

U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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STEERING AND REVISIONS COMMITTEE FOR THE FINALISATION OF THE  
PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT AND THE PRELIMINARY DRAFT PROTOCOL  
THERE TO ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

*PRELIMINARY DRAFT UNIDROIT CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*

(as established by the Study Group at the conclusion of its fourth session, held in Rome from 3  
to 7 November 1997, and revised by the Chairman of the Study Group):

*PRELIMINARY DRAFT PROTOCOL  
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT*

(as established by a working group organised and chaired by Mr J. Wool,  
expert consultant to the Study Group on international aviation finance matters,  
at the invitation of the President, at the conclusion of its second session, held in Geneva from 19  
to 21 November 1997, and revised by the Chairman of the Study Group  
in collaboration with Mr Wool )

Rome, June 1998

## INTRODUCTION

At its 77<sup>th</sup> session, held in Rome from 16 to 20 February 1998, the Unidroit Governing Council was seised of a preliminary draft Unidroit Convention on international interests in mobile equipment (hereinafter referred to as the **preliminary draft Convention**), established by a Unidroit Study Group (hereinafter referred to as the **Study Group**) (Study LXXII - Doc. 37), and a preliminary draft Protocol thereto on matters specific to aircraft equipment (hereinafter referred to as the **preliminary draft Protocol**), established by a Working Group (hereinafter referred to as the **Aircraft Protocol Group**) organised and chaired, at the invitation of the President of Unidroit, by Mr J. Wool, expert consultant to the Study Group on international aviation finance matters (Study LXXIID - Doc. 1). On that occasion the Governing Council was called upon to advise as to the most appropriate steps to be taken regarding the prosecution of work on the aforementioned preliminary draft instruments.

While noting with appreciation the work accomplished by the Study Group and the Aircraft Protocol Group, the Governing Council decided that the preliminary draft Convention and the preliminary draft Protocol should be further refined by a steering and revisions committee (hereinafter referred to as the **Steering and Revisions Committee**) before and with a view to their submission to governmental experts. It was envisaged in particular that those provisions of the preliminary draft Protocol capable of application to the generality of equipment encompassed by the preliminary draft Convention be moved accordingly and that the preliminary draft Protocol be generally aligned, as to both style and terminology, with the preliminary draft Convention. The business of the Steering and Revisions Committee would be to prepare clean texts of the preliminary draft Convention and the preliminary draft Protocol in English and French such as to permit their prompt transmission to Governments with a view to a meeting of governmental experts, scheduled to be held in Rome from 11 to 22 January 1999 and to be organised jointly by Unidroit and the International Civil Aviation Organization (**I.C.A.O.**), as part of their co-sponsorship of the intergovernmental process in respect of the two texts.

The Steering and Revisions Committee will be meeting in Rome at the seat of Unidroit from 27 to 29 June 1998. In line with the decision taken by the Governing Council, participation will be restricted to representatives of Unidroit, I.C.A.O. and, as core members of the Aircraft Protocol Group, the International Air Transport Association (**I.A.T.A.**) and the Aviation Working Group jointly organised by Airbus Industrie and The Boeing Company as well as those experts necessary in the opinion of Unidroit to deal with special aspects of the texts.

At its meeting the Steering and Revisions Committee will have before it revised texts of both the preliminary draft Convention and the preliminary draft Protocol prepared by Professor R.M. Goode, Chairman of the Study Group (in the case of the preliminary draft Protocol, in collaboration with Mr Wool, as Chairman of the Aircraft Protocol Group) with a view to dealing with the points raised by the Governing Council. The text of the preliminary draft Protocol as so revised is set out hereunder. It has been annotated by Professor Goode with a view to explaining the principal features of this revision process. His notes are set out in an Annex to the text of the preliminary draft Protocol at the very end of this document.

