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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A  
DRAFT PROTOCOL ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK TO  
THE DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS  
IN MOBILE EQUIPMENT

First Joint session, Bern – 15 and 16 March 2001

DRAFT UNIDROIT CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Rome, December 2000

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

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

THE STATES PARTIES TO THIS CONVENTION,

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

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

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

DESIRING to provide broad economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

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

HAVE AGREED upon the following provisions:

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\* This text has been adopted by the UNIDROIT Governing Council and will be submitted to a diplomatic Conference which will be held in principle in South Africa in May 2001.

## CHAPTER I

### SPHERE OF APPLICATION AND GENERAL PROVISIONS

#### Article 1

##### *Definitions*

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

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;
- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee rights in the international interest;
- (c) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “insolvency proceedings” means collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) “interested persons” means:
  - (i) the debtor;
  - (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
  - (iii) any other person having rights in or over the object;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the

relevant object is located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the transaction;

(o) “international interest” means an interest to which Article 2 applies;

(p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;

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

(r) “national interest” means an interest in an object created by an internal transaction;

(s) “non-consensual right or interest” means a right or interest conferred by law to secure the performance of an obligation, including an obligation to a State or State entity;

(t) “notice of a national interest” means a notice that a national interest has been registered in a public registry in the Contracting State making a declaration to the Protocol pursuant to Article 48(1);

(u) “object” means an object of a category to which Article 2 applies;

(v) “pre-existing right or interest” means a right or interest of any kind in an object created or arising under the law of a Contracting State before the entry into force of this Convention in respect of that State, including a right or interest of a category covered by a declaration pursuant to Article 39 and to the extent of that declaration;

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

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

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

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

(aa) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “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;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 38;

(ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 16(2)(b);

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 16(1);

(ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

(mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and

(nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.<sup>1</sup>

## Article 2

### *The international interest*

1. – This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.

2. – For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 6, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

(a) granted by the chargor under a security agreement;

(b) vested in a person who is the conditional seller under a title reservation agreement; or

(c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. – The categories referred to in the preceding paragraphs are :

(a) airframes, aircraft engines and helicopters;

(b) railway rolling stock; and

(c) space property.

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<sup>1</sup> It was noted that this definition should be further reviewed.



4. – This Convention does not determine whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.

5. – An international interest in an object extends to proceeds of that object.

### Article 3

#### *Sphere of application*

1. – This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. – The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

### Article 4

#### *Where debtor is situated*

1. – For the purposes of this Convention, the debtor is situated in any 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.

2. – A reference in this Convention to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

### Article 5

#### *Interpretation and applicable law*

1. – In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. – Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. – References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. – Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant

territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

## CHAPTER II

### CONSTITUTION OF AN INTERNATIONAL INTEREST

#### Article 6

##### *Formal requirements*

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

## CHAPTER III

### DEFAULT REMEDIES

#### Article 7

##### *Remedies of chargee*

1. – In the event of default as provided in Article 10, the chargee may, to the extent that the chargor has at any time so agreed, exercise any one or more of the following remedies:

- (a) take possession or control of any object charged to it;
  - (b) sell or grant a lease of any such object;
  - (c) collect or receive any income or profits arising from the management or use of any such object,
- or apply for a court order authorising or directing any of the above acts.

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph or by Article 12 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.

3. – A chargee proposing to sell or grant a lease of an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed sale or lease to:

- (a) interested persons specified in Article 1(m)(i) and (ii); and
- (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

4. – Any sum collected or received by the chargee as a result of exercise of any of the remedies set out under paragraph 1 shall be applied towards discharge of the amount of the secured obligations.

5. – Where the sums collected or received by the chargee as a result of the exercise of any remedy given in paragraph 1 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall pay the excess to the holder of the registered interest ranking immediately after its own or, if there is none, to the chargor.

