

**LUXEMBOURG PROTOCOL TO THE  
CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT ON  
MATTERS SPECIFIC TO RAILWAY  
ROLLING STOCK**

**Request for Proposals (RFP) for the  
International Registry**

**30 June 2010**

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# PART 1

## INTRODUCTION

### Overview

1. This Request for Proposals (RFP) Document is issued by the Preparatory Commission for the establishment of the International Registry pursuant to the Luxembourg Protocol to the Convention on International Interest in Mobile Equipment on Matters specific to Railway Rolling Stock (the Luxembourg Protocol).<sup>1</sup> Pursuant to Article I(2)(e) of the Luxembourg Protocol, “railway rolling stock” is defined to mean vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto.
2. Its purpose is to invite interested entities to submit proposals for being appointed as the Registrar of the International Registry. The function of the Registrar will include, *inter alia*, being responsible for the design, production, delivery, installation, and ongoing operation and development of the International Registry.
3. The relationship between the Registrar and the Supervisory Authority shall be governed by a contract setting out their mutual rights and duties. See further Part 4.
4. The International Registry will be an electronic and internet-based registry. It will be accessible via a dedicated website, and all transactions, including registrations and searches, will be undertaken electronically through that website. Some direct human intervention will be required in relation to the process of verifying the identity of applicants wishing to become registered users of the International Registry. Registrations and searches will otherwise be conducted automatically without any real-time human intervention on the part of the Registrar.
5. The Registrar of the International Registry will play a key role in the development, administration and ongoing development of the International Registry which, following the successful establishment of the International Registry for Aircraft Objects, has the potential to play an important role in international financing transactions relating to railway rolling stock acquisitions.
6. The role of Registrar may provide the successful bidder with a unique platform to showcase the application of cutting-edge technology in relation to the international registration and recognition of financial instruments. The Registrar will be in a position to develop an attractive business model around the operation of the International Registry, which is expected to become a key focal point for the rail industry. Through the International Registry website, the Registrar will have the potential to offer additional income-generating services (“ancillary services”), such as vehicle tracking. While any such additional services could only be provided with the prior consent of the Supervisory Authority, it is expected that the Supervisory Authority would favourably

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<sup>1</sup> The text of the Luxembourg Protocol is available from the following page on the UNIDROIT website: <http://www.unidroit.org/english/conventions/mobile-equipment/main.htm>

consider, and work with the Registrar to facilitate, the provision of any such services that are compatible with the International Registry's functions. Further information is provided at paragraph 95.

7. In relation to the registration and search services provided under the Luxembourg Protocol, the Supervisory Authority, in close consultation with the Registrar, will establish (and periodically review, as appropriate) the fees having regard to all relevant factors including assumptions as to Registry operating costs and transaction volumes. The fees will be established so as to recover the reasonable establishment, implementation and operating costs of the International Registry over the period of the contract. The Supervisory Authority will work closely with the Registrar in establishing a Registry implementation schedule linked to the progress being made on securing state ratifications; this approach should serve to keep down the Registrar's expenditures during the early stages of implementation. Also, the Supervisory Authority will partner with the Registrar to promote the Luxembourg Protocol to potential Contracting States with a view to maximising the pool of potential revenue-generating Registry transactions.

### **What we are looking for**

8. The RFP Document seeks proposals from interested entities to be appointed as the Registrar of the International Registry. The first appointment shall be for an initial period of 10 years. The Supervisory Authority may, in its absolute discretion, decide to reappoint the Registrar for a period or periods not exceeding 10 years, or may decide upon another process for the selection of the Registrar to operate the International Registry following the expiry of the initial 10 year period of the operations of the International Registry. The contract between the Supervisory Authority and the Registrar will provide for the Supervisory Authority to undertake consultations with the Registrar on this issue and to communicate to the Registrar its decision about reappointment of the Registrar no later than 24 months prior to the expiration of the term of the contract. Proposals must be submitted no later than **29 September 2010** (see further paragraph 119).
9. The principal function of the Registrar shall be to ensure the establishment and efficient operation of the International Registry, in accordance with the Convention, the Luxembourg Protocol, the regulations to be made by the Supervisory Authority (Regulations),<sup>2</sup> and the contract to be concluded between Registrar and the Supervisory Authority.
10. Proposals will be evaluated by the Preparatory Commission having regard to the following factors:
  - (a) the extent to which the proposals address the technical requirements of the International Registry, in particular the technical requirements set out in Part 2 of this RFP Document;

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<sup>2</sup> Article 17(2)(d) of the Convention provides for the Supervisory Authority to make regulations dealing with the operation of the International Registry – these Regulations will provide the framework for the establishment and operation of the International Registry. The Regulations will be developed on an ongoing basis in the lead-up to the entry into force of the Luxembourg Protocol. The current draft of the Regulations is attached to this RFP as Annex 4: it is expected that this current draft will be revised and modified during the establishment phase of the International Registry, including in consultation with the Registrar, and may be subsequently amended.

- (b) the costs of the proposals (see Part 3 of this RFP Document);
  - (c) the proposed corporate structure and ownership structure (including the bidder's and the proposed Registrar's name, date and place of registration, capitalisation and beneficial ownership and control);
  - (d) the degree to which the proposed Registrar has sufficient relevant business and management experience to successfully establish and operate the International Registry.
11. Proposals may be made by public or private entities. It is envisaged that the Registrar may make arrangements with sub-contractors and service providers for the delivery to it of the services necessary to enable the Registrar to fulfil its obligations pursuant to the Convention, the Luxembourg Protocol, the regulations and the contract between the Registrar and the Supervisory Authority. Any such proposed arrangements should be specified in the proposal, and such arrangements will be subject to the approval of the Supervisory Authority.
  12. Proposals must provide details as to the proposed corporate structure of the Registrar, however it is not necessary that a bid be submitted by the same corporate entity that would act as Registrar pursuant to the proposals contained in the bid.
  13. Potential bidders may wish to consider the International Registry established pursuant to the Aircraft Protocol as an illustration of a currently-operating registry established pursuant to the Cape Town Convention. Information about that International Registry may be available from the following internet site: [www.internationalregistry.aero](http://www.internationalregistry.aero)
  14. The Annex to this RFP contains additional background information relevant to the International Registry, as well as an overview of provisions of the Convention and the Luxembourg Protocol that are relevant to the establishment of the International Registry.

### **The role of the Supervisory Authority and the Preparatory Commission**

15. The Luxembourg Protocol provides for the establishment of a Supervisory Authority, which will be a body established by representatives of States. The Convention provides that the Supervisory Authority has international legal personality, and that its functions include establishing or providing for the establishment of the International Registry, and appointing and dismissing the Registrar.
16. The Diplomatic Conference to adopt the Luxembourg Protocol resolved, in Resolution 1 of the Conference, to establish, pending the entry into force of the Luxembourg Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry, and directed it to carry out a number of tasks, including:
  - to ensure that the International Registry be set up in accordance with a fair selection process, so as to ensure both technical capacity and operational features which can maintain such a registry at a cost as low as feasible;
  - to enter into a contract with the Registrar that makes provision for the testing of the software, the initial fees, the user application process and timelines for the

consideration of the inclusion of other than the initially selected language to be used for registrations and searches, as well as other relevant details.

17. This RFP Document has been issued by the Preparatory Commission, in its capacity as Provisional Supervisory Authority, to provide for the establishment of the International Registry.
18. Unless the context indicates otherwise, a reference in this RFP to the “Preparatory Commission” is a reference to the Preparatory Commission acting in its capacity as Provisional Supervisory Authority. The preparatory phase prior to the entry into force of the Luxembourg Protocol will follow the model of the preparatory process undertaken in relation to the Aviation Protocol, in which the Preparatory Commission established by the Cape Town Diplomatic Conference undertook the preparations for the establishment of the International Registry for aircraft object, with the Supervisory Authority adopting the decisions of the Preparatory Commission upon the entry into force of the Aircraft Protocol.

