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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

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

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

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

*PRELIMINARY DRAFT PROTOCOL
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT*

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

Rome, January 1998

INTRODUCTORY NOTE

(by the Unidroit Secretariat)

At its third session, held in Rome from 15 to 21 January 1997, the Study Group was seised of a proposal, tabled jointly by the Aviation Working Group (hereinafter referred to as *A.W.G.*) and the International Air Transport Association (hereinafter referred to as *I.A.T.A.*), to split the future Unidroit Convention on international interests in mobile equipment into a base Convention setting forth general rules universally applicable to all the different categories of equipment falling within its sphere of application and one or more equipment-specific Protocols containing such additional rules as might be necessary to adapt the general rules of the base Convention to the special financing patterns of specific categories of equipment. This proposal was adopted by the Study Group and was subsequently provisionally approved by the Unidroit Governing Council at its 76th session, held in Rome from 7 to 12 April 1997.

Pursuant to this decision, the President of Unidroit on 10 February 1997 invited Mr J. Wool, in his joint capacity as expert consultant to the Study Group on international aviation finance matters and co-ordinator of the A.W.G., to organise and chair a working group to prepare a preliminary draft Protocol on matters specific to aircraft equipment capable of being submitted for information to the Governing Council at the same time as the preliminary draft Convention, under preparation by the Study Group, was ready for submission for approval to that body.

The text of a preliminary draft aircraft equipment Protocol to the future Unidroit Convention on international interests in mobile equipment, established by an aircraft protocol group, the core members of which were Dr. L. Weber, Director, Legal Bureau, International Civil Aviation Organization (hereinafter referred to as *I.C.A.O.*), Mr L.S. Clark, General Counsel and Corporate Secretary, I.A.T.A., and Mr Wool, was communicated to the President by the latter on 28 January 1998.

In his letter communicating the text of the preliminary draft Protocol, Mr Wool indicated that the core members of the aircraft protocol group had carefully developed and refined this text over the previous year, starting with a detailed outline (APG 1997 Doc. 1), then preparing an initial draft (APG 1997 Doc. 4), revising that initial draft (APG 1997 Doc. 7) and finally settling on its definitive form (APG 1998 Doc. 12). He further indicated that the aircraft protocol group had held two formal sessions to consider the interim drafts, the first held in Montreal at the offices of I.C.A.O. from 25 to 27 August 1997 and the second in Geneva at the offices of I.A.T.A. from 19 to 21 November 1997. He pointed out that the aircraft protocol group had been greatly assisted in its work by the involvement of numerous observers, many of whom had taken responsibility for co-ordinating, to the extent that this was practicable, with representatives of Government and industry in their respective countries. These observers included officials or persons designated from Canada, China, Colombia, France, Germany, India, Indonesia, Ireland, Nigeria, the Russian Federation, the United Kingdom, the United States of America and the Commission of the European Communities.

The French-language version of the preliminary draft Protocol is a translation of the English-language original prepared as a collaborative effort by the Canadian Department of Justice and the Quebec Research Centre for Private Comparative Law of McGill University,

Montreal. In communicating the text of the preliminary draft Protocol Mr Wool paid a tribute to their invaluable work in preparing this translation. He noted that their expert work on the interim drafts had drawn to the attention of the aircraft protocol group not only a number of preferred drafting techniques but also certain conceptual difficulties requiring further consideration and emendation of the English-language text.

The preliminary draft aircraft equipment Protocol is reproduced hereunder.

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AIRCRAFT PROTOCOL GROUP

PROPOSED UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS
IN MOBILE EQUIPMENT

AIRCRAFT EQUIPMENT PROTOCOL

(preliminary draft Aircraft Equipment Protocol established by the Aircraft Protocol Group)

January 1998

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AIRCRAFT EQUIPMENT**

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**PRELIMINARY DRAFT PROTOCOL ON INTERNATIONAL INTERESTS IN
AIRCRAFT EQUIPMENT**

(as established by the Aircraft Protocol Group at the conclusion of its second session held in
Geneva from 19 to 21 November 1997)

THE CONTRACTING STATES TO THIS PROTOCOL

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

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

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

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

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

HAVE AGREED as follows:

**CHAPTER I
GENERAL PROVISIONS**

*Article I
Defined Terms*

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

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

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

(b) "aircraft engines" means aircraft engines powered by jet propulsion or turbine technology that:

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

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

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

except aircraft engines used in military, customs and police services;