## Article 8

### *Vesting of object in satisfaction; redemption*

1. – At any time after default as provided in Article 10, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. – The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. – The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. – At any time after default as provided in Article 10 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 7(1)(b). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. – Ownership or any other interest of the chargor passing on a sale under Article 7(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 28.

## Article 9

### *Remedies of conditional seller or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 10, the conditional seller or the lessor, as the case may be, may:

- (a) terminate the agreement and take possession or control of any object to which the agreement relates; or

- (b) apply for a court order authorising or directing either of these acts.

## Article 10

### *Meaning of default*

1. – The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 7 to 9 and 12.

2. – In the absence of such an agreement, “default” for the purposes of Articles 7 to 9 and 12 means a substantial default.

## Article 11

### *Additional remedies*

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 14.

## Article 12

### *Relief pending final determination*

1. – A Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object; and/or
- (d) lease or management of the object and the income therefrom.

2. – In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons 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 this Convention or the Protocol; or
- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

3. – Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. – Nothing in this Article affects the application of Article 7(2) or limits the availability of forms of interim relief other than those set out in paragraph 1.

## Article 13

*Procedural requirements*

Subject to Article 52(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

## Article 14

*Derogation*

In their relations with each other, the parties may, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter, except as stated in Articles 7(2) to (5), 8(3) and (4), 12(2) and 13.

**CHAPTER IV****THE INTERNATIONAL REGISTRATION SYSTEM**

## Article 15

*The International Registry*

1. – An International Registry shall be established for registrations of:
  - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
  - (b) assignments and prospective assignments of international interests;
  - (c) acquisitions of international interests by legal or contractual subrogation;
  - (d) subordinations of interests referred to in sub-paragraph (a) of this paragraph; and
  - (e) notices of national interests.
2. – Different international registries may be established for different categories of object and associated rights.
3. – For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

## Article 16

*The Supervisory Authority and the Registrar*

1. – There shall be a Supervisory Authority as provided by the Protocol.
2. – The Supervisory Authority shall:
  - (a) establish or provide for the establishment of the International Registry;

- Registrar;
- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
  - (c) ensure that any rights required for the continued effective operation of the International Registry are such as may be assigned in the event of a change of Registrar;
  - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
  - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
  - (f) supervise the Registrar and the operation of the International Registry;
  - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
  - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
  - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
  - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. – The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 26(3).

4. – The Supervisory Authority shall own all proprietary rights in the data and archives of the International Registry.

5. – The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

## **CHAPTER V**

### **MODALITIES OF REGISTRATION**

#### Article 17

##### *Registration requirements*

1. – The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

- (a) for effecting a registration;
- (b) for making searches and issuing search certificates, and, subject thereto;
- (c) for ensuring the confidentiality of information and documents of the International Registry.

2. – Such requirements shall not include any evidence that a consent to registration required by Article 19(1), (2) or (3) has been given.

3. – Registration shall be effected in chronological order of receipt at the International Registry data base, and the file shall record the date and time of receipt.

4. – The Protocol may provide that a Contracting State may designate an entity in its territory as the entity through which the information required for registration shall or may be transmitted to the International Registry.

## Article 18

### *When registration takes effect*

1. – A registration shall be valid only if made in conformity with Article 19 and shall take effect upon entry of the required information into the International Registry data base so as to be searchable.

2. – A registration shall be searchable for the purposes of the preceding paragraph at the time when:

(a) the International Registry has assigned to it a sequentially ordered file number; and

(b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

3. – If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest.

4. – The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

5. – A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

## Article 19

### *Who may register*

1. – An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. – The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. – A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. – The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. – A registrable non-consensual right or interest may be registered by the holder thereof.
6. – A notice of a national interest may be registered by the holder thereof.

## Article 20

### *Duration of registration*

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

## Article 21

### *Searches*

1. – Any person may, in the manner prescribed by the Protocol or regulations, make or request a search of the International Registry concerning interests registered therein.
2. – Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol or regulations, shall issue a registry search certificate with respect to any object:
  - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
  - (b) stating that there is no information in the International Registry relating thereto.