### **Promotion and industry support**

19. The Registrar, as the public face of the Luxembourg Protocol, will be in a unique position to assist in the promotion of the Luxembourg Protocol and the Registry. The cost provisions (see paragraph 93) provide for expenditure of €25,000 per year towards promotion activities (for example, attendance of seminars and meetings).
20. Both International Institute for the Unification of Private Law (UNIDROIT) and the International Organization for International Carriage by Rail (OTIF), as sponsoring organisations of the Protocol, are committed to promote ratification and accession to the Protocol, UNIDROIT through its role as Depositary to the Convention and Luxembourg Protocol, and OTIF in its roles as the Secretariat of the Supervisory Authority and as the principal intergovernmental organisation with responsibility for the rail sector.
21. The Rail Working Group,<sup>3</sup> representing the Rail industry, has a central role in promoting the Luxembourg Protocol. In particular, the RWG will undertake the following activities prior to, and following, the entry into force of the Luxembourg Protocol:
  - marketing the Luxembourg Protocol, for example through the publication of articles and presentations at industry conferences, including any conferences organised by the Registrar;
  - publicising the URVIS<sup>4</sup> system;
  - providing general guidance and information on the implementation of the Protocol;
  - encouraging its members to work with their governments to ratify the Luxembourg Protocol, and providing relevant assistance and cooperation (including with the Registrar) in relation to the ratification process;
  - providing a direct link from its website to the Registry website; and
  - promotion to its members of Registrar communications.

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<sup>3</sup> Further information about the Rail Working Group is available from its website: [www.railworkinggroup.org](http://www.railworkinggroup.org)

<sup>4</sup> Unique Rail Vehicle Identification System. The URVIS number will be the unique 20-digit number issued by the International Registry. See further paragraphs 32-35.

## PART 2

# TECHNICAL REQUIREMENTS

### General technical requirements

#### *General overview*

22. Proposals must address the bidder's capacity to establish and operate the International Registry in light of the technical requirements set out in this section. The information provided in the proposal must be sufficiently detailed to enable a thorough evaluation of that capacity. In relation to the technical requirements, the proposal must be specific, detailed and complete and must clearly and fully demonstrate that the bidder has a thorough understanding of the requirements for, and the technical problems inherent in, providing services of the character, scope and magnitude outlined in the RFP. The proposal must include, *inter alia*, details of the providers of software, software services, and other support services.
23. It is anticipated that the International Registry would eventually need to be able to register many thousands of interests in items of railway rolling stock each year, and also provide for searches against many thousands of assets and the issuance of search certificates in relation thereto. The International Registry must provide the capacity for multiple registrations and searches to occur simultaneously. The International Registry must provide the potential for numerous individual assets to be registered, and searched for, in asset groups ("block registrations"), further details of which are set out in the draft Regulations.

#### *An electronic, internet-based registry*

24. The International Registry will be established as an electronic, internet-based registry. It will be accessible via a dedicated website, and all transactions, including registrations and searches, will be undertaken electronically through that website – it will not operate a physical "shop-front" and it will not be possible to physically visit the registry for the purpose of effecting registry transactions. Apart from the process for authorising registered users (see paragraphs 27-28), all registry transactions and services will be automated and able to be provided without direct real-time human intervention on the part of the Registrar.
25. The International Registry's website will comprise the single point of entry for accessing the International Registry. The domain for the website shall be owned by the Supervisory Authority and used by the International Registry under a licence for the period of the Registrar's contract. The web site must be configured so that it is able to be accessed from web browsers released within the previous 2 years.
26. The International Registry will use standardised electronic forms for all registration, search and certification procedures.

#### *Process for the authorisation of registered users*

27. A person or entity will not have access to the International Registry in order to effect registrations (or participate in a registration transaction, such as by consenting to the

registration) as a registered user unless they have first been authorised by the Registrar as a registered user. That approval will be given after the Registrar has verified that the relevant applicant is who it claims to be and, in the case of an administrator representing another entity, that the administrator is entitled to act in that capacity. It will also be necessary to fulfil any other conditions for registration, such as the payment in advance of appropriate fees. The International Registry will be required to incorporate secure log-on and access features which present the best solution having regard to cost, security, and portability (that is, the possibility of a single registered user being able to log into the International Registry from various locations).

28. The International Registry will be able to be accessed by:
- all registered users;
  - a designated entry point which is the subject of a declaration by a Contracting State pursuant to Article XIII of the Luxembourg Protocol; and
  - all other persons, to the extent that the Regulations provide for access to the International Registry without the need to become a registered user (some information on the International Registry website will be accessible and searchable by users who are not registered users).

*Minimised risk of unauthorised registrations*

29. The process of registering an international interest will be fully automated and the Registrar will not be involved in reviewing the validity or accuracy of registration information prior to it being posted on the International Registry. However, the system will need to be designed so as to:
- minimise the risks of unauthorised registrations; and
  - preventing registrations which are manifestly implausible or which do not contain the information required to effect a registration.

*Registration process: minimal information to be required*

30. The International Registry registration process will need to be designed to enable a minimum of information to be entered in order for interests to be registered and searched for. As interests will be recorded in the International Registry in relation to items of railway rolling stock, rather than the identity of the parties or other criteria, the Luxembourg Protocol provides that the Regulations will prescribe a system for the allocation of identification numbers by the Registrar to enable the unique identification of railway rolling stock. Registrations and searches in relation to an individual item of railway rolling stock will be able to be made, on the International Registry, using the unique identification number.
31. The registration of an international interest on the International Registry will contain only minimal information, such as names and addresses of parties, the unique description of item (unique identification number), and type of transaction (for example, “security agreement”), and the date of the creation of the international interest.<sup>5</sup> Annex 3 includes an illustrative model of a possible registration form, showing the

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<sup>5</sup> In order to take account of the possibility of registration of pre-existing rights or interests pursuant to Article 60 of the Convention, the International Registry will need to provide for the possibility that the date of creation of the international interest to be as early as 1960

items that might be included in it. Drop-down lists containing all options for insertion will be used as far as possible, in order to minimise errors on the part of users when they enter information. However, the registration process shall provide for the possibility of the entry of free-form text, up to a maximum of 150 characters.

*Basis for registrations – unique identification number*

32. Pursuant to Article 18(1)(a) of the Convention, which provides that the protocol and Regulations must specify, inter alia, the criteria for the identification of an object, Article XIV(1) of the Luxembourg Protocol provides that the Regulations shall prescribe a system for the allocation of identification numbers by the Registrar so as to enable the unique identification of items of railway rolling stock.
33. It is proposed that the Regulations would provide for the Registrar to issue 20-digit identification numbers. Such numbers would not need to be related to any particular identification criteria – however:
  - (a) the International Registry’s system for creating 20-digit identification numbers must be capable of generating numbers that incorporate national or regional identification numbers;
  - (b) the Registrar may offer, subject to approval by the Supervisory Authority, additional services in relation to identification numbers (such as reservation of specific numbers or sets of numbers).
34. A unique identification number issued by the International Registry in accordance with the provisions referred to in Paragraph 33 will be required to be provided at the time of registration of an international interest, together with other information identifying the relevant item of rolling stock (see Article 5.3(c) of the draft Regulations). From that time, the relevant item of rolling stock will be able to be identified, and searched for on the International Registry, using the unique identification number. The International Registry must not permit a unique identification number to be used in relation to the registration of international interests relating to more than one item of railway rolling stock.
35. Article XIV of the Luxembourg Protocol also provides that Contracting States may make a declaration which specifies a system of national or regional identification numbers that shall be used with respect to items of railway rolling stock subject to an international interest that is created or provided for by an agreement entered into by a debtor situated in that Contracting State at the time of the conclusion of the agreement. Such a system would require some work on the part of the International Registry, including in relation to the development of agreements and protocols with national or regional systems.

*Additional functions – Contracting State information*

36. The International Registry will also contain information about Contracting States to the Cape Town Convention and the Luxembourg Protocol including, in particular, information about the instruments of ratification/accession of Contracting States and the declarations made by Contracting States, with this information to be added, and searchable, according to each particular Contracting State.