(c) "aircraft objects"⁽¹⁾ means airframes, aircraft engines and helicopters;

(d) "airframes" means airframes that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

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

(2) goods in excess of 2750 kilograms,

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

except airframes used in military, customs and police services;

(e) "authorised party" means the party referred to in paragraph 2 of Article XXII of this Protocol;

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

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

(h) "Chicago Convention registry authority" means the national authority or the common mark registering authority in the state of registry responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention;

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

(j) "deregister the aircraft" means the Reregistration of an aircraft from a Chicago Convention aircraft register;

⁽¹⁾ In accord with the Convention, the body of this Protocol employs the term "object," rather than the term "equipment," although the latter is used in the title of the instrument (and, for consistency with that title, in the preamble). Consideration should be given as to whether a more consistent approach to the use of these two terms is appropriate in both instruments.

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

(l) "helicopters" means heavier-than-air machines supported in flight chiefly by the reactions of the air on one or more power driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

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

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

except helicopters used in military, customs and police services,

(m) "insolvency date" means the date referred to in paragraph 2 of Article XIX of this Protocol;

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

[(o) "International Regulator" means [the permanent international body designated as the International Regulator under this Protocol] [the entity designated as the International Regulator in paragraph 1 of Article XXIII of this Protocol];]

(p) "interpretive note" means the note [approved] [authorized] by the diplomatic conference relating to the adoption of this Protocol as a[n] [authoritative] source for interpreting this Protocol;

(q) "primary insolvency jurisdiction" means the jurisdiction of the insolvency proceedings referred to in paragraph 2 of Article XX of this Protocol;

(r) "prospective transfer" means a sale of an aircraft object pursuant to a transfer agreement that is intended to take effect in the future;

[(s) "Registrar" means [the entity designated as the Registrar under this Protocol] [the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be, as specified in Article XXIII of this Protocol].]

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

(u) "surety undertaking" means a contract or instrument in which a surety, guarantor or other credit insurer ("the surety") conditionally or unconditionally agrees with an obligee to pay amounts or perform obligations in the case of a default by an obligor; and

(v) "transfer agreement" means a contract or instrument by or in which one person ("the transferor") sells or agrees to sell an aircraft object to another person ("the transferee") and that is expressed to fully divest the transferor of its interest in that aircraft object.

Article II
Modifications Relative to Aircraft Objects

The Convention is modified relative to aircraft objects by the terms of this Protocol.

Article III
Interpretive Note

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

CHAPTER II
SPHERE OF APPLICATION PROVISIONS

Article IV
Select Provisions Relating to Scope

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

2. - Article W of the Convention is deleted in its entirety.

3. - The Convention shall have no effect for purposes beyond its scope including the application of national rules relating to:

- (a) taxation or depreciation of aircraft objects; and
- (b) liability, death, personal injury or property damage caused by aircraft objects.

Article V
Extension of Convention to Transfers

1. - A transfer agreement that is in writing, relates to an aircraft object in respect of which the transferor has the power to enter into that agreement and identifies the aircraft object by its manufacturer's serial number is sufficient to:

- (a) transfer the interest of the transferor in the aircraft object to the transferee; and
- (b) entitle the transferee to register the interest in the International Registry in conformity with this Protocol and the Regulations.

2. - The provisions of paragraph 1 of Article 16 and Articles 18-20 of the Convention and Article XXVII of this Protocol apply *mutatis mutandis* in relation to the registration of a prospective transfer or a transferee's interest under a transfer agreement.

3. - The provisions of Article 29 of the Convention apply *mutatis mutandis* to the interest of a transferee as against the trustee in bankruptcy of a transferor.

4. - The provisions of paragraph 2 of Article 38 of the Convention apply *mutatis mutandis* to the priority of a non-consensual right or interest (other than a registrable non-consensual right or interest) as against a registered interest in an aircraft object of a transferee.

5. - The provisions of Article VII of this Protocol apply *mutatis mutandis* to the ability of the parties to enter into a transfer agreement in an agency, trust or other representative capacity.

6. - The provisions of Article VIII of this Protocol apply *mutatis mutandis* to the rights and interests of a transferee under a transfer agreement.

7. - The provisions of Article XXI of this Protocol apply *mutatis mutandis* to the ability of the parties to agree on the body of national law to govern their contractual rights and obligations under a transfer agreement.

Article VI
Associated Rights⁽²⁾

Paragraph (c) of Article 1 of the Convention is deleted and replaced by the following:

"(c) "associated rights" means all rights to payment or other performance from an obligor under the agreement and related transaction documents secured by or associated with an object."

