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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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

DRAFTING GROUP
(Fourth session: Würzburg, 24-26 July 1997)

*REVISED DRAFT ARTICLES OF A FUTURE UNIDROIT CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT*

(prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997)

Rome, February 1997

CORRIGENDUM

At page 14 *sub* Article 30:

for “(a) the notice identifies the international interest; and” read “(a) the obligor has been given notice of the assignment in writing by or with the authority of the assignor;”

for “(b) the obligor does not have [actual] knowledge of any other person’s superior right to payment or other performance” read “(b) the notice identifies the international interest; and”

insert a new paragraph (c) to read as follows: “(c) the obligor does not have [actual] knowledge of any other person’s superior right to payment or other performance”.

INTRODUCTORY NOTE

by the Unidroit Secretariat

The Study Group for the preparation of uniform rules on international interests in mobile equipment at its third session, held in Rome from 15 to 21 January 1997, considered the revised draft articles proposed by the Drafting Group (cf. Study LXXII - Doc. 30). On 17 and 20 January the Drafting Group met to consider those drafting amendments necessary in the light of the Study Group's consideration of the revised draft articles. In the time available the Drafting Group was able to revise only Articles 1 to 11 (cf. International Interests/Study Group/third session/Misc. 4). At the final meeting of the Study Group on 21 January Professor R.M. Goode, Chairman of the Study Group, undertook to prepare a complete revised version of the revised draft articles to take account of the deliberations of the Study Group during the session as also of the Drafting Group's proposals for Articles 1 to 11. Professor Goode's intention in preparing this new version was not only to prepare the ground for the Drafting Group's next session, to be held in Würzburg from 24 to 26 July 1997, but also to enable the Governing Council at its 76th session, to be held in Rome from 7 to 12 April 1997, to form a clear idea of the precise stage reached in the Study Group's work. In this connection it should be borne in mind that it is the intention of Unidroit to convene the fourth, and hopefully final session of the Study Group in December 1997.



**REVISED DRAFT ARTICLES
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(prepared by the Chairman of the Study Group in the light of the deliberations of that Group at its third session, held in Rome from 15 to 21 January 1997, and of the proposals by the Drafting Group at its third session, held in Rome on 17 and 20 January 1997)^(*)^(**) ⁽¹⁾

CHAPTER I

SPHERE OF APPLICATION AND GENERAL PROVISIONS

Article 1

1. – This Convention provides for the creation and effects of an international interest in mobile equipment.

2. – For the purposes of this Convention an international interest in mobile equipment is an interest in an object of a kind listed in Article 2:

- (a) granted by the chargor under a security agreement; or
- (b) vested in a person who is the seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

[3. – An interest which under the applicable law falls within sub-paragraph (a) of the preceding paragraph does not fall within sub-paragraph (b) or (c) of that paragraph for the purposes of this Convention.]

Article 2

1. – This Convention applies in relation to an object of any of the following kinds:

- (a) airframes;
- (b) aircraft engines;
- (c) helicopters;
- (d) [registered ships];
- (e) oil rigs;
- (f) containers;
- (g) railway rolling stock;

^(*) The use of an asterisk (*) against a particular provision indicates that the provision in question is envisaged as part of the Final Clauses of the future Convention.

^(**) Chapters marked with a triple asterisk are derived from a draft prepared by the Chairman of the Registration Working Group but await review by him and that Group.

⁽¹⁾ It will be necessary in due course to prepare a draft Preamble to the Convention.

(h) satellites;

(i) objects of any other category each member of which is uniquely identifiable and habitually moves from one State to another in the ordinary course of business.

* 2. – This Convention shall not come into force as regards any category of object until there is in force a Protocol relating to such category. This Convention shall take effect subject to the terms of that protocol.

* 3. – [Add provision for procedure for making of Protocols] ⁽²⁾

Article 3

[Add provision on connection to a Contracting State]

Article 4

Terms used in this Convention and defined in the Appendix have the meanings there stated. ⁽³⁾

Article 5

In their relations with each other the parties may, by agreement in writing, derogate from or vary the effect of any of the provisions of this Convention except as stated in Articles [...].

Article 6

1. – In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity and predictability in its application and the observance of good faith in international trade.

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

CHAPTER II

CONSTITUTION OF AN INTERNATIONAL INTEREST

Article 7

⁽²⁾ It may be necessary to distinguish between protocols containing no more than a definition and those containing substantive provisions.

