

UNIDROIT 1996
Study LXXII - Doc. 23
(Original: English)

Unidroit

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

STUDY GROUP FOR THE PREPARATION OF
UNIFORM RULES ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

SECOND MEMORANDUM

prepared jointly by

Airbus Industrie and The Boeing Company

on behalf of an

aviation working group

Rome, March 1996

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prepared jointly by

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Re: Unidroit's Proposed Convention on International Interests in Mobile Equipment/Certain Recommendations of, and Draft Supplementary Text Proposed by, an Aviation Working Group

Introductory Comments

Reference is made to clauses 38 and 39 of the summary report ("**summary report**") prepared by the Unidroit Secretariat summarising the decisions taken by a sub-committee of the Unidroit study group ("**Unidroit**") currently at work preparing a draft convention on international interests in mobile equipment ("**proposed convention**") at its meeting held 11-13 October 1995 ("**October meeting**").

Unidroit has invited the aviation working group jointly organised by Airbus Industrie and The Boeing Company ("**aviation working group**")¹, through Mr. Jeffrey Wool², to propose the text of supplementary rules for aircraft and aircraft engines, designed to reflect the special needs of the aviation finance community. Unidroit has asked that this proposed text, which will be considered at Unidroit's April 1996 meeting, be prepared in a

¹ The members of the aviation working group, listed alphabetically (with their nationalities noted parenthetically), are: Airbus Industrie (French, German, Spanish and UK consortium), Banque Indosuez (French), Douglas Aircraft Company (USA), GE Capital Aviation Services, Inc. and GE Capital Aviation Services, Ltd. (USA and Irish), General Electric Aircraft Engines (USA), International Lease Finance Corporation (USA), Kreditanstalt für Wiederaufbau (German), Rolls-Royce plc (UK), Snecma (French), The Boeing Company (USA), The Chase Manhattan Bank (USA), The Long-Term Credit Bank of Japan, Ltd. (Japanese) and United Technologies Pratt & Whitney (USA). A brief description of the members of the aviation working group and their aviation-related businesses is set forth in Annex 4.

² Mr. Jeffrey Wool was recently appointed Unidroit's expert consultant on international aviation finance matters. See Clause 38 of the summary report. He is a partner in the London office of Perkins Coie, and is an Assistant Affiliate Professor of Law at the University of Washington and Coordinator of its Comparative Commercial Law Institute.

manner consistent with the aviation working group's recommendations to date³, the general structure of the proposed convention⁴, and further aviation industry consensus⁵.

The proposed draft aviation text ("**aviation text**") is attached to this second memorandum ("**second memorandum**") as **Annex 1**⁶ (and a copy of the aviation text marked to indicate changes from the revised third draft is attached as **Annex 2**). The aviation text builds upon the revised third draft and, except where necessary⁷, does not propose aircraft specific rules. The aviation text was prepared and is being presented in this manner, and not as a set of stand-alone supplementary rules applicable solely to aircraft equipment, in view of the suggestion made at the October meeting that certain concepts being proposed

³ At Unidroit's request, the aviation working group, through Airbus Industrie/The Boeing Company, submitted a memorandum dated 15 May 1995 to Unidroit containing a broad set of recommendations on the proposed convention as the same relates to aircraft equipment ("**first memorandum**"). See Unidroit, 1995, Study LXXII-Doc. 16, 1995. In commenting on the revised draft of the proposed convention (Unidroit, 1995, Study LXXII-Doc. 18, 1995 ("**revised second draft**") in a memorandum dated 6 October 1995, the aviation working group made certain amendments to their recommendations set in the first memorandum. See Unidroit, 1995, Study LXXII-Doc. 19 Add. 4, 1995.

⁴ A drafting group ("**drafting group**") met in Oxford on 18-19 December 1995 to amend the revised second draft of the proposed convention to reflect the decisions taken at the October meeting. The product of that session ("**revised third draft**") represents the current version of the proposed convention -- as applies to non-aircraft equipment -- and the current thinking of Unidroit thereon. See Unidroit, 1996, Study LLXXII - Doc. 22, 1996.

⁵ The aviation working group has taken a number of steps since the October meeting to continue in consultative, information distributing and gathering, and other further industry consensus-building efforts. Prominent amongst these activities were preliminary consultation meetings with airline representative groups, including the International Air Transport Association, the objective of which was to establish a framework to facilitate ongoing cooperation and consensus building in connection with the proposed convention. Such consultations are ongoing. In addition, the aviation working group has been, and will be, in contact with various governmental organisations regarding the proposed convention, the aviation working group's recommendations thereon, and aviation-specific issues arising in connection with the international register system.

The aviation working group has also solicited legal commentary on this second memorandum and the aviation text from a group of leading aviation finance legal experts and, where practicable, have attempted to include in this second memorandum and the aviation text views expressed in such commentary to the extent the same were consistent with the commercial views of the aviation working group. The group whose views were solicited consisted of over a dozen aviation legal experts from Europe, the United States and Asia.

Beyond these efforts, the aviation working group is of the view that fuller industry consultations are appropriate in the context of a draft text (the aviation text) after Unidroit has considered the same on a preliminary basis at the April 1996 meeting. See generally concluding comments section of this second memorandum.

⁶ A table cross-referencing the recommendations made in the first memorandum, as amended, and in parts I and II of this second memorandum to the relevant articles of the draft aviation text reflecting such recommendations is attached as **Annex 3**.

⁷ While following the approach, for illustrative purposes, of applying our recommendations generally to all categories of high value, specifically identifiable equipment, certain substantive points are only suitable to aircraft equipment financing and leasing (e.g., points relating to the "de-registration" of aircraft, to the transfer, financing and leasing of aircraft engines and to the relationship between the proposed convention to certain aviation-specific conventions). Such points have been set forth in Article 23 of the aviation text as supplementary rules.

by the aviation working group "might be found to have more general application and might to this extent assist other industry groups in their analysis of the desired scope and content of the proposed convention". See clause 38 of the summary report. In the event that Unidroit, in consultation with such other industry groups, concludes that the additional rules set forth in the aviation text ought to properly be limited to aviation equipment, the next draft of the proposed convention can include these rules as supplementary in the strict sense⁸.

This second memorandum will not iterate the commercial and legal points made in the first memorandum, which should be consulted by the readers hereof for background purposes, except to say that in preparing the aviation text reference was continuously made to the operating premise of the aviation working group. That premise, derived from the magnitude of the credit required to finance anticipated aircraft deliveries over the coming years⁹, is that the value of the proposed convention is directly related to the extent to which its terms, by properly addressing security/leasing issues and/or international legal issues, as needed, result in an increase in the availability of credit, and/or a reduction in the cost of such credit, to owners/operators of aircraft equipment¹⁰.

This second memorandum is divided into three parts. In Part I specific recommendations will be given in respect of the issues reserved upon by the aviation working group in the first memorandum as well as the rationale for such recommendations. Part II will then set forth recommendations and/or commentary in respect of certain issues arising at the October meeting. Part III will provide certain explanatory comments on the aviation text for use in Unidroit's review of the same. Finally, certain concluding comments will be made.

⁸ The following are the principal Articles of the aviation text that could be re-classified as supplementary aircraft provisions: 1(3)(d) - (f); 4(3)(a); 7(a); 10; 12(2); 13; 14; 15; 16; 17(b) (and related provisions in Articles 17 and 18); 24(1)(d); 25; 26 and 31. The following are the principal associated definitional paragraphs to be found in the annexure: (2) - (6); (8) - (17); (19); (22) - (23); (25) - (27); (30); (32) - (33); (38) - (40); (42) - (45); (47) - (48); and parts of (51).

⁹ It is estimated by the major airframe manufacturers that the aggregate acquisition cost of aircraft and engine deliveries over the next twenty years may be in the range of US\$900-1000 Billion. See Airbus' Press Release dated 28 March 1995; Airbus' Global Market Forecast, March 1995; Boeing's Current Market Outlook, 1995; and McDonnell Douglas Corporation's 1994-2013 Outlook for Commercial Aircraft, 1995.

¹⁰ See pp. 3-6 of the first memorandum. These pages summarise the views expressed by the aviation working group that, in order to facilitate the extension of asset-based credit, the rules contained in the proposed convention must, in addition to providing certainty, ensure that the basic commercially oriented, and contractually agreed, rights of asset-based financiers and lessor are protected. We are, at the same time, mindful of both the wide range of differences among and between legal systems on these points, and the potential political/sovereignty concerns that may arise in connection with significant amendments to domestic law; as a rejoinder to both of these types of concerns we have proposed the concept of asset-finance-facilitating "optional" provisions (contractual choice of law/remedies; international insolvency; and mandatory timetable for remedies) that countries can agree to or not when ratifying the proposed convention.

It is the **consensus view of the aviation working group**¹¹ that the recommendations set forth in this second memorandum, together with the aviation text, should be considered by Unidroit as a means of facilitating and reducing the cost of aircraft-based leasing and financing.

Part I Specific Recommendations on Issues Reserved Upon by the Aviation Working Group in the First Memorandum and the Rationale Therefor

1 Appropriate Relationship/Interface Between the Proposed Convention and the Convention of 1948 on the International Recognition of Rights in Aircraft ("Geneva Convention")

Recommendations

- 1.1 The proposed convention shall not prejudice the application of the basic conflict of laws element of the Geneva Convention. This requires signatories to the Geneva Convention to recognize rights in aircraft constituted in accordance with the "law" of the country in which the aircraft was registered (at the time such rights were created) if such rights are recorded in a bona fide public record. Rather, in this regard the two conventions should be coordinated, to the extent possible, by ensuring that (a) the reference to the "law" of the country of aircraft registration is to the law of such country after implementation of the proposed convention and (b) the country of aircraft registration will not prohibit the recordation of an international interest created under the proposed convention.
- 1.2 The non-conflict of laws provisions of the Geneva Convention, except those necessary to effectuate the recommendation in Section 1.1 above or (with amendment) necessary to ensure definitional consistency between the two conventions, shall be superseded by the proposed convention.

Draft text reflecting the recommendations in this Section are contained in Article 23(4)(a) and (b) and Article 23(5)(a) of the aviation text.

¹¹ The aviation working group was provided with detailed background materials, including the revised second draft and the summary report, as well as legal analysis. The aviation working group had numerous preliminary internal communications and correspondence before its substantive meeting in London on 15 December 1995. Following this meeting, drafts of this second memorandum and the aviation text, reflecting the decisions taken by the aviation working group, were circulated, commented upon and revised.

Each member of the aviation working group has confirmed its agreement that the recommendations set forth in this second memorandum and the aviation text should be submitted to Unidroit (on behalf of the aviation working group) as a means of facilitating and reducing the cost of aircraft-based leasing and financing.

Rationale

In view of the important subject matter of this issue -- a long-standing international agreement¹² covering a commercially important area in a complex yet in many ways unsatisfactory¹³ and outdated manner -- much attention has been given by the aviation working group to the alternatives available in addressing the relationship between the Geneva Convention and the proposed convention.

Before exploring these legal alternatives, we would summarise the contours of the Geneva Convention as follows.

The Geneva Convention is principally, but not exclusively, a conflict of laws convention, that is, it calls upon contracting states to "recognise" rights validly constituted in accordance with, and recorded in a public registry in, the country of aircraft registration. In respect of these conflict of laws rules ("**conflicts provisions**"), reference is made, in general, to the (i) substantive security/leasing law of the country of aircraft registration ("**country of registration law**") and (ii) private international law rules, that is, recognition rules, of countries other than that of registration ("**non-country of registration law**").

In addition, a number of provisions in the Geneva Convention set forth substantive rules ("**substantive provisions**"), particularly Articles II and III (matters relating to the registry), IV and VII(4) and (5) (and possibly XII) (priority rules), V (limitations on receiving security in respect of more than three years of previously accrued interest), VI-IX (certain substantive and procedural requirements in connection with sale proceedings), and X (spare parts/engine rules). Some of these provisions are outdated, non-commercial and/or controversial.

While every provision applies in respect of foreign-registered aircraft, that is, all such provisions form part of the non-country of registration law of each signatory country,

12 In excess of fifty countries have ratified the Geneva Convention, an international agreement that has been in effect for forty-eight years. A number of countries with developed or transforming economies that are important in the aviation finance industry, however, have not ratified the Geneva Convention, including Canada, China, India, Indonesia, Japan, Russia and the United Kingdom.

13 The principal shortcoming of the Geneva Convention, as a vehicle for the facilitation of asset-based finance, is the fact that it is principally a conflict of laws convention; it refers to the law of the country of registration on questions relating to the creation, perfection and priority of a security and leasing. If such national laws are weak, do not exist, or do not recognise a foreign form of security, the Geneva Convention is of little assistance. The country of registration can also prohibit the recording of any rights not recognised under its national law.

In addition, the Geneva Convention (i) only applies if the relevant countries have ratified the same, and, as mentioned in footnote 12 above, many important countries have not, (ii) has no effect if the country of registration does not have a proper system for "regularly recording" security or leasing rights, as the case may be, (iii) does not adequately cover security rights in respect of aircraft engines, (iv) does not clearly provide for security rights relating to lease assignments, and (v) does not affect the basic provisions of national insolvency law that may limit the ability of repossession or permit the restructuring of financial obligations.

only certain provisions apply to form part of the substantive law where such signatory country is the country of registry (Articles II, III, IV (to a degree) and IX). See generally Article XI of the Geneva Convention.

Broadly speaking, there are three candidates for the appropriate legal relationship between the proposed convention and the Geneva Convention. First, the proposed convention can completely defer to the Geneva Convention, where and to the extent the latter applies, without reference to the impact of the proposed convention on the substantive country of registration law. This would result in the least disruption to the existing international legal order but would also constitute the smallest improvement thereto.

This alternative would significantly lessen the value of the proposed convention and thus cannot be supported by the aviation working group.

Second, the proposed convention can completely supersede/override the Geneva Convention, to the extent the former applies. This would result in the greatest disruption to the existing international legal order but would also constitute the greatest improvement thereto. This alternative may render the proposed convention less attractive to the numerous signatories to the Geneva Convention and may complicate the process of legal reform currently under way in a number of countries presently considering adopting the Geneva Convention.

The third type of approach ("**coordinative approach**") would attempt to coordinate the two conventions, where appropriate, and, where not, would -- on a global or issue-by-issue basis -- either defer to the Geneva Convention or override the Geneva Convention. Under the coordinative approach, **the country of registration law would be defined as the law of the country of aircraft registration after giving effect to the amendments thereto as a result of the implementation of the proposed convention (including, if applicable, the optional provisions)**¹⁴. In many (but not all) countries this would be

¹⁴ The coordinative approach will undoubtedly require, as between contracting states to the proposed convention that are also signatories to the Geneva Convention, certain amendments to the latter. The rules of public international law applicable to the modification to existing multilateral agreements among some but not all of the parties thereto are neither entirely clear nor universally accepted, and thus will require careful consideration. The starting point in this analysis would likely be the Vienna Convention on the Law of Treaties, 1969 ("**Vienna Treaty Convention**"), which has been ratified, or acceded or succeeded to by a few parties to the Geneva Convention (e.g., Chile, Germany, the Netherlands, and Switzerland), but not most (e.g., Brazil, France, Greece, Sweden and the United States). It is nonetheless a useful source of general principles in this area. Under the Vienna Treaty Convention, there are two routes to the modification of existing multilateral treaties. First, two or more parties to a multilateral treaty may modify the treaty as between themselves if, inter alia, the modification does not eliminate rights/obligations and is not "incompatible with the effective execution of the object and purpose of the treaty as a whole". See § 41 of the Vienna Treaty Convention. Second, assuming certain procedural requirements involving all parties to a multilateral agreement have been satisfied, broader modifications are possible among those who ultimately agree to such modifications. See § 40 of the Vienna Treaty Convention.

Certain additional amendments will also be required to ensure consistency in respect of, inter alia, definitions/scope. Most important in this regard is the fact that the Geneva Convention covers rights in "aircraft" (which includes engines, even where temporarily removed (although such engines may then become "spare parts" -- to which different (and

done by implementing domestic legislation that amends domestic law to reflect the substantive terms of the proposed convention¹⁵. (Such domestic legislation is also valuable in that it would increase the probability that non-proposed convention countries would apply the proposed convention through application of its own choice of law rules that may refer to the laws of a proposed convention country when the same is the country in which the aircraft is registered)¹⁶.

The more complicated element of the coordinative approach involves the question of deference versus override on points of substance. In comparing the proposed treatment of these substantive issues under the proposed convention with that of the Geneva Convention, the aviation working group believes that override is justified on both legal and commercial grounds¹⁷.

impractical) rules apply), but excludes technical records), and, as recommended, the proposed convention would cover interests in "airframes" (see Section 2 below) and "aircraft engines" (In each case including technical records relating to the same (see Sections 2 and 3, respectively)). In Article 23(4)(b) of the aviation text we have recommended wording to address these points, in general, and have attempted to clarify the position in respect of aircraft engines (which have no nationality, or at most a very tenuous one), in particular.

- 15 Whether or not incorporating/implementing material legislation is required is a matter for each contracting state. This point is reflected in Article 28 of the aviation text.
- 16 As regards private international law rules governing proprietary aspects of transactions involving movable equipment with nationality, such as aircraft and ships, a number of countries, absent applicable international convention, would nonetheless refer to the laws of flag rather than that of the physical situs. See Dicey and Morris, The Conflicts of Laws 936 (12th ed. 1993) (English law), Juris Classeur, droit international privé français, Fasc. 550, 2 App. Art. 711 à 717, (a) navires and (b) aéronefs paras. 102 et seq. and paras. 117 et seq. (French law), Staudinger-Stoll, Internationales Sachenrecht, Note 340 (German law - majority view), and Yamada, Private International Law p. 274 (Japanese law); cf. Restatement (Second) of Conflict of Laws §244, comment g (USA law); see generally Wood, Law and Practice of International Finance: Comparative Law of Security and Guarantees 258 (1995).
- 17 To give but a few examples, please note as follows. First, the Geneva Convention does not provide a comprehensive priority regime: there are a few rules, e.g., Articles IV (preference for certain salvage or preservation claim) and VII(5) (preference for certain tort claimants), but otherwise the priorities are determined by the country of aircraft registration. The proposed convention will set forth comprehensive rules that, through disclosure, still allow for the protection of nationally preferred interests. See Article 22 of the aviation text. Second, Article V of the Geneva Convention limits the availability of security in respect of interest occurring prior to three years before enforcement; the proposed convention would have no such limitation. Third, the security rights in respect of engines removed from airframes is limited and non-commercial under Article X of the Geneva Convention (such engines must (i) be stored in a specified place, (ii) be identified as being subject to the security, and (iii) remain in the stored location); the proposed convention would put in place a comprehensive security/leasing system in respect of aircraft engines. Fourth, the Geneva Convention sets forth only one method of enforcement against aircraft, judicial sale, which through its required minimum procedures in Article VII provides, in effect, the defaulting party with a mandatory grace period; this limited and restricted set of enforcement rights is inappropriate in the context of modern aircraft finance. The same subject matter will be addressed more properly under the proposed convention, and in a manner consistent with the expectations of the parties.