CHAPTER III
AVIATION FINANCE MODIFICATIONS

Article VII
Representative Capacities

An obligee may enter into an agreement, or register a related interest in an aircraft object, in an agency, trust or other representative capacity. Where this has occurred:

(2) Consideration should be given as to whether the definition of associated rights ought to include express supplier warranties relating to aircraft objects. If and to the extent they are eventually included, the written consent of the supplier, analogous to the obligor consent specified in paragraph 1 of Article XIII of this Protocol, would be required as a condition to the assignment of such warranties and to the binding of a supplier to that assignment. It should be noted that Chapter VII of the Convention would require additional modifications to reflect this expansion.

(a) the obligee, to the exclusion of the party or parties represented, shall be entitled to assert rights and interests under the Convention; and

(b) that capacity may not be used as a defense for the failure by any obligor to perform its obligations under an agreement and related transaction documents.

Article VIII

No Nationality, Domicile or Residence Conditions

The rights and interests of an obligee under the Convention shall not be conditioned upon its place of domicile or residence, or its nationality. The preceding sentence shall not affect the provisions of Article 4 of the Convention.

Article IX

Inapplicability to Wet Lease Transactions

To constitute a "leasing agreement" for the purposes of paragraph (i) of Article 1 of the Convention, the lessor must be obliged to surrender possession of the aircraft object.

Article X

Description of Aircraft Objects

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

Article XI

Modifications to Default Remedies Provisions

1. - In addition to the remedies specified in paragraph 1 of Article 9 and in Article 11 of the Convention, and the forms of judicial relief specified in paragraph 1 of Article 15 of the Convention, the obligee may in the circumstances specified in such Articles:

(a) deregister the aircraft; and

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

2. - Paragraph 2 of Article 9 of the Convention is deleted in its entirety.

3. - A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall satisfy the requirement of providing "reasonable prior notice" specified in paragraph 3 of Article 9 of the Convention. The foregoing shall not prevent a chargee and a chargor from agreeing to a longer prior notice period.

4. - All references in the Convention to the "amount secured" by a security agreement or an assignment by way of security, as applicable, shall mean all amounts agreed by the parties to be secured, including such amounts expended by a chargee or assignee to

bring the aircraft object into the physical condition required by the agreement and related transaction documents.

5. - The phrase "guarantor or surety under a guarantee (including a demand guarantee or standby letter of credits given to the chargee" is deleted and replaced by the word "surety" in sub-paragraph (b) of paragraph 6 of Article 9 of the Convention.

6. - The words "a senior officer of" are inserted immediately in front of the words "the chargee within" where they appear in sub-paragraph (d) of paragraph 6 of Article 9 of the Convention.

7. - The following is inserted immediately after Article 14 of the Convention and designated *Article 14 bis*:

"1. - Any remedy given by the Convention shall be exercised in a commercially reasonable manner.

2. - An agreement between an obligor and an obligee as to what is commercially reasonable shall, subject to paragraph 3, be conclusive.

3. - An obligee may not take possession or control of an aircraft object in a manner which contravenes public order. For these purposes, the disruption of air transport shall not in itself be deemed a contravention of public order."

8. - The word "or" is deleted from sub-paragraph (b) of paragraph 3 of Article 15 of the Convention. The period at the end of sub-paragraph (c) of that Paragraph is replaced by the mark and word "; or". The following is added immediately after sub-paragraph (c) of that Paragraph:

"(d) the aircraft is within the territory of the state of registry."

Article XII *Modification to Priority Provisions⁽³⁾*

1. - The words "at the time of its acquisition of that interest" are deleted and replaced by the words "prior to the time of its registration of that interest as a transferee" in sub-paragraph (a) of paragraph 3 of Article 28 of the Convention.

2. - The words "at the time of its registration of that interest as a transferee" are inserted immediately after the words "unregistered interest" where they appear in sub-paragraph (b) of paragraph 3 of Article 28 of the Convention.

⁽³⁾ While no modification was made to the definition of "unregistered interest" in paragraph (x) of Article 1 of the Convention, as employed in paragraph 1 of Article 28 of the Convention, consideration should be given as to whether a revision is required to ensure that such definition includes all consensual and non-consensual rights and interest, other than ones to which paragraph 2 of Article 38 of the Convention applies, *whether or not such rights and interests are registrable*.

