an airframe and registers its security interest as an international interest. In September C2, an unsecured creditor of D for a loan of 1 million euro, is concerned that D may be on the verge of insolvency, takes a charge on another aircraft engine also situated in Ruritania to secure the loan and registers its international interest. In October, by which time D has declared a suspension of payments, C3 takes an international interest in an aircraft engine to secure a contemporaneous loan of 2 million euro but fails to register this as an international interest, though C3 does register its charge in the Ruritanian register of charges. All the aircraft objects were situated in Ruritania at the time the various interests in them were granted. C1 did not register its charge in the Ruritanian register of charges and under Ruritanian law this invalidates the charge in the event of the debtor’s insolvent liquidation. The other two international interests were registered in the requisite Ruritanian register of charges and are considered duly perfected under Ruritanian law.

**Section 7.1.3.1**

2.232. The general rule is that in insolvency proceedings against the debtor (see Article 1(l) and paragraphs 3.125 and 4.21 for the definition of "insolvency proceedings") an international interest is effective if registered prior to the commencement of the proceedings (Article 30(1)). …

2.205. … Finally, a creditor who fails to register does not secure recognition of the effectiveness of its international interest under the Convention pursuant to Article 30(1) of the Convention and such recognition will be dependent on the applicable law (Article 30(2)).

4.217. An international interest is in principle effective in insolvency proceedings against the debtor (which would seem to include proceedings initiated by the debtor itself) if registered in the International Registry prior to the commencement of the insolvency proceedings, that is, the time at which those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). This is so even if the international interest would otherwise be void for want of compliance with local perfection requirements. …

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). The effect of Article 37 is that if insolvency proceedings are instituted against the assignor the title of the assignee to the assigned associated rights and related international interest is effective in the insolvency if the assignment was registered in conformity with the Convention prior to the commencement of the insolvency proceedings (Article 30(1)), that is, prior to the time when those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). …

**Section 7.1.3.2**

2.232. … However this provision does not impair the effectiveness of an international interest which is effective under the applicable law (Article 30(2)). In other words, the rule in Article 30(1) is a rule of validity, not of invalidity. The applicable law under conflict of laws rules is generally taken to be the law of the situation of the object (*lex situs*, *lex rei sitae*) at the time of commencement of the insolvency proceedings. If under the applicable law the international interest is effective in the insolvency even if it has not been registered prior to the commencement of the insolvency proceedings, or, indeed, at all, then its efficacy in those proceedings is not affected by Article 30. …

2.205. … Finally, a creditor who fails to register does not secure recognition of the effectiveness of its international interest under the Convention pursuant to Article 30(1) of the Convention and such recognition will be dependent on the applicable law (Article 30(2)).

4.219. By paragraph 2 even an international interest not so registered may be effective under the applicable law. In other words, paragraph 1 provides a rule of validation, not of invalidation. In this context "that interest" means the interest as recognised by the applicable law, not the international interest as such, which is the creation of the Convention, not of the applicable law. … Where the insolvency jurisdiction is that of a State which is a Contracting State the law of which adopts this conflict rule then if at the above time the asset was situated in a State other than that in which the insolvency proceedings have been commenced and an interest equivalent to the international interest was duly perfected under the law of that State even though not registered in the International Registry, it will be treated as perfected for the purpose of the insolvency proceedings. In other words, Article 30(1) does not disturb the status of an interest perfected under the applicable law and this status will be respected in the insolvency. That reflects the general principle that the starting point of insolvency law is to respect pre-insolvency entitlements. …

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). …

**Section 7.1.3.3**

2.232. The general rule is that in insolvency proceedings against the debtor (see Article 1(l) and paragraphs 3.125 and 4.21 for the definition of "insolvency proceedings") an international interest is effective if registered prior to the commencement of the proceedings (Article 30(1)). This, of course, presupposes that the insolvency proceedings have been opened in a Contracting State, which need not, however, be the same Contracting State as that under the law of which the international interest was created. … "Effective" means that the property interest will be recognised and the holder of the international interest will have a claim against the asset for obligations owed, and will not be limited to a *pari passu* sharing with unsecured creditors. …

2.205. So far as the courts of a Contracting State are concerned a registered interest has priority over an unregistered interest (other than a pre-existing right or interest – see Article 60) even if the latter was not capable of registration for Convention purposes, for example because it was not of a registrable category or because at the time it was granted the debtor was not situated in a Contracting State (see paragraphs 2.31(5), 2.33 *et seq*.). Article 29(1) thus overrides priority rules under national law, whether those rules are of a Contracting State or non-Contracting State. …

4.219. By paragraph 2 even an international interest not so registered may be effective under the applicable law. … an effective international interest may not be set aside or subordinated for the benefit of the debtor, the insolvency administrator or the estate, or other claimants, except as provided by Article 30(3) (see paragraph 4.220). …

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). The effect of Article 37 is that if insolvency proceedings are instituted against the assignor the title of the assignee to the assigned associated rights and related international interest is effective in the insolvency if the assignment was registered in conformity with the Convention prior to the commencement of the insolvency proceedings (Article 30(1)), that is, prior to the time when those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). …

**Section 7.1.4.1**

2.232. … The protection given by Article 30(1) extends to non-consensual rights or interests registered under Article 40 (see paragraph 2.273). …

2.234. A non-consensual right or interest covered by a declaration under Article 39 has priority over a registered international interest, whether in or outside insolvency proceedings (Article 39(1)(a)) and *a fortiori* has priority over an unregistered interest (see paragraph 2.267). Accordingly the insolvency of the debtor does not affect the priority of the non-consensual right or interest where the insolvency proceedings are opened in a Contracting State.

2.265. The priority over the registered international interest to which such a declaration relates is a priority given not under the Convention itself but under the law of the Contracting State in respect of non-consensual rights or interests in an aircraft object situated within that State, and such priority is not entitled to recognition in another State to which the aircraft object has moved except to the extent provided by that State’s conflict of laws rules.

2.268. … a lien or right of detention covered by a declaration under Article 39(1)(b) applies only while the aircraft object is situated within the territory of the Contracting State making such a declaration or of another Contracting State under whose conflict of laws rules the lien or right of detention is recognised. …

2.273. … Registration of a non-consensual right or interest, though protecting its priority under the Convention, does not convert it into an international interest. It retains its character as a non-consensual lien or right of detention and as such is typically exercisable only where the aircraft object is in the possession of the person asserting the lien or right of detention. Moreover, even where the law of the declaring Contracting State allows the right to be exercisable without possession it is territorially limited and cannot be enforced while the aircraft object is outside that State’s jurisdiction. …

4.278. … However, the priority is not a Convention priority but one given by the law of the declaring State. It is therefore not entitled to recognition in another Contracting State unless the conflict of laws rules of that State so require (see Illustration 52, paragraph 4.290). …

4.293. This Article enables a Contracting State to extend the application of the Convention by making a declaration listing categories of non-consensual right or interest to be registered as if they were international interests. For this purpose the relevant declaring State is the State whose law is applicable under the conflict rules of the forum, which will usually be the law of the State where the object is situated at the time the non-consensual right or interest attaches to it; and the registration will be effective only in those cases where that State’s law is applicable. …

**Section 7.1.5.1**

2.233. The fact that an unregistered interest valid under the *lex situs* is entitled to recognition in the insolvency proceedings as having been duly perfected does not mean that it is immune from avoidance under rules of the insolvency law. The position is simply that the insolvency court has to accept as a starting point that an interest perfected under the applicable law was duly perfected. It remains liable to avoidance on any ground applicable under the insolvency law, not merely as a preference or a transaction in fraud of creditors as specified in Article 30(3)(a). In this respect an unregistered international interest perfected under the applicable law is more vulnerable under insolvency law than a registered international interest (see paragraph 2.235).

2.235. Under Article 30(3)(a)) the general rule in Article 30(1) does not protect a registered international interest from rules of law relating to the avoidance of preferences and transfers in fraud of creditors. … Other rules of insolvency law of a Contracting State, such as the invalidation of security interests not duly registered under the law of the insolvency jurisdiction, or the rule that a payment (other than a preference or transaction in fraud of creditors) is void if made for past value during a prescribed period (*période suspecte*) before the commencement of the insolvency proceedings, cannot be invoked against an international interest registered before the commencement of the insolvency proceedings. …

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). The effect of Article 37 is that if insolvency proceedings are instituted against the assignor the title of the assignee to the assigned associated rights and related international interest is effective in the insolvency if the assignment was registered in conformity with the Convention prior to the commencement of the insolvency proceedings (Article 30(1)), that is, prior to the time when those proceedings are deemed to commence under the applicable insolvency law (Article 1(d)). In that case the assignment takes effect subject to any rules of that law relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors (Article 30(3)(a)) but is not affected by any other grounds of avoidance that would ordinarily be available under the insolvency law. Nothing in Article 30 impairs the effectiveness of an unregistered international interest where that would be effective under the applicable law (Article 30(2)) but such an interest is subject to all the avoidance rules of the insolvency law, not merely those mentioned in Article 30(3)(a)).

4.219. … However, the insolvency jurisdiction remains entitled to apply any rules of its own insolvency law rendering perfected interests void or liable to be set aside, and in this case, unlike that of the registered international interest, any grounds of avoidance may be applied, not merely avoidance as a preference or a transaction in fraud of creditors. See Illustration 34, paragraph 4.223.

4.221. Article 30(3)(a) is confined to the avoidance of preferences and transfers in fraud of creditors. It follows that other grounds of avoidance that would ordinarily be applicable, such as failure to register a security interest in a national register, cannot be invoked to impeach an international interest effective under Article 30(1), though they can as regards an interest effective only under Article 30(2) (see paragraph 4.219). …

4.223. *Illustration 34*

In January C1 advances 3 million euro to D on the security of an airframe and registers its security interest as an international interest. In September C2, an unsecured creditor of D for a loan of 1 million euro, is concerned that D may be on the verge of insolvency, takes a charge on another aircraft engine also situated in Ruritania to secure the loan and registers its international interest. In October, by which time D has declared a suspension of payments, C3 takes an international interest in an aircraft engine to secure a contemporaneous loan of 2 million euro but fails to register this as an international interest, though C3 does register its charge in the Ruritanian register of charges. All the aircraft objects were situated in Ruritania at the time the various interests in them were granted. C1 did not register its charge in the Ruritanian register of charges and under Ruritanian law this invalidates the charge in the event of the debtor’s insolvent liquidation. The other two international interests were registered in the requisite Ruritanian register of charges and are considered duly perfected under Ruritanian law.

**Section 7.1.5.2**

2.235. … Article 30(3) does not say what constitutes a preference or a transfer in fraud of creditors. That is left to the applicable insolvency law, which also determines what defences are available to a claim by the insolvency administrator resulting from a transaction void or voidable as a preference or a transfer in fraud of creditors …

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). …

4.219. … However, the insolvency jurisdiction remains entitled to apply any rules of its own insolvency law rendering perfected interests void or liable to be set aside, and in this case, unlike that of the registered international interest, any grounds of avoidance may be applied, not merely avoidance as a preference or a transaction in fraud of creditors. See Illustration 34, paragraph 4.223.

4.221. … However, it is for the applicable insolvency law to determine what constitutes a preference or a transaction in fraud of creditors and also the time at which the insolvency proceedings are deemed to have commenced (see Article 1(d)).

4.223. *Illustration 34*

In January C1 advances 3 million euro to D on the security of an airframe and registers its security interest as an international interest. In September C2, an unsecured creditor of D for a loan of 1 million euro, is concerned that D may be on the verge of insolvency, takes a charge on another aircraft engine also situated in Ruritania to secure the loan and registers its international interest. In October, by which time D has declared a suspension of payments, C3 takes an international interest in an aircraft engine to secure a contemporaneous loan of 2 million euro but fails to register this as an international interest, though C3 does register its charge in the Ruritanian register of charges. All the aircraft objects were situated in Ruritania at the time the various interests in them were granted. C1 did not register its charge in the Ruritanian register of charges and under Ruritanian law this invalidates the charge in the event of the debtor’s insolvent liquidation. The other two international interests were registered in the requisite Ruritanian register of charges and are considered duly perfected under Ruritanian law.

**Section 7.1.6.1**

2.236. Under Article 30(3)(b) nothing in Article 30 affects rules of insolvency procedure relating to the enforcement of rights to property under the control or supervision of an insolvency administrator, for example, rules which, with a view to facilitating a reorganisation of the debtor, suspend or restrict enforcement of a security interest. But in a Contracting State which has made a declaration under Alternative A of the insolvency provisions of the relevant Protocol Article 30(3)(b) does not apply, being overridden by those provisions. …

2.259. The assignment is also subject to any rules of procedure relating to the enforcement of rights of property which is under the control or supervision of the insolvency administrator (Article 30(3)(b)). …

4.222. Article 30(3)(b) states that nothing in the Article affects rules of procedure relating to the enforcement of rights to property under the control or supervision of the insolvency administrator, which for this purpose includes a debtor in possession if permitted by the applicable insolvency law (Article 1(k)). So it remains open to courts of the insolvency jurisdiction to apply rules which restrict or suspend the enforcement of security, the institution of proceedings against the debtor, and the like, in order, for example, to preserve the debtor’s business or its value for the benefit of all creditors. However, as regards aircraft objects Alternative A of Article XI of the Aircraft Protocol, where applicable, overrides such rules and thus displaces Article 30(3)(b).

4.224. *Illustration 35*

C, which has leased some helicopters to D, registers its interest in the helicopter in the International Registry as an international interest. Subsequently, in insolvency proceedings opened in a Contracting State in which D’s centre of main interests is situated, an insolvency administrator is appointed with a view to a reorganisation of D. Under the insolvency law the effect of the appointment is to stay all enforcement measures against D. C cannot exercise its normal remedy of repossession under Article 10 so long as the stay continues in force unless the Contracting State in question has made a declaration applying Alternative A of Article XI of the Aircraft Protocol, in which case no stay may be granted or continued in force after the date specified in paragraph 2 of Alternative A.

**Section 7.1.7.1**

2.235. … On the other hand it is left to the applicable insolvency law to determine when those proceedings are deemed to have commenced (Article 1(d)). This leaves open the possibility that a registered international interest may be invalidated where under the applicable insolvency law the commencement of insolvency proceedings is made retrospective, e.g. to the time of presentation of a petition to the court for a winding-up order or, under the so-called "zero hour" rule, to the first moment ("zero hour") of the day on which the insolvency proceedings commenced, and that time precedes the registration of the international interest. …

3.126. The applicable insolvency law (that is, the *lex fori concursus*) determines the time when insolvency proceedings are deemed to commence. The word "deemed" indicates that what is relevant is not the actual time an order for winding up or reorganisation in an insolvency context is made but the time when, under the *lex concursus*, it is treated as having been made. …

4.13. **“commencement of the insolvency proceedings”** – the time at which they are deemed to commence under the applicable insolvency law. In some jurisdictions, for example, a liquidation is deemed to commence at the time of presentation of the winding-up petition, in others a “zero hour”, by which the proceedings are taken to have been opened at the first moment of the day on which they are opened, applies. …

4.221. … However, it is for the applicable insolvency law to determine …. the time at which the insolvency proceedings are deemed to have commenced (see Article 1(d)).

**Section 7.2.1.1**

3.139. The "hard", or rule-based, version, Alternative A, is specifically designed to meet the requirements of advanced structured financing, including international capital market financing structures, … Paragraphs 2 and 7 require the insolvency administrator or the debtor, as applicable, either (a) to give possession within the earlier of a waiting period specified in a Contracting State’s declaration or the date on which the creditor would otherwise be entitled to possession or (b) within the above time to cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the agreement, …

3.1. … In addition, ratification of the Cape Town Convention and Aircraft Protocol with select declarations, including Article XI, Alternative A, of the Aircraft Protocol, have helped airlines access the capital markets, for example, through the issue of enhanced equipment trust certificates, and thus tap a source of finance hitherto almost entirely confined to U.S. airlines because of the lack in other jurisdictions of any parallel of section 1110 of the U.S. Bankruptcy Code, which provided the model for Alternative A.

3.118. Article XI introduces special remedies on the debtor’s insolvency in relation to aircraft objects designed to strengthen the creditor’s position vis-à-vis the insolvency administrator or the debtor on the occurrence of an insolvency-related event. …

5.61. This Article, which modifies Article 30(3) of the Convention, is designed to provide in relation to aircraft objects a special insolvency regime to govern the creditor’s rights where the debtor becomes subject to insolvency proceedings (as defined by Article 1(l) of the Convention) or an insolvency-related event (as defined by Article I(2)(m) of the Protocol) has otherwise occurred. The underlying purpose is to reflect the realities of modern structured finance, in particular to facilitate capital market financing, by ensuring as far as possible that, within a specified and binding time-limit, the creditor either (a) secures recovery of the object or (b) obtains from the debtor or the insolvency administrator, as the case may be, the curing of all past defaults and a commitment to perform the debtor’s future obligations. …

**Section 7.2.1.2**

5.62. There are two alternative texts of this Article, Alternative A, the "hard", or rule-based, version, and Alternative B, the "soft", or discretion-based, version. …

5.68. Alternative B requires the insolvency administrator or the debtor, as the case may be, upon the request of the creditor, to notify the creditor within the time specified in a declaration by the Contracting State whether it will (a) cure all defaults and perform all future obligations under the agreement and related transaction documents or (b) give the creditor the opportunity to take possession of the aircraft object, in the latter case subject to any additional step or the provision of any additional guarantee that the court may require as permitted by the applicable law (Alternative B, paragraph 3). …

5.69. Article XI can be invoked by the creditor whether or not its international interest has been registered. Paragraph 4 of Alternative B requires the creditor to provide evidence of its claims and proof that its international interest has been registered. There is no similar provision in Alternative A. This is because Alternative B, unlike Alternative A, involves an application to the court, and the evidence and proof are to be provided to the court. Again in contrast to Alternative A, the requirement to furnish proof that the international interest has been registered signifies that the creditor cannot invoke the provisions of Alternative B without first registering its international interest. This is despite the fact that such registration is only one of the methods of preserving the effectiveness of the international interest on the debtor’s insolvency, the other being its effectiveness under the applicable law (Article 30(2)). The latter is not sufficient to enable the creditor to invoke the provisions of Alternative B. Paragraph 5 of Alternative B provides that if the insolvency administrator does not give the creditor the opportunity to take possession when the insolvency administrator has declared that it will do so the court may permit the creditor to take possession upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee. So in the absence of a court order or the consent of the debtor the creditor may not take possession. Paragraph 6 states that the aircraft object must not be sold pending the court’s decision. It would seem that the creditor’s ability to exercise other remedies is governed by the applicable insolvency law.

3.19. … The majority of Contracting States have made declarations applying Article XI, all of them choosing Alternative A except for one Contracting State, which intends to modify its declaration to select Alternative A. This choice is dictated by the fact that only a set of declarations made in a particular form will qualify for the full economic benefits of the Convention and Protocol.

3.120. … Alternative A of Article XI has been adopted by all Contracting States except one, which intends to modify its declaration to select Alternative A (see paragraph 3.19). …

3.138. … To date, with one exception, every Contracting State making a declaration has opted for Alternative A.