2 Appropriate Definition of Aircraft or Airframe for Purposes of the Proposed Convention

Recommendations

- 2.1 In view of the recommended independent treatment of aircraft engines under the proposed convention, the appropriate base definition, for purposes of the equipment list in Article 2, should be "airframe" rather than aircraft¹⁸. An airframe would include all accessories, equipment and parts installed thereon or attached thereto (except aircraft engines or similar parts installed on or in such aircraft engines).

As recommended in the first memorandum, the definition of an "airframe" would also include all technical manuals, data and records relating to such airframe, whether or not located on or in such airframe.

- 2.2 Only airframes that (when appropriate aircraft engines are installed thereon) are capable of transporting, or are certified by the initial country of registration to transport, at least ten (10) passengers or goods [in excess of 2750 kilograms] and that are not used for military, customs or police purposes should be covered by the proposed convention.
- 2.3 Given the bifurcation of aircraft into airframes and aircraft engines, and the removability of aircraft engines, the proposed convention should contain provisions addressing the situation in which a party with an interest in an airframe takes possession of the same under the proposed convention, but the aircraft engines then installed thereon are not ones in which it has an interest. In this case, the proposed convention should (as against the aircraft engine interest holder) limit the liability of such airframe interest holder, but should set forth a limited diligence and cooperation obligation in favour of the person with a first priority interest in such aircraft engine under the proposed convention.

Draft text reflecting the recommendations in this Section are contained in paragraphs (2) - (4) of the annexure to, and Articles 2(1)(a) and 23(3) of, the aviation text.

Rationale

There are three issues to be addressed in, or that follow from, the definition of the aircraft/airframe. First, should the proposed convention be limited to aircraft/airframes of a certain type or size, or should it apply to all types and sizes. Second, should the definition of aircraft include engines and, if so, for which purposes. Third, should the definition of aircraft/airframe include technical records relating thereto.

¹⁸ A definition of "aircraft property" (airframes, aircraft engines, [helicopters] and all interests in agreements relating to any of the foregoing) will be required. A definition of "aircraft" (airframe and aircraft engines installed thereon) may also be required.

As to the category of aircraft to be covered by the proposed convention, we would envisage certain benefits, principally on the political side, to a convention excluding general aviation craft. This is so given the extent to which the proposed convention supersedes otherwise applicable domestic law. The more expensive, advanced and commercial¹⁹ the equipment, the more likely it is that (i) the transaction parties are sophisticated and thus in a position to access, and comply with, international agreements of the kind set forth in the proposed convention and (ii) the equipment will be used and/or financed internationally (thus avoiding purely domestic transaction concerns). We believe that the narrow limitation in terms of capacity to transport passengers or cargo set forth in Section 2.2 is objective and strikes an appropriate balance between the need for a broad convention without a domestic transaction exclusion²⁰, on the one hand, and deference to national law in cases in which interests are likely to be domestic in nature, on the other.

Turning now to the second issue, whether the definition of aircraft should include a definition of engine (and, if so, for what purposes), let us first review the relevant background. The recommendations set forth in the first memorandum contemplate a system in which separate security can be taken and perfected in, and enforced against, specifically identified engines. See pp. 18-20 of the first memorandum. This necessarily implies that the definition of aircraft should exclude aircraft engines (and parts relating thereto); the appropriate base term, for Article 2 purposes, is thus "airframe" - which, in fact, is the actual item specifically identified by a manufacturer's serial number.

One consequence of this recommendation is that unless the proposed convention otherwise provides, enforcement action against the airframe might constitute a violation of the property rights of the debtor/lessee or third parties in a replaced or swapped engine that happens to be on an airframe at the time of enforcement. This result, which could impose legal liability, would not be commercially acceptable when stated in these terms -- although aircraft financiers, to varying degrees, take this risk under current law when it takes enforcement action against an aircraft²¹.

Addressing the third issue, while definitions of aircraft under most systems of law do not include technical records and related documentation, in our view they should. Most financing transactions include provision for taking security over these items. Since physical possession of these technical documents is obviously not transferred or

19 Please note that we are not recommending an exclusion for private aircraft. Such aircraft are extremely valuable, face the familiar set of problems associated with the *lex situs* rule, and typically involve sophisticated parties in a position to access and comply with international requirements.

20 See detailed rationale for this position summarised in footnote 14 to the first memorandum.

21 Aircraft engines may be removed from airframes in accordance with the underlying financing or leasing contract or in violation of the same. Operational and safety requirements are often the principal determinants. Removed engines must of course be replaced. A financier/lessor may attempt to limit its liability (as well as protect its security) by stating in the contract that replacement engines become part of the aircraft; while this may bind or estop the airline, it is unlikely to prevent a conversion-type claim by a third party with a superior interest in such replacement engine.

transferable to the lessor/financier, security rights therein are typically perfected, if at all, through public filings (to the extent permissible under applicable law). Improving this unsatisfactory system in respect of potentially valuable technical records is likely to be well received by the financing community.

3 Appropriate Definition of Aircraft Engine for Purposes of the Proposed Convention

Recommendations

- 3.1 Only aircraft engines that are powered by jet propulsion (and that have at least 1750 lbs of thrust or its equivalent) or turbine technology (and that have at least 550 rated takeoff shaft horsepower or its equivalent) should be covered by the proposed convention.
- 3.2 As with airframes, the definition of aircraft engine shall include all modules and other accessories, equipment and parts installed therein or attached thereto as well as all technical manuals, data and records relating to such aircraft engines.

Draft text reflecting the recommendations in this Section are contained in paragraph (2) of the annexure to, and Article 2(1)(b) of, the aviation text.

Rationale

As a general matter, the considerations outlined in connection with the first and third issues addressed in Section 2 are relevant in respect of aircraft engines.

In sum, we recommend that the proposed convention contain a narrow limitation in the definition of aircraft engines, in terms of its base technology and power²², to ensure that the relevant financing transactions involve sophisticated parties and that the aircraft engines, accessed *ex ante*, are likely to be used internationally.

4 Rules Establishing the Relationship Between an Assignee and a Debtor/Lessee

Recommendations

- 4.1 Assuming contract rights are assignable under the law governing the underlying contract, a debtor/lessee shall be bound by an assignment of such contract rights to the extent it has [consented in writing to such assignment].

²² Piston-powered engines have been excluded from this recommended definition, given their limited role in international aviation. Including this type of engine in the proposed convention would, in our view, place undue burden on owners and operators of this equipment; existing national law should continue to govern the relevant legal relations and issues.

As far as the suggestions on engine power, these figures are intended to reflect the minimum force required to power airframes as defined in Section 2 of this second memorandum.

- 4.2 The relationship between the assignee and debtor/lessee shall be governed by the law governing the underlying contract²³ - but only to the extent that the relevant issue has not been addressed in the debtor/lessee consent referred to in Section 4.1 above.
- 4.3 In the event a debtor/lessee is bound by the terms of conflicting assignments, the first assignee to record a consent registration notice in the international register system shall have priority as against the debtor/lessee.
- 4.4 The only non-convention interest in contract rights that is registrable under the proposed convention is that of an attaching judgement creditor.

Draft text reflecting the recommendations in this Section are contained in Article 16(1), (2), (3) and (4) of the aviation text.

Rationale

While in the context of lease assignments the aviation working group has previously provided Unidroit with recommendations on certain questions relating to the relationship between the assignor (lessor) and the assignee (lender), and certain elements of that between the obligor (lessee) and the assignee (lender)²⁴, we specifically reserved on the question as to whether (a) a substantive rule binding the obligor (lessee) to the assignment

²³ To the extent that the optional contractual choice of law provision -- contained in Article 7(a) of the aviation text -- is applicable, the law selected by the parties shall be the law governing the underlying contract for these purposes. To the extent it is not, otherwise applicable private international law rules would determine such governing law. See Article 27 of the aviation text. This point has not been made expressly in the aviation text on grounds that it would be addressed in the explanatory report/official comments to the proposed convention.

²⁴ To recapitulate and expound, there are five principal sets of issues to be addressed in the context of the inclusion of lease assignment, that is, a specific type of contract rights, in the proposed convention. First, what rule will determine the basic proprietary question as to whether an assignment constitutes a valid transfer of property rights between the parties (assignor and assignee), and whether or not formalities or other substantive requirements are relevant to this question. As with other international interests covered by the proposed convention, an assignment complying with the basic creation criteria set forth in the proposed convention would be a *sui generis* interest recognized as such throughout the contracting states. Second, what rule will determine the contractual rights and obligations between the parties. As with other international interests, the law selected by the parties would do so, if the optional contractual choice of law provision applies, or, if not, otherwise applicable law would govern such matters. Third, what perfection requirements and priority rules would apply to such assignments. Perfection would be effectuated by registration, and priorities would be determined on a first-to-file basis. A few miscellaneous points regarding this third set of issues are of note: in the context of such assignments, the concept of preferred national creditors (see paragraph (26) of the annexure to, and Article 22(1)(b) of, the aviation text) is inapposite; the optional insolvency provisions would not apply; and, the basic insolvency rule (see Article 22(4)) -- confirming the validity of international interests against a trustee in bankruptcy -- would apply equally to such assignments.

This portion of this second memorandum addresses the fourth and fifth sets of questions. Fourth, what rule should determine the general relationship between the obligor (lessee) and the assignee, inside and outside the insolvency context. Fifth, what is the appropriate priority rule, as against the lessee, in the case of multiple, conflicting assignments.

and providing a priority rule vis-à-vis the obligor (lessee)²⁵ or (b) a choice of law provision²⁶ in respect of these two points is appropriate.

The principal reason favouring the substantive rule with a registration component, in the case of priorities, is certainty: it provides third parties with a means of ascertaining with certainty that the lessee is not bound by a previous assignment of the lease²⁷. The obligor (lessee) consent aspect of the substantive rule, in turn, would ensure fairness to the obligor (lessee). This is particularly so in view of our recommendation that the obligor (lessee) have the autonomy to bind itself to the specific terms of an assignment - which, in practice, may include important commercial undertakings and agreements by the lessee including agreements not to assert certain defenses which it may have against the assignor or to insure or indemnify the assignee against certain risks in the transaction. The downside associated with this approach, as proposed, is the potential difficulty associated with the lessee consent requirement²⁸.

The choice of law approach, on the other hand, provides a greater degree of flexibility -- by use of a choice of law that does not require lessee consent (e.g., rather the simple

25 We went on to say that, in the event a substantive rule were to be selected, we would recommend a rule based on the following principle: "the obligor (lessee) shall be obliged to pay or perform, as the case may be, for the benefit of the assignee (lender), to the exclusion of the assignor (lessor) or any subsequent assignee, the assigned sums and obligations in respect of the assigned rights, to the extent of, and on the conditions set forth in, such assignment, if the obligor (lessee) has countersigned a notice from the assignor (lessor), or consented to such assignment, and a copy of such a countersigned notice of or consent to assignment has been filed with the registry (and has not been terminated pursuant to a filed termination statement executed by the assignee (lender))." See footnote 31 on page 14 of the first memorandum.

26 The most likely choice of law rule would be the *lex situs* of the contract debt, that is, the debtor's principal place of business, although other rules -- such as the law of the debt or the assignor's place of business -- have been suggested.

27 See generally Assignment in receivable financing: discussion and preliminary draft of uniform rules: Report of the Secretary General, United Nations Commissions on International Trade Law, Twenty-eighth session, Vienna, 2-26 May 1995 ("UNCITRAL report") paragraphs 73-80. Such paragraphs of the UNCITRAL report were focused on priority vis-à-vis the assignor. As set forth in Article 22 of the aviation text, we are in full support of this concept regarding competition among an assignor's creditors.

In addition, we are of the view that these principles also apply in respect of concerns that an obligor may be bound to a previous assignment under national law. Note, for example, the often discussed hypothetical: if a lessor previously assigned the lease to lender one who did not file in the international register system yet gave notice of the assignment to the lessee (thus "perfecting" under English law), lender two would not be aware that the lessee was bound to the previous assignment (since the previous assignment was not recorded).

28 Few national laws, and national private international law rules, require a lessee's consent to effect an assignment to which a lessee is bound. Nonetheless, in the financing of aircraft equipment, lessee consents are customarily required. Binding the lessee to an assignment is, in practice, simply too important to be left to complex, technical rules; a contractual agreement is sought. Moreover, aircraft finance agreements often amend, to some degree, the assigned obligations, establishing a new legal relation between the assignee and the debtor to that extent. Finally, in certain jurisdictions privity requirements would counsel a prudent assignee to establish a direct contractual relation with the lessee.

giving of notice)²⁹ -- but results in less certainty as to whether, on precisely what terms, and in what priority the lessee is bound.

Given the potential disagreement on the appropriate choice of law rule, the fact that lessee/obligor consents are customarily required and obtained in airfinance transactions, the commercial imperative of certainty as regards an assignee's relationship with an obligor, and the centrality of party autonomy principles, we recommend the substantive rule with its concomitant lessee/obligor consent and registration requirements. We have, however, placed the pertinent part of the main recommendation in brackets to indicate the absence of complete consensus on this point and the need for further consideration.

5 Supplementary Priority and Related Rules for Aircraft Engines

Recommendations

- 5.1 As recommended in the first memorandum, and subject to the recommendation in Section 5.2 below, competing interests in aircraft engines will be determined on the basis of the first-to-file principle (subject, as with other convention property, to disclosed classes of preferred national creditors) and notwithstanding national accession rules pursuant to which title to aircraft engines may automatically pass to or from an airframe owner (as the case may be) upon installation or removal (as the case may be) of such aircraft engine from an airframe.
- 5.2 In the event that a financier/lessor and an airline contractually agree that upon installation of a specifically identified aircraft engine on a specifically identified airframe title to such aircraft engine would be transferred to such financier/lessor, such financier/lessor may record its prospective interest by filing a registration notice in the international register system against the specified aircraft engine. At all times when such aircraft engine is installed on such airframe, a financier/lessor who has registered its interest shall have priority over third parties recording interests in the relevant aircraft engines subsequent to the recordation of its prospective interest.

Draft text reflecting the recommendations in this Section are contained in paragraphs (1) and (44) of the annexure to, and Articles 22(1) and 23(1)(g) of, the aviation text.

²⁹ A few commentators on this second memorandum have expressed the view that the flexibility of simply notifying the obligor as a means of perfection is highly valuable, particularly where obtaining consent is impracticable (such as in receivable financing with large numbers of obligors) or where the same may be difficult or costly (such as in the refinancing of used property). While impracticability is relatively less significant in the context of aircraft financing than, say, in credit card receivable financing, the cost issue is of note. Obligor may take advantage of this consent requirement to extract contractual concessions. Potential assignors are always at liberty, however, to obtain advance consents (whether conditional or not) to avoid this circumstance.

Rationale

As a general rule, we have recommended in respect of aircraft engines a priority regime based on a first-to-file principle excepting only certain classes of preferred national creditors recorded (by each enacting country) under the proposed convention. This implies overriding the priority aspects³⁰ of any national accession or similar rules that, in effect, would afford priority rights to unrecorded transfers of aircraft engines. In footnote 42 of the first memorandum, however, we noted that a special rule ("**special engine rule**") may be required on commercial grounds in order to accommodate the situation in which aircraft and engine leasing arrangements contractually embody the "title transfer" approach, that is, where the relevant contracts contemplate that title to (or security rights in) specifically identified engines installed from time-to-time on an airframe become part of that aircraft/aircraft security package (i.e., the act of installation/removal constitutes conveyances).

We went on to say that, if recommended, the special engine rule would be based on the following principle: "in the event that (a) an aircraft financier/lessor and an airline contractually agree that, upon installation of a specifically identified engine on specifically identified aircraft, title to such engine would be transferred to such financier/lessor and (b) such title transfer arrangements are expressly noted in the appropriate financing statement or title reservation statement, as the case may be, filed in the engine registry (the forms of such statements to contemplate such a notation) in respect of such engine, then such aircraft financier/lessor shall, in respect of such engine (if and so long as the same is installed on such aircraft), have priority over purchasers or financiers subsequently filing interests in respect of such specifically identified engines." See p. 18 of the first memorandum.

As expressed above, the special engine rule is a narrow exception to the general priority rules that, given its consistency with notice-based security principles, would fall within the general framework of the proposed convention. This is so given the requirement in the special engine rule that all the relevant engines be specifically identified *ex ante* and that filings be made with respect to the same. With this limiting condition, we believe that the special engine rule may well strike the appropriate balance between the competing commercial interests in airfinance transactions.

6 Organisations to be Delegated Operational and Managerial Responsibility for the Airframe and Aircraft Engine Registers

Recommendations

While we would again reserve on our recommendations as to the candidates for the central registrar for airframes and aircraft engines, we would take this opportunity to

³⁰ Note that such national accession or similar rights, once vested, would constitute registrable national interests as defined in paragraph (33) of the annexure to the aviation text. The holders of such rights, therefore, may have priority on the basis of the general first-to-file principle. See Article 22 of the aviation text.

briefly set forth our view of the main structural or organisational components of the international register system -- for airframes and aircraft engines -- as follows:

- 6.1 The Unidroit Governing Counsel would designate a group or body ("**supervisory body**")³¹ that would promulgate initial and ongoing rules and regulations ("**regulations**") implementing and regulating the proposed convention. The supervisory body would direct the central registrar of the international register system -- which may be different for different types of equipment ("**central registrar**") -- to operate and manage the international register system in accordance with the regulations.
- 6.2 Each contracting state would in its ratification instrument designate a satellite registrar in its country ("**satellite registrars**") that, in the context of aircraft property, would likely be the existing aircraft regulatory authority. The satellite registrars [together with the central registrar] would be the exclusive points of access into the international register system.
- 6.3 The satellite registrars would act in accordance with the uniform regulations and would not be permitted to impose additional requirements relating to registration of interests under the proposed convention.
- 6.4 The regulations would set forth the conditions to be satisfied prior to the registration by the satellite registrar (or, to the extent registrations are permitted with the central registrar, by the central registrar) of the registration notice. These conditions will be limited, in general, to a discrete set of factual matters (i.e., the agreement been signed, does it properly describe the property, and have the relevant parties consented to the registration).
- [6.5 Registrations can only be made with the "**relevant satellite registrar**" which, in the case of [airframes] [aircraft property], would be the country of aircraft registration [or with the central registrar].]

Draft text reflecting the recommendations in this Section are contained in paragraphs (7), (37), (39) and (40) of the annexure to, and Articles 4 and 17 of, the aviation text.

