

Annex 1 – Declarations Matrix and Economically–Based Recommendations

**Ratification of the Cape Town Convention and Aircraft Equipment Protocol
(prepared jointly by the Aviation Working Group (“A.W.G.”))**

This matrix and the evaluative comments contained therein have been prepared to illustrate the optimal declarations or non–declarations in order to **enhance the economic benefits** to be derived from the Cape Town Convention. In determining their positions on declarations, States may wish to use this matrix in connection with the weighing of economic versus other policy considerations.

References are to the Convention (“**C–Art.**”) and Aircraft Equipment Protocol (“**P–Art.**”). Without diminishing the potential legal or political importance in a given State of other permitted declarations, those of particular economic significance are set out in bold.

References to Form numbers are to the Explanatory Memorandum prepared by the Secretariat of UNIDROIT, as Depository. Only those forms for provisions where a declaration is contemplated by the Matrix have been included therein.

Explanatory Notes:

(1) Opt–out provisions are those provisions that apply *unless* a declaration is made. Opt–in provisions are those provisions that *only apply if* a declaration is made. Whether a provision is opt–in or opt–out is noted under column B.

(2) All declarations under the Convention as relates to aircraft objects are made the time of ratification, acceptance, approval of, or accession to the Aircraft Protocol.

For further information, please contact Jeffrey Wool, Secretary, A.W.G., +44 2078 327107.

A.	B.	C.	D.	E.	F.
Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
Nos. 1, 2, and 5	C–Art. 39(1)(a) and 39(4)	Rights having priority without registration (Opt–in) (non–consensual rights and interests)	Yes, but limited	(1) Specific and quantifiable list of qualifying categories that, under current law, have priority without national registration; (2) Limited to customary categories (e.g., repairers); (3) Limited to claims arising following a declared	C–Art. 1(s)

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A.	B.	C.	D.	E.	F.
Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
				default	
No. 6	C-Art. 40	Registrable non-consensual rights or interests (<u>Opt-in</u>)	Yes,	(1) Specific list of qualifying categories (e.g., judgment creditors); (2) Use of this declaration, rather than C-Art. 39(1)(a) declaration, is preferred – bringing all categories of aviation interests within the first-to-file Registry system	C-Art. 1(s)
Nos. 7 and 8	C-Art. 50	Internal transactions (<u>Opt-out</u>)	No		C-Arts. 1(n), (r)
Nos. 9 and 10	C-Art. 52	Territorial Units (<u>Opt-in</u>)	See Column	(1) Only if required by constitutional principles; (2) If made, Convention should apply to all territorial units with aviation interests	P- Art. XXIX (same topic; thus must be consistent)
No. 11	C-Art. 53	Determination of courts (<u>Opt-in</u>)	Yes	As specific as possible, preferably listing the courts by name	C-Art. 1(h), Chapter XII
No. 12	C-Art. 54(1)	Preventing lease as remedy (<u>Opt-out</u>)	No		C- Art. 8(l)(b)
No. 13	C-Art. 54 (2)	Remedy – Leave of Court (<u>mandatory declaration</u>)	Yes	Track wording in C-Art, 54(2): leave of court is <u>not</u> required nor is any other court action	C-Art. 8 & 10
Nos. 14, 15, 16 and 17	C-Art. 55	Declarations regarding relief pending final determination of a claim (<u>Opt-out</u>)	No		C-Arts. 13 and 43 (See also P-Art. X)

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Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
No. 18	C- Art. 60(1)-(3)	Transitional Provisions (<u>Opt-in</u>)			C-Art. I(v)
No. 19	P- Art. VIII	Contractual Choice of Law (<u>Opt-in</u>)	Yes	(1)Wording declaring application; (2) Technically, this declaration is made under P-Art. XXX(1); (3) Choice of law should apply wholly, not in part	P-Art. XXX(1)
No. 21	P- Art. X	Modification of provisions regarding relief pending final determination of a claim (<u>Opt-in</u>)	Yes	(1) Wording declaring application (wholly, not in part); (2) Timetable for remedies under C-Art. 13(1)(a)-(c), shall be the number of working days equivalent to no more than <u>10</u> calendar days; (3) Timetable for remedies under C-Art. 13(1)(d)-(e), shall be the number of working days equivalent to no more than <u>30</u> calendar days; (4) Technically, this declaration is made under P-Art. XXX(2)	P- Art. XXX(2); C-Art. 13

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Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
No. 23	P-Art. XI	Remedies on Insolvency (<u>Opt-in</u>)	Yes	(1) Wording declaring application of Alternative A (wholly, not in part) to “all insolvency proceedings and other proceedings relating to an insolvency-related event”; (2) Declared “waiting period” under P- Art. XI(3) is 60 calendar days; (3) Technically, this declaration is made under P-Art. XXX(3)	P-Art. XXX(3); C-Art. 1(1) and P-Arts. I(2)(m),(n)
No. 26	P-Art. XII	Insolvency Assistance (<u>Opt-in</u>)	Yes	(1) Wording declaring application; (2) Technically, this declaration is made under P-Art. XXX(1)	P- Art. XXX(1); P-Art. XI
No. 27	P-Art. XIII	De-registration and export request authorisation (<u>Opt-in</u>)	Yes	(1) Wording declaring application; (2) Technically, this declaration is made under P-Art. XXX(1)	P- Arts. IX(1) and (5)