# **PRELIMINARY DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

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PRELIMINARY DRAFT PROTOCOL  
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

(as established by a working group organised and chaired by Mr J. Wool,  
expert consultant to the Study Group on international aviation finance matters,  
at the invitation of the President, at the conclusion of its second session, held in Geneva from 19  
to 21 November 1997, and revised by the Chairman of the Study Group  
in collaboration with Mr Wool )

THE CONTRACTING STATES TO THIS PROTOCOL,

MINDFUL of the demand for, and utility of aircraft equipment and the need to finance  
their acquisition and use as efficiently as possible,

RECOGNISING the advantages of asset-based financing and leasing for this purpose  
and desiring to facilitate these transactions by establishing clear rules to govern them,

BELIEVING that such rules must (i) reflect the principles underlying asset-based  
financing and leasing of aircraft objects and (ii) provide transaction parties with autonomy to  
allocate risks and benefits to the extent consistent with the policy decisions made by Contracting  
States in this Protocol,

CONSCIOUS of the need for an international registry system as an essential feature of  
the legal framework applicable to international interests in aircraft equipment,

CONSIDERING it desirable to modify the Unidroit Convention on International  
Interests in Mobile Equipment, pursuant to Article T of the Convention, to reflect the  
requirements of aircraft finance and the purposes described above,

HAVE AGREED upon the following provisions relating to aircraft equipment:

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

*Article I*  
*Defined terms*

1. – Terms used in this Protocol and defined in Article 1 of the Convention are employed herein with the meanings there stated.

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

(a) “aircraft” means airframes with aircraft engines installed thereon or helicopters;

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

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

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

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

(c) “aircraft objects” \* means airframes, aircraft engines and helicopters;

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

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

(2) goods in excess of 2750 kilograms,

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

(e) “authorised party” means the party referred to in Article XIV(2);

(f) “Chicago Convention” means the Chicago Convention on International Civil Aviation, signed at Chicago on 7 December 1944, or any successor or superseding international agreement governing the nationality of aircraft;

(g) “Chicago Convention aircraft register” means the national or non-national register in which an aircraft is registered pursuant to the Chicago Convention;

(h) “Chicago Convention registry authority” means the national authority, or the common mark registering authority in a Contracting State which is the State of registry

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\* In accordance with the preliminary draft Convention, the body of this preliminary draft Protocol employs the term “object” rather than the term “equipment”, although the latter is used in the title of the instrument (and, for consistency with that title, in the preamble). Consideration should be given to the adoption of a consistent terminology in the two instruments.

responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention;

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

(j) “deregister the aircraft” means delete the registration of an aircraft from a Chicago Convention aircraft register;

(k) “Geneva Convention” means the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948;

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

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

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

(m) “insolvency date” means the date referred to in Article XII(1);

(n) [“International Registry Authority” means the permanent international body designated as the International Registry Authority under this Protocol;]

(o) [“International Regulator” means [the permanent international body designated as the International Regulator under this Protocol] [the entity designated as the International Regulator in Article XVII(1)];]

(p) “interpretative note” means the note [approved] [authorised] by the Diplomatic Conference for the adoption of this Protocol as a[n] [authoritative] source for interpreting this Protocol;

(q) “primary insolvency jurisdiction” means the insolvency jurisdiction of the State in which the centre of the obligor's main interests is situated;

(r) “prospective sale” means a sale that is intended to take effect on the conclusion of a contract of sale in the future;

(s) [“Registrar” means [the entity designated as the Registrar under this Protocol] [the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be, as specified in Article XVII];]

(t) “State of registry” means in respect of an aircraft the State, or a State member of a common mark registering authority, on whose Chicago Convention aircraft register an aircraft is entered under the Chicago Convention; and

(u) “suretyship contract” means a contract entered into by one of the parties as surety.

## *Article II*

### *Modification of Convention as regards aircraft objects*

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

*Article III*  
*Interpretative note*

The interpretative note shall be referred to regarding the matters there addressed.

*Article IV*  
*Sphere of application*

1. – The reference in Article 4(b) of the Convention to a “nationality register” is to be construed as a reference to a Chicago Convention aircraft register. No other “close connection” to a Contracting State shall be applicable for the purposes of that paragraph.

2. – Article U of the Convention shall not apply for the purposes of this Protocol.

3. – In their relations with each other, the parties may, by agreement in writing, derogate from or vary any of the provisions of Articles X(1), XI or XII(1) - (6).