**Section 7.2.2.1**

3.119. Article XI must be applied in any Contracting State where the debtor is subject to an insolvency proceeding and three other conditions are satisfied, namely where (1) a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3), stating that it will apply either Alternative A or Alternative B of Article XI, (2) an insolvency-related event has occurred, whether in a Contracting State or, in the case of the second category of insolvency-related event, in a Contracting State or elsewhere (see paragraph 3.127) and (3) the debtor is holding an aircraft object in, or subject to the insolvency laws of, the forum (see paragraph 3.156). Even where a Contracting State has made a declaration under Article XXX(3) it is open to the parties to exclude the application of Article XI by an agreement in writing (Article IV(3)) but not to vary it (see paragraph 3.19). … There is no obligation on any Contracting State to make a declaration applying one of the Alternatives in Article XI (see paragraph 5.62), but if the declaring State is the primary insolvency jurisdiction then the courts of each other Contracting State in which insolvency proceedings are brought must do so, whether or not that Contracting State has itself made a declaration applying Article XI, and must apply that Article in conformity with the COMI Contracting State’s declaration as to the Alternative, the type of insolvency proceedings covered and the time period specified. …

3.136. … Under Article XXX(4) of the Protocol the courts of Contracting States (i.e. Contracting States other than the COMI Contracting State) are required to apply Article XI whether or not their Contracting State has made a declaration under Article XXX(4) applying Article XI and to do so in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction. So if there are insolvency proceedings in a non-COMI Contracting State relating to an aircraft object situated in or otherwise subject to the jurisdiction of that State the courts of that State must apply the Alternative of Article XI selected by a declaration of the Contracting State of primary insolvency jurisdiction to the type of insolvency proceeding selected, and with the time-period selected, by the declaration of the Contracting State of primary insolvency jurisdiction. This is so whether or not insolvency proceedings have been commenced or another insolvency-related event has occurred in the COMI Contracting State (see paragraph 3.155). See also paragraph 3.154. Article XXX(4) requires such a non-COMI Contracting State to apply Article XI in conformity with the declaration made by the COMI Contracting State, and not to merely follow interpretations or carry into force orders made by the courts of the COMI Contracting State. …

3.19. Under Article IV(3), in their relations with each other, the parties may, by agreement in writing, exclude the application of Article XI (dealing with insolvency) and, in their relations with each other derogate from or vary the effect of any of the provisions of the Protocol except Article IX(2)-(4), which relate to the exercise of default remedies. The power to vary the provisions of the Protocol does not apply to Article XI, which can be excluded in its entirety but not modified. The reason for this is that whichever of the two alternative versions of Article XI is chosen by a Contracting State it can only be adopted in its entirety (Article XXX(3)). …

3.136. … Even where a Contracting State has made a declaration under Article XXX(3) it is open to the parties to exclude the application of Article XI by agreement in writing (Article IV(3)), but they cannot vary it, only exclude it in its entirety (see paragraph 5.27), …

5.27. Paragraph 3 enables the parties, by agreement in writing, to exclude the application of Article XI altogether or, in their relations with each other, to derogate from or vary the effect of any of the provisions of the Protocol except Article IX(2)-(4). "Writing" includes authenticated teletransmissions (Convention, Article 1(nn)). The exclusion of Article XI by agreement of the parties is not, of course, necessary unless the Contracting State that is the primary jurisdiction has elected to make a declaration under Article XXX(3). Where this is the case then despite the absence of the word "other" before "provisions" it seems clear from the use of the word "exclude" in relation to Article XI, in contrast to "derogate from or vary", that the power of derogation or variation is not exercisable in relation to Article XI and that the parties must either exclude the application of Article XI in its entirety or adhere in full to the Alternative selected by the State that is the primary insolvency jurisdiction. This is logical because the question which, if any, of the two alternatives is to be selected is a matter for the Contracting State that is the primary insolvency jurisdiction, not the parties, and the Contracting State cannot select part of Alternative A or Alternative B but must select either one of the alternatives in its entirety or make no declaration at all. …

3.137. Where the COMI Contracting State has made a declaration applying Article XI the fact that the aircraft in question is registered in another Contracting State which has not made such a declaration or in a non-Contracting State does not affect the application of Article XI in other Contracting States.

3.155. Under Article XXX(4) "the courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction." This has to be read in conjunction with Article XXX(3), under which Article XI applies only in a Contracting State that has made a declaration to apply it. The effect of Article XXX(4) is that where the COMI Contracting State has made a declaration under Article XXX(3) applying Article XI the courts of every other Contracting State must do so whether or not that Contracting State has made such a declaration under Article XXX(3) and only in relation to those types of insolvency proceeding specified, and with the time-period specified, in the COMI Contracting State’s declaration. The provision is designed to prevent forum shopping with a view to selection of the opt-in Contracting State whose declaration is most indulgent to the debtor. The obligations imposed by Article XXX(4) bind the non-COMI Contracting States to adhere to the terms of the declaration made by the COMI Contracting State whether or not an insolvency proceeding is pending in the COMI Contracting State, and whether or not the courts of the COMI Contracting State adhere to the terms of that declaration (see paragraph 3.136). …

3.156. As Article XI deals only with the obligations of the insolvency administrator as regards aircraft objects, Article XXX(4) is necessarily confined to proceedings in cases where aircraft objects are situated in or otherwise subject to the insolvency laws of the forum Contracting State, as where the debtor’s insolvency proceeding is pending in that Contracting State and its laws assert jurisdiction over the debtor and its assets wherever located.

**Section 7.2.3.1**

3.119. Article XI must be applied in any Contracting State where the debtor is subject to an insolvency proceeding and three other conditions are satisfied, namely where (1) a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3), stating that it will apply either Alternative A or Alternative B of Article XI, … There is no obligation on any Contracting State to make a declaration applying one of the Alternatives in Article XI (see paragraph 5.62), but if the declaring State is the primary insolvency jurisdiction then the courts of each other Contracting State in which insolvency proceedings are brought must do so, whether or not that Contracting State has itself made a declaration applying Article XI, and must apply that Article in conformity with the COMI Contracting State’s declaration as to the Alternative, the type of insolvency proceedings covered and the time period specified. See paragraph 3.155. …

3.136. A Contracting State may elect to make a declaration applying Alternative A or Alternative B of Article XI or it may make no declaration at all, in which case its existing insolvency law will continue to apply to any debtor whose COMI is situated there (see paragraph 3.155). … Moreover, courts of a non-COMI Contracting State making a declaration under Article XXX(3) cannot apply it unless such a declaration has been made by the COMI Contracting State (Article XI(1)). Under Article XXX(4) of the Protocol the courts of Contracting States (i.e. Contracting States other than the COMI Contracting State) are required to apply Article XI whether or not their Contracting State has made a declaration under Article XXX(4) applying Article XI and to do so in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction. So if there are insolvency proceedings in a non-COMI Contracting State relating to an aircraft object situated in or otherwise subject to the jurisdiction of that State the courts of that State must apply the Alternative of Article XI selected by a declaration of the Contracting State of primary insolvency jurisdiction to the type of insolvency proceeding selected, and with the time-period selected, by the declaration of the Contracting State of primary insolvency jurisdiction. This is so whether or not insolvency proceedings have been commenced or another insolvency-related event has occurred in the COMI Contracting State (see paragraph 3.155). See also paragraph 3.154. Article XXX(4) requires such a non-COMI Contracting State to apply Article XI in conformity with the declaration made by the COMI Contracting State, and not to merely follow interpretations or carry into force orders made by the courts of the COMI Contracting State. Thus, even in the case where the COMI Contracting State fails to adhere to its own declaration (by for example extending the waiting period under Alternative A beyond the time provided under its declaration), the courts of a non-COMI Contracting State with jurisdiction over the aircraft object must nevertheless apply Article XI in accordance with the terms of the declaration made by the COMI Contracting State.

5.62. … Unless at the time of its declaration an insolvency-related event has already occurred it will not be known where the debtor’s COMI will be at the relevant time, so the courts of a non-COMI Contracting State may not apply Article XI unless and until the COMI Contracting State has made a declaration and they must then do so in accordance with that declaration (Article XXX(4). It follows that where there is no such State, because the State that would otherwise be the primary insolvency jurisdiction is a non-Contracting State, no declaration may be made under this Article by any State. Where an insolvency-related event has occurred and the debtor’s COMI Contracting State has not made any declaration applying Article XI then unless and until it does the courts of every other Contracting State may not apply Article XI. But once the COMI Contracting State has made a declaration applying Article XI, the courts of each other Contracting State, whether or not that State has made such a declaration, must apply Article XI and do so in the form of the declaration made by the COMI Contracting State as the State that is the primary insolvency jurisdiction (Article XXX(4)). This means that they may only apply the Alternative selected by the State which is the primary insolvency jurisdiction and may apply that Alternative only to the types of insolvency proceeding, and with the time-period, specified in the COMI Contracting State’s declaration under Article XXX(3). See paragraph 3.137.

**Section 7.2.3.2**

3.151. A special situation exists for Member States of the European Union. This is because the duty of cooperation imposed on Member States by EU law precludes them from concluding international agreements deviating from the position adopted by the EU. In its decision of 6 April 2009 the Council of what was then the European Community decided to make no declaration under Article XXX(3) of the Aircraft Protocol as to the adoption of either Alternative A or Alternative B, while declaring that Member States kept their competence regarding rules of substantive law as regards insolvency. The only reason for the EC’s concern with the insolvency provisions of the Convention and Protocol was to ensure that nothing affected what was then the EC Regulation, which is primarily a conflict of laws regulation. If the EC had made a declaration applying Alternative A or Alternative B all Member States of the EU choosing to ratify the Convention and Protocol would have had to make the same declaration, whereas it had been agreed with Member States that each should be free to go its own way. The result is that Member States are not permitted by EU law to make any declaration applying Article XI of the Aircraft Protocol but they remain free either to retain their own substantive insolvency law without amendment or to reproduce the effects of Alternative A or Alternative B by domestic legislation. Notification of such legislation to UNIDROIT as Depositary under Article XXXVII(2)(iii), if conforming to the same requirements as are prescribed for declarations by Article XXX(3), is treated for all purposes, including Article XXX(4), as the equivalent of a declaration under Article XXX(3) and EU Member States who are Contracting States are expected to follow the same notification process as for declarations by non-EU Member States by notifying UNIDROIT as Depositary of the relevant legislation, which UNIDROIT will then transmit to all Contracting States in accordance with Article 62(2)(a)(iii) of the Convention and Article XXXVII(2)(a)(iii) of the Protocol.

5.61. … Under EU law Member States may not make a declaration under Article XI but are free to introduce equivalent provisions through domestic legislation. What is now the EU deliberately made no declaration under Article XI in order to leave each Member State the freedom to choose through its domestic laws Alternative A or Alternative B or neither. See paragraph 3.151.

**Section 7.2.3.3**

3.120. The declaration must apply to the entirety of the selected Alternative in order to make it clear that a Contracting State could not make a declaration applying some provisions from one Alternative and some from another (see paragraph 5.62). … Under Article XXX(3) the declaration must specify the types of insolvency proceedings, if any, to which Alternative A will apply and the types of insolvency proceedings, if any, to which Alternative B will apply (see paragraphs 5.62 and 5.162). …

3.136. A Contracting State may elect to make a declaration applying Alternative A or Alternative B of Article XI or it may make no declaration at all, in which case its existing insolvency law will continue to apply to any debtor whose COMI is situated there (see paragraph 3.155). …

5.62. … It may decide to make no declaration at all, in which case Article XI will not apply and the Contracting State’s national insolvency law, in its current form, will continue to be applicable in this context. …

3.136. … Where it does make a declaration this must specify the types of insolvency proceedings, if any, to which to which the relevant Alternative of Article XI will apply and the time-period required by Article XI (Article XXX(3)). …

5.62. … A Contracting State may opt to apply Article XI to all types of insolvency proceeding or only to some, and it may apply Alternative A to some types of insolvency proceeding and Alternative B to others, or apply one of these alternatives to all or only some types of insolvency proceeding and make no declaration as to others. But to whatever type of insolvency proceeding Alternative A or Alternative B is applied, it must be applied in its entirety. This is because each of the alternatives embodies a set of integrated provisions which make it impracticable to select one or more without the others.

5.123. Paragraph 3 is an opt-in provision requiring a Contracting State to specify "the types of insolvency proceeding" to which it will apply Alternative A or Alternative B. However, the intention is to cover both forms of insolvency-related event referred to in Article I(2)(m) and the second of these deals with the case where the creditor cannot pursue insolvency proceedings. Accordingly, paragraph 3 should be interpreted as enabling a Contracting State to specify the types of insolvency proceeding or other insolvency-related event to which Alternative A or Alternative B is to apply. Paragraph 3 also requires that the declaration state the time-period required by Article XI within which the debtor or the insolvency administrator has to give possession or cure all defaults and agree to perform all future obligations (Alternative A) or to give notice whether it will do so (Alternative B). …

**Section 7.2.4.1**

3.119. … There is no obligation on any Contracting State to make a declaration applying one of the Alternatives in Article XI (see paragraph 5.62), but if the declaring State is the primary insolvency jurisdiction then the courts of each other Contracting State in which insolvency proceedings are brought must do so, whether or not that Contracting State has itself made a declaration applying Article XI, and must apply that Article in conformity with the COMI Contracting State’s declaration as to the Alternative, the type of insolvency proceedings covered and the time period specified. …

3.130. The COMI is of major importance in the Aircraft Protocol in that, as in the other protocols, it identifies the Contracting State whose decision to make a declaration applying one of the Alternatives in Article XI triggers the application of that Alternative of Article XI in the courts of all other Contracting States in which insolvency proceedings have been commenced or, where the insolvency-related event is the declared intention to suspend or actual suspension of payments, whether or not the non-COMI Contracting State has made a declaration applying Article XI and whether or not the insolvency-related event has occurred in the COMI Contracting State or any other Contracting State or in a non-Contracting State. Further, the courts of a non-COMI Contracting State must, under Article XXX(4) apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction, that is, the jurisdiction where the debtor has its COMI (see paragraphs 3.155-3.156). In the absence of such a declaration by the COMI Contracting State the courts of a non-COMI Contracting State are free to apply their own domestic insolvency law and, if that law covers all the debtor’s assets on a worldwide basis, aircraft objects wherever situated. …

3.129. … In essence Article XI prescribes a choice of law rule designed to ensure that the debtor’s COMI as visible to Cape Town creditors dealing with the debtor determines the Contracting State whose declaration is relevant to trigger Article XI, the proceedings to which it applies and the waiting period (see paragraph 3.131).

3.136. … Moreover, courts of a non-COMI Contracting State making a declaration under Article XXX(3) cannot apply it unless such a declaration has been made by the COMI Contracting State (Article XI(1)). Under Article XXX(4) of the Protocol the courts of Contracting States (i.e. Contracting States other than the COMI Contracting State) are required to apply Article XI whether or not their Contracting State has made a declaration under Article XXX(4) applying Article XI and to do so in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction. So if there are insolvency proceedings in a non-COMI Contracting State relating to an aircraft object situated in or otherwise subject to the jurisdiction of that State the courts of that State must apply the Alternative of Article XI selected by a declaration of the Contracting State of primary insolvency jurisdiction to the type of insolvency proceeding selected, and with the time-period selected, by the declaration of the Contracting State of primary insolvency jurisdiction. This is so whether or not insolvency proceedings have been commenced or another insolvency-related event has occurred in the COMI Contracting State (see paragraph 3.155). See also paragraph 3.154. Article XXX(4) requires such a non-COMI Contracting State to apply Article XI in conformity with the declaration made by the COMI Contracting State, and not to merely follow interpretations or carry into force orders made by the courts of the COMI Contracting State. Thus, even in the case where the COMI Contracting State fails to adhere to its own declaration (by for example extending the waiting period under Alternative A beyond the time provided under its declaration), the courts of a non-COMI Contracting State with jurisdiction over the aircraft object must nevertheless apply Article XI in accordance with the terms of the declaration made by the COMI Contracting State.

5.61. … The courts of non-COMI Contracting States, whether or not they have themselves made a declaration under Article XXX(3) applying Article XI, must apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction (Article XXX(4)) and this is so even if no insolvency-related event has occurred in that jurisdiction, only elsewhere (see further paragraph 3.155). …

3.136. A Contracting State may elect to make a declaration applying Alternative A or Alternative B of Article XI or it may make no declaration at all, in which case its existing insolvency law will continue to apply to any debtor whose COMI is situated there (see paragraph 3.155). …

3.155. Under Article XXX(4) "the courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction." This has to be read in conjunction with Article XXX(3), under which Article XI applies only in a Contracting State that has made a declaration to apply it. The effect of Article XXX(4) is that where the COMI Contracting State has made a declaration under Article XXX(3) applying Article XI the courts of every other Contracting State must do so whether or not that Contracting State has made such a declaration under Article XXX(3) and only in relation to those types of insolvency proceeding specified, and with the time-period specified, in the COMI Contracting State’s declaration. The provision is designed to prevent forum shopping with a view to selection of the opt-in Contracting State whose declaration is most indulgent to the debtor. …

**Section 7.2.5.1**

3.123. "Primary insolvency jurisdiction" means the Contracting State in which the debtor’s COMI is situated, which is deemed to be the place of the debtor’s statutory seat (see paragraph 2.34) or, if none, the place where the debtor is incorporated or formed, unless proved otherwise (Article I(2)(n)). …

5.15. "**primary insolvency jurisdiction**" – the Contracting State in which the centre of the debtor’s main interests (COMI) is situated. There is a rebuttable presumption that this is the place of the debtor’s statutory seat or, if none, the place where it is incorporated or formed. … In particular it does not apply to a natural person, and in this case the "centre of main interests" is presumably the debtor’s place of business or, if more than one, its principal place of business. The presumption is not lightly displaced, but where the activities of the debtor at the statutory seat are confined to administrative matters such as the holding of board meetings or the maintenance of records and the main business dealings with creditors are transacted from offices in a different Contracting State then it is that State that will be the COMI and hence the primary insolvency jurisdiction. Of particular importance where the presumption as to the statutory seat does not apply is the perception of airline creditors dealing with the debtor. …

3.133. … In determining the debtor’s COMI at that time the court has to examine the regular activity of the debtor, as visible to Cape Town creditors, over the period up to the occurrence of the insolvency-related event.

3.134. The presumption in favour of the statutory seat is rebutted where the COMI, determined in the light of the debtor’s regular business activities visible to creditors up to the occurrence of the insolvency-related event, is shown to be elsewhere (see paragraphs 3.131, 3.133). …

**Section 7.2.5.2**

3.131. … But where in the perception of creditors generally (as opposed to any particular creditor in an individual transaction) the COMI is elsewhere, as where there is a management team and account services in the place of the statutory seat but the debtor regularly transacts business with its creditors from its place of business in another Contracting State then the COMI will usually be considered to be in the other State. … Decisions of the Court of Justice of the European Union (European Court of Justice) attach particular importance to the visibility to creditors of the place from which the debtor’s business transactions are conducted and this is very much in line with Article 5(1) of the Convention, which requires that in the interpretation of the Convention regard is to be had to the need to promote uniformity and predictability in its application. … In the more complex case where the debtor transacts business from more than one State, which might include a non-Contracting State, it is the State from which the debtor deals with Cape Town creditors that is the COMI State. … In the case of an airline other primary factors normally visible to creditors are the place where the debtor is licensed, supervised or otherwise regulated as an airline or the place where the majority of its staff dealing with its aircraft operations are based. …

**Section 7.2.5.3**

3.131. … Irrelevant are the terms of the agreement creating or providing for the international interest, including provisions as to the place of payment, jurisdiction and the applicable law, as well as the State where the agreement was prepared or concluded, the location of creditors and of the bank account into which payments to creditors are made unless such payments are associated with other factors indicative of the COMI’s location in the place where the bank account is maintained. Also irrelevant is the fact that the debtor has ceased to conduct business, or a significant amount of business, after having entered into the transactions the regularity of which established its COMI, though a long period of inactivity may lead to the conclusion that the prior pattern of transactions has ceased to be relevant, in which case there will be a reversion to the presumption that the COMI is the statutory seat. Further, in the case of a debtor company forming part of a corporate group, the COMI is not the location of management of the group or the COMI of the parent company but the place of conduct of business activity, visible to creditors, of the debtor itself. …

3.129. … the purpose of Article XI is not to protect the general body of creditors but on the contrary to insulate Cape Town creditors (secured creditors, conditional sellers and lessors) from the impact of the debtor’s insolvency …

**Section 7.2.5.4**

3.133. … There can only ever be one COMI at a particular time, and this is determined at the time of occurrence of an insolvency-related event. …

3.123. … This cannot be determined in advance, only at the time of the occurrence of an insolvency-related event (albeit with reference to the conduct of the debtor’s business up to that time - see paragraphs 3.131, 3.133), …

3.134. The presumption in favour of the statutory seat is rebutted where the COMI, determined in the light of the debtor’s regular business activities visible to creditors up to the occurrence of the insolvency-related event, is shown to be elsewhere (see paragraphs 3.131, 3.133). …

5.15. … The COMI will not necessarily be known at the time of deposit of the declaring State’s declaration since it does not become determinable until the occurrence of an insolvency-related event, whether in the COMI or elsewhere.