## Article 22

### *List of declarations and declared non-consensual rights or interests*

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the depositary State as having been declared by Contracting States in conformity with Article 39 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol or regulations to any person requesting it.

## Article 23

### *Evidentiary value of certificates*

- A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:
- (a) that it has been so issued; and
  - (b) of the facts recited in it, including the date and time of a registration.



## Article 24

*Discharge of registration*

1. – Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

2. – Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall procure the discharge of the registration upon written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. – Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall procure the discharge of the registration upon written demand by the debtor delivered to or received at its address stated in the registration.

## Article 25

*Access to the international registration facilities*

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

**CHAPTER VI****PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY  
AUTHORITY AND THE REGISTRAR**

## Article 26

*Legal personality; immunity*

1. – The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. – The Supervisory Authority and its officers and employees shall enjoy [functional] immunity from legal or administrative process.

3. – (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.

(b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated.

4. – Except for the purposes of Article 27(1) and in relation to any claim made under that paragraph and for the purposes of Article 43:

(a) the Registrar and its officers and employees shall enjoy functional immunity from legal or administrative process;

(b) the assets, documents, databases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. – The Supervisory Authority may waive the immunity conferred by paragraph 4.

## **CHAPTER VII**

### **LIABILITY OF THE REGISTRAR**

#### Article 27

##### *Liability and insurance*

1. – The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system [except ...]

2. – The Registrar shall provide insurance or a financial guarantee covering the liability referred to in the preceding paragraph to the extent provided by the Protocol.

## **CHAPTER VIII**

### **EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES**

#### Article 28

##### *Priority of competing interests*

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

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

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

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

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

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

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

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

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

6. – This Convention does not determine priority as between the holder of an interest in an item held prior to its installation on an object and the holder of an international interest in that object.

## Article 29

### *Effects of insolvency*

1. – In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

2. – Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. – Nothing in this Article affects any rules of insolvency law relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors or any rules of insolvency procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

## CHAPTER IX<sup>2</sup>

### ASSIGNMENTS OF INTERNATIONAL INTERESTS AND RIGHTS OF SUBROGATION

## Article 30

### *Formal requirements of assignment*

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

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

(a) is in writing;

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<sup>2</sup> At the third Joint Session the Chairman invited three delegations to develop proposals designed to bring Chapter IX more into line with those national legal systems under which an assignment of associated rights would carry with it the interest securing those rights. A proposal containing two alternatives was discussed but there was insufficient time to give the alternatives full consideration. Substantial support for the approach taken in the proposal was expressed. However, it was agreed that the alternatives required further careful study by experts and a number of delegations expressed their wish to proceed with further informal consultations. This matter was not further discussed at the 31st Session of the ICAO Legal Committee.

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

## Article 31

### *Effects of assignment*

1. – An assignment of an international interest in an object made in conformity with the preceding Article transfers to the assignee, to the extent agreed by the parties to the assignment:
- (a) all the interests and priorities of the assignor under this Convention; and
- (b) all associated rights.
2. – Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
3. – The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph, but the debtor may not waive defences arising from fraudulent acts on the part of the assignee.
4. – In the case of an assignment by way of security, the assigned rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

## Article 32

### *Debtor's duty to assignee*

1. – To the extent that an international interest has been assigned in accordance with the provisions of this Chapter, the debtor in relation to that interest is bound by the assignment, and, in the case of an assignment within Article 31(1)(b), has a duty to make payment or give other performance to the assignee, if but only if:
- (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor;
- (b) the notice identifies the international interest [; and
- (c) the debtor [consents in writing to the assignment, whether or not the consent is given in advance of the assignment or identifies the assignee] [has not been given prior notice in writing of an assignment in favour of another person]].
2. – Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.
3. – Nothing in the preceding paragraph shall affect the priority of competing assignments.