*Article V*  
*Application of Convention to sales*

The following provisions of the Convention apply *mutatis mutandis* in relation to a sale and a prospective sale as they apply in relation to an international interest and a prospective international interest:

Article 19(1) other than sub-paragraph (c);

Articles 21 - 23;

Article 26;

Articles 28 and 29;

Chapter VI; and

Article 42(2).

*Article VI*  
*Formalities and effects of contract of sale*

1. – An agreement is a contract of sale for the purposes of this Protocol if it:
- (a) is in writing;
  - (b) relates to an aircraft object in respect of which the transferor has power to enter into the agreement; and
  - (c) identifies the aircraft object.



2. – A contract of sale transfers the interest of the transferor in the aircraft object to the transferee according to its terms.

3. – A sale may be registered in the International Registry by or with the consent in writing of the seller.

*Article VII*  
*Representative capacities*

A party to an agreement or a contract of sale may enter into an agreement, or register a related interest in an aircraft object in an agency, trust or other representative capacity. In such case that party is entitled to assert rights and interests under the Convention to the exclusion of the party or parties represented.

*Article VIII*  
*Description of aircraft objects*

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is sufficient to identify the object for the purposes of Article 8(c) of the Convention and Article VI(1)(c) of this Protocol.

*Article IX*  
*Choice of law*

1. – The parties to an agreement or a contract of sale or a related suretyship contract or subordination agreement may agree on the law which is to govern their rights and obligations under this Convention, wholly or in part.

2. – The reference in the preceding paragraph to the law chosen by the parties is to the rules of law in force in the designated State other than its rules of private international law.

CHAPTER II

DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

*Article X*  
*Modification of default remedies provisions*

1. – In addition to the remedies specified in the provisions of Articles 9(1), 11 and 16(1) of the Convention, the obligee may in the circumstances specified in such provisions:

- (a) deregister the aircraft; and
- (b) export and physically transfer the aircraft object from the territory in which it is situated.

2. – The obligee may not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the obligee.

3. – A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons is deemed to satisfy the requirement of providing “reasonable prior notice” specified in Article 9(2) of the Convention. The foregoing shall not prevent a chargee and a chargor from agreeing to a longer prior notice period.

4. – Article 15 of the Convention applies in relation to aircraft objects:

(a) as if “1.” were inserted before “Any remedy.”

(b) as if the following were substituted for the second sentence:

“An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 2, be conclusive.”

(c) as if the following were inserted as paragraph 2:

“2. The obligee may not take possession or control of an aircraft object in a manner which contravenes public order. For this purpose, the disruption of air transport is not in itself deemed a contravention of public order.”

5. – For the purposes of Articles 16 and 17 of the Convention, a court of a Contracting State also has jurisdiction where that State is the State of registry.

#### *Article XI*

##### *Definition of speedy judicial relief*

1. – For the purposes of Article 16(1) of the Convention, “speedy” in the context of obtaining judicial relief means a period not exceeding thirty calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.

2. – The remedies specified in Article X(1) shall be made available by the Chicago Convention registry authority and other administrative authorities, as applicable, in a Contracting State no later than three working days after the judicial relief specified in the preceding paragraph is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

#### *Article XII*

##### *Remedies on insolvency*

1. – For the purposes of this Article, “insolvency date” means the earliest date on which one of the events specified in paragraph 2 shall have occurred.

2. – This Article applies where:

(a) any insolvency proceedings\*\* against the obligor have been commenced by the obligor or another person in a Contracting State which is the primary insolvency jurisdiction of the obligor; or

(b) the obligor is located in a Contracting State and has declared its intention to suspend, or has actually suspended payment to creditors generally.

3. – Within a period not exceeding [thirty/sixty] days from the insolvency date the obligor shall:

(a) cure all defaults, and agree to perform all future obligations under the agreement and related transaction documents; or

(b) give possession of the aircraft object to the obligee [in accordance with, and in the condition specified in the agreement and related transaction documents].