**Section 7.2.5.5**

3.134. The presumption in favour of the statutory seat is rebutted where the COMI, determined in the light of the debtor’s regular business activities visible to creditors up to the occurrence of the insolvency-related event, is shown to be elsewhere (see paragraphs 3.131, 3.133). The debtor is free to change its COMI for bona fide business reasons, for example, to attract a more favourable tax, labour or regulatory regime. The relevant COMI is the debtor’s COMI at the time of opening of insolvency proceedings or the occurrence of some other insolvency-related event, whether in the COMI or elsewhere, any prior COMI being ignored. However, a court might disregard as a *fraude à la loi* a change of COMI used as a forum shopping device in the run-up to the opening of insolvency proceedings designed to attract an easier insolvency regime to the detriment, rather than the benefit, of creditors. In that event the relevant COMI would be the prior COMI. Where the attempted change of COMI is genuine but business in the new COMI has not developed sufficiently to establish a regularity of transactions as seen by Cape Town creditors prior to the advent of insolvency proceedings the old COMI is irrelevant and the presumption in favour of the debtor’s statutory seat applies (Article 1(2)(n) until such time as the regularity of transaction conducted from the new COMI has been established.

3.123. … This cannot be determined in advance, only at the time of the occurrence of an insolvency-related event (albeit with reference to the conduct of the debtor’s business up to that time - see paragraphs 3.131, 3.133), because the debtor is free to change its COMI except where the change is, in EIR language, "fraudulent or abusive", that is, made on the eve of insolvency and designed primarily to attract a more debtor-friendly insolvency regime to the detriment of creditors (see paragraph 3.134). …

**Section 7.2.5.6**

3.129. … Apart from this the EIR has no relevance to the Protocols, which have their own distinctive rules which are designed to achieve objectives different from those of the EIR. In particular, while the EIR is an insolvency regime designed primarily for unsecured creditors and operating under the supervision of a court or other competent authority, with secured creditors preserving their rights in rem under Article 8 of the EIR, the Cape Town Convention and Aircraft Protocol are not insolvency instruments. Secured creditors are not taken into account in considering whether proceedings are collective proceedings (see paragraph 3/125(1)) and the purpose of Article XI is not to protect the general body of creditors but on the contrary to insulate Cape Town creditors (secured creditors, conditional sellers and lessors) from the impact of the debtor’s insolvency and to preclude the court from granting time to the debtor or from modifying the agreement where the waiting period has expired without defaults being remedied and an undertaking given by the insolvency administrator or debtor to perform all future obligations. …

3.132. … Moreover, the above considerations would not, of course, preclude the institution of insolvency proceedings in a different non-EU Contracting State under its domestic insolvency law, especially considering that a debtor’s COMI determined for purposes of the EIR may differ from its COMI for purposes of the Protocol.

**Section 7.2.6.1**

3.127. The second type of insolvency-related event is 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 the Convention is prevented or suspended by law or by State action, … Where such actions or requirements prevent or suspend the right of the creditor to enforce Convention remedies or commence an insolvency proceeding they fall within Article I(2)(m)(ii) of the Protocol. …

"Suspension of payments" denotes suspension of payments to creditors generally, not merely to a specific creditor or class of creditor and is a phrase used to denote that the debtor is unable to meet its debts as they fall due. …

3.124. "Insolvency-related event" is defined by Article I(2)(m) of the Protocol as:

(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 the Convention is prevented or suspended by law or State action. …

5.14. … The second, a declared intention to suspend payments, or actual suspension of payments, where a creditor may not commence proceedings or exercise Convention remedies by law or State action, also constitutes an insolvency-related event. …

**Section 7.2.7.1**

3.140. The phrase "insolvency administrator or the debtor, as applicable" covers three situations. The first concerns cases within Article I(2)(m)(ii) of the Protocol, that is, where there are no insolvency proceedings and the insolvency-related event consists of 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 exercise remedies under the Convention is prevented or suspended by law or State action. In such a case there is no insolvency administrator and it is the debtor itself upon which the duties fall. The second involves cases within Article I(2)(m)(i) where there is a gap between the commencement of the insolvency and the appointment of the insolvency administrator. During that gap the debtor again is the party responsible. Of course, the debtor’s freedom of action may be circumscribed by the *lex concursus*. The third situation is where the estate is being administered in insolvency proceedings by a debtor in possession if permitted by the applicable insolvency law. The debtor is then its own insolvency administrator. …

2.236. … "Insolvency administrator" includes a debtor in possession if permitted by the applicable insolvency law (Article 1(k)) but a person not authorised in a collective insolvency proceeding, for example, one appointed by a secured creditor under the terms of a security agreement or by a group of creditors under an informal workout arrangement is not an insolvency administrator for the purpose of the Convention, nor is a person appointed to perform accounting and/or financial reporting functions but lacking authority to manage or dispose of assets or direct their possession or redelivery, even if designated by the applicable law as an insolvency administrator.

4.20. "**insolvency administrator**" – a person authorised to administer the reorganisation or liquidation, i.e. in an insolvency proceeding as defined by the next paragraph. The term is a neutral one covering persons designated in various ways in national insolvency systems, for example, trustee in bankruptcy, liquidator, provisional liquidator, administrator. The inclusion of a "debtor in possession" reflects the bankruptcy laws of some States by which the conduct of the business of an insolvent debtor undergoing reorganisation is authorised to be left in the hands of its management under the supervision of the court and a committee of creditors. A person not authorised in a collective insolvency proceeding, for example, one appointed by a secured creditor under the terms of a security agreement or by a group of creditors under an informal workout arrangement, is not an insolvency administrator for the purposes of the Convention, nor is a person appointed to perform accounting and/or financial reporting functions but lacking authority to manage or dispose of assets or direct their possession or redelivery, even if designated by the applicable law as an insolvency administrator.

**Section 7.2.8.1**

3.153. Article XII, which applies only where a Contracting State has made a declaration under Article XXX(1) and only where an aircraft object is situated in that State (see paragraph 3.156) provides that the courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of that Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI. …

3.154. Article XII does not specifically mention procedures in the primary insolvency jurisdiction but refers to "foreign courts and foreign insolvency administrators." This seems to cover the possibility that in addition to a court or insolvency administrator in a Contracting State where insolvency proceedings have been opened there may be courts of other Contracting States applying Article XII who, in order to fulfil their own obligations under that Article, require assistance from the court where an aircraft object is situated, as where the engines situated in the territory of the latter court’s State are needed to be installed in working condition on an airframe situated in the territory of the court or administrator requiring assistance. …

**Section 7.3.1.1**

3.145. Paragraph 9 of Alternative A precludes the court from preventing or delaying the exercise of the creditor’s remedies under the agreement beyond the above time-period, while paragraph 10 prohibits the court from modifying the debtor’s obligations without the creditor’s consent. For this purpose obligations of the debtor under the agreement that cannot be modified without the creditor’s consent include a duty imposed by the agreement to perform obligations under other transaction documents (see paragraph 3.139). In effect these paragraphs remove, for aircraft objects, the preservation of the court’s powers under Article 30(3)(b) of the Convention (see paragraph 2.236). Thus under Alternative A the court will be precluded from exercising some of the powers it would normally have to grant a stay or to modify a secured creditors’ rights or remedies, the justification being the economic benefits anticipated from a clear and unqualified rule. Moreover, in order to conform to Alternative A a Contracting State that has made a declaration selecting that alternative must ensure that any provisions of its domestic law imposing an automatic stay, or conferring on its courts the power to impose a stay, are disapplied where they would be inconsistent with paragraph 9. Similarly, any provisions of domestic law modifying or empowering a court to modify the debtor’s obligations must be disapplied where these would conflict with paragraph 10. …

5.66. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). Moreover, no second waiting period may be imposed in respect of a breach of a commitment to perform future obligations. Accordingly, under this Alternative it would not, for example, be open to the insolvency courts of a Contracting State to suspend the enforcement of a security interest over an aircraft object, or vary the terms of the agreement, without the consent of the creditor, nor would provisions of national insolvency law providing for an automatic stay pending reorganisation be operative beyond the declared waiting period. The effect is to displace Article 30(3)(b) of the Convention. Similarly, any provisions of domestic law modifying or empowering a court to modify the debtor’s obligations must be disapplied where these would conflict with paragraph 10. …

**Section 7.3.1.2**

2.107. … In the case of insolvency proceedings in a Contracting State which has made a declaration under Article 54(2) requiring leave of the court for the exercise of remedies and has then gone on to opt for Alternative A of Article XI of the Aircraft Protocol, the Contracting State must be taken to have intended to exclude the creditor’s remedies under Alternative A from the scope of its declaration under Article 54(2). Given that Articles 8(2) and 9(2) confer on the creditor a right to apply to the court for an appropriate default remedy even where self-help would be available, there is an obligation on the forum to ensure that its rules of procedure make any such remedy available.

3.139. … In the case of a Contracting State that has made a declaration under Article 54(2) requiring leave of the court for the exercise of remedies and has then gone on to opt for Alternative A of Article XI of the Aircraft Protocol, the Contracting State must be taken to have intended to exclude the creditor’s remedies under Alternative A from the scope of its declaration under Article 54(2). …

**Section 7.3.1.3**

3.145. … Though Alternative A is not of itself a source the insolvency administrator’s right to terminate the agreement the insolvency administrator remains entitled to terminate the agreement where so allowed by the applicable law (Alternative A, paragraph 11). Independently of this the insolvency laws of many jurisdictions facilitate reorganisation or otherwise protect the debtor’ estate by allowing the insolvency administrator or debtor in possession to terminate unprofitable executory contracts (that is, contracts where some performance remains due on both sides, each party’s right to future performance being dependent on its own willingness and ability to perform) or to require a creditor to elect between joining a scheme of arrangement or restructuring plan, thereby giving its consent to the modification of the debtor’s obligations, or to terminate the agreement and recover the aircraft object. Paragraph 11 preserves these aspects of the applicable law.

**Section 7.3.2.1**

3.139. … Paragraphs 2 and 7 require the insolvency administrator or the debtor, as applicable, either (a) to give possession within the earlier of a waiting period specified in a Contracting State’s declaration or the date on which the creditor would otherwise be entitled to possession or (b) within the above time to cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the agreement, which includes obligations under other transaction documents, e.g. related loan agreements, promissory notes given as payment under the agreement or as security for payment, and documents which embody collateral contracts and undertakings forming part of the overall transaction between the parties. It does not, however, include undertakings which are given orally and not embodied in the agreement or some other document. …

2.242. It also follows from the definition that associated rights do not include (a) rights to performance by a third party or (b) rights to performance by the debtor under another contract or engagement ("agreement B"), which might consist merely of a promissory note, unless in either case the debtor is liable under agreement A to perform the obligations of the third party or of the debtor itself imposed by agreement B. However, it is not necessary for agreement A to refer specifically to agreement B. It suffices that the obligations secured by agreement A include those arising under other agreements or promissory notes. …

3.145. … Though paragraph 10 only precludes modification of the debtor’s obligations under "the agreement", that is, the security agreement, title reservation agreement or leasing agreement relating to the aircraft object, and says nothing about security assignments of debtor’s rights, it must be intended to cover these as well as other transaction documents (see paragraph 3.139), particularly in view of the fact that paragraph 9, precluding prevention of or delay in the exercise of the creditor’s remedies permitted by the Convention or Protocol, applies to all remedies, not merely those relating to the aircraft object. …

5.64. … or (b) to cure all defaults (other than a default constituted by the opening of insolvency proceedings, which, of course, is not capable of being cured) and to agree to perform all future obligations under the agreement. This would include obligations under other transaction documents which the debtor has, by virtue of their incorporation by reference, agreed to perform under the agreement (see paragraphs 3.139 *et seq*. and Illustration 71, paragraph 5.70). . It does not, however, include undertakings which are given orally and not embodied in the agreement or some other document. …

**Section 7.3.3.1**

3.139. … Paragraphs 2 and 7 require the insolvency administrator or the debtor, as applicable, either (a) to give possession within the earlier of a waiting period specified in a Contracting State’s declaration or the date on which the creditor would otherwise be entitled to possession or (b) within the above time to cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the agreement, …

3.141. The waiting period begins on the occurrence of an insolvency-related event as defined by Article I(2)(m) and is the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction (Article XI(3)). …

3.142. … The insolvency administrator or the debtor can only avoid loss of the right to possession if it has cured all defaults, other than a default caused by the opening of insolvency proceedings, by the earlier of the expiry of the waiting period and the accrual or resumption of the creditor’s right to possession and has within the same time agreed to perform all future obligations under the agreement, including obligations under other contracts incorporated by reference into the agreement. …

5.64. Alternative A requires the insolvency administrator or the debtor, as the case may be, by the end of the "waiting period", that is the period specified in the declaration of the relevant Contracting State or any earlier date on which the creditor would otherwise be entitled to possession under the applicable law, either (a) to give possession of the aircraft object to the creditor or (b) to cure all defaults (other than a default constituted by the opening of insolvency proceedings, which, of course, is not capable of being cured) and to agree to perform all future obligations under the agreement. …

**Section 7.3.3.2**

3.145. Paragraph 9 of Alternative A precludes the court from preventing or delaying the exercise of the creditor’s remedies under the agreement beyond the above time-period, while paragraph 10 prohibits the court from modifying the debtor’s obligations without the creditor’s consent. …

5.66. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). Moreover, no second waiting period may be imposed in respect of a breach of a commitment to perform future obligations. …

**Section 7.3.3.3**

3.139. … If the insolvency administrator or the debtor fails to give up possession after the creditor has become entitled to it under the above provisions or in any other way fails to fulfil its obligations under Alternative A the creditor can apply for and is entitled to obtain speedily a court order requiring the insolvency administrator or the debtor to give possession of the aircraft object. … Alternative A requires strict adherence to the timetable and the court is precluded from granting any extension of time for payment or other performance (Alternative A, paragraph 9). Thus the time declared by a Contacting State for the waiting period is a matter exclusively for that State and is not governed by the provisions of Article IX(3) relating to commercial reasonableness. …

3.136. … So if there are insolvency proceedings in a non-COMI Contracting State relating to an aircraft object situated in or otherwise subject to the jurisdiction of that State the courts of that State must apply the Alternative of Article XI selected by a declaration of the Contracting State of primary insolvency jurisdiction to the type of insolvency proceeding selected, and with the time-period selected, by the declaration of the Contracting State of primary insolvency jurisdiction. …

5.61. … The courts of non-COMI Contracting States, whether or not they have themselves made a declaration under Article XXX(3) applying Article XI, must apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction (Article XXX(4)) and this is so even if no insolvency-related event has occurred in that jurisdiction, only elsewhere (see further paragraph 3.155). …

5.62. … This means that they may only apply the Alternative selected by the State which is the primary insolvency jurisdiction and may apply that Alternative only to the types of insolvency proceeding, and with the time-period, specified in the COMI Contracting State’s declaration under Article XXX(3). See paragraph 3.137.

5.64. Alternative A requires the insolvency administrator or the debtor, as the case may be, by the end of the "waiting period", that is the period specified in the declaration of the relevant Contracting State or any earlier date on which the creditor would otherwise be entitled to possession under the applicable law, either (a) to give possession of the aircraft object to the creditor or (b) to cure all defaults (other than a default constituted by the opening of insolvency proceedings, which, of course, is not capable of being cured) and to agree to perform all future obligations under the agreement. … The duties must be performed before the end of the waiting period if the creditor has previously become entitled to possession. The underlying premise is that the commencement of the insolvency proceedings produces a stay on the creditor’s right to possession. Where this is not the case or where any stay has been lifted the creditor becomes entitled to possession even if the waiting period has not expired. …

5.66. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). Moreover, no second waiting period may be imposed in respect of a breach of a commitment to perform future obligations. …

**Section 7.3.3.4**

5.27. Paragraph 3 enables the parties, by agreement in writing, to exclude the application of Article XI altogether … However, while the parties to an agreement may not vary the provisions of Article XI they are free to agree, before or after the occurrence of an insolvency-related event, on obligations to be performed or conditions to be satisfied for the purpose of paragraph 7 and may also agree to extend the waiting period (see paragraph 3.139). …

3.136. … though once Article XI has been triggered it is always open to the creditor to agree to accept a deviation from the rights conferred by Article XI. …

3.139. … The debtor and the creditor are free to agree on obligations that must be performed or other conditions that must be satisfied for the purpose of paragraph (7) and may agree to extend the waiting period. …

5.61. … Article XI applies only where a Contracting State that is the primary insolvency jurisdiction (as defined by Article I(2)(n)) has made a declaration under Article XXX(3), and it may be excluded by the parties (Article IV(3)), though only in its entirety (see paragraph 5.27). …

**Section 7.3.4.1**

3.143. Paragraph 2 of Alternative A requires the insolvency administrator or the debtor to give possession unless certain conditions are fulfilled (see paragraph 3.139). …

3.139. … While the insolvency administrator or the debtor has a duty to preserve the equipment and maintain it and its value in accordance with the agreement until the creditor is given the opportunity to take possession (see paragraph 3.143) it does not prescribe remedies for breach of that duty, or, indeed, of other duties imposed by Article XI, and these are left to be determined by the agreement and the applicable law. A Contracting State has a duty to ensure that appropriate remedies are available under its law, for example, the (a) the payment of damages sufficient to place the creditor in substantially the same position as it would have been if the debtor had performed or (b) the payment of liquidated damages or (c) the grant of an injunction. …

5.64. … Unless and until the creditor is given the opportunity to take possession the insolvency administrator or the debtor, as applicable, must preserve the aircraft object and its value in accordance with the agreement and, subject to this, may allow its use, while the creditor is entitled to apply for any other forms of interim relief available under the applicable law (see paragraph 3.143). …

5.65. The duty of the insolvency administrator or the debtor under the Convention to preserve the aircraft object and maintain it and its value comes to an end once the administrator or the debtor, as the case may be, has given the creditor the opportunity to take possession, whether or not the creditor avails itself of that opportunity. Thereafter, the duty to take care of the aircraft object is governed by the applicable law.