3. - The words "and to amounts payable by any governmental entity in respect of its confiscation, condemnation or requisition of that object" are inserted immediately following the words "physical destruction of that object" where they appear in paragraph 5 of Article 28 of the Convention.⁽⁴⁾

Article XIII
Modification to Assignment Provisions

1. - The following is added to paragraph 2 of Article 30 of the Convention immediately after sub-paragraph (c) thereof:

"(d) is consented to in writing by the obligor."

2. - The written consent of the obligor referred to in sub-paragraph (d) of paragraph 2 of Article 30 of the Convention may be granted in advance of the assignment and need not specifically identify the assignee.

3. - The words "so far as such rights are assignable under the applicable law" are deleted from sub-paragraph (b) of paragraph 1 of Article 31 of the Convention.

4. - An agreement by the obligor within the meaning of paragraph 2 of Article 31 of the Convention shall be effective to waive such defenses and rights of set-off to the extent so agreed.

5. - Sub-paragraph (c) of paragraph 1 of Article 33 of the Convention is deleted.

[6. - All the words following the phrase "not held with an international interest" are deleted from Article 36 of the Convention.]⁽⁵⁾

Article XIV
Special Provisions Applicable to Sureties and Rights of Subrogation

1. - Subject to paragraph 2 below, nothing in the Convention shall adversely affect the rights and interests of any person arising by operation of legal principles of subrogation. The vesting of such rights and interest shall not constitute an "assignment" within the meaning of paragraph 3 of Article 30 of the Convention.

⁽⁴⁾ Consideration should be given as to whether Chapter V of this Protocol ought to include an associated precatory provision requiring compensation in the case of government confiscation, condemnation or requisition. That provision might say, by way of example, the following: "A Contracting State shall not confiscate, condemn or requisition an aircraft object without providing fair compensation, determined objectively. That compensation shall be paid prior to such confiscation, condemnation or requisition except in the case of a declared national emergency or with the consent of the obligee. For purposes of this provision, the exceptions to the definitions of airframes, aircraft engines and helicopters contained in their respective final clauses shall not apply." A corollary definition of "fair compensation" may need to be developed.

⁽⁵⁾ Article 36 of the Convention, as may be modified by this Protocol, will have important implications on the competing rights of a receivables financier and an asset-based financier in payment obligations of an obligor. Consideration should be given as to the appropriate rule in the context of aviation financing.

2. - Any obligees, sureties or other persons referred to in the preceding paragraph may vary the priority of their respective interests by written agreement.

3. - To the extent agreed between a surety and an obligee:

(a) a surety is entitled to, and may register, a prospective assignment of the international interest from an obligee; and

(b) that prospective assignment may take effect as an assignment of that international interest to the extent of payments made by the surety to the obligee.

4. - The provisions of Article 29 of the Convention shall apply *mutatis mutandis* to the interests of a surety contemplated by sub-paragraph (b) of the preceding paragraph as against the trustee in bankruptcy of an obligee.

5. - Until such time as any partial assignment permitted by paragraph 3 above becomes a complete assignment, the obligee shall remain the sole person entitled to assert rights and interests under the Convention. As between a surety and an obligee, such rights and interests shall be so asserted for the benefit of the surety to the extent of any such partial assignment.

6. - The provisions of sub-paragraph (d) of paragraph 2 of Article 30 of the Convention requiring written consent of the obligor and of paragraph 2 of Article XIII of this Protocol permitting advance consent apply *mutatis mutandis* to a prospective assignment. Where an obligor has so consented to a prospective assignment, no additional consent is required as a condition to its becoming an assignment.

CHAPTER IV DECLARATIONS RELATING TO AIRCRAFT OBJECTS

Article XV Declaration of Relevant Court

A Contracting State shall declare at the time of ratification, acceptance, approval of, or accession to this Protocol the relevant "court" or "courts" for purposes of paragraph (f) of Article 1 of the Convention. A declaration of more than one court shall be supplemented, as appropriate, with instructions as to when each of the courts declared is "the court" for purposes of this Protocol.

Article XVI Declarations under the Convention

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to this Protocol:

(a) the extent to which any remedy available under Articles 9 to 11 of the Convention which is not there expressed to require application to the court may only be exercised with leave of the court as specified in paragraph 2 of Article Y of the Convention;

(b) that while the charged object is situated within or controlled from its territory the chargee shall not grant a lease of the object in that territory as specified in paragraph 1 of Article Y of the Convention;

(c) that it will not apply the provisions of Article 15 of the Convention, wholly or in part, as specified in Article Z of the Convention;

(d) categories of registrable non-consensual rights or interests in accordance with paragraph 1 of Article 38 of the Convention; and

(e) categories of preferred non-consensual rights or interests in accordance with paragraph 2 of Article 38 of the Convention and the extent of their preference.