4. – Where possession has been given to the obligee pursuant to the preceding paragraph, the remedies specified in Article X(1) shall be made available by the Chicago Convention registry authority and other administrative authorities, as applicable, no later than three working days after the date on which the aircraft object is returned.

5. – No exercise of remedies permitted by the Convention may be prevented or delayed after the period specified in paragraph 3.

6. – No obligations of the obligor under the agreement and related transactions may be modified [in the insolvency proceedings] without the consent of the obligee.

7. – No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 42 of the Convention, shall have priority in the insolvency over registered interests.

### *Article XIII* *Insolvency assistance*

The courts of a Contracting State in which an aircraft object is situated shall expeditiously co-operate with and assist the courts or other authorities administering the insolvency proceedings referred to in Article XII in carrying out the provisions of that Article.

### *Article XIV* *De-registration and export authorisation*

1. – Where the obligor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the Chicago Convention registry authority, that authorisation shall be so recorded.

2. – The person in whose favour the authorisation has been issued (“the authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified

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\*\* The phrase “insolvency proceedings” will need to be defined.

in Article X(1), and may do so only in accordance with the authorisation. Such authorisation may not be revoked by the obligor without the consent in writing of the authorised party.

3. – The Chicago Convention registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article X.

*Article XV*  
*Modification of priority provisions*

[1.] – Article 31 of the Convention applies as if paragraph 3 were omitted.

[2. – Article 31(5) of the Convention applies as if the words “and to amounts payable by any Government or State entity in respect of its confiscation, condemnation or requisition of that object” were inserted immediately following the words “physical destruction of that object”.] \*\*\*

*Article XVI*  
*Modification of assignment provisions*

1. – Article 33(2) of the Convention applies as if the following were added immediately after sub-paragraph (c):

“(d) is consented to in writing by the obligor, whether or not the consent is given in advance of the assignment or specifically identifies the assignee.”

[2. – Article 34(1)(b) of the Convention applies as if the words “so far as such rights are assignable under the applicable law” were omitted.]

[3. – Article 36(1) of the Convention applies as if sub-paragraph (c) were omitted].

[4. – Article 39 of the Convention applies as if the words following the phrase “not held with an international interest” were omitted]. \*\*\*\*

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\*\*\* Consideration should be given to an optional provision for compensation in respect of such governmental acts to be paid before they are performed in order to reduce political risk.

\*\*\*\* Article 39 of the preliminary draft Convention, as may be modified by this preliminary draft Protocol, will have important implications for the competing rights of a receivables financier and an asset-based financier. Consideration should be given to the appropriate rule in the context of aviation financing.

CHAPTER III

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS  
IN AIRCRAFT OBJECTS

*Article XVII*

*Regulation and operation of Registry*

**ALTERNATIVE A**

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

**ALTERNATIVE B**

[1. – The International Registry shall be regulated by the Council of the International Civil Aviation Organization or such other permanent body designated by it to be the International Regulator.

2. – The initial Registrar hereby designated to operate the International Registry shall be a newly created, independent special purpose affiliate of the International Air Transport Association.

3. – The initial Registrar shall be organised in consultation with the International Regulator. Its constitutive documents shall contain provisions that:

- (a) restrict it to acting as Registrar and performing ancillary functions; and
- (b) ensure that it has no greater duties (fiduciary or otherwise) to members of the International Air Transport Association than to any person or entity in the performance of its functions as Registrar.

4. – The initial Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular five-year intervals by the [Contracting States] [International Regulator].]

[2./5. – Article 20(1) and (3) of the Convention apply as modified by the preceding paragraphs of this Article.]

*Article XVIII*

*Basic regulatory responsibilities*

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\*\*\*\* Further consideration needs to be given as to whether the appropriate term is *International* Regulator or *Intergovernmental* Regulator.

\*\*\*\*\* The two bracketed provisions in this Alternative A are mutually exclusive, so that if the decision is to have an International Registry Authority references in other Articles to the International Regulator and the Registrar will be deleted, whilst if the latter are adopted references to the International Registry Authority will be deleted.

1. – The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in Article 20(6) and (7) of the Convention.