Rationale

One model of registry matters under the proposed convention, described in extreme form, would have high a technology system, through which any person could search and file from any computer terminal in any location in the world, with minimal regulation or interference (e.g., no confirmation of executed documents, authorised signatures, etc.), and with all technical risks resting on the filing party and all delay or error risk falling on

³¹ In addition to being international in composition and neutral, the supervisory body would need to be expert in, inter alia, aviation law and finance practice, as well as in technical matters relating to international registers.

either the searching party or the filing party³². This model might be referred to as the "**pure notice-based model**". The pure notice-based model is the prototype of, among others, US and Canadian personal property security law systems (although, interestingly, not US/Canadian aviation - specific security law systems). A system of this kind has certain undeniable benefits, many of them technology and efficiency-based.

Another model, again described in extreme form, is that of manual document filings, at one government location, after a substantive review by regulators, in which -- to a greater or lesser degree -- risks of error and delay are taken, or are thought to be taken, by governments. Filings, on this model, constitute something more than possible proof of, and a vehicle for the perfection of, rights (as they are in the pure notice based model). This model might be referred to as the "**manual, substantive rights model**". The principal benefit of this model is thought to be the certainty and comfort provided by the role of this registry. A number of current European systems follow this model, as does the USA aviation security system (although transaction parties, in fact, take a considerable amount of system and error risk under USA aviation law -- which is minimized by the role of specialized legal counsel and advanced legal opinion practice)³³.

It is fair to say that the proposed convention, like most new/modern systems, follows the pure notice-based model. In our supplementary comments to Unidroit dated 6 October 1995 we agreed, conceptually, that as far as the central registrar is concerned, the international character of the registry, and the need for instantaneous search results and filings, demands a notice-based system.

Having said this, our comments regarding the satellite office/satellite registrar concept seek, in effect, to permit what might be referred to as a "**hybrid model**" in which (i) the satellite offices/registrars (that is, national aviation offices -- which, of course, could be the very same offices in which both Chicago Convention registration filings and Geneva Convention security filings are made) could conduct a limited substantive/factual review (pursuant to uniform, international regulations) before filing but (ii) as between the central registrar and satellite registrar, priorities will be determined on the timing of simple notices. In the hybrid model, only the satellite offices would be able to make filings, and thus government regulators could maintain their monitoring function.

Please note our bracketed recommendation in Section 6.5 to the effect that all registrations must be made through the satellite office in the country of aircraft registration. It is premature to take a firm view on this issue until the workings of the international register system become more concrete. It is unclear, for example, whether every country will be able to establish a satellite registrar within its borders. If not, or for other reasons, it may be desirable to permit direct registration with the central registrar.

32 See discussion of risk allocation between searching parties and filing parties contained in Section 8.

33 Expert airfinance regulatory counsel will be a valuable resource as matters relating to the international register system develop. As noted in the concluding comments, we would intend to include such counsel in ongoing industry consultation relating to the aviation text.

There are also further issues relating to the treatment of aircraft engines -- which might be addressed in a manner similar to the parallel question of the Geneva Convention³⁴. We will revert on these questions in due course.

**Part II Specific Recommendations on Certain Issues Raised at 11-13 October
1995 Meeting of Sub-committee of the Study Group**

7 Required Connection between the Proposed Convention and Contracting States and Related Issues

- 7.1 The courts of a country ratifying the proposed convention ("**contracting state**") (a) in which debtor/lessee/buyer is domiciled or has its principal place of business, (b) in which the aircraft property is based or located, (c) that is the country of aircraft registration and (d) if not violative of its fundamental public policy, designated by the parties to an agreement -- shall each have jurisdiction over disputes involving aircraft property giving rise to legal proceedings relating to the proposed convention.
- 7.2 Whether or not the courts of contracting states other than those referred to in Section 7.1 shall have jurisdiction shall be determined in accordance with the private international law rules of such contracting states. In addition, the provisions reflecting the recommendations in Sections 7.1 and this Section 7.2 shall not prejudice the application of the private international law rules of non-contracting states that may confer jurisdiction on its courts and, in settling a dispute relating to the proposed convention, that may refer to laws of a contracting state (that is, the proposed convention).
- 7.3 Nothing in the proposed convention shall prejudice the ability of the parties to an agreement to select an exclusive forum to litigate disputes between themselves relating to the proposed convention. In the event such an exclusive forum is agreed, other courts shall decline to exercise jurisdiction over a dispute unless doing so would violate its fundamental public policy.
- 7.4 In applying the proposed convention to a dispute relating to aircraft property:
- (a) the courts referred to in Sections 7.1 and 7.2 shall apply the optional contractual choice of law and additional remedies/mode of enforcement provisions only if [the country of aircraft registration] [the contracting state in which the forum sits] has not entered a reservation regarding the same in its ratification instrument; and
 - (b) a contracting state (i) shall only be bound by the remedy timetable provisions contained in the proposed convention to the extent it has not entered a reservation regarding the same in its ratification instrument,

³⁴ See Article 23(4)(b) of the aviation text.

(ii) that is the primary insolvency jurisdiction or is another jurisdiction where aircraft property is based or located (as the case may be) during insolvency proceedings shall only be bound by the relevant optional insolvency provisions to the extent that it has not entered a reservation regarding the same in its ratification instrument, and (iii) shall refer to the preferred national creditors as defined in the contracting state in which the action or event giving rise to such claim occurs in applying the priority rules under the proposed convention.

- 7.5 A waiver of sovereign immunity from jurisdiction of the courts referred to in Sections 7.1 and 7.2, and/or in respect of enforcement against aircraft property, shall be valid and binding under the proposed convention.

Draft text reflecting the recommendations in this Section are contained paragraphs (10), (27) and (38) of the annexure to, and in Articles 11, 12(2), 24 and 23(1)(h) and (i) of, the aviation text.

Rationale

Unidroit is now taking a very close look at the set of issues generally referred to as the "connecting factor" questions, that is, what connections are necessary/sufficient between the courts of a country and the subject matter of the proposed convention to justify (i) the jurisdiction of such courts to hear and rule on a dispute and (ii) the application by such courts of the proposed convention to a dispute. While this set of issues is not specific to aircraft property (except to the extent the country of registration is an additional factor in the analysis and that the recommended optional provision concept further complicates these questions), it is of significant interest to the aviation finance community.

It is true to say, as certain Unidroit sub-committee members recently have, that "it is not reasonable to assume that a court sitting in a contracting state applying that [nation's] otherwise applicable choice of law rules would *always* apply the [proposed convention] to a transaction involving aviation equipment. [N]or would it be reasonable to assume that a court sitting in a non-contracting state would *never* apply the [proposed convention] to an appropriate transaction"³⁵.

Turning first to the question of jurisdiction, Unidroit has previously set forth three grounds for the assertion of jurisdiction: location of the equipment; nationality (if any) of the equipment; and, subject to mandatory rules of the *lex fori*, designation by the contract parties³⁶. We agree in general³⁷ with the list, and have previously suggested adding the

³⁵ See comments of Professor Charles Mooney, Jr. and Mr. Thomas Whalen (Representing the Government of the United States of America) on Revised Proposals for a First Set of Draft Articles of a Future Unidroit Convention on International Interests in Mobil Equipment, Unidroit 1995, Study LXXII-Doc. 19, Add. at p. 5.

³⁶ See Summary Report of the 29 November-1 December 1994 Meeting of the Study Group for the Preparation of Uniform Rules on International Interests in Mobile Equipment, Unidroit 1995, Study LXXII-Doc. 15.

debtor/lessee's country of domicile and principal place of business to the list.³⁸.. This broad list of courts with jurisdiction should not, however, prejudice the ability of parties to contractually agree to an exclusive forum where doing so would not violate the fundamental public policy of other courts in which litigation may be commenced.

The next set of questions relates to which version of proposed convention ought to be applied if different relevant jurisdictions in a transaction have enacted different versions of the proposed convention, that is, where one or more of such relevant jurisdictions has adopted the proposed convention with some or all of the optional provisions and others have not.

Complicating matters further is the differing nature of the optional provisions themselves. For example, the question of the mandatory remedy-timetable could only apply in respect of forum. Similarly, the optional insolvency provision would only apply, as regards its basic points, to the primary insolvency jurisdiction. More difficult questions arise in connection with the optional provision in respect of the additional remedies/mode of enforcement (i.e., self-help) and contractual choice of law. We would reserve our position on whether the same should be settled by reference to the version of the proposed convention adopted by the country of aircraft registration (if a contracting state) or, alternatively, by reference to the version of the proposed convention adopted by the contracting state in which the forum sits.³⁹

37 As set forth in Article 24(1)(b) of the aviation text, we would recommend changing the formulation of the qualification in respect of jurisdiction of the designated forum from an absence of inconsistent "mandatory rules" of the forum to the non-violation of a "fundamental public policy" of the relevant contracting state. Mandatory rules are rules of positive application (which cannot be varied by contract); public policy operates negatively to void or invalidate a provision. The subject restriction is of the latter kind. Moreover, given the objective of broad application of the proposed convention, we believe the violation of public policy should be fundamental to invalidate a forum selection clause.

38 The "principal place of business" is a North American reference and concept. It would appear that a competing concept is emerging in Europe, that is, the "location in which the centre of a person's main interests are situated." See Draft EC Convention on Insolvency Proceedings. Provisionally, either standard would appear to be acceptable. We have used the European formulation in Article 24(1)(b) (jurisdiction), Article 24(2)(a) (controlling law (through the definition of relevant contracting state)) and Article 15 (optional insolvency provision) of the aviation text to assist in gauging the non-European reaction to this concept.

39 This set of questions raises particularly difficult issues that require further consideration. While such issues are not unique to aircraft property, there are certain distinct and additional considerations in this context. Moreover, the two issues being addressed here together, namely, whether one contracting state (X) should recognise a reservation or non-reservation made in another pertinent contracting state (Y) in respect of the ability of the parties to select the law to govern their contractual rights/obligations and the availability of additional remedies/the mode of enforcement of remedies, may ultimately be bifurcated and treated separately.

A few preliminary points may be useful. First, as regards the ability of the parties to select a law to govern contractual matters, should a reservation or non-reservation made by contracting state Y, the country of aircraft registration, or alternatively, made by contracting state X, the country in which the forum court sits, be dispositive (when considered by the courts of contracting state X). Uniformity, certainty and deference to the strong interest of the country of nationality would suggest the former, while theoretical sovereignty considerations, as well as the implications of our recommendation on the inapplicability of mandatory and public policy-based rules, may suggest the latter. Our

We believe that, given the degree of governmental ownership and/or control of aircraft property, express confirmation of the validity of a waiver of sovereign immunity (if given by a transaction party) is necessary to carry out the terms and intention of the proposed convention as the same relates to aircraft property. We would submit that this concept is in line with emerging law as relates to governmental entities involved in commercial activities⁴⁰, particularly where such entities have expressly waived sovereign immunity-type defenses. Please note, in particular, that we have proposed a narrow formulation of this rule -- the validity of an express waiver -- rather than the loss of immunity by virtue of the commercial nature of the activity in question.

8 Legal and Technical Relationship between the Central Registrar and Satellite Registrars, and the Allocation of Risk Regarding Filing Errors, Delays, etc. among the Transaction Parties, the Central Registrar and Satellite Registrars

Beyond the broad organisational and structural recommendations set forth in Section 6, we would reserve our position on this complex set of issues pending further progress on the work of the registry expert in April 1996.

Certain Considerations

Work by Unidroit on all questions relating to the registry is entering into a new, more formalised phase. A technical registry expert group, led by Professor Ronald Cuming of Canada, is being assembled to study the full range of pertinent questions and issues raised by an international register of the type contemplated by the proposed convention.

Professor Cuming has circulated a discussion paper ("**registry discussion paper**") outlining registry-related questions and issues⁴¹.

The registry discussion paper is conceptual in nature, leaving more detailed and specific discussion for the first meeting of the registry group set for 16-18 April 1996.

We would make two general and preliminary observations on the registry discussion paper. First, as mentioned in Section 6 of this second memorandum, and as set forth in paragraphs (7), (39) and (40) of the annexure to, and Articles 4 and 17 of, the aviation text, we would encourage the participants at the registry group meeting to seriously

provisional view is that, on balance, the first set of considerations would appear to outweigh the second, and thus that the appropriate references in this context may well be the position taken by the country of aircraft registration.

While the competing considerations are in broad terms the same as regards remedies, particularly in connection with the mode of enforcement thereof, the balancing thereof may produce a different conclusion.

40 See The Foreign Sovereign Immunities Act of 1976 (US law), State Immunities Act 1978 (English law), *Juris Classeur, droit civil, immunités de juridiction et d'exécution*, Art. 14 and 15 Fasc. 70, para. 62 et seq. (French law), and Geimer, *Internationales Zivilprozeßrecht*, 2nd Editional, Note 560 et seq. (German law); cf. Matsuyama & Sono v. Republic of China, 7 *Taishinin Minji Hanreishu* 1135 (Japanese law).

41 See Exploratory Report: An International Registry for International Interests in Mobile Equipment, Unidroit, 1996, Study LXXIIC - Doc. 1.

consider, in the context of aircraft property, the "hybrid model" as the starting point in building the international register system. Second, without suggesting that certain systematic and error risks ought not to reside with the supervisors and/or operators of the system, as regards allocation of risk between filing parties and searching parties, we believe it should fall on the former. Simply put, searching parties must be able to rely on the non-existence of filings as they prepare to make large dollar advances. In furtherance of this objective, we recommend that registrations not be effective until "searchable". See Article 17(4) of the aviation text. Filing parties can protect themselves by not advancing funds until their own filings are searchable.

9 Court(s) Having the Authority to Make Determinations Binding upon the International Register System

We would reserve our position on this issue pending further development of the proposals on the nature of the international registry system, on the one hand, and jurisdiction under the proposed convention, on the other.

Certain Considerations

This is another complex question with broad political and legal implications. While this question is not limited to aircraft property, once again it is of considerable interest to the aviation finance community.

This issue received considerable attention at the October meeting, and there were a multiplicity of views expressed. As noted in point 29 of the summary report, the issue was deferred pending consideration by the study group in April, 1996 with the following possibilities being listed:

- (i) any designated national court could make orders binding upon the international register system;
- (ii) a new international tribunal could be created with authority to make orders binding upon the international register system;
- (iii) no courts would have authority to make such binding orders; rather, national courts would make *in personam* orders (that is, orders binding on the litigants (rather than on the registrar)) to take actions with respect to the registry (or, if not, would result in national sanctions against the parties for not following national court orders);
- (iv) respecting the (presumably exclusive) forum choices, if any, contained in the financing or leasing contract; and
- (v) the registrar itself would take all such decisions in light of all available documents, including national *in personam* orders.

Each of the above-mentioned alternatives has its shortcomings. Possibility (i) runs the risk of two inconsistent orders, as well as qualitative concerns. Possibility (ii), while

having numerous theoretical benefits, including certainty and uniformity -- and even having the potential to serve as a court of exclusive jurisdiction on all matters under the proposed convention -- would not appear to be very practical, would be costly in terms of time and expense, and would run into considerable political resistance. Possibility (iii), which, along with Possibility (v), may be the most realistic, may result in delays, confusion, etc. Possibility (iv) would force the parties to select an exclusive forum, which often is commercially unacceptable, or otherwise has the same problems set forth in Possibility (i). In addition, all disputes might not be between the two contracting parties. The desirability of Possibility (v) depends on the quality of the registry organisation, which is a question, and raises issues regarding an appeal procedure, if any.

One other alternative comes to mind: designating an existing court or courts as having exclusive jurisdiction⁴². While this alternative has certain benefits, the political resistance is also likely to be considerable.

One final point. However this issue is resolved, it will, to some degree supersede Article 16(3) of the Brussels Convention of 1968, which states that "in proceedings which have as their object the validity of entries in public registries" the courts of a contracting state thereto in which the register is kept shall have jurisdiction⁴³.

Part III Certain Explanatory Comments on the Draft Aviation Text

Reference is made to Annex 2, which contains a draft of the aviation text marked to indicate changes from the revised third draft.

In part III of this second memorandum, we will provide certain explanatory comments on the aviation text where it contrasts with or builds upon the revised third draft. We would emphasise that this commentary is not intended to be comprehensive but instead will only address points/recommendations not made in either the first memorandum or parts I or II of this second memorandum (see Annex 3 for appropriate cross-references between such points/recommendations and the aviation text) and not self-explanatory.

With initial Article references being to those in the aviation text, please note as follows:

Article 1(1) we have suggested amendments to Article 1(1) of the revised third draft to provide somewhat more detail on the important matter of the scope of application, generally, and to note that priorities between international interests and national interests will be addressed, in particular;

Article 1(3) please note that assignment documents and security assignment agreements are listed and treated separately (see also the definitions at

⁴² By way of example, certain existing courts might be granted exclusive jurisdiction regarding registry-related matters in respect of aircraft property registered as to nationality in specified regions.