CHAPTER V PRECATORY ASSET-BASED FINANCING AND LEASING PROVISIONS

Article XVII

Declarations Relating to Precatory Provisions

A Contracting State may declare at the time of ratification, acceptance, approval of, or accession to this Protocol that it will not apply the provisions of any of Articles XVIII-XXII of this Protocol, wholly or in part.

Article XVIII

Definitions of Speedy Judicial Relief

1. - For purposes of paragraph 1 of Article 15 of the Convention, "speedy" in the context of obtaining judicial relief shall mean a period not to exceed thirty calendar days from the date on which the instrument initiating the proceedings is lodged with the court or its administrative office.

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

3. - The parties may, by agreement in writing, derogate from the effect of the provisions of paragraphs 1 and 2 of this Article XVIII.

Article XIX

International Insolvency Provision

1. - This Article XIX applies, subject to paragraph 8 below, where:

(a) any insolvency proceedings have been commenced by the obligor or against it or its assets under applicable national law; or

(b) the obligor has declared its intention to suspend, or has actually suspended, payment of its debt or rental obligations to creditors generally.

2. - The phrase "insolvency date" shall refer to the first date on which one of the events specified in sub-paragraph (a) or (b) of the previous paragraph shall have occurred.

3. - Within a period not to exceed [thirty/sixty] days from the insolvency date the obligor shall:

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

(b) return and deliver the aircraft object to the obligee in accordance with, and in the condition specified in, the agreement and related transaction documents.

4. - Where sub-paragraph (b) of the previous paragraph applies, the remedies specified in sub-paragraphs (a) and (b) of paragraph 1 of Article XI of this Protocol shall be made available by the Chicago Convention registry authority and other administrative authorities, as applicable, in Contracting States no later than three working days after the date on which the aircraft object is returned.

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

6. - No obligations of the obligor under the agreement and related transactions may be modified without the consent of the obligee.

7. - No rights or interests, except for preferred non-consensual rights or interests declared under paragraph (e) of Article XVI of this Protocol and which relate to insolvency proceedings, shall have priority in such proceedings over registered interests.

8. - The parties may, by agreement in writing, derogate from the effect of the provisions of paragraphs 1-6 of this Article XIX.

Article XX
Insolvency Assistance Provision

1. - Contracting States in which an aircraft object is situated shall on an expedited basis cooperate with and assist the appropriate authorities in the primary insolvency jurisdiction in carrying out the provisions of Article XIX of this Protocol.

2. - For purposes of the previous paragraph, the "primary insolvency jurisdiction" shall mean the country in which the centre of the obligor's main interests is situated.

Article XXI
Contractual Choice of Law Provision

The parties to an agreement and the related transaction documents, a surety undertaking or any subordination agreement permitted by the Convention may agree on the

body of national law to govern their contractual rights and obligations, wholly or in part. The agreements, documents and transaction need not bear a relationship to the selected body of national law. References in this Article XXI to a body of national law excludes its choice of law rules.

Article XXII
De-registration and Export Authorisation

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

2. - The person in whose favor the authorization has been issued ("the authorised party") or its certified designee shall be the sole person entitled to take the actions specified in sub-paragraphs (a) and (b) of paragraph 1 of Article XI of this Protocol, and may do so only in accordance with the authorization. The authorization may not be revoked by the obligor without the consent of the authorised party.

3. - The Chicago Convention registry authority and other administrative authorities in Contracting States shall cooperate with the authorised party relating to the speedy completion of the actions specified in the previous paragraph. The foregoing shall not permit the taking of such action where the holder of a registered interest in the aircraft object having priority over the interest of the authorised party has not consented thereto.

CHAPTER VI
REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN
AIRCRAFT OBJECTS

Article XXIII
Regulation and Operation of Registry

Alternative A

[1. - [The International Registry shall be regulated and operated by the International Registry Authority.] [The International Registry shall be regulated by the International Regulator⁽⁶⁾ and operated by the Registrar.]]⁽⁷⁾

⁽⁶⁾ Further consideration needs to be given as to whether the appropriate term is *International Regulator* or *Intergovernmental Regulator*.