## Article 33

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

In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 7, 8 and 10 to 13 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as they are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;
- (b) to the chargee and chargor were references to the assignee and assignor of the international interest;
- (c) to the holder of the international interest were references to the holder of the assignment; and
- (d) to the object were references to the assigned rights relating to the object.<sup>3</sup>

## Article 34

*Priority of competing assignments*

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 28 apply as if the references to an international interest were references to an assignment of an international interest.

## Article 35

*Assignee's priority with respect to associated rights*

Where the assignment of an international interest has been registered, the assignee shall, in relation to the associated rights transferred by virtue of or in connection with the assignment, have priority under Article 28 only to the extent that such associated rights relate to:

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

and the reasonable costs referred to in Article 7(5).

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<sup>3</sup> The Drafting Committee of the third Joint Session noted that this provision would require further technical consideration. However, this matter was not discussed by the third Joint Session Plenary, nor by the 31st Session of the ICAO Legal Committee.

## Article 36

*Effects of assignor's insolvency*

The provisions of Article 29 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

## Article 37

*Subrogation*

1. – Subject to paragraph 2, nothing in this Convention affects the acquisition of an international interest by legal or contractual subrogation under the applicable law.

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

**CHAPTER X****NON-CONSENSUAL RIGHTS OR INTERESTS**

## Article 38

*Registrable non-consensual rights or interests*

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

## Article 39

*Priority of non-registrable non-consensual rights or interests*

1. – A Contracting State may at any time in a declaration deposited with the depositary of the Protocol declare, generally or specifically, those categories of non-consensual right or interest (other than a right or interest to which Article 38 applies) which under that State's law would have priority over an interest in the object equivalent to that of the holder of the international interest and shall have priority over a registered international interest, whether in or outside the insolvency of the debtor. Such a declaration may be modified from time to time.

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

3. – An international interest has priority over a non-consensual right or interest of a category not covered by a declaration deposited prior to the registration of the international interest.

**CHAPTER XI****APPLICATION OF THE CONVENTION TO SALES**

## Article 40

*Sale and prospective sale*

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

**CHAPTER XII****JURISDICTION**

## Article 41

*Choice of forum*

Subject to Articles 42 and 43, the courts of a Contracting State chosen by the parties to a transaction have exclusive jurisdiction in respect of any claim brought under this Convention, unless otherwise agreed between the parties, whether or not the chosen forum has a connection with the parties or the transaction.

## Article 42

*Jurisdiction under Article 12(1)*

1. – The courts of a Contracting State chosen by the parties and the courts on the territory of which the object is situated may exercise jurisdiction to grant relief under Article 12(1)(a), (b), (c) and Article 12(4) in respect of that object.

2. – The courts of a Contracting State chosen by the parties and the courts on the territory of which the debtor is situated may exercise jurisdiction to grant relief under Article 12(1)(d) and Article 12(4) if the enforcement of such relief is limited to the territory of the forum.

3. – A court may exercise jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 12(1) will or may take place in a court of another Contracting State or in an arbitral tribunal.

## Article 43

*Jurisdiction to make orders against the Registrar*

1. – The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages against the Registrar under Article 27.

2. – Where a person fails to respond to a demand made under Article 24(1) or (2) and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made

against it requiring it to procure discharge of the registration, the courts referred to in paragraph 1 shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.

3. – Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

4. – Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

#### Article 44

##### *General jurisdiction*

Except as provided by Articles 41, 42 and 43, the courts of a Contracting State having jurisdiction under the law of that State may exercise jurisdiction in respect of any claim brought under this Convention.

### CHAPTER XIII

#### RELATIONSHIP WITH OTHER CONVENTIONS

#### Article 45

##### *Relationship with the UNIDROIT Convention on International Financial Leasing*

The Protocol may determine the relationship between this Convention and the *UNIDROIT Convention on International Financial Leasing*, opened for signature in Ottawa on 28 May 1988.