### *Additional functions – declarations*

37. In general, the role of the Registrar in relation to Contracting States will not differ according to the declarations made by a particular Contracting State. However, if a Contracting State makes a declaration pursuant to Article XIII of the Luxembourg Protocol to designate an entry point, the International Registry will need to negotiate arrangements with that Contracting State regarding the operation of the entry point (for example, the provision of authorising codes by the entry point for use by registered users in making registrations with the International Registry). Also, if a Contracting State makes a declaration pursuant to Article XIV(2) of the Luxembourg Protocol, this may affect the methodologies used by the International Registry in the creation of identification numbers (see further paragraph 33).

### *Round the clock, accurate recording of time of registration activities*

38. The International Registry will be central to one of the most important aspects of the Convention: establishing the order of priority for security interests in an item of railway rolling stock. Pursuant to Article 29(1) of the Convention, a security interest that is validly registered on the International Registry has priority over any other interest subsequently registered, and over an unregistered interest (an interest that is not registered on the International Registry is an unregistered interest, irrespective of whether it is registered under a national registration regime). This “first-in-time” priority rule refers to the time when an interest first becomes searchable in the International Registry. Therefore, it is critical to the proper functioning of the system envisaged by the Convention and Luxembourg Protocol that the International Registry is able to provide registration and search services around-the-clock.
39. In accordance with Article 18(4) of the Convention, the Registrar must ensure that registrations are entered into the International Registry data base and made searchable in chronological order of receipt. Precise timing information must be recorded, and must be contained in all registrations and searches.
40. The timing at which information is entered into the International Registry, and made available to those who conduct searches, is critical to the Convention’s system of priorities. The International Registry will be required to electronically issue and publish search certificates which show the item of railway rolling stock (identified by its unique identification number) and the full history (including time and date) of all registrations, and amendments and discharges of registrations, with respect to that item.

### *Notice-based system*

41. The International Registry will be a “notice-based” system – that is, it will provide notice that an interest has been registered in relation to a specific item of railway rolling stock. The documents on which the interest is based will not be required to be submitted as part of the registration process, and will not be available from the International Registry to those conducting searches. However, the contact information of the beneficiaries of registered interests will be available on the International Registry, enabling those who conduct searches with an opportunity to obtain further information about the interests.

42. The Registrar will not be required to confirm the accuracy of information provided by registered users, and will not be required confirm the existence or validity of documents underlying a registration.

#### *Integrity of registration process*

43. The process of registering an international interest will be automated and the Registrar will not be involved in reviewing the validity or accuracy of information prior to it being posted on the International Registry.

#### *Entry points designated by Contracting States*

44. Under Article XIII of the Luxembourg Protocol, Contracting States may make a declaration which designates an entity as an entry point through which the transmission of information to the International Registry may be permitted or required. If a Contracting State were to make such a declaration it could, depending on the declaration, require that registrations affected by the declaration would need to be made either via the designated entity for that Contracting State (for example, via that Contracting State's national registration authority), or only following notification to that designated entity. The registration process of the International Registry will need to take account of the possibility that an entry point would be designated. As envisaged in the [draft] Regulations, the Registrar would need to establish arrangements applicable to the electronic transmission of registration information from, or authorised by, entry points to the International Registry and, after consultations with each designated entry point, to specify the procedures and costs applicable to each entry point.

#### *Languages*

45. The International Registry will be required to operate as from its commencement in English, with the additional requirement that FAQ information about how to use the International Registry will need to be provided in Arabic, Chinese, English, French, Russian and Spanish. In addition, the contract between the Registrar and the Supervisory Authority will include a timeline for consideration of the inclusion of an additional, Latin-alphabet language, for registrations and searches. Accordingly, proposals must describe how the International Registry would be able to be adapted to operate in such additional language and must include information on the estimated cost that would arise from operating the International Registry in such additional language. Live helpdesk assistance (see paragraph 47) must be provided in English.

#### *FAQ, technical support and helpdesk*

46. The International Registry will be required to provide "Frequently Asked Questions" (FAQ) information about how to use the International Registry, as well as:
- on-line help functions to give users of the Registry assistance in relation to completing Registry transactions;
  - real-time assistance (for example, via pop-up windows) to explain the capability of the system, including search and indexing capabilities;
  - training for all users through web-based tutorial training developed by the systems developer, which will guide the user through the process of entering and viewing transactions.

47. The International Registry will be required to provide live helpdesk assistance (email and telephone) to users of the International Registry for at least 40 hours per week.

#### *Scalability*

48. The International Registry must be designed so as to be scalable: that is, so that it is able to be modified (for example, to take account of changes to the Regulations, or to take account of significant increases in capacity) without the necessity of significant redesign of the software and hardware systems.
49. The software to be used in the operation of the International Registry may be custom designed and built by the Registrar, or may be based on commercially-available software programs with custom modifications. Bidders are free to decide which approach to take in relation to the acquisition of software, having regard to the functionality requirements, costs and security.

#### *Software upgrades and enhancements*

50. The software used in the operation of the International Registry shall be regularly upgraded, in accordance with industry best practice, in relation to bugs and security fixes. Other software upgrades and enhancements to the services offered by the International Registry would require the prior approval of the Supervisory Authority. The cost of such other software upgrades and enhancements would be funded on the same basis as other costs of the International Registry: that is, the costs would be taken into account in setting the fees for the International Registry so as to enable the costs of establishing and operating the International Registry to be recovered from International Registry revenues over the course of the contract.
51. The contract will provide that, prior to the Supervisory Authority requiring the Registrar to undertake software upgrades or enhancements within the final 2 years of the term of the contract, the Supervisory Authority would be required to take into consideration the possibility of recovering the costs of those upgrades or enhancements prior to the termination of the term of the contract.

#### *System availability*

52. The International Registry will be required to be available 97% of the time. One reason for this is to ensure the availability of the International Registry for users in all locations and time zones. The 3% of non-availability contemplates maintenance, power outages, hardware problems, etc. Maintenance of the International Registry which would involve the International Registry services being unavailable to users must not be performed during peak periods as determined by statistical data on the usage of the International Registry.

#### *System integrity*

53. The International Registry information technology system must ensure that data is not able to be added, deleted or manipulated other than in the course of authorised registration transactions.
54. The successful bidder will be required to produce, prior to the signature of the contract with the Supervisory Authority, a technical validation certificate from an entity independent of the Registrar (as approved by the Supervisory Authority) that confirms

the validity and operability of the IT structure. The Registrar will also be required to provide to the Supervisory Authority a technical validation certificate, from an entity independent of the Registrar (as approved by the Supervisory Authority) that confirms the validity and operability of the IT structure of the International Registry after the first full year of operation of the International Registry, and thereafter as required by the Supervisory Authority.

#### *Contingency and data recovery plans*

55. The International Registry must have contingency and data recovery plans that provide for the integrity of the records and operating systems of the International Registry, and for the full restoration of the records and operating systems in the event that they are compromised. These plans must include the following features:
- A tracking capability for information entered by users of the International Registry;
  - A tracking capability to capture full historical record of information and to allow point-in-time reporting of all data manipulation activities performed by each user, including date and time stamps, user identification, Internet Protocol (IP) addresses and dynamic Internet addresses on every record;
  - the capability for the Registrar to amend Registry records, in accordance with the Regulations, for example in order to comply with a court order pursuant to Article 44(3) of the Convention.
  - the electronic records of the Registry must be securely stored at a location that is different from the location of the hardware, and must be regularly archived.

#### *Capacity for permanent storage of records*

56. The historical records of the International Registry must be stored on the database indefinitely, and the Registry must have storage capacity to store up to 200,000 individual registry transactions each year.

#### *Domain names, logos etc – Ownership by the Supervisory Authority*

57. The Supervisory Authority shall own the intellectual property in the domain names, logos etc of the International Registry, and the contract between the Supervisory Authority and the Registrar will provide for the Registrar to be granted a licence to use such intellectual property for the purposes of the International Registry for the duration of the contract.

#### *Location of the Registry*

58. The Diplomatic Conference that adopted the Luxembourg Protocol resolved that the Grand Duchy of Luxembourg shall be the host State of the International Registry. The Grand Duchy of Luxembourg is already a Contracting State to the Convention and the Aircraft Protocol, and it has indicated that, as the host State of the International Registry, it will be a Contracting State to the Luxembourg Protocol at the time of its entry into force. Furthermore, the Government of the Grand Duchy of Luxembourg has stated its readiness to provide the necessary office accommodations as well as provide for all utilities and required security for such accommodations, for the International Registry's operations in Luxembourg. Consequently, bidders in preparing their cost proposals should not include these items.

