

Uniform Law
Conference of Canada

*Uniform
International
Interests in Mobile
Equipment Act
(Aircraft Equipment)*

UNIFORM INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ACT

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Uniform International Interests in Mobile Equipment Act

(AIRCRAFT EQUIPMENT)

Comment: The purpose of the Act is set out in Section 4. If possible, the Act and the title could be amended to allow the addition of other Protocols in the future, such as the Protocols on Railway Rolling Stock or Space objects. Alternatively, the Act could also serve as a template to implement future Protocols if an amendment of this Act was not possible.

Definitions

1(1) In this Act:

“**Aircraft Protocol**” means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on November 16, 2001, the text of which is set out in Schedule 2; («Protocole aéronautique»)

“**Convention**” means the Convention on International Interests in Mobile Equipment that was opened for signature at Cape Town November 16, 2001, the text of which is set out in Schedule 1. («Convention»)

Comment: The Convention and the Aircraft Protocol that are given the force of law are set out in the schedules to the Act. The Consolidated Aircraft Convention will be set out in the schedule for information purposes, as soon as an updated copy is released by the Secretariats of Unidroit and ICAO, pursuant to Resolution 1 of the Final Act of the Diplomatic Conference. The Act does not give the force of law to the Consolidated Aircraft Convention.

Comment: If this Act was amended to implement other Protocols, it will be necessary to add the names of other Protocols such as the Protocols on Railway Rolling Stock or Space assets to this definition section and to reproduce them in the schedules to the Act.

(2) All words and expressions used in this Act have the same meaning as the corresponding words and expressions used in the Convention and the Aircraft Protocol.

Comment: This is a standard provision for uniform acts implementing international conventions (see subsection 1(2) of the Uniform International Commercial Arbitration Act, subsection 1(2) of the Settlement of International Investments Disputes Act and subsection 1(2) of the Uniform International Sales Conventions Act).

Comment: If this Act was amended to implement other Protocols, it will be necessary to add the names of those Protocols to this subsection.

Interpretation

2 In interpreting the Convention and the Aircraft Protocol, recourse may be had to the Official Commentary on the Convention on International Interests in Mobile Equipment and the Protocol thereto on Matters Specific to Aircraft Equipment, as approved for distribution by the Governing Council of the International Institute for the Unification of Private Law (UNIDROIT).

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Comment: The Official Commentary may be added as a Schedule to the Act in order to make it more easily accessible and to encourage the use of the same version by everyone. Enacting jurisdictions may simply indicate references for United Nations and Unidroit Reports and Commentaries in their legislation. Alternatively, some jurisdictions could also publish these documents in their Gazette for information purposes or make reference to the documents as published in the Canada Gazette for information purposes.

Comment: This provision is in addition to the treaty interpretation principles (i.e. Articles 31 and 32 of the Vienna Convention on the Law of Treaties, Can. T.S. 1980 No. 37) that have been accepted in Canadian law by recent court decisions. In *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, Justice La Forest wrote with regard to those Articles and more specifically about the recourse to preparatory work to interpret a treaty “[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the State parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689”.

Comment: If this Act was amended to implement other Protocols this provision could identify the relevant documents for other Protocols.

Inconsistency

3 In the event of any inconsistency between this Act and any other law, this Act prevails to the extent of the inconsistency.

Comment: This is a standard provision for uniform acts implementing international conventions (see section 7 of the Uniform International Factoring (Unidroit Convention) Act and of the Uniform Act respecting International Child Abduction (the Hague), subsection 2(2) of the Settlement of International Investment Disputes Act and section 9 of the Uniform International Sales Conventions Act).

Comment: It is important to note that this provision may not be sufficient and that some legislation might have to be amended. In particular, jurisdictions may consider making changes to existing legislation relating to security law, as the relevant chapters on security in the Quebec Civil Code or the different personal property security acts. They may consider as well the interactions between those legislation and this implementing Act.

Purpose of Act

4 The purpose of the Act is to implement the provisions of the Convention and the Aircraft Protocol with regard to aircraft equipment.