#### Article 46

##### *Relationship with the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade]*

[This Convention shall supersede the [draft] UNCITRAL Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] as it relates to the assignment of receivables which are associated rights related to international interests in objects of the categories referred to in Article 2(3).]<sup>4</sup>

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<sup>4</sup> This provision may be modified or deleted depending on the final form of the future UNCITRAL Convention.



**CHAPTER XIV**  
**FINAL PROVISIONS**

Article 47

*Entry into force*

1. – This Convention enters into force on the first day of the month following the expiration of six months after the date of deposit of the [third/fifth] instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

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

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

Article 48

*Internal transactions*

1. – A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol that this Convention shall not apply to a transaction which is an internal transaction in relation to that State.

2. – Notwithstanding the preceding paragraph, the provisions of Articles 7(3) and 8(1), Chapter V, Article 28, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

[Article 49

*Protocols on Railway Rolling Stock and Space Property*

1. – The International Institute for the Unification of Private Law (UNIDROIT) shall communicate the text of any preliminary draft Protocol relating to a category of objects falling within Article 2(3)(b) or (c) prepared by a working group convened by UNIDROIT to all Contracting States Parties to the Convention through their adherence to any existing Protocol, all Member States of UNIDROIT and all Member States of any intergovernmental Organisation represented in the working group. Such States shall be invited to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

2. – UNIDROIT shall also communicate the text of any preliminary draft Protocol prepared by a working group to relevant non-governmental Organisations as UNIDROIT considers appropriate. Such non-governmental Organisations shall be invited to submit comments on the text of the preliminary draft Protocol to UNIDROIT or, as appropriate, to participate as observers in the preparation of a draft Protocol.

3. – Upon completion of a draft Protocol, as provided by the preceding paragraphs, the draft Protocol shall be submitted to the Governing Council of UNIDROIT for approval with a view to adoption by the General Assembly of UNIDROIT and such other intergovernmental Organisations as may be determined by UNIDROIT.

4. – The procedure for the adoption of Protocols covered by this Article shall be determined by the States participating in their preparation.]

## Article 50

### *Other future Protocols*

1. – UNIDROIT may create working groups to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. – The Protocols referred to in the preceding paragraph shall be prepared and adopted in accordance with the procedures provided for under Article 49.

## Article 51

### *Determination of courts*

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to the Protocol the relevant “court” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.

## Article 52

### *Declarations regarding remedies*

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

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

## Article 53

### *Declarations regarding relief pending final determination*

A Contracting State may declare at the time of signature, ratification, acceptance, approval of, or accession to the Protocol that it will not apply the provisions of Article 12, wholly or in part.

## Article 54

*Reservations, declarations and non-application of reciprocity principle*

1. – No reservations are permitted except those expressly authorised in this Convention and the Protocol.
2. – No declarations are permitted except those expressly authorised in this Convention and the Protocol.
3. – The provisions of this Convention subject to any reservation or declaration shall be binding on the Contracting States that do not make such reservations or declarations in their relations vis-à-vis the reserving or declaring Contracting State.

## Article 55

*Transitional provisions**Alternative A*

[This Convention does not apply to a pre-existing right or interest, which shall retain the priority it enjoyed before this Convention entered into force.]

*Alternative B*<sup>5</sup>

1. – Except as provided by paragraph 2, this Convention does not apply to a pre-existing right or interest.
2. – Any pre-existing right or interest of a kind referred to in Article 2(2) shall retain the priority it enjoyed before this Convention entered into force if it is registered in the International Registry before the expiry of a transitional period of [10 years] after the entering into force of this Convention in the Contracting State under the law of which it was created or arose. Where such a pre-existing right or interest is not so registered, its priority shall be determined in accordance with Article 28.
3. – The preceding paragraph does not apply to any right or interest in an object created or arising under the law of a State which has not become a Contracting State.]

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

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<sup>5</sup> The ICAO Legal Committee, while maintaining both alternatives A and B, expressed the view that in case alternative B was selected, the fees charged with respect to these transactions should be nominal.