59. From the date of the entry into force of the Luxembourg Protocol the operations of the International Registry will be based in Luxembourg. This will require, as from that date:
- the Registrar be a corporate entity incorporated in Luxembourg, and registered for VAT purposes in Luxembourg;
  - a full-time office for the International Registry in Luxembourg headed by an office manager, and with such other employees as the Registrar considers appropriate based in Luxembourg;
  - all International Registry transactions for International Registry services to be effected out of Luxembourg, and subject to Luxembourg VAT;
  - the International Registry primary computer servers and hardware for storage of electronic archives to be physically located within Luxembourg.
60. It is preferable, though not required, that the International Registry's computer back-up and storage systems be located in Luxembourg or the territory of a Contracting State to the Convention. However, such computer back-up and storage systems cannot be located where they would be on the same primary power grid as the primary computer servers and hardware

### **Technical functions and specifications**

#### *Review and finalisation of data entered by registered users*

61. The International Registry must provide an opportunity for registered users who are inputting data to view a summary of the information and review it for accuracy prior to that information being confirmed, recorded by the International Registry and saved to the data base.
62. However, the International Registry must ensure that data that has been entered by a registered user cannot subsequently be altered once that data has become searchable.

#### *Search certificates displayed on line and searchable*

63. The International Registry must provide a capacity for search certificates, showing the results of a search of the International Registry, to be displayed on-line and printed by users.

#### *Multiple simultaneous transactions*

64. The International Registry must provide a capacity for multiple users in different locations to simultaneously access the International Registry and input data in relation to a single international interest.

#### *Payment system*

65. The International Registry must provide a secure online payment system. The currency of the International Registry fees will be Euro (€). Bidders are invited to submit proposals for a payment system that would minimise payment transaction costs (such as credit card transaction and currency conversion fees) for users of the International Registry.

## VAT

66. All transactions on the International Registry will be subject to the value-added tax (VAT) regime applicable in Luxembourg.

### *Electronic signature*

67. Registered users will be able to enter information via a unique verified electronic signature. The International Registry must be configured to enable the electronic signatures of multiple parties (for example, debtor, creditor, co-debtor and guarantor) to be provided in respect of a single transaction.

### *Printability of information*

68. The International Registry must provide an ability for relevant documents (for example, search certificates) to be printed by users.

### *Secure payment validation system*

69. The International Registry must provide a secure electronic payments system enabling the validation of a user's credit card or direct debit information for the purpose of payment of fees in connection with the International Registry.

### *System design document*

70. Within 90 days of the finalisation of the contract between the Registrar and the Supervisory Authority, the Registrar will be required to provide the Provisional Supervisory Authority with a detailed System Design Documentation (SDD) on the equipment hardware/software operation, including civil works dedicated to the supply of a registry system under the contract, such SDD to be approved by a professional engineer. The SDD shall include, at least, the following information:

- system architecture and layout;
- equipment inventory (count, function, brand, model), switches, routers, firewalls load balancers;
- network diagrams;
- servers (database, applications, web, mail, print, file, certificates, backup);
- hardware configuration (CPU, memory disk capacity etc);
- software configuration (operating system, backup, applications);
- electrical diagram, including the performance of UPS and Generating Set;
- security (anti-virus, anti-spam, patching policy, intrusion detection, DMZ); and
- system backup (rotation schedule, retention policy, off-site storage, automatic switchover).

## **System requirements**

### *Introduction*

71. The following are the minimum system requirements for the International Registry.

### *Environment - Telecommunications*

72. The International Registry system shall provide:

- Accessibility using a current standard telecommunications protocol, e.g., Transmission Control Protocol/Internet Protocol (TCP/IP), and the World Wide Web. The protocol defines a common set of rules and signals that enables computers on the network to communicate.
- Version-level compatibility between the server operating system (OS), the server Relational Database Management System (RDBMS), and the software.
- Fault-tolerance, i.e., the ability of a system to respond to an unexpected hardware or software failure.
- A web-based system, with multi-tiered architecture, having the flexibility to optimize performance and reduce resource bottlenecks. For example, these components may include:
  - The presentation processing logic layer (the application code that interacts with a device, e.g., end user's terminal).
  - The business processing logic layer (the application code that uses the input data to perform business tasks).
  - The data manipulation logic layer (the application code that manipulates data within the application).
  - The database management system processing layer (the actual processing of the database data that is performed by the Database Management System (DBMS)).

### *Environment - Workstation*

73. The system shall provide access to users through common Internet browser products, released within the past two years. The Internet browser must be capable of employing data encryption, with the ability to access an Internet or Intranet web site.

74. The system shall be compatible with a workstation or resources found in a typical office automation setting and an upward compatible processor to allow software to run not only on the computer for which it was designed, but also on newer, larger, and more powerful models without converting the data.

75. The encryption and user verification systems must permit the registered users to access the International Registry using a hardware-specific digital certificate issued by the International Registry which creates a secure channel to the International Registry.

### *Database*

76. The International Registry system shall provide:

- Standard data access methods to ensure adequate system and data availability for system users;
- Data integrity and processing consistency by defining system level validation rules and business logic at the server database;

- Capabilities to perform hot backups to ensure high system availability while supporting up-to-the-minute database recovery;
- Enhanced configuration management support through a centralized implementation of business logic;
- Flexible access by users needing data access through other commercial-off-the-shelf software packages, e.g., downloads to manipulate data on a spreadsheet;
- Automated tools to assist in analyzing the data in respect to system performance.

### *Security*

77. The system's security shall provide:

- Firewalls to prevent unauthorized access to or from private networks. For greater security, data will be encrypted;
- The ability to restrict access to the International Registry, or to particular features of the International Registry, to registered users;
- A feature to logoff registered users because of inactivity;
- Limitations of access to appropriate system components, i.e., administrative database functions, data entry, views, or reporting of users based on roles, privileges, and access availability.
- Limitation of access for users to the Operating System. Access will be only available through the presentation layer.
- Software encryption processing that occurs between the client application layer and the software server. All transactions for registration will utilize data encryption while in transmission.
- An on-line method to create and assign user identifications and passwords (although it is recognised that the solutions referred to in paragraph 27 might involve, for example, the issue of hardware such as USB keys containing log-on certificates).
- The system shall include automated tools to record pertinent data in respect of the security and to provide assistance in analyzing this data.
- Physical access security shall be required to the central service site.

### *Maintenance*

78. The International Registry and its systems must be regularly maintained, with maintenance to include, but not be limited to, hardware, software and telecommunication systems. All maintenance problems must be resolved as soon as possible and so as to ensure system availability in accordance with system availability requirements (see paragraph 42). If a maintenance problem cannot be resolved immediately, users must be notified that the problem is being addressed and the approximate time it will take to resolve it.

### *Connect Times*

79. Connect times should allow for time outs that take account of the fact that the internet connections may function at different speeds in different regions. The System shall

provide for Intranet<sup>6</sup> connect times for an entire action regardless of the number of users according to industry best practice.

#### *Application Infrastructure - Data*

80. The data elements to be accommodated and maintained in the database shall include:
  - The information entered by registered users in relation to each transaction on the International Registry;
  - The fee collected for each transaction (the amount of the fee and a brief description of the fee);
  - Date/time stamps, user identifications and details of encrypted access keys; and
  - Other information as may be reasonably required pursuant to the Regulations.
81. The system shall provide:
  - The flexibility to add new data fields to support changes in the System processes and regulatory requirements without excessive data modification.
  - Unlimited capacity for new data elements in the database.
  - Configuration management for software releases.

#### *Application infrastructure - Edits*

82. The database shall have editing capability to display guidance when incorrect data is entered using list boxes, text boxes, check boxes or other GUI standards, to ensure compliance with Regulations.
83. The system shall ensure no transaction on the International Registry (such as the registration of an International Interest) may be finalised until the fee prescribed by the regulations has been paid to the International Registry.
84. The system shall validate new data to ensure accuracy and consistency with existing data. For example, inconsistency of new data may prevent its entry into the system, such as inconsistency of assignment information with original interest.