**Section 7.3.5.1**

3.143. … Meanwhile the creditor for its part is entitled to apply for any other forms of interim relief available under the applicable law (Alternative A, paragraph 5(b)), which could include interim relief under the Convention itself pursuant to Article 13(1)(a). For example, where the aircraft is in imminent danger of being removed or damaged the court may by way of interim relief allow the creditor to repossess the aircraft object or have it taken into protective custody even if the waiting period has not yet expired. …

3.144 The power to grant the creditor interim relief under paragraph 5(b) of Alternative A of Article XI in a Contracting State that has made a declaration applying Alternative A does not affect the ordinary jurisdiction of an insolvency court , even in a Contracting State which has not made such a declaration, to grant such interim relief as its law allows. …

5.64. … Unless and until the creditor is given the opportunity to take possession the insolvency administrator or the debtor, as applicable, must preserve the aircraft object and its value in accordance with the agreement and, subject to this, may allow its use, while the creditor is entitled to apply for any other forms of interim relief available under the applicable law (see paragraph 3.143). The applicable law is determined by the *lex fori*. The forum is not necessarily the insolvency forum, since courts chosen by the parties have jurisdiction (Convention, Articles 42, 43(2)), as do courts of a Contracting State on the terriory of which the debtor is situated where the interim relief is, by the terms of the order granting it, enforceable only in the territory of that Contracting State (Article 43(2)). …

**Section 7.3.6.1**

3.47. Where the debtor is insolvent and a Contracting State has made a declaration applying Alternative A of Article XI, then if (a) the additional remedies have become exercisable via one of these two routes, (b) the creditor has become entitled to possession under paragraph 2 of Alternative A, and (c) the creditor notifies the relevant authorities that it is entitled to procure the above remedies in accordance with the Convention, they must make such remedies available within five working days and must expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations (Article XI, Alternative A, paragraph 8). …

5.64. … Paragraph 8 requires the registry authority and administrative authorities in a Contracting State, as applicable, to make available to the creditor the remedies of de-registration and export and physical delivery no later than five working days after the creditor has notified such authorities that it is entitled to pursue those remedies in accordance with the Convention, in addition to which they must expeditiously co-operate and assist the creditor, though only in conformity with the applicable safety laws and regulations. …

5.66. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). Moreover, no second waiting period may be imposed in respect of a breach of a commitment to perform future obligations. …

**Section 7.3.7.1**

3.145. … paragraph 10 prohibits the court from modifying the debtor’s obligations without the creditor’s consent. … One effect of Alternative A of Article XI is that in a Contracting State creditors are not bound by any court-ordered "cross-class cram-down" plan by which a class of dissenting creditors, including secured creditors, who dissent from a proposed scheme may nevertheless be bound by the plan so long as each class of creditor is treated at least as favourably as any other class of the same rank (see, for example, the European Restructuring Directive, Article 11). So creditors entitled to invoke Article XI can proceed in accordance with that article without being subject to such a court order or other judicial intervention. Article 31(3) of the Directive provides that it is without prejudice to the application of the Cape Town Convention and Aircraft Protocol - a result that would obtain anyway due to the primacy of the Convention. …

To be effective under paragraph 10 any consent must conform to the requirements of the transaction documents. So where there are multiple Cape Town creditors and the agreement requires the consent of all such creditors or a majority of them a proposed scheme, even if approved by the court, is not binding on any of them, and none of them may join the scheme, unless all or, as the case may be, the majority consent. Similarly, where the international interest is granted to a security trustee for Cape Town creditors no consent by the trustee will be effective under paragraph 10 unless in conformity with the trust deed and any transaction documents incorporated by reference, including any provisions that the trustee shall act in accordance with the instructions of the senior creditors until the senior loan has been satisfied and only then in accordance with the instructions of the junior creditors or requisite class of junior creditors. …

5.66. Alternative A further restricts the operation of the relevant insolvency law by precluding any order or action which prevents or delays the exercise of remedies after expiry of the waiting period or would modify the obligations of the debtor without the creditor’s consent (paragraphs 9 and 10). …

**Section 7.3.8.1**

3.146. The creditor’s protection under Alternative A is further strengthened by a provision that no rights or interests, except for non-consensual rights or interests of a category covered by a declaration under Article 39(1), are to have priority over registered interests (Alternative A, paragraph 12). …

3.150. The term "creditor" in Article XI does not include the holder of a non-consensual right or interest (see Article 1(i) of the Convention). Consequently neither Alternative A nor Alternative B deals with the enforcement rights of the holder of a non-consensual right or interest covered by a declaration under Article 39(1), which preserves that interest’s priority in insolvency proceedings over registered interests. …

**Section 7.3.9.1**

3.150. The term "creditor" in Article XI does not include the holder of a non-consensual right or interest (see Article 1(i) of the Convention). Consequently neither Alternative A nor Alternative B deals with the enforcement rights of the holder of a non-consensual right or interest covered by a declaration under Article 39(1), which preserves that interest’s priority in insolvency proceedings over registered interests. …

2.40(5) … But the Convention remedies themselves are not available to the holder of a registrable non-consensual right or interest, which secures only those rights conferred by the law of the declaring State. See Articles 1(s) and 25(1).

3.146. The creditor’s protection under Alternative A is further strengthened by a provision that no rights or interests, except for non-consensual rights or interests of a category covered by a declaration under Article 39(1), are to have priority over registered interests (Alternative A, paragraph 12). … rules of insolvency law – for example, those giving priority to various categories of preferential debt such as claims for taxes or unpaid wages – cannot be applied to displace the priority of a registered international interest. But as previously noted (see paragraph 2.265) the priority given to a non-consensual right or interest is a national law priority which is not entitled to recognition in another State to which the equipment has moved except to the extent provided by that State’s conflict of laws rules.

**Section 7.3.10.1**

3.143. … While requiring the debtor to perform its obligations under the agreement as to preservation of the equipment and maintenance of its value (which typically would include the duty to continue insurance of the equipment) the Convention does not prescribe remedies for the breach of such obligations (but see paragraph 3.139). Thus remedies such as damages, payment of liquidated damages under the agreement or the grant of an injunction are left to the agreement and to national law. It is the duty of a Contracting State to ensure that its national law provides a suitable remedy for enforcing such contractual obligations (see paragraphs 2.26, 2.101, 3.118). Meanwhile the creditor for its part is entitled to apply for any other forms of interim relief available under the applicable law (Alternative A, paragraph 5(b)), which could include interim relief under the Convention itself pursuant to Article 13(1)(a). …

3.118. … Breach of such an obligation gives rise to remedies not under the Protocol but under the agreement and/or the applicable law … and then only in courts of a Contracting State and under the laws of that State or in the courts of another State whose conflict of laws rules lead to the application of the law of a Contracting State, which is obliged to ensure that an adequate remedy is available …

2.26. Another principle is that parties on whom a right is conferred should have a remedy for its enforcement. … Again, while Article XI(5)(a) of Alternative A of the Protocol requires the debtor to comply with its obligations under the agreement as to preservation of the equipment and maintenance of its value it does not prescribe the remedies for the breach of such obligations, which are left to the agreement and the applicable law. It is the duty of a Contracting State to ensure that for the infringement of any right created by the Protocol an adequate remedy is available, whether it be damages, the payment of liquidated damages or the grant of an injunction (see paragraphs 2.101, 3.139).

2.101. It is necessary to distinguish Convention remedies from those given by the otherwise applicable law. National laws typically confer rights and prescribe remedies for infringement of those rights. The Convention and Aircraft Protocol are shaped rather differently. Thus Articles 8 to 10 of the Convention, together with the provisions affecting proceeds (see paragraph 2.62), prescribe remedies for the infringement of rights which are themselves conferred not by the Convention but by the agreement and/or the applicable law. Conversely Article XI of the Protocol confers rights without prescribing remedies, which are left to the agreement and/or the applicable law. This is the position as regards the debtor’s duty under Article XI(5)(a) of Alternative A of the Protocol to preserve the equipment and maintain it and its value and under Article XI(7) of Alternative A making remedying of default and future observance of the agreement a condition of the right to retain possession. … It is the duty of a Contracting State to ensure that adequate remedies are available (see paragraphs 2.26, 3.118, 3.139). …

3.139. … A Contracting State has a duty to ensure that appropriate remedies are available under its law, for example, the (a) the payment of damages sufficient to place the creditor in substantially the same position as it would have been if the debtor had performed or (b) the payment of liquidated damages or (c) the grant of an injunction. …

**Section 8**

**Section 8.1.1**

2.25. Party autonomy is an underlying principle of the Convention, so that in their relations with each other the parties are free to derogate from or vary the provisions of the Convention or otherwise fashion their own rules so long as their agreement does not contravene the mandatory provisions of the Convention or the overriding mandatory rules of the forum, that is, rules which apply regardless of the otherwise applicable law.

2.23. The Convention and Protocols are governed by five underlying principles: …

* Party autonomy in contractual relationships, reflecting the fact that parties to a high-value cross-border transaction in equipment of the kind covered by the Convention will be knowledgeable and experienced in such transactions and expertly represented, so that in general their agreements should be respected and enforced …

2.66. Article 15 deals with derogation from the Convention as regards default remedies, but it is also open to the parties to impose contractual re strictions on the exercise of rights under the Convention. …

2.146 Article 15 provides that in their relations with each other, any two or more parties referred to in Chapter III may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of Chapter III except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14. It is therefore open to the parties to exclude or modify any of the remedies conferred on the creditor or to impose restrictions on their exercise. …

3.19. Under Article IV(3), in their relations with each other, the parties may, by agreement in writing, exclude the application of Article XI (dealing with insolvency) and, in their relations with each other derogate from or vary the effect of any of the provisions of the Protocol except Article IX(2)-(4), which relate to the exercise of default remedies. …

4.128. This Article embodies the general principle of party autonomy. The parties are free to exclude or vary any of the provisions of this Chapter except for those listed in the present Article as mandatory, …

**Section 8.2.1**

3.83. A person may enter into an agreement or a sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or other representative capacity (Article VI). … The status of a duly appointed trustee, agent or other representative must be recognized in all Contracting States, whether or not, in the case of a trustee, their laws recognize the concept of a trust and whether or not the law governing the trust is that of a Contracting State. Recognition of a valid trust involves acceptance of the title of a trustee duly appointed, the power of the trustee to exercise remedies, including possession and sale, on behalf of the creditors (see also paragraphs 3.83-3.85) and the status of trust assets as constituting a separate fund held for the beneficiaries and not available to the trustee’s creditors in the event of its insolvency.

2.46. … The position in the case of agreements entered into by an obligee through an agent, trustee or other representative (see paragraphs 2.33, 2.45, 3.83) applies *mutatis* *mutandis* to an agreement entered into as obligor through a beneficiary, agent or other representative and the same determines who is to be regarded as the debtor for the purpose of the connecting factor under Article 3 (see paragraph 2.33). Where a trustee under a validly constituted trust enters in an agreement as borrower, conditional buyer or lessee on behalf of beneficiaries under the trust it is the trustee, not the beneficiary, who is the debtor, and this is so even if the trustee enters into the agreement in a fiduciary capacity and is liable only to the extent of the trust assets. In those jurisdictions that recognise the trust itself as having legal personality then where the trust (as opposed to the trustees) enters into an agreement as grantor of the international interest it is the trust that is the debtor. The position is otherwise where the relevant insolvency law looks through the trust to the party at whose behest it was established (see paragraph 3.140). By contrast, where the obligor’s contract with the creditor is concluded through an agent or other representative the debtor is the principal, not the agent or other representative except where contracting in its own name. …

4.19. … Where the agreement with the creditor is entered into as obligor by a trustee on behalf of beneficiaries of a validly constituted trust it is for the law governing the agreement to determine who is to be regarded as the debtor but in general the debtor will be the trustee, not the beneficiaries, and this is the case even where the trustee enters into the agreement in a fiduciary capacity so that the creditor’s claim is limited to the trust assets. … By contrast, in the case where an agreement is concluded on behalf of an obligor by an agent or other representative it is usually the principal, not the agent or other representative, who will be the debtor except where contracting in its own name and without indicating the capacity in which it is entering into the agreement and the identity of the principal. …

3.87. Similar considerations apply to agreements entered into, registrations effected or rights or interests asserted by an agent or other representative duly appointed in accordance with the law of the State applicable to the agency or other representational relationship except that the question of assets forming part of the agent’s estate will not usually arise and it will normally be the principal, not the agent or other representative, who is the creditor or debtor as the case may be. In addition, for the purposes of determining whether the debtor is situated in a Contracting State, the connecting factor designated by Article 3, and thus whether the Convention applies, will almost always be the principal who is the debtor, not the agent or other representative. …

5.33. … All Contracting States must recognise a validly created foreign trust, even if their national law does not recognise the institution of trust and even if the law governing the trust is not the law of a Contracting State. See paragraphs 3.83-3.84. Similar considerations apply to instruments by which agents or other representatives are appointed. Further, a disposition by a representative properly registered as the holder of an international interest should be recognised as transferring a good title even if the disposition was made in breach of the authority conferred on the representative (see paragraph 3.86)

5.35. *Illustration 67*

A syndicate of banks advances funds for the purchase of a fleet of aircraft registered in Urbania, taking security interests under the Convention in the various aircraft objects and appointing the lead bank as agent for the other banks, with power to take enforcement measures against the debtor, in the event of the debtor’s default, unless otherwise directed by the other banks. The lead bank procures registration in its own name of the international interests in the various aircraft objects. The debtor defaults and the lead bank institutes proceedings for recovery of the aircraft objects in Ruritania, where the debtor has its centre of administration. Ruritania is a Contracting State but under its law only the secured creditor, not an agent, is entitled to bring proceedings for the recovery of aircraft objects. Nevertheless the courts of Ruritania must respect the status of the lead bank under Article VI of the Protocol as competent to bring proceedings in its own name. If the lead bank had held the collateral as security trustee in conformity with Urbanian law, its status as such would have had to be recognized by the Ruritanian courts even if Ruritanian law did not recognise the trust concept.

**Section 8.2.2**

3.83. A person may enter into an agreement or a sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or other representative capacity (Article VI). … This provision is to be interpreted broadly as permitting a person acting as trustee, agent or other representative to take any action under the Convention, including entering into or exercising default remedies, registering international interests or assignments or subordinations of international interests registration of an assignment or subordination, whether or not covered by the express language of this Article. Accordingly acts by the representative other than those specified in Article VI should be considered covered by analogy. …

5.33. … Article VI must be interpreted broadly. The intent is to permit a person to take any action under the Convention – entering into agreements, enforcing them or registering them with the International Registry – in a representative capacity, whether as agent, trustee or in some other representative capacity. …

**Section 8.2.3**

3.83. … Where the trust instrument specifies the law that is to govern the trust, as it almost invariably does, that will be the applicable law. … nor will a choice of law be effective if it seeks to circumvent a rule of public policy of the State with which the trust has the closest connection.

3.84. … As previously stated, the validity and effect of a declaration of trust will be determined by the law specified in the declaration of trust except where the choice of law is designed to circumvent the public policy of the State with which the trust has the closest connection, …

5.33. … Where the trust instrument specifies its governing law, that will be the applicable law for determining the validity of the trust except where the choice of law is designed to circumvent rules of public policy of the State having the closest connection with the trust. … Where, in the case of a trust, the trust instrument specifies its governing law, that will be the applicable law for determining the validity of the trust except where the choice of law is designed to evade rules of public policy of the State with which the trust has its closest connection, …

**Section 8.2.4**

5.33. In relation to trusts Article VI presupposes the establishment of a trust valid under its applicable law (usually the law specified in the trust instrument) and the appointment of the trustee in conformity with that instrument and the applicable law, while in relation to agents or other representatives it is necessary that the agent acts within the scope of its actual or apparent authority in effecting a registration and asserting the creditors rights and interests under the Convention. … The capacity and authority of the representative are in principle determined by the instrument (usually an inter-creditor agreement) under which the representative was appointed and the law governing that instrument, but the party against whom such measures are taken is precluded by this Article from contending that the representative has no *locus standi*. …

3.86. Where an international interest has been registered in the name of the trustee pursuant to a power contained in the trust instrument, a disposition by the trustee in breach of the terms of the trust instrument ought nevertheless to pass a good title to the transferee, for by authorising the trustee to register the interest the beneficiaries hold out the trustee as having the powers of a creditor, and it is important to the integrity of the registration system that third parties should be able to rely on a duly authorised entry in the register. In the absence of registration, however, the question whether an unauthorised disposition by the trustee overreaches the interests of the beneficiaries, for example by virtue of the trustee's legal title or the application of the *possession vaut titre* principle, is determined by the lex situs at the time of the disposition.

3.87. Similar considerations apply to agreements entered into, registrations effected or rights or interests asserted by an agent or other representative duly appointed in accordance with the law of the State applicable to the agency or other representational relationship …

**Section 8.2.5.1**

3.83. … The debtor also may be a trustee. So if a security agreement, title reservation agreement or leasing agreement is entered into by a trustee as the grantor of the security interest or the conditional buyer or lessee then it is the trustee, not the beneficiary, who is the debtor even if, under the law governing the agreement, the trustee’s liability is limited to the value of the trust assets. This means that the connecting factor under Article 3 of the Convention is the situation of the trustee, not of the beneficiary. Further, for the purpose of Alterative A of Article XI the debtor is the trustee and it is the declaration made by the primary insolvency jurisdiction of the trustee that determines whether or not Alternative A applies (see paragraph 3.140). Moreover, it is insolvency proceedings against the debtor that are the relevant proceedings, whether those proceedings are initiated by a creditor or by the debtor itself. However, where a security interest to secure repayment of a loan has been granted by a trustee in circumstances such that the relevant insolvency law disregards the trust, Alternative A will apply if the Contracting State that is the primary insolvency jurisdiction of the beneficiary has made a declaration pursuant to Article XXX(3). See paragraph 3.140. …

2.46. … The position in the case of agreements entered into by an obligee through an agent, trustee or other representative (see paragraphs 2.33, 2.45, 3.83) applies *mutatis* *mutandis* to an agreement entered into as obligor through a beneficiary, agent or other representative and the same determines who is to be regarded as the debtor for the purpose of the connecting factor under Article 3 (see paragraph 2.33). Where a trustee under a validly constituted trust enters in an agreement as borrower, conditional buyer or lessee on behalf of beneficiaries under the trust it is the trustee, not the beneficiary, who is the debtor, and this is so even if the trustee enters into the agreement in a fiduciary capacity and is liable only to the extent of the trust assets. In those jurisdictions that recognise the trust itself as having legal personality then where the trust (as opposed to the trustees) enters into an agreement as grantor of the international interest it is the trust that is the debtor. The position is otherwise where the relevant insolvency law looks through the trust to the party at whose behest it was established (see paragraph 3.140). …

4.19. “**debtor**” – primarily the person who owes obligations under an agreement. … Where the agreement with the creditor is entered into as obligor by a trustee on behalf of beneficiaries of a validly constituted trust it is for the law governing the agreement to determine who is to be regarded as the debtor but in general the debtor will be the trustee, not the beneficiaries, and this is the case even where the trustee enters into the agreement in a fiduciary capacity so that the creditor’s claim is limited to the trust assets. So in transactions where the borrower does not itself grant the security interest but transfers the aircraft object to a trustee with instructions to grant an international interest to the creditor it is the trustee, not the borrower, who is the debtor, from which it follows that if the borrower enters into insolvency proceedings those are not relevant proceedings for the purpose of the Protocol in general and Article XI in particular. …

**Section 8.2.5.2**

3.140. … It should be noted that the debtor is the grantor of the international interest and it is only the insolvency of the grantor that is relevant. So if B as borrower enters into an agreement for a loan from C but then transfers the aircraft object to be given in security to a trustee, T, with instructions to grant a security interest in the object to C, the debtor is T, not B, B’s insolvency administrator does not fall within Article XI of the Protocol and there is no insolvency-related event as regards T. Thus if in B’s insolvency a stay imposed on the enforcement of security rights by B’s creditors then subject to what is said below this has no effect on C’s rights to enforce its security interest against T, so that Alternative A does not come into consideration. Only a stay of enforcement granted in insolvency proceedings initiated by or against T or alternatively a declared intention to suspend or actual suspension of payments by T would affect the right of the holder of an international interest from T to exercise its remedies so as to attract the application of Article XI. There is, however, an important exception. Where the law governing B’s insolvency looks through the trust and in B’s insolvency proceedings a stay is imposed on enforcement by T’s creditors of the international interest which has been expressed to have been granted by T, then if B’s primary insolvency jurisdiction has made a declaration under Article XXX(3) Alternative A will apply.