⁽³⁾ See below at p. 16 *et seq.*

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

- (a) is in writing;
- (b) relates to an object in respect of which the chargor, seller or lessor has power to enter into the agreement;
- (c) identifies the object;
- (d) in the case of a security agreement, identifies the secured obligations expressly or by reference to another document.

CHAPTER III

DEFAULT REMEDIES

Article 8

1. – In the event of default in the performance of a secured obligation, the chargee may exercise any one or more of the following remedies:

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

2. – Any remedy given by sub-paragraph (a), (b) or (c) of the preceding paragraph shall be exercised in a commercially reasonable manner. In determining what is reasonable the court shall have regard to any terms of the security agreement relating to the manner of exercise of such remedies.

3. – A chargee proposing to sell an object under paragraph 1 otherwise than pursuant to a court order shall give reasonable notice of the proposed sale to interested persons.

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

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

6. – In this Article and in Article 9 “interested persons” means:

- (a) the chargor;

(b) any guarantor or surety under a guarantee (including a demand guarantee or standby letter of credit) given to the chargee;

(c) any person entitled to the benefit of any international interest which is registered after that of the chargee;

(d) any other person having rights in or over the object of which notice in writing has been given to the chargee within a reasonable time before exercise of the remedy given by subparagraph (b) of paragraph 1 of this Article or vesting of the object in the chargee under paragraph 1 of Article 9, as the case may be.

Article 9

1. – At any time after default in the performance of a secured obligation, all the interested persons may agree, or the court may on the application of the chargee order, that ownership of any object covered by the security interest shall vest in the chargee in satisfaction of all or any part of the secured obligations.

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

3. – At any time after default in performance of a secured obligation and before sale of the charged object or the making of an order under paragraph 1, the chargor may redeem the object by paying the amount secured by the security interest, subject to any lease granted by the chargee under paragraph 1 of Article 8. Where, after such default, the payment is made by an interested person, that person is subrogated to the rights of the chargee.

4. – Ownership passing on a sale under paragraph 1 of Article 8 or passing under paragraph 1 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 24.

Article 10

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 terminate the agreement and/or take possession of any object to which the agreement relates.

Article 11

1. – The parties may provide in their agreement for any kind of default, or any event other than default, as giving rise to the rights and remedies specified in Articles 8 to 10 or 14.

2. – In the absence of such an agreement, “default” for the purposes of Articles 8 to 10 and 14 means a material default.

Article 12

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

* 2. – Any remedy available to the obligee under Articles 8 to 10 which is not there expressed to require application to the court may be exercised without reference to the court except to the extent that the Contracting State where the remedy is to be exercised has made a declaration under Article Y.

* 3. – A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that while the charged object is situated within or controlled from its territory the chargee shall not in that territory sell or grant a lease of the object without leave of the court.

* 4. – For the purposes of this Article and the preceding Articles of this Chapter, “court” in relation to any Contracting State means such court or administrative or arbitral tribunal as may from time to time be specified in a declaration made by that State.

5. - Any remedy given by this Convention is extinguished if proceedings to enforce it are not commenced within [...] years after accrual of the cause of action.

Article 13

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

*Article 14 **

1. – A Contracting State shall ensure that an obligee who adduces *prima facie* evidence that it has become entitled to exercise a remedy under Article 8, 9 or 10 may obtain speedy provisional or interim judicial relief relating to the object to which the relevant agreement relates.

2. – The forms of judicial relief available before trial shall include the following orders:

- (a) preservation of the object or its value;
- (b) possession, custody or management of the object;
- (c) sale or lease of the object;
- (d) application of the proceeds or income of the object;
- (e) immobilisation of the object.

3. – A court of a Contracting State has jurisdiction to grant provisional or interim judicial relief under this Article where the object is within the territory of that State or one of the parties has its place of business within that territory, even if the trial referred to in the preceding paragraph will or may take place in a court of another State.

4. – A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will disapply the provisions of this Article, wholly or in part.

CHAPTER IV

THE INTERNATIONAL REGISTRY **

Article 15

1. – An international registry shall be established for the purpose of registering international interests, and information relating to international interests, in conformity with this Convention, and different registries may be established for different categories of object.

2. – The Governing Council of the International Institute for the Unification of Private Law, or such other organisation as it may from time to time determine:

(a) shall designate such registry or registries;

(b) may designate satellite registries, to which any registration notice or other document referred to in Chapter V may be sent for onward transmission to the appropriate registry designated under sub-paragraph (a);

(c) shall prescribe, and may amend, Rules governing the organisation and operation of the international registry or registries and the registration of international interests and prospective international interests and of amendments, subordinations, assignments and discharges of registered international interests.