⁽⁷⁾ The two bracketed provisions in this Alternative A are mutually exclusive. If the first bracketed provision in Alternative A is adopted, then the various references in Articles XXIV-XXX to the International Regulator and/or to the Registrar, sub-paragraph (c) of paragraph 1 of Article XXV and, possibly, sub-paragraph (e) of paragraph 1 of Article XXV and Article XXIX, would be deleted. If the second bracketed provision in Alternative A or the approach represented by Alternative B is adopted, then the various references in Articles XXIV-XXX to the International Registry Authority would be deleted.

Alternative B

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

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

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

(a) restrict it to acting as Registrar and performing ancillary functions; and

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

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

[2./5.] - The preceding paragraph[s] modify paragraphs 1 and 3 of Article 17 of the Convention.

Article XXIV

Basic Regulatory Responsibilities

1. - The manner in which the regulation [and oversight] of the International Registry is conducted by the [International Registry Authority] [International Regulator], and the associated responsibilities of the operators of the International Registry and registration facilities, shall be specified in the Regulations.

2. - The [International Registry Authority] [International Regulator] shall act in a non-adjudicative capacity. This shall not prevent the [International Registry Authority] [International Regulator] from undertaking the functions specified in paragraph 5 of Article 17 of the Convention as contemplated by paragraphs 2 and 3 of Article XXX of this Protocol.

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

4. - The initial Regulations shall be promulgated by the [International Registry Authority] [International Regulator] prior to the entry into force of this Protocol.

Article XXV
Basic Operational Responsibilities

1. - The [International Registry Authority] [Registrar] shall:
 - (a) operate the International Registry efficiently and responsibly;
 - (b) perform the functions assigned to it under the Convention, this Protocol and the Regulations;
 - [(c) report to the International Regulator on its performance of these functions and otherwise comply with the oversight requirements specified by the International Regulator;]
 - (d) maintain financial records relating to its functions [in a form specified by the International Regulator]; and
 - [(e) insure against liability for its errors and omissions [in a manner acceptable to the International Regulator.]]
2. - The centralised functions of the International Registry shall be operated and administered by the [International Registry Authority] [Registrar] on a twenty-four hour basis. The various registration facilities shall be operated and administered during working hours in their respective territories.

Article XXVI
Registration Facilities

1. - At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may, subject to the paragraph 2 below:
 - (a) designate its operators of registration facilities as specified in paragraph 2 of Article 17 of the Convention; and
 - (b) declare the extent to which any such designation shall preclude alternative access to the International Registry.
2. - A Contracting State may only designate registration facilities as points of access to the International Registry in relation to:
 - (a) helicopters or airframes pertaining to aircraft for which it is the state of registry; and law.
 - (b) registrable non-consensual rights or interests created under its national

Article XXVII
Conditions and Requirements to Registration

1. - The Regulations shall specify the conditions and requirements:

(a) referred to in Article 18 of the Convention; and

(b) which must be fulfilled in order to convert a registered prospective international interest into an international interest and to convert a registered prospective assignment into an assignment.

2. - The [International Registry Authority] [Registrar] and the operators of the registration facilities shall not effect any registrations or enter other information into the data base until the conditions and requirements specified in the preceding paragraph and in the Regulations have been satisfied.

Article XXVIII
Basis of Fee System

1. - The [International Registry Authority] [International Regulator] shall establish and may from time to time amend the fee schedule to be paid by the users of the International Registry.

2. - The fee schedule referred to in the preceding paragraph shall be determined so as to recover the reasonable costs of operating the International Registry and the registration facilities and, in the case of the initial fee schedule, of designing and implementing the International Registry system.

3. - The fees referred to in paragraph 1 of this Article XXVIII shall be set forth in the Regulations.

Article XXIX
Liability Rules for Errors and Omissions

1. - The [International Registry Authority] [Registrar] [and operators of the registration facilities] shall be liable for [its] [their respective] errors and omissions in the operation and administration of the International Registry.

2. - The measure of liability referred to in the preceding paragraph shall be compensatory damages for loss incurred as a result of the error or omission.

3. - The persons who have been damaged by the error or omission shall have standing to bring legal actions against the [International Registry Authority] [Registrar] [or the operators of the registration facilities, as the case may be,] seeking the damages specified in the preceding paragraphs of this Article XXIX.

4. - The courts [of the Contracting State[s] in which the [International Registry Authority] [Registrar] [or the operators of the registration facilities, as the case may be,] [is] [are]] situated shall have jurisdiction to resolve any disputes relating to this Article XXIX. The words "or jurisdiction of the courts" in paragraph 4 of Article 17 of the Convention are deleted to the extent inconsistent with the preceding sentence.