⁴³ See 1968 Brussels Convention on Jurisdiction and Enforcement in Civil and Commercial Matters, Article 16(3).

paragraphs (6) and (42) of the annexure to the aviation text); the latter is in certain respects treated similarly to security agreements (see Article 10 of the aviation text), while the former is treated similarly to transfers; where appropriate, they are treated together (see Article 16 of the aviation text);

Article 2(1) given our recommendation that the proposed convention should apply to contract rights and transfers, we think the term "property" rather than "object" is more flexible and appropriate;

helicopters (to be defined) have been included as a separate category of property (in paragraph (3) of the annexure to the aviation text); please note the bracketed reference to helicopters in the definition of aircraft property: we reserve at this stage on the questions of whether and to what extent the recommendations of the aviation working group ought to apply with equal force to helicopters;

Note: we have moved the connecting factor provision from Article 3 of the revised third draft to Article 24 of the aviation text, and have included detailed recommendations on that set of issues;

Article 3 given the numerous additions to and length of this Article, we have placed the terms in alphabetical order in the definition annexure;

Article 4(3) assuming the "hybrid model" and the suggested role of satellite registrars, a question remains as to whether satellite registrars should be exclusive points of access in respect of filings only, or searching as well as filing; in addition, and as previously mentioned, the role of the central registrar as a point of access is to be determined as registry matters in general become more developed (see also Article 17(2) - (4) and Article 18(1), (2) and (4));

Article 5 the lead-in to Article 5(1) and all of Article 5(2) of (and paragraph (18) of the annexure to) the aviation text address very fundamental points relating to the creation of an international interest and related proprietary and formality issues; we appreciate that these points have been expressed more directly than is customary in international conventions of this kind; we leave open the possibility that certain points of detail might be more appropriately contained in official comments or explanatory reports (see Article 30(3) of the aviation text) to the proposed convention;

Article 7(a) as with Article 5, whether the relevant detail provided in paragraph (8) of the annexure to the aviation text relating to this Article 7(a) is necessary may depend upon the form and function of the official comments and explanatory report;

Article 10 please consider these draft provisions on the basic convention remedies applicable to a security assignment agreement upon a default by a security assignment assignor;

Article 12 Article 12(2) of the revised third draft permits a contracting state to limit non-judicial remedies in connection with a security agreement (but not a title reservation agreement or leasing agreement); our recommendations regarding these provisions would clarify that this issue applies to all remedies (save a judicial sale), including additional remedies -- we are of the view that a contracting state should be asked to enter a specific reservation if, as a policy matter, it seeks to prevent non-judicial remedies; we reserve on the question as to whether for this purpose the relevant contracting state should be the country of aircraft registration or the country in which the forum sits;

we would submit that the unqualified deference to the procedural law (which has a wide range of meaning across legal systems) contained in Article 12(1) of the revised third draft presents the potential to undermine the terms and intention of the remedy provisions; we have therefore recommended that Article 12(1) be subject to the overriding provisions of Article 12(2) (non-judicial remedies) and Article 13 (remedies timetable);

Article 17 this provision sets forth other interests that may be registered with the international register system, and by whom they may be so registered;

Article 22(1) in addition to setting forth broad priority rules, the lead-in makes clear that these priority rules also apply in respect of insurance proceeds (as agreed at the October meeting);

Article 23(1) pursuant to sub-paragraph (e), countries may differentiate between classes of preferred national creditors in cases in which they are and are not the country of aircraft registration;

the point set forth in sub-paragraph (h) is new and admittedly broadens the scope of the proposed convention; it has, therefore, been left in square brackets; as discussed above, given the extent to which the world's airline community includes government-owned and-controlled entities, our provisional recommendation -- which we would ask Unidroit to consider and on which we will revert after further consultations -- is that this clause is necessary to carry out the terms and intention of the proposed convention as relates to aircraft property;

Article 23(5) we will revert in due course on the relationship between the proposed convention and Unidroit's Convention on International Financial Leasing;

Article 24(2) as previously indicated, we have reserved on the question of whether reference should be made to the country of aircraft registration or, alternatively, to the country where the forum sits in determining the applicability of the optional contractual choice of law and additional remedies/mode of enforcement provisions; in addition, we have not yet taken a firm view on whether (initially or currently installed) aircraft

engines should be treated similarly to airframes in referring, for these purposes, to the country of aircraft registration;

- Article 25 the proposed convention sets forth a discrete set of rules that should not be prejudiced or qualified on grounds of inconsistency with mandatory rules or (except in the case of Article 24(1)(b) or (d)) public policy; the overriding objectives of the proposed convention, certainty and predictability, in our view demand this provision; the issues that face these types of objections are in our parlance "optional" and may be reserved upon by contracting states in accordance with Article 31 of the aviation text;
- Article 27 this is a broader revision of Article 13 of the revised third draft, which was limited to the effects of international interests as between the parties; we have previously emphasized the importance of the express non-applicability of the proposed convention to certain tangentially related third-party and other matters, such as the national taxation and non-contractual liability, and would draw attention specifically to the precedent on this point to be found in Article 5 of the United Nations Convention on Contracts for the International Sale of Goods;
- Article 28 the proposed convention shall constitute national law with universal application;
- Article 31 this provision sets forth the important rules relating to reservations that constitute a central feature of our approach to the proposed convention; and
- Article 32(2) without restricting the ability of any contracting state to denounce the proposed convention at any time, this provision makes clear that any such denouncement would not affect the rights of parties entering into transactions while the proposed convention was in effect in a contracting state; this would significantly reduce the change-in-law risk in asset-based financing and leasing transactions.

Annexure

- Para. (7) please note the bracketed language at the end of this clause, which is intended to suggest that it might be desirable to have a different central registrar for aircraft property than for other property; it would, however, be premature at this stage to express a view on this important issue;
- Para. (10) included in the definition of "courts" is the possibility of state-controlled arbitral tribunals (as agreed at the October meeting);

- Para. (22) in Article 22 of the aviation text, we have attempted to provide a comprehensive priority scheme including in relation to disputes involving national interests (see also paragraph (33) of the annexure for a listing of registrable national interests -- which are meant to be existing property rights other than those representing or analogous (under national law) to international interests under the proposed convention); see also paragraph 26 of the annexure for the definition of "preferred national interests" that would prevail without registration;
- Para. (27) the term "primary insolvency jurisdiction" is based on the analogous concept contained in the draft EC Convention on Insolvency Proceedings but contains amendments as regards the rebuttable presumption wording.

Concluding Comments

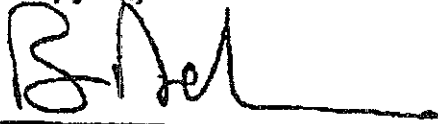
We hope that Unidroit will give due consideration to the views set forth in this second memorandum and in the aviation text and, consequently, that the aviation working group will remain in a position to vigorously promote the commercial and political acceptance of the proposed convention. In this regard, we would note that while we have kept certain governmental representatives (including European and U.S. export credit agencies and certain representatives of departments of state) informed of our work, and are sending copies of this second memorandum to those listed on the schedule hereto, the views expressed herein are solely those of the aviation working group.

We understand that the principal draftsman of these materials, Jeffrey Wool, will be attending both the study group and registry group meetings in April 1996 to address any questions and provide elaboration on these materials. Please note that we are also available to provide additional assistance as appropriate.

On matters of procedure, may we suggest the following. Subject to the decisions taken by Unidroit in April 1996, we would be pleased to continue building aviation industry support for the aviation text (as appropriately amended) and to determine the appropriate recommendations on the few points on which we have reserved, while continuing our consultation and coordination with the study group, on development of the base text, and with the registry group, on matters relating to the international register system.

We appreciate the opportunity to express the views of the aviation working group on these matters and to participate directly in the process of producing a commercially oriented and legally sound convention on security and leasing rights over aircraft property.

Sincerely yours,



Benoît Debains
Vice President, Customer Finance
Airbus Industrie



Kenneth Peters
Assistant Treasurer
The Boeing Company

We appreciate the opportunity to express the views of the aviation working group on these matters and to participate directly in the process of producing a commercially oriented and legally sound convention on security and leasing rights over aircraft property.

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**N.B. THIS PAGE HAS BEEN INCLUDED FOR PURPOSES OF CLARITY AND
LEGIBILITY.**

**[PLEASE REFER TO PREVIOUS PAGE FOR AIRBUS INDUSTRIE/THE
BOEING COMPANY SIGNATURE.]**

**Convention on International Interests
in Mobile Equipment**

DRAFT AVIATION TEXT*

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

- 1 - This Convention provides for the creation of an international interest in mobile equipment, determines certain effects of such international interest between the contracting parties, and establishes the relative priority among international interests and between international interests and national interests in mobile equipment.
- 2 - The international interest shall be of an autonomous character and shall have effect throughout the territories of the Contracting States.
- 3 - For the purposes of this Convention an international interest in mobile equipment is an interest in property of a kind listed in Article 2:
 - (a) granted by a chargor under a security agreement;
 - (b) retained by a seller under a title reservation agreement;
 - (c) retained by a lessor under a leasing agreement;
 - (d) granted by a security assignment assignor under a security agreement;
 - (e) transferred by a transferor under a transfer document; and
 - (f) assigned by an assignor under an assignment document.

* Certain explanatory comments in respect of this draft aviation text are contained in Part III of the aviation working group memorandum dated 7 March 1996. The general commercial and legal basis for the contents of this draft aviation text is set forth in the aviation working group memorandum dated 15 May 1995, as amended by the aviation working group memorandum dated 6 October 1995, and as supplemented by Parts I and II of the aviation working group memorandum dated 7 March 1996, in each case prepared jointly by Airbus Industrie/The Boeing Company (on behalf of the aviation working group) and submitted by invitation to Unidroit.

Certain provisions in this draft aviation text have been presented in overly broad terms to facilitate analysis of their underlying commercial and legal principles, and thus require further development in due course.

While this draft aviation text builds upon the revised (third) draft of the proposed convention, see Unidroit, 1996. Study LXXII - Doc. 22, 1996, it should not be regarded as representing the views of Unidroit. Rather, this draft aviation text has been submitted to Unidroit by the aviation working group as a set of recommendations designed to facilitate and reduce the cost of asset-based leasing and financing.

Article 2

1 - This Convention applies in relation to property of any of the following kinds:

- (a) airframes;
- (b) aircraft engines;
- (c) [registered ships];
- (d) oil rigs not intended to be permanently immobilised;
- (e) containers [with z cubic capacity of not less than x];
- (f) railway rolling stock;
- (g) satellites;
- (h) helicopters; and
- (i) [others]

2 - [Provision for an amendment of list from time to time by designated body pursuant to Article X]

Article 3

The terms and expressions listed in the annexure shall have the meanings set forth therein when used in this Convention.

CHAPTER II

THE INTERNATIONAL REGISTER SYSTEM

Article 4

1 - An international register system comprised of a central registrar and satellite registrars shall be established for the purpose of registering international interests and for purposes of Article 22 registrable national interests in conformity with this Convention.

2 - The central registrar shall be located in such place or places and managed under the direction of such body as shall be determined from time to time by the Governing Council of the International Institute for the Unification of Private Law (Unidroit) and shall be operated in accordance with the regulations.

3 - The satellite registrars shall:

- (a) [together with the central registrar,] be the only access points to the international register system [through which registrations can be made, amended and discharged under this Convention in accordance with Articles 17-19 and the regulations]; and
- (b) be managed and operated in accordance with the regulations.

- 4 - The international register system shall be organised such that:
- (a) registrations in respect of aircraft property shall be made by reference to the manufacturer's serial number of such aircraft property; and
 - (b) registrations in respect of [other property] shall be made by reference to [appropriate asset identification criteria].

CHAPTER III

CREATION OF INTERNATIONAL INTERESTS; CONDITIONS OF APPLICATION OF CHAPTERS IV TO IX

Article 5

1 - Subject to the provisions of Article 20, an international interest in property is created under this Convention, and Chapters IV to IX apply to such an interest as an international interest in property, only where the agreement providing for the interest:

- (a) is in writing signed by or on behalf of the parties;
- (b) relates to property in which the chargor, seller, lessor, transferee, assignee, security assignment assignee or engine rights grantor has an interest;
- (c) describes the property to which it relates in a manner sufficient to enable it to be identified; and
- (d) in the case of a security agreement, states the obligations secured.

2 - An agreement that complies with the requirements of Article 5(1) shall for all purposes of this Convention create and constitute a valid international interest regardless of whether or not:

- (a) the form of the interest so created would otherwise be recognised in a Contracting State;
- (b) additional actions or formalities would otherwise be required under the national law of a Contracting State to create such an interest in property;
- (c) application of otherwise applicable private international law rules of a Contracting State would determine the validity of such interest under other laws; and/or
- (d) other grounds exist under national law (except only in relation to the capacity of a person to enter into an agreement) that but for this provision would lead to the invalidation or non-recognition of such interest in property.

CHAPTER IV

EFFECTS OF AN AGREEMENT FOR AN INTERNATIONAL INTEREST AS BETWEEN THE PARTIES

Article 6

- 1 - The parties may agree in writing to exclude, wholly or in part, any rights conferred on the chargee, seller or lessor, security assignment assignee, assignee, transferee, engine rights grantee by this Chapter.
- 2 - This Chapter has effect subject to the provisions of the Unidroit Convention on International Financial Leasing of 1988, where applicable.

Article 7

The parties may provide in their agreement:

- (a) that the selected law shall govern all matters relating to their contractual rights and obligations under the transaction documents; and
- (b) in the case of a security agreement, a title reservation agreement, a leasing agreement and a security assignment agreement, as to what constitutes default ("default") giving rise to the remedies specified in Articles 8 to 11.

Article 8

- 1 - In the event of default by the chargor under a security agreement, the chargee may:
 - (a) obtain a court order for sale of all or part of the property charged to it and payment of the proceeds to the chargee, or otherwise obtain the proceeds and other benefits of realisation of the property;
 - (b) take possession of all or part of the property; and/or
 - (c) sell or grant a lease of all or part of the property -to the extent and on the terms set forth in the security agreement.
- 2 - At any time after default by the chargor, the parties may agree or the court may on the application of the chargee order that ownership of and title to all or part of the property charged to it shall vest in the chargee in satisfaction of all or any part of the chargee's claims under the security agreement.
- 3 - In exercising its powers under Article 8(2), the court shall have regard on the one hand to the value of the property to be vested in the chargee and on the other to the amount of the obligation that is to be satisfied by the vesting.

4 - At any time before sale of the charged property or the making of an order under Article 8(3), the chargor may redeem the property by paying the full amount secured by the security interest, subject to any lease granted by the chargee under Article 8(1)(c).

5 - A sale by the chargee in exercise of its rights under Article 8(1)(c), pursuant to an order of the court under Article 8(1)(a), or pursuant to Article 11, shall pass title to the purchaser free from any other international interest or any national interest over which the chargee's international interest has priority under the provisions of Article 22. Where such a sale results in a surplus above what is due to the chargee and is secured by the property sold, the surplus shall be paid by the chargee to the holder of any other registered interest ranking after the chargee's international interest or, if there is none, then to the chargor.

Article 9

In the event of default by the buyer under a title reservation agreement or by the lessee under a leasing agreement, the seller or lessor (as the case may be) may take possession of all or any of the property to which the agreement relates to the extent and on the terms set forth in the agreement.

Article 10

1 - In the event of default by the security assignment assignor under a security assignment agreement, the security assignment assignee shall as against the security assignment assignor be entitled to:

- (a) receive and apply against the secured debt all payments from the obligor in respect of the assigned rights and the proceeds and benefits of realisation of such assigned rights; and
- (b) exercise such assigned rights in accordance with the provisions of the agreement to which such assigned rights relate.

2 - Any payments or proceeds referred to in Article 10(1)(a) in excess of the amount secured by such security assignment agreement shall be for the benefit of the holder of any other registered interest ranking after the security assignment assignee's international interest or, if there is none, shall be retained by the security assignment assignee or held for the benefit of the security assignment assignor (as the case may be) in accordance with applicable law.

3 - The provisions of this Article 10 shall be without prejudice to the rights available to the security assignment assignee under applicable law prior to a default.

Article 11

The parties may agree upon any additional remedies for default by the chargor, buyer, lessee or security assignment assignor to the extent that they are consistent with the preceding provisions of this Chapter IV and are permitted under the applicable law of the relevant Contracting State.

Article 12

1 - Subject to Article 12(2) and, if applicable, Article 13(1) and (2), any remedy provided by this Chapter shall be exercised in conformity with the procedural law of the place where exercise of the remedy is sought.

2- The remedies available upon default to a chargee under Articles 8(1)(b) or (c), to a seller or lessor under Article 9, to a security assignment assignee under Article 10 and to a chargee, seller, or lessor or security assignment assignee (as the case may be) under Article 11 may be enforced without judicial proceedings, assistance, approval or intervention unless the relevant Contracting State has entered a reservation with respect to this Article 12(2).

CHAPTER V

CERTAIN ADDITIONAL PROVISIONS RELATING TO INTERNATIONAL INTERESTS

Article 13

1 - Judicial proceedings relating to the ability of a chargee, seller or lessor to take possession of all or any property as a result of a default under an agreement shall be completed within five (5) working days after the commencement of such judicial proceedings in a Contracting State, and such judicial proceedings shall be so commenced in a Contracting State within three (3) working days after an initiating instrument has been lodged by the holder of an international interest with the relevant authorities in such Contracting State.

2 - Without prejudice to Article 23(2)(b), judicial proceedings relating to any other claim or right under this Convention shall be completed within thirty (30) days after the commencement of such judicial proceedings in a Contracting State, and such judicial proceedings shall be so commenced in a Contracting State within three (3) working days after an initiating instrument has been lodged by the holder of an international interest with the relevant authorities in such Contracting State.

Article 14

Notwithstanding the insolvency laws in effect in any Contracting State that is the primary insolvency jurisdiction:

- (a) if and to the extent that the chargor, buyer or lessee has so agreed in the agreement to which a registered international interest relates:
 - (i) upon the earlier of (x) thirty (30) days of the insolvency event date and (y) the date (if any) on which under such insolvency laws the chargor, buyer or lessee would be required to cure all defaults under the agreement and transaction documents or return and deliver the property to the chargee, seller or lessor (such earlier date "the cure/return date"), the chargor, buyer or lessee shall cure

all such defaults and agree to perform all future obligations in accordance with the terms of the agreement and other transaction documents or return and deliver the property to the chargee, seller or lessor in accordance with and in the physical condition required by the terms of the agreement;

- (ii) no enforcement action or other exercise of remedies permitted under Article 8, 9, 11, or 23(2) by the chargee, seller or lessor against the chargor, buyer or lessee or the property upon the occurrence of default after the cure/return date shall be stayed, prevented or delayed; and
 - (iii) no contractual obligations or undertakings of the chargor, buyer or lessee under the agreement or transaction documents may be restructured, amended or modified without the consent of the chargee, seller or lessor; and
- (b) no class of creditors or other persons except holders of preferred insolvency interests may have priority under the insolvency laws of the primary insolvency jurisdiction over the rights and interest in property of a chargee, seller or lessor under this Convention.

Article 15

Each Contracting State (which is not the primary insolvency jurisdiction) in which property is situated shall on an expedited basis cooperate with and assist the relevant authorities in the primary insolvency jurisdiction in carrying out the provisions (if applicable) of Article 14.

Article 16

1 - Subject to Article 16(2)(a), an obligor shall be bound by the terms of any security assignment agreement or assignment document (as the case may be) to the extent it has [consented in writing thereto].

2 - The law governing the security agreement, title reservation agreement or leasing agreement that is the subject of a security assignment agreement or an assignment document shall:

- (a) determine the assignability of the assigned rights; and
- (b) determine:
 - (i) the relationship between the security assignment assignee or the assignee (as the case may be) and the obligor;
 - (ii) the conditions under which the security assignment agreement or assignment document can be invoked against the obligor; and

- (iii) any questions as to whether the obligor's obligations have been discharged -

but only to the extent that the matters set forth in clauses (a)(i) - (iii) above have not been addressed in the obligor consent referred to in Article 16(1) or by the terms of Article 16(3).

3 - In the event that an obligor is bound under this Convention or otherwise applicable law to conflicting security assignment agreements, assignment documents or national interests relating to the assigned rights, the relative priority of the rights of the competing security assignment assignees, and assignees and other national interest holders, shall rank as against the obligor in the order in which the same were registered in the international register system.

4 - No national interest in assigned rights is registrable under this Convention except a registrable national interest as defined in sub-clause (i) of paragraph (33) of the annexure.