#### *Application infrastructure - Applications*

85. The system shall reliably support On-Line Transaction Processing (OLTP), transaction-based access where the computer responds immediately to user requests, including rollbacks and commits, i.e., rollback is the process of restoring protected resources to the state at the last commit point and commit is the process that causes the changes to the protected resources to become permanent. Data entry locking shall occur at the row level and provide other users and processes read access to “in-transaction” data.

#### *Application infrastructure -Interfaces*

86. The system shall provide the capability for reasonable state-of-the-art interfacing to heterogeneous (unlike) systems and databases including national and regional registries.

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<sup>6</sup> Internet connect time standards will not be imposed on the system.

*Application infrastructure - Reporting*

87. The system shall be capable of generating statistical and ad hoc reports, e.g. statistical reports on peak periods or selected transactions processed in a particular period.

*Application infrastructure - Support*

88. As part of the user's logon process, a configuration management function shall be included that allows for automatic distribution of software enhancements from servers to client workstations.

*Technology enhancements*

89. Technology enhancements will be implemented in accordance with best industry practice in order for the system to remain current with advancing technology.

## PART 3

### COST SPECIFICATIONS

#### *General*

90. The objectives of the International Registry are to provide an efficient, reliable and secure electronic registration system as contemplated by the Convention and the Luxembourg Protocol. Bidders submitting proposals must set out in detail their proposed methods to achieve these objectives, which shall describe all steps from the requirements analysis System Design Document (see paragraph 57) through to the delivery, implementation and on-going operation of the system. Without limiting the foregoing, proposals must address comprehensive risk assessment and management as well as the financing of the system.
91. Each proposal must include a comprehensive schedule of estimated costs, in EURO (€), for the fulfilment of the obligations of the Registrar, including the establishment and ongoing operation of the International Registry. Such estimates should be made in relation to prices as of 30 June 2010. The assumptions underlying the estimated costs should be clearly elaborated.
92. Each proposal must specify the estimated costs for each of the following items associated with the development and establishment of the International Registry, and must in addition specify the costs of any other items not listed below which may be incurred as start-up costs:
- (a) Function-related:
    - Hardware design
    - Hardware assembly
    - Software design
    - Software creation
    - Communication system design
    - Communication system creation
    - Security system design
    - Real time backup system
  - (b) Site and facility related:<sup>7</sup>
    - Site fit out
    - Furniture and equipment
  - (c) Miscellaneous
    - Permits

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<sup>7</sup> As noted in paragraph 58, the Luxembourg Government has indicated its readiness to provide the necessary office accommodations as well as provide for all utilities and required security for such accommodations. Consequently, bidders in preparing their cost proposals should not include these items.

- Insurance, including the cost of insurance referred to in Article 28(4) of the Convention
- Legal expenses
- Other

93. Each proposal must contain a breakdown of the estimated yearly operating costs of the International Registry as follows:<sup>8 9</sup>

- (a) Personnel (wages and benefits for Registry operations)
- (b) Hardware replacement, update and maintenance
- (c) Software replacement, update and maintenance
- (d) Insurance
- (e) Non-recoverable taxes and duties on operations (excluding taxes payable on net income or gains)
- (f) Permit renewals
- (g) Legal, audit and other professional expenses
- (h) Costs related to operating the Registry in an additional language (see paragraph 40)
- (i) Promotion and marketing (€25.000 per year);
- (j) Other

*Why costs estimates are required*

94. The estimates of costs are required to be provided, because the costs of establishing and operating the International Registry will be reflected in the fees that are established for using the International Registry. Article XVI(1) of the Luxembourg Protocol provides that the Supervisory Authority shall set, and may from time to time amend, the fees to be paid in connections with registrations, filings, searches and other services the International Registry may provide, in accordance with its Regulations. Article XVI(2) of the Luxembourg Protocol provides that these fees shall be determined so as to recover, to the extent necessary, the reasonable costs of establishing, implementing and operating the International Registry, as well as the reasonable costs of the Secretariat associated with the performance of its functions, and also provides that “nothing in this paragraph shall preclude the Registrar from operating for a reasonable profit”.

*Ancillary services*

95. As noted in paragraph 6, through the International Registry website the Registrar will have the potential to offer additional income-generating services (“ancillary services”). While any such additional services could only be provided with the prior consent of the

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<sup>8</sup> As noted in paragraph 58, the Luxembourg Government has indicated its readiness to provide the necessary office accommodations as well as provide for all utilities and required security for such accommodations. Consequently, bidders in preparing their cost proposals should not include these items.

<sup>9</sup> The costs of the Secretariat of the Supervisory Authority will be included in the overall costs of the International Registry to be recovered from income generated by the International Registry’s registration fees. These costs will include the expenses incurred by the Supervisory Authority in auditing the Registrar, estimated as at the date of publication of this RFP document to be approximately €15,000 per year.

Supervisory Authority, it is expected that the Supervisory Authority would favourably consider, and work with the Registrar to facilitate, the provision of any such services that are compatible with the International Registry's functions.

96. Examples of possible ancillary services include:

- Vehicle tracking/monitoring services (lessors and financiers may wish to monitor the location of the assets they finance – this can be particularly important where the contract contains limitations on the movement of assets. The Registrar would potentially be able to offer a service tracking the location of the rail assets using the same identification criteria as are used in relation to a registration on the International Registry, and using GPS, RFID or other similar tracking system, so as to offer an integrated title and asset tracking system.
- Consultancy services
- Company partnership service
- Employment opportunities' page
- Industry briefings (subscription)
- Identification plates

97. For the purpose of applying the revenues from ancillary services, such services would be divided into 2 categories. The first category would encompass services, the provision of which is totally dependent on, and can only be offered through, the Registry website. An example would be advertising on the International Registry website. For such services, at least 40% of the gross revenues will be required to be allocated towards the payment of the establishment costs of the International Registry. The second category would encompass services that would be able to be offered independently of the International Registry website. An example would be vehicle tracking/monitoring services. For those services, the Registrar would be entitled to realise some, none or all of the revenues as profit, subject to accounting for the pro rata costs of using the resources (such as computers, personnel) on the provision of those ancillary services.

#### *The relationship between costs and fees*

98. The Luxembourg Protocol provides that it is the responsibility of the Supervisory Authority to set the fees to be charged in connection with the International Registry, and this will be reflected in the contract between the Registrar and the Supervisory Authority. In relation to the registration and search services provided under the Luxembourg Protocol, the Supervisory Authority, in close consultation with the Registrar, will establish (and periodically review, as appropriate) the fees having regard to all relevant factors including assumptions as to Registry operating costs and transaction volumes. The fees will be established so as to recover the reasonable establishment, implementation and operating costs of the International Registry over the period of the contract, as well as the reasonable costs of the Secretariat associated with the performance of its functions, as set out in Article XVI(2) of the Luxembourg Protocol. The Supervisory Authority will work closely with the Registrar in establishing a Registry implementation schedule linked to the progress being made on securing state ratifications; this approach should serve to keep down the Registrar's expenditures during the early stages of implementation. Also, the Supervisory Authority will partner with the Registrar to promote the Luxembourg Protocol to potential

Contracting States with a view to maximising the pool of potential revenue-generating Registry transactions.

## **PART 4**

### **INFORMATION ABOUT KEY CONTRACT PROVISIONS**

#### *Introduction*

99. The contract between the Registrar and the Supervisory Authority will set out the rights, duties, obligations and entitlements of the Registrar in relation to the operation of the International Registry. The following sections provide information in relation to some of the key contract provisions.

#### *Requirement to operate International Registry in conformity with the Regulations*

100. Article 17(2)(d) of the Convention provides for the Supervisory Authority to make regulations dealing with the operation of the International Registry. The Regulations will establish the framework for the establishment and operation of the International Registry, and the contract between the Registrar and the Supervisory Authority will provide that the Registrar must operate the International Registry in conformity with the Regulations. The Regulations will be developed on an ongoing basis in the lead-up to the entry into force of the Luxembourg Protocol, and may be subsequently amended. The Supervisory Authority will consult closely with the Registrar in the development, and revision, of the Regulations.