2.46. … In those jurisdictions that recognise the trust itself as having legal personality then where the trust (as opposed to the trustees) enters into an agreement as grantor of the international interest it is the trust that is the debtor. The position is otherwise where the relevant insolvency law looks through the trust to the party at whose behest it was established (see paragraph 3.140). …

3.118. … There may, for example, be cases where there is a loan agreement between creditor and borrower but title to the aircraft object is transferred to a trustee who then grants the international interest. In such a case it is the trustee, not the borrower, who is the debtor …

3.83. … Further, for the purpose of Alterative A of Article XI the debtor is the trustee and it is the declaration made by the primary insolvency jurisdiction of the trustee that determines whether or not Alternative A applies (see paragraph 3.140). Moreover, it is insolvency proceedings against the debtor that are the relevant proceedings, whether those proceedings are initiated by a creditor or by the debtor itself. However, where a security interest to secure repayment of a loan has been granted by a trustee in circumstances such that the relevant insolvency law disregards the trust, Alternative A will apply if the Contracting State that is the primary insolvency jurisdiction of the beneficiary has made a declaration pursuant to Article XXX(3). …

5.34. … In the case of a trust it is the trustee, not the borrower/beneficiary, B, who is the debtor and this is so even if the trustee, T, acts in a fiduciary capacity so that liability is limited to the trust assets. There is, however, an important exception. Where under the law governing B’s insolvency the trust is to be disregarded and the international interest treated as having been granted by B, then if B’s primary insolvency jurisdiction has made a declaration under Article XXX(3) Alternative A will apply. …

**Section 8.2.5.3**

3.83. … The debtor also may be a trustee. So if a security agreement, title reservation agreement or leasing agreement is entered into by a trustee as the grantor of the security interest or the conditional buyer or lessee then it is the trustee, not the beneficiary, who is the debtor even if, under the law governing the agreement, the trustee’s liability is limited to the value of the trust assets. …

The status of a duly appointed trustee, agent or other representative must be recognized in all Contracting States, whether or not, in the case of a trustee, their laws recognize the concept of a trust and whether or not the law governing the trust is that of a Contracting State. Recognition of a valid trust involves acceptance of the title of a trustee duly appointed, the power of the trustee to exercise remedies, including possession and sale, on behalf of the creditors (see also paragraphs 3.83-3.85) and the status of trust assets as constituting a separate fund held for the beneficiaries and not available to the trustee’s creditors in the event of its insolvency.

**Section 8.2.5.4**

3.84. … This reflects the common law concept of the trust, which will now apply not only in common law jurisdictions but in civil law jurisdictions that have ratified the Hague Trusts Convention.[[18]](#footnote-18) In these jurisdictions the trustee will hold legal title and in that capacity will be able to enter into agreements as debtor or creditor, effect registrations and enforce rights under Article VI. Some jurisdictions have adopted legislation allowing the formation of a “statutory trust” as a legal entity.[[19]](#footnote-19) Even in those jurisdictions where legal title is held by the trust itself, where this is recognised as having legal personality, or by the beneficiaries,[[20]](#footnote-20) the trustee will almost invariably be empowered to deal with the trust assets and thus to perform the acts referred to in Article VI. …

2.46. … In those jurisdictions that recognise the trust itself as having legal personality then where the trust (as opposed to the trustees) enters into an agreement as grantor of the international interest it is the trust that is the debtor. …

**Section 8.2.5.5**

3.83. A person may enter into an agreement or a sale, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or other representative capacity (Article VI). So an international interest under a security agreement may be taken by an agent or trustee for bondholders or other creditors in the name of the agent or trustee as chargee and may be registered in that name. …

**Section 8.2.5.6**

5.33. … Where an agent, trustee or other representative effects a registration on behalf of beneficiaries or principals pursuant to an agreement in writing under Article VI it is not open to the beneficiaries or principals to make a separate registration of the same interest. …

3.83. … Whether in such a case default remedies are also exercisable by one or more of the creditors directly depends on the law of the State where enforcement is sought (Convention, Article 14) and the terms of the trust or agency agreement. …

**Section 8.2.5.7**

3.84. … Where title to an international interest is vested in a trustee or the trustee acts in exercise of powers conferred on him by the trust instrument only the trustee, not the beneficiaries, can effect a registration and assert rights and interests under the Convention (see paragraph 3.84). Further, only the trustee can make and register an assignment of the international interest registered in the trustee’s name. However, beneficiaries may effect transfers of their beneficial interests off register, thus obviating the need for a new registration every time an interest is transferred. … The beneficial interests created by the declaration of trust and the transfers of such beneficial interests, whether by way of security, sale or otherwise, do not themselves fall within the Convention or Protocol.

2.202. … Where the grantor of the international interest is a trustee the creditor to whom the international interest is granted has priority over the interest of the trust beneficiary (that interest not being registrable) even if the creditor acquired its interest with knowledge of the fact that the aircraft given in security is held on trust (Article 29(2)).

**Section 8.2.5.8**

3.85. The appointment of a new trustee operates as a transfer of the existing international interest either by act of parties, in which case it is registrable as an assignment, or by operation of law, in which case the transfer is outside the scope of the Convention and is not itself registrable but is dealt with as a change of name by the original trustee under Section 5.16 of the Regulations. This does not, of course, mean that the new trustee is considered to be the original trustee under a new name. There is no amendment of the registration itself, only of the person recorded as the transacting user entity. See paragraph 3.82(4).

5.34. … The appointment of a new trustee does not generate a new international interest; it constitutes a transfer either by act of parties, in which case it is registrable as an assignment, or by operation of law, in which event it falls outside the Convention. See further paragraph 3.85.

**Section 8.3.1**

4.225. … Only a creditor (i.e. a chargee, a conditional seller or a lessor) can hold and assign associated rights. So an assignment by a lessee qua lessee is not within the Convention … “Assignment” is widely defined so as to include the pledge or charge of associated rights and related international interests (see paragraph 4.8). However, it is limited to contractual assignments and does not include assignments by operation of law. Associated rights are defined in Article 1(c) as rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object. …

2.41. In addition to the above original rights, the Convention provides means of protecting rights and interests acquired or prospectively acquired by the following means of transfer:

(1) A**ssignments and prospective assignments** of international interests, which are registrable under Article 16(1)(b). An assignment of an international interest created or provided for by way of security is valid only if some or all of the related associated rights are also assigned (Article 32(2)).

(2) **Assignments of associated rights**, which are not independently registrable but are protected by registration of the assignment of the international interest to which they relate. An assignment of associated rights which is not effective to transfer the related international interest, though it may be effective under the applicable law, falls outside the Convention (Article 32(3)). …

2.242. … “Assignment” is broadly defined so as to cover any contract which confers associated rights on the assignee with or without transfer of the related international interest.[[21]](#footnote-21) It thus embraces both outright transfers and charges. But a novation as to the creditor’s rights, where a new agreement replaces the existing agreement, creates a new interest which should be protected by a fresh registration (see paragraphs 2.53-2.54), while a right of subrogation, which is separately dealt with in Article 38, does not constitute an assignment. Moreover it is only assignments effected by contract that fall within Chapter IX (see the definition of “assignment” in Article 1(b)).

2.243. Transfers by operation of law – for example, transfers under statutory provisions or on a statutory merger or amalgamation of two corporations which under the applicable law operates to transfer rights and liabilities – are outside the scope of the Chapter, since they do not fall within the definition of “assignment” in Article 1(b), which is confined to contractual assignments. Only a creditor (that is, a chargee, conditional seller or lessor) can hold and assign associated rights.

4.10. The definition covers both an assignment which also transfers the related international interest, as will be the effect under Article 31(1) if the parties do not otherwise agree, and an assignment of the associated rights alone where the parties so agree. The latter is not, however, governed by the Convention (Article 32(3)). The definition is limited to contractual assignments and does not apply to assignments by operation of law, for example, assignments under statutory provisions or resulting from a statutory merger or amalgamation of two corporations.

4.225. … Only a creditor (i.e. a chargee, a conditional seller or a lessor) can hold and assign associated rights. So an assignment by a lessee qua lessee is not within the Convention, … “Assignment” is widely defined so as to include the pledge or charge of associated rights and related international interests (see paragraph 4.8). However, it is limited to contractual assignments and does not include assignments by operation of law. …

4.133. … “Assignment” in this context does not bear its normal meaning, under Article 1(b), of a transfer of associated rights, which is not registrable, but refers to an assignment of the international interest itself, as envisaged by Article 32(2). …

4.249. An assignment of an international interest created by a security agreement is not valid unless some or all of the associated rights are also assigned, though not necessarily in the same assignment. …

4.225. … Only a creditor (i.e. a chargee, a conditional seller or a lessor) can hold and assign associated rights. So an assignment by a lessee qua lessee is not within the Convention, …

**Section 8.3.2**

2.54. “Assignment” as defined in Article 1(b) of the Convention, involves the conferment of associated rights on the assignee. As stated above, “associated rights” are “all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object”. The essence of assignment is thus the transfer of the creditor’s rights. It is clear that a new agreement between all three parties – debtor, creditor and assignee – which replaces the original agreement is not an assignment but a novation. It is also clear that a transaction in which the creditor simply transfers its associated rights and the related international interest without reference to its obligations is an assignment. But there are also hybrid transactions in which the creditor assigns its rights under the agreement and also, with the consent of the debtor, transfers its obligations, wholly or in part. Such a transaction is an assignment for the purposes of the Convention, whether or not the elements of the transactions relating to the creditor’s obligations result in characterisation of the agreement as a novation under national law. This is because the Convention’s definition of “assignment” is independent of national law, and if an agreement transfers associated rights from the creditor to another person it will be an assignment for the purposes of the Convention no matter how the transaction as a whole is characterised under national law. This is not altered by the fact that under Article XV of the Aircraft Protocol the debtor’s consent to the assignment is required, for this requirement is purely a term of the agreement between creditor and debtor and is not part of a new tripartite agreement involving the assignee. …

2.53. … The distinction between an assignment and a novation is significant in that the priority rules in Article 35(1) governing successive assignments of the same international interest do not apply to a novation, which creates a new claim distinct from that of the claim previously assigned.

2.242. … “Assignment” is broadly defined so as to cover any contract which confers associated rights on the assignee with or without transfer of the related international interest.[[22]](#footnote-22) It thus embraces both outright transfers and charges. But a novation as to the creditor’s rights, where a new agreement replaces the existing agreement, creates a new interest which should be protected by a fresh registration …

4.9. It is also necessary to distinguish an assignment, which leaves intact the agreement to which it relates, from a novation, which involves replacement of the agreement by a new agreement, whether between the same parties or between different parties. For the purposes of the Convention the question is whether the transferor assigns the relevant associated rights to its counterparty, in which case the transfer is an assignment (see Illustration 1, paragraph 4.52), or is replaced as contracting party as regards those rights by the transferee (as is the case when the transferring party releases its entitlement to such associated rights and the lessee grants such rights anew in favour of the transferee), in which case the transfer is a novation and falls outside the provisions on assignment of associated rights (see Illustration 2, paragraph 4.53). The transfer of obligations (whether by assignment or by novation) is irrelevant to this characterisation. So also is the transfer of the international interest under which those rights arise. Where a right or interest which would be an international interest but for the fact that it falls outside the Convention as a pre-existing right or interest (Article 60(1)) is novated after the effective date of the Convention the new interest is an international interest and as such is registrable under the Convention. If such a pre-existing right or interest were to be transferred in the same circumstances by an assignment rather than a novation, the transaction would remain outside of the Convention. …

2.24. … A transfer is an assignment if falling within the definition in Article 1(b) even if it contains features which would characterise it as a novation under the applicable law …

2.53. … But whether a transaction is an assignment, which does not give rise to a new international interest, or a novation, which does, is to be determined from its nature as a matter of interpretation of the Convention and without reference to the applicable law. …

4.52. *Illustration 1*

O agrees to lease an airframe to L under an agreement providing for payment of rentals to O throughout the period of the lease. The lease agreement is registered in the International Registry as an international interest. Subsequently O assigns to T all of its rights under the agreement arising subsequent to the assignment, and by agreement among O, T and L, T assumes all of O’s obligations arising subsequent to the assignment and O is released from those obligations. For purposes of the Convention, the transaction constitutes an assignment. It is a partial assignment under Article 31(2) limited to rights against L arising after the date of the assignment. The fact that under the applicable law that part of the transaction involving the assumption of obligations is characterised as a novation is irrelevant.

4.53. *Illustration 2*

The facts are as in Illustration 1, except that for the period following the transfer: (1) O and L release one another from their respective rights and obligations under the lease; and (2) T and L agree that each will render an equivalent performance in favour of one another. As a consequence of these agreements, T has replaced O as the party who is in a contractual relationship with L for the period following the transfer. O and L agree that the transfer does not affect their pre-existing rights and obligations. Under the applicable law, the law of Ruritania, the entire transaction would be characterised as an assignment because the original contract has not been replaced in its entirety. Under the Convention, however, the transfer of O’s post-transfer rights, having been effected by a release of the original rights in favour of O and a fresh grant of such rights by L in favour of T, is a novation generating a new international interest between T and L requiring separate registration.

**Section 8.3.3**

2.245. … There are no prescribed formalities for the assignment of associated rights but if these are to be effective to transfer the related international interest, without which the Convention will not apply to the assignment (Article 32(3)) the assignment must conform to Article 32, which tracks Article 7 relating to the constitution of an international interest except that there is no reference to a power to dispose. Just as the substantive validity of an agreement as a contract creating or providing for an international interest is governed by the applicable law (see paragraph 2.79), so also the substantive validity of an assignment of associated rights is governed not by the Convention but by the applicable law, which will thus apply to such matters as the effect of a contractual prohibition of assignment or of overriding rules of public policy. …

2.251. Under Article 32 there are no formal requirements for the assignment of associated rights as such but if such an assignment is to transfer the related international interest it must comply with the formalities prescribed by Article 32(1), which track those applicable to the creation of an international interest except that there is no requirement of a right to dispose. The assignment must be in writing, must enable the associated rights to be identified under the contract from which they arise, and in the case of a security assignment must enable the obligations secured by the assignment to be determined in accordance with the relevant Protocol but without the need to state a sum or maximum sum secured. …

2.247. An assignee stands in the same position as its assignor. Accordingly if the assigned interest was not itself a Convention interest it will not be converted into a Convention interest by registration of the assignment, which will therefore have no effects under the Convention. …

4.235. The parties can agree on a partial assignment of the assignor’s associated rights, e.g. the right to some but not all future instalments or rentals. However, the rights assigned must be identifiable under the contract from which they arise (Article 32(1)(b)) and must be identified in the notice to the debtor before the debtor can be called upon to pay the assignee (see Article 33(1)(b)). …

4.247 Paragraph 1 contains rules for the constitution of an assignment under the Convention, prescribing the conditions in which the assignment of associated rights transfers the related international interest and tracks the formal requirements laid down in Article 7 for the creation of an international interest except that what has to be identified is not the object (which is already identified) but the associated rights. This requires identification of the contract from which the associated rights arise. …

4.248. Failure to comply with paragraph 1 has the effect that the related inter-national interest does not pass to the assignee and the assignment then falls outside the scope of the Convention altogether (see paragraph 3 of the present Article and paragraph 4.231) and its efficacy outside the Convention will depend on the applicable law.

**Section 8.3.4**

2.245. … Accordingly Article 31(1) provides that, except as otherwise agreed by the parties, an assignment of associated rights made in conformity with the prescribed formalities also transfers to the assignee the related international interest and all the interests and priorities of the assignor under the Convention. …

4.230. Except as otherwise agreed by the parties, the assignment of associated rights transfers to the assignee the related international interest (i.e. that of the chargee, conditional seller or lessor) and all the interests and priorities of the assignor under the Convention …

4.231. It is, however, open to the parties to agree on an assignment of the associated rights without a transfer of the security or other international interest. …

4.234. Where, as will be the case in the absence of agreement to the contrary, the assignment of the associated rights carries with it the related international interest, the assignee obtains the same priority status as its assignor. …

4.241. Illustration 37

O, the owner/lessor of an aircraft object, registers its international interest and subsequently assigns its rights under the leasing agreement (associated rights) to A by way of an outright assignment. The effect of the assignment is to transfer to A not only the associated rights but also, in the absence of agreement to the contrary, the international interest previously vested in O. Absent such agreement A becomes entitled to be registered as assignee of the international interest, enjoying the same priority as that previously enjoyed by O, and to collect the rentals under the lease, subject to any defences or rights of set-off available to the lessee under the applicable law, e.g. for nonconformity of the equipment with the specifications in the leasing agreement, so far as these have not been waived by the lessee by the terms of the lease or in some other writing.

**Section 8.3.5**

2.239. The assignee of an international interest is entitled to have it registered, whether or not the assigned international interest has itself been registered, in order to secure a measure of priority for its assignment. This, of course, assumes that the interest is indeed an international interest. The assignment of a pre-existing interest not covered by a declaration under Article 60 is outside the Convention altogether. …

2.247. An assignee stands in the same position as its assignor. Accordingly if the assigned interest was not itself a Convention interest it will not be converted into a Convention interest by registration of the assignment, which will therefore have no effects under the Convention. So if a pre-existing right or interest not covered by a declaration under Article 60 is assigned after the Convention has come into force as provided by Article 60(2)(a) it remains a pre-existing right or interest. …

3.159. The assignee of an international interest is entitled to have it registered, whether or not the assigned international interest has itself been registered, in order to secure a measure of priority for its assignment. See paragraph 2.239.

4.233. There is nothing to preclude the assignment of an unregistered international interest and, if there were no further assignments or competing interests, such assignment would entitle the assignee to exercise default remedies against the debtor even if neither the international interest nor the assignment were registered. Registration of the assignment of an unregistered international interest would protect the assignee against subsequently registered and unregistered assignees who do not procure registration of the international interest but not against displacement by the holder of a subsequent international interest who registers its international interest first or the assignee of such holder or against creditors in the debtor’s insolvency (see paragraph 2.240).

**Section 8.3.6**

2.248. The debtor is bound by the assignment, and has a duty to make payment or give other performance to the assignee where the formalities prescribed by Article 33(1) have been observed (see paragraph 2.251). …

3.157. Article XV introduces into Article 33(1) of the Convention a new sub-paragraph (c) making it necessary for the debtor to give its consent to an assignment of associated rights. …

3.158. The debtor’s consent to an assignment is not usually required by national laws on assignment of claims but is designed to avoid disputes as to the efficacy of an assignment. That consent, however, may be given in advance and may be general in nature. …

4.251. The debtor must have been given notice of the assignment in writing by or with the authority of the assignor and the notice must identify the associated rights to which it relates. Article XV of the Aircraft Protocol adds a further condition of the debtor’s duty to make payment or give other performance, namely that the debtor has consented in writing, though the consent can be given in advance and need not identify the assignee. This provision applies whether or not the international interest to which the assignment relates has been registered.

4.241. *Illustration 37*

O, the owner/lessor of an aircraft object, registers its international interest and subsequently assigns its rights under the leasing agreement (associated rights) to A by way of an outright assignment. The effect of the assignment is to transfer to A not only the associated rights but also, in the absence of agreement to the contrary, the international interest previously vested in O. Absent such agreement A becomes entitled to be registered as assignee of the international interest, enjoying the same priority as that previously enjoyed by O, and to collect the rentals under the lease, subject to any defences or rights of set-off available to the lessee under the applicable law, e.g. for nonconformity of the equipment with the specifications in the leasing agreement, so far as these have not been waived by the lessee by the terms of the lease or in some other writing.