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Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
Nos. 28 and 29	P-Art. XIX	Designated entry points (<u>Opt-in</u>)	No (See Column)	No declaration is recommended; if one is made, (a) as relates to airframes and helicopters, the declaration must be limited to those pertaining to aircraft for which the declaring State is the State of Registry; and (b) minimal conditions, if any, to be satisfied prior to use should be clearly specified, and an added fee should not be included in those conditions	C-Art. 18(5)
Nos. 31	P-Art. XXX(5)	Declarations relating to certain provisions (modification of jurisdiction rules) (<u>Opt-out</u>)	No		P-Art. XXI
No. 32	P- Art. XXIV(2)	Relationship with the Convention for the unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (Rome Convention of 1933) (<u>Opt-out</u>)	No		C-Art. 54(2)
No. 34	P- Art. XXIX	Territorial Units (<u>Opt-in</u>)	See Column	(1) Only if required by constitutional principles; (2) If made, Convention should apply to all territorial units with aviation interests	CVN 52(1) (same topic; thus must be consistent)

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Form No.	Article 56 of the Convention authorises declarations under Article:	Headings	Declaration	Particulars of Declaration, if applicable	Relates to Article
No. 35	C–Art. 48(2)	Regional Economic Integration Organisation	N/A	Any declaration should be as specific as possible	P– Art. XXVII (same topic; thus must be consistent)
No. 36	P– XXVII(2)	Regional Economic Integration Organization	N/A	Any declaration should be as specific as possible	CVN Art. 48(2) (same topic; thus must be consistent)

Key Declarations Reflecting the A.W.G. Declarations Matrix – with Completed Text attached (Based on UNIDROIT Forms, modified as necessary)

PREFATORY NOTE: Applying commercial criteria, the *declarations other than those specified below should not be made* (i.e., UNIDROIT Forms 2, 4, 5, 7–8, 12, 14–18, 20, 22, 24–25, 30–34) except (i) technical declarations (i.e., UNIDROIT Forms 9–11 and 34–35). Whether a declaration regarding an entry point (UNIDROIT Form 28–29) requires particular attention. If that declaration is made, minimal conditions should be specified (as permitted by Article 19(5) of the Convention.

A. KEY DECLARATIONS UNDER THE CONVENTION (COMPLETED TO REFLECT A.W.G. MATRIX)

Form No. 1 Specific Declarations under Article 39(1)(a)

“{Name of State} declares that the following categories of non–consensual right or interest;

- 1. liens in favour of workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the subject object;*
- 2. liens in favour of repairers of an object in their possession to the extent of service performed on and value added to that object –*

have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency.”

Form No. 6 Declarations under Article 40

“{Name of State} declares that the following categories of non–consensual right or interest;

- 1. right of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment;*

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2. *liens or other rights of the government of {name of state} relating to taxes or other unpaid charges of any type whatsoever (which is not covered by the declaration under Article 39(1)(a) of the Convention); and*
3. *any other non–consensual right or interest which is not covered by the declaration under Article 39(1) (a) of the Convention –*

shall be registrable under the Convention as regards aircraft objects as if the right or interest were an international interest and shall be regulated accordingly.”

Form No. 13 Declarations under Article 54(2)

“{Name of State} declares that all remedies available to the creditor under the Convention or Protocol which are not expressed under the provisions thereof to require application to the court may be required exercised without leave of the court or other court action.”

B. KEY DECLARATIONS UNDER THE PROTOCOL (COMPLETED TO REFLECT A.W.G.)

Form No. 19 Declarations under Article XXX(l) in respect of Article VIII

“{Name of State} declares that it will apply Article VIII.”

Form No. 21 Declarations under Article XXX(2) in respect of Article X providing for the application of the entirety of the latter

“{Name of State} declares that it will apply Article X in its entirety and that the number of days to be used for the purposes of the time–limit laid down in Article X(2) shall be–

1. *in respect of the relief specified in Article 13(1)(a)–(c), shall not exceed the number of working days equivalent to ten (10) calendar days; and*
2. *in respect of the relief specified in Articles 13(1)(d)–(e), shall not exceed shall not exceed the number of working days equivalent to thirty (30) calendar days –*

in each case from the date the application for relief is filed.”

Form No. 23 General Declarations under Article XXX(3) in respect of Article XI of Alternative A in its entirety to all types of insolvency proceeding

“{Name of State} declares that it will apply Article XI, Alternative A in its entirety to all types of insolvency proceedings and all other insolvency related events and that the waiting period for the purposes of Article XI(3) of that Alternative shall b sixty (60) calendar days”.

Form No. 26 Declarations under Article XXX(1) in respect of Article XII

“{Name of State} declares that it will apply Article XII.”

Form No. 27 Declarations under Article XXX(1) in respect of Article XIII

“{Name of State} declares that it will apply Article XIII.”