CHAPTER VI

REGISTRATION OF INTERESTS

Article 17

- 1 - (a) An international interest may be registered in the international register system by the holder of such interest where:
 - (i) the agreement relating to it conforms to the provisions of Article 5(1); and
 - (ii) all parties to the agreement have consented in writing to the registration.
- (b) The following additional interests may be registered in the international register system by the parties so noted below:
 - (i) the interest of a security assignment assignee or assignee (as the case may be) as against an obligor arising by virtue of the obligor's consent ("obligor consent") to a security assignment agreement or assignment document (as the case may be) - by the security assignment assignee or assignee (as the case may be);
 - (ii) the interest of a holder of a registrable national interest in property - by the holder of such interest; and
 - (iii) the interest of the holder of a registered interest arising by virtue of an agreement by the holder of another registered interest to subordinate its priority in property to that of the registered interest

of such person - by the person to whose interest another's has been subordinated.

- (c) Notices of intention to file a registration in respect of an international interest may also be registered [by the holder of a prospective international interest] ("priority notice").

2 - A party entitled to register with the international register system pursuant to Article 17(1) may transmit or deliver to [the central registrar or] the relevant satellite registrar (as the case may be) a notice in writing ("registration notice") conforming to the regulations in respect of such types of registration.

3 - Registration notices shall be accompanied by such supporting documents and evidence as are required by [the central registrar or] the relevant satellite registrar (as the case may be) acting in accordance with the regulations, including:

- (a) in respect of the registration of an international interest, evidence that the agreement complies with the requirements of Article 5(1)(a), (c) and (d) and that the parties to such agreement have consented to the registration;
- (b) in respect of the registration of an obligor consent, evidence that the obligor has consented to the relevant security assignment agreement or assignment document (as the case may be);
- (c) in respect of a registrable national interest, evidence that such interest validly exists under the relevant national law;
- (d) in respect of the registration of a subordination, evidence that the party subordinating its interest has consented to the registration; and
- (e) in respect of the registration of a priority notice, evidence [of the existence of the prospective international interest] [that the prospective chargor, lessee or buyer has consented to the registration of such priority notice].

4 - All registration notices complying with the requirements of Article 17(1)-(3) shall be registered in the international register system by [the central registrar or] the relevant satellite registrar (as the case may be). Registration takes effect when a registration notice has been recorded in the international register system, has been allotted a registration number and is searchable. A registration notice is "searchable" when [_____].

5 - Registration remains effective up to the date or until expiry of the period specified in the registration notice.

6 - A registration is valid despite an irregularity in the registration notice unless the irregularity is seriously misleading and the relevant party is actually misled by it.

Article 18

1 - A party entitled to register with the international register system pursuant to Article 17 wishing to have its registration amended shall transmit or deliver to [the central registrar or] the relevant satellite registrar (as the case may be) a notice in writing ("registration amendment notice") conforming to the regulations in respect of such types of registration.

2 - Registration amendment notices shall be accompanied by such supporting documents and evidence as are required by [the central registrar or] the relevant satellite registrar (as the case may be) acting in accordance with the regulations including the same evidence in respect of such amendment as was required in connection with the registration being so amended.

3 - An amended registration takes effect when a registration amendment notice has been recorded in the international register system and is searchable, and remains effective up to the date or until expiry of the period specified in the registration amendment notice.

4 - The registration shall be discharged on the earlier of the date or period specified pursuant to Article 17(5) or Article 18(3) (as the case may be) and on the transmission or delivery to [the central registrar or] the relevant satellite registrar (as the case may be) in conformity with the regulations of a notice in writing ("registration discharge notice") signed by or on behalf of the party making the registration. Such registration discharge notice shall be accompanied by supporting documents and evidence as are required by [the central registrar or] the relevant satellite registrar (as the case may be) acting in accordance with the regulations.

Article 19

A certificate of registration that records the time when any registration becomes searchable issued by [the central registrar or] the satellite registrars (as the case may be) shall be *prima facie* evidence of the fact, time, order and contents of registration without the need to prove the authenticity of the certificate.

Article 20

Articles 17 to 19 apply *mutatis mutandis* to a prospective international interest as they apply to an international interest.

[Article 21

Liability of International Registry]

CHAPTER VII

EFFECTS OF AN INTERNATIONAL INTEREST AS AGAINST THIRD PARTIES

Article 22

1 - Subject to Article 22(2), the holder of a registered interest in property ("the registered interest holder") has priority over any competing interest in such property or insurance proceeds payable upon the physical loss of such property of:

- (a) the holders of all unregistered international interests in such property;
- (b) the holders of all unregistered national interests in such property (whether or not such national interests were registrable national interests) except preferred national interests;
- (c) the holders of all registered interests in such property that have been registered with the international register system subsequent in time to the registration of the interest of the registered interest holder, except:
 - (i) a holder of a registered interest to whom such registered interest holder has subordinated its registered interest as evidenced by a registered subordination notice; and
 - (ii) the holder of an international interest to whom such registered interest holder has transferred or assigned its international interest in such property; and
- (d) the holders of all previously registered interests in such property:
 - (i) that have been transferred or assigned to the registered interest holder pursuant to an agreement registered under this Convention;
 - (ii) that have subordinated their interests in such property to that of the registered interest holder pursuant to a subordination evidenced by a registered subordination notice; or
 - (iii) to the extent of any [value added] [advances made] by such holders without a pre-existing obligation to do so and at the time when it had actual knowledge of the registered interest of the registered interest holder.

- 2 - (a) A registered interest holder who has acquired its interest from a chargee, seller or lessor, whether by contract or by operation of law, shall have the same priority rights in property as the person from whom it acquired its interest.

- (b) The priority rights of a [person] [holder of a prospective international interest] registering a priority notice in accordance with Article 17(1)(c) shall be the same as those of a registered interest holder under Article 22(1), determined as of the date of the registration of such priority notice, if a registration notice evidencing the international interest that was the subject of such priority notice is registered within [seven (7) days] of the registration of such priority notice.
- 3 - The priority of interests as among and between holders of unregistered interests shall be determined in accordance with otherwise applicable law.
- 4 - (a) An international interest is valid against the trustee in bankruptcy if prior to the bankruptcy the international interest has been registered in conformity with this Convention.

(b) For the purpose of this Article 22(4) "trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of the chargor, lessee, buyer, security assignment assignor or obligor, for the benefit of the general body of creditors.
- 5 - Subject to Articles 14 and 15, nothing in this Article 22 shall affect any other rules of insolvency law applicable to the insolvency of the chargor, buyer, lessee, security assignment assignor or obligor.

CHAPTER VIII

SPECIAL PROVISIONS FOR AIRCRAFT PROPERTY

Article 23

- 1 - For purposes of this Convention as the same relates to aircraft property the following supplementary provisions and modifications and amendments to this Convention shall apply:
 - (a) a "leasing agreement" as defined in paragraph (20) of the annexure and referred to in this Convention shall include agreements that are otherwise within the definition thereof but are for a period of less than three (3) years;
 - (b) for purposes of paragraph (31) of the annexure the reference to a registration "against property to which an agreement relates" means a registration against the manufacturer's serial number of such aircraft property;
 - (c) for purposes of Article 5(1)(c) a description of aircraft property that contains its manufacturer's serial number and the name of the manufacturer and model designation shall be "sufficient to enable it to be identified";

- [(d) the provisions of Article 6(2) shall not apply as contemplated by Article 23(5)(c)];
 - (e) each Contracting State may in its ratification instrument differentiate for purposes of Article 22 between holders of "preferred national interests" in cases where such Contracting State is the country of registration and in cases where it is not the country of registration;
 - (f) the provisions of Article 22(1)(d)(iii) shall not apply;
 - (g) the priority of a registered international interest of an engine rights grantee in aircraft engines shall be the same as a registered interest holder (as defined and set forth in Article 22(1)) without further condition if at the time of any priority dispute the specifically identified engine that is the subject of the special engine agreement is installed on the specifically identified airframe referred to in such special engine agreement.
 - (h) a waiver of sovereign immunity from jurisdiction of the courts referred to in Articles 24(1)(a) and (b) and Article 23(1)(i), and/or in respect of enforcement against property in accordance with Articles 8-11, 13(1) or 14(a)(ii), shall be valid and binding under this Convention; and
 - (i) in addition to the courts of Contracting States set forth in Articles 24(1)(a)(i) and (ii) and Article 24(1)(b), the courts of the country of registration shall also have jurisdiction over disputes giving rise to legal proceedings relating to the subject of this Convention.
- 2 - (a) This Article 23(2) applies only where the chargor, buyer or lessee has agreed in writing and has submitted an authorisation which is expressed to be irrevocable and exclusive in favour of the chargee, seller, lessor, assignee or security assignment assignee ("authorised party") to the relevant aviation authority in the country of registration in the form required under the regulations.
- (b) After a default by the chargor, buyer or lessee and upon application by the authorised party, the relevant authorities in the country of registration shall [within seven (7) days] of such application take all actions necessary to:
- (i) effect the deregistration of the aircraft property; and
 - (ii) permit and authorise the export and removal of the aircraft property from its territory -
- provided that any registered interest in the aircraft property having priority over the interest therein of the authorised party shall have been satisfied or the holder of any such prior registered interest shall have consented to such deregistration, export and removal.

- (c) If the default and all other defaults are fully cured by the chargor, buyer or lessee prior to the deregistration of the aircraft property, the authorised party shall promptly withdraw the application (if any) made to the relevant aviation authorities in accordance with Article 23(2)(a).
- (d) The provisions of this Article 23(2) shall be without prejudice to any right that the chargee, seller, lessor, assignee or security assignment assignee may have under the national laws of the country of registration to effect such deregistration of the aircraft property and the export and removal of the aircraft property (i) without the authorisation of the chargor, buyer or lessee referred to above or (ii) pursuant to other applicable procedures in less than [seven (7) days].

3 - A person taking possession of an airframe (in accordance with Articles 8-11, or 14(a)(i) or (ii)) shall not be liable as a result of such action to any person with an interest in an aircraft engine installed thereon, provided that such person makes reasonable efforts to promptly search the international register system and identify, contact and cooperate with the holder (if any) of a registered interest in such aircraft engine having first priority therein under Article 22.

4 - (a) Where a Geneva Convention Contracting State is the country of registration: *

- (i) the reference to the "laws" of such Geneva Convention Contracting State for purposes of Article I(1)(i) of the Geneva Convention of 1948 shall be to the laws of such Geneva Convention Contracting State after giving effect to the implementation of this Convention as ratified by such Geneva Convention Contracting State in its ratification instrument; and
- (ii) it shall not prohibit the registration of any right or interest under this Convention pursuant to Article II(3) of the Geneva Convention of 1948.

(b) As between Geneva Convention Contracting States, the term "aircraft" as referred to in Article I(1)(a)-(d) of the Geneva Convention of 1948 shall be replaced by the terms "airframes" (as defined in this Convention) and "aircraft engines (as defined in this Convention) installed on airframes [at the time of registration]".

* The draft provision requires elaboration and refinement in order to ensure its consistency/coordination with the terms of the Geneva Convention of 1948; such provision (along with Article 23(5)(a)) has been drafted broadly and simply to facilitate general analysis.

By way of example, it will need to be made clear that, for purposes of Article I(1)(ii) of the Geneva Convention of 1948, "a public record of the Contracting State in which the aircraft is registered as to nationality" shall be deemed to include the relevant satellite registrar of the international register system under this Convention.

5 - This Convention shall, for the Contracting States, supersede the following conventions between two or more of them:

- (a) the Geneva Convention of 1948 except in respect of each Geneva Convention Contracting State's undertakings in Article I of the Geneva Convention of 1948;
- (b) the Convention of 1933 for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft but only to the extent that the Contracting State [in which the aircraft property is arrested] [which is the country of registration] has not entered a reservation in its ratification instrument with respect to Article 12(2); and
- [(c) the Unidroit Convention on International Financial Leasing of 1988 as the same relates to aircraft [but only to the extent that such convention is inconsistent with the provisions of this Convention].]

CHAPTER IX

CERTAIN JURISDICTIONAL, COORDINATIVE AND FINAL PROVISIONS

Article 24

- 1 - (a) The courts of a Contracting State shall have jurisdiction over disputes giving rise to legal proceedings relating to this Convention if such Contracting State is:
- (i) the legal domicile of the chargor, buyer, lessee, transferor, assignor, security assignment assignor or engine rights grantor (as the case may be), or is the location in which the centre of such party's main interests is situated; or
 - (ii) the location in which the relevant property is based or situated.
- (b) The courts of any other Contracting State designated by the parties to an agreement shall also have jurisdiction over disputes giving rise to legal proceedings relating to this Convention unless such jurisdiction violates the fundamental public policy of the Contracting State in which such courts sit.
- (c) Whether or not the courts of Contracting States other than those set forth in Article 24(1) (a) and (b) have jurisdiction over disputes relating to this Convention shall be determined in accordance with the private international law rules of such Contracting States.
- (d) Nothing in this Convention shall prejudice the rights of the parties to an agreement to designate that the courts of a Contracting State or any other state shall have exclusive jurisdiction over disputes between such parties giving rise to legal proceedings relating to this Convention. In the event

- (i) the provisions of Article 7(a) relating to the contractual choice of law by the parties to an agreement;
 - (ii) the provisions of Article 12(2) relating to the availability of remedies without judicial proceedings, assistance, approval or intervention;
 - (iii) the provisions of Article 13(1) and/or 13(2) relating to the timetable for judicial proceedings relating to remedies under this Convention;
 - (iv) the provisions of Article 14 relating to special insolvency rules applicable to the primary insolvency jurisdiction; and
 - (v) the provisions of Article 15 relating to special insolvency rules applicable in Contracting States other than the primary insolvency jurisdiction;
- (b) may set forth:
- (i) its preferred national interests for purposes of Article 22; and
 - (ii) its preferred insolvency interests for purposes of Article 14(b);
- (c) shall set forth:
- (i) the organisations, if any, that will constitute satellite registrars in its country for each class of property listed in Article 2(1);
 - (ii) the applicable courts for purposes of paragraph (10) of the annexure, Article 13 and Article 24;
 - (iii) the relevant authorities referred to in Articles 13(1) and (2) for purposes of initiating legal proceedings; and
 - (iv) the relevant aviation authority for purposes of Article 23(2).

3 - Any Contracting State may at any time withdraw a reservation that it has made in its ratification instrument; any such reservation shall cease to have effect on the first day of the third calendar month after the date the depositary has received the subject withdrawal.

4 - No reservations are permitted, except those expressly permitted under Article 31(2), and no Contracting State may make a reservation, except in its ratification instrument initially deposited with the depositary.

5 - (a) Any Contracting State may at any time amend its listing of preferred national interests or preferred insolvency interests by lodging a declaration to that effect with the depositary; any such amendment shall,

subject to Article 31(5)(b), take effect on the first day of the third calendar month after the date on which the depositary has received the subject declaration.

- (b) The amendments permitted by Article 31(5)(a) shall have no effect on the application of Article 14(b) or 22 (as the case may be) in respect of the rights of any party that has registered an interest prior to the effective date of any such amendment.

Article 32

1 - This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State; any such denouncement shall, subject to Article 32(2), take effect on the first day of the third calendar month after the date on which the depositary has received the subject denouncement.

2 - A denouncement by a Contracting State permitted by Article 32(1) shall have no effect on the rights under this Convention of a holder of an international interest registered prior to the date on which such denouncement becomes effective, nor shall it relieve such Contracting State of its agreements under this Convention relating to such registered international interest.

ANNEXURE

(1) "agreement" means a security agreement, a title reservation agreement, a leasing agreement, a security assignment agreement, an assignment document, a transfer document or a special engine agreement;

(2) "aircraft engines" means aircraft engines powered by jet propulsion or turbine technology that, in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent and, in the case of turbine-powered aircraft engines, have at least [550 rated takeoff shaft horsepower] or its equivalent, all modules and other appurtenances, accessories and other parts and equipment installed or incorporated therein or attached thereto, and all technical data, manuals, log books and other records relating to all or part of any of the foregoing except aircraft engines used by governmental authorities for military, customs or police purposes;

(3) "aircraft property" means airframes, aircraft engines, [helicopters] and all interests in agreements relating to airframes, aircraft engines [and helicopters];

(4) "airframes" means airframes that, when appropriate aircraft engines are installed thereon, are capable of transporting, or are certified by the initial country of registration to transport, at least ten (10) passengers or goods [in excess of 2750 kilograms], all appurtenances, accessories, furnishings, appliances and other equipment and parts (other than the aircraft engines) installed or incorporated therein or attached thereto, and all technical data, manuals, log books and other records relating to all or part of any of the foregoing except any such airframe used by governmental authorities for military, customs or police purposes;

(5) "assigned rights" means all rights assigned by a security assignment assignor to a security assignment assignee pursuant to a security assignment agreement or by an assignor to an assignee pursuant to an assignment document (as the case may be);

(6) "assignment document" means an agreement (other than a security assignment agreement) or instrument by or in which one person ("the assignor") assigns its interest in a security agreement, a title reservation agreement or a leasing agreement to another person ("the assignee") and that is expressed to fully divest the assignor of the interest in and under such agreements;

(7) "central registrar" means [_____], the central registrar of the international register system [in respect of aircraft property and _____], the central registrar of the international register system in respect of property other than aircraft property];

(8) "contractual rights and obligations" under transaction documents when referred to in Article 7(a) concerns all matters relating to (i) the interpretation and construction of the transaction documents; (ii) the performance under the transaction documents; (iii) whether a default (as defined in Article 7(b)) has occurred under the agreement; (iv) whether obligations under the transaction documents have been extinguished and/or

discharged; (v) the assessment of damages as a consequence of non-performance or breach under the transaction documents; and (vi) the consequences of the nullity of the agreement and/or the other transaction documents;

(9) "country of registration" means in respect of an aircraft property the Contracting State in which such aircraft property is registered under the Chicago Convention of 1944 on International Civil Aviation or any successor or superseding international agreement governing the nationality of aircraft property;

(10) "courts" means in respect of a Contracting State the judicial or arbitral tribunals, including appellate tribunals designated in the ratification instrument of such Contracting State with lawful authority to issue binding rulings and decisions under the national laws of such Contracting State;

(11) "deregistration of the aircraft property" means in respect of the country of registration the deregistration of the aircraft property from that country under such country's laws and regulations referred to in Article 19 of the Chicago Convention of 1944 or the analogous part of any successor or superseding international agreement;

(12) "Geneva Convention Contracting State" means such Contracting States that have ratified, or that in the future ratify, the Geneva Convention of 1948;

(13) "Geneva Convention of 1948" means the Convention of 1948 on the International Recognition of Rights in Aircraft;

(14) "helicopters" means [_____];

(15) "insolvency event date" means the earlier of (i) the date on which any insolvency proceedings have been commenced under applicable national law and (ii) the date on which a chargor, buyer or lessee declares its intention to suspend or impose a moratorium on, or actually suspends or imposes a moratorium on, the payment of its debt or rental obligations to its creditors generally;

(16) "insolvency laws" means in respect of a Contracting State the bankruptcy laws, insolvency laws, liquidation laws, administration or reorganisation laws or any other similar laws affecting creditors generally in such Contracting State;