**Section 8.3.7**

2.248. … The debtor may assert against the assignee all defences and rights of set-off available to the debtor under the applicable law (Article 31(3)) unless it has waived them by an agreement in writing (Article 31(4)). Under the Convention such a waiver is binding except where it purports to bar defences arising from fraudulent acts of the assignor (Article 31(4)). …

4.237. The Convention does not itself contain any provisions as to defences or rights of set-off other than waiver of these (see paragraph 4 of this Article and paragraph 4.238). …

4.238. Paragraph 4 of the present Article recognises the common practice of including a provision by which the debtor waives defences and rights of set-off against the assignee, in order to make claims more readily transferable. Such waiver is permitted and binding except for defences arising from fraudulent acts on the part of the assignor. So where the Convention applies then subject to the above exception the debtor’s waiver of defences or rights of set-off will be effective even if this would not be recognised under the otherwise applicable law.

**Section 8.3.8**

2.239. The assignee of an international interest is entitled to have it registered, whether or not the assigned international interest has itself been registered, in order to secure a measure of priority for its assignment. This, of course, assumes that the interest is indeed an international interest. …

2.240. It follows from the above that if there are no further assignments or other competing interests, an assignee is entitled to exercise remedies against the debtor even if neither the international interest nor the assignment is registered. … The creditor is entitled to assign its rights and the assignee, standing in the same position as the assignor, is entitled to enforce remedies even though the assigned interest is unregistered. …

3.158. The debtor’s consent to an assignment is not usually required by national laws on assignment of claims but is designed to avoid disputes as to the efficacy of an assignment. That consent, however, may be given in advance and may be general in nature. The thinking is that, in exchange for a clear consent requirement, the debtor is bound to the assignment without qualification. …

**Section 8.3.9**

4.255. This Article confers on the assignee default remedies in relation to the object corresponding to those given by Chapter III to the holder of an international interest on the debtor’s default. So on the assignor’s default the assignee may, for example, sell or otherwise transfer its rights to payment or other performance under the assignment and apply under Article 13 for relief pending final determination of its claim. The default remedy provisions referred to in this Article also apply to the associated rights to the extent that they are documentary intangibles (see paragraph 2.252), while the rights to payment or other performance due or to become due under the agreement can be sold but otherwise are simply enforceable against the debtor under Article 33 or through whatever additional remedies are given by the applicable law (Article 12).

4.256. However, the default provisions apply only in the relations between assignor and assignee as regards the assignment of the associated rights and do not affect the rights of the debtor. Accordingly any sale or further assignment by the assignee will take effect subject to the rights of the chargor, conditional buyer or lessee to the extent that it is entitled to quiet possession as against the assignee. …

2.252. Under Article 34, an assignee under a security assignment, qua transferee of the international interest under Article 32(1), has the same remedies as those available to the original creditor under the provisions of Articles 8, 9 and 11 to 14. However, in relation to associated rights the remedies given by those provisions are exercisable only so far as such provisions are capable of application to intangible property. …

2.259. The assignment is also subject to any rules of procedure relating to the enforcement of rights of property which is under the control or supervision of the insolvency administrator (Article 30(3)(b)). …

4.257. *Illustration 43*

O leases an airframe to L, registers an international interest in the airframe and then assigns that interest and the associated rights to A by way of security for a loan from A repayable by instalments. O defaults in payment of an instalment and A thereby acquires the right to sell the airframe or, subject to L’s rights under the lease agreement, lease it to another party and receive the rentals. If A sells the airframe, the purchaser acquires them subject to L’s rights as lessee in possession and becomes entitled to collect the rentals while the lease is current and thereafter to take possession of the airframe. The position is similar if A leases the airframe to T, who takes its lease subject to the existing lease in favour of L. L’s lease then becomes a sub-lease, so that T becomes L’s lessor, with the consequent right to collect rentals from L and to recover the airframe in the event of a default by L within the meaning of Article 11, while T has to pay rentals to A under the head lease. …

**Section 8.3.10**

None

**Section 8.3.11**

2.258. On the assignor’s insolvency Article 30 applies as if the references to the debtor were references to the assignor (Article 37). …

4.273. The effect of this Article is that if insolvency proceedings are instituted against the assignor then the assignee’s title to the assigned international interest and to the associated rights (see Article 35(2)) is to be treated as effective in the proceedings if the assignment of the international interest was registered in the International Registry prior to the commencement of the insolvency proceedings or if that assignment is otherwise effective under the applicable law. …

**Section 8.3.12**

None

**Section 8.4.1**

2.260. The Convention itself provides for a right of subrogation, in Article 9(4). Under Article 38(1), nothing in the Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law, which in a Contracting State includes Article 9(4) itself. … However, the right of subrogation given by Article 9(4) is itself to be treated as given by the applicable law in a Contracting State and is registrable accordingly.

2.41(3) **Acquisitions of international interests by legal or contractual subrogation**, which are registrable under Article 16(1)(c). Rights may be acquired by subrogation either under Article 9(4) of the Convention or under the otherwise applicable law. …

**Section 8.4.2**

2.119. … Under Article 9(4), which is mandatory, at any time before sale or the making of a vesting order under Article 9(2) the debtor may discharge the security interest by paying the secured amount in full, subject to any lease granted by the chargee under Article 8(1) or ordered by the court under Article 8(2). Where, after such default, the payment is made by an interested person other than the debtor, that person is subrogated to the rights of the chargee (Article 9(4)) and thus acquires the security interest automatically and without any need for an assignment. Only one who is an “interested person” within Article 1(m)(ii) or (iii) is entitled to make a payment attracting rights of subrogation. See paragraph 2.115(2) and (3). Under Article 16(1)(c) the acquisition of an international interest by legal or contractual subrogation “under the applicable law” is registrable in the International Registry. …

4.102. An interested person other than the debtor who discharges the debtor’s obligation in full is subrogated to the rights of the chargee. This reflects a rule common in national legal systems and one which is preserved by Article 38 (see Illustration 14, paragraph 4.107). The acquisition of an international interest by legal or contractual subrogation is registrable under Article 16(1)(c) if it arises “under the applicable law.” Normally in an international Convention references to the applicable law are used to denote a law other than the Convention itself. But in this particular case there seems no reason why, in a Contracting State, the right of subrogation given by Article 9(4) should not be treated as a right given by the applicable law so as to enable the acquisition of the chargee’s interest by an interested person paying off the debt to be registered under Article 16(1)(c).

4.107. *Illustration 14*

C advances USD 30 million to D on the security of an airframe and a guarantee of the debt by S. The debt is repayable by five instalments of USD 6 million each and on default in payment of any one instalment the full outstanding balance becomes immediately payable. D defaults in payment of the second instalment and C calls upon S as surety to pay USD 24 million together with outstanding interest and charges. Upon making this payment S becomes subrogated to C’s rights to the benefit of the charge to secure the amount it has paid under its guarantee and can register its acquisition of C’s international interest by subrogation as provided by Article 16(1)(c).

**Section 8.4.3**

2.260. … Under Article 38(1), nothing in the Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law, which in a Contracting State includes Article 9(4) itself. …

4.274. … A right of subrogation is conferred by Article 9(4) of the Convention and national laws commonly confer a separate right of subrogation, typically as the result of a payment to the creditor by a third party such as a guarantor or insurer, who then stands in the shoes of the creditor. Subrogation may occur either by operation of law (as in the case of a discharge of the debtor’s secured obligations by a guarantor) or by contract between the creditor and the third party. This Article makes it clear that the rights of the subrogee under the applicable law are unaffected. …

2.41(3) **Acquisitions of international interests by legal or contractual subrogation**, which are registrable under Article 16(1)(c). Rights may be acquired by subrogation either under Article 9(4) of the Convention or under the otherwise applicable law. Typical examples of the latter are the right of a surety who has discharged the debt to take over the international interest held by the creditor and of an insurer who has paid the insured claim on loss or damage of the object to take over the insured’s interest in the object.

**Section 8.4.4**

2.261. A party acquiring associated rights and/or the international interest by way of subrogation stands in much the same position under the Convention as an assignee. Where there are two subrogees whose subrogatory rights relate to different international interests it is the international interests, not the subrogatory rights as such, that are in competition. Accordingly each subrogee stands in the shoes of its subrogor and thus has priority over the subrogee of a junior international interest, whether or not the first subrogee has registered its subrogation (see paragraph 2.254 for the comparable position in relation to an assignment). However, if there are two subrogees acquiring from the same subrogor in relation to the same international interest the competition is between the two rights of subrogation and priority goes to the first to register its acquisition by subrogation. This is not expressly provided by the Convention but must follow from the general principle in Article 29(1) that the order of registration determines priorities.

4.274. … In principle a subrogee stands in the position of the original holder of the interest and acquires the same priority as that holder in relation to other holders (see Illustration 49, paragraph 4.276), so that registration of the subrogation is unnecessary in order to protect a subrogee of a registered international interest against a holder of an unregistered or subsequently registered interest or against a subrogee of such holder. …

4.276. *Illustration 49*

C1 advances money to D on the security of an airframe and registers its international interest. Subsequently C2 makes a loan to D on the security of the same airframe and a guarantee by G. C2 registers its international interest. D defaults in payment of sums due under the second loan agreement and C2 demands payment from G under its guarantee. G pays in full and under the applicable law becomes subrogated to the rights of C2, which are subordinate to those of C1.

**Section 8.5.1**

2.219. As stated above, the priority rules laid down in Article 29 may be varied by agreement between the parties. Thus the holder of a registered interest may agree to be subordinated to the holder of a subsequently registered interest or of a prior or subsequent unregistered interest and a chargee or other party to whose interest a debtor from the chargor would otherwise be subject under Article 29(4) may agree to subordinate its interest to that of the debtor. …

4.200. The basic rules, however, may be varied by contract, with the variation registered as a subordination (as contemplated by Article 29(5)), thereby binding third parties. … A subordination agreement affects only the parties to it and an assignee of a registered subordination. …

4.203. Holders of competing interests may vary the priority between themselves by agreement but an assignee of a subordinated interest is not bound by the subordination unless it was registered prior to the assignment, …

4.201. Since the right of quiet possession of the conditional buyer or lessee vis-à-vis the chargee is dependent on the fact that the conditional seller or lessor registered its international interest before the chargee registered its own international interest, discharge of the registration of the former international interest extinguishes the right of quiet possession as against the chargee (though not as against the conditional seller or lessor), in line with the principle that priorities and other rights against third parties derived from a registration come to an end when the registration is discharged. This rule is necessary to protect the integrity of the registration system.

4.214. *Illustration 31*

D gives a charge on an aircraft object to C1, who registers it, and a second charge to C2, who also registers. Later C1 agrees to subordinate its charge to that of C2. However, C2 fails to register the subordination agreement. Subsequently C1 assigns its charge to A. A has priority over C2 and this is so whether or not A knew of the subordination agreement.

**Section 8.5.2**

2.220. A party in whose favour a subordination has been made should register the subordination in the International Registry, otherwise it will not bind an assignee of the subordinated interest (Article 29(5)). A subordination of an interest may be registered even if the subordinated interest itself has not been registered, though usually the failure to register will itself result in subordination, rendering a subordination agreement unnecessary. But a subordination agreement is required where the interest to be subordinated is one which would otherwise have priority without itself being registered and in this case the subordination agreement should be registered. … A subordination agreement between two creditors affects only the creditors themselves and, if the subordination agreement is registered, an assignee of the subordinated creditor. It does not affect the debtor, whose consent is not required and who must fulfil its obligations to both creditors.

4.200. … A subordination agreement affects only the parties to it and an assignee of a registered subordination. It does not affect the debtor, whose consent is not required and who must fulfil its obligations to both creditors.

**Section 8.6.1**

2.56. Even an amendment to an agreement creating or providing for an international interest may, without necessarily affecting the existing registration, give rise to a new international interest which will not be protected by initial registration but requires to be separately registered. Examples are the following:

(1) The amendment changes the agreement category, as where a pure leasing agreement is amended by an agreement for the grant of an option to purchase which under the applicable law converts the leasing agreement into a security agreement.

(2) The agreement is amended to add or substitute a new item of equipment; to increase a fractional interest in an aircraft object (e.g. from five per cent to ten per cent) otherwise than by assignment or subrogation; to bring in a new party as grantee or grantor of a security interest, conditional sale or lease or to extend a security interest to an obligation not previously secured or a new obligation, e.g. the provision of additional finance.

(3) A lease is extended or renewed. The extension or renewal of a lease creates a new registrable interest in favour of the lessor, and this is so even if the lease itself gives the lessee an option to extend or renew the lease, for the option may never be exercised and unless and until it is exercised the lessor has no existing international interest as regards the extension or renewal period. However, where the extension or renewal is provided for in the lease itself the lessor can register it as a prospective international interest from the outset, with no need to reregister when the extension or renewal takes effect, and if the lease provides for successive renewal periods, a single registration of a prospective international interest will cover all renewals.

(4) The rent under a lease characterised by the applicable law as a security agreement is increased by a subsequent agreement.

The factor common to all the above amendments is that the original international interest is in some way enlarged, replaced or supplemented by a new interest or a new type of interest, to the potential detriment of intervening creditors whose interests will be thereby eroded. So it is important to effect registration of the new or varied international interest in order to preserve its priority. However, the original registration remains effective to the extent that the international interest to which it relates still subsists. An assignment of rights does not constitute an amendment, since it does not change the agreement or the parties to the agreement in any way, it merely entitles the assignee to exercise the assigned rights given by the agreement. The same is true of an international interest acquired by subrogation under Article 9(1) of the Convention or under the applicable law or through some other form of transfer by operation of law, for example, on a statutory transfer or a statutory merger or amalgamation of a creditor corporation with another corporation which under the applicable law operates to transfer the international interest (see paragraphs 2.178, 2.243).

2.57. Where a pre-existing right or interest, which under Article 60(1) falls outside the Convention, is amended after entry into force of the Convention in the relevant State in such a way as to give rise to a new interest, as indicated in paragraph 2.56, this will constitute an international interest governed by the Convention and ranking for priority according to the time of its registration. By contrast, the capture of after-acquired property under the provisions of an agreement creating a pre-existing right or interest is simply an application of that agreement and does not trigger a new international interest.

4.25 An amendment of the agreement may in certain cases give rise to a new international interest (see paragraph 2.56) and may also convert a pre-existing right or interest outside the Convention (Article 60(1)) into a new international interest governed by the Convention (see paragraph 2.57).

**Section 8.6.2**

2.58. There are kinds of amendment which do not generate a new international interest because they do not change the terms or because any additional obligations they impose are secured or provided for by the international interest under the terms of the original agreement, for example, an amendment:

(1) to record that a creditor or debtor has changed its name;

(2) as to the amount, mode or time of payment under a security agreement or a related promissory note either without increasing the amount of the obligations secured or where any increase is already secured by the terms of the original agreement;

(3) as to repair or insurance of the equipment;

(4) to provide for a further advance which is already secured by the agreement or adjust the interest rate on an existing secured advance.

2.57. Where a pre-existing right or interest, which under Article 60(1) falls outside the Convention, is amended after entry into force of the Convention in the relevant State in such a way as to give rise to a new interest, as indicated in paragraph 2.56, this will constitute an international interest governed by the Convention and ranking for priority according to the time of its registration. By contrast, the capture of after-acquired property under the provisions of an agreement creating a pre-existing right or interest is simply an application of that agreement and does not trigger a new international interest.

4.25 An amendment of the agreement may in certain cases give rise to a new international interest (see paragraph 2.56) and may also convert a pre-existing right or interest outside the Convention (Article 60(1)) into a new international interest governed by the Convention (see paragraph 2.57).

**Section 8.6.3**

2.56. … However, the original registration remains effective to the extent that the international interest to which it relates still subsists. …

**Section 8.7.1**

2.229. Article 29(7) is replicated in Article XIV(4) of the Aircraft Protocol. This was thought necessary to avoid items other than objects being swept up into the definition of “airframes” in Article I(2)(e) of the Protocol.[[23]](#footnote-23) However, it does not apply to installed or removed aircraft engines, for these are not mere components but distinct Convention objects that do not form part of the airframe on which they are installed, interests in them being separately registrable. Hence Article XIV(3), unlike Article XIV(4), does not leave ownership or other rights in installed engines to be dealt with by the applicable law; it lays down a positive rule that such rights are not affected by the aircraft engine’s installation on or removal from the airframe.

2.230. Article XIV(3) of the Aircraft Protocol contains a special rule for aircraft engines. Ownership of or another right or interest in an aircraft engine is not affected by its installation on or removal from an aircraft, so that (in contrast to the position under Article 29(7)) this is the case even if under the applicable law the engine would otherwise have passed to the owner of the airframe by a rule of accession (see paragraph 2.231).

2.231. … Given that the stated purpose of Article XIV(3) is to preclude the application of the doctrine of accession to installed aircraft engines,[[24]](#footnote-24) it must be concluded that for the purposes of the Convention and Protocol aircraft engines, when installed, would have been treated as accessions, or otherwise as passing into the ownership of, or becoming subordinated to the rights of, the owner of the principal object, but for the provisions of Article XIV(3).

2.70. … However, under Article XIV(3) of the Aircraft Protocol ownership of or another right or interest in an aircraft engine is not affected by its installation on or removal from an aircraft, overriding any provision of the otherwise applicable law that would otherwise apply a doctrine of accession (see paragraph 2.231).

3.10. … See Article 29(7) of the Convention and Article XIV (3) and (4) of the Protocol, which exclude the doctrine of accessions in relation to engines and other items that become installed on an aircraft (see paragraph 2.231). …

4.207. … Article XIV(3), however, gives still stronger protection to those holding pre-installation rights in an aircraft engine, stating that ownership of or another right or interest in an aircraft engine is not to be affected by its installation on or removal from an aircraft. The effect of this is to displace any doctrine of accession that might otherwise operate under the applicable law and to preserve the Convention interest in the engine. Engines are regularly interchanged as between one aircraft and another (see paragraph 2.231). Article XIV(3) thus adopts the principle of title-tracking, not title transfer, so that if engines are swapped the holder of an interest in the engine removed from the aircraft retains that interest and does not acquire an interest in the substitute engine installed on the aircraft, which continues to be subject to whatever interest was granted to another party prior to its installation. …

5.76. … In contrast to the position as regards items other than objects (see paragraph 5.77 below), Article XIV(3) overrides a national law of a Contracting State which would otherwise apply a doctrine of accession (see paragraph 2.231) and ensures that neither the installation of an aircraft engine on an aircraft or its removal from the aircraft affect the ownership of or other interest in the aircraft engine. So if, for example, an aircraft engine is leased by its owner to an airline and installed on its aircraft, ownership of the engine does not pass to the airline but remains with the lessor. Thus Article XIV(3) adopts the principle of title tracking rather than title transfer. Article XIV(3) does not apply to installed items other than aircraft engines, for these other items are deemed to form part of the airframe, aircraft engine or helicopter on which they are installed (see the definitions in Article I(2)(b), (e) and (l) and paragraphs 3.9, 3.11 …

**Section 8.7.2**

2.227. Article 29(7) concerns dealings with an item other than an object, … In relation to aircraft objects the term covers such articles as spare parts which are not themselves aircraft engines, modules installed on engines, computers, audio and visual systems, and the like. Article 29(7) is designed to ensure that rights of a person in an item (other than an object) held prior to its installation on an object are not affected by installation of the item on an object if under the applicable law those rights continue to exist after the installation, and new rights may be created in a previously installed item which is removed where under the applicable law those rights are created. …

2.228. The effect of Article 29(7)(a) is that where the applicable law so provides, the replacement units, which may have been financed separately and given in security to the lender, remain subject to that security interest and do not pass by accession or otherwise become subject to the rights of the owner of, or to another creditor holding a security interest in, the airframe or aircraft engine. In the case of the holder of the other security interest this remains valid but is subordinated to the pre-installation interest of the other creditor in the item. …

3.10. … So such items as installed propellers, winglets, seats, auxiliary power units, computers and engines installed on a helicopter are not distinct objects for the purpose of these two instruments, so that the registration and priority rules apply not to them but to the airframe of which they form part. However, their installation does not affect rights in them, or in other items not constituting an object, held prior to installation if under the applicable law those rights continue to exist after installation. See Article 29(7) of the Convention and Article XIV (3) and (4) of the Protocol, which exclude the doctrine of accessions in relation to engines and other items that become installed on an aircraft (see paragraph 2.231). …

4.216. *Illustration 33*

An audio system leased by A to L is installed on an aircraft which is owned by D and has been charged to C. Later, S supplies spare parts under a conditional sale agreement and these are incorporated into the aircraft engine but subsequently removed and held in store. Paragraph 7(a) of this Article makes it clear that the Convention does not affect A’s rights over the audio system where under the applicable law those rights continue to exist despite the installation in the aircraft and that if the applicable law so provides S’s interest in the spare parts continues notwithstanding their incorporation into the aircraft engine and their subsequent removal.