Comment: It is important to specify the purpose of the Act as it is limited to the implementation of the Convention to aircraft equipment.

Comment: If this Act was amended to implement other Protocols this provision should be amended accordingly.

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Responsible Minister

5 The [Minister of _____] is the Minister responsible for the administration of this Act.

Comment: An enacting jurisdiction will name the minister responsible for the administration of the Act.

Request to extend application

6 The [Minister of _____] shall request the Government of Canada to declare in accordance with Article 52 of the Convention and Article XXIX of the Aircraft Protocol, that the Convention and the Aircraft Protocol extend to [name of province or territory].

Comment: In the normal course, the Act would take effect in an enacting jurisdiction when Canada's ratification of the Convention and the Aircraft Protocol comes into force on the date set in accordance with the calculation explained in the comment under subsection 10(2) below. The Convention and the Aircraft Protocol will apply to jurisdictions that adopt the Act after Canada has become a party to those instruments after the date set in accordance with the calculation explained in the comment under subsection 10(2) below.

Comment: Some jurisdictions may not need this provision as they may already have adopted specific legislation with regard to treaty implementation.

Article 39 declaration

7(1) The [Minister of _____], at the time a request under section 6 is made, may request the Government of Canada to make a declaration in accordance with Article 39 of the Convention in respect of [name of province or territory].

(2) The [Minister of _____], from time to time, may request the Government of Canada to make a subsequent declaration in accordance with Article 57 of the Convention and Article XXXIII of the Aircraft Protocol, in relation to Article 39 of the Convention, in respect of [name of province or territory].

Comment: Initial declarations with regard to Articles 39 and 40 of the Convention should accompany the declaration with regard to Article 52 of the Convention and Article XXIX of the Aircraft Protocol and they will come into effect on the same date the Convention and the Aircraft Protocol come into effect for the jurisdiction. Subsequent declarations with regard to Articles 39 and 40 will come into effect in accordance with paragraph 2 of Article 57 of the Convention and paragraph 2 of Article XXXIII of the Aircraft Protocol as set in subsection 12(2)b) below. Such subsequent declarations could be needed if other Protocols were to be extended to the jurisdiction. Paragraphs [89] to [108] of the attached Report discuss Articles 39 and 40 of the Convention.

Comment: Some jurisdictions may not need this provision as they may already have adopted specific legislation with regard to treaty implementation.

Article 40 declaration

8(1) The [Minister of _____], at the time a request under section 6 is made, may request the Government of Canada to make a declaration in accordance with Article 40 of the Convention in respect of [name of province or territory].

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(2) The [Minister of _____], from time to time, may request the Government of Canada to make a subsequent declaration in accordance with Article 57 of the Convention and Article XXXIII of the Aircraft Protocol, in relation to Article 40 of the Convention, in respect of [name of province or territory].

Comment: Initial declarations with regard to Articles 39 and 40 of the Convention should accompany the declaration with regard to Article 52 of the Convention and Article XXIX of the Aircraft Protocol and they will come into effect on the same date the Convention and the Aircraft Protocol come into effect for the jurisdiction. Subsequent declarations with regard to Articles 39 and 40 will come into effect in accordance with paragraph 2 of Article 57 of the Convention and paragraph 2 of Article XXXIII of the Aircraft Protocol as set in subsection 12(2)b below. Such subsequent declarations could be needed if other Protocols were to be extended to the jurisdiction. Paragraphs [89] to [108] of the attached Report discuss Articles 39 and 40 of the Convention.

Comment: Some jurisdictions may not need this provision as they may already have adopted specific legislation with regard to treaty implementation.

Binding on Crown

9 This Act is binding on the Crown in right of [name of province].

OR

Binding on Government

9 This Act is binding on the Government of [name of province or territory].

Comment: Jurisdictions not wishing their government to be bound by the Act should not enact this provision. The Convention and the Aircraft Protocol are supposed to apply to governments and, to this end, the Convention provides for liens gained by the government (article 39) and the Aircraft Protocol excludes State equipment used in military, customs or police services). Some jurisdictions may not need this provision as some interpretation acts provide that the Crown, unless otherwise stated, is implicitly bound by enacted legislation. In that case, governments not wishing to be bound by the Act should include a provision to that effect.