(17) "insolvency proceedings" means any bankruptcy, insolvency, liquidation, administration, reorganisation or any other similar proceedings affecting creditors generally in respect of a chargor, buyer or lessee or its assets;

(18) "international interest" means an interest created under this Convention to which Article 1(3) applies;

(19) "judicial proceedings" means in respect of a Contracting State all legal and judicial proceedings under the national laws of such Contracting State required to issue under such national laws a non-appealable and non-reviewable final judicial decision or ruling in respect of the subject matter of such proceedings;

(20) "leasing agreement" means an agreement by which one person ("the lessor") leases or agrees to lease (with or without an option to purchase) property to another person ("the lessee") for a period of not less than [three (3)] years, pursuant to which care, custody and control of such leased property passes to the lessee for the period of the leasing agreement;

(21) "manufacturer's serial number" means in respect of such category of property the number assigned to such property by the manufacturer thereof as supplemented by additional digits, letters and/or symbols as set forth in the regulations necessary to ensure the uniqueness of any such number;

(22) "national interest" means any interest in property (other than an international interest) arising under national law;

(23) "obligor" means in respect of a security assignment agreement or an assignment document (i) where the assigned rights arise under a security agreement, the chargor, (ii) where the assigned rights arise under a title reservation agreement, the buyer, and (iii) where the assigned rights arise under a leasing agreement, the lessee;

(24) "party" means any individual, firm, corporation, partnership, joint venture, association, unincorporated organization or government, any agency or political subdivision thereof, and any of the foregoing acting in a capacity as trustee or agent, whether residing or having nationality in any Contracting State or not, that has entered into an agreement;

(25) "preferred insolvency interests" means in respect of a Contracting State that is the primary insolvency jurisdiction the classes of interests (other than interests that are registrable national interests as defined in sub-clauses (i) or (iii) of paragraph (33) of this annexure) in property that:

- (i) under the insolvency laws of such Contracting State would have priority over the rights in property of the owner of such property or a holder of a previously granted and registered or perfected security interest in or mortgage of such property, and

- (ii) are set forth in reasonable detail by such Contracting State in its ratification instrument -

but only to the extent that such classes of interests are expressed in such ratification instrument to constitute preferred insolvency interests with priority over the rights in property of a chargee, seller, lessor [or security assignment assignee] under this Convention;

(26) "preferred national interests" means in respect of a Contracting State the interests (other than interests that are registrable national interests as defined in sub-clauses (i) or (iii) of paragraph (33) of this annexure) that:

- (i) under the national laws of such Contracting State would have priority over the rights in property of the owner of such property or

a holder of a previously granted and registered or perfected security interest in or mortgage of such property, and

- (ii) are set forth in reasonable detail by such Contracting State in its ratification instrument;

but only to the extent that such classes of interests are expressed in such ratification instrument to constitute preferred interests with priority over the rights in property of a chargee, seller, lessor [or security assignment assignee] under this Convention;

(27) "primary insolvency jurisdiction" means in respect of a chargor, buyer or lessee the country in which the centre of such chargor's, buyer's or lessee's main interests is situated [(which shall be presumed to be the country under whose laws such chargor, buyer or lessee has been constituted in the absence of the proof that another country is effectively exercising jurisdiction in the insolvency proceedings over the principal asset of such chargor, buyer or lessee];

(28) "property" means property of a kind listed in Article 2(1);

(29) "prospective international interest" means an interest that will come into existence as an international interest upon the chargor, seller, lessor, security assignment assignor, [assignor, transferee] or engine rights grantor acquiring rights in the property to which the agreement providing for the interest relates;

(30) "ratification instrument" means in respect of a Contracting State the instrument of ratification deposited by such Contracting State with the depositary in accordance with Article 31(1), as such instrument may be amended in accordance with Article 31(5);

(31) "registered" means registered in the international register system against property to which an agreement relates in accordance with Article 17(4);

(32) "registered interest" means a registered international interest or a registered registrable national interest;

(33) "registrable national interest" means a national interest in property of:

- (i) persons who have attached or executed against property in satisfaction of judgements issued by national courts;
- (ii) persons who have performed services in respect of such property for which they have not received compensation;
- (iii) persons who have lawfully acquired an interest in property by virtue of the installation of such property in or on, or the attachment of such property to, other types of property in which such person has an interest or the application of national accession or similar rules; or

- (iv) persons who have lawfully exercised (including as agent for others) a right to detain or attach or execute against property by virtue of the non-payment of taxes, fees or similar governmental charges;
- (34) "registration amendment notice" means the notice in writing referred to in Article 18(1);
- (35) "registration discharge notice" means the notice in writing referred to in Article 18(4);
- (36) "registration notice" means the notice in writing referred to in Article 17(2);
- (37) "regulations" means the rules and regulations promulgated from time to time by the body referred to in Article 4(2);
- (38) "relevant Contracting State" means:
- (i) in relation to aircraft property, the Contracting State [that is the country of registration] [in which the subject judicial proceedings relating to this Convention are occurring]; [and
 - (ii) in relation to property other than aircraft property, the Contracting State in which [the centre of the chargor's, buyer's, lessee's, transferor's, assignor's, security assignment assignor's [or engine rights grantor's] (as the case may be) main interests is situated] [the subject judicial proceedings relating to this Convention are occurring];
- (39) "relevant satellite registrar" means:
- (i) in respect of registrations relating to [airframes] [aircraft property], the satellite registrar in the country of registration; or
 - [(ii) in respect of registrations relating to other property, the satellite registrar in which the centre of the chargor's, buyer's, lessee's, security assignment assignor's, assignor's or transferor's (as the case may be) main interests is situated.]
- (40) "satellite registrar" means in respect of a Contracting State the registrar designated, for each class of property listed in Article 2(1), by such Contracting State in its ratification instrument as the satellite registrar in such Contracting State for purposes of Articles 4 and 17-19;
- (41) "security agreement" means an agreement by which one person ("the chargor") gives or agrees to give to another person ("the chargee") an interest ("security interest") in or over property to secure the performance of an existing or future obligation;
- (42) "security assignment agreement" means an agreement (other than an assignment document) by one person ("the security assignment assignor") to create a security interest

in its interests in a security agreement, a title reservation agreement or a leasing agreement securing performance of an existing or future obligation to another person ("the security assignment assignee");

(43) "selected law" means in respect of an agreement or other contract or instrument constituting a transaction document the law or laws expressed to govern such agreement, contract, or instrument other than its rules of private international law;

(44) "special engine agreement" means an agreement in which one person ("the engine rights grantor") agrees that, upon the installation of a specifically identified aircraft engine on a specifically identified airframe, title to or security rights in respect of such engine would transfer to another person ("the engine rights grantee");

(45) "take possession" means in respect of all or any property action or actions the cumulative effect of which is that physical control over such property is transferred to the chargee, seller or lessor (or their agents).

(46) "title reservation agreement" means an agreement by which one person ("the seller") sells or agrees to sell property to another person ("the buyer") on terms that ownership of such property does not pass until performance of the buyer's obligations;

(47) "transaction documents" means in respect of an agreement such agreement and all other contracts and instruments expressly contemplated by such agreement as constituting an integral part of the transactions contemplated by such agreement;

(48) "transfer document" means an agreement (other than a title reservation agreement) or instrument by or in which one person ("the transferor") sells or agrees to sell property to another person ("the transferee") and that is expressed to fully divest the transferor of its interest in the property;

(49) "unregistered" means not registered as stated in paragraph (31) of this annexure;

(50) "writing" means an authenticated record of information (including information by teletransmission) that is in tangible form; and

(51) the following additional terms shall have the meanings given in the referenced Articles: "authorised party" (Article 23(2)(a)); "cure/return date" (Article 14(a)(i)); "default" (Article 7(b)); "depository" (Article 31(1)); "mandatory rules" (Article 25); "obligor consent" (Article 17(b)(i)); "priority notice" (Article 17(1)(c)); "registered interest holder" (Article 22(1)); and "searchable" (Article 17(4)).

Draft Aviation Text Marked Against Current (Third) Draft of the Proposed Convention

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

- 1 - This Convention provides for the creation of an international interest in mobile equipment, determines certain effects of such international interest between the contracting parties, and establishes the relative priority among international interests and between international interests and national interests in mobile equipment.
- 2 - The international interest shall be of an autonomous character and shall have effect throughout the territories of the Contracting States.
- 3 - For the purposes of this Convention an international interest in mobile equipment is an interest in property of a kind listed in Article 2:
- (a) granted by a chargor under a security agreement;
 - (b) retained by a seller under a title reservation agreement;
 - (c) retained by a lessor under a leasing agreement;
 - (d) granted by a security assignment assignor under a security agreement;
 - (e) transferred by a transferor under a transfer document; and
 - (f) assigned by an assignor under an assignment document.

Article 2

- 1 - This Convention applies in relation to property of any of the following kinds:
- (a) airframes;
 - (b) aircraft engines;
 - (c) [registered ships];
 - (d) oil rigs not intended to be permanently immobilised;
 - (e) containers [with z cubic capacity of not less than x];
 - (f) railway rolling stock;
 - (g) satellites;
 - (h) helicopters; and
 - (i) [others]

- 2 - [Provision for an amendment of list from time to time by designated body pursuant to Article X]

Article 3^{*/}

The terms and expressions listed in the annexure shall have the meanings set forth therein when used in this Convention.

CHAPTER II

THE INTERNATIONAL REGISTER SYSTEM

Article 4

1 - An international register system comprised of a central registrar and satellite registrars shall be established for the purpose of registering international interests and for purposes of Article 22 registrable national interests in conformity with this Convention.

2 - The central registrar shall be located in such place or places and managed under the direction of such body as shall be determined from time to time by the Governing Council of the International Institute for the Unification of Private Law (Unidroit) and shall be operated in accordance with the regulations.

3 - The satellite registrars shall:

- (a) [together with the central registrar,] be the only access points to the international register system [through which registrations can be made, amended and discharged under this Convention in accordance with Articles 17-19 and the regulations]; and
- (b) be managed and operated in accordance with the regulations.

4 - The international register system shall be organised such that:

- (a) registrations in respect of aircraft property shall be made by reference to the manufacturer's serial number of such aircraft property; and
- (b) registrations in respect of [other property] shall be made by reference to [appropriate asset identification criteria].

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^{*/}connection to contracting state concept addressed in Article 24. N.B.— no traditional internationality requirement as such: aircraft property is per se international

CHAPTER III

CREATION OF INTERNATIONAL INTERESTS; CONDITIONS OF APPLICATION OF CHAPTERS IV TO IX

Article 5

1 - Subject to the provisions of Article ~~20~~, an international interest in property is created under this Convention, and Chapters IV to IX apply to such an interest as an international interest in property, only where the agreement providing for the interest:

- (a) is in writing signed by or on behalf of the parties;
- (b) relates to property in which the chargor, seller, lessor, transferee, assignee, security assignment assignee or engine rights grantor has an interest;
- (c) describes the property to which it relates in a manner sufficient to enable it to be identified; and
- (d) in the case of a security agreement, states the obligations secured.

2 - An agreement that complies with the requirements of Article 5(1) shall for all purposes of this Convention create and constitute a valid international interest regardless of whether or not:

- (a) the form of the interest so created would otherwise be recognised in a Contracting State;
- (b) additional actions or formalities would otherwise be required under the national law of a Contracting State to create such an interest in property;
- (c) application of otherwise applicable private international law rules of a Contracting State would determine the validity of such interest under other laws; and/or
- (d) other grounds exist under national law (except only in relation to the capacity of a person to enter into an agreement) that but for this provision would lead to the invalidation or non-recognition of such interest in property.

CHAPTER IV

EFFECTS OF AN AGREEMENT FOR AN INTERNATIONAL INTEREST AS BETWEEN THE PARTIES

Article 6

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1 - The parties may agree in writing to exclude, wholly or in part, any rights conferred on the chargee, seller or lessor, security assignment assignee, assignee, transferee, engine rights grantee by this Chapter.

2 - This Chapter has effect subject to the provisions of the Unidroit Convention on International Financial Leasing of 1988, where applicable.

Article 7

The parties may provide in their agreement:

- (a) that the selected law shall govern all matters relating to their contractual rights and obligations under the transaction documents; and
- (b) in the case of a security agreement, a title reservation agreement, a leasing agreement and a security assignment agreement, as to what constitutes default ("default") giving rise to the remedies specified in Articles 8 to 11.

Article 8

1 - In the event of default by the chargor under a security agreement, the chargee may:

- (a) obtain a court order for sale of all or part of the property charged to it and payment of the proceeds to the chargee, or otherwise obtain the proceeds and other benefits of realisation of the property;
- (b) take possession of all or part of the property; and/or
- (c) sell or grant a lease of all or part of the property;

to the extent and on the terms set forth in the security agreement.

2 - At any time after default by the chargor, the parties may agree or the court may on the application of the chargee order that ownership of and title to all or part of the property charged to it shall vest in the chargee in satisfaction of all or any part of the chargee's claims under the security agreement.

3 - In exercising its powers under Article 8(2), the court shall have regard on the one hand to the value of the property to be vested in the chargee and on the other to the amount of the obligation that is to be satisfied by the vesting.

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4 - At any time before sale of the charged property or the making of an order under Article 8(3), the chargor may redeem the property by paying the full amount secured by the security interest, subject to any lease granted by the chargee under Article 8(1)(c).

5 - A sale by the chargee in exercise of its rights under Article 8(1)(c), pursuant to an order of the court under Article 8(1)(a), or pursuant to Article 11, shall pass title to the purchaser free from any other international interest or any national interest over which the chargee's international interest has priority under the provisions of Article 22. Where such a sale results in a surplus above what is due to the chargee and is secured by the property sold, the surplus shall be paid by the chargee to the holder of any other registered interest ranking after the chargee's international interest or, if there is none, then to the chargor.

Article 9

In the event of default by the buyer under a title reservation agreement or by the lessee under a leasing agreement, the seller or lessor (as the case may be) may take possession of all or any of the property to which the agreement relates to the extent and on the terms set forth in the agreement.

Article 10

1 - In the event of default by the security assignment assignor under a security assignment agreement, the security assignment assignee shall as against the security assignment assignor be entitled to:

- (a) receive and apply against the secured debt all payments from the obligor in respect of the assigned rights and the proceeds and benefits of realisation of such assigned rights; and
- (b) exercise such assigned rights in accordance with the provisions of the agreement to which such assigned rights relate.

2 - Any payments or proceeds referred to in Article 10(1)(a) in excess of the amount secured by such security assignment agreement shall be for the benefit of the holder of any other registered interest ranking after the security assignment assignee's international interest or, if there is none, shall be retained by the security assignment assignee or held for the benefit of the security assignment assignor (as the case may be) in accordance with applicable law.

3 - The provisions of this Article 10 shall be without prejudice to the rights available to the security assignment assignee under applicable law prior to a default.

Article 11

The parties may agree upon any additional remedies for default by the chargor, buyer, lessee or security assignment assignor to the extent that they are consistent with the preceding provisions of this Chapter IV and are permitted under the applicable law of the relevant Contracting State.

Article 12

1 - Subject to Article 12(2) and, if applicable, Article 13(1) and (2), any remedy provided by this Chapter shall be exercised in conformity with the procedural law of the place where exercise of the remedy is sought.

2- The remedies available upon default to a chargee under Articles 8(1)(b) or (c), to a seller or lessor under Article 9, to a security assignment assignee under Article 10 and to a chargee, seller, or lessor or security assignment assignee (as the case may be) under Article 11 may be enforced without judicial proceedings, assistance, approval or intervention unless the relevant Contracting State has entered a reservation with respect to this Article 12(2).

CHAPTER V

CERTAIN ADDITIONAL PROVISIONS RELATING TO INTERNATIONAL INTERESTS

Article 13

1 - Judicial proceedings relating to the ability of a chargee, seller or lessor to take possession of all or any property as a result of a default under an agreement shall be completed within five (5) working days after the commencement of such judicial proceedings in a Contracting State, and such judicial proceedings shall be so commenced in a Contracting State within three (3) working days after an initiating instrument has been lodged by the holder of an international interest with the relevant authorities in such Contracting State.

2 - Without prejudice to Article 23(2)(b), judicial proceedings relating to any other claim or right under this Convention shall be completed within thirty (30) days after the commencement of such judicial proceedings in a Contracting State, and such judicial proceedings shall be so commenced in a Contracting State within three (3) working days after an initiating instrument has been lodged by the holder of an international interest with the relevant authorities in such Contracting State.

Article 14

Notwithstanding the insolvency laws in effect in any Contracting State that is the primary insolvency jurisdiction:

- (a) if and to the extent that the chargor, buyer or lessee has so agreed in the agreement to which a registered international interest relates:
 - (i) upon the earlier of (x) thirty (30) days of the insolvency event date and (y) the date (if any) on which under such insolvency laws the chargor, buyer or lessee would be required to cure all defaults under the agreement and transaction documents or return and deliver the property to the chargee, seller or lessor (such earlier date "the cure/return date"), the chargor, buyer or lessee shall cure all such defaults and agree to perform all future

obligations in accordance with the terms of the agreement and other transaction documents or return and deliver the property to the chargee, seller or lessor in accordance with and in the physical condition required by the terms of the agreement;

- (ii) no enforcement action or other exercise of remedies permitted under Article 8, 9, 11, or 23(2) by the chargee, seller or lessor against the chargor, buyer or lessee or the property upon the occurrence of default after the cure/return date shall be stayed, prevented or delayed; and
 - (iii) no contractual obligations or undertakings of the chargor, buyer or lessee under the agreement or transaction documents may be restructured, amended or modified without the consent of the chargee, seller or lessor; and
- (b) no class of creditors or other persons except holders of preferred insolvency interests may have priority under the insolvency laws of the primary insolvency jurisdiction over the rights and interest in property of a chargee, seller or lessor under this Convention.

Article 15

Each Contracting State (which is not the primary insolvency jurisdiction) in which property is situated shall on an expedited basis cooperate with and assist the relevant authorities in the primary insolvency jurisdiction in carrying out the provisions (if applicable) of Article 14.

Article 16

1 - Subject to Article 16(2)(a), an obligor shall be bound by the terms of any security assignment agreement or assignment document (as the case may be) to the extent it has [consented in writing thereto].

2 - The law governing the security agreement, title reservation agreement or leasing agreement that is the subject of a security assignment agreement or an assignment document shall:

- (a) determine the assignability of the assigned rights; and
- (b) determine:
 - (i) the relationship between the security assignment assignee or the assignee (as the case may be) and the obligor;
 - (ii) the conditions under which the security assignment agreement or assignment document can be invoked against the obligor; and
 - (iii) any questions as to whether the obligor's obligations have been discharged

but only to the extent that the matters set forth in clauses (a)(i) - (iii) above have not been addressed in the obligor consent referred to in Article 16(1) or by the terms of Article 16(3).