3. – A registry designated as an international registry is an international organisation that, in the exercise of its functions under this Convention, is not subject to the law or jurisdiction of the courts of the State in which it is situated except as provided by agreement between the registry and that State.

4. – In this Article and Article 16 “the appropriate registry” means the international registry established under this Convention or, where there is more than one such registry, the registry appropriate to the category of object to which the relevant registration relates.

[5. – Liability of the international registry for errors and omissions under the law of the host State.]

CHAPTER V

REGISTRATION OF INTERNATIONAL INTERESTS AND PROSPECTIVE INTERNATIONAL INTERESTS **

Article 16

1. – An international interest may be registered in the international registry where:

(a) the agreement relating to it conforms to the provisions of Article 7;

(b) in the case of a security agreement, the chargor has consented in writing to the registration; and

(c) the requirements for registration set out in this Chapter and in the Rules have been complied with.

2. – A registration of an international interest in an object shall be recorded and searchable in the data base of the appropriate registry according to the manufacturer's serial number on the object or according to such other asset identification marks on the object as are specified in the Rules.

3. – Registrations shall be allocated registration numbers indicating the sequence in which the registrations occurred.

4. – Any amendment, subordination or assignment of a registered international interest shall be noted in the data base against the registration, and any registration the subject of a discharge notice shall be recorded as discharged.

5. – Registration of an international interest, or of any amendment, subordination, assignment or discharge of a registered interest, takes effect when the information contained in the requisite notice referred to in Article 17 is entered on the data base of the appropriate registry so as to be searchable as provided by Article 21.

Article 17

1. – The holder of an international interest may apply for its registration by transmitting a registration notice to the appropriate registry.

2. – The holder of a registered international interest may apply to amend the registration or extend the registration period by transmitting a registration amendment notice to the appropriate registry before expiry of the registration.

3. – A person in whose favour an international interest has been subordinated to that person's international interest may apply to register the subordination by transmitting a subordination notice to the appropriate registry.

4. – Where the obligation or obligations secured by a security interest have been discharged, or the condition or conditions of transfer of title under a title reservation agreement have been fulfilled, the obligor may require the obligee to have the discharge or transfer of title recorded in the appropriate registry.

5. – The obligee may at any time, and shall where so required by the obligor under the preceding paragraph, procure discharge of the registration of the obligee's international interest by transmitting a registration discharge notice to the appropriate registry.

6. – Registration of an international interest remains effective for the period of time specified in the registration notice or registration amendment notice unless previously discharged pursuant to this Article [or removed from the data base of a registry pursuant to paragraph (a) of Article 22].

7. – In this Article “appropriate registry” includes a satellite registry to which the Rules permit or require a notice to be transmitted.

Article 18

1. – A prospective international interest may be registered in the appropriate registry with the consent in writing of the intending grantor of the interest by transmission to the registrar of a registration notice relating to the prospective international interest.

2. – The provisions of this Chapter other than paragraph 1 of Article 17 apply *mutatis mutandis* to a prospective international interest as they apply to an international interest.

3. – The intending grantor of the prospective international interest may by notice to the appropriate registry require the registration to be removed at any time before the prospective grantee of the interest has given value or incurred a commitment to give value.

Article 19

A document in the form prescribed by the Rules which purports to be a certificate issued by a registry is *prima facie* proof:

- (a) that it has been so issued; and
- (b) of the facts recorded in it, including the date of registration of the international interest and the order of registration as indicated by the registration number, and the date of registration of any amendment notice, subordination notice, assignment notice or discharge notice affecting that interest.

Article 20

A notice transmitted to a registry pursuant to this Chapter shall be accepted for the purposes of registration only if:

- (a) the proposed registration appears to be in conformity with the provisions of this Convention; and
- (b) the notice is in the form prescribed by the Rules and is accompanied by such other documents and information, and by such fee or fees, as the Rules require.

Article 21

1. – Any person may make a search in a registry concerning any object.

2. – On receipt of a search request concerning any object and made in conformity with the Rules, the registrar of a registry shall issue a registry search certificate setting out:

- (a) any information relating to the object, including the manufacturer’s serial number or other asset identification mark of the object and the registration number assigned to the registration by the registry, where there is such information on the data base; or
- (b) a statement that there is no such information on the data base.

Article 22

A registration may be removed from the data base of a registry by the registrar:

- [(a) where the registration appears no longer to be effective; or
- (b)] on receipt of a discharge notice relating to the registration.