Article XXX
Additional Modifications to Registry Provisions

1. - The provisions of paragraph 4 of Article 17 of the Convention shall not be construed as requiring the grant of privileges or immunities to the [International Registry Authority] [Registrar] or the operators of the registration facilities. Such grant may be made in an agreement between the host country and the [International Registry Authority] [Registrar] and shall only be binding upon the parties to that agreement.

2. - The [International Registry Authority] [International Regulator] shall review acts or omissions of the operators of the International Registry alleged to be in contravention of the Convention, this Protocol or the Regulations and order remedial action as appropriate under the circumstances. The procedures pursuant to which such review shall be undertaken shall be specified in the Regulations.

3. - The operators of the International Registry may request advice from the [International Registry Authority] [International Regulator] regarding the exercise of their respective functions under the Convention, this Protocol and the Regulations. The procedures pursuant to which such advice may be requested and given shall be specified in the Regulations.

4. - The medium for the transmission of information referred to in Article 19 of the Convention shall be specified in the Regulations. This shall not modify the conditions and requirements to registration referred to in Article XXVII of this Protocol.

5. - A registration shall be "searchable" for purposes of paragraph 1 of Article 20 of the Convention when the [International Registry Authority] [Registrar] confirms by electronic notation:

(a) the official sequentially ordered filing number assigned by it to that registration; and

(b) that the registration and its official filing number may be accessed at the International Registry and each registration facility in which searches may be made at that time.

6. - For purposes of paragraph 5 of Article 20 of the Convention, the search criterion for an aircraft object shall be its manufacturer's serial number, as supplemented to ensure uniqueness. Such supplemental information shall be specified in the Regulations.

7. - The registrations permitted by sub-paragraphs (a) and (b) of paragraph 1 of Article 21 of the Convention may also be made by the obligor with the written consent of the obligee, and by the intending grantor or assignor with the written consent of the intended grantee or assignee, respectively.

8. - The registration permitted by sub-paragraph (e) of paragraph 1 of Article 21 of the Convention shall require the consent in writing of the assignor. That registration may also be made by the assignor with the written consent of the assignee.

9. - The registration permitted by sub-paragraph (g) of paragraph 1 of Article 21 of the Convention shall require the consent in writing of the person subordinating its registered interest. That registration may also be made by the person subordinating its interest with the written consent of the person in whose favour the subordination was made.

10. - For purposes of Article 22 of the Convention, registration of an international interest shall, unless discharged, remain effective for an indefinite period of time.

11. - The Regulations shall prescribe the manner in which:

(a) as contemplated by paragraph 1 of Article 23 of the Convention, a person may make or request a search of the International Registry; and

(b) as contemplated by paragraph 2 of Article 23 of the Convention, the [International Registry Authority] [Registrar] shall issue a registry search certificate.

12. - For purposes of Article 24 of the Convention, the categories of preferred non-consensual creditors shall be searchable by the name of the declaring Contracting State.

13. - For purposes of paragraph 2 of Article 27 of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a prospective assignment of an international interest shall take the actions within its power to effect a removal thereof no later than five working days after the receipt of the demand described in such paragraph. The foregoing shall not prevent the parties from agreeing to a shorter period in their agreement.

CHAPTER VII JURISDICTIONAL RULES

Article XXXI Basis of Jurisdiction

1. - Courts of Contracting States specified in sub-paragraphs (a), (b), (c) and (d) of paragraph 3 of Article 15 of the Convention have general jurisdiction, subject to paragraph 2 below, over any other actions relating to the Convention.

2. - The courts referred to in the previous paragraph shall not issue orders or make rulings that purport to bind the [International Registry Authority] [Regulator] or the operators of the registration facilities.

3. - A court of a Contracting State referred to in sub-paragraph (c) of paragraph 3 of Article 15 of the Convention may refuse to exercise jurisdiction contemplated by the Convention where exercising such jurisdiction would violate the fundamental public policy of the Contracting State in which that court sits.