3 - In the event that an obligor is bound under this Convention or otherwise applicable law to conflicting security assignment agreements, assignment documents or national interests relating to the assigned rights, the relative priority of the rights of the competing security assignment assignees, and assignees and other national interest holders, shall rank as against the obligor in the order in which the same were registered in the international register system.

4 - No national interest in assigned rights is registrable under this Convention except a registrable national interest as defined in sub-clause (i) of paragraph (33) of the annexure.

CHAPTER VI

REGISTRATION OF INTERESTS

Article 17

- 1 -
 - (a) An international interest may be registered in the international register system by the holder of such interest where:
 - (i) the agreement relating to it conforms to the provisions of Article 5(1); and
 - (ii) all parties to the agreement have consented in writing to the registration.
 - (b) The following additional interests may be registered in the international register system by the parties so noted below:
 - (i) the interest of a security assignment assignee or assignee (as the case may be) as against an obligor arising by virtue of the obligor's consent ("obligor consent") to a security assignment agreement or assignment document (as the case may be) - by the security assignment assignee or assignee (as the case may be);
 - (ii) the interest of a holder of a registrable national interest in property - by the holder of such interest; and
 - (iii) the interest of the holder of a registered interest arising by virtue of an agreement by the holder of another registered interest to subordinate its priority in property to that of the registered interest of such person - by the person to whose interest another's has been subordinated.
 - (c) Notices of intention to file a registration in respect of an international interest may also be registered [by the holder of a prospective international interest] ("priority notice").

such national interests were registrable national interests) except preferred national interests;

- (c) the holders of all registered interests in such property that have been registered with the international register system subsequent in time to the registration of the interest of the registered interest holder, except:
 - (i) a holder of a registered interest to whom such registered interest holder has subordinated its registered interest as evidenced by a registered subordination notice; and
 - (ii) the holder of an international interest to whom such registered interest holder has transferred or assigned its international interest in such property; and
- (d) the holders of all previously registered interests in such property:
 - (i) that have been transferred or assigned to the registered interest holder pursuant to an agreement registered under this Convention;
 - (ii) that have subordinated their interests in such property to that of the registered interest holder pursuant to a subordination evidenced by a registered subordination notice; or
 - (iii) to the extent of any [value added] [advances made] by such holders without a pre-existing obligation to do so and at the time when it had actual knowledge of the registered interest of the registered interest holder.

2 - (a) A registered interest holder who has acquired its interest from a chargee, seller or lessor, whether by contract or by operation of law, shall have the same priority rights in property as the person from whom it acquired its interest.

(b) The priority rights of a [person] [holder of a prospective international interest] registering a priority notice in accordance with Article 17(1)(c) shall be the same as those of a registered interest holder under Article 22(1), determined as of the date of the registration of such priority notice, if a registration notice evidencing the international interest that was the subject of such priority notice is registered within [seven (7) days] of the registration of such priority notice.

3 - The priority of interests as among and between holders of unregistered interests shall be determined in accordance with otherwise applicable law.

4 - (a) An international interest is valid against the trustee in bankruptcy~~if~~ prior to the bankruptcy~~the~~ international interest has been registered in conformity with this Convention.

(b) For the purpose of this, Article 22(4) "trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of the chargor,

lessee, buyer, security assignment assignor or obligor, for the benefit of the general body of creditors.

5 - Subject to Articles 14 and 15, nothing in this Article 22 shall affect any other rules of insolvency law applicable to the insolvency of the chargor, buyer, lessee, security assignment assignor or obligor.

CHAPTER VIII

SPECIAL PROVISIONS FOR AIRCRAFT PROPERTY

Article 23

1 - For purposes of this Convention as the same relates to aircraft property the following supplementary provisions and modifications and amendments to this Convention shall apply:

- (a) a "leasing agreement" as defined in paragraph (20) of the annexure and referred to in this Convention shall include agreements that are otherwise within the definition thereof but are for a period of less than three (3) years;
- (b) for purposes of paragraph (31) of the annexure the reference to a registration "against property to which an agreement relates" means a registration against the manufacturer's serial number of such aircraft property;
- (c) for purposes of Article 5(1)(c) a description of aircraft property that contains its manufacturer's serial number and the name of the manufacturer and model designation shall be "sufficient to enable it to be identified";
- [(d) the provisions of Article 6(2) shall not apply as contemplated by Article 23(5)(c)];
- (e) each Contracting State may in its ratification instrument differentiate for purposes of Article 22 between holders of "preferred national interests" in cases where such Contracting State is the country of registration and in cases where it is not the country of registration;
- (f) the provisions of Article 22(1)(d)(iii) shall not apply;
- (g) the priority of a registered international interest of an engine rights grantee in aircraft engines shall be the same as a registered interest holder (as defined and set forth in Article 22(1)) without further condition if at the time of any priority dispute the specifically identified engine that is the subject of the special engine agreement is installed on the specifically identified airframe referred to in such special engine agreement.
- (h) a waiver of sovereign immunity from jurisdiction of the courts referred to in Articles 24(1)(a) and (b) and Article 23(1)(i), and/or in respect of enforcement against property in accordance with Articles 8-11, 13(1) or 14(a)(ii), shall be valid and binding under this Convention; and

- (i) in addition to the courts of Contracting States set forth in Articles 24(1)(a)(i) and (ii) and Article 24(1)(b), the courts of the country of registration shall also have jurisdiction over disputes giving rise to legal proceedings relating to the subject of this Convention.

2 - (a) This Article 23(2) applies only where the chargor, buyer or lessee has agreed in writing and has submitted an authorisation which is expressed to be irrevocable and exclusive in favour of the chargee, seller, lessor, assignee or security assignment assignee ("authorised party") to the relevant aviation authority in the country of registration in the form required under the regulations.

(b) After a default by the chargor, buyer or lessee and upon application by the authorised party, the relevant authorities in the country of registration shall [within seven (7) days] of such application take all actions necessary to:

- (i) effect the deregistration of the aircraft property; and
- (ii) permit and authorise the export and removal of the aircraft property from its territory -

provided that any registered interest in the aircraft property having priority over the interest therein of the authorised party shall have been satisfied or the holder of any such prior registered interest shall have consented to such deregistration, export and removal.

(c) If the default and all other defaults are fully cured by the chargor, buyer or lessee prior to the deregistration of the aircraft property, the authorised party shall promptly withdraw the application (if any) made to the relevant aviation authorities in accordance with Article 23(2)(a).

(d) The provisions of this Article 23(2) shall be without prejudice to any right that the chargee, seller, lessor, assignee or security assignment assignee may have under the national laws of the country of registration to effect such deregistration of the aircraft property and the export and removal of the aircraft property (i) without the authorisation of the chargor, buyer or lessee referred to above or (ii) pursuant to other applicable procedures in less than [seven (7) days].

3 - A person taking possession of an airframe (in accordance with Articles 8-11, or 14(a)(i) or (ii)) shall not be liable as a result of such action to any person with an interest in an aircraft engine installed thereon, provided that such person makes reasonable efforts to promptly search the international register system and identify, contact and cooperate with the holder (if any) of a registered interest in such aircraft engine having first priority therein under Article 22.

4 - (a) Where a Geneva Convention Contracting State is the country of registration:

- (i) the reference to the "laws" of such Geneva Convention Contracting State for purposes of Article I(1)(i) of the Geneva Convention of 1948 shall be to the laws of such Geneva Convention Contracting State after giving effect to the implementation of this Convention as ratified by such Geneva Convention Contracting State in its ratification instrument; and
 - (ii) it shall not prohibit the registration of any right or interest under this Convention pursuant to Article II(3) of the Geneva Convention of 1948.
- (b) As between Geneva Convention Contracting States, the term "aircraft" as referred to in Article I(1)(a)-(d) of the Geneva Convention of 1948 shall be replaced by the terms "airframes" (as defined in this Convention) and "aircraft engines (as defined in this Convention) installed on airframes [at the time of registration]".
- 5 - This Convention shall, for the Contracting States, supersede the following conventions between two or more of them:
- (a) the Geneva Convention of 1948 except in respect of each Geneva Convention Contracting State's undertakings in Article I of the Geneva Convention of 1948;
 - (b) the Convention of 1933 for the Unification of Certain Rules Relating to the Precautionary Arrest of Aircraft but only to the extent that the Contracting State [in which the aircraft property is arrested] [which is the country of registration] has not entered a reservation in its ratification instrument with respect to Article 12(2); and
 - [(c) the Unidroit Convention on International Financial Leasing of 1988 as the same relates to aircraft [but only to the extent that such convention is inconsistent with the provisions of this Convention].]

CHAPTER IX

CERTAIN JURISDICTIONAL, COORDINATIVE AND FINAL PROVISIONS

Article 24

- 1 - (a) The courts of a Contracting State shall have jurisdiction over disputes giving rise to legal proceedings relating to this Convention if such Contracting State is:
- (i) the legal domicile of the chargor, buyer, lessee, transferor, assignor, security assignment assignor or engine rights grantor (as the case may be), or is the location in which the centre of such party's main interests is situated; or
 - (ii) the location in which the relevant property is based or situated.

- (b) The courts of any other Contracting State designated by the parties to an agreement shall also have jurisdiction over disputes giving rise to legal proceedings relating to this Convention unless such jurisdiction violates the fundamental public policy of the Contracting State in which such courts sit.
- (c) Whether or not the courts of Contracting States other than those set forth in Article 24(1) (a) and (b) have jurisdiction over disputes relating to this Convention shall be determined in accordance with the private international law rules of such Contracting States.
- (d) Nothing in this Convention shall prejudice the rights of the parties to an agreement to designate that the courts of a Contracting State or any other state shall have exclusive jurisdiction over disputes between such parties giving rise to legal proceedings relating to this Convention. In the event such a designation is made, other courts with jurisdiction under this Convention shall decline to exercise such jurisdiction unless doing so would violate the fundamental public policy of the Contracting State in which such court sits.

2 - In applying this Convention to a dispute the courts of a Contracting State referred to in Article 24(1) shall:

- (a) apply the provisions of Article 7(a) only if the relevant Contracting State has not entered a reservation with respect thereto; and
- (b) apply the provisions of Article 22 with reference to the preferred national interests in the Contracting State in which the action or events giving rise to such interests have occurred, if applicable, or otherwise with reference to its own rules of private international law.

3 - The courts referred to in Article 24(1) shall be bound by the timetable requirements contained in Article 13(1) and Article 13(2) only if the Contracting State in which it sits has not entered a reservation in its ratification instrument with respect to such Articles.

4 - The provisions of this Article 24 shall not prejudice the application of the private international law rules of non-Contracting States that may confer jurisdiction on such non-Contracting State in respect of legal proceedings relating to matters addressed by this Convention and, in connection with such proceedings, that may refer to the laws of a Contracting State.

Article 25

The application of the rules set forth in this Convention may not be refused or qualified by courts in a Contracting State on grounds that the rules would prejudice the application of its or another country's rules that cannot, under national law, be derogated from by contract ("mandatory rules") or (except as provided in Article 24(1)(b) or (d)) would be inconsistent with its or another country's public policy ("ordre public").

Article 26

1 - This Convention shall, for the Contracting States that are parties to it, supersede the following conventions between two or more of them but only to the extent specified below:

- (a) Articles [-] of the Brussels Convention of 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the San Sebastian Convention of 1989 to the extent that Article 24 or 23(1)(i) of this Convention applies;
- (b) Articles [-] of the Lugano Convention of 1988 to the extent that Article 24 or 23(1)(i) of this Convention applies;
- (c) Articles [-] of the Rome Convention on the Law Applicable to Contractual Obligations of 1980 to the extent that Article 7(a), 16 or 25 of this Convention applies; and
- [(d) others].

Article 27

All legal matters not expressly addressed in this Convention shall be governed by otherwise applicable law, including the characterization of an agreement for among other purposes national taxation law and national law relating to non-contractual legal liability.

Article 28

The terms of this Convention shall in addition to constituting a valid international agreement among the Contracting States constitute the national law of each Contracting State. Each Contracting State shall take all necessary actions to implement the terms of this Article 28.

Article 29

This Convention shall apply in a Contracting State to agreements made after the date on which this Convention has entered into force with respect to that Contracting State.

Article 30

1 - In the interpretation and application of the terms of this Convention and the regulations regard shall be had to their international character and of the desirability of achieving uniformity in their interpretation and application.

2 - The terms of this Convention and the regulations shall be uniformly interpreted and applied to promote the underlying commercial purpose of facilitating asset-based transactions involving mobile property.

3 - In furtherance of the aims set forth in this Article 30, the official [comments to] [explanatory report for] this Convention shall be considered when interpreting and applying the terms of this Convention and the regulations.

Article 31

1 - This Convention shall be subject to ratification by the Contracting States. The ratification instrument of each Contracting State shall be deposited with [] ("the depositary"), which shall give notice of the date of deposit, and the terms of the ratification instrument, to each of the other Contracting States.

2 - In its ratification instrument, a Contracting State:

(a) may reserve the right not to apply:

- (i) the provisions of Article 7(a) relating to the contractual choice of law by the parties to an agreement;
- (ii) the provisions of Article 12(2) relating to the availability of remedies without judicial proceedings, assistance, approval or intervention;
- (iii) the provisions of Article 13(1) and/or 13(2) relating to the timetable for judicial proceedings relating to remedies under this Convention;
- (iv) the provisions of Article 14 relating to special insolvency rules applicable to the primary insolvency jurisdiction; and
- (v) the provisions of Article 15 relating to special insolvency rules applicable in Contracting States other than the primary insolvency jurisdiction;

(b) may set forth:

- (i) its preferred national interests for purposes of Article 22; and
- (ii) its preferred insolvency interests for purposes of Article 14(b);

(c) shall set forth:

- (i) the organisations, if any, that will constitute satellite registrars in its country for each class of property listed in Article 2(1);
- (ii) the applicable courts for purposes of paragraph (10) of the annexure, Article 13 and Article 24;
- (iii) the relevant authorities referred to in Articles 13(1) and (2) for purposes of initiating legal proceedings; and
- (iv) the relevant aviation authority for purposes of Article 23(2).

3 - Any Contracting State may at any time withdraw a reservation that it has made in its ratification instrument; any such reservation shall cease to have effect on the first day of the third calendar month after the date the depositary has received the subject withdrawal.

4 - No reservations are permitted, except those expressly permitted under Article 31(2), and no Contracting State may make a reservation, except in its ratification instrument initially deposited with the depositary.

5 - (a) Any Contracting State may at any time amend its listing of preferred national interests or preferred insolvency interests by lodging a declaration to that effect with the depositary; any such amendment shall, subject to Article 31(5)(b), take effect on the first day of the third calendar month after the date on which the depositary has received the subject declaration.

(b) The amendments permitted by Article 31(5)(a) shall have no effect on the application of Article 14(b) or 22 (as the case may be) in respect of the rights of any party that has registered an interest prior to the effective date of any such amendment.

Article 32

1 - This Convention may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State; any such denouncement shall, subject to Article 32(2), take effect on the first day of the third calendar month after the date on which the depositary has received the subject denouncement.

2 - A denouncement by a Contracting State permitted by Article 32(1) shall have no effect on the rights under this Convention of a holder of an international interest registered prior to the date on which such denouncement becomes effective, nor shall it relieve such Contracting State of its agreements under this Convention relating to such registered international interest.

ANNEXURE **

(1) "agreement" means a security agreement, a title reservation agreement, a leasing agreement, a security assignment agreement, an assignment document, a transfer document or a special engine agreement;

(2) "aircraft engines" means aircraft engines powered by jet propulsion or turbine technology that, in the case of jet propulsion aircraft engines, have at least 1750 lbs of thrust or its equivalent and, in the case of turbine-powered aircraft engines, have at least [550 rated takeoff shaft horsepower] or its equivalent, all modules and other appurtenances, accessories and other parts and equipment installed or incorporated therein or attached thereto, and all technical data, manuals, log books and other records relating to all or part of any of the foregoing except aircraft engines used by governmental authorities for military, customs or police purposes;

(3) "aircraft property" means airframes, aircraft engines, [helicopters] and all interests in agreements relating to airframes, aircraft engines [and helicopters];

(4) "airframes" means airframes that, when appropriate aircraft engines are installed thereon, are capable of transporting, or are certified by the initial country of registration to transport, at least ten (10) passengers or goods [in excess of 2750 kilograms], all appurtenances, accessories, furnishings, appliances and other equipment and parts (other than the aircraft engines) installed or incorporated therein or attached thereto, and all technical data, manuals, log books and other records relating to all or part of any of the foregoing except any such airframe used by governmental authorities for military, customs or police purposes;

(5) "assigned rights" means all rights assigned by a security assignment assignor to a security assignment assignee pursuant to a security assignment agreement or by an assignor to an assignee pursuant to an assignment document (as the case may be);

(6) "assignment document" means an agreement (other than a security assignment agreement) or instrument by or in which one person ("the assignor") assigns its interest in a security agreement, a title reservation agreement or a leasing agreement to another person ("the assignee") and that is expressed to fully divest the assignor of the interest in and under such agreements;

(7) "central registrar" means [_____], the central registrar of the international register system [in respect of aircraft property and [_____]], the central registrar of the international register system in respect of property other than aircraft property];

(8) "contractual rights and obligations" under transaction documents when referred to in Article 7(a) concerns all matters relating to (i) the interpretation and construction of the transaction documents; (ii) the performance under the transaction documents; (iii) whether a default (as defined in Article 7(b)) has occurred under the agreement; (iv) whether obligations under the transaction documents have been extinguished and/or

discharged; (v) the assessment of damages as a consequence of non-performance or breach under the transaction documents; and (vi) the consequences of the nullity of the agreement and/or the other transaction documents;

(9) "country of registration" means in respect of an aircraft property the Contracting State in which such aircraft property is registered under the Chicago Convention of 1944 on International Civil Aviation or any successor or superseding international agreement governing the nationality of aircraft property;

(10) "courts" means in respect of a Contracting State the judicial or arbitral tribunals, including appellate tribunals designated in the ratification instrument of such Contracting State with lawful authority to issue binding rulings and decisions under the national laws of such Contracting State;

(11) "deregistration of the aircraft property" means in respect of the country of registration the deregistration of the aircraft property from that country under such country's laws and regulations referred to in Article 19 of the Chicago Convention of 1944 or the analogous part of any successor or superseding international agreement;

(12) "Geneva Convention Contracting State" means such Contracting States that have ratified, or that in the future ratify, the Geneva Convention of 1948;

(13) "Geneva Convention of 1948" means the Convention of 1948 on the International Recognition of Rights in Aircraft;

(14) "helicopters" means [_____];

(15) "insolvency event date" means the earlier of (i) the date on which any insolvency proceedings have been commenced under applicable national law and (ii) the date on which a chargor, buyer or lessee declares its intention to suspend or impose a moratorium on, or actually suspends or imposes a moratorium on, the payment of its debt or rental obligations to its creditors generally;