#### *Contract to define portability of custom software*

101. The contract between the Registrar and the Supervisory Authority will require that rights to all of the software used in the operation of the International Registry shall be held by a separate company (“the IT holding company”). The Registrar will be required to ensure the portability of all of the software used in the operation of the International Registry, including the custom software developed by Registrar (or its subcontractors), by providing the Supervisory Authority with an assignable option to acquire the software (via acquisition of the ownership of the IT holding company) at nominal cost upon the termination of the contract. If the contract is terminated before the expiration of the initial term of the contract for any reason other than the default or insolvency of the Registrar, the amount that the Registrar would be eligible to receive, should the Supervisory Authority exercise its option, would be the unamortized cost of the custom software that had been developed by the Registrar (or its subcontractors). That unamortized cost would be calculated by reference to a formula that will be set out in the contract.

#### *Proprietary rights in data bases*

102. Pursuant to Article 17(4) of the Convention, the contract between the Registrar and the Supervisory Authority will provide that the Supervisory Authority will own all proprietary rights in the data bases and archives of the International Registry.

#### *Contract to define termination*

103. The contract between the Registrar and the Supervisory Authority will define events that entitle the parties to terminate the contract, which will include default by the

Registrar in performing its obligations and the Registrar becoming, or being at imminent risk of becoming, insolvent or bankrupt or unable to pay its debts as they fall due. The contract will also provide that in the event of a default, the Supervisory Authority shall be entitled to immediate access to all property connected with the operation by the Registrar of the International Registry, including the computer hardware equipment and the physical premises of the International Registry.

#### *Performance guarantees*

104. The contract between the Registrar and the Supervisory Authority will provide that the Supervisory Authority may require the legal and beneficial owners of the Registrar to provide guarantees of the performance by the Registrar of its obligations. The contract will also provide that any material change in the legal or beneficial ownership or control of the Registrar will require the prior approval of the Supervisory Authority.

#### *Test phase*

105. The contract between the Registrar and the Supervisory Authority will provide that a test phase of the International Registry will be conducted, and must commence no later than 6 months after, and conclude no later than 8 months after, the date of the approval by the Preparatory Commission of the final contract between the Supervisory Authority and the Registrar. Full implementation and commissioning of the System must be able to be completed no later than 12 months after the date of the approval by the Preparatory Commission of the final contract between the Supervisory Authority and the Registrar. The full implementation and commissioning of the International Registry refers to the preparedness for the International Registry to immediately begin full operations. However, the precise date of the entry into force of the Luxembourg Protocol, and of the actual commencement of full operations of the International Registry, will be determined in accordance with Article XXIII of the Luxembourg Protocol, and that date may be after the date that the full implementation and commissioning of the International Registry is achieved.

#### *Costs of the International Registry*

106. It is expected that the Supervisory Authority will have regard to the costs and revenues of the International Registry when setting, and amending, the fees, with a view to the costs of the International Registry being amortised over the 10-year period of the initial contract. For this reason, the contract between the Registrar and the Supervisory Authority will require that audited details of costs and expenses of the Registrar and the International Registry be submitted to the Supervisory Authority at regular intervals. The contract may also require that expenditures by the Registrar above threshold limits only be incurred following approval by the Supervisory Authority.

#### *Liability and insurance*

107. The contract between the Registrar and the Supervisory Authority will deal with liability of the Registrar and insurance, in accordance with the provisions of the Convention and Luxembourg Protocol. Article 17(5) of the Convention provides that the Registrar is required to ensure the efficient operation of the International Registry and to perform the functions assigned to it by the Convention, the Luxembourg Protocol and the Regulations. Pursuant to Article 28(1) of the Convention, the Registrar will 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. Article 28(4) of the Convention requires that the Registrar procure insurance or financial guarantee covering the liability set out in Article 28 of the Convention, and Article XV(5) of the Luxembourg Protocol provides that the Registrar's liability under Article 28(1) of the Convention shall be for loss caused up to an amount not exceeding the value of the railway rolling stock to which the loss relates, and that the liability of the Registrar shall not exceed 5 million Special Drawing Rights in any calendar year (or such greater amount, computed in such manner, as the Supervisory Authority may from time to time determine).

108. In this regard, the Preparatory Commission has decided that the Regulations will provide that the amount of insurance or financial guarantee shall be not less than 15.3 million Special Drawing Rights per calendar year, and 5.1 million Special Drawing Rights per event of loss covering up to 3 events of loss per calendar year. An event of loss would comprise all losses caused by the same error or omission or malfunction insofar as the losses are compensable under Article 28(1) of the Convention. It will also be a requirement that, should 3 events of loss occur in any one calendar year, the Registrar will need to procure additional insurance coverage to cover any additional events of loss that might occur in that calendar year.

#### *System design documentation*

109. Within 90 days of the finalisation of the contract between the Registrar and the Supervisory Authority, the Registrar will be required to provide the Provisional Supervisory Authority with a detailed System Design Documentation (SDD) on the equipment hardware/software operation, including civil works, dedicated to the supply of a registry system under the contract, such SDD to be approved by a professional engineer. The SDD shall include, at least, the following information:
- system architecture and layout;
  - equipment inventory (count, function, brand, model), switches, routers, firewalls load balancers;
  - network diagrams;
  - servers (database, applications, web, mail, print, file, certificates, backup);
  - hardware configuration (CPU, memory disk capacity etc);
  - software configuration (operating system, backup, applications);
  - electrical diagram, including the performance of UPS and Generating Set;
  - security (anti-virus, anti-spam, patching policy, intrusion detection, DMZ);
  - system backup (rotation schedule, retention policy, off-site storage, automatic switchover).

#### *Ownership of domain names, logos*

110. The contract between the Registrar and the Supervisory Authority will provide that the Supervisory Authority shall own the intellectual property in the domain names, logos etc of the International Registry, and shall grant the Registrar a licence to use such intellectual property for the purposes of the International Registry for the duration of the *contract*.

*Parties to the Contract*

111. The contract negotiations with the successful bidder will be conducted by representatives of the Preparatory Commission Member States, under the authority of the Preparatory Commission and those Member States. The contract will be entered into between the successful bidder and the Supervisory Authority, and on behalf of the Supervisory Authority will be signed under authorisation of the Preparatory Commission. The contract will provide that it will be endorsed by the Supervisory Authority upon the entry into force of the Luxembourg Protocol.

*Law of the Contract*

112. The contract will be governed by Luxembourg law.

## **PART 5**

### **PRACTICAL INFORMATION ABOUT THE BIDDING PROCESS**

#### *Distribution of the Request for Proposals Document*

113. This RFP Document has been approved for distribution by the Preparatory Commission. It will be distributed to the following States:
- Contracting States and Signatory States to the Convention, the Aircraft Protocol and the Luxembourg Protocol;
  - States that participated in the Diplomatic Conference to adopt the Convention and the Aircraft Protocol held in Cape Town, South Africa (20 October – 16 November 2001);
  - States that participated in the Diplomatic Conference to adopt the Luxembourg Protocol (12-23 February 2007);
  - Member States and Observer States of the Preparatory Commission;
  - UNIDROIT Member States;
  - OTIF Member States.
114. This RFP Document will also be available on the UNIDROIT website ([www.unidroit.org](http://www.unidroit.org)) and the OTIF website ([www.otif.org](http://www.otif.org)). Subject to sufficient funding it may also be advertised in one or more suitable publications.

#### *Proposals - content and format*

115. Bidders must submit a proposal which is clear, comprehensive and self-contained. The Preparatory Commission reserves the right to assess each bid solely on the basis of the content of the proposal and without requesting any additional information or clarification. However, the Preparatory Commission also reserves the right, at its discretion, to request additional information or clarification from bidders regarding the contents of their proposal.

#### *Supplementary information*

116. The RFP Document is intended to provide all information necessary to enable entities to prepare and submit proposals. Any entity requiring clarification or additional information should send an email request to: [info@unidroit.org](mailto:info@unidroit.org) no later than one month prior to the closing date for the receipt of proposals (that is, no later than 29 August 2010). The Preparatory Commission shall consider such requests and if clarification or additional information is provided, this shall also be posted on the UNIDROIT and OTIF websites without information that would identify the entity that made the request.