[*Article 23*

The registrar of a registry may suspend any one or more of the functions of the registry under this Convention for a period of time during which, in the opinion of the registrar, it is not practicable to provide registry services [for reasons beyond the registry's control].]

CHAPTER VI

EFFECTS OF AN INTERNATIONAL INTEREST
AS AGAINST THIRD PARTIES

Article 24

1. – An international interest registered under this Convention has priority over any other interest subsequently registered.

[*Alternative A*

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

- (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
- (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.]

[*Alternative B*

2. – However, where the holder of the first-mentioned interest gives value after registration of the other interest and with actual knowledge of it, the first-mentioned interest is subordinate to the other interest except to the extent that such value:

- (a) does not exceed the sum or maximum sum (if any) secured by the first-mentioned interest and specified as so secured in any registration notice or registration amendment notice taking effect under paragraph 5 of Article 16 before the creation of the other interest; or
- (b) is given pursuant to an obligation entered into without actual knowledge of the other interest.]

3. – A buyer who acquires title to an object takes free from an unregistered international interest even if he has actual knowledge of it.

4. – [(a)] Priority between a registered international interest and a consensual interest (other than that of a buyer under the preceding paragraph) which is not registrable under this Convention is determined by the order of their creation.

[(b)] Notwithstanding the preceding sub-paragraph, the interest first created is subordinate to the other interest as regards value given by the holder of the first-mentioned interest with actual knowledge of the other interest except to the extent provided by sub-paragraphs (a) and (b) of paragraph 2].⁽⁴⁾

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

6. – Any priority given by this Article to an interest in an object extends to insurance proceeds payable in respect of the loss or physical destruction of that object.

[7. – In proceedings before the courts of a Contracting State a non-consensual right or interest (other than a registrable national interest) which under the law of that State would have priority over an interest in the object equivalent to that held by the holder of the international interest (whether in or outside the insolvency of the obligor) has priority over the international interest to the extent, and only to the extent, set out by that State in its instrument of ratification, acceptance, approval or accession or any subsequent instrument amending that instrument deposited with the depositary.]

Article 25

1. – An international interest is valid against the trustee in bankruptcy and creditors of the obligor, including creditors who have obtained an attachment or execution, if prior to the commencement of the bankruptcy, attachment or execution that interest was registered in conformity with this Convention.

2. – For the purposes of the preceding paragraphs “trustee in bankruptcy” includes a liquidator, administrator or other person appointed to administer the estate of the obligor for the benefit of the general body of creditors.

3. – Nothing in this Article affects the validity of an international or other interest against a person referred to in paragraph 1 where that interest is valid against that person under the applicable law.

4. – Nothing in this Article affects any special rules of insolvency law [(other than a rule within paragraph 7 of the preceding Article)] applicable to the insolvency of the obligor.

⁽⁴⁾ This paragraph will apply only where Alternative B of paragraph 2 is adopted.

Article 26

For the purposes of this Chapter, where a registered prospective international interest becomes an international interest, the international interest shall be treated as registered from the time of registration of the prospective international interest.

CHAPTER VII

ASSIGNMENTS OF INTERNATIONAL INTERESTS

Article 27

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

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

- (a) is made with the written consent of the obligor;
- (b) is in writing;
- (c) identifies expressly or by reference to another document the international interest and the object to which it relates;
- (d) in the case of an assignment by way of security, identifies the obligations secured by the assignment.

3. – For the purposes of this Convention “assignment” means an outright transfer or any other kind of transfer or agreement, whether by way of security or otherwise, which confers on the assignee rights in or over the international interest.

Article 28

1. – An assignment of an international interest transfers to the assignee, to the extent agreed by the parties:

- (a) all the rights and priorities of the assignor under this Convention; and
- (b) in the case of an assignment of a security interest, title to the secured obligations.

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

Article 29

1. – An assignee of an international interest under an assignment conforming to the provisions of Article 27 may register the assignment by transmitting an assignment notice to the appropriate registry.

2. – The provisions of Chapter V of this Convention (other than paragraph 1 of Article 16) and Article 26 shall apply *mutatis mutandis* to the registration of an assignment or prospective assignment of an international interest as if the assignment or prospective assignment were the international interest or prospective international interest and as if the assignor were the grantor of the interest.

Article 30

Where an international interest has been assigned in accordance with the provisions of this Chapter, the obligor in relation to that interest is bound by the assignment, and has a duty to make payment or give other performance to the assignee, if but only if:

- (a) the notice identifies the international interest; and
- (b) the obligor does not have [actual] knowledge of any other person's superior right to payment or other performance.