(16) "insolvency laws" means in respect of a Contracting State the bankruptcy laws, insolvency laws, liquidation laws, administration or reorganisation laws or any other similar laws affecting creditors generally in such Contracting State;

(17) "insolvency proceedings" means any bankruptcy, insolvency, liquidation, administration, reorganisation or any other similar proceedings affecting creditors generally in respect of a chargor, buyer or lessee or its assets;

(18) "international interest" means an interest created under this Convention to which Article 1(3) applies;

(19) "judicial proceedings" means in respect of a Contracting State all legal and judicial proceedings under the national laws of such Contracting State required to issue under such national laws a non-appealable and non-reviewable final judicial decision or ruling in respect of the subject matter of such proceedings;

(20) "leasing agreement" means an agreement by which one person ("the lessor") leases or agrees to lease (with or without an option to purchase) property to another person ("the lessee") for a period of not less than [three (3)] years, pursuant to which care, custody and control of such leased property passes to the lessee for the period of the leasing agreement;

(21) "manufacturer's serial number" means in respect of such category of property the number assigned to such property by the manufacturer thereof as supplemented by additional digits, letters and/or symbols as set forth in the regulations necessary to ensure the uniqueness of any such number;

(22) "national interest" means any interest in property (other than an international interest) arising under national law;

(23) "obligor" means in respect of a security assignment agreement or an assignment document (i) where the assigned rights arise under a security agreement, the chargor, (ii) where the assigned rights arise under a title reservation agreement, the buyer, and (iii) where the assigned rights arise under a leasing agreement, the lessee;

(24) "party" means any individual, firm, corporation, partnership, joint venture, association, unincorporated organization or government, any agency or political subdivision thereof, and any of the foregoing acting in a capacity as trustee or agent, whether residing or having nationality in any Contracting State or not, that has entered into an agreement;

(25) "preferred insolvency interests" means in respect of a Contracting State that is the primary insolvency jurisdiction the classes of interests (other than interests that are registrable national interests as defined in sub-clauses (i) or (iii) of paragraph (33) of this annexure) in property that:

- (i) under the insolvency laws of such Contracting State would have priority over the rights in property of the owner of such property or a holder of a previously granted and registered or perfected security interest in or mortgage of such property, and
- (ii) are set forth in reasonable detail by such Contracting State in its ratification instrument -

but only to the extent that such classes of interests are expressed in such ratification instrument to constitute preferred insolvency interests with priority over the rights in property of a chargee, seller, lessor [or security assignment assignee] under this Convention;

(26) "preferred national interests" means in respect of a Contracting State the interests (other than interests that are registrable national interests as defined in sub-clauses (i) or (iii) of paragraph (33) of this annexure) that:

- (i) under the national laws of such Contracting State would have priority over the rights in property of the owner of such property or a holder of a previously granted and registered or perfected security interest in or mortgage of such property, and
- (ii) are set forth in reasonable detail by such Contracting State in its ratification instrument;

but only to the extent that such classes of interests are expressed in such ratification instrument to constitute preferred interests with priority over the rights in property of a chargee, seller, lessor [or security assignment assignee] under this Convention;

(27) "primary insolvency jurisdiction" means in respect of a chargor, buyer or lessee the country in which the centre of such chargor's, buyer's or lessee's main interests is situated [(which shall be presumed to be the country under whose laws such chargor, buyer or lessee has been constituted in the absence of the proof that another country is effectively exercising jurisdiction in the insolvency proceedings over the principal asset of such chargor, buyer or lessee)];

(28) ... "property" means property of a kind listed in Article 2(1);

(29) "prospective international interest" means an interest that will come into existence as an international interest upon the chargor, seller, lessor, security assignment assignor, [assignor, transferee] or engine rights grantor acquiring rights in the property to which the agreement providing for the interest relates;

(30) "ratification instrument" means in respect of a Contracting State the instrument of ratification deposited by such Contracting State with the depository in accordance with Article 31(1), as such instrument may be amended in accordance with Article 31(5);

(31) "registered" means registered in the international register system against property to which an agreement relates in accordance with Article 17(4);

(32) "registered interest" means a registered international interest or a registered registrable national interest;

(33) "registrable national interest" means a national interest in property of:

- (i) persons who have attached or executed against property in satisfaction of judgements issued by national courts;
- (ii) persons who have performed services in respect of such property for which they have not received compensation;
- (iii) persons who have lawfully acquired an interest in property by virtue of the installation of such property in or on, or the

attachment of such property to, other types of property in which such person has an interest or the application of national accession or similar rules; or

- (iv) persons who have lawfully exercised (including as agent for others) a right to detain or attach or execute against property by virtue of the non-payment of taxes, fees or similar governmental charges;

(34) "registration amendment notice" means the notice in writing referred to in Article 18(1);

(35) "registration discharge notice" means the notice in writing referred to in Article 18(4);

(36) "registration notice" means the notice in writing referred to in Article 17(2);

(37) "regulations" means the rules and regulations promulgated from time to time by the body referred to in Article 4(2);

(38) "relevant Contracting State" means:

- (i) in relation to aircraft property, the Contracting State [that is the country of registration] [in which the subject judicial proceedings relating to this Convention are occurring]; [and
- (ii) in relation to property other than aircraft property, the Contracting State in which [the centre of the chargor's, buyer's, lessee's, transferor's, assignor's, security assignment assignor's [or engine rights grantor's] (as the case may be) main interests is situated] [the subject judicial proceedings relating to this Convention are occurring];

(39) "relevant satellite registrar" means:

- (i) in respect of registrations relating to [airframes] [aircraft property], the satellite registrar in the country of registration; or
- [(ii) in respect of registrations relating to other property, the satellite registrar in which the centre of the chargor's, buyer's, lessee's, security assignment assignor's, assignor's or transferor's (as the case may be) main interests is situated.]

(40) "satellite registrar" means in respect of a Contracting State the registrar designated, for each class of property listed in Article 2(1), by such Contracting State in its ratification instrument as the satellite registrar in such Contracting State for purposes of Articles 4 and 17-19;

(41) "security agreement" means an agreement by which one person ("the chargor") gives or agrees to give to another person ("the chargee") an interest ("security interest") in or over property to secure the performance of an existing or future obligation;

(42) "security assignment agreement" means an agreement (other than an assignment document) by one person ("the security assignment assignor") to create a security interest in its interests in a security agreement, a title reservation agreement or a leasing agreement securing performance of an existing or future obligation to another person ("the security assignment assignee");

(43) "selected law" means in respect of an agreement or other contract or instrument constituting a transaction document the law or laws expressed to govern such agreement, contract, or instrument other than its rules of private international law;

(44) "special engine agreement" means an agreement in which one person ("the engine rights grantor") agrees that, upon the installation of a specifically identified aircraft engine on a specifically identified airframe, title to or security rights in respect of such engine would transfer to another person ("the engine rights grantee");

(45) "take possession" means in respect of all or any property action or actions the cumulative effect of which is that physical control over such property is transferred to the chargee, seller or lessor (or their agents).

(46) "title reservation agreement" means an agreement by which one person ("the seller") sells or agrees to sell property to another person ("the buyer") on terms that ownership of such property does not pass until performance of the buyer's obligations;

(47) "transaction documents" means in respect of an agreement such agreement and all other contracts and instruments expressly contemplated by such agreement as constituting an integral part of the transactions contemplated by such agreement;

(48) "transfer document" means an agreement (other than a title reservation agreement) or instrument by or in which one person ("the transferor") sells or agrees to sell property to another person ("the transferee") and that is expressed to fully divest the transferor of its interest in the property;

(49) "unregistered" means not registered as stated in paragraph (31) of this annexure;

(50) "writing" means an authenticated record of information (including information by teletransmission) that is in tangible form; and

(51) the following additional terms shall have the meanings given in the referenced Articles: "authorised party" (Article 23(2)(a)); "cure/return date" (Article 14(a)(i)); "default" (Article 7(b)); "depository" (Article 31(1)); "mandatory rules" (Article 25); "obligor consent" (Article 17(b)(i)); "priority notice" (Article 17(1)(c)); "registered interest holder" (Article 22(1)); and "searchable" (Article 17(4)).

**Cross-Reference Table Indicating Correlation Between Cumulative
Recommendations of the Aviation Working Group and Draft Aviation Text**

<u>AWG Recommendations</u>	<u>Draft Aviation Text</u>
First memorandum (15 May 1995)	
<i>core provisions</i>	
recommendation 1.1	1(3)(e), 4(1) and (4), 5, 17, 22 and 23(1)(b); annexure paras. (1), (21), and (46)
recommendation 1.2	22(1)(c)
recommendation 1.3	n/a (explanatory in nature)
recommendation 2.1	see 5(1) and (2)*
recommendation 2.2	8 - 11, 13,14,15, 16 and 22
recommendation 2.3	cf. 8 with 9, see 11; annexure paras. (20), (41) and (46)
recommendation 2.4	27
recommendation 3	9, 11, and 23(1)(a); annexure paras. (1), (20) and (46)
recommendation 4.1	1(3)(d) and (f), 10, 11, 16 and 22; annexure paras. (1), (5), (6) and (23)
recommendation 4.2	5(1), 7(a), 10, 11, 13 and 22; annexure paras. (1), (6) and (42)
recommendation 4.3	16, see also 17(1)(b)(i)
recommendation 4.4	22(1)

* We are prepared to support the inclusion of substantive requirements for the creation/validity of international interests, as recommended by the sub-committee, rather than our previously recommended choice of law rule. We believe that the requirements set forth in Article 6 of the (third) revised draft (and adopted in Article 5(1) of the aviation text) are sufficient requirements and, as stated in Article 5(2) of the aviation text, should not be supplemented by any additional creation/validity criteria applicable under national law.

recommendation 5.1	13**, 31(2)(a)(iii) and 31(2)(c)(ii); annexure paras. (10) and (19)
recommendation 5.2	8 - 11 and 12(2); annexure para. (45)
recommendation 5.3	23(2); annexure paras. (11), (37) and (51)
recommendation 6.1	2(1), 5, 7(a), 8 - 11, 14 - 16, 17 and 22; annexure para. (2)
recommendation 6.2	annexure paras. (3) and (4)
recommendation 7.1	17, 22(1)(a) - (d) and (2) and 23(1)(g); annexure paras. (22), (32), (33), (49) and (51)
recommendation 7.2	22(1)(b), 31(2)(b)(i) and 31(5); annexure para. (26)
recommendation 7.3	5(d), 17(1)(b)(iii), 22(1)(c)(i), 22(1)(d)(ii) and 23(1)(f)
recommendation 7.4	22(1)
recommendation 8	[see recommendation 7 in Second Memorandum]
recommendation 9.1	4(1) and (2)
recommendation 9.2	4, 17 - 19 and 31(2)(c)(i); annexure paras. (7), (31) - (36), (37) (39) and (40)
recommendation 9.3	17, see also point 2(b) in 6 October 1995 memorandum, and recommendations 8 and 9 in Second Memorandum
recommendation 9.4	18; annexure paras. (34) - (36) and (37)

** See point 2(a) in supplementary aviation working group memorandum of 6 October 1995 in which the recommendation in respect of a remedies timetable was changed from it being a core provision to it being an optional provision.

recommendation 9.5 22(1)

recommendation 10 [see recommendation 1 in Second memorandum]

optional provisions

recommendation 1.1 7(a), 11 and 12(2); annexure paras. (8) and (45)

recommendation 1.2 31(2)(a)(i)

recommendation 2.1 14 and 15

recommendation 2.2 31(2)(a)(iv) and (v)

recommendation 2.3 14(b); annexure para. (25)

Supplementary Memorandum (6 October 1995)

point 2(a) 13; annexure paras. (10) and (19)

point 2(b) 17(1) - (3) and 22; annexure paras. (31), (32) and (51)

Second Memorandum (7 March 1996)

recommendation 1.1 23(4)(a) and (b); annexure paras. (12) and (13)

recommendation 1.2 23(5)(a); annexure paras. (12) and (13)

recommendation 2.1 2(1)(a); annexure para. (4)

recommendation 2.2 annexure para. (4)

recommendation 2.3 23(3)

recommendation 3.1 2(1)(b); annexure para. (2)

recommendation 3.2 annexure para. (4)

recommendation 4.1 16(1), see also 16(2)(a); annexure paras.

	(6), (23) and (42)
recommendation 4.2	16(2), see also 7(a); annexure paras. (5) and (23)
recommendation 4.3	16(3), see also 16(4); annexure paras. (18) and (22)
recommendation 4.4	16(4); annexure paras. (22) and sub-clause (i) of (33)
recommendation 5.1	22(1); annexure paras. (26), see also sub-clause (iii) of (33)
recommendation 5.2	23(1)(g); annexure paras. (1) and (44)
recommendation 6.1	4 and 17; annexure paras. (7), (37), (39) and (40)
recommendation 6.2	4(3) and 31(2)(c)(i), see also 17; annexure para (40)
recommendation 6.3	4(3) and 17 - 19; annexure para. (37)
recommendation 6.4	17(2) and (3) and 18(1), (2) and (4), see also 4(2) and (3); annexure para. (37)
recommendation 6.5	17(2) and (3) and 18(1), (2) and (4); annexure para. (39), see also para. (9)
recommendation 7.1	23(1)(i), 24(1)(a) and (b) and 31(2)(c)(ii); annexure para. (10)
recommendation 7.2	24(1)(c)
recommendation 7.3	24(1)(d) and (4)
recommendation 7.4	24(2) and (3), see also 12(2), 14 and 15; annexure paras. (27) and (38)
recommendation 7.5	23(1)(h)
recommendation 8	4 and 17; annexure paras. (7), (39) and (40)
recommendation 9	n/a

**Description of Members of
Aviation Working Group
(listed alphabetically)**

Airbus Industrie G.I.E. is a major international supplier of large civil aircraft organised as a consortium of four leading European aerospace companies -- Aerospatiale Société Industrielle Nationale (France), Daimler-Benz Aerospace Airbus GmbH (Germany), Construcciones Aeronauticas S.A. (Spain) and British Aerospace (Operations) Limited (England). Airbus Industrie G.I.E. is primarily engaged in the leadership and coordination of the design, development, certification, assembly, marketing, sale and support of the Airbus family of airliners, namely the Airbus A300, A310, A319, A320, A321, A330 and A340 projects and derivatives.

Banque Indosuez is a wholly owned subsidiary of Compagnie Financière de Suez, Banque Indosuez, a major merchant banking institution with offices in 65 countries. The bank's Indosuez Aerospace Group has broad experience in aircraft finance, including debt finance, operating and tax leasing, export credit supported finance and equity arrangement.

GE Aircraft Engines is a division of General Electric Company, a U.S. company that, among other things, provides a wide variety of aviation-related products and services. General Electric Company is a major manufacturer and supplier of large and small jet engines for airframe manufacturers, airlines, leasing companies, and military aircraft. Also, CFM International, a joint company of General Electric Company and SNECMA of France, is a major manufacturer of mid-sized commercial and military jet engines. In addition, GE Capital Aviation Services, a wholly owned subsidiary of General Electric Company, leases over 950 aircraft and provides other aircraft-related services (including aircraft financing and spare engine leasing services) to more than 150 airlines around the world.

GE Capital Aviation Services, a wholly owned subsidiary of GE Capital Services, which is in turn a wholly owned subsidiary of General Electric Company, is a global commercial aviation financial services company. As of December 31, 1995 the portfolio of aircraft managed by GECAS and its affiliates comprised approximately 890 aircraft, which are on lease to more than 157 lessees in 54 countries throughout the world. GECAS has recently announced that it has entered into a multi-year order for up to 259 new jet aircraft.

International Lease Finance Corporation ("ILFC") is a large commercial aircraft leasing company based in Los Angeles, California with over 300 aircraft leased to over 75 airlines all over the world. Since 1973 ILFC has engaged in over 700 transactions involving the lease or sale of commercial aircraft to more than 140 airlines. As of December 31, 1994, ILFC had committed to purchase 236 additional aircraft deliverable through 2000 at an estimated aggregate purchase price of \$13.4 billion and had options to purchase an additional 51 aircraft for delivery through 2001 at an estimated aggregate purchase price of \$2.8 billion.

Kreditanstalt für Wiederaufbau ("KfW") was established in 1948 as a corporation under public law. It is a bank with responsibilities in economic policy. KfW extends loans and grants (i) to promote the German economy both at home and abroad and (ii) to support the German federal government in its financial cooperation with developing countries. KfW's aerospace financing forms an important part of the bank's overall export and project financing activities to promote German industries.

McDonnell Douglas Corporation, headquartered in St. Louis, Missouri, is a major aerospace company, producing both military and commercial aircraft and helicopters, as well as missiles, space and electronic systems. Commercial jet aircraft currently in production include the MD-80 and MD-90 twinjets and the MD-11 trijet.

Pratt & Whitney, a division of United Technologies Corporation, Hartford, Connecticut, is an aerospace manufacturer engaged in the production of military and commercial jet engines, small gas turbine engines, rocket engines and space propulsion systems, and engines for commuter aircraft. Pratt & Whitney also provides customer support, engineering services, and specialised engine maintenance and overhaul and repair service.

Rolls-Royce plc is a major power systems company, operating through its aerospace and industrial power groups. The Aerospace Group, which now includes the Allison Engine Company, has a significant fleet of engines powering aircraft and helicopters for both commercial and military applications. Rolls-Royce plc is engaged in aircraft engine leasing through Rolls-Royce Leasing and Rolls-Royce & Partners Finance Limited. Rolls-Royce & Partners Finance Limited has a portfolio of more than 40 spare engines, which support lease arrangements with 23 lessors worldwide.

SNECMA comprises a group of six major aerospace companies that operate in both civil and military markets. The SNECMA Group's core business is propulsion, spanning the design, production and marketing of aircraft and rocket engines, as well as engine components, repair and maintenance. The SNECMA Group is involved in a number of major aerospace programs including Rafale high-performance fighter, new Airbus and Boeing jetliners and the ARIANE launch vehicle.

The Boeing Company, based in Seattle, Washington, is a major aerospace firm engaged in, among other things, the business of manufacturing and selling commercial jet transport. Jetliners currently in production include the 737, 747, 757, 767 and 777. Boeing is also a major U.S. government contractor with capabilities in missiles and space, electronics systems, military aircraft, helicopters and information systems management.

The Chase Manhattan Bank is a major banking establishment in the United States. Chase Manhattan has assets of almost \$300 Billion and \$20 Billion in shareholders' equity and serves over 25 million consumers in 39 states and has operations in 51 countries. The Chase Global Aerospace Group has specialized in providing aviation and aerospace advice and credit for over fifty years.

The Long-Term Credit Bank of Japan, Ltd., a Japanese banking organisation, directly and by way of its ownership interests in Japan Leasing Corp., LTCB International Leasing, GPA and Capstar, covers all relevant aspects of the commercial jet finance and leasing markets on a global basis. It maintains currently an industry-related loan portfolio in excess of US\$2 billion.