Article XXXII
Waivers of Sovereign Immunity

A waiver of sovereign immunity from jurisdiction of the courts specified in paragraph 1 of Article XXXI of this Protocol or relating to enforcement of rights and interests relating to an aircraft object under the (convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

CHAPTER VIII
RELATIONSHIP WITH OTHER CONVENTIONS

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

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

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

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

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

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

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

Article XXXIV

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

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

Article XXXV

Relationship with Unidroit Convention on International Financial Leasing of 1988

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

Article XXXVI

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

The Convention shall, for Contracting States that do not make a declaration under Article XVII of this Protocol that they will not apply Article XXI of this Protocol, supersede where inconsistent the Rome Convention on the Law Applicable to Contractual Obligations 1980 to the extent that such Convention is in force among them.

Article XXXVII

*Relationship with Inter-American Convention on the Law Applicable to International
Contracts 1994*

The Convention shall, for Contracting States that do not make a declaration under Article XVII of this Protocol that they will not apply Article XXI of this Protocol, supersede where inconsistent the Inter-American Convention on the Law Applicable to International Contracts 1994 to the extent that such Convention is in force among them.

**CHAPTER IX
FINAL PROVISIONS**

[It is envisaged that, in accordance with established procedures, the plenipotentiaries at the diplomatic conference will develop the final provisions to this Protocol. To facilitate their work, and to indicate the suggestions of the Aircraft Protocol Group, a preliminary set of draft final provisions are set out in the Final Provisions Addendum to this text.

Particular reference should be made to two such draft provisions which are viewed as necessary extensions of the developmental work on the text of this Protocol: *Article XLIV(3)* (limiting the effect of any denunciation or future declaration or reservation as relates to previously established rights) and *Article XLVII* (establishing a review board, and contemplating review and revision of this Protocol).]

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Protocol in English and French, both texts being equally authentic.

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

[Insert Date]

To: [Insert Name of Chicago Convention Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

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

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

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
 - (a) obtain de-registration of the aircraft from the [insert name of national aviation registry] maintained by the [insert name of aviation authority] for purposes of Chapter III of the Chicago Convention of 1944 on International Civil Aviation; and
 - (b) export and physically transfer the aircraft from [insert name of country]; and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the actions specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall cooperate with the authorised party relating to the speedy completion of such actions.

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

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

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

Sincerely yours,

[insert name of operator/owner]

Agreed to and lodged this
[insert date]

By: [insert name of signatory]
Its: [insert title of signatory]

[insert relevant notational details]

FINAL PROVISION ADDENDUM

Article XXXVIII Convention and Protocol as Single Instrument

The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Unidroit Convention on International Interests in Mobile Equipment as modified by the Protocol on Aircraft Equipment*.

Article XXXIX Signature, Ratification, Acceptance, Approval and Accession

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

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

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

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

Article XL Entry Into Force

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

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

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

Article XLI
Territorial Units

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

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

3. - If a Contracting State makes no declaration under paragraph 1 above, the Convention is to extend to all territorial units of that Contracting State.

Article XLII
Temporal Application

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

Article XLIII
Declarations and Reservations

1. - No declarations or reservations may be made to this Protocol at the time of signature but instead shall be specified at the time of ratification, acceptance, approval or accession.

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

Article XLIV
Denunciations and Subsequent Declarations

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

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

3. - Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation or subsequent declaration were made, in respect of all rights

and interests arising prior to the effective date of that denunciation or subsequent declaration. The foregoing shall not apply to any subsequent declaration under Article XV of this Protocol.

Article XLV
Withdrawal of Declarations and Reservations

Any Contracting State may at any time withdraw a declaration or reservation that it has made. Any such declaration or 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.

Article XLV
Depositary Arrangements

1. - This Protocol shall be deposited with the
[_____].

2. - The [_____] shall:

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

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

(ii) each declaration made in accordance with this Protocol;

(iii) the withdrawal of any declaration;

(iv) the date of entry into force of this Protocol; and

(v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all signatory Contracting States, to all Contracting States acceding to the Protocol and to [_____];

(c) provide the [International Registry Authority] [Registrar] with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible; and

(d) perform such other functions customary for depositaries.

Article XLVII
Establishment and Responsibilities of Review Board

1. - A five-member review board shall promptly be appointed to prepare yearly reports to the Contracting States addressing the matters specified in sub-paragraphs (a)-(d) of

paragraph 2 of this Article XLVII. [The composition of the review board, and its organization and administration, shall be determined, in consultation with other aviation interests, jointly by the International Institute for the Unification of Private Law and the International Civil Aviation Organization].

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

- (a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of aircraft objects;
- (b) the judicial interpretations given to the terms of the Convention, this Protocol and the Regulations;
- (c) the functioning of the International Registry system, and performance of the [International Registry Authority] [Registrar and its oversight by the International Regulator]; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.