*Practical information in relation to submission of proposals*

117. Two original copies of the proposal must be submitted. Proposals must be submitted in the English language. Proposals should be submitted in electronic media (eg compact disc, digital versatile disc or USB MSC) capable of being accessed and read using standard PC programs.
118. Proposals must be sent, by mail or courier, to:
- UNIDROIT  
Via Panisperna, 28  
Rome, Italy, 00184
- Proposals may also be delivered in person at the above address between the hours of 9am and 6pm, Monday to Friday. Receipt of proposals will be acknowledged by letter or email. A return address and email address must be included with each proposal.
119. In order to be taken into consideration, proposals must be received by UNIDROIT no later than 6pm on **29 September 2010**. The Preparatory Commission reserves the right to exclude from consideration any proposal received after that date and time.

*Evaluation and selection process*

120. The contract will be entered into between the successful bidder and the Supervisory Authority, and on behalf of the Supervisory Authority will be signed by an authorised representative of the Preparatory Commission in its capacity as acting Supervisory Authority. Each proposal received will be evaluated by the Preparatory Commission in relation to how the proposal addresses the criteria and requirements set out in this RFP Document. The Preparatory Commission may provide entities that have submitted proposals with an opportunity to make a presentation of their proposal to the Preparatory Commission.
121. The Preparatory Commission will conduct an evaluation of the proposals, drawing upon such expertise as shall be considered appropriate. The Preparatory Commission shall take all reasonable steps to ensure that the evaluation of proposals is fair and free from bias. In the course of that evaluation, the Preparatory Commission reserves the right to request further information or clarification from any or all of the bidders in relation to their respective bids.
122. The Preparatory Commission shall select the bid (“the preferred bidder”) which, in its sole discretion, presents the best overall bid meeting the criteria set out in this RFP document, having regard to:
- (a) the extent to which the proposals address the technical requirements of the International Registry, in particular the technical requirements set out in Part 2 of this RFP Document;
  - (b) the costs of the proposals (see Part 3 of this RFP Document);
  - (c) the proposed corporate structure and ownership structure (including the bidder’s and the proposed Registrar’s name, date and place of registration, capitalisation and beneficial ownership and control);

- (d) the degree to which the proposed Registrar has sufficient relevant business and management experience to successfully establish and operate the International Registry.
123. The Preparatory Commission reserves the right to select as the preferred bidder the bidder that presents the best overall bid meeting the criteria set out in this RFP document, notwithstanding that that bidder may not present the best bid in relation to individual specific criteria.
124. It shall be a condition of submitting a bid that bidders unreservedly accept the decision of the Preparatory Commission in relation to the selection of the preferred bidder.
125. If additional issues arise during the course of the contract negotiations, the Preparatory Commission reserves the right to adjust the technical and cost requirements set out in this RFP document.
126. If the Preparatory Commission and the preferred bidder do not for any reason conclude the negotiations for a contract providing for the appointment of the preferred bidder as the Registrar, the Preparatory Commission shall, unless it decides that the circumstances otherwise require, enter into negotiations with the entity that submitted the next best overall bid meeting the criteria set out in this RFP document.

*Illustrative time frames*

127. The following sequence illustrates the RFP process (actual dates may vary according to the circumstances):
- (a) 30 June– RFP is issued;
  - (b) 29 September (a + 3 months)– final date for proposals to be submitted;
  - (c) 1 December (b + 3 months) – evaluation by Preparatory Commission and notification to the preferred bidder - bidders should be prepared to commence contract negotiations within 4 weeks of the notification – although this is subject to change;
  - (d) 1 March (estimated) (c + 3 months)– finalisation of contract negotiations between the Preparatory Commission and the preferred bidder;
  - (e) 1 April (estimated) (d + 1 month) – approval by the Preparatory Commission of the final contract between the Supervisory Authority and the preferred bidder;
  - (f) 1 July – (e + 3 months) – submission to the Supervisory Authority by the Registrar of the System Design Document (SDD) as referred to in paragraph 57;
  - (g) No later than 6 months after (e) – commencement of test phase of the International Registry;
  - (h) No later than 8 months after (e) – completion of test phase of the International Registry;
  - (i) No later than 12 months after (e) – full implementation and commissioning of the International Registry. The full implementation and commissioning of the International Registry refers to the preparedness for the International Registry to immediately begin full operations. However, the precise date of the entry into force of the Luxembourg Protocol, and of the actual commencement of full operations of

the International Registry, will be determined in accordance with Article XXIII of the Luxembourg Protocol, and that date may be after the date that the full implementation and commissioning of the International Registry is achieved (see Annex 1, paragraph 133).

128. Ancillary services, as outlined in paragraph 95, will be able to provided – subject to the prior approval of the Supervisory Authority – as soon as practicable and, in particular, will be able to be provided prior to the date of entry into force of the Luxembourg Protocol.

## ADDITIONAL BACKGROUND INFORMATION RELEVANT TO THE INTERNATIONAL REGISTRY

### *Information about the Luxembourg Protocol*

129. The Cape Town Convention on International Interests in Mobile Equipment<sup>10</sup> was adopted on 16 November 2001 at a Diplomatic Convention held in Cape Town. The Convention and its protocols contemplate the establishment and operation of modern, electronic International Registries with the following features:
- electronic and internet-based;
  - facility for creditors to register their registrable security interests (defined by the Convention and described as “**international interests**”) in objects of mobile equipment (the advantages of registration of a security interest include that a registered security interest will have priority over subsequently-registered interests and interests that are not registered); and,
  - capacity for the details of the registered international interests to be made available to whomever may conduct a search of the International Registry, with such searches to be able to be conducted at any time from any place via an internet connection to the International Registry.
130. The Convention establishes a system to facilitate asset-backed financing of high-value mobile equipment, and in particular it creates an international registration system for the registration of specific types of international interests. The Convention entered into force on 1 March 2006. As at 30 June 2010 it had 36 Contracting States.
131. The Convention is a “framework” convention, and its provisions are supplemented by protocols relating to different categories of equipment. The Convention specifies that different international registries may be established for different categories of objects.
132. The Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (the Aircraft Protocol) was also adopted on 16 November 2001, and also entered into force on 1 March 2006. It applies the provisions of the Convention to aircraft objects (airframes, aircraft engines and helicopters). An International Registry established for registrations of interests covered by the Aircraft Protocol commenced operations on 1 March 2006.<sup>11</sup>
133. The Luxembourg Protocol was adopted on 23 February 2007 at a Diplomatic Conference hosted in Luxembourg by the Government of the Grand Duchy of Luxembourg. It applies the provisions of the Convention to railway rolling stock. The Luxembourg Protocol currently has 4 signatory states and no Contracting States – it will enter into force after the time when there are both 4 ratifications by States, and the Secretariat of the Supervisory Authority has deposited with the Depository a certificate

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<sup>10</sup> The text of the Cape Town Convention is available from the following page on the UNIDROIT website: <http://www.unidroit.org/english/conventions/mobile-equipment/main.htm>

<sup>11</sup> The website of the International Registry is: [www.internationalregistry.aero](http://www.internationalregistry.aero).

confirming that the International Registry is fully operational. Such a certificate would not be deposited if the International Registry was not fully operational, for example during the test phase and prior to the commissioning of the International Registry.

*The Supervisory Authority and Registrar*

134. Article 17(2) of the Convention invests the Supervisory Authority with a number of specific duties, including:
- to establish or provide for the establishment of the International Registry;
  - to appoint and dismiss the Registrar;
  - to 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;
  - to supervise the Registrar and the operation of the International Registry;
  - to set and periodically review the structure of fees to be charged for the services and facilities of the International Registry; and
  - to do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of the Convention and protocol;
135. Article 17(5) of the Convention provides that the Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by the Convention, the protocol and the regulations.

## RELEVANT PROVISIONS OF THE CONVENTION AND LUXEMBOURG PROTOCOL

### *Introduction*

136. The following section outlines some of the provisions of the Convention and the Luxembourg Protocol most relevant to the functions of the Registrar and the operation and role of the International Registry.

### *Priority of registered interests*

137. Article 29(1) of the Convention establishes a basic priority rule: “international interests”<sup>12</sup> in items of railway rolling stock<sup>13</sup> which are registered on the International Registry take priority over any other interest subsequently registered and over an unregistered interest. One exception to the priority rule is that Contracting States may declare that certain categories of non-consensual right or interest will take priority over an interest registered on the International Registry – however, such declarations themselves are to be notified to, and searchable on, the International Registry.
138. For the purpose of the priority rules and determining whether another interest was registered “subsequently”, the time when the registration becomes “searchable” is the relevant time. The Convention provides in Article 19(2) that a valid registration is complete upon the entry of the required information into the International Registry’s data base so as to be searchable. The Convention provides in Article 19(3) that a registration is searchable when the International Registry has assigned it a sequentially ordered file number, and the registration information may be accessed at the International Registry.

### *Registry search certificates*

139. Article 22 of the Convention provides that any person may make or request a search of the International Registry by electronic means, and upon receipt of a request for a search the Registrar must issue a registry search certificate by electronic means, such certificate to state all of the registered information (or that there is no registered information) and the date and time of registration of the information. Article 24 of the Convention provides that a document 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 therein.

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<sup>12</sup> Security agreements, title reservation agreements and leases and related subrogations, subordinations and assignments, together with non-consensual rights and interests and notices of national interests, and notices of sale, see Convention, Article 16(1), Luxembourg Protocol Article XVII.

<sup>13</sup> The term “railway rolling stock” is defined in Article I(2)(e) of the Luxembourg Protocol to mean vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto.

### *Requirements for effecting registration*

140. Pursuant to Article 18(1) of the Convention, the Luxembourg Protocol and the regulations made under the Protocol must specify the requirements (including the criteria for the identification of the railway rolling stock) for effecting a registration, for making searches and issuing search certificates, and for ensuring confidentiality. Pursuant to Article 18(4) of the Convention, the Registrar must arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file must record the date and time of receipt.:

### *24/7 operations*

141. Article XV of the Luxembourg Protocol provides that the functions of the International Registry must be operated and administered by the Registrar on a twenty-four hour basis. This will ensure that registration of international interests, and other International Registry services, are provided at any time in accordance with the business hours of the jurisdiction where the relevant transactions take place. However, in recognition of the fact that the International Registry may need to be taken off-line for short periods (for example, to perform software upgrades), the Registrar will be required to commit to a 97% availability of the International Registry (see paragraph 52).

### *Consent*

142. Article 20 of the Convention provides that a registration may be registered, amended, or extended, by either party with the consent in writing of the other party. Further, a registration may be discharged with the consent of the person in whose favour it was made. This means that the International Registry will need include a system for the provision of consent by registered users to the registration of interests in railway rolling stock in which they have an interest. However, the Registrar is not under any duty to actively enquire as to whether a consent to registration under Article 20 has been given or is valid (Convention Article 18(2)), and those questions will not need to be determined by intervention of the Registrar at the time of registration. Other legal and factual issues in respect of which the Registrar will not be required to intervene with human vetting include:
- whether the interest being registered is an “international interest” for the purposes of the Convention and the Luxembourg Protocol;
  - a party has the rights that it purports to dispose (for example, whether a debtor has an interest in the railway rolling stock);
  - whether a submission to the International Registry was made by a party with internal power to act (that is, whether a corporate entity has obtained the necessary internal corporate approvals).
143. Consistent with the principle that the International Registry shall be electronic and highly automated, a registration will only need to comply with the electronic application form and be accompanied by the required fee in order to be registered.

### *“Entry points”*

144. Article XIII of the Luxembourg Protocol implements Article 18(5) of the Convention by providing that a Contracting State may designate, by declaration, an entity as the

entry point through which the information required for registration shall or may be transmitted to the International Registry.<sup>14</sup> For example, a Contracting State may wish to utilise an existing national registration system, modified to enable or require the holder of a national interest which also constitutes an international interest to make one input to the national entry point which will simultaneously procure registration of the national interest and transmission of details of the international interest to the International Registry. The International Registry would need to make arrangements with any designated entry point to ensure that the technical and other details necessary to enable registration information to be transmitted are in place.

#### *Discharge or expiry of registrations*

145. Registrations on the International Registry will remain effective until they are discharged, or until the expiry of any period specified in the registration (Convention Article 21). Where the obligations secured by a registered interest have been discharged the holder of the interest must, without undue delay, procure the discharge of the registration. The International Registry will need to provide systems that minimize the risk of unauthorised discharge (or similar actions, such as amendment) by requiring a matching of the electronic signature of the initial registrant and that of the discharging (or amending) party.

#### *Types of interests that may be registered*

146. The types of interests that may be registered on the International Registry, as specified in Article 16 of the Convention and Article XVII of the Luxembourg Protocol, are:
- international interests, prospective international interests and registrable non-consensual rights and interests;
  - assignments and prospective assignments of international interests;
  - acquisitions of international interests by legal or contractual subrogation under the applicable law;
  - notices of national interest;
  - subordinations of any of the interests noted above;
  - notices of sale of railway rolling stock (for information purposes only).

#### *The Registrar and court jurisdiction*

147. Article 44(1) of the Convention provides that 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. This jurisdiction would be limited to:
- matters relating to the Registrar's liability in accordance with the Convention or Luxembourg Protocol;
  - making orders requiring the Registrar to discharge a registration where a person has failed to respond to a demand to discharge a registration and that person cannot be found or no longer exists;

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<sup>14</sup> The designation of an entry point may not apply in relation to notices of national interests, or of registrable non-consensual rights or interests, arising under the law of another State, and the use of a national entry point may not be made compulsory for registrations in respect of notices of sale

- making orders requiring the Registrar to give effect to an order of a court with jurisdiction under the Convention or Luxembourg Protocol that a person procure the amendment or discharge of a registration and that person fails to comply with the order.

Apart from these examples, no court is able to make orders or give judgements or rulings against the Registrar. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process (Convention Article 27(4)).

## ILLUSTRATIVE MODEL OF A POSSIBLE LAYOUT OF AN INTERNATIONAL REGISTRY REGISTRATION FORM

All fields must be completed unless otherwise indicated

**Creditor:**

**Name:**

**Address:**

**Email address:**

**Debtor:**

**Name:**

**Address:**

**State of location at time of creation of interest  
at time of application for registration of interest:**

**Email address:**

**Registry User entity:**

**Name:**

**Address:**

**Email address:**

**Registration number:**

**Railway Rolling Stock:<sup>15</sup>**

**Manufacturer:**

**Type: locomotive/freight wagon/passenger wagon/other**

**If other specify below:**

**URVIS number:**<sup>16</sup>

**Identifier affixed to rolling stock (if different):**

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<sup>15</sup> List in a special schedule in case of multiple registrations.

<sup>16</sup> Unique Rail Vehicle Identification System. The URVIS number will be the unique 20-digit number issued by the International Registry.

**Immatriculation number:**<sup>17</sup>

**Security Interest:**

**Date:**

**Type of interest (prospective or full international interest):**

**Duration of registration (if not unlimited):**

**Additional Comments**

**[for example further additional information about the rolling stock]:**

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<sup>17</sup> Non mandatory

## **DRAFT REGISTRY REGULATIONS**

*DRAFT  
REGULATIONS FOR THE INTERNATIONAL REGISTRY*

*(Article 17(2) (d) of the Convention on international interests in mobile equipment and Article XII of the Luxembourg Protocol)*

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## Section 1 AUTHORITY

1.1 These Regulations are issued by the Supervisory Authority pursuant to Article 17(2)(d) of the *Convention on International Interests in Mobile Equipment* ("Convention") and Article XII of the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock* ("Protocol").

## Section 2 DEFINITIONS

2.1 Terms defined in the Convention and the Protocol shall have the same meanings in these Regulations. In addition, the following terms shall have the meanings set out below:

2.1.1 "Administrator" means the person with authority to act on behalf of a registry user entity on administrative matters in dealings with the International Registry, and an "acting administrator" has the meaning set out in Section 4.1.

2.1.2 "Amendment" means any change in registration information, including any change in the duration of a registