

# **CIVIL AVIATION (REPEAL AND RE-ENACTMENT) ACT 2006.**



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(c) four persons with cognate experience in aviation; and

(d) the Director-General of the Authority.

(2) The Chairman and members of the Board other than the Director General shall be appointed on part time basis by the President on the recommendation of the Minister.

(3) The Chairman and members of the Board, including the Director-General, shall be persons of recognised expert knowledge, qualification and experience of not less than ten years in one or more of the following fields:

(a) Aeronautical Engineering

(b) Aviation Law

(c) Air Transport Management,

(d) Aerodrome Engineering,

(e) Aircraft Piloting, or

(f) Telecommunications.

(4) The supplementary provisions set out in Schedule VI to this Act shall have effect with respect to the proceedings of the Board and the other matters contained therein. *Schedule VI*

4. A member of the Board, other than the Director General, shall hold office: *Tenure of office*

(a) for a term of 4 years in the first instance and may be reappointed for a further term of 4 years and no more, and

(b) on such terms and conditions as may be specified in the letter of appointment.

5. (1) Notwithstanding the provisions of section 4 of this Act, a person shall cease to hold office as a member of the Board if – *Cessation of office*

(a) he becomes bankrupt, suspends payment or compounds with his creditors; or

(b) he is convicted of a felony or any offence involving dishonesty or fraud; or

(c) he becomes of unsound mind or is incapable of carrying out his duties; or

(d) he is guilty of a serious misconduct in relation to his duties; or

(e) in the case of a person possessed of professional qualification, he is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority; or

(f) he resigns his appointment by a letter addressed to the President.

(2) A member of the Board, other than the Director General, may be removed by the President, on the recommendation of the Minister if the Minister is satisfied that it is not in the interest of the Authority or the public for the member to continue in office.

(3) If a member of the Board ceases to hold office for any reason whatsoever before the expiration of the term for which he is appointed, another person representing the same interest as that member shall be appointed to the Board for the unexpired term.

6. The Chairman and members of the Board shall be paid such allowances, expenses and benefits in accordance with extant Federal Government Financial Guidelines. Allowances, Expenses etc of Chairman and Members

7. The Board shall: Functions of the Board.

(a) fix terms and conditions of service including remuneration of the employees of the Authority in accordance with the provision of Salary and Wages Commission.

(b) receive and review annual reports from the Management of the Authority and submit same to the President and the National Assembly, through the Minister, not later than 30th June in each year. The report shall be on the activities of the Authority during the immediately preceding calendar year, and shall include a copy of the audited accounts of the Authority for that calendar year;

(c) submit not later than 30th September in each year to the Minister an estimate of the expenditure and income of the Authority for the next succeeding year; and

(d) cause to be kept, proper accounts of the Authority in respect of each year and proper records in relation thereto and shall cause the accounts to be audited not later than 6 months after the end of each year by auditors appointed from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation.

#### **PART IV- STAFF OF THE AUTHORITY**

8. (1) There shall be for the Authority a Director General who shall be appointed by the President, on such terms and conditions as stipulated in the act, subject to the confirmation by the Senate. Director-General of the Authority

(2) The Director-General shall be primarily responsible for the fostering of the safety of civil aviation in Nigeria and shall be:

(a) the chief executive and accounting officer of the Authority;

(b) responsible for the day-to-day administration of the Authority;

(c) appointed for a term of 5 years in the first instance and may be re-appointed for a further term of 5 years and no more; and

(d) a person who possesses relevant and adequate professional qualifications and shall have been so qualified for a period of not less than 15 years.

(3) The Director General may be suspended or removed from office by the President if he:

(a) has demonstrated inability to effectively perform the duties of his office; or

(b) has been absent from 5 (five) consecutive meetings of the Board without the consent of the Chairman unless he shows good reason for such absence; or

(c) is guilty of serious misconduct in relation to his duties as Director General; or

(d) in the case of a person possessed of professional qualifications, he is disqualified or suspended from practising his profession in any part of the world by an order of a competent authority; or

(e) is guilty of a Conflict of Interest as stipulated in section 10 of this Act.

(4) The Director General shall not be removed from office except in accordance with the provisions of this Act.

**9.** (1) The Board shall appoint for the Authority a Secretary who shall:

Appointment of Secretary and other staff by the Authority

(a) be a legal practitioner and shall have been so qualified for a period of not less than 12 years;

(b) conduct the correspondence of the Board and keep the official seal and records of the Authority; and

(c) perform such other functions as the Board or the Director-General, may, from time to time assign to him.

(2) The Authority shall appoint such number of employees as may be expedient and necessary for the proper and efficient performance of its functions under this Act.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the Authority shall have power to appoint either directly or on secondment from any public service in the Federation or of a State, such number of staff as may, in its opinion be required to assist it in the discharge of any of the Authority's functions under this Act.

(4) Nothing in subsection (3) of this section shall preclude the Authority from appointing persons from outside the public service of the Federation or of a State.

**10.** (1) The Minister of Aviation, Members of the Governing Board, Director General and employees of the Ministry of Aviation and the Authority shall not control, manage or operate any aviation enterprise while in office.

Conflict of Interests

(2) Any of the persons specified in sub-section 1 above, having a financial interest in any aviation enterprise shall make full disclosure of such interest to their respective appointing authorities.

(3) Any of the persons mentioned in subsection (1) above is prohibited from participating in any action or decision that may, whether directly or indirectly affect their financial interest(s) in any aviation enterprise.

11. (1) Service in the Authority shall be approved service for the purpose of the Pension Reform Act 2004 or any other Act for the time being in force. Pensions

(2) The officers and other persons employed in the Authority shall be entitled to pensions, gratuities and other retirement benefits in conformity with provisions of the Pensions Reform Act 2004.

(3) Nothing in subsections (1) and (2) of this section, shall prevent the appointment of a person to any office on terms which may preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

(4) For the purposes of the application of the provisions of the Pensions Act, any power exercisable there under by a Minister or other authority (other than the power to make regulations the Pensions Act) is hereby vested in and shall be exercisable solely by the Board.

#### **PART V - FINANCIAL PROVISIONS**

12 (1) There shall continue to be a 5% air ticket contract, charter and cargo sales charge to be collected by the airlines and paid over to the Authority. Air Ticket and Cargo Sales Charge.

(2) The Air Ticket and Cargo Sales charge may be reviewed by the Authority in consultation with the stakeholders from time to time.

(3) Funds accruing from the said charge shall be shared in the following manner –

- (a) the Nigeria Civil Aviation Authority - 58%
- (b) Nigerian Airspace Management Agency - 23%
- (c) Nigerian Meteorological Agency - 9%
- (d) Nigerian College of Aviation Technology - 7%
- (e) Accident Investigation Bureau - 3%

Provided that if any of the above listed agencies is privatised it shall immediately cease to share in the funds as aforesaid and the Minister may by regulation specify how the share of such privatised agency shall be applied or disbursed.

13. There shall be established and maintained for the Authority a fund into which shall be paid and credited: Fund of the Authority



(a) all subventions and budgetary allocation from the Government of the Federation;

(b) all fees and funds in respect of services provided by the Authority, and accruing from the grant of-

- (i) Air Travel Organizer's Licence,
- (ii) Air Transport Licence/Airline Operating Permit/Permit for non-commercial flights,
- (iii) Air Operator Certificate;
- (iv) Calibration of navigational aids where applicable,
- (v) Personnel licences,
- (vi) 58% of the air ticket and cargo and charter sales charge imposed in section 12 of this Act,
- (vii) Approved Maintenance Organisation (AMO) approval,
- (viii) Aircraft registration and certification,
- (ix) Certificate of Airworthiness (issue and renewal),
- (x) Rental of property, plant and equipment,
- (xi) Medical examination fees, where applicable,
- (xii) Proceeds from sales of information and publications,
- (xiii) Contract registration fees;
- (xiv) any licence, certificates, permits, contracts or leases issued pursuant to the provisions of this Act.
- (xv) Registration legal instruments and interests
- (xvi) Aerodrome, Heliport and Helipad operating Licence;
- (xvii) Aviation height clearance
- (xviii) Aviation Training Organisations, and
- (xix) Registration of Agencies.

(c) all fines payable for violation of civil aviation regulations, rules and orders;

(d) all sums accruing to the Authority by way of gifts, endowments, bequests, grants or other contributions by persons and organisations;

(e) returns on investments;

(f) foreign aid and assistance; and

(g) all other sums which may, from time to time, accrue to the Authority.

- 14.** The Director General of the Authority shall, from time to time, apply the funds of the Authority to: Expenditure by the Authority

(a) the cost of administration and maintenance of the Authority;

(b) publicise and promote the activities of the Authority;

(c) pay allowances, expenses and other benefits of members of the Board and Committees of the Board;

(d) pay the salaries, allowances and benefits of employees of the Authority;

(e) pay other overhead allowances, benefits and other administrative costs of the Authority; and

(f) undertake such other activities as are connected with all or any of the functions of the Authority under this Act.

- 15.** (1) The Authority may accept gifts of land, money or other property on such terms and conditions, if any, as may be specified by the person or organisation making the gift. Power to accept gifts

(2) The Authority shall not accept any gift if the conditions attached by the person or organisations making the gift are inconsistent with the functions of the Authority under this Act.

- 16.** (1) Subject to all applicable laws, the Board may, from time to time, borrow by overdraft or otherwise, such money as the Authority may require for the performance of its functions under this Act. Power to Borrow and Invest

(2) The Board shall not, without the approval of the President borrow money, which exceeds, at any time, the limit set by the Government of the Federation.

(3) Notwithstanding subsection (1) of this section, where the sum to be borrowed is in foreign currency, the Board shall not borrow the sum without the prior approval of the President

(4) The Board may, subject to the provisions of this Act and the conditions of any trust created in respect of any property, invest all or any of its funds in accordance with any general guidelines approved by the President.

(5) The Board may invest funds in such securities as it deems fit and proper.

- 17.** (1) The Authority shall be exempted from the payment of tenement rates and income tax. Exemption from Tax

(2) The provision of any enactment relating to the taxation of companies or trust funds shall not apply to the Authority.

**18.** (1) The Director-General shall conduct the Authority's affairs with prudence and due diligence to ensure that the Authority does not become insolvent. Duty to be financially prudent

(2) The Authority shall strive to recover the whole of its costs and to achieve reasonable returns on capital and investment.

#### **PART VI - INFORMATION, NOTICES, ETC.**

**19.** (1) For the purpose of obtaining required information for the proper discharge of the functions conferred upon it by this Act, any authorised officer of the Authority may by notice in writing – Power to request for information

(a) require any person who undertakes the business of air transport including carriage of passengers or goods in an aircraft for reward, to furnish such information relating to such business and flights as may be specified in the notices; and

(b) specify the times and the form and manner in which, any information required under paragraph (a) of this subsection shall be furnished.

(2) In carrying out the functions conferred on the Authority, an authorised officer of the Authority shall have unrestricted access to the business premises, aircraft, structures and other apparatus used by any operator for the purpose of air transport or related operations.

(3) In this section, "authorised officer" means the Director General or any other officer of the Authority specifically or generally authorised by the Director General to carry out the functions of the Authority under this Act.

**20.** (1) No estimates, returns or information relating to an air transport undertaking obtained under the foregoing provisions of this Act, shall, without the prior consent in writing of the person carrying on the undertaking which is the subject of the estimates, returns, or information, be disclosed except – Restriction on disclosure of information.

(a) in accordance with directions given by the Authority for the purpose of the exercise of any of its functions under this Act; or

(b) for the purposes of any proceedings under this Act.

(2) If any person discloses any estimates, returns or any information in contravention of subsection 1 of this section, he shall be guilty of an offence and be liable on conviction to imprisonment for a term not less than 1 month or a fine not less than N25, 000.00 or both.

**21.** (1) Any notice required or authorised under this Act to be served on any person may be served either by: Service of Notices

(a) delivering it to the person or his agents or servants; or

(b) leaving it at the person's proper address; or

(c) posting it to the person's principal office by registered post or courier.

(2) Any notice required or authorised to be served upon a body corporate shall be deemed to have been duly served if it is served on a director of or the Secretary to the body corporate.

(3) For the purposes of this section, the proper address of any person on whom such a notice is to be served shall –

(a) in the case of a body corporate, be that of the registered or principal office of the body corporate; and

(b) in any other case, be the last known address of the person.

- 22.** A notice, summons or other document required or authorised to be served upon the Authority under the provisions of this Act shall be served by delivering same to the office of the Director-General of the Authority situate at the Headquarters of the Authority. Service of Documents

### **PART VII-MISCELLANEOUS PROVISIONS**

- 23.** (1) The Authority, may subject to the Land Use Act, acquire any land for the purpose of discharging its functions under this Act. Power to Acquire Land

(2) If there is any hindrance in the acquisition of any land by the Authority under this Act (including any failure by the Authority to reach an agreement as to the amount to be paid in respect of the acquisition), the Authority may apply to the Minister for a declaration under subsection (3) of this section.

(3) The Minister on receiving an application from the Authority and after such enquiry as he may think fit, may request the Governor of the State in which the land is situated to declare that the land is required for the service of the Authority and accordingly for an over-riding public purpose.

(4) Where a declaration is made under subsection (3) of this section, the land to which the declaration relates shall be deemed to be land required for the public purpose of the Federation within the meaning of the Land Use Act and the Authority shall acquire the land accordingly.

(5) Where a declaration has been made under subsection (3) of this section in respect of any land and-

(a) the land has been acquired pursuant to subsection (4) of this section; or

(b) the Governor of the State where the land is situated is satisfied that there are no rights subsisting in respect of the land; the Governor may vest the land in the Authority by issuing a certificate of occupancy in respect thereof, in favour and in the name of the Authority.

(6) The compensation, if any, payable under the Land Use Act for the revocation of any rights relating to the land, where applicable, shall in the first instance be paid by the Federal Government, but the Authority shall refund to the Federal Government any compensation so paid and all incidental expenses incurred by the Government.

(7) A plan of any land referred to in subsection (2) of this section-

(a) containing measurements of the boundaries of the land;

(b) showing the relationship of the land to any sufficient identifying mark(s); and

(c) signed by a licensed surveyor and the Director- General

shall be sufficient description of the land for the purpose of an application under that subsection.

- 24.** (1) Notwithstanding anything contained in any other law or enactment, no suit shall lie against the Authority, a member of its Board, its Director-General, or any other employee of the Authority for any act done in pursuance or execution of any public duty under this Act or any law or enactment, or in respect of any alleged neglect or default in the execution of any public duty under this Act or such law or enactment, unless it is commenced within one (1) year next after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within one (1) year after the ceasing thereof.

Limitation of Suits  
Against the  
Authority

(2) No suit shall be commenced against the Authority, a member of its Board, its Director-General or any employee of the Authority, before the expiration of a period of one (1) month after written notice of intention to commence the suit shall have been served upon the Authority by the intending plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the plaintiff and the relief sought.

- 25.** (1) In any action or suit against the Authority, no execution or attachment or process in the nature thereof save a garnishee process shall be issued against the Authority.

Restriction on  
execution against  
property of the  
Authority

(2) Any sum of money, which may by the Judgment of any court be awarded against the Authority, shall, subject to any direction given by a competent court where notice of appeal of the said judgement has been given, be paid from the fund of the Authority.

- 26.** A member of the Board, the Director-General or employee of the Authority shall be indemnified by the Authority against any civil proceeding brought against him arising from the lawful discharge of any of the functions or the exercise of any of the powers conferred on the Authority under this Act or any other enactment.

Indemnification of  
Officers

## **PART VIII - INVESTIGATION AND ENFORCEMENT**

- 27.** (1) The Authority shall have power to carry out investigations into complaints, and/or occurrence(s), save for accidents and serious incidents, after due notice to the person(s) concerned.

Power to  
Investigate,  
impose fines and  
enforce

(2) If the Authority is satisfied after such hearing that such person(s) is or are violating any provisions of this Act, regulations, rules or orders, as the case may be, it shall by order require the person(s) to take such action consistent with the provision of this Act, regulations, rules or

orders as may be necessary in the opinion of the Authority to prevent further violation of the provisions of this Act, regulations, rules or orders.

(3) The Authority shall have power to take all steps reasonably necessary, including the power to ground any aircraft and to seal the premises of any air transport service provider or provider of allied aviation service, in order to ensure compliance with the provisions of this Act and the regulations, rules and orders made pursuant to it.

**28.** (1) The Minister may after consultation with the Authority give such directions, not inconsistent with the provisions of this Act, to the Authority on matters of policy: - Directions by the Minister

(a) in the interests of national security; or

(b) in connection with any matter appearing to him to affect the relations of Nigeria with a country or territory outside Nigeria; or

(c) in order to discharge or facilitate the discharge of an obligation binding on Nigeria by virtue of its being a member of an international organisation or a party to an international agreement; or

(d) in order to obtain or facilitate the attainment of any other object of which is in his opinion appropriate in view of the fact that Nigeria is a member of an international organization or a party to an international agreement; or

(e) in order to enable Nigeria become a member of an international organisation or a party to an international agreement.

(2) The Authority in the exercise of its functions and powers shall be guided by such directions.

(3) The Authority shall furnish the Board with such information or facilities for obtaining information with respect to its activities as the Minister may from time to time require.

**29.** (1) There is hereby established an Accident Investigation Bureau hereinafter referred to as the Bureau which shall be a body corporate with power to sue and be sued in its corporate name except for matters associated with accident reports and to acquire hold and dispose of property whether movable or immovable. Investigation of Accidents/Accident Investigation Bureau

(2) The Bureau shall be an autonomous agency reporting to the President through the Minister.

(3)(a) The Bureau shall be headed by a Commissioner of Accident Investigation who shall be appointed by the President on the recommendation of the Minister.

(b) The Commissioner of Accident Investigation, who shall be the Chief Executive Officer of the Bureau, shall be appointed for a period of four (4) years renewable once for another period of four (4) years.

(4) The Commissioner of Accident Investigation shall possess cognate experience and qualification in air accident investigation of not less than 12 years.

(5) There shall be established for the Bureau a fund into which shall be paid and credited:

(a) all subventions and budgetary allocation from the Government of the Federation;

(b) 3% of the air ticket contract charter and cargo sales charge imposed in Section 12 of this Act

(c) all sums accruing to the Bureau by way of gifts, endowments, bequests, grants or other contributions by persons and Organisations;

(d) returns on investments;

(e) foreign aid and assistance; and

(f) all other sums which may, from time to time, accrue to the Bureau.

(6) The services of all persons currently employed in the Accident Investigation and Prevention Bureau of the Ministry of Aviation are hereby transferred to the Bureau.

(7) The Commissioner of Accident Investigation may with the approval of the Minister recruit such staff as is necessary for the execution of its functions under this Act.

(8) There shall be appointed for the Bureau a Legal Adviser who shall be a Legal Practitioner of not less than 10 years post call experience.

(9) The Bureau in the execution of its functions under this Act shall follow and adhere to the regulations for accident investigation made by the Minister.

(10) The Minister may make regulations providing for the investigation of any accident or incident arising out of or in the course of air navigation and either occurring in or over Nigeria or occurring to Nigerian aircraft elsewhere.

(11) Without prejudice to the generality of subsection (10) of this section, the regulations made there under may in particular contain provisions:

(a) requiring notice to be given of any such accident or incident as aforesaid in such manner and by such persons as may be prescribed;

(b) applying for the purpose of investigations held with respect to any such accident or incident any of the provisions of any law in force in Nigeria relating to the investigation of deaths or accidents;

(c) prohibiting, pending investigation, access to or interference with aircraft to which an accident or incident has occurred and authorising any person, so far as may be necessary for the purposes of an investigation, to have access to, examine, remove, take measures for the preservation of, or otherwise deal with, any such aircraft;

(d) authorising or requiring the cancellation, suspension, endorsement or

surrender of any licence or certificate granted in Nigeria in pursuance of this Act or any regulation, or the withdrawal or suspension of any validation conferred in Nigeria of a licence granted by a competent authority elsewhere, where it appears on investigation that the licence, certificate or validation ought to be so dealt with, and requiring the production accordingly of any such licence or certificate.

(e) incorporating the provisions of Annex 13 to the Convention on International Civil Aviation,

(12) The sole objective of the investigation of an accident or serious incident under this Act shall be the prevention of accidents and incidents. It shall not be the purpose of such an investigation to apportion blame or liability.

(13) On the basis of the findings of accident investigations the Authority shall be informed and the Director General shall take corrective actions that, in the judgment of the Authority, will prevent similar accidents in the future.

(14) Notwithstanding the provisions of the Evidence Act CAP 112 LFN 1990, the contents of an air accident investigation report made pursuant to the provisions of this Act and regulations made there under, shall not be admissible in evidence as to form the basis of liability in any criminal or civil proceedings.

## **PART IX - THE AUTHORITY'S POWER TO REGULATE CIVIL AVIATION**

**30.** (1) The Authority may by regulation make such provision as expedient: Power to regulate  
air navigation

(a) for carrying out the Convention on International Civil Aviation (in this section referred to as "the Convention") concluded at Chicago on the 7th day of December 1944, any Annex to the Convention which relates to international standards and recommended practices and is adopted in accordance with the Convention, and any amendment of the Convention or of any such Annex which is made in accordance with the Convention;

(b) for carrying out any other treaty or agreement in the field of civil aviation to which Nigeria is a party; and

(c) generally for regulating air navigation.

(2) Without prejudice to the generality of subsection (1) of this section, the powers conferred therein shall include power to make regulations:

(a) for the registration of aircraft in Nigeria;

(b) for the prohibition of aircraft from flying unless certificates of airworthiness issued or validated under the regulations are in force with respect to them and except upon compliance with such conditions as to maintenance and repair as may be prescribed;

(c) for the licensing, inspection and regulation of aerodromes, access to aerodromes and places where aircraft have landed, for the inspection of aircraft factories, and for prohibiting or regulating the use of aerodromes



which are not licensed in pursuance to the regulations;

(d) for prohibiting persons from engaging in, or being employed in or in connection with, air navigation in such capacities as may be prescribed unless they satisfy the prescribed requirements, and for the licensing of persons employed at aerodromes in the inspection, testing or supervision of aircraft;

(e) as to the conditions under which, and in particular the aerodromes to or from which, aircraft entering or leaving Nigeria may fly, and as to the conditions, under which aircraft may fly from one part of Nigeria to another;

(f) as to the conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes, and for prohibiting the carriage by air of goods of such class or classes as may be prescribed;

(g) for minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation, and for prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;

(h) generally for securing the safety, efficiency and regularity of air navigation and the safety of aircraft and of persons and property carried in aircraft, and for preventing aircraft from endangering other persons and property;

(i) for requiring persons engaged in, or employed in or in connection with, air navigation to supply meteorological information for the purposes of air navigation;

(j) for regulating the making of signals and other communications by or to aircraft and persons carried in aircraft;

(k) for instituting and regulating the use of a civil air ensign and any other ensign established by the Authority for purposes connected with air navigation;

(l) for prohibiting aircraft from flying over such areas in Nigeria as may be prescribed.

(m) for applying the enactments relating to customs in relation to aerodromes and to aircraft and to persons and property carried in aircraft;

(n) as to the manner and conditions of the issue, validation, renewal, extension or variation of any certificate, licence or other document required by the regulations (including the examinations and tests to be undergone), and as to the form, custody, production, cancellation, suspension, endorsement and surrender of any such document;

(o) for the registration of births and deaths occurring in aircraft and of particulars of persons missing from the aircraft;

(p) for regulating the charges that may be made in respect of air traffic

control and meteorological services and for the use of aerodromes licensed under the regulations and for services provided at such aerodromes;

(q) for specifying the fees to be paid in respect of the issue, validation, renewal, extension or variation of any certificate, licence or other document or the undergoing of any examination or test required by virtue of the regulations and in respect of any other matter in respect of which it appears to the Authority to be expedient for the purposes of the regulations to charge fees;

(r) for exempting from the provisions of the regulations or any of them any aircraft or persons or classes of aircrafts or persons; as to the conditions under which noise and vibration may be caused by aircraft on aerodromes provided that no action shall lie in respect of nuisance by reason only of the noise and vibration caused by aircraft on an aerodrome so long as the provisions of the regulations in force as respects aerodromes are complied with;

(s) as to the circumstances and conditions under which it would be permissible to use aircraft for aerial advertisement and for regulating advertisements by air transport, aerodrome and air traffic control service providers;

(t) regarding the design, construction and modification of aircraft and all other matters connected with the design, construction and maintenance of aircraft; and

(u) regarding security control and screening to which passengers and baggage (whether accompanied or unaccompanied) would be subjected to before boarding or being laid on an aircraft.

(3) The Authority shall have power to:-

(a) free and unobstructed access to all civil aviation personnel, aircraft, aviation facilities, to inspect aircraft, aircraft manufacturers and maintenance facilities or organisations, training facilities (including simulators), and other appliances designed for use in air transportation, as may be necessary to enable the Authority to determine the issuance or granting of a certificate of registration or approval to such aircraft, aircraft manufacturer and maintenance facility or organisation and other applicable appliances;

(b) issue, amend, vary, cancel, refuse and suspend approved maintenance organisation certificates in conformity with regulations made under this Act;

(c) issue, amend, vary, cancel, refuse and suspend a production certificate;

(d) issue or validate type certificates and prescribe in such certificates, terms, conditions and limitations as are required in the interest of safety;

(e) issue, renew or validate certificates of air worthiness in respect of an aircraft, and specify in such certificates, the duration of such certificates, the type of services for which the aircraft may be used and such other

terms, conditions or limitations as are required in the interest of safety;

(f) issue, amend, vary, cancel and suspend airworthiness approvals, licences and certificates in conformity with regulations made under this Act;

(g) develop, issue and amend airworthiness directives, bulletins, orders, terms and conditions to bring them into conformity with airworthiness regulations;

(h) establish flight operations, airworthiness engineering and airworthiness inspection organisations, necessary for the requirements of safety of air navigation;

(i) establish a personnel licensing system to Licence aircraft maintenance personnel, flight crew, air traffic controllers, flight operations officers and such other persons engaged in the use or operation of aircraft, aircraft facilities, aerodromes and other activities related, incidental or supplementary thereto, in accordance with the provisions of this Act, regulations and the licensing requirements specified in Annex 1 of the Chicago Convention;

(j) specify, monitor and supervise the conditions under which an aircraft may carry passengers, mail and cargo or be used for other purposes, and prohibit an aircraft from the carriage of such classes of goods as the Authority may prescribe from time to time;

(k) certify/grant licences in respect of aerodromes and certify airways, navigational approaches and landing aids in Nigeria to ensure safety of air navigation;

(l) prohibit and regulate the installation of any structure, which by virtue of its height or position is considered to endanger the safety of air navigation;

(m) institute and regulate the use of civil air ensign and other ensign established for purposes connected with air navigation in Nigeria;

(n) regulate the activities of air navigation service providers in accordance with ICAO Standards and Recommended Practices and national laws;

(o) regulate and participate in aeronautical search and rescue operations;

(p) determine the need for commercial air transport operations.

(q) regulate the standards for the provisions of air traffic services and prescribe air traffic regulations, rules or conditions on aircraft flights(including safe altitudes) for the purpose of navigating, protecting and identifying aircraft, protecting individuals and property on ground and preventing collision between aircraft and land or water vehicles and between an aircraft and airborne objects;

(r) regulate the standards for the provision of aeronautical meteorological services for the safe conduct of civil aviation operations;

(s) regulate the standards for the provision of civil aviation security in Nigeria.

(4) Notwithstanding the provisions of subsections (1) and (3) of this section, the Authority shall have and exercise the powers generally to:

(a) regulate, supervise and monitor the activities of Nigerian and Foreign carriers, travel and other aviation agents operating in Nigeria, and to keep a register in respect thereof;

(b) require periodic statistical/financial and special returns and special reports from any air carrier; prescribe the manner and form in which such reports or returns shall be made, and require from any air carrier specific answers to questions upon which it deems information may be necessary;

(c) prescribe the form of financial records and memoranda to be kept by air carriers including accounts records and memoranda of the movement of traffic and the receipt of and expenditure of money and length of time such accounts, records and memoranda may be preserved;

(d) require every Nigerian and Foreign carrier to file and keep open for public inspection, tariffs showing all rates, fares and charges charged by it, in such form and manner as may be prescribed by the Authority from time to time, and to approve or reject tariffs so filed which are inconsistent with approved rates specified by the Authority under the provisions of this Act, regulations, rules and orders made there under:

Provided that the rates, fares and charges shown in any tariff shall in the first instance be denominated in local currency, without prejudice to these being denominated in foreign currencies in the case of foreign carriers;

(e) require an air carrier to maintain reasonable and adequate rates of compensation and other conditions of service for its employees so as to bring them into conformity with prevailing labour practices in the industry;

(f) require a domestic air carrier to submit annually and at such other times as it may deem fit, a list showing the names of its shareholders or any person holding more than 5 per cent of the shares in the air carrier together with the names of any person on whose behalf such shares are held;

(g) require every Nigerian carrier to file with it a true copy of every contract or agreement affecting air transportation or any modification or cancellation thereof, between the air carrier and any other air carrier or other bodies, for leases, pooling or apportioning earnings, losses, traffic, service or equipment or relating to establishment of transportation fares, charges or classifications, or for preserving and improving safety, preventing or otherwise eliminating destructive, oppressive or wasteful competition or for any other co-operative working arrangement;

(h) disapprove of such contract or agreement described in paragraph (g) above whether or not previously approved that is found to be adverse to

the public interest or to be in violation of the provisions of this Act, regulations, rules and orders made by the Authority under this Act;

(i) investigate and determine upon its own initiative or upon receipt of a complaint by any air carrier, air travel agent, consumer of air transport service or other allied aviation service provider, whether any air carrier, air travel agent or provider of any other allied aviation service has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation, the sale of tickets thereof or in the provision of other allied aviation service and order such air carrier, air travel agent or other allied aviation service provider to desist from such practices or methods of competition;

(j) establish procedures for investigation and determination of requests or applications for special operating authorisations; such procedures may include written notice to holders of air operator's certificates to make submissions which may be heard orally in support of such application as will not unduly delay the issuance of the special operating authorisation, taking into consideration the degree or emergency involved;

(k) participate in and advise the Minister on technical matters including Bilateral Air Services Agreements, and generally on activities of international aviation organisations;

(l) set training standards for and approve air transport training institutions;

(m) institute programmes for the protection of consumer interests;

(n) specify the fees to be paid for the issue, validation, renewal, extension or variation of any certificate, licence or other document issued pursuant to this Act or the undergoing of any examination or test required which may be expedient for the purpose of the regulation of fees charged;

(o) prescribe the minimum insurance cover to be taken out by any air operator certificate holder, aerodrome operator or air traffic control service provider taking into account, as the basis for such minimum, the respective risk involved in such operations;

(p) ensure that the extent of insurance cover undertaken by any holder shall not be less than that prescribed by the Authority;

(q) fix and impose charges in respect of the grant of any Licence, permit, certificate or other authorisation to any person under this Act or regulations made pursuant thereto and in respect of the registration of aircrafts or mortgages in respect thereof, approvals, consents and any other form of benefit conferred on any person pursuant to this Act or the regulations made pursuant thereto;

(r) conduct economic regulation of airlines, aerodromes, air navigation services, other aviation and allied aviation service providers.

(5) The powers conferred upon the Authority under this section includes the powers to develop, make, issue and revise regulations, rules, orders,

terms and conditions in respect of any matter relating, incidental, or supplemental thereto, or such matter as the Authority may deem necessary in the public interest and safety of air navigation.

(6) In the exercise of the powers conferred upon it and the discharge of its functions in this Act, the Authority, subject to the provisions of section 29 in this Act, shall not submit its decision for the approval of or be bound by the decisions or recommendations of any person, body or organisation, but shall be guided by safety, security and public interest considerations.

(7)(a) The powers conferred on and the functions of the Authority in this Act are vested on the Director-General of the Authority who may exercise them directly or through the Directors in charge of the under listed Directorates:

- (i) Air Worthiness Standards;
- (ii) Air Transport Regulation;
- (iii) Operations and Training Standards;
- (iv) Aerodrome and Airspace Standards;
- (v) Licensing Standards;
- (vi) Aeromedical Standards;
- (vii) Legal;
- (viii) Finance and Accounts;
- (ix) Administration and Corporate Affairs; or other staff of the Authority.

(b) The Director General shall establish the credentials of the Safety Inspectors of the Authority.

(8) The Director General may delegate any assigned powers and duties to any properly qualified private person, subject to such regulation, supervision and review as may be prescribed by the Authority. However, the Director General shall ensure that such functions are not delegated in such a way that aircraft operators, airport operators, aerial work service providers, general aviation operators and maintenance facility operators, in effect, regulate themselves.

(9) Regulations made under this section shall provide for the imposition of penalties for offences against the regulations, including the suspension or revocation of certificates, Licences and authorisations, and in the case of any particular offence such fine as may from time to time be prescribed by regulations made by the Authority and or imprisonment for a term not less than six months, and, subject to Chapter IV of the Constitution of the Federal Republic of Nigeria (which relates to fundamental rights), for the taking of such steps (including the interception of aircraft) as may be prescribed as respects aircraft flying over areas of Nigeria over which flying is prohibited by the regulations.

(10) Regulations made under this section may make different provisions with respect to different classes of aircraft, aerodromes, persons or property and with respect to different circumstances but shall, so far as practicable, be so framed as not to discriminate in like circumstances.

(11) In the exercise of its power to make regulations under this section, the Authority shall consult with stakeholders including airlines, aerodrome operators, air traffic control service providers, consumers and other relevant bodies and organisations in the aviation industry.

## **PART X – FUNCTIONS OF THE AUTHORITY**

**31.** The Authority shall be responsible for:

Functions of the  
Authority

(a) the registration of any aircraft in Nigeria and issuance to the owner thereof, of a certificate of registration;

(b) the establishment and maintenance of a system or register for recording the title to or any interest in any aircraft registered in Nigeria;

(c) the prohibition of any Nigerian or foreign registered aircraft from operating within the Nigerian airspace, unless a certificate of airworthiness in respect thereof, is issued or validated under the regulations in force with respect to the aircraft:

Provided that the foregoing prohibition shall not apply to aircraft undergoing test flights or flights to places where prescribed maintenance or repairs are to be carried out;

(d) the inspection and regulation of aerodromes, inspection of aircraft factories and for the prohibition or regulation of the use of aerodromes which are not licensed in pursuance of the regulations;

(e) the prohibition of any person from engaging in air navigation in any capacity whatsoever unless the Authority determines that such a person satisfies the requirements of this Act and the regulations made there under;

(f) ensuring the efficiency and regularity of air navigation and the safety of aircraft, persons and property carried in aircraft and for preventing aircraft from endangering persons and property;

(g) the prohibition of aircrafts from flying over such areas in Nigeria as may be prescribed;

(h) the issue, validation, renewal, extension or variation of any certificate, licence or other document required by the regulations (including the examinations tests to be undergone) and custody, and production, cancellation, suspension, endorsement and surrender of any such document;

(i) the registration of births and deaths occurring in aircraft and of particulars of persons missing from aircraft; and

(j) the collation and maintenance of a data bank of aviation and aircraft

accidents, incidents, and occurrences and promote accident prevention programmes.

## **PART XI – CONTROL OF AIR TRANSPORT UNDERTAKING.**

**32.** Subject to the provisions of section 34 of this Act:

Licensing of air  
transport  
undertakings.

(1) no aircraft shall be used by any person in Nigeria for flying, while carrying passengers or cargo for reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) or for such flying undertaking for the purpose of any trade or business, except under the authority of and in accordance with a licence, permit, or other authorization issued to him by the Authority.

(2) no aircraft shall be used by any person in Nigeria for any other purpose save for military, police, customs, or immigration operations, except under the authority of and in accordance with a licence, permit, or other authorisation issued by the Authority.

(3) The Authority may by regulations prescribe the types of licences, permits, certificates or other authorisation, which may be issued and the terms and conditions upon which they may be issued.

(4) Nothing in this section shall restrict the right of a designated air transport undertaking, having its principal place of business in any country outside Nigeria, to provide transport for passengers, mail or cargo:

(a) in accordance with the terms of any agreement for the time being in force between the government of the Federal Republic of Nigeria and the government of that country or,

(b) in accordance with the terms of any permission granted by the Minister pending the completion of the negotiations for such an agreement referred to in paragraph (a) above.

(5) An application for the grant of a licence, permit, certificate or other authorisation must be made in writing to the Authority and contain such particulars with respect to such matters as the Authority may specify in a notice published in the prescribed manner and where an application is made for the grant of any such licence, permit, certificate or other authorization, the Authority shall subject to subsection (6) of this section, either grant such licence, permit, certificate or other authorisation to the applicant in the terms requested in the application, or in those terms with such modifications as the Authority thinks fit, or refuse to grant such licence, permit, certificate or other authorisation.

(6) Where an application is made to the Authority and the Authority is satisfied that the applicant has met and complied with all the requirements necessary for the grant of a licence, permit, certificate or other authorisation, the Authority shall give notice of such compliance by the applicant.

(7) Upon receipt of the notice aforesaid, the Authority may approve or disapprove the grant of such licence, permit, certificate or other authorisation. The Authority shall proceed to grant the said licence,



permit, certificate or other authorisation;

Provided that, the Authority shall not approve any applicant for the grant of a licence, permit, certificate or other authorisation in respect of whom the Authority has not given notice that such an applicant has met and complied with all the requirements for the grant of such licence, permit, certificate or other authorisation.

- 33.** (1) Notwithstanding the provisions of Section 17 of the Nigerian Investment Promotion Commission Act No 16, 1995, the Authority shall refuse to grant a licence, permit, certificate or other authorisation in pursuance of an application if it is not satisfied that-

Eligibility for Licences Permits etc.

(a) the applicant is-

- i. a citizen of Nigeria, or
- ii. being a company or a body corporate, is registered in Nigeria and has its principal place of business within Nigeria, and is controlled by Nigerian nationals .

(b) the applicant is, having regard to:

- i. his and his employees' experience in the field of aviation and his and their past activities generally, and
- ii. where the applicant is a body corporate, the experience in the field of aviation and the past activities generally of the persons appearing to the Authority to control that body, a fit person to operate aircraft(s) under the authority of the licence, permit, certificate or other authorisation which the Authority considers should be granted to him in pursuance of the application; or

(c) the resources of the applicant and the financial arrangements made by him are adequate for discharging his actual and potential obligations in respect of the business activities in which he is engaged if any, and in which he may be expected to engage if he is granted the licence, permit, certificate or other authorisation which the Authority considers should be granted to him in pursuance of the application.

(2) The provisions of subsection (1) of this section shall not apply to any licence, permit, certificate or other authorisation needed by a person for the purpose of operating an aircraft for private use only.

- 34.** (1) It shall be the duty of the Authority to issue Air Operators Certificates and all other certificates relating to the safety of air transport undertakings.

Air Operators Certificate (AOC) and other Safety certificates

(2) The Authority shall by Regulation prescribe the minimum safety standards and all other relevant requirements for the grant, issuance, operation, variation, and renewal of such certificates.

(3) The Authority shall by regulation, issue operation specifications that define the approved terms, conditions and limitations of such operations.

(4) The Authority shall by Regulation prescribe conditions for the revocation, suspension or other limitation of Air Operator Certificates.

- 35.** (1) An application for the variation, suspension or revocation of a licence, permit, certificate or other authorisation may be made to the Authority at any time in such manner and by such person(s) as may be prescribed in writing by the Authority.

Variation,  
Suspension and  
Revocation of  
Licences, Permits  
etc.

(2) The Authority may at any time vary, suspend or revoke, a licence, permit, certificate or other authorisation if it considers it appropriate to do so, whether or not such an application with respect to the licence, permit, certificate or authorisation has been made pursuant to subsection (1) of this section.

(3) The Authority may exercise its powers under subsection (2) hereof to revoke, suspend or vary a licence, permit, certificate or authorisation (whichever is appropriate in the circumstances) if it is not or is no longer satisfied that:-

(a) the holder of the licence is, having regard to—

(i) his and his employees' experience in the field of aviation and his and their past activities generally, and

(ii) where the holder of the licence is a body corporate, the experience in the field of aviation and the past activities generally of the persons appearing to the Authority to control that body, a fit person to operate air transport business under the authority of the licence, permit, certificate or other authorisation; or

(b) the resources of the holder of the licence, permit, certificate or other authorisation and the financial arrangements made by him are adequate for discharging his actual and potential obligations in respect of the business activities in which he is engaged;

(c) the holder of a licence, permit, certificate or other authorisation subject to section 34(2) is a citizen, of Nigeria or such a company or body as mentioned in clause (a)(ii) of sub-section (1) of section 34;

(4) The Authority may exercise its powers under subsection (2) hereof to revoke, suspend or vary a licence, permit, certificate or authorisation (whichever is appropriate in the circumstances) if it is not or is no longer satisfied that the holder of a licence has not contravened any of the provisions of this Act or any regulation made there under especially provisions and regulations relating to safety and security or any provision or regulation the breach of which constitutes an offence under this Act or such regulation.

(5) The provisions of subsections (2) and (3) conferring on the Authority power to revoke, suspend or vary a licence, permit, certificate or other authorisation shall be construed as conferring on the Authority power to provide, by a notice in writing served in the prescribed manner on the holder of the licence, permit, certificate or other authorisation that the licence, permit, certificate or other authorisation shall not be effective during a period specified in the notice.

(6) The Authority may, while a licence, permit, certificate or other authorisation is ineffective by virtue of such a notice, by a further notice in writing served in the prescribed manner on the holder, provide that the licence, permit, certificate or other authorisation shall be effective on and after a date specified in the further notice, but the further notice shall not prejudice the Authority's powers to suspend the licence, permit, certificate or other authorisation again or to revoke or vary it.

- 36.** (1) Where the Authority takes a decision refusing to grant, vary, suspend or revoke a licence, permit, certificate or other authorisation, it shall be the duty of the Authority subject to subsection (2) below, to furnish a statement of the reasons for the decision to the applicant for the licence, permit, certificate or other authorisation, or as the case may be, to the holder and to any other person who in accordance with rules made pursuant to this Act has filed an objection in the case or requested such a statement, provided that, no statement of reasons need be furnished in pursuance of this subsection in a case in which the decision is taken in pursuance of a request by the holder of a licence, permit, certificate or other authorisation for the variation, suspension or revocation of it.

Supplementary Provisions Relating to Licences, Permits etc.

(2) The Authority may refrain from furnishing a statement of reasons in pursuance of sub-section (1) of this section, if it has reason to believe that it might adversely affect the security interests of Nigeria or the relations of Nigeria with any other country.

(3) The Authority may publish in such manner as it thinks fit particulars of, and of its reasons for, any decision taken with respect to a licence, permit, certificate or other authorisation or an application for such a licence, permit, certificate or other authorisation.

(4) A person who, for the purpose of obtaining for himself or another person a licence, permit, certificate or other authorisation or with regard to a variation or the cancellation or suspension of a licence, permit, certificate or other authorisation knowingly or recklessly furnishes to the Authority any information which is false, shall be guilty of an offence and liable upon conviction to imprisonment for a term of not less than 6 months or a fine of not less than N500,000.00 (five hundred thousand naira) or both.

- 37.** (1) The Authority shall perform its air transport licensing functions in the manner which it considers best to ensure that Nigerian registered airlines compete as effectively as possible with other airlines in providing air transport services on international routes; and in performing those functions the Authority shall also have regard to-

General duties in relation to the Licensing functions of the Authority

(a) any advice received from the Minister with respect to the likely outcome of negotiations with the government of any other country or territory for the purpose of securing any right required for the operation by an airline in Nigeria of any air transport services outside Nigeria; and

(b) the need to secure the most effective use of aerodromes within Nigeria.

(2) In considering whether to grant a licence, permit, certificate or other authorisation, it shall be the duty of the Authority to have regard to the

effect on existing air transport services provided by Nigerian registered airlines, of authorising any new services the applicant proposes to provide under the licence, permit, certificate or other authorisation.

(3) Where two or more applicants have applied for the same licence, permit, certificate or other authorisation under which each proposes to provide similar services, the Authority shall have regard in particular to any benefits which may arise from enabling two or more airlines to provide the services in question.

## **PART XII – PROVISION OF AERODROMES, CONTROL OF LAND FOR AVIATION PURPOSES ETC.**

- 38.** (1) The Minister may approve the establishment and development of aerodromes anywhere in Nigeria. Power of Minister to approve establishment of aerodromes
- (2) Roads, approaches, apparatus, equipment, buildings and other accommodations in connection to such aerodromes shall be maintained by the owners in conformity with rules and regulations made under this Act.
- 39.** A licence for an aerodrome shall not be granted to any person other than - Eligibility for an Aerodrome Licence
- (a) a citizen of Nigeria; or
- (b) the Federal Government, a State Government, a Local Government or any company or corporation owned or controlled by either of the said Governments; or
- (c) a company or a corporation registered in Nigeria and having its principal place of business in Nigeria.
- 40.** The Authority in exercising its functions in relation to the licensing of aerodromes shall have regard to the need to minimize so far as practicable any adverse effect the presence of such aerodrome(s) may have on the environment. Duty of the Authority to consider environmental factors when licensing Aerodromes
- 41.** Without prejudice to any power of an aerodrome operator to enter into an agreement on such terms as he or it thinks fit, an aerodrome operator may, for the purpose of encouraging the use of quieter aircraft and of diminishing inconvenience from aircraft noise, fix his or its charges by reference, among other things, to any fact or matter relating to – Fixing by reference to noise factors, the charges for using licensed aerodromes
- (a) the amount of noise, vibration or emission caused by the aircraft in respect of which the charges are made; or
- (b) the extent or nature of any inconvenience resulting from such noise, vibration or emission.
- 42.** (1) No aerodrome operator shall permit his or its aerodrome to be used for operation of air transport service unless he or it has the airport security programme approved by the Authority. Requirement for approval of aerodrome security programme

(2) It shall be the duty of the aerodrome operator, his or its representatives and servants to comply with the provisions of the approved security programme. Every breach of the provisions of the approved airport security programme shall attract a fine of not less than N200,000.00 (one hundred thousand naira).

- 43.** (1) No airline operator shall operate air transport service to, from and within Nigeria unless he has a security programme approved by the Authority. Requirement for approval of airline security programme
- (2)(i) It shall be the duty of the airline operator, its representatives and servants to comply with the provisions of the approved security programme.
- (ii) It shall be the duty of the airline operator, its representatives and servants to comply with the provisions of the approved security programme. Every breach of the provisions of the approved airline security programme shall attract a fine of not less than N200,000.00 (two hundred thousand naira)
- 44.** The Authority or any other person authorised by it by general or special order in writing in this behalf may – Security Surveys, Audits, Tests and Inspections
- (a) conduct surveys and inspections of security measures relating to passengers and their cabin baggage, checked baggage, cargo and other goods, access controls and aerodrome design;
- (b) conduct an exercise to check the professional efficiency of those personnel responsible for implementing the aviation security procedures and also to test the adequacy of security measures at any aerodrome in Nigeria.
- 45.** (1) Every person entering an aerodrome and every person before proceeding for boarding an aircraft and his hand baggage, if any, shall be liable to be searched and shall permit to be searched by an aviation security officer or any other person authorized in that behalf in writing by the Minister. Security check of persons and baggage
- (2)(i) Baggage of every person boarding an aircraft and all unaccompanied baggage shall be screened or subjected to prescribed security control before they are placed on board or carried on an aircraft.
- (ii) Baggage of every person boarding an aircraft and all unaccompanied baggage shall be screened or subjected to prescribed security control before they are placed on board or carried on an aircraft. Every breach of the provisions of this Section shall attract a fine of not less than N50,000.00 (fifty thousand naira).
- 46.** (1) If the Authority is satisfied, with respect to any building or structure in the vicinity of an aerodrome to which this section applies, that in order to avoid danger to aircraft flying in that vicinity in darkness or conditions of poor visibility, provision ought to be made (whether by lighting or otherwise) for giving to such aircraft warning of the presence of that building or structure, it may by order direct (subject to any conditions specified in the order) the operator of the aerodrome and any person acting under the operator's instructions- Obstructions near Aerodromes

(a) to execute, install, maintain, operate, and as occasion requires repair and alter, such works and apparatus as may be necessary for enabling such warning to be given in the manner specified in the order, and

(b) so far as may be necessary for exercising any of the powers conferred by the order, enter upon and pass over (with or without vehicles) any such land as may be specified in the order:

Provided that, no such order shall be made in relation to any building or structure if it appears to the Authority that there have been made, and are being carried out, satisfactory arrangements for the giving of such warning as aforesaid.

(2) The Authority shall, before making any such order as aforesaid cause to be published, in such manner as it thinks best for informing persons concerned, notice of the proposal to make the order and of the place where copies of the draft order may be obtained free of charge, and take into consideration, any representations with respect to the order which may within such period not being less than 14 (Fourteen) days after the publication of the notice as may be specified therein, be made to it by any person appearing to it to have an interest in any land which would be affected by the order, and at the end of that period the order may, subject to the provisions of this section, be made with such modifications (if any) of the original draft as the Authority thinks proper.

(3) Every such order as aforesaid shall provide that-

(a) except in a case of emergency, no works shall be executed on any land in pursuance of the order unless, at least 14 (fourteen) days previously, the operator of the aerodrome to which the order relates has served in the manner specified by the order on the occupier of that land, and on every other person known by the operator to have an interest in the land, a written notice containing such particulars of the nature of the proposed works, and the manner in which and the time at which it is proposed to execute them, as may be specified by the order,

(b) if within 14 (fourteen) days from the service of the said notice on any person having such an interest, the operator of the aerodrome receives written objection on the part of that person to the proposals contained in the notice, then, except in so far as the objection is withdrawn, no steps shall be taken in pursuance of the notice without the specific authority of the Authority, and

(c) the operator of the aerodrome to which the order relates to pay to any person having an interest in any land affected by the order adequate compensation for any loss or damage which that person may suffer in consequence of the order; and for the purposes of this subsection any expense reasonably incurred in connection with the lawful removal of any apparatus installed in pursuance of such an order, and so much of any expense incurred in connection with the repair, alteration, demolition or removal of any building, structure or erection to which such an order relates as is attributable to the operation of the order, shall be deemed to be loss or damage suffered in consequence of the order.

(4) The ownership of any thing shall not be taken to be affected by

reason only that it is placed in, or affixed to, any land in pursuance of such an order as aforesaid; and (subject to the provisions of the next following subsection) so long as any such order in respect of an aerodrome is in force, no person shall, except with the consent of the operator of the aerodrome, wilfully interfere with any works or things which, to the knowledge of that person, are works or things executed or placed in, on or over any land in pursuance of the order.

(5) If any person contravenes the provision of subsection 4 of this section, he shall be guilty of an offence and liable on conviction to imprisonment for a term not less than 6 months or a fine not less than N100,000.00 or both; and any person who wilfully obstructs a person in the exercise of any of the powers conferred by such an order as aforesaid shall be guilty of an offence and liable on conviction to imprisonment for a term not less than 6 months or a fine not less than N100,000.00 or both.

(6) Nothing in this section shall operate, in relation to any building or structure, so as to restrict the doing of any work for the purpose of repairing, altering, demolishing or removing the building or structure if-

(a) notice of the doing of the work is given as soon as may be to the operator of the aerodrome; and

(b) the giving of warning of the presence of the building or structure in the manner provided by any order under this section in force in relation thereto is not interrupted.

(7) In this section -

(a) the expression "aerodrome to which this section applies" means-

- (i) an aerodrome under the control of the Minister or of the Minister of the government of the federation responsible for defence, or
- (ii) any premises which, in pursuance of regulations made under section 8 of this Act are for the time being licensed as an aerodrome, and

(b) the expression "operator of the aerodrome" means-

- (i) in the case of such an aerodrome as is mentioned in subparagraph (i) of paragraph (a) of this subsection, the person(s) in charge of the aerodrome and
- (ii) in any other case, the holder of the licence issued in respect of the aerodrome in pursuance of this Act.

**47.** (1) Subject to sub-section (2) of this section, any person who trespasses on any land forming part an aerodrome, or upon which navigational aids or any ancillary facility is situated shall be guilty of an offence and liable on conviction, to imprisonment for a term not less than 1 month or a fine of not less than N100,000.00 or both.

Trespass on  
Aerodromes etc.

(2) No person shall be liable under this section, unless it is proved that

at the material time, notices warning trespassers of their liability under this section were posted, so as to be readily seen and read by members of the public, in such position on or near the boundary of the aerodrome or land upon which any navigational aid or ancillary facility is situated as appear to the court to be proper.

**PART XIII – SPECIAL PROVISIONS AS TO TRESPASS, NUISANCE, SALVAGE AND PATENTS, ETC.**

48. (1) The provisions contained in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28th May, 1999 set forth in Schedule II of this Act and as amended from time to time, shall from the commencement of this Act have force of law and apply to international carriage by air to and from Nigeria, in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage, and shall, subject to the provisions of this Act, govern the rights and liabilities of carriers, passengers, consignors, consignees and other persons. Carriers' Liability

(2) The provisions contained in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28th May, 1999 as has been modified and set out in Schedule III of this Act and as amended from time to time, shall from commencement of this Act have force of law and apply to non international carriage by air within Nigeria, irrespective of the nationality of the aircraft performing the carriage, and shall, subject to the provisions of this Act, govern the rights and liabilities of carriers, passengers, consignors, consignees and other persons.

(3) In any case of aircraft accident resulting in death or injury of passengers, the carrier shall make advance payments of at least US \$30,000 (thirty thousand United States Dollars) within 30 (thirty) days from the date of such accident, to the natural person or such natural persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute recognition of liability and may be off set against any amounts subsequently paid as damages by the carrier.

49. (1) No action shall lie in respect of trespass or nuisance by reason only of the flight of an aircraft over any property at a height above the ground which, having regard to wind, weather and all the circumstances of the case is reasonable, or the ordinary incidents of such flight, so long as the flight over such property duly complies with any regulations in force made in respect thereto. Actions in Trespass, Nuisance, and Damage from Aircraft

(2) Where injury, loss or damage is caused to any person or property on land or water by an article or a person in or falling from an aircraft while in flight, taking off or landing, then, without prejudice to the law relating to contributory negligence, damages in respect of the injury, loss or damage shall be recoverable without proof of negligence or intention or any other cause of action, as if the injury, loss or damage had been caused by the wilful act, neglect or default of the owner of the aircraft.

Provided that where the injury, loss or damage is caused as aforesaid in circumstances in which-



(a) damages are recoverable from the owner in respect of the injury, loss or damage by virtue only of the foregoing provisions of this subsection; and

(b) a legal liability exists in some person other than the owner to pay damages in respect of the injury, loss or damage;

the owner shall be entitled to be indemnified by that other person against any claim in respect of the said injury, loss or damage.

(3) Where any aircraft has been bona fide demised, let or hired out to any person by the owner thereof and no pilot, commander, navigator or operative member of the crew of the aircraft is in the employment of the owner, this section shall have effect as though references to the owner here were substituted for references to the person to whom the aircraft has been so demised, let or hired out.

**50.** (1) Any services rendered in assisting, or in saving life from, or in saving the cargo or apparel of, an aircraft in, on or over the sea or any tidal water, or on or over the shores of the sea or any tidal water, shall be deemed to be salvage services in all cases in which they would have been salvage services if they had been rendered in relation to a vessel.

Application to  
aircraft of law of  
Wreck and  
Salvage

(2) Where salvage services are rendered by an aircraft to any property or person, the owner of the aircraft shall be entitled to the same reward for those services as he would have been entitled to if the aircraft had been a vessel.

(3) The provisions of subsections (1) and (2) of this section shall have effect, notwithstanding that the aircraft concerned is a foreign aircraft and that the services in question are rendered elsewhere than within the limits of the territorial waters of Nigeria.

(4) The Minister may by regulations direct that any provisions of any law for the time being in force in Nigeria which relate to wreck, to salvage of life or property or to the duty of rendering assistance to vessels in distress shall, with such modifications and exceptions (if any) as may be prescribed, apply in relation to aircraft as those provisions apply in relation to vessels.

(5) For the purposes of this section, any provisions of any law in force in Nigeria, which relate to vessels laid by, or neglected as unfit for sea service shall be deemed to be provisions relating to wreck.

**51.** (1) Any lawful entry into Nigeria or any lawful transit across Nigeria, with or without landings, of an aircraft to which this sub-section applies, shall not, entail any seizure or detention of the aircraft or any proceedings against the owner or operator of the aircraft or any other interference with the aircraft by or on behalf of any person in Nigeria on the ground that the construction, mechanism, parts, accessories, or operation of the aircraft is an infringement of any patent, design or model.

Patent Claims

(2) The importation into and storage in Nigeria of spare parts and spare equipment for an aircraft to which this sub-section applies and the use and installation thereof in the repair of such an aircraft, shall not, entail any seizure or detention of the aircraft or of the spare parts or spare

equipment or any proceedings against the owner or operator of the aircraft or the owner of the spare parts or spare equipment or any other interference with the aircraft by or on behalf of any person in Nigeria, on the ground that the spare parts or spare equipment or their installation are or is an infringement of any patent, design or model:

Provided that, this subsection shall not apply in relation to any spare parts or spare equipment, which are sold or distributed in Nigeria or are, exported from Nigeria for sale or distribution.

(3) Subsections (1) and (2) of this section applies to-

(a) any aircraft (other than an aircraft used in military, customs or police services) registered in a country or territory in the case of which there is for the time being in force a declaration made by the Minister, with, a view to the fulfilment of the relevant provisions of the Convention mentioned in section 8(1)(a) of this Act, that the benefits of those subsections extend to that country or territory; and

(b) such other aircraft as the Minister may by order specify.

- 52.** (1) Where it is alleged by any interested person that a foreign aircraft which is not an aircraft to which section 54 of this Act applies and which is making a passage through or over Nigeria, infringes in itself or part of it any invention, design or model which is entitled to protection in Nigeria, it shall be lawful, subject to and in accordance with any order made by the Minister, to detain the aircraft until the owner of it deposits or secures in respect of the alleged infringement a sum (hereafter in this section referred to as "the deposited sum"); and thereupon the aircraft shall not, during the continuance of the passage, be subject to any lien, arrest, detention or prohibition, whether by order of a court or otherwise, on account of the alleged infringement. Infringement of Patent
- (2) The deposited sum shall be such sum as may be agreed between the parties interested or, in default of agreement, as may be fixed by the Minister; and the payment of the deposited sum shall be made or secured to the Minister in such manner as may be specified by orders made by the Minister.
- (3) The deposited sum shall be dealt with by such tribunal and in accordance with such procedure as may be prescribed by orders made by the Minister, and the orders may provide generally for carrying the provisions of subsections (1) and (2) of this section into effect.
- (4) For the purposes of subsection (1) of this section, the expression "owner" shall include the actual owner of an aircraft and any person claiming through or under him, and the expression "passage" shall include all reasonable landings and stoppages in the course of the passage.
- 53.** Any regulation, rule or order made under or in pursuance of this Act in relation to aircraft may, provide for the detention of aircraft to secure compliance with the regulation, rule or order and may make such further provisions as appear necessary or expedient for securing the detention. Detention of Aircraft

## PART XIV – OFFENCES

- 54.** (1) Any act done by any person on a Nigerian aircraft outside Nigeria which, if it had been done by him in any part of Nigeria would have constituted an offence under the law in force in that part shall, for the purposes of any criminal proceedings in that part of Nigeria against that person in respect of that act, be deemed to have been done by him in that part of Nigeria. Offences
- (2) Except with the consent of the Attorney General of the Federation, no proceedings shall be instituted by virtue of the foregoing subsection against any person.
- (3) Where it is alleged that an offence under this Act or regulations made by virtue of this Act has been committed, proceedings in respect of the offence may be brought in any court in Nigeria, which would have had jurisdiction in the matter if the offence had been committed in the part of Nigeria for which the Court acts.
- 55.** (1) Where an aircraft is flown in such a manner as to cause danger to any person or property in the aircraft, on land or water, the pilot or any other person in charge of the aircraft and the owner or any person having responsibility for safe navigation of the aircraft shall be liable on conviction to imprisonment for a term of not less than 2 years or a fine of not less than N1,000,000.00 (one million naira) or both. Dangerous flying
- (2) In any proceedings against the owner of an aircraft in respect of an alleged offence under this section, it shall be a defence to prove that the act alleged to constitute the offence was done without the fault, privity and consent of the owner.
- (3) In this section, "owner", in relation to an aircraft and an alleged offence, includes any person by whom the aircraft is hired at the time of the alleged offence.
- 56.** (1) The provisions contained in the Convention for the Suppression of the Unlawful Seizure of Aircrafts signed at the Hague on the 16th day of December 1970 set forth in Schedule I to this Act and as amended from time to time shall from the commencement of this Act have force of law in Nigeria. Hijacking and Interference
- (2) Whosoever on board an aircraft either on ground or in flight unlawfully, by force or threat of force, or by any other form of intimidation, seizes or exercises control of that aircraft, commits the offence of hijacking of such aircraft.
- (3) Any person who attempts to commit any of the acts referred to in sub-section (2) of this section in relation to any aircraft, or is an accomplice to the commission of any such act, shall also be deemed to have committed the offence of hijacking of such aircraft.
- (4) Any person who commits the offence of hijacking shall be liable on conviction to imprisonment for life and also to a fine of not less than N10,000,000.00 (ten million naira).
- (5) Any person who in the course of committing the offence of hijacking

of an aircraft, commits, in connection with such offence, any act of violence against any passenger or member of the crew of such aircraft, shall be liable to the same punishment with which he would have been liable under any law for the time being in force in Nigeria if such act had been committed in Nigeria.

(6) The Courts of the Federal Republic of Nigeria shall have jurisdiction to try offenders under this section where:

(a) the offence is committed on board an aircraft registered in Nigeria;

(b) the aircraft on board which the offence is committed lands in Nigeria with the alleged offender(s) still on board;

(c) the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business in Nigeria or if he has no principal place of business, his permanent residence is in Nigeria; and

(d) the offence is committed on board a non-Nigerian registered aircraft whilst such an aircraft is within the territory of the Federal Republic of Nigeria.

**57.** (1) Any person who unlawfully and intentionally –

- (a) commits an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of such aircraft; or
- (b) communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight,

Offences of endangering safety, destroying or damaging of an aircraft in flight, etc.

shall be guilty of an offence and shall be liable on conviction to imprisonment for 5 years or a fine of not less than N2,000,000.00 (two million naira).

(2) Any person who unlawfully and intentionally-

- (a) destroys an aircraft in service or causes damage to such aircraft in such a manner as to render it incapable of flight or which is likely to endanger its safety in flight; or
- (b) places or causes to be placed on an aircraft in service by any means whatsoever a device or substance which is likely to destroy that aircraft or to cause damage to it which renders it incapable of flight or to cause damage to it which is likely to endanger its safety in flight

shall be guilty of an offence and shall be liable on conviction to a maximum of life imprisonment and his assets may be confiscated or to both.

(3) Whoever attempts to commit or abets the commission of any offence under subsections (1) and (2) of this Section shall also be deemed to have committed such offence and be liable on conviction to the

punishment for such offence.

- 58.** The Authority may by Regulations prohibit certain acts which constitute unruly or indecent behaviour on board aircraft in or over Nigeria. Such regulations may include appropriate criminal sanctions. Prohibition of unruly and indecent conduct.
- 59.** (1) Any person who, at any aerodrome, unlawfully and intentionally, uses any device, substance or weapon to— Offences at Aerodromes
- (a) commit an act of violence which causes or is likely to cause grievous hurt of any person; or
- (b) destroy or seriously damage any aircraft or facility at an aerodrome or disrupt any service at the aerodrome;
- shall be guilty of an offence and liable on conviction to imprisonment for life or to a fine of not less than N10,000,000.00 (ten million naira).
- (2) Any person who attempts to commit, or abets the commission of any offence under sub-section (1) of this section shall also be deemed to have committed such offence and shall be liable on conviction to the punishment provided for such offence.
- 60.** (1) Any person who unlawfully and intentionally destroys or damages air navigation and meteorological facilities or interferes with their operation in such a manner as is likely to endanger the safety of aircraft in flight shall be guilty of an offence and liable on conviction to imprisonment for a term of not less than 1 (one) year or to a fine of not less than N500,000.00 (five hundred thousand naira) or both. Destruction of, or Damage to, Air Navigation and other Facilities
- (2) Any person who attempts to commit, or abets the commission of any offence under sub-section (1) of this section shall also be deemed to have committed such offence and shall be liable to the punishment provided for that offence.
- 61.** (1) **Duty of Operators:** It shall be the duty of each Operator to make or cause to be made, such inspection, maintenance, overhaul, and or repair of all equipment used in civil aviation and to ensure that the operations conducted are in accordance with this Act and the regulations, Bye laws, directives and orders of the Director General issued under this Act Duties of Operators and Personnel
- (2) **Duties of Air Operators.** It shall be the duty of each holder of an air operator certificate to ensure that the maintenance of aircraft and operations of that air operator are conducted in the public interest and in accordance with the requirements of this Act and the regulations, Bye laws, directives and orders issued under this Act by the Director General.
- (3) **Duties of Airmen:** It shall be the duty of each holder of an airman certificate to observe and comply with the authority and limitations of that certificate, the requirement of this Act and the regulations, Bye laws, directives and orders issued under this Act.
- (4) **Duty of Persons Generally:** It shall be the duty of every person performing duties in civil aviation to observe and comply with the

requirements of this Act and the orders, rules, regulations and Bye laws issued under this Act relating to their tasks.

(5) **Dangerous Goods:** It shall be the duty of every person who offers, or accepts shipment of cargo, or baggage for civil air transport, whether originating or arriving in international flights to or from Nigeria, or for flights within Nigeria, to offer or accept such shipment of cargo, or baggage in accordance with the provisions of Annex 18 to the Chicago Convention and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air or any regulations on Dangerous Goods made pursuant to this Act.

62. The Authority shall monitor and enforce compliance with the provisions of Annex 18 to the Chicago Convention and the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air, and is authorised to submit variations to the Technical Instructions on behalf of Nigeria where necessary.
- Transportation of Dangerous Goods by Air

63. (1) The Federal High Court shall have jurisdiction to try offences committed under this Act, and to hear all other matters involving the Authority and its obligations under any law.
- Federal High Court to try Offences

(2) Without prejudice to the power of the Attorney General of the Federation in Section 174 of the Constitution of the Federal Republic of Nigeria 1999, the Authority shall with the consent of the Attorney General of the Federation have power to initiate and undertake the prosecution, in its name, of any person in respect of any offence created under the provisions of this Act or any regulation, rule or order made pursuant to this Act.

#### **PART XV – GENERAL**

64. (1) The Authority in consultation with other relevant government agencies may, make regulations for the prevention of danger arising to public health by the introduction or spread of any infectious or contagious disease from aircraft arriving at or being at any aerodrome and for the prevention of the conveyance of infection or contagion by means of any aircraft leaving an aerodrome.
- Power of Authority to make rules for Protecting Public Health

(2) The Authority may, by regulation provide that a breach of any regulation made pursuant to subsection (1) of this section shall be punishable with imprisonment for a period not less than 1 month or a fine of not less N100,000.00 or both.

65. (1) If the Minister is satisfied that Nigeria or any part thereof is visited by or threatened with an outbreak of any dangerous epidemic disease, and that the ordinary provisions of the law for the time being in force are insufficient for the prevention of danger arising to public health through the introduction or spread of the disease by the agency of the aircraft, the Minister may take such measures as deemed necessary to prevent such danger.
- Emergency Powers for Protecting Public Health

(2) In any such case the Minister may, without prejudice to the powers conferred by section 61 of this Act, by notification in the Official Gazette, make such temporary orders with respect to aircraft and persons travelling or things carried therein and aerodromes as he deems

necessary in the circumstances.

(3) Orders made under sub-section (2) shall not remain in force for more than three months from the date of notification, provided that the Minister may, by special order continue them in force for a further period or periods of not more than three months.

(4) In making any order under this section, the Minister may direct that a breach of it shall be punishable with imprisonment for a period not less than one 1 year, or a fine not less than N500,000.00 or both.

**66.** (1) In time of war, whether actual or imminent or when a proclamation of emergency under the Constitution is in force in the Federal Republic of Nigeria or any part thereof, if the Minister is of the opinion that in the interest of public safety or tranquillity, the issue of all or any of the following orders is expedient, he may by notification in the Official Gazette-

Power of Minister  
to make orders in  
emergency

(a) cancel or suspend, either absolutely or subject to such conditions as he may think fit to specify in the order, all or any licences, permits, certificates or other authorisations issued under this Act;

(b) prohibit either absolutely or subject to such conditions as he may think fit to specify in the order, or regulate in such manner as may be contained in the order, the flight of all or any aircraft or class of aircraft over the whole or any portion of Nigeria;

(c) prohibit, either absolutely or conditionally, or regulate the erection, maintenance or use of any aerodrome, aircraft factory, flying - school or club, or place where aircraft are manufactured, repaired or kept, or any class or description thereof;

(d) direct that any aircraft or class of aircraft, or any aerodrome, aircraft factory, flying school or club, or place where aircraft are manufactured, repaired or kept, together with any machinery, plant, material or things used for the operation, manufacture, repair or maintenance of aircraft shall be delivered, either forthwith or within a specified time, to such authority and in such manner as he may specify in the order, to be at the disposal of the Federal Government of Nigeria for the public service; or

(e) direct that any airline operator having its principal place of business in Nigeria, or an aerodrome operator or a provider of air traffic and meteorological services, and the employees of such air line operator, aerodrome operator or provider of air traffic and meteorological services, shall carry out flights, and other duties connected with operation of flights, in the public interest in the manner specified in the order.

(2) Any order made under sub-section (1) of this section shall have effect, notwithstanding anything inconsistent therewith contained in any regulation made under this Act or any other statute in force in Nigeria.

(3) Any person who suffers direct injury or loss by reason of any order made under paragraph (c), (d) or (e) of sub-section (1) of this section shall be paid such compensation as may be determined by such authority or person as the Minister may appoint in this behalf.

(4) The Minister may, authorise such steps to be taken to secure compliance with any order made under sub-section (1) as appear to him to be necessary.

(5) Any person who knowingly disobeys, or fails to comply with, or does any act in contravention of an order made under sub-section (1) of this section, shall be guilty of an offence and liable upon conviction to imprisonment for a term not less than 6 months, or a fine not less than N100,000.00 (one hundred thousand naira), or both, and the court by which he is convicted may direct that the aircraft or thing, if any, in respect of which the offence has been committed, or any part of such aircraft or thing, shall be forfeited to the Federal Government.

**67.** (1) All services which facilitate and maintain the smooth, orderly and safe take off, flight and handling of aircrafts and the, disembarkation and evacuation of passengers and cargo respectively in all aerodromes in Nigeria are hereby designated as essential services pursuant to the provisions of section 11 (l) of the Constitution of the Federal Republic of Nigeria.

Designation of  
Essential Services

(2) The Minister may by regulations prohibit all or such class or classes of workers, officers and other employees of persons whether corporate or natural, engaged in the provision of the services specified in subsection (1) of this section from taking part in a strike or other industrial action.

(3) In this section, "strike" means the cessation of work by a body of persons employed, acting in combination or a concerted refusal or a refusal under a common understanding of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer, or the Government of the Federation of Nigeria or any part thereof, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work or any government economic policy or pricing of any essential product; and in this definition –

(a) "cessation of work" includes working at less than usual speed or with less than usual efficiency without reasonable operational justification; and

(b) "refusal to continue to work" includes a refusal to work at usual speed or with usual efficiency.

**68.** (1) The Authority may pursuant to Article 83 bis of the Convention on International Civil Aviation and by a Bilateral Agreement with the Aeronautical Authorities of another country exchange with that country all or part of their respective functions and duties with respect to registered aircrafts under the following articles of the conventions: Article 12 (rules of the air), Article 31 (certificates of airworthiness), or Article 32(a) (Licences of Personnel).

Bilateral  
Exchanges of  
Safety Oversight  
Responsibilities.

(2) The Authority relinquishes responsibility with respect to the functions and duties transferred by the Authority as specified in the Bilateral agreement under the articles listed in subsection (6) for Nigerian registered aircraft described in subsection (6) (a) transferred abroad and



accept responsibility with respect to the functions and duties under those articles for aircraft registered abroad described in subsection (6) (b) that are transferred to Nigeria.

(3) The Authority may predicate, in the Agreement, the transfer of functions and duties under this subsection on any conditions the Authority deems necessary and prudent, except that the Authority may not transfer responsibilities for Nigerian registered aircraft described in subsection (6) (a) to a country that the Authority determines is not in compliance with its obligations under International Law for the safety oversight of Civil aviation.

(4) The Authority, pursuant to agreements entered into under this section, may recognise certificates of airworthiness and personnel licenses issued or renewed by the State of the operator.

(5) The Authority shall notify and inform the International Civil Aviation organization and other States concerned with the transfer arrangement of the existence of the agreement.

(6) In this section the term "registered aircraft" means –

(a) aircraft registered in Nigeria and operated pursuant to an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in another country; and

(b) aircraft registered in a foreign country and operated under an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in Nigeria.

**69.** (1) The Authority shall encourage regional cooperation in the regulation and administration of aviation safety.

Regional  
Cooperative  
Aviation Safety  
Agreements

(2) The Authority may, pursuant to subsection (1) of this section, enter into agreements for cooperative endeavours in aviation safety with other regional contracting States to the Convention on International Civil Aviation. The Authority in conjunction with the Ministry in charge of civil aviation shall negotiate, agree to and manage such regional cooperative agreements.

(3) The Authority may in the interest of public safety and the safety of civil aviation, delegate certain aviation safety tasks under the cooperative agreement to citizens of Nigeria and/or citizens of the other state party to the agreement.

**70.** (1) The Authority, subject to the approval of the Minister may, by regulation make such provisions as it deems necessary, to prohibit and or discourage anti-competitive practices.

Aviation  
Safeguards

(2) Without prejudice to the generality of sub-section (1) of this section, such practices may include:

(a) charging fares and rates on routes at levels which are in aggregate, insufficient to cover the costs of providing the services to which they relate;

(b) the addition of excessive capacity or frequency of service;

(c) practices which have a serious negative economic effect on, or cause significant damage to, another airline;

(d) practices which reflect an apparent intent or have the probable effect, of crippling, excluding or driving another airline or allied aviation service provider from the market; and

(e) any behaviour indicating an abuse of dominant position on a route or routes or in respect of any allied service.

**71.** (1) The Authority shall formulate schemes for suitable compensation of passengers and other aviation and allied service consumers arising from different forms of grievances.

Compensation schemes for passengers and other allied aviation services consumers

(2) The regulations under sub-section (1) of this section shall be formulated after holding consultations with air carriers and other stake holders.

**72.** (1) All persons engaged in the sale, distribution and provision of allied services shall obtain such licence, permit or authorisation from the Authority as may be specified.

Regulation of Sale, Distribution and Provision of Allied Services.

(2) The Authority may make rules in this behalf, which may, inter alia, include:

(a) the categories including (but not limited) to aircraft equipment sale or leasing operations, in-flight catering services, ground handling, amongst others in which the licence may be granted;

(b) the information to be furnished by an applicant for the licence;

(c) the terms and conditions subject to which the licence may be granted; and

(d) the circumstances under which the licence may be suspended or revoked.

**73.** (1) The provisions of the Convention on the International Recognition of Rights In Aircraft (Geneva Convention), 1948 set out in Schedule IV to this Act, and as amended from time to time, shall from the commencement of this Act have the force of law in Nigeria subject to subsection (2) of this section.

Application of certain Conventions

(2) The provisions of the Convention on International Interests in Mobile Equipment 2001 and the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to aircraft equipment 2001 (The Cape Town Convention and Protocol) set out in Schedule V (a) and (b) respectively, shall from the commencement of this Act, have the force of law in Nigeria.

Provided however, that the Minister of Aviation shall have power to from time to time make Declarations required or permitted to be made under the Convention and Protocol.

- 74.** (1) Any carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground handling services, meteorological services, air traffic control services, aircraft maintenance services, or provider of such other class of allied service as the Authority may from time to time determine in writing shall maintain adequate insurance covering its liability under this Act and also its liability towards compensation for damages that may be sustained by third parties for an amount to be specified in regulations made by the Authority. Insurance
- (2) Absence of such insurance shall be sufficient reason for refusal, suspension or revocation of the permission to operate the air transport service or services in question.
- (3) Any person having a duty to maintain adequate insurance pursuant to the provision of subsection (1) of this section shall make quarterly returns to the Authority evidencing that such adequate insurance is maintained and that all conditions necessary to create an obligation on the insurer to provide indemnity in the event of a loss have for the time being been fulfilled.
- (4) Any Carrier operating air transport services to, from or within Nigeria, or aerodrome operator, aviation fuel supplier, or any provider of ground services, air traffic control services, aircraft maintenance services, who contravenes the provisions of subsections (1) and (3) of this section, shall be guilty of an offence and liable on conviction to a fine of not less than Ten million Naira and its Principal Officers shall be liable to imprisonment for a term of not less than two years.
- 75.** All funds accruing from or as a result of air services agreements entered into by Nigeria whether multilateral or bilateral shall be paid to the Authority and maintained in a separate account to be used solely for the development of Civil Aviation in Nigeria in accordance with regulations made by the Minister and appropriation by the National Assembly. Air Services Agreement
- 76.** (1) The Minister may publish from time to time a statement of the policies of the Government of the Federal Republic of Nigeria on civil aviation. Periodic Publication of Aviation Policy.
- (2) If the Minister considers it appropriate to do so, he may by notice in writing, require the Authority to publish a statement of the policy it intends to adopt with respect to any particular matter in exercising the powers and performing the functions conferred upon it under this Act and it shall be the duty of the Authority to publish the statement required by such a notice.
- (3) Before publishing any statement under this section, the Authority shall consult such persons as appear to it to be representative respectively-

(a) of the civil aviation industry of Nigeria; and

(b) of users of air transport services.

(4) The manner of publication of any statement under this section shall be as the Authority may determine.

**77.** (1) Subject to the provisions of subsection (2) of this section, the following enactments are hereby repealed: Repeals and Savings provisions.

(a) Carriage By Air (Colonies, Territories and other Trust Territories) Colonial Order 1953;

(b) Civil Aviation Act, Cap 51 LFN 1990;

(c) Civil Aviation (Amendment) Act, 1999; and

(d) Nigerian Civil Aviation Authority (Establishment) Act, No. 49 1999.

(2) All regulations, bye-laws, orders and subsidiary legislation made under the Civil Aviation Act 1964(cap. 51 LFN 1990) shall continue to be in force until new regulations, bye-laws, orders and subsidiary legislation are made pursuant to this Act.

**78.** (1) In this Act, unless the context otherwise requires- Definitions

“Aerodrome” means a defined area of land on land or water (including any buildings, installations, and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft;

“Aircraft” means any machine that can derive support in the atmosphere from reactions of the air other than reactions of the air against the earth's surface;

“Air navigation services” includes information, direction and other facilities furnished, issued or provided in connection with the navigation or movement of aircraft and the control of movement of vehicles in any part of an aerodrome used for the movement of aircraft;

“Allied Aviation Business” includes aircraft equipment sale or leasing operations, in-flight catering services, ground handling operations and other businesses connected with or ancillary to civil aviation;

“Authority” means the Nigerian Civil Aviation Authority established by section 2(1) of this Act;

“Cargo” means any property carried on an aircraft other than mail stores and accompanied or mishandled baggage;

“Chicago Convention” means the Convention on International Civil Aviation concluded at Chicago on the 7th December 1944, any Annex which relates to international standards and recommended practices and is adopted in accordance with the Convention and any amendment

of the Convention or of such Annex which is made in accordance with the Convention;

“Civil Aviation Operations” includes Ground Handling operations, air operations, aerodrome operations, Meteorological Services, Air traffic control and provision of Navigational Aids, Catering and allied services.

“Director-General” means the Director General of the Authority;

“Flight” means a journey by air beginning from the moment when all the external doors of an aircraft are closed following embarkation until the moment when any such doors are opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

"Foreign aircraft" means an aircraft other than a Nigerian registered aircraft;

“ICAO” means International Civil Aviation organization established under the Convention on International Civil Aviation 1944.

“Licence” Includes Air Transport Licence (ATL), Air operators Permit (AOP), Air travellers Organisers Licence (ATOL), Air Operators Certificate (AOC), Certificates of Airworthiness, Certificate of Registration, Personnel Licences and Ratings, Aerodrome licence, Aviation Training Organisations Approvals/Certificates, Aircraft Maintenance Organisation approvals/certificates and all other authorizations and approvals issued pursuant to this Act.

“Mail” means dispatches of correspondence and other items tendered by and intended for delivery to postal services in accordance with the rules of the Universal Postal Union;

“Member” means a member of the Governing Board of the authority and includes the Chairman;

"Minister" means the Minister of the government of the Federation responsible for civil aviation;

"Nigerian aircraft" means an aircraft registered in Nigeria in pursuance of regulations made under this Act;

“Premises” includes lands, plants, and ancillary works;

“Prescribed” means prescribed by regulations made under this Act;

“Regulations” in this Act is a reference to all subsidiary legislations made pursuant to this Act; and

“Reward” in relation to a flight, includes any form of consideration received or required to be received wholly or partly in connection with the flight irrespective of the person by whom or to whom the consideration has been or is to be given.

(2) Every other term shall have the same meaning as contained in the

Chicago Convention.

- 79.** This Act may be cited as the Civil Aviation (Repeal and Re-Enactment) Short Title Act 2006.

SCHEDULE 1	Section 57(1)
Convention for the Suppression of Unlawful Seizure of Aircraft.	
SCHEDULE II .....	Section 49(1)
Convention for the Unification of certain Rules Relating to International Carriage By Air(Montreal 1999).	
SCHEDULE III.....	Section 49(2)
Modifications to the Convention for the Unification of Certain rules relating to International Carriage By Air.	
SCHEDULE IV.....	Section 74(1)
Convention on International Recognition of Rights in Aircraft 1948	
SCHEDULE V(a).....	Section 74(2)
Convention on International Interests in Mobile Equipment	
SCHEDULE V(b).....	Section 73(2)
Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment	
SCHEDULE VI.....	Section 3(4)
Supplementary provisions with respect to the proceedings of the Board and other matters.	

**CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT.**

1993

CONVENTION

For the Suppression of  
Unlawful Seizure of Aircraft

Signed at the Hague on 16<sup>th</sup> December 1970

**Source : ICAO Doc. 8920**



**Preamble**

## THE STATES PARTIES TO THIS CONVENTION

CONSIDERING that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affects the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

CONSIDERING that the occurrence of such acts is a matter of grave concern;

CONSIDERING that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

HAVE AGREED AS FOLLOWS:

**Article 1**

Any person who on board an aircraft in flight:

unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as "the offence").

**Article 2**

Each Contracting State undertakes to make the offence punishable by severe penalties.

**Article 3**

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. This Convention shall apply only if the place of take-off or the place of actual landing if the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that Article.

5. Notwithstanding paragraph 3 and 4 of this Article, Articles 6, 7, 9, and 10 shall

apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a state other than the state of registration of the aircraft.

#### **Article 4**

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases;

- (a) when the offence is committed on board an aircraft registered in that State;
- (b) when the aircraft is onboard which the offence is committed lands in its territory with the alleged offender still on board;
- (c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This convention does not exclude any criminal jurisdiction exercised in accordance with national law.

#### **Article 5**

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

#### **Article 6**

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the fact.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a notational.

4. When a State, pursuant to this Article, has taken a person into custody it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1 (c), the State of nationality of detained person and, if it considers it advisable,

any other interested State of the fact that such person is in custody and of the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

#### **Article 7**

The Contracting State in the territory of which the alleged offender found shall, if it does not extradite him, be obliged, without exception found whatsoever and whether or not the offence was committed in its territory to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

#### **Article 8**

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty services a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence between themselves subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, paragraph 1.

#### **Article 9**

1. When any of the acts mentioned in Article 1 (a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

#### **Article 10**

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 of this Article shall not affect obligations under any other treaty bilateral or multilateral, which governs or will govern, in whole or in part,

mutual assistance in criminal matters.

#### **Article 11**

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:  
the circumstances of the offence;  
the action taken pursuant to Article 9;  
the measures taken in relation to the offender or the alleged offender, and, in particular the results of any extradition proceedings or other legal proceedings.

#### **Article 12**

1. Any dispute between two or more Contracting States concerning the interpretation or application of this convention which cannot be settled through negotiation, shall at the request of one of them, be submitted to the Parties are unable to agree on the organization or the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each state may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depository Governments.

#### **Article 13**

1. This Convention shall be open for signature at The Hague on 16 December 1970, by the States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as the Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America which are hereby designated the Depository Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depository Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1994).

#### **Article 14**

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

**CONVENTION**  
**FOR THE UNIFICATION OF CERTAIN RULES FOR**  
**INTERNATIONAL CARRIAGE BY AIR**

THE STATES PARTIES TO THIS CONVENTION

RECOGNIZING the significant contribution of the convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the "Warsaw Convention", and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944.

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

**Chapter 1**

**General Provisions**

**Article 1 - Scope of Application**

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the

purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

### **Article 2 - Carriage Performed by State and Carriage of Postal Items**

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

## **Chapter II**

Documentation and Duties if the Parties Relating to the Carriage of Passengers, Baggage and Cargo

### **Article 3 - passengers and Baggage**

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing;

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

#### **Article 4 - Cargo**

1. In respect of the carriage of cargo, an air waybill shall be delivered.
2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carriage shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

#### **Article 5 - Contents of Air waybill or Cargo Receipt**

The air waybill or the cargo receipt shall include:

- (a) an identification of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- (c) an indication of the weight of the consignment.

#### **Article 6 - Document Relating to the Nature of the Cargo**

The consignor maybe required, if necessary to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

#### **Article 7 - Description of Air Waybill**

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee" ; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor maybe printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

#### **Article 8 – Documentation for Multiple Packages**

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.



### **Article 9 - Non-compliance with Documentary Requirements**

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

### **Article 10 - Responsibility for Particulars of Documentation**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.
2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damages suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

### **Article 11 - Evidentiary Value of Documentation**

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packaging of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

### **Article 12 - Right of Disposition of Cargo**

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

### **Article 13 - Delivery of the Cargo**

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

### **Article 14 - Enforcement of the Rights of Consignor and Consignee**

The consignor and the consignee can respectively enforce all the rights given to them by article 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

### **Article 15 - Relations of Consignor and Consignee or Mutual Relations of Third Parties**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provisions in the air waybill or the cargo receipt.

### **Article 16 - Formalities of Customs, Police or Other Public Authorities**

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

## Chapter III

### Liability of the Carrier and Extent of Compensation for Damage

#### **Article 17 - Death and Injury of Passengers - Damage of Baggage**

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.
3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of the twenty –one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.
4. Unless otherwise specified, in this Convention the term “baggage” means both checked baggage and unchecked baggage.

#### **Article 18 - Damage to Cargo**

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.
2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:
  - (a) inherent defect, quality or vice of that cargo;
  - (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents.
  - (c) an of war or an armed conflict.
  - (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.
4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the

result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

#### **Article 19 - Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

#### **Article 20 - Extension**

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or commission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

#### **Article 21 - Compensation in Case of Death or Injury of Passengers**

1. For damage arising under paragraph 1 of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100 000 Special Drawing Rights if the carrier proves that:
  - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
  - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

#### **Article 22 - Limits of Liability in Relation to Delay, Baggage and Cargo**

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the

passenger's actual interest in delivery at destination.

3. In the carriage of Cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage, or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servants or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the Plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the Plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

### **Article 23 - Conversion of Monetary Units**

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by the State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary

units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogram with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

#### **Article 24 - Review of Limits**

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to States Parties a majority of the States Parties register their disapproval, the provision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 percent since the previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

#### **Article 25 - Stipulation on Limits**

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

### **Article 26 - Invalidity of Contractual Provisions**

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

### **Article 27 - Freedom to Contract**

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

### **Article 28 - Advance Payments**

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

### **Article 29 - Basis of Claims**

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

### **Article 30 – Servants, Agents – Aggregation of Claims**

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, the provisions of paragraph 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage recklessly and with knowledge that damage would probably result.

### **Article 31- Timely Notice of Complaints**

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the

date of receipt in case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty –one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

### **Article 32 - Death of person Liable**

In the case of the death of the person liable, an action for damages lies in accordance with the items of this Convention against those legally representing his or her estate.

### **Article 33 - Jurisdiction**

1. An action for damages must be brought, at the option of the Plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purpose of paragraph 2,

(a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seised of the case.

### **Article 34 - Arbitration**

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitral tribunal shall apply the provisions of this Convention.



4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

#### **Article 35 - Limitation of Actions**

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seized of the case.

#### **Article 36 - Successive Carriage**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

#### **Article 37 - Right of Resources against Third Parties**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

### **Chapter IV**

#### **Combined Carriage**

#### **Article 38 - Combined Carriage**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **Chapter V**

### **Carriage by Air Performed by a Person other than the Contracting Carrier**

#### **Article 39 -Contracting Carrier - Actual Carrier**

The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

#### **Article 40- Respective Liability of Contracting and Actual Carriers**

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

#### **Article 41 - Mutual Liability**

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

#### **Article 42 - Addressee of Complaints and Instructions**

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

#### **Article 43 - Servants and Agents**

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

#### **Article 44 - Aggregation of Damages**

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

#### **Article 45 - Addressee of Claims**

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the Plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

#### **Article 46 - Additional Jurisdiction**

Any action for damages contemplated in Article 45 must be brought, at the option of the Plaintiff, in the territory of one of the State Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

#### **Article 47 - Invalidity of Contractual Provisions**

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

#### **Article 48 - Mutual Relations of Contracting and Actual Carriers**

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

### **Chapter VI**

#### **Other Provisions**

#### **Article 49 - Mandatory Application**

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

#### **Article 50 - Insurance**

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

### **Article 51 - Carriage Performed in Extraordinary Circumstances**

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

### **Article 52 - Definition of Days**

The term "days" when used in this Convention means calendar days, not working days.

## **Chapter VII**

### **Final Clauses**

### **Article 53 - Signature, Ratification and Entry into Force**

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.
2. This convention shall be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this convention and has been duly authorised to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1 (b) of Article 3, paragraph (b) of Article 5, Article 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.
3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.
4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organisation, which is hereby designated the Depository.
6. This convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depository between the States which have deposited such instrument. An instrument deposited by a Regional Economic International Organisation shall not be counted for the purpose of this paragraph.
7. For other States and for other Regional Economic Integrations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.
8. The Depository shall promptly notify all signatories and States Parties of;

- (a) each signature of this Convention and date thereof;
- (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
- (c) the date of entry into force of this Convention;
- (d) the date of the coming into force of any revision of the limits of liability under this Convention;
- (e) any denunciation under Article 54.

#### **Article 54 - Denunciation**

1. Any State Party may denounce this Convention by written notification to the Depository.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depository.

#### **Article 55 - Relationship with over Warsaw Convention Instruments**

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to
  - (a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention).
  - (b) the *Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12 October 1929*, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);
  - (c) the *Convention, supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention).
  - (d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at The Hague on 28 September 1955 signed at Guatemala City on 8 March 1971* (hereinafter called the Guatemala City Protocol);
  - (e) *Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol signed at Montreal on 25 September 1975* (hereinafter called the Montreal Protocols); or
2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

### **Article 56 - States with more than one System of Law**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may notify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the convention applies.
3. In relation to a State Party which has made such a declaration:
  - (a) references in Article 23 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State; and
  - (b) the reference in Article 28 to “national law” shall be construed as referring to the law of the relevant territorial unit of that State.

### **Article 57 - Reservations**

No reservation may be made to this convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to;

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and /or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

**IN WITNESS WHEREOF** the undersigned plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Montreal on the 28<sup>th</sup> day of May of the year one thousand nine hundred ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organisation, and certified copies thereof shall be transmitted by the Depositary to all States parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

Modifications To the Convention for the Unification of Certain rules Relating to International carriage By Air.

## **CHAPTER 1**

### **General Provisions**

#### **Article 1 - Scope of Application**

1. This Convention applies to all carriage of persons, baggage or cargo performed by aircraft for reward within Nigeria. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking
2. Carriage to be performed by several successive carriers is deemed for the purposes of this convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts.
3. This convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

#### **Article 2 - Carriage performed by State and Carriage of Postal Items**

1. This convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. In the carriage of postal items, the carriage shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

## **CHAPTER 11**

### **Documentation and Duties of the Parties Relating to the Carriage of passengers, Baggage and Cargo**

#### **Article 3 - Passengers and Baggage**

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing an indication of the places of departure and destination.
2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.
3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage and for delay.
5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall nonetheless, be subject to the rules of this convention including those relating to limitation of liability.

#### **Article 4 - Cargo**

1. In respect of the carriage of cargo, an air waybill shall be delivered.
2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

#### **Article 5 - Contents of Air Waybill of Cargo receipt**

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination;
- (b) an indication of the weight of the consignment.

#### **Article 6 - Document Relating to the Nature of the Cargo**

The consignor may be required, if necessary to meet the formalities of customs, police, and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

#### **Article 7 - Description of Air Waybill**

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee", it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

#### **Article 8 - Documentation for Multiple Packages**

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;



- (b) the consignor has the right to require the carrier to deliver separate cargo receipt when the other means referred to in paragraph 2 of Article 4 are used.

#### **Article 9 - Non-compliance with Documentary Requirements**

Non-compliance with the provisions of Article 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

#### **Article 10 - Responsibility for Particulars of Documentation**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.
2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.
3. Subject to the provisions of paragraph 1 and 2 of this Article, the carrier shall indemnify the consignor against all damages suffered by it, or by any other person to whom the consignor is liable by reason of irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 or Article 4.

#### **Article 11 - Evidentiary Value of Documentation**

1. The air waybill or the cargo receipt is prima facie evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packaging of the cargo, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

#### **Article 12 - Right of Disposition of Cargo**

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.
3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of air waybill or the cargo receipt delivered to the latter, the carrier will be liable without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of air waybill or the cargo receipt.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with the consignor resumes its right to disposition.

#### **Article 13 - Delivery of the Cargo**

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of two days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

#### **Article 14 - Enforcement of the Rights of Consignor and Consignee**

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

#### **Article 15 - Relations of Consignor and Consignee or Mutual Relations of Third parties**

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13, and 14 can only be varied by express provisions in the air waybill or the cargo receipt.

#### **Article 16 - Formalities of Customs, Police or Other Public Authorities**

1. The Consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police, and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

### **CHAPTER III**

#### **Liability of the Carrier and Extent of Compensation for Damage**

##### **Article 17 - Death and Injury of Passengers - Damage to Baggage**

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

The carrier is liable for damage sustained in case of destruction or loss of, or damage to checked baggage upon condition only that the event which caused the destruction, or loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of seven days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

##### **Article 18 - Damage of Cargo**

The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following;

inherent defect, quality or vice of that cargo;

defective packing of that cargo performed by a person other than the carrier or its servants or agents;

an act of war or an armed conflict;

an act of public authority carried out in connection with the entry, exit or transit of the cargo.

The carriage by air within the meaning paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

The period of the carriage by air does not extend to any carriage by land, by sea or by

inland waterway performed outside and airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

#### **Article 19 - Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

#### **Article 20 - Exoneration**

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from which he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies too all the liability provisions on this Convention, including paragraph 1 of Article 21.

#### **Article 21- Compensation in case of Death or Injury of Passengers**

For damages arising under paragraph 1 of Article 17 not exceeding 100,000.00 United States Dollars for each passenger, the carrier shall not be able to exclude or limit its liability.

The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100,000 United States Dollars if the carrier proves that:

Such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

Such damage was solely due to the negligence or other wrongful act or omission of a third party.

#### **Article 22 - Limits of Liability in Relation to Delay, Baggage and Cargo**

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4150 United States Dollars.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage, or delay is limited to 1000 United States Dollars for each passenger unless the passenger has made, at the time when the checked baggage was

handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 20 United States Dollars per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at a destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.
4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
5. The foregoing provisions of paragraph 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.
6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own rules of procedure in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the Plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, including court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the Plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

#### **Article 23 – Conversion of Monetary Units**

The sums mentioned in Articles 21 and 22 shall be converted to Naira at the existing official exchange rate.

#### **Article 24 - Review of Limits**

Without prejudice to the provisions of Article 25 of this Convention, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Minister of Aviation upon advice by the Nigerian Civil Aviation Authority at seven year intervals, the first such review to take place at the end of the seventh year following the date of entry into force of this Act.

#### **Article 25 - Stipulation on Limits**

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

## **Article 26 - Invalidity of Contractual Provisions**

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

## **Article 27 - Freedom to Contract**

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

## **Article 28 - Advance Payments**

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payment amount shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

## **Article 29 - Basis of Claims**

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

## **Article 30 - Servants, Agents - Aggregation of Claims**

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.
3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

## **Article 31 - Timely Notice of Complaints**

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within two days from the date of receipt in the case of checked baggage and seven days from the

date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within fourteen days from the date on which the baggage or cargo have been placed at his or her disposal.

Every complaint must be made in writing and given or dispatched within the times aforesaid.

If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

### **Article 32 - Death of Person Liable**

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

### **Article 33 - Arbitration**

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.
2. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.
3. The provisions of paragraph 2 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

### **Article 35 - Limitation of Actions**

The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

### **Article 36 - Successive Carriage**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.
2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passengers or to the consignor or consignee.

### **Article 37 - Right to Resources against Third Parties**

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of resources against any other person.

## **Chapter IV**

### **Article 38- Combined Carriage**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this convention shall prevent the parties in the case of combined carriage from inserting in the documents of air carriage conditions relating to other modes of carriage, provided that the provisions of this convention are observed as regards the carriage by air.

## **CHAPTER V**

### **Carriage by Air Performed by a Person other than the Contracting carrier**

#### **Article 3-Contracting Carrier - Actual Carrier**

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

#### **Article 40 - Respective Liability of Contracting and Actual Carriers**

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual shall, except as otherwise provided in this chapter, be subject to the rules of this convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

#### **Article 41- Mutual Liability**

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.



#### **Article 42 - Addressee of Complaints and Instructions**

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

#### **Article 43 - Servants and Agents**

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

#### **Article 44 - Aggregation of Damages**

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

#### **Article 45 - Addressee of Claims**

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the Plaintiff, against that carrier or the contracting carrier; or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seized of the case.

#### **Article 46 - Invalidity of Contractual Provisions**

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

#### **Article 47 - Mutual relations of Contracting and Actual Carriers**

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

### **Chapter VI**

#### **Other Provisions**

#### **Article 48 - Mandatory Application**

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by

this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

#### **Article 49 - Carriage Performed in Extraordinary Circumstances**

The provisions of Article 3 to 5, 7 and 8 relating to the documents of carriage shall not apply in the case of carriage performed in extra-ordinary circumstances outside the normal scope of a carrier's business.

#### **Article 50 - Definition of Days**

The expression "days" when used in this convention means working days, not calendar days.

SCHEDULE IV .....

Section 74(1)

Convention on International Recognition of Rights in Aircraft 1948

GENEVA CONVENTION  
CONVENTION  
on the international recognition  
of rights in aircraft

Signed at Geneva, on 19 June 1948

WHEREAS the International Civil Aviation Conference, held at Chicago in November – December 1944, recommended the early adoption of a Convention dealing with the transfer of title to aircraft,

WHEREAS it is highly desirable in the interest of the future expansion of international civil aviation that rights in aircraft be recognized internationally,

THE UNDERSIGNED, duly authorised, HAVE AGREED, on behalf of their respective Government, AS FOLLOWS:

## **ARTICLE 1**

1. The Contracting States undertake to recognise:
  - (a) rights of property in aircraft;
  - (b) rights to acquire aircraft by purchase coupled with possession of the aircraft;
  - (c) rights to possession of aircraft under leases of six months or more;
  - (d) mortgages, hypothèques and similar rights in aircraft which are contractually created as security for payment of an indebtedness; provided that such rights
    - i. have been constituted in accordance with the law of the Contracting State in which the aircraft was registered as to nationality at the time of their constitution, and
    - ii. are regularly recorded in a public record of the Contracting State in which the aircraft is registered as to nationality.The regularity of successive recordings in different Contracting States shall be determined in accordance with the law of the state where the aircraft was registered as to nationality at the time of each recording.
2. Nothing in this Convention shall prevent the recognition of any rights in aircraft under the law of any Contracting State; but Contracting States shall not admit or recognise any right as taking priority over the rights mentioned in paragraph 1 of this Article.

## **Article II**

1. All recordings relating to a given aircraft must appear in the same record.
2. Except as otherwise provided in this Convention, the effects of the recording of any right mentioned in Article 1, paragraph 1, with regard to third parties shall be determined according to the law of the Contracting State where it is recorded.
3. A Contracting State may prohibit the recording of any right which cannot validly be constituted according to its national law.

## **Article III**

1. The address of the authority responsible for maintaining the record must be shown on every aircraft's certificate of registration as to nationality.
2. Any person shall be entitled to receive from the authority duly certified copies or extracts of the particulars recorded. Such copies or extracts shall constitute *prima facie* evidence of the contents of the record.
3. If the law of a Contracting State provides that the filing of a document for recording shall have the same effect as the recording, it shall have the same

effect for the purposes of this Convention. In that case, adequate provision shall be made to ensure that such document is open to the public.

4. Reasonable charges may be made for services performed by the authority maintaining the record.

#### **Article IV**

1. In the event that any claims in respect of:  
  
compensation due for salvage of the aircraft, or  
extraordinary expenses indispensable for the preservation of the aircraft  
give rise, under the law of the Contracting State where the operations of salvage  
or preservation were terminated, to a right conferring a charge against the aircraft,  
such right shall be recognised by Contracting States and shall take priority over all  
other rights in the aircraft.
2. The rights enumerated in paragraph 1 shall be satisfied in the inverse order of the  
dates of the incidents in connection with which they have arisen.
3. Any of the said rights may, within three months from the date of the termination of  
the salvage or preservation operations, be noted on the record.
4. The said rights shall not be recognised in other Contracting States after expiration  
of the three months mentioned in paragraph 3 unless, within this period,
  - (a) the right has been noted on the record in conformity with paragraph 3,  
and
  - (b) the amount has been agreed upon or judicial action on the right has  
been commenced. As far as judicial action is concerned, the law of the forum  
shall determine the contingencies upon which the three months period may be  
interrupted or suspended.
5. This Article shall apply notwithstanding the provisions of Article 1, paragraph 2.

#### **Article V**

The priority of a right mentioned in Article 1, paragraph 1 (d), extends to all sums thereby secured. However, the amount of interest included shall not exceed that accrued during the three years prior to the execution proceedings together with that accrued during the execution proceedings.

#### **Article VI**

In case of attachment or sale of an aircraft in execution, or of any right therein, the Contracting States shall not be obliged to recognise, as against the attaching or executing creditor or against purchaser, any right mentioned in Article 1, or the transfer of any such right, if constituted or effected with knowledge of the sale or execution proceedings by the person against whom the proceedings are directed.

#### **Article VII**

1. The proceedings of a sale of an aircraft in execution shall be determined by the law of the Contracting State where the sale takes place.
2. The following provisions shall however be observed:

- (a) The date and place of the sale shall be fixed at least six weeks in advance.
  - (b) The executing creditor shall supply to the Court or other competent authority a certified extract of the recordings concerning the aircraft. He shall give public notice of sale at the place where the aircraft is registered as to nationality, in accordance with the law there applicable, at least one month before the day fixed, and shall concurrently notify by registered letter, if possible by air mail, the recorded owner and the holders of recorded rights in the aircraft and of rights noted on the record under Article IV, paragraph 3, according to their addresses as shown on the record.
- 3. The consequences of failure to observe the requirements of paragraph 2 shall be as provided by the law of the Contracting State where the sale takes place. However, any sale taking place in contravention of the requirements of that paragraph may be annulled upon demand made within six months from the date of the sale by any person suffering damage as the result of such contravention.
- 4. No sale in execution can be effected unless all rights having priority over the claim of the executing creditor in accordance with this Convention which are established before the competent authority, are covered by the proceeds of sale or assumed by the purchaser.
- 5. When injury or damage is caused to persons or property on the surface of the Contracting State where the execution sale takes place, by any aircraft subject to any right referred to in article 1, held as security for an indebtedness, unless adequate and effective insurance by a State or an insurance undertaking in any State has been provided by or on behalf of the operator to cover such injury or damage, the national law of such Contracting State may provide in case of the seizure of such aircraft or any other aircraft owned by the same person and encumbered with any similar right held by the same creditor:
  - (a) that the provisions of paragraph 4 above shall have no effect with regard to the person suffering such injury or damage or his representative if he is an executing creditor;
  - (b) that any right referred to in Article 1 held as security for an indebtedness encumbering the aircraft may not be set up against any person suffering such injury or damage or his representatives in excess of an amount equal to 80% of the sale price.

In the absence of other limit established by the law of the Contracting State where the execution sale takes place, the insurance shall be considered adequate within the meaning of present paragraph if the amount of the insurance corresponds to the value when new of the aircraft seized in execution.
- 6. Costs legally chargeable under the law of the Contracting State where the sale takes place, which are incurred in the common interest of creditors in the course of execution proceedings leading to sale, shall be paid out of the proceeds of sale before any claims, including those given preference by Article IV.

#### **Article VIII**

Sale of an aircraft in execution in conformity with the provisions of Article VII shall effect the transfer of the property in such aircraft free from all rights which are not assumed by the purchaser.

## **Article IX**

Except in a case of a sale in execution in conformity with the provisions of Articles VII, no transfer of an aircraft from the nationality register or the record of a Contracting State to that of another Contracting State shall be made unless, all holders of record rights have been satisfied or consent to the transfer.

## **Article X**

1. If a recorded right in an aircraft of the nature specified in Article 1, and held as security for the payment of an indebtedness, extends, in conformity with the law of the Contracting State where the aircraft is registered, to spare parts stored in a specified place or places, such right shall be recognized by all Contracting States as long as the spare parts remain in the place or places specified provided that an appropriate public notice, specifying the description of the right, the name and address of the holder of this right and the record in which such right is recorded, is exhibited at the place where the spare parts are located, so as to give due notification to third parties that such spare parts are encumbered.
2. A statement indicating the character and the approximate number of such spare parts shall be annexed to or included in the recorded document. Such parts may be replaced by similar parts without affecting the right of the creditor.
3. The provisions of Article VII, paragraph 1 and 4, and of Article VIII shall apply to a sale of spare parts in execution. However, where the executing creditor is an unsecured creditor, paragraph 4 of Article VII in its application to such a sale shall be construed so as to permit the sale to take place if a bid is received in an amount not less than two-thirds of the value of the spare parts as determined by experts appointed by the authority responsible for the sale. Further in the distribution of the proceeds of sale, the competent authority may, in order to provide for the claim of the executing creditor, limit the amount payable to holders of prior rights to two thirds of such proceeds of sale after payment of the costs referred to in Article VII, paragraph 6.
4. For the purpose of this Article, the term "spare parts" means part of aircraft, engines, propellers, radio apparatus, instruments, appliances, furnishings, parts of any of the foregoing, and generally any other articles of whatever description maintained for installation in aircraft in substitution for parts or articles removed.

## **Article XI**

1. The provisions of this Convention shall in each Contracting State apply to all aircraft registered as to nationality in another Contracting State.
2. Each contracting State shall also apply to aircraft registered as to nationality:
  - (a) the provisions of Articles II, III, IX and
  - (b) the provisions of Article IV, unless the salvage or preservation operations have been terminated within its own territory.

## **Article XII**

Nothing in this Convention shall prejudice the right of any Contracting State to enforce against an aircraft its national laws relating to immigration, customs or air navigation.

### **Article XIII**

This convention shall not apply to aircraft used in military, customs or police services.

### **Article XIV**

For the purpose of this Convention, the competent judicial and administrative authorities of the contracting States may, subject to any contrary provision in the national law, correspond directly with each other.

### **Article XV**

The contracting States shall take such measures as are necessary for the fulfilment of the provisions of this convention and shall forthwith inform the Secretary General of the International Civil Aviation Organisation of these measures.

### **Article XVI**

For the purpose of this Convention the term "aircraft" shall include the airframe, engines, propellers, radio apparatus and all other articles intended for use in the aircraft whether installed therein or temporarily separated therefrom.

### **Article XVII**

If a separate register of aircraft for purposes of nationality is maintained in any territory for whose foreign relations a Contracting State is responsible, references in this Convention to the law of the contracting State shall be constituted as reference to the law of that territory.

### **Article XVIII**

This Convention shall remain open for signature until it comes into force in accordance with the provisions of Article XX.

### **Article XIX**

This Convention shall be subject to ratification by the signatory States.

The instruments of ratification shall be deposited in the archives of the International Civil Aviation Organisation, which shall give notice of the date of deposit to each of the signatory and adhering States.

### **Article XX**

1. As soon as two of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the second instrument of ratification. It shall come into force, for each State which deposits its instrument of ratification after that date, on the ninetieth day after the deposit of its instrument of ratification.
2. The International Civil Aviation Organisation shall give notice to each signatory State of the date on which this Convention comes into force.
3. As soon as this Convention comes into force, it shall be registered with the United Nations by the Secretary General of the International Civil Aviation Organisation.



#### **Article XXI**

1. This Convention shall, after it has come into force, be open for adherence by non-signatory States.
2. Adherence shall be effected by the deposit of an instrument of adherence in the archives of the International Civil Aviation Organisation, which shall give notice of the date of the deposit to each signatory and adhering State.
3. Adherence shall take effect as from the ninetieth day after the date of the deposit of the instrument of adherence in the archives of the International Civil Aviation Organisation.

#### **Article XXII**

1. Any Contracting State may denounce this Convention by notification of denunciation to the International Civil Aviation Organisation, which shall give notice of the receipt of such notification to each signatory and adhering State.
2. Denunciation shall take effect six months after the date of receipt by the International Civil Aviation Organisation of the notification of denunciation.

#### **Article XXIII**

1. Any State may at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Convention does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
2. The International Civil Aviation Organisation shall give notice of any such declaration to each signatory and adhering State.
3. With the exception of territories in respect of which a declaration has been made in accordance with paragraph 1 of this Article, this Convention shall apply to all territories for the foreign relations of which a Contracting State is responsible.
4. Any State may adhere to this Convention separately on behalf of all or any of the territories regarding which it has made a declaration in accordance with paragraph 1 of this Article and the provisions of paragraphs 2 and 3 of Article XXI shall apply to such adherence.
5. Any Contracting State may denounce this Convention, in accordance with the provisions of Article XXII, separately for all or any of the territories for the foreign relations of which such State is responsible.

**IN WITNESS WHEREOF** the undersigned plenipotentiaries having been duly authorized, have signed this Convention.

**DONE** at Geneva, on the nineteenth day of the month of June of the year one thousand nine hundred and forty-eight in the English, French and Spanish languages, each text being of equal authenticity.

This Convention shall be deposited in the archives of the International Civil Aviation Organisation where, in accordance with Article XVIII, it shall remain open for signature.

Convention on International Interests in Mobile Equipment

**CONVENTION**

**ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

THE STATES PARTIES TO THIS CONVENTION,

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

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

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

DESIRING to provide broad and mutual economic benefits for all interested parties.

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

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

TAKING INTO CONSIDERATION the objective and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

**Chapter 1**

**Sphere of application and general provisions**

**Article 1 - Definitions**

In this convention, except where the context otherwise requires, the following items are employed with the meaning set out below.;

- (a) "agreement" means a security agreement, a title agreement or a leasing agreement.
- (b) "assignment" a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest,

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

transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1).

- (o) “international interest” means an interest held by a creditor to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purpose of this Convention or the Protocol;
- (q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- ® “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created.
- (u) “object” means an object of category to which Article 2 applies;
- (v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) “proceeds” means money or non money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscating, condemnation or reacquisition;
- (x) “prospective assignment” means an assignment that is intended to be made in the future upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (z) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (aa) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (bb) “protocol” means in respect of any category of object and associated rights to which this Convention applies the protocol in respect of that category of object and associated rights;

- (cc) “registered” means registered in the International Registry pursuant to Chapter V;
- (dd) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (ee) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ff) “registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);
- (gg) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (hh) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (ii) “secured obligation” means an obligation secured by a security interest;
- (jj) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (kk) “security interest” means an interest created by a security agreement;
- (ll) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (mm) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (nn) “unregistered interest” means a consensual interest or non-consensual interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (oo) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

#### **Article 2 - The international interest**

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a

category of such objects listed in paragraph 3 and designated in the protocol:

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

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

3. The categories referred to in the preceding paragraphs are:
  - (a) airframes, aircraft engines and helicopters;
  - (b) railway rolling stock; and
  - (c) space assets.
4. The applicable law determines whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.
5. An international interest in an object extends to proceeds of that object.

#### **Article 3 - Sphere of application**

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.
2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

#### **Article 4 - Where debtor is situated**

1. For the purpose of Article 3(1), the debtor is situated in any Contracting State;
  - (a) under the law of which it is incorporated or formed;
  - (b) where it has its registered office or statutory seat;
  - (c) where it has its centre of administration; or
  - (d) where it has its place of business.
2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

#### **Article 5 - Interpretation and applicable law**

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

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based, or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.
4. Where State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

#### **Article 6 - Relationship between the Convention and the Protocol**

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

### **Chapter II**

#### **Constitution of an international interest**

##### **Article 7 - Formal requirements**

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

is in writing;

relates to an object of which the chargor, conditional seller or lessor has power to dispose;

enables the object to be identified in conformity with the Protocol; and

in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

### **Chapter III**

#### **Default remedies**

##### **Article 8 - Remedies of chargee**

1. In the event of default as provided in Article II, the chargee may, to the extent that he chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies;
  - (a) take possession or control of any object charged to it;

- (b) sell or grant a lease of any such object;
  - (c) collect or receive any income or profits arising from the management or use of any such object.
2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
  3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.
  4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to;
    - interested persons specified in Article 1 (m)(i) and (ii); and
    - interested persons specified in article 1 (m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
  5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.
  6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

#### **Article 9 - Vesting of object in satisfaction redemption**

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
3. The court shall grant any application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.
4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.



5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

#### **Article 10 - Remedies of conditional seller or lessor**

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

#### **Article 11 - Meaning of default**

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Article 8 to 10 and 13.
2. Where the debtor and the creditor have not so agreed, "default" for the purpose of Article 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

#### **Article 12 - Additional remedies**

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

#### **Article 13 - Relief pending final determination**

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:
  - (a) preservation of the object and its value;
  - (b) possession, control or custody of the objects;
  - (c) immobilization of the object; and
  - (d) lease, or except where covered by sub-paragraph (a) to (c), management of the object and the income therefrom.
2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:
  - (a) in implementing any order granting such relief, fails to perform any of its obligation to the debtor under this Convention or the Protocol; or

- (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
- 3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.
- 4. Nothing in this article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

#### **Article 14 - Procedural requirements**

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

#### **Article 15 - Derogation**

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

### **Chapter IV**

#### **The international registration system**

##### **Article 16 - The International Registry**

- 1. An International Registry shall be established for registration of:
  - (a) international interest, prospective international interests and registrable non-consensual rights and interests;
  - (b) assignment and prospective assignments of international interests;
  - (c) acquisition of international interests by legal or contractual subrogations under the applicable law;
  - (d) notices of national interests; and
  - (e) subordinations of interests referred to in any of the preceding subparagraphs.
- 2. Different international registries may be established for different categories of object and associated rights.
- 3. For the purpose of this Chapter and Chapter V, the term "registration" includes, where appropriate, an amendment, extension or discharge of a registration.

##### **Article 17 - The Supervisory Authority and the Registrar**

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

- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
  - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
  - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
  - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
  - (f) supervise the Registrar and the operation of the International Registry;
  - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
  - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
  - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
  - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).
  4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.
  5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the protocol and the regulations.

## **Chapter V**

### **Other matters relating to registration**

#### **Article 18 - Registration requirements**

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
  - (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
  - (b) for making searches and issuing search certificates, and, subject thereto;

- (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
- 2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
- 3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for registration of an international interest.
- 4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.
- 5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify requirements, if any, to be satisfied before such information is transmitted to the International Registry.

#### **Article 19 - Validity and time of registration**

- 1. A registration shall be valid only if made in conformity with Article 20.
- 2. A registration, if valid, shall be completed upon entry of the required information into the International Registry database so as to be searchable.
- 3. A registration shall be searchable for the purpose of the preceding paragraph at the time when:
  - the International Registry has assigned to it a sequentially ordered file number;
  - and
  - the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.
- 4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.
- 5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.
- 6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

#### **Article 20 - Consent to registration**

- 1. An international interest, a prospective international interest or an assignment or

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

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.
3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.
4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.
5. A registrable non-consensual right or interest may be registered by the holder thereof.
6. A notice of a national interest may be registered by the holder thereof.

#### **Article 21 - Duration of registration**

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

#### **Article 22 - Searches**

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefore, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:
  - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
  - (b) stating that there is no information in the International Registry relating thereto.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

#### **Article 23 - List of declarations and declared non-consensual rights or interests**

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depository as having been declared by Contracting States in conformity with Article 39

and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

#### **Article 24 - Evidentiary value of certificates**

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

that it has been so issued; and

of the facts recited in it, including the date and time of registration.

#### **Article 25 - Discharge of registration**

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.
3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registrations was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

#### **Article 26 - Access to the international registration facilities**

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

### **Chapter VI**

#### **Privileges and immunities of the Supervisory Authority and the Registrar**

##### **Article 27 - Legal personality; immunity**

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

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.
3. (a) The supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreements with the host State.  
  
(b) For the purpose of this paragraph, "host state" means the State in which the Supervisory Authority is situated.
4. The assets, documents, date bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.
6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

## **Chapter VII**

### **Liability of the Registrar**

#### **Article 28 - Liability and financial assurance**

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.
2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.
3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.
4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

## **Chapter VIII**

### **Effects of an international interest as against third parties**

#### **Article 29 - Priority of competing interests**

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

2. The priority of the first-mentioned interest under the preceding paragraph applies:
  - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
  - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. The buyer of an object acquires its interest in it:
  - (a) subject to an interest registered at the time of its acquisition of that interest; and
  - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. The conditional buyer or lessee acquires its interest in or right over that object:
  - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
  - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
  - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
  - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

### **Article 30 - Effects of insolvency**

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.
2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.
3. Nothing in this Article affects:
  - (a) any rules of law applicable in insolvency proceedings relating to the



avoidance of a transaction as a preference or a transfer in fraud of creditors; or

- (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

## **Chapter IX**

### **Assignments of associated rights and international interests; rights of subrogation**

#### **Article 31 - Effects of assignment**

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:  
  
the related international interest; and  
  
all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of setoff referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.
5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

#### **Article 32 - Formal requirements for assignment**

1. An assignment of associated rights transfers the related international interest only if it:
  - (a) is in writing;
  - (b) enables the associated rights to be identified under the contract from which they arise; and
  - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.

3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

### **Article 33 - Debtor's duty to assignee**

1. To the extent that associated rights and the related international interest have been transferred in accordance with Article 31 and 32, the debtor in relation to those rights and 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 debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
  - (b) the notice identifies the associated rights.
2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.
3. Nothing in this Article shall affect the priority of competing assignments.

### **Article 34- Default remedies in respect of assignment by way of security**

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Article 8,9 and 11 to 14 apply in the relations between the assignor and the assignee (and in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

### **Article 35 - Priority of competing assignments**

1. Where there are competing assignments of associated rights and at least one of the assignment includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

### **Article 36 - Assignee's priority with respect to associated rights**

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:
  - (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
  - (b) to the extent that the associated rights are related to an object.
2. For the purpose of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:
  - (a) a sum advanced and utilised for the purchase of the object;
  - (b) a sum advanced and utilised for the purpose another object in which the assignment hold another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
  - (c) the price payable for the object;
  - (d) the rentals payable in respect of the object; orother obligations arising from a transaction referred to in any of the preceding paragraphs.
3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

### **Article 37- Effects of assignor's insolvency**

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

### **Article 38 - Subrogation**

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.
2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

## **Chapter X**

### **Rights or interests subject to declarations by Contracting States**

#### **Article 39 - Rights having priority without registration**

1. A Contracting State may at any time, in a declaration deposited with the Depository of the Protocol declare, generally or specifically:
  - (a) those categories of non-consensual rights or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
  - (b) that nothing in this Convention shall affect the right of a State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the law of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.
2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.
3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.
4. Notwithstanding the preceding paragraph, a contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

#### **Article 40 - Registrable non-consensual rights or interests**

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

## **Chapter XI**

### **Application of the Convention to sales**

#### **Article 41 - Sale and prospective sale**

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

## **Chapter XII**

### **Jurisdiction**

#### **Article 42 - Choice of forum**

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.
2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

#### **Article 43 - Jurisdiction under Article 13**

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a),(b),(c) and Article 13(4) in respect of that object.
2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:  
  
by the courts chosen by the parties; or  
  
by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.
3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

#### **Article 44 - Jurisdiction to make orders against the Registrar**

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.

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

#### **Article 45 - Jurisdiction in respect of insolvency proceedings**

The provisions of this Chapter are not applicable to insolvency proceedings.

### **Chapter XIII**

#### **Relationship with other Conventions**

#### **Article 45 bis - Relationship with the *United Nations Convention on the Assignment of Receivables in International Trade*.**

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York of 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft object, railway rolling stock and spaces assets.

#### **Article 46 - Relationship with the *UNIDROIT Convention on International Finance Leasing***

The Protocol may determine the relationship between this Convention and the *UNIDROIT Convention on International Finance Leasing*, signed at Ottawa on 28 May 1988.

### **Chapter XIV**

#### **Final Provisions**

#### **Article 47 - Signature, ratification, acceptance, approval or accession**

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Convention may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

#### **Article 48 – A Regional Economic Integration Organizations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

#### **Article 49 - Entry into force**

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:
  - (a) as from the time of entry into force to that Protocol;
  - (b) subject to the terms of that Protocol; and
  - (c) as between States Parties to this Convention and that Protocol.
2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) or the preceding paragraph.

#### **Article 50 - Internal transactions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.
2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interest shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

#### **Article 51 - Future Protocols**

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipments, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.
2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.
3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.
4. Where the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.
5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.
6. Article 45 *bis* of this convention applies to such a Protocol only if specifically provided for in that Protocol.

#### **Article 52 - Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval, or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.
4. Where a Contracting State extends this Convention to one of its territorial units, declarations permitted under this Convention may be made in respect of each



such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:
  - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;
  - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
  - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

#### **Article 53 - Determination of courts**

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

#### **Article 54 - Declarations regarding remedies**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged objects is situated within, or controlled from its territory the chargee shall not grant a lease of the objects in that territory.
2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provisions of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

#### **Article 55 - Declaration regarding relief pending final determination**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

#### **Article 56 - Reservations and Declaration**

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

#### **Article 57 - Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

#### **Article 58 - Withdrawal of declarations**

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

#### **Article 59 - Denunciations**

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

#### **Article 60 - Transitional Provisions**

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.
2. For the purpose of Article 1(v) and of determining priority under this Convention:

- (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
  - (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.
- 3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

#### **Article 61 - Review Conferences, amendments and related matters**

- 1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
- 2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the supervisory Authority, to consider:
  - (a) the practical operation of this Convention and its effectiveness in facilitating the asset-base financing and leasing of objects covered by its terms;
  - (b) the judicial interpretation given to, and the application made of the terms of this Convention and regulations;
  - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
  - (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.
- 3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.
- 4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipments, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

## Article 62 - Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
  - (a) inform all Contracting States of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of this Convention;
    - (iii) each declaration made in accordance with this Convention, together with the date thereof;
    - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
    - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
  - (b) transmit certified true copies of this Convention to all Contracting States;
  - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
  - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all exists being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Protocol To the Convention on International Interest in Mobile Equipment on Matters specific to Aircraft Equipment

**PROTOCOL**  
**TO THE CONVENTION**  
**ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON**  
**MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT**

THE STATES PARTIES TO THIS PROTOCOL.

CONSIDERING it necessary to implement the *Convention of International Interests in Mobile Equipment* (hereinafter referred to as "the Convention") as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment.

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944.

HAVE AGREED upon the following provisions relating to aircraft equipment:

**Chapter 1**

**Sphere of application and general Provisions**

**Article 1- Defined terms**

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
  - (a) "aircraft" means aircraft as defined for the purpose of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;
  - (b) "aircraft engines" means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and;
    - (i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and
    - (ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horse power 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;

- (c) “aircraft objects” means airframes, aircraft engines and helicopters;
- (d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;
- (e) “airframes” means airframes (other than those used in military, custom or police services that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:
  - (i) at least eight (8) persons including crew; or
  - (ii) goods in excess of 2750 kilograms,
  - (iii) together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;
- (f) “authorised party” means the party referred to in Article XIII(3);
- (g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;
- (h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organisation on nationality and registration of aircraft operated by international operating agencies;
- (i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;
- (j) “guarantee contract” means a contract entered into by a person as guarantor;
- (k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (l) “helicopters” means heavier-than-air machines (other than those used in military, customs, or police services) 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:
  - (i) at least five (5) persons including crew; or
  - (ii) 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;

- (m) “insolvency-related event” means:
  - (i) the commencement of the insolvency proceedings; or
  - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interest is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;
- (o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and
- (p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

#### **Article II - Application of Convention as regards aircraft objects**

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

#### **Article III – Application of Convention to sales**

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Article 3 and 4;  
Article 16(1)(a);  
Article 19(4)  
Article 20(1) (as regards registration of a sale or a prospective sale);  
Article 25(2) (as regards a prospective sale); and  
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapter IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV (1) and (2), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

#### **Article IV - Sphere of application**

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also

apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. For the purposes of the definition of "internal transaction" in Article 1 of the Convention:
  - (a) an airframe is located in the State of registry of the aircraft of which it is a part;
  - (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and
  - (c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

#### **Article V - Formalities, effects and registration of contracts of sale**

1. For the purposes of this Protocol, a contract of sale is one which:
  - is in writing;
  - relates to an aircraft object of which the seller has power to dispose; and
  - enables the aircraft object to be identified in conformity with this Protocol.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.
3. Registration of contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

#### **Article VI - Representative capacities**

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

#### **Article VII - 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 necessary and sufficient to identify the object for the purposes of Article 7 (c) of the Convention and Article V(1)(c) of this Protocol.

#### **Article VIII - Choice of law**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX (1).



2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligation, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

## **Chapter II**

### **Default remedies, priorities and assignments**

#### **Article IX - Modification of default remedies provisions**

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:
  - (a) procure the de-registration of the aircraft; and
  - (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. The registry in a contracting state shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:
  - (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
  - (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.
6. A chargee proposing to procure the de-registration and export of an aircraft under

paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:

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

**Article X - Modification of provisions  
regarding relief pending final determination**

1. This Article applies only where a Contracting State has made a declaration under Article XXX (2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):
  - "(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom",and Article 43(2) applies with the insertion after the words "Article 13(1)(d)" of the word "and (e)".
4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor's international interest has priority under the provisions of Article 29 of the Convention.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
6. With regard to the remedies in Article IX (1):
  - (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and
  - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
7. Paragraph 2 and 6 shall not affect any applicable aviation safety laws and regulations.

## Article XI - Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX (3).

### *Alternative A*

2. Upon the occurrence of an insolvency-related event, the insolvency administrator of the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:  
  
the end of the waiting period; and  
  
the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply
3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:
  - (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement ; and
  - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.
7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
8. With regards to the remedies in Article IX(1):
  - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
  - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.
10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

*Alternative B*

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a contracting State pursuant to Article XXX (3) whether it will:
  - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
  - (b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.
3. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.
4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.
6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

**Article XII- Insolvency assistance**

1. This article applies only where a Contracting State has made a declaration pursuant to Article XXX (1).
2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum

extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

### **Article XIII - De-registration and export request authorisation**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX (1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.
3. The person in whose favour the authorisation has been issued (the “authorized party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX (1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorized party. The registry authority shall remove an authorisation from the registry at the request of the authorized party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised part in the exercise of the remedies specified in Article IX.

### **Article XIV - Modification of priority provisions**

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

### **Article XV - Modification of assignment provisions**

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b);

“ and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

### **Article XVI -Debtor provisions**

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
  - (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4) of the Convention, or in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

### **Chapter III**

#### **Registry provisions relating to International interests in aircraft objects**

##### **Article XVII -The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.
2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
5. The first 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 reappointed at regular five-yearly intervals by the Supervisory Authority.

##### **Article XVIII - First regulations**

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

##### **Article XIX - Designated entry points**

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

#### **Article XX- Additional modifications to Registry provisions**

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.
2. For the purposes of article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after receipt of the demand described in such paragraph.
3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by article 17(2) of the Convention.
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hours basis. The various entry points shall be operated at least during working hours in their respective territories.
5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.
6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

### **Chapter IV**

#### **Jurisdiction**

##### **Article XXI -Modification of jurisdiction provisions**

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter or an airframe pertaining to an aircraft, for which that State is the State of registry.

##### **Article XXII -Waiver of sovereign immunity**

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the conditions to such jurisdiction or

enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

## **Chapter V**

### **Relationship with other conventions**

#### **Article XXIII - Relationship with the *Convention on the International Recognition of Rights in Aircraft***

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supercede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superceded.

#### **Article XXIV - Relationship with the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft***

1. The Convention shall, for a contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.
2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

#### **Article XXV - Relationship with the *UNIDROIT Convention on International Financial Leasing*,**

*The Convention shall supercede the UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

## **Chapter VI**

### **Final provisions**

#### **Article XXVI - Signature, ratification, acceptance, approval or accession.**

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the unification of the Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.
2. This protocol shall be subject to ratification, acceptance or approval by States which have signed it.



3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

#### **Article XXVII-Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve, or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "Contracting State" or "Contracting States" or "State Party" or "States Parties" in this Protocol applies equally to Regional Economic Integration Organisation where the context so requires.

#### **Article XXVIII- 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 the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments
2. For other States this Protocol enters into force 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.

#### **Article XXIX - Territorial units**

1. If a Contracting State has 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 modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this protocol extends to one or more territorial units of a Contracting State:
  - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
  - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
  - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

**Article XXX -Declaration relating to certain provisions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceedings, if any, to which it will apply Alternative A and the types of insolvency proceedings, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.
4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.
5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article

XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, incase it will be applied partly, or otherwise which other forms of interim relief will be applied.

#### **Article XXXI - Declarations under the Convention**

Declarations made under the Convention, including those made under Article 39,40,50,53,54,55,57,58, and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

#### **Article XXXII - Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII, and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

#### **Article XXXIII-Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified on the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, the Protocol shall continue to apply, as if no such subsequent declarations have been made in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

#### **Article XXXIV-Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding eth previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interest arising prior to the effective date of any such withdrawal.

#### **Article XXXV- Denunciations**

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

#### **Article XXXVI- Review Conferences, amendments and related matters**

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five percent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
  - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
  - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
  - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
  - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.
3. Any amendment to this Protocol shall be approved by at least a two-third majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the Provisions of Article XXVIII relating to its entry into force.

#### **Article XXXVII- Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
  - (a) inform all contracting States of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of this Protocol;

- (iii) each declaration made in accordance with this Protocol, together with the date thereof;
  - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
  - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
  - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
  - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

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

Annex referred to in Article XIII

(Insert Date)

To: (Insert Name of 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 authorisation issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft 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) procure the de-registration of the aircraft from the [inset name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and
  - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
- (ii) confirmation that the authorized party or the person it certifies as designee may take the action 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 co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour 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 registry authority].

[insert name of operator/owner]

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Agreed to and lodged this

By: [insert name of signatory]

[insert date]

Its: [insert title of signatory]

---

[insert relevant notational details]

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

**SUPPLEMENTRY PROVISIONS RELATING TO THE BOARD, ETC.**

1. Subject to this Act and section 27 of the Interpretation Act, Cap 192 LFN 1990, the Board may make standing orders regulating its proceedings or those of any of its committees.
2. At every meeting of the Board, the Chairman shall preside and in his absence the members present at the meeting shall appoint one of their members to preside at the meeting.
3. The quorum at a meeting of the Board shall consist of the chairman or, in an appropriate case, the person presiding at the meeting pursuant to paragraph 2 of this Schedule, and three other members of the Board, two of whom shall be *ex-officio* members.
4. The Board shall, for the purposes of this Act, meet not less than three times in each year and, subject thereto, the Board shall meet whenever it is summoned by the Chairman, and if required to do so, by notice given to him by not less than four other members, he shall summon a meeting of the Council to be held within 14 days from the date on which the notice is given.
5. Where the Board desires to obtain the advice of any person on a particular matter, the Board may co-opt him to the Board for such period as it deems fit, but a person who is a member by virtue of this sub-paragraph shall not be entitled to vote at any meeting of the Board and shall not count towards a quorum.

**Committees**

6. –(1) Subject to its standing orders, the Board may appoint such number of standing and ad hoc Committee as it thinks fit to consider and report any matter with which the authority is concerned.
  - (2) A committee appointed under this paragraph shall –
    - (a) consist of such number of persons (not necessarily members of the Board) as may be determine by the Board, and a person, other than a member of the Board, shall hold office on the committee in accordance with the terms of his appointment; and
    - (b) be presided over by a member of the Board.
  - (3) The quorum of any committee set up by the Board shall be as may be determined by the Board.
  - (4) A decision of a committee of the Board shall be of no effect until it is confirmed by the Board.

*Miscellaneous*

7. The Fixing of the seal of the Authority shall be authenticated by the signature of the Chairman, the Director-General or any other person generally or specifically authorized by



the Board to act for that purpose.

8. Any contract or instrument which, if made by a person not being a body corporate, would not be required to be under seal may be made or executed on behalf of the Authority by the director-General or by any other person generally or specially authorized by the Board to act for that purpose.

9. Any document purporting to be a contract, instrument, or other document duly signed or sealed on behalf of the Authority shall be received in evidence and shall, unless the contrary is proved, be presumed without further proof to have been so signed or sealed.

10. The validity of any proceedings of the Board or of any of its committee shall not be affected by –

- (a) any vacancy in the membership of the Board, or committee, or
- (b) any defect in the appointment of a member of the Board or committee; or
- (c) reason that any person not entitled to do so took part in the proceedings of the Board or Committee.

11. A member of the Board or a committee who has a personal interest in any contract or arrangement entered into or proposed to be considered by the Board or such committee shall forthwith disclose his interest to the Board and shall not vote on any question relating to the contract or arrangement.

12. No member of the Board shall be personally liable for any act or omission done or made in good faith while engaged in the business of the Authority.

PASSED BY THE SENATE ON TUESDAY, 10 OCTOBER, 2006

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**President,**  
Senate of the Federal Republic of Nigeria

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**Clerk,**  
Senate of the Federal Republic of Nigeria