5.4. … However, if another person had rights in an attached item prior to its installation on an aircraft engine and under the applicable law those rights continue to exist after the installation and the Convention does not affect them (Article XIV(4) of the Aircraft Protocol and Article 29(7)(a) of the Convention), nor does the Convention affect the ability to grant rights in the attached item after its removal from the engine where such rights may be created under the applicable law (Article XIV(4) and Article 29(7)(b) of the Convention). …

5.77. Paragraph 4 applies Article 29(7) to an item which is not an airframe, aircraft engine or helicopter. The paragraph is in fact redundant, since Article 29(7) of the Convention already applies by its own terms. …

**Section 8.7.3**

2.231. … The terms “installed”, “incorporated” and “attached” are not defined but appears to be intended to denote different degrees of association between the accessory and the principal object. On this basis “installed” means that the accessory can be removed without any, or any significant, damage either to the object or to the accessory, while “incorporated” is at the other end of the spectrum, denoting an absorption of the accessory into the object such that the accessory loses its identity and “attached” refers to the intermediate position where the accessory retains its identity but cannot be detached without significant damage to the object or the accessory. …

4.206. … “Installed” means placed on or in an object in such a way that the item is readily removable without damage to the item or the object. … In all these cases the installation does not affect pre-installation rights if these are preserved by the applicable law. …

**Section 8.8.1**

3.43. … However, if a transaction is partly internal and partly international, as may be the case with respect to a three- party transaction that includes a lease between two parties in the same declaring State, and a lender to the lessor who is situated outside the declaring State, the remedial provisions of the Convention remain applicable to any international interest constituted between the party outside the declaring State and a debtor situated within the declaring State. …

**Section 9**

**Section 9.1.1**

2.278. Except in relation to the grant of advance relief under Article 13 (see paragraphs 2.280-2.281) or the making of orders against the Registrar (see paragraphs 2.282-2.284), exclusive jurisdiction for any claim brought under the Convention is given to the courts of a Contracting State chosen by the parties to a transaction except where they agree that the jurisdiction is to be non-exclusive (Article 42(1)). Exclusive jurisdiction clauses within Article 42(1) may be symmetric, that is, binding on both parties, or asymmetric, binding on one party (typically the debtor) while giving the other party (typically the creditor) the option to bring proceedings elsewhere. As regards asymmetric jurisdiction clauses the words “unless otherwise agreed between the parties” are to be construed as meaning “to the extent otherwise agreed between the parties,” so that the selected jurisdiction is non-exclusive as regards the party having the option but exclusive as regards the other party. … Article 42(1) is limited to Convention claims; it does not apply to claims under the applicable law even where referred to in the Convention, for example under Article 12. … The chosen forum need not have a connection with the parties or the transaction. …

4.296. This Article is a general jurisdiction provision covering “any claim” under the Convention. … Article 42(1) is limited to Convention claims; it does not apply to claims under the applicable law even where referred to in the Convention, for example under Article 12. … Article 42 embodies the general principle of party autonomy. There is no other Article in the Convention providing for the exercise of general jurisdiction. The selected jurisdiction is exclusive. It is, however, open to the parties to agree that the jurisdiction selected is to be non-exclusive. Where exclusive, the provision precludes courts of other Contracting States from accepting or asserting jurisdiction. The Article is concerned with choice of jurisdiction by parties to a “transaction”, a term which is not defined but covers not only an agreement creating or providing for an international interest but any other contract falling within the scope of the Convention, including a subordination agreement, an assignment and a contractual subrogation. …

2.277. … A court having exclusive jurisdiction under Articles 42 to 44 may not decline it on the ground of *forum non conveniens*.

2.279. … A question for consideration is the relationship between Articles 42 and 43 of the Convention and the 2005 Hague Convention. The effect of Article 26 of the Hague Convention is that where a State is a party to both conventions then in case of inconsistency the provisions of the Cape Town Convention prevail, but subject to this the Hague Convention applies. One consequence of this is that the duty of recognition extends to the recognition and enforcement of judgments of a court having exclusive jurisdiction under the choice of court agreement (Article 8). A second consequence is incorporation of the principle of severability of the jurisdiction clause from the rest of the contract, so that the validity of an exclusive choice of court agreement cannot be contested on the ground that the contract is not valid (2005 Hague Convention, Article 3(d)), though the position would be otherwise if the alleged ground of invalidity affects the choice of court agreement itself, as where a party asserts that its signature to the entire agreement, including the choice of law clause, was forged. For the relationship between Articles 13, 42 and 43 of the Cape Town Convention and Brussels I (recast) see paragraph 2.328. …

2.328. Member States of the European Community (now the European Union) are not permitted by EC/EU law to make declarations on matters within the competence of the EC/EU. Instead, the EC/EU, if it so decides, makes any such declarations on behalf of itself and Member States, and as a matter of EU law Member States are required to apply provisions covered by the declarations in the manner specified in the decision of the Council on the conditions of accession to the Convention. For example, the Council decision of 6 April 2009 on the accession of the EC to the Cape Town Convention and Aircraft Protocol stipulated that where the debtor is domiciled in a Member State of the EC, Member States bound by Brussels I would apply Articles 13 and 43 of the Convention on interim relief only in accordance with Article 31 of Brussels I as interpreted by the European Court of Justice in the context of Article 24 of the Brussels Convention (see paragraphs 2.288-2.289). Accordingly it would be a breach of what is now EU law for Member States to apply Articles 13 and 43 otherwise than in accordance with what is now Article 35 of Brussels I (recast). However, this is a matter internal to the EU and has no application on the international plane. Accordingly Unidroit as Depositary is obliged to accept instruments of ratification which accord with the Cape Town Convention and any relevant Protocol even if they do not conform to the above Council decision. See paragraph 2.302. The provisions of Brussels I (recast) are not affected by the Hague Judgments Convention. See Article 23(4) of that Convention.

4.298. The parties are free to confer jurisdiction on the courts of any Contracting State, whether or not it has a connection with the parties or the transaction. It is not necessary for the agreement to refer specifically to claims “under the Cape Town Convention”. It suffices that the forum selection clause covers all matters arising in connection with the agreement, which would include claims under the Convention as well as those outside it. This provision overrides contrary national law. …

**Section 9.1.2**

2.278. … Article 42(1) is limited to Convention claims; it does not apply to claims under the applicable law even where referred to in the Convention, for example under Article 12. Moreover, the parties can only make a choice of jurisdiction in relation to claims arising in their relationship with each other, not claims involving third parties, such as priority claims. Of course, non-Convention claims can be dealt with by the same forum, either because so provided by agreement between the parties or because that forum has jurisdiction under its own jurisdiction rules. … But jurisdiction can be conferred only on the courts of a Contracting State or a territorial unit of a Contracting State covered by Article 52. No other court falls within Article 42. …

2.280. The courts of the territory on which the debtor is situated have concurrent jurisdiction, pending final determination of the claim, (a) to make orders for the lease or management of the object and income from it under Article 13(1)(d); (b) to grant any other interim relief available under the *lex fori* by virtue of Article 13(4), in either case as requested by the creditor, though the jurisdiction is limited to orders which by their terms are enforceable only in the territory concerned. …

2.281. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is located have concurrent jurisdiction to make orders requested by the creditor for advance relief, other than orders for the lease or management of the object and the income from it (Article 43(1)). …

4.296. … Article 42(1) is limited to Convention claims; it does not apply to claims under the applicable law even where referred to in the Convention, for example under Article 12. Moreover, the parties can only make a choice of jurisdiction in relation to claims arising in their relationship with each other, not claims involving third parties, such as priority claims. … The Article does not, of course, confer jurisdiction over disputes with third parties. …

4.297. … this Article does not exclude any jurisdiction conferred by Article 43 in relation to relief under Article 13 (relief pending final determination). …

4.299. The Convention does not, of course, deal with the conferment of jurisdiction on the courts of a non-Contracting State. In such a case the effectiveness of the jurisdiction clause is determined by the *lex fori* and it is for the forum court to decide whether it will take jurisdiction.

5.103. This Article confers concurrent jurisdiction on courts of the State of registry of a helicopter, or of an aircraft to which an airframe pertains, to make orders under Article 13 of the Convention (speedy judicial relief), on the application of the creditor, in relation to the helicopter or airframe. …

**Section 9.1.3**

2.277. … A deliberate decision was taken at the Diplomatic Conference not to include in the Convention any general rule of jurisdiction. Accordingly in the absence of party choice of jurisdiction only claims under Article 13 and claims against the Registrar are covered by the Convention, and jurisdiction over other claims is determined by the *lex fori*. …

4.301. The Convention makes no provision for cases where the parties have not made a choice of forum and the claim is not for advance relief under Article 13 or for an order against the Registrar under Article 44 but is, for example, for breach of a duty imposed on the creditor under Article 8 or Article 9 or is a claim by a person other than the debtor for the correction or discharge of a registration, as where a junior chargee wishes to have a satisfied prior charge recorded as discharged. Jurisdiction in such cases is determined by the *lex fori*, including any external rules having effect under the *lex fori* by reason of ratification of an international convention or by a regulation made by the European Union as regards a Member State. …

**Section 9.2.1**

4.303. This Article is confined to jurisdiction to entertain claims by a creditor to speedy judicial relief under Article 13(1) pending final determination of the creditor’s claim and other forms of interim relief available under the *lex fori*. The forms of relief set out in Article 13(1)(a), (b) and (c), together with other forms of interim relief in respect of the object (see paragraphs 4.304-4.305) are seen as being of an *in rem* nature, and thus in the absence of party agreement are dependent on the object being within the territory of the Contracting State from whose courts relief is sought. By contrast, relief under Article 13(1)(d) is conceived as operating *in personam*, so that in the absence of party agreement what is required is that the debtor be situated in the territory of the forum State and the enforcement sought limited to that territory by the terms of the order granting relief. In either case the jurisdiction is concurrent with that chosen by the parties under Article 42(1). For the purpose of this Article a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry (Protocol, Article XXI).

4.304. Jurisdiction to grant other forms of interim relief under Article 13(4) depends on the nature of the relief sought. If it is interim relief in respect of the object then it shares the *in rem* characteristic of relief under Article 13(1)(a), (b) and (c) and falls within the concurrent jurisdiction of the courts of the Contracting State in the territory of which the object is situated. If, on the other hand, it is interim relief which is not in respect of the object, as, for example, a claim for an interim payment by the debtor towards alleged arrears under the agreement, then under Article 43(2) that is a matter for the courts of the Contracting State on the territory of which the debtor is situated, which have concurrent jurisdiction with the courts of the jurisdiction selected by the parties under Article 42.

2.277. … A court having exclusive jurisdiction under Articles 42 to 44 may not decline it on the ground of *forum non conveniens*.

2.279. … A court has jurisdiction under Article 43 even if the final determination of the claim under Article 13(1) will or may take place in the court of another Contracting State or by arbitration (Article 43(3)). …

4.307. It is not necessary that the court from which relief is sought under Article 13 shall be the tribunal making the final determination of the claim. This may be a court in another Contracting State or a court or arbitral tribunal having its seat in any State. Article 43(3) is silent as to the position where the final determination is to be made by the court of a non-Contracting State. It would seem that in such a case there is no reason why the courts of a Contracting State should not be able to grant relief under Article 13.

2.280. The courts of the territory on which the debtor is situated have concurrent jurisdiction, pending final determination of the claim, (a) to make orders for the lease or management of the object and income from it under Article 13(1)(d); (b) to grant any other interim relief available under the *lex fori* by virtue of Article 13(4), in either case as requested by the creditor, though the jurisdiction is limited to orders which by their terms are enforceable only in the territory concerned. The parties cannot exclude the concurrent jurisdiction of courts of the place where the debtor is situated. …

2.281. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is located have concurrent jurisdiction to make orders requested by the creditor for advance relief, other than orders for the lease or management of the object and the income from it (Article 43(1)). It is not competent to the parties to exclude the concurrent jurisdiction of courts of the *situs* of the object. …

4.305. The concurrent jurisdiction of the courts of the Contracting State to grant relief under Article 13 where the object is situated (Article 43(1)) or where the debtor is situated (Article 43(2)(b)) cannot be excluded by a choice of forum clause under Article 42(1) (see paragraph 4.297), though it is for the creditor to decide whether to invoke that jurisdiction.

2.280. The courts of the territory on which the debtor is situated have concurrent jurisdiction, pending final determination of the claim, (a) to make orders for the lease or management of the object and income from it under Article 13(1)(d); (b) to grant any other interim relief available under the *lex fori* by virtue of Article 13(4), in either case as requested by the creditor, though the jurisdiction is limited to orders which by their terms are enforceable only in the territory concerned. The parties cannot exclude the concurrent jurisdiction of courts of the place where the debtor is situated. …

4.306. Article 43 does not provide any test for determining the situation of the debtor, nor is Article 4(1) directly applicable, for the alternative tests of situation laid down in that Article are solely for the purposes of Article 3(1). However, there is no reason why a court should not have regard to these in determining whether the debtor is situated within the territory of that court’s State for the purpose of the exercise of *in personam* jurisdiction.

2.281. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is located have concurrent jurisdiction to make orders requested by the creditor for advance relief, other than orders for the lease or management of the object and the income from it (Article 43(1)). It is not competent to the parties to exclude the concurrent jurisdiction of courts of the *situs* of the object. …

4.308. Under Article 55 a Contracting State may declare that it will not apply the provisions of Article 13 or Article 43 or both, wholly or in part. The relevant declaration operates only to preclude the jurisdiction of the declaring State. A Contracting State should take care to ensure that any decision as to a declaration under one of these Articles is consistent with the decision under the other. For example, a Contracting State making a declaration excluding Article 13 will also want to exclude Article 43. Courts of a Member State of the EU must apply the provisions of Articles 13(1) and 43 in conformity with Brussels I (recast). See paragraph 2.328.

**Section 10**

**Section 10.1.1**

2.12. … Once the Convention has entered into force for that State it is bound by international law to perform its obligations under the Convention even if this conflicts with national law. …

2.10(1) … There may, of course, be cases where a provision of the Convention specifically covers a point that would ordinarily be dealt with as a matter of public law, and Article 27 of the 1969 Vienna Convention on the Law of Treaties (the “Vienna Convention”) expressly provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. …

2.13. … In some States a treaty may be directly applicable as domestic law; in others it can be brought into force by administrative action; in others still it requires implementing legislation (in this last case, most States have included a ‘prevailing law’ provision designed to ensure the primacy of the Convention over the State’s conflicting domestic law). These issues are as important for the Cape Town Convention and Protocols as for other international instruments in that it is one thing to ratify or accede to a treaty but quite another to carry it into force in national law so as to enable it to be invoked by private parties, which is essential to achieving the objectives of the Convention*.*

2.292. More difficult is the case where the breach is by a Contracting State. Once the Convention is in force for a Contracting State it is, of course, obliged to ensure that where under the law of the State international conventions are not self-executing the State’s domestic law and its courts and administrative bodies give effect to all the provisions of the Convention other than those which were the subject of a permitted opt-out by declaration or were dependent on an opt-in by declaration which the Contracting State decided not to make. …

2.293. The types of act or omission capable of constituting a Contracting State’s breach of its obligations under the Convention or Protocol are many and various. First and foremost, a Contracting State has a duty to ensure that on or before the time its ratification takes effect it has effectively given full effect to the ratified instrument or instruments in its national law in accordance with that law’s constitutional requirements. … Conformity with the Convention and Protocol requires also that the implementing provisions override existing inconsistent legislation and that any subsequent legislation is, or is to be construed as, conforming legislation.

2.294. … A deliberate refusal by the courts of a Contracting State to apply a particular provision of the Convention or Protocol, for example, denial of a Convention remedy on the ground that no such remedy exists under local law, would also place the Contracting State in breach of its international obligations if the offending decision was not rectified by the appeal process or by legislation. … The mere fact that the courts of a Contracting State adopt in good faith an interpretation contrary to that adopted by the majority of courts of other States does not place the Contracting State in breach. …

2.327. … the general principle is that a relevant declaration has to be respected by all other Contracting States and will also be respected by a non-Contracting State whose conflict of laws rules lead to the application of the law of a Contracting State, whether or not the declaring State. …

3.139. … Alternative A requires strict adherence to the timetable and the court is precluded from granting any extension of time for payment or other performance (Alternative A, paragraph 9). …

**Section 10.2.1**

2.10. The Convention applies to the exclusion of otherwise applicable law where the two conflict. …

2.12. … Once the Convention has entered into force for that State it is bound by international law to perform its obligations under the Convention even if this conflicts with national law. …

2.71. The purpose of the Convention is to provide uniform rules which make it both unnecessary and impermissible to resort to the conflict of laws on matters within the scope of the rules, including the creation, registration, enforcement and priority of international interests and the assignment of associated rights, except so far as the Convention otherwise provides or as regards issues on which it is silent and cannot be determined by the general principles on which it is based. …

4.75. The constitution of the international interest derives from the Convention, not from national law. …

4.125. *Illustration 17*

Under the pre-Convention law of State X, a creditor may not take possession of an aircraft or any part thereof without first obtaining a court order and then, if possession is ordered, obtaining administrative approval of the airport authority. Under Article 54(2), State X declares that leave of the court is not required. Thus, the creditor merely needs the administrative approval of the airport authority, which may not deny the same on grounds of there being no court order.

4.238. Paragraph 4 of the present Article recognises the common practice of including a provision by which the debtor waives defences and rights of set-off against the assignee, in order to make claims more readily transferable. Such waiver is permitted and binding except for defences arising from fraudulent acts on the part of the assignor. So where the Convention applies then subject to the above exception the debtor’s waiver of defences or rights of set-off will be effective even if this would not be recognised under the otherwise applicable law.

**Section 10.3.1**

2.26. Another principle is that parties on whom a right is conferred should have a remedy for its enforcement. … It is the duty of a Contracting State to ensure that for the infringement of any right created by the Protocol an adequate remedy is available, whether it be damages, the payment of liquidated damages or the grant of an injunction (see paragraphs 2.101, 3.139).