2. – The [International Registry Authority] [International Regulator] shall [be responsible to the Contracting States, and shall report thereto on its regulatory [and oversight] functions. Such reports shall be made on a yearly basis or more frequently as the [International Registry Authority] [International Regulator] deems appropriate.]

[3. – The initial Regulations shall be promulgated by the [International Registry Authority] [International Regulator] on entry into force of this Protocol.]

### *Article XIX*

#### *Registration facilities*

1. – At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to paragraph 2:

(a) designate its operators of registration facilities as specified in Article 20(2) of the Convention; and

(b) declare the extent to which any such designation shall preclude alternative access to the International Registry.

2. – A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:

(a) helicopters or airframes pertaining to aircraft for which it is the State of registry; and

(b) registrable non-consensual rights or interests created under its domestic law.

*Article XX*

*Additional modifications to Registry provisions*

1. – For the purposes of Article 23(6) of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the Regulations.

2. – For the purposes of Article 30(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph.

3. – The fees referred to in Article 20(4) shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fees, of designing and implementing the international registration system.

CHAPTER IV

RELATIONSHIP WITH OTHER CONVENTIONS

*Article XXI*

*Relationship with 1948 Convention on the International Recognition of Rights in Aircraft*

1. – Where a Contracting State is a party to the Geneva Convention:

(a) the reference to the “laws” of such Contracting State for the purposes of Article I (1)(i) of the Geneva Convention should be to such laws after giving effect to the Convention;

(b) for the purposes of that Convention, the term “aircraft” as defined in Article XVI of the Geneva Convention shall be deleted and replaced by the terms “airframes,” “aircraft engines” and “helicopters” as defined in this Protocol; and

(c) registrations in the International Registry shall be deemed to be regular recordations “in a public record of the Contracting State” for the purposes of Article I (1)(ii) of the Geneva Convention.

2. – Subject to paragraph 3, the Convention shall, for the Contracting States referred to in the preceding paragraph, supersede the Geneva Convention to the extent, after giving effect to the preceding paragraph, of inconsistency between the two Conventions.

3. – The provisions of the preceding paragraph shall not apply to Articles VII and VIII of the Geneva Convention where an obligee elects to exercise remedies against an obligor in accordance with those Articles [and provides the court with written evidence of that election.]

*Article XXII*

*Relationship with 1933 Convention for the Unification of Certain Rules  
Relating to the Precautionary Arrest of Aircraft*

The Convention shall, for Contracting States that do not make a declaration under Article XXV(a) of this Protocol, supersede the 1933 Convention for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft to the extent that that Convention is in force among them.

*Article XXIII*

*Relationship with 1988 Unidroit Convention on International Financial Leasing*

The Convention shall, for Contracting States which are parties to it, supersede the 1988 Unidroit Convention on International Financial Leasing as it relates to aircraft objects to the extent that that Convention is in force among them.

*[Article XXIV*

*Relationship with 1980 Rome Convention on the Law Applicable to Contractual Obligations*

Article IX of this Protocol, so far as not disapplied under Article XXV, shall have effect in a Contracting State notwithstanding any provisions of the 1980 Rome Convention on the Law Applicable to Contractual Obligations.]

CHAPTER V

[OTHER] FINAL PROVISIONS \*\*\*\*\*

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\*\*\*\*\* It is envisaged that, in line with practice, draft Final Provisions will be prepared for the Diplomatic Conference at such time as governmental experts have completed their preparation of the draft Protocol. The proposals for draft Final Provisions set out in the Addendum to this preliminary draft Protocol below are in no way intended to prejudge that process but simply to indicate the suggestions of the Aircraft Protocol Group on this matter. Particular attention is drawn to Article XXXII(3) (limiting the effect of any denunciation or future declaration or reservation as regards established rights) and Article XXXV (establishing a Review Board and contemplating review and revision of this Protocol).



**FORM OF IRREVOCABLE DE-REGISTRATION  
AND EXPORT REQUEST AUTHORISATION**

[Insert Date]

To: [Insert Name of Chicago Convention Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]\* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturer's serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the “**aircraft**”).