Force of law

10(1) The Convention, other than Articles 49 to 59, 61 and 62, and the Aircraft Protocol, other than [paragraphs 1 and 2 of Article IX, paragraphs 1 and 2 of Article X and Articles XIII and] XXVI to XXXVII, have the force of law in [name of province or territory].

Option 1:

(2) Subsection (1) applies commencing on the day the Convention and the Aircraft Protocol enter into force in accordance with Articles 49 and 52 of the Convention and Articles XXVIII and XXIX of the Aircraft Protocol.

Option 2:

(2) Subsection (1) applies commencing:

- (a) if, on ratification, Canada declares, pursuant to paragraph 1 of Article 52 of the Convention and paragraph 1 of Article XXIX of the Aircraft Protocol, that the Convention and the Aircraft Protocol are to extend to [name of province or territory], then, on the day on which the Convention and the Aircraft Protocol enter into force in respect of Canada as provided in paragraph 1 or 2 of Article 49 of the Convention and paragraph 1 or 2 of Article XXVIII of the Aircraft Protocol; or

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(b) if, on ratification, Canada does not declare, pursuant to paragraph 1 of Article 52 of the Convention and paragraph 1 of Article XXIX of the Aircraft Protocol, that the Convention and the Aircraft Protocol are to extend to [name of province or territory], then, on the later of:

(i) the day on which the Convention and the Aircraft Protocol enter into force in respect of Canada as provided in paragraph 1 of Article 49 of the Convention and paragraph 1 of Article XXVIII of the Aircraft Protocol; and

(ii) the first day of the month following the expiration of three months after the day on which Canada substitutes its declaration under paragraph 1 of Article 52 of the Convention and paragraph 1 of Article XXIX of the Aircraft Protocol for one declaring that the Convention and the Aircraft Protocol extend to [name of province or territory].

Comment: This provision clearly indicates that the Convention and the Aircraft Protocol have the force of law in the enacting jurisdiction with the exception of certain Articles. Some of the Articles that are/are not given the force of law under this provision, except those found in the Chapters on Final Provisions of the Convention and the Aircraft Protocol, may be the subject of a declaration under Article XXX of the Aircraft Protocol. The implementation of paragraphs 1 and 2 of both Articles IX and X and Article XIII is discussed in the attached Report.

Comment: It is necessary to provide when the Convention and the Aircraft Protocol will have the force of law for the enacting jurisdiction. It is important to provide for an effective and simple provision to co-ordinate the entry into force of the Convention and the Aircraft Protocol for Canada at the international level, the coming into force of domestic implementing legislation and regulation, and giving the Convention and the Aircraft Protocol the force of law. Proclaiming the implementing legislation in force on the day the Convention and the Aircraft Protocol come into force for Canada is not recommended since this may not suit the legislative agendas of all jurisdictions. Instead, it is recommended that the legislation implementing the Convention and the Aircraft Protocol come into force on Royal Assent or other equivalent means. The Act is drafted such that the Convention and the Aircraft Protocol are given the force of law domestically only from the date they come into force at the international level for Canada and the jurisdictions declared pursuant to Article 52 of the Convention and XXIX of the Aircraft Protocol. That date is either the first day of the month following the expiration of [x] months after the date (1) of the necessary number of instruments of ratification or (2) of the deposit of Canada's instrument of ratification. Note that in the case of jurisdictions adopting implementing legislation after the coming into force of the Convention and the Aircraft Protocol for Canada, the Act provides that the Convention and the Aircraft Protocol have the force of law, not from their entry into force in accordance with Article 49 of the Convention and XXVIII of the Aircraft Protocol, but rather (3) on the entry into force of the declaration extending the application of the Convention and of the Aircraft Protocol to that jurisdiction in accordance with the last part of paragraph 1 of Article 52 and paragraph 1 of Article XXIX of the Aircraft Protocol. Finally (4), it is important to provide for the eventuality where declarations could be substituted according to the last part of paragraph 1 of Article 52 and paragraph 1 of Article XXIX of the Aircraft Protocol before the Convention and the Aircraft Protocol come into force at the international level for Canada.

