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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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COMMITTEE OF GOVERNMENTAL EXPERTS FOR THE PREPARATION OF A DRAFT
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND
A DRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

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

and

*PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT:*

COMMENTS

(submitted by the Government of Switzerland)

Rome, January 1999

INTRODUCTION

(by the Unidroit Secretariat)

Subsequently to its receipt of the preliminary observations by the Government of the United States of America on the preliminary draft Unidroit Convention on International Interests in Mobile Equipment (Study LXXII – Doc. 42) and the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (Study LXXIID – Doc. 3) reproduced in Study LXXII - Doc. 43/Study LXXIID – Doc. 4, of the comments from the Government of Australia on the aforementioned preliminary draft Convention (Study LXXII – Doc. 44) and the aforementioned preliminary draft Protocol (Study LXXIID – Doc. 5), of the comments submitted jointly by the International Air Transport Association and the Aviation Working Group on both texts (Study LXXII – Doc. 45/Study LXXIID – Doc. 6) and of the comments submitted by the Government of Canada on the preliminary draft Convention (Study LXXII – Doc. 46) and the preliminary draft Protocol (Study LXXIID – Doc. 7), the Unidroit Secretariat also received comments from the Government of Switzerland on the preliminary draft Convention and the preliminary draft Protocol. This paper reproduces these comments set out hereunder.



PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

and

PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT:

COMMENTS

(submitted by the Government of Switzerland)

Regarding the two preliminary drafts, our comments are for the moment general in character. In fact, the difficulty that we experience at present on reading these texts concerns the relationship between the national registry and the planned International Registry.

In Switzerland the aircraft registry, established pursuant to the Geneva Convention, permits in particular the registration of security interests (mortgages) in, or leasing agreements concerning all types of aircraft. This instrument, which operates like a land registry, is greatly used for the financing of large capacity aircraft, the category covered in the first place by the preliminary drafts.

We thus find it difficult to conceive an aircraft which is the subject, for instance in Switzerland, of a security interest (a mortgage), covering as a rule the entirety of its value, also being registered in the International Registry in connection with a different security interest. In other words, there needs to be a reliable link between the national registry and the International Registry so as to avoid the same aircraft being the subject of two different security interests depending on the registry in which it is registered.

To our mind, the preliminary draft Convention and Protocol fail to establish this link clearly. The role of the national operators of registration facilities is not brought out with sufficient clarity and needs to be filled out so as to ensure the best possible interface between the International Registry and the national registry.