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of obligee] (“the **authorised party**”) under the authority of Article XIV of the Protocol to the Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) obtain de-registration of the aircraft from the [insert name of national aviation registry] maintained by the [insert name of aviation authority] for the purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and

(b) export and physically transfer the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of Chicago Convention registry authority].

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\* Select the term that reflects the relevant nationality registration criterion.

[insert name of operator/owner]

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Agreed to and lodged this  
[insert date] Its: [insert title of signatory]

By: [insert name of signatory]

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[insert relevant notational details]

CHAPTER V

[OTHER] FINAL PROVISIONS

*Article XXV*

*Declarations disapplying certain provisions*

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to this Protocol that it will not apply any one or more of the provisions of Articles IV and XII to XIV of this Protocol.

*Article XXVI*

*Convention and Protocol as single instrument*

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

*Article XXVII*

*Adoption of Protocol*

1. – This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the Unidroit Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment and will remain open for signature by all Contracting States at [...] until [...].

2. – This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3. – This Protocol is open for accession by all States which are not signatory Contracting States as from the date it is open for signature.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.\*

*Article XXVIII*

*Entry into force*

1. – This Protocol enters into force on the first day of the month following the expiration of [three] months after the date of deposit of the [third] instrument of ratification, acceptance, approval or accession.

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\* It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for making and/or withdrawing declarations and reservations.

2. – For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of [three] months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

*Article XXIX*  
*Territorial units*

1. – If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2. – These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3. – If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

*Article XXX*  
*Temporal application*

This Protocol applies in a Contracting State to rights and interests in aircraft objects created or arising on or after the date on which this Protocol enters into force in that Contracting State.

*Article XXXI*  
*Declarations and reservations*

No declarations or reservations are permitted except those expressly authorised in this Protocol.

*Article XXXII*  
*Denunciations and subsequent declarations*

1. – This Protocol may be denounced, or a subsequent declaration may be made by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2. – Any such denunciation or subsequent declaration shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument of denunciation or in which such declaration is made with the depositary. Where a longer period for that denunciation or declaration to take effect is specified in the instrument of denunciation or in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3. – Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation or subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that denunciation or subsequent declaration. The foregoing shall not apply to any subsequent declaration under Article XV of this Protocol.

*Article XXXIII*  
*Withdrawal of declarations and reservations*

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

*Article XXXIIIbis*

1. – A five-member Review Board shall promptly be appointed to prepare yearly reports to the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of paragraph 2. [The composition of the Review Board, and its organisation and administration, shall be determined, in consultation with other relevant interests, jointly by the International Institute for the Unification of Private Law, the International Civil Aviation Organization and ...].

2. – At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider:

(a) the practical operation of this Convention and the Protocol and their effectiveness in facilitating the asset-based financing and leasing of the objects covered by their terms;

(b) the judicial interpretations given to the terms of this Convention, the Protocol and the Regulations;

(c) the functioning of the International Registry system and the performance of the Registrar and its oversight by the Intergovernmental Regulator; and

(d) whether any modifications to this Convention and the Protocol or the arrangements relating to the International Registry are desirable.

*Article XXXIV*  
*Depositary arrangements*

1. – This Protocol shall be deposited with the [...].

2. – The [...] shall:

(a) inform all Contracting States which have signed or acceded to this Protocol and [...] of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

- (ii) each declaration made in accordance with this Protocol;
  - (iii) the withdrawal of any declaration;
  - (iv) the date of entry into force of this Protocol; and
  - (v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all signatory Contracting States, to all Contracting States acceding to the Protocol and to [...];
- (c) provide the [International Registry Authority] [Registrar] with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and
- (d) perform such other functions customary for depositaries.