Comment: If this Act was amended to implement other Protocols this provision should be amended accordingly.

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Court

11 The [name of court] is the relevant court for the purposes of Article 53 of the Convention.

Comment: The Court named in this section will be the court identified in the declaration made under Article 53 of the Convention and XXXI of the Aircraft Protocol.

Regulations

12(1) The [name of regulation-making authority] may make any regulations that are necessary to give effect to any of the provisions that have the force of law pursuant to subsection 10(1), including regulations:

- (a) prescribing categories of non-consensual rights and interests for the purposes of Article 39 of the Convention; and
 - (b) prescribing categories of non-consensual rights and interests for the purposes of Article 40 of the Convention.
- (2) Regulations made under subsection (1) apply:
- (a) in the case of regulations in relation to declarations referred to in subsections 7(1) and 8(1), on and after the day on which subsection 10(1) commences to apply as provided by subsection 10(2); and
 - (b) in the case of regulations in relation to subsequent declarations referred to in subsections 7(2) and 8(2), on and after the day on which the subsequent declarations take effect as provided by paragraph 2 of Article 57 of the Convention and paragraph 2 of Article XXXIII of the Aircraft Protocol.

Comment: Regulations may be thought desirable or may be necessary for a government to implement some provisions of the Convention and the Aircraft Protocol.

Comment: The lists prepared for the purposes of Articles 39 and 40 will serve for the declarations to be made under those Articles as provided under sections 7 and 8 above and will serve to disseminate this information at the domestic level.

Coming into force

13 This Act comes into force on [_____].

Comment: It is important to note that the consequential amendments should enter into force at the same date the Convention and the Aircraft Protocol enter into force in a given jurisdiction.

Comment: The Act comes into force on the day it is assented to or on the day of its proclamation or other equivalent methods. It is important that the Act comes into force, especially sections 5, 7, 8, 9, 13 and 15, before the Convention and the Aircraft Protocol comes into force for the jurisdiction.

Comment: If this Act was amended to implement other Protocols this section should be amended accordingly.

Publication

14(1) The [Minister of _____/name of regulation-making authority] shall publish in the [Gazette] a notice setting out the day on which the Convention and the Aircraft Protocol enter into force in [name of province or territory].

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(2) The [Minister of _____/name of regulation-making authority] shall publish in the [Gazette] regulations referred to in sub-paragraph 2(d) of Article 17 of the Convention, and any amendments to those regulations.

Comment: This is a standard provision. Jurisdictions may want to publicize the coming into force of the Convention and the Aircraft Protocol.

Comment: Enacting jurisdictions could publish the regulations in their Gazette for information purposes or make reference to the documents as published in the Canada Gazette for information purposes.

Comment: If this Act was amended to implement other Protocols this section should be amended accordingly.

Deemed repeal

15 This Act is deemed to be repealed on the first day of the month following the expiration of twelve months following the expiration of the day on which a substituted declaration is made, pursuant to paragraph 1 of Article 52 of the Convention and paragraph 1 of Article XXIX of the Aircraft Protocol, that does not provide for the extension of the Convention and the Aircraft Protocol to [name of province or territory].

Comment: If jurisdictions consider it appropriate, they may pass an act to repeal the present Act. In that case, Article 15 would not be necessary.

Comment: Article 59 of the Convention and Article XXXV of the Protocol provide for the denunciation of the instruments. The denunciation takes effect on the first day of the month following the expiration of twelve months after the date of receipt of notification by the Depositary.

Comment: If this Act were amended to implement other Protocols this section should be amended accordingly.