2.74. … However, a Contracting State may not impose conditions in its private law incompatible with the provisions of the Convention, such as restrictions on the creditor’s right to terminate a title reservation agreement or leasing agreement on the debtor’s default. …

2.145. In a Contracting State the procedural law to be applied in accordance with Article 14 must be applied in a manner that is compatible with the substantive provisions of the Convention. For example, procedural law must not be utilised to undermine the substantive remedies given by Articles 8 to 10 of the Convention. …

2.327. … This means that the procedure must be consistent with the declaration made by the forum State itself under Article 54(2), so that the procedural rules cannot be utilised to require leave of the court where the declaration provides that remedies are to be exercisable without such leave, while conversely the procedural rules cannot permit self-help where the declaration requires leave of the court. …

2.101. … It is the duty of a Contracting State to ensure that adequate remedies are available (see paragraphs 2.26, 3.118, 3.139). …

2.107. … Secondly, any remedy provided by the Convention is to be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised (Article 14). So the remedy of possession of an aircraft object will generally have to be exercised in conformity with the procedural law of the place where the object is located (see paragraph 2.144). … where the Contracting State makes a declaration that the remedy is to be exercisable without leave of the court this overrides any requirement in that Contracting State’s general law that requires such leave to be obtained. … In the case of insolvency proceedings in a Contracting State which has made a declaration under Article 54(2) requiring leave of the court for the exercise of remedies and has then gone on to opt for Alternative A of Article XI of the Aircraft Protocol, the Contracting State must be taken to have intended to exclude the creditor’s remedies under Alternative A from the scope of its declaration under Article 54(2). Given that Articles 8(2) and 9(2) confer on the creditor a right to apply to the court for an appropriate default remedy even where self-help would be available, there is an obligation on the forum to ensure that its rules of procedure make any such remedy available.

3.38. … Although the Protocol refers only to obligations of the registry authority and other administrative authorities, it is the duty of a Contracting State to ensure that under its domestic law other State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery, for example export agencies, are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export, including by requiring a procedure where the creditor cannot exercise these remedies directly without the co-operation of the debtor. …

5.50. … Although the Protocol refers only to obligations of the registry authority and other administrative authorities, it is the duty of a Contracting State to ensure that under its domestic law other State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery, for example export agencies, are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export, including by requiring a procedure where the creditor cannot exercise these remedies directly without the co-operation of the debtor.

**Section 10.4.1**

2.277. … A court having exclusive jurisdiction under Articles 42 to 44 may not decline it on the ground of *forum non conveniens*.

2.142. The courts of other Contracting States have a duty to recognise orders under Article 13 made by a court having jurisdiction under Articles 42 and 43, but enforcement of such orders is a matter to be determined by the law of the jurisdiction in which the remedy is sought to be exercised (Article 14), including provisions of that law as to the enforcement of judgments and orders of another State. …

2.279. … Whilst courts of other Contracting States must recognise jurisdiction exercised by the courts of another Contracting States under Articles 42 and 43 the Convention does not deal with enforcement of judgments in proceedings under those Articles. These are matters for the conflict rules of the forum, including, for courts of EU Member States, Brussels I (recast), except where the 2005 Hague Convention applies (see below). The enforcing court is, however, obliged to treat the judgment or order to be enforced as having been made by court of competent jurisdiction.

2.294. … A deliberate refusal by the courts of a Contracting State to apply a particular provision of the Convention or Protocol, for example, denial of a Convention remedy on the ground that no such remedy exists under local law, would also place the Contracting State in breach of its international obligations if the offending decision was not rectified by the appeal process or by legislation. …

4.298. The parties are free to confer jurisdiction on the courts of any Contracting State, whether or not it has a connection with the parties or the transaction. It is not necessary for the agreement to refer specifically to claims “under the Cape Town Convention”. It suffices that the forum selection clause covers all matters arising in connection with the agreement, which would include claims under the Convention as well as those outside it. This provision overrides contrary national law. …

**Section 10.5.1**

4.296. … Article 42 embodies the general principle of party autonomy. There is no other Article in the Convention providing for the exercise of general jurisdiction. The selected jurisdiction is exclusive. It is, however, open to the parties to agree that the jurisdiction selected is to be non-exclusive. Where exclusive, the provision precludes courts of other Contracting States from accepting or asserting jurisdiction. …

2.142. The courts of other Contracting States have a duty to recognise orders under Article 13 made by a court having jurisdiction under Articles 42 and 43, but enforcement of such orders is a matter to be determined by the law of the jurisdiction in which the remedy is sought to be exercised (Article 14), including provisions of that law as to the enforcement of judgments and orders of another State. …

2.145. … Again, Article 13 is paramount in that an order by a court which has jurisdiction to make an order under Article 13 must be respected by other courts exercising jurisdiction under Article 14. …

2.279. There is a presumption that the selected jurisdiction is exclusive, and in that event courts of other Contracting States must decline jurisdiction over the claim in question. Where, on the other hand, the parties agree that the selected jurisdiction is to be non-exclusive, courts of other Contracting States remain free to exercise jurisdiction in accordance with their own jurisdictional rules. Whilst courts of other Contracting States must recognise jurisdiction exercised by the courts of another Contracting States under Articles 42 and 43 the Convention does not deal with enforcement of judgments in proceedings under those Articles. These are matters for the conflict rules of the forum, including, for courts of EU Member States, Brussels I (recast), except where the 2005 Hague Convention applies (see below). The enforcing court is, however, obliged to treat the judgment or order to be enforced as having been made by court of competent jurisdiction. …

2.294. … A deliberate refusal by the courts of a Contracting State to apply a particular provision of the Convention or Protocol, for example, denial of a Convention remedy on the ground that no such remedy exists under local law, would also place the Contracting State in breach of its international obligations if the offending decision was not rectified by the appeal process or by legislation. …

4.127. *Illustration 19*

A court having jurisdiction under Article 13 makes an order for delivery of the aircraft to the creditor but on terms that the creditor undertakes to pay to the debtor any damages suffered by the debtor in the event that the creditor fails to establish default at the substantive hearing. The debtor having removed the aircraft to an unknown destination the creditor applies to a court of the jurisdiction where the debtor is situated for an order *in* *personam* requiring the debtor to deliver up the aircraft to the creditor. The procedure for enforcing such an order is a matter for the local procedural law but the local court must respect the terms of the order made under Article 13.

4.298. The parties are free to confer jurisdiction on the courts of any Contracting State, whether or not it has a connection with the parties or the transaction. It is not necessary for the agreement to refer specifically to claims “under the Cape Town Convention”. It suffices that the forum selection clause covers all matters arising in connection with the agreement, which would include claims under the Convention as well as those outside it. This provision overrides contrary national law. …

**Section 10.6.1**

3.38. … Although the Protocol refers only to obligations of the registry authority and other administrative authorities, it is the duty of a Contracting State to ensure that under its domestic law other State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery, for example export agencies, are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export, including by requiring a procedure where the creditor cannot exercise these remedies directly without the co-operation of the debtor. …

2.13. Certain obligations are imposed on Contracting States by the Cape Town Convention and Aircraft Protocol, in particular the obligation under Article 13 of the Convention, as crystallised by Article X(2) of the Protocol, to ensure the availability of speedy advance relief to a creditor who adduces evidence of default and the obligation under Articles IX to XIII of the Aircraft Protocol to ensure that the Aircraft Registry and other administrative authorities perform their duties to give effect to the creditor’s remedy of de-registration and export. …

2.292. … Apart from this there is only one provision of the Convention[[25]](#footnote-25) which imposes positive obligations on a Contracting State, namely Article 13, which requires a Contracting State, except as otherwise provided by Article 55, to ensure that a creditor who adduces evidence of default by the debtor is granted speedy judicial relief pending final determination of the creditor’s claim. Several other important obligations are imposed on Contracting States under the Aircraft Protocol, namely the provision for timely advance relief (Article X(2)), timely relief on insolvency (Article XI, Alternative A), insolvency assistance (Article XII) and de-registration and export (Article XIII). …

3.37. … The effect of the provisions is to enable the creditor to invoke the duty of expeditious co-operation and assistance on the part of the relevant administrative authorities of the State where the equipment is situated in effecting export and physical transfer. A Contracting State may opt out of this duty (Article VIII(6)) by a declaration under Article XXX(1). …

5.49. … A creditor following the court route under Article X(6) must obtain an order for advance relief under Article 13(1) from a court of the State in which the aircraft is registered, or equivalent relief from a court whose jurisdiction is recognised by the home court, and notify the registry and other administrative authorities, as applicable, that the relief has been granted and that the creditor is entitled to pursue the remedies of de-registration and export in accordance with the Convention. The purpose of this notification is to trigger an automatic duty on the authorities to give effect to the remedies within five working days without the burden of investigating the facts. In short, the process is perceived as purely documentary. However, it does not affect any applicable safety laws and regulations (Article X(7)).

**Section 10.6.2**

3.38. … The duties imposed on administrative authorities by Article X(6)(b) do not displace the priority of a lien for unpaid customs duties covered by a Contracting State’s declaration under Article 39(1)(a) of the Convention (see paragraph 3.37) or override rules of public policy of the State concerned. For example, where there is an embargo on exports to the intended country of import there may be a duty to facilitate the grant of such exemptions as may be available but if there are none that the body responsible for enforcing the embargo is able or willing to grant there will be no breach of the duty of co-operation. Finally, any conditions imposed by the country of import will need to be met. …

3.37. … In two conjoined cases[[26]](#footnote-26) the High Court of Delhi at New Delhi has rightly held that while a Contracting State’s customs authority is not entitled to withhold de-registration of an aircraft while customs duties remain unpaid, any public interest of the State being outweighed by the greater public interest of ensuring that the State’s treaty obligations were honoured, it would be entitled to detain the aircraft and prevent export and physical transfer if under national law the customs authority had a non-consensual right or lien to secure payment of customs duties which had priority over the registered international interest and the non-consensual right or interest was covered by a declaration made by the Contracting State under Article 39(1)(a) of the Convention.

**Section 10.6.3**

3.40. … Once the creditor has notified the authorities of the grant of relief they come under two distinct obligations. The first obligation is to make the remedies available within five working days of the notification. This must mean five working days of the authorities’ receipt of the notification rather than its dispatch. The second obligation is expeditiously to co-operate with and assist the creditor in the exercise of the remedies of de-registration and export in accordance with the applicable aviation laws and safety regulations, which are unaffected by Article X(6) (see Article X(7)).

2.294. … A deliberate refusal by the courts of a Contracting State to apply a particular provision of the Convention or Protocol, for example, denial of a Convention remedy on the ground that no such remedy exists under local law, would also place the Contracting State in breach of its international obligations if the offending decision was not rectified by the appeal process or by legislation. …

3.34. … Following this, the remedies of de-registration and export must be made available from the registry authority and other administrative authorities of the State of registry in conformity with Article X(6)

3.38. … Although the Protocol refers only to obligations of the registry authority and other administrative authorities, it is the duty of a Contracting State to ensure that under its domestic law other State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery, for example export agencies, are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export, including by requiring a procedure where the creditor cannot exercise these remedies directly without the co-operation of the debtor. …

5.49. Article X(6) contains a drafting slip in that the reference to Article IX(1) of the Protocol should be a reference to Article 13 of the Convention. …

**Section 10.6.4**

3.45. … Thirdly, whether the recording of the debtor’s authorisation has taken place under Article XIII or otherwise, the registry authority must honour the IDERA if the conditions set out in Article IX(5) are satisfied. … Finally, if the Contracting State has adopted Alternative A of the insolvency provisions in Article XI then as stated above (paragraph 3.40) registry authority and the administrative authorities in the Contracting State concerned come under a duty to make the de-registration and export remedies available no later than five working days after the date of notification by the creditor that it is entitled to procure those remedies in accordance with the Convention, and to provide expeditious cooperation and assistance (Article XI, Alternative A, paragraph 8, and paragraph 3.47 below).

5.50. … Subject to any applicable safety laws and regulations the registry authority must honour the IDERA if the creditor or other authorised party certifies to the registry authority, where so required by the authority, that all registered interests ranking in priority to that of the creditor have been discharged or that the holders of such interests have consented to the de-registration and export (Article IX(5)). In other words, the IDERA machinery is purely documentary, dispensing with the need for the regulatory authority to investigate external facts. Moreover, except as provided by safety laws and regulations, which apply only to export, not to de-registration, the registry authorities may not impose any additional requirements, for example, further consents by the debtor. …

3.38. … Although the Protocol refers only to obligations of the registry authority and other administrative authorities, it is the duty of a Contracting State to ensure that under its domestic law other State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery, for example export agencies, are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export, including by requiring a procedure where the creditor cannot exercise these remedies directly without the co-operation of the debtor. …

5.64. … Paragraph 8 requires the registry authority and administrative authorities in a Contracting State, as applicable, to make available to the creditor the remedies of de-registration and export and physical delivery no later than five working days after the creditor has notified such authorities that it is entitled to pursue those remedies in accordance with the Convention, in addition to which they must expeditiously co-operate and assist the creditor, though only in conformity with the applicable safety laws and regulations. …

**Section 10.7.1**

3.151. … The result is that Member States are not permitted by EU law to make any declaration applying Article XI of the Aircraft Protocol but they remain free either to retain their own substantive insolvency law without amendment or to reproduce the effects of Alternative A or Alternative B by domestic legislation. Notification of such legislation to Unidroit as Depositary under Article XXXVII(2)(iii), if conforming to the same requirements as are prescribed for declarations by Article XXX(3), is treated for all purposes, including Article XXX(4), as the equivalent of a declaration under Article XXX(3) and EU Member States who are Contracting States are expected to follow the same notification process as for declarations by non-EU Member States by notifying Unidroit as Depositary of the relevant legislation, which Unidroit will then transmit to all Contracting States in accordance with Article 62(2)(a)(iii) of the Convention and Article XXXVII(2)(a)(iii) of the Protocol.

1. See paragraphs 2.40(2) and 2.61 and Illustration 20, paragraph 4.155. [↑](#footnote-ref-1)
2. A security agreement creates an international interest, whereas a conditional sale or lease agreement merely “provides for” an international interest, since the title retained by the seller or lessor does not derive from the conditional sale or leasing agreement but is acquired independently of (and usually before entry into) that agreement. [↑](#footnote-ref-2)
3. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (the “EU Insolvency Regulation (recast)” or the EIR (recast)). [↑](#footnote-ref-3)
4. Pursuant to Protocol 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, which includes, in particular, judicial cooperation in civil and commercial matters. Therefore Denmark is not bound by the Council Decision of 6 April 2009 (2009/370/EC) on the accession of the European Community to the Convention and Aircraft Protocol or by the Council Decision of 30 November 2009 (2009/940/EC) concerning the signature of the Luxembourg Protocol and the Council Decision of 4 December 2014 (2014/888/EU) on the approval, on behalf of the European Union, of the Luxembourg Protocol. [↑](#footnote-ref-4)
5. Designation of an entry point under Article XIX of the Protocol is treated by Unidroit as a declaration. See generally paragraph 3.68. [↑](#footnote-ref-5)
6. Of the 80 Contracting States parties to the Aircraft Protocol as at the current date (the European Union being excluded for this purpose) only eleven have so far designated an entry point, namely Albania, Argentina, Brazil, China, Côte d’Ivoire, Mexico, Spain, Ukraine, the United Arab Emirates, the United States and Viet Nam. All such entry points are authorizing entry points. [↑](#footnote-ref-6)
7. As opposed to being acquired by assignment or subrogation. See paragraph 2.41. [↑](#footnote-ref-7)
8. As to the States that may make a declaration, see paragraph 2.327. [↑](#footnote-ref-8)
9. For brevity, relief pending final determination is referred to hereafter as advance relief. While Article 13(4) refers to “interim relief” this description was intentionally avoided in the heading to Article 13 and in Article 13(1) so as to make it clear that the relief is a Convention relief and should not be characterised by reference to concepts of municipal procedural law. See further paragraph 3.48(3). [↑](#footnote-ref-9)
10. Subject to a declaration by the relevant Contracting State under Article 54(2) that leave of the court is required. [↑](#footnote-ref-10)
11. But a Contracting State may, by a declaration under Article 54(1), exclude the power to lease equipment while on its territory. This provision was inserted to meet the concerns of certain jurisdictions whose laws contain mandatory provisions relating to leases. However, only one State, China, has made a declaration under Article 54(1). Article 8(1) does not confer on the creditor a power to grant a mortgage over the asset but the parties are free to confer this power by agreement (Article 12) [↑](#footnote-ref-11)
12. For brevity, relief pending final determination is referred to hereafter as advance relief. While Article 13(4) refers to “interim relief” this description was intentionally avoided in the heading to Article 13 and in Article 13(1) so as to make it clear that the relief is a Convention relief and should not be characterised by reference to concepts of municipal procedural law. See further paragraph 3.48(3). [↑](#footnote-ref-12)
13. For brevity, relief pending final determination is referred to hereafter as advance relief. While Article 13(4) refers to “interim relief” this description was intentionally avoided in the heading to Article 13 and in Article 13(1) so as to make it clear that the relief is a Convention relief and should not be characterised by reference to concepts of municipal procedural law. See further paragraph 3.48(3). [↑](#footnote-ref-13)
14. The European Community (now the European Union) is treated for most purposes as a Contracting State and has made a declaration to the effect that Articles 13 and 43 will apply only so far as in conformity with specified EU legislation. See below, paragraph 2.288. [↑](#footnote-ref-14)
15. But in the case of certain space assets registrability is a condition of application of the Convention and Protocol. See above, paragraph 2.68. [↑](#footnote-ref-15)
16. Article III. The default provisions are, of course, inapplicable in the context of an outright sale. See paragraph 3.15. [↑](#footnote-ref-16)
17. “Pre-existing right or interest” refers, of course, to the definition in Article 1(v) which does not itself imply that the right or interest existed before the creation or registration of the international interest. Nevertheless Article 60(1) should be interpreted as confined to pre-existing rights or interests created prior to registration of the international interest. See below, paragraph 2.310. [↑](#footnote-ref-17)
18. It will apply in other civil law jurisdictions only where their conflict of laws rules lead to the application of a jurisdiction that recognises the trust concept. [↑](#footnote-ref-18)
19. See, for example, the Delaware Statutory Trust Act, Del. Code Ann. Tit. 12, §3801 et seq. and the Uniform Statutory Trust Entity Act prepared by the National Conference of Commissioners on Uniform State Laws. [↑](#footnote-ref-19)
20. There are some jurisdictions the trust law of which recognizes ownership by the beneficiary as an alternative to ownership by the trustee. See, for example, the South African Trust Property Control Act, SA No. 57 of 1988, s. 1. [↑](#footnote-ref-20)
21. Article 1(b). But an assignment which is not effective to transfer the related international interest is outside the Convention (Article 32(3)). Moreover, only assignments and prospective assignments of the international interest are registrable under Article 16(1)(b). [↑](#footnote-ref-21)
22. Article 1(b). But an assignment which is not effective to transfer the related international interest is outside the Convention (Article 32(3)). Moreover, only assignments and prospective assignments of the international interest are registrable under Article 16(1)(b). [↑](#footnote-ref-22)
23. *ibid*, at page 208. [↑](#footnote-ref-23)
24. See DCME – IP/2, paragraph 3, *Acts and Proceedings*, pp 462-463. [↑](#footnote-ref-24)
25. As to the various duties imposed on a Contracting State by the Aircraft Protocol, see paragraph 3.162. [↑](#footnote-ref-25)
26. *Awas 39423 Ireland Ltd v Director-General of Civil Aviation* (2015) WP(C) 871/2015 and *Wilmington Trust SP Services Ltd v Director General of Civil Aviation* (2015) WP(C) 747/2015. [↑](#footnote-ref-26)