## NOTES ON REVISION OF PRELIMINARY DRAFT AIRCRAFT EQUIPMENT PROTOCOL

### General

- <sup>1</sup> The purpose of the revision is fourfold:
- (1) To shorten the preliminary draft Protocol substantially while preserving its key features;
  - (2) To transfer to the preliminary draft Convention those provisions which appear suitable for general application;
  - (3) To align the style of the preliminary draft Protocol with that of the preliminary draft Convention;
  - (4) To rearrange the Articles in a more logical sequence.
- <sup>2</sup> The length of the preliminary draft Protocol has been substantially reduced. There are now 34 Articles instead of 47 and several of the remaining Articles have been significantly shortened. This has been achieved by moving a number of Articles or paragraphs to the preliminary draft Convention itself and by deleting provisions which are already in the preliminary draft Convention or which add nothing to its effect.
- Moreover, the provision of explanatory materials will lighten the text of the preliminary draft Protocol like that of the preliminary draft Convention.
- <sup>3</sup> Brackets have been inserted round certain provisions in order to identify prospective policy concerns that need to be addressed.
- <sup>4</sup> References to the preliminary draft Protocol are to the original text of the preliminary draft Protocol except where otherwise indicated. References to the preliminary draft Convention are to the revised text (numbers of Articles remain unchanged but new Articles 39 and 43 have been added).

### Old Article

- I Since the only relevant form of outright transfer is sale, “sale” has been substituted for “transfer” throughout, references to the transfer agreement have been deleted, and definitions of “contract of sale” and “sale” inserted in the preliminary draft Convention.
- IV/V As originally drafted, this combined formalities with sphere of application. It has been split into two separate Articles, one extending the preliminary draft Convention to sales (new Article IV) and the other providing for the formalities and effects (new Article V). Original para. 3 of Art. IV deleted as unnecessary.
- VI Rendered otiose by suggested amendments to the definition of “associated rights” in the preliminary draft Convention.
- VII Paragraph (b) deleted as unnecessary.
- VIII Deleted as unnecessary.
- IX Deleted as point now covered by revision of definition of “leasing agreement” as suggested by Mr J. Wool.
- XI Paragraph 4 deleted as unnecessary in view of addition to Article 8(d) of the preliminary draft Convention.  
Paragraph 5 revised since “surety” is now defined.  
Paragraph 6 deleted as inappropriate.  
Paragraph 8 has been reworded to establish the necessary link with a Contracting State.

- XII Paragraph 3 has been inserted in brackets, an alternative being to transfer it to the preliminary draft Convention, as shown by the bracketed addition to Article 31(5).
- XIII Paragraph 4 has been transferred to Article 34(3) of the preliminary draft Convention. Paragraph 6 has been reworded and put in brackets as suggested deletion would have the effect that the competing interest could be a Convention interest, in which case there would be a conflict with the basic priority provisions.
- XIV Transferred to preliminary draft Convention and abbreviated.
- XV Transferred to new Article W of preliminary draft Convention.
- XVI Deleted as already covered by preliminary draft Convention.
- XVII Moved to new Article XXV.
- XIX Last part of paragraph 3(b) put in brackets, as it could involve substantial expenditure to detriment of general body of creditors. It is understood from Mr J. Wool that this is not what was intended, and that the duty to return in proper condition is meant to be confined to cases where that duty is part of a secured obligation. Will need some redrafting. Paragraph 8 deleted as now covered by Article V.
- XXIV Paragraph 1 and Article XXV covered by revision of Article 20 of preliminary draft Convention.
- XXV Alternative now offered to paragraph 2 as implications of concept "responsible to Contracting States" are unclear.
- XXVII Paragraph 1 transferred to become Article 21(b) of preliminary draft Convention. Paragraph 2 deleted as unnecessary.
- XXIX Substance transferred to revised Article 29 of preliminary draft Convention.
- XXX Substance now covered in revised Articles 20 and 29 of preliminary draft Convention.
- XXXI Now covered in Article 17 of preliminary draft Convention.
- XXXII Deleted as unnecessary.
- XXXIII Paragraph 3 put in brackets; evidential provisions not appropriate.
- XXXVI Inserted in brackets as it seems both unnecessary and undesirable, unnecessary because the preliminary draft Convention gives freedom of choice, subject only to mandatory rules which cannot be excluded anyway, and undesirable because of the need to retain paragraph 4 of the preliminary draft Convention.
- XXXVII Deleted as it is inappropriate to deal with a purely regional Convention in a multilateral Protocol.