Article 31

1. – In the event of default by the assignor under the assignment of an international interest made by way of security, Articles 8, 9 and 11 to 14 apply as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the international interest and the security interest created by that assignment;
- (b) to the chargee and chargor were references to the assignee and assignor of the international interest; and
- (c) to the object included references to the assigned rights relating to the object.

2. – Where, in the case of an assignment by way of security, the sums collected or received by the assignee of the international interest as the result of the exercise of the remedies provided by virtue of the preceding paragraph exceed the amount secured by the security interest, then unless otherwise ordered by the court the assignee shall pay the excess to the holder of the assignment registered immediately after its own or, if there is none, to the assignor of the international interest.

Article 32

Where there are competing assignments of international interests and at least one of the assignments is registered, the provisions of Article 24 [(other than paragraph 2)] ⁽⁵⁾ apply as if the references to an international interest were references to an assignment of an international interest.

Article 33

1. – An assignment of an international interest is valid against the trustee in bankruptcy and creditors of the assignor, including creditors who have obtained an attachment or execution, if prior

⁽⁵⁾ The words in brackets apply only where Alternative B to paragraph 2 of Article 24 is adopted.

to the commencement of the bankruptcy, attachment or execution that assignment was registered in conformity with this Convention.

2. – Nothing in this Article affects any special rules of insolvency law applicable to the insolvency of the assignor.

[CHAPTER VIII

REGISTRABLE NATIONAL INTERESTS

Article 34

1. – A Contracting State may in its instrument of ratification, acceptance, approval or accession set forth the non-consensual interests arising under an attachment or execution against an object, or by way of lien to secure payment of services rendered in respect of that object, which may be registered as international interests under this Convention.

2. – The holder of a registrable national interest may apply to register it by transmitting a national interest registration notice to the appropriate registry, and paragraphs 1, 2, 4 and 7 of Article 17 and the provisions of Chapter VI, so far as appropriate, shall apply *mutatis mutandis* in relation to the registered national interest.]

[CHAPTER IX
JURISDICTION]

[CHAPTER X
RELATIONSHIP WITH OTHER CONVENTIONS]

[CHAPTER XI
OTHER FINAL PROVISIONS]

APPENDIX

DEFINITIONS

In this Convention:

- (a) “assignment notice” means a notice referred to in paragraph 1 of Article 29;
- (b) “international interest” means an interest to which Article 1 applies;
- (c) “leasing agreement” means an agreement by which one person (“the lessor”) grants a lease or sub-lease of an object (with or without an option to purchase) to another person (“the lessee”) for such minimum period (if any) as may be specified in the relevant Protocol;
- (d) “notice” means a notice in writing;
- (e) “object” means an object of a kind listed in paragraph 1 of Article 2;
- (f) “obligee” means the chargee, seller or lessor under a security agreement, title reservation agreement or leasing agreement;
- (g) “obligor” means the chargor, buyer or lessee under a security agreement, title reservation agreement or leasing agreement;
- (h) “prospective assignment” means an assignment referred to in an assignment notice as one that is intended to be made in the future;
- (i) “prospective international interest” means an interest referred to in a registration notice as one that is intended to be created or provided for as an international interest in the future;
- (j) “registered” means registered in the international register pursuant to Chapter[s] V [or VIII];
- (k) [“registrable national interest” means an interest registrable under Article 34;
- (l) “registrar” means the registrar of the International Registry;
- [(m)] “registration amendment notice” means a notice referred to in paragraph 2 of Article 17 or paragraph 1 of Article 29;
- [(n)] “registration discharge notice” means a notice referred to in paragraph 5 of Article 17;
- [(o)] “registration notice” means a notice referred to in paragraph 1 of Article 17;
- [(p)] “Rules” means rules laid down by the body referred to in sub-paragraph (c) of paragraph 2 of Article 15;
- [(q)] “secured obligation” means an obligation secured by a security interest;
- [(r)] “security agreement” means an agreement by which one person (“the chargor”) grants or agrees to grant to another person (“the chargee”) an interest (“security interest”) in or over an object to secure the performance of an existing or future obligation of the chargor or a third person;
- [(s)] “subordination notice” means a notice referred to in paragraph 3 of Article 17;
- [(t)] “title reservation agreement” means an agreement by which one person (“the seller”) agrees to sell an object to another person (“the buyer”) on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

[(u)] “unregistered” means not registered;

[(v)] “writing” means an authenticated record of information (including information sent by teletransmission) which is retrievable in tangible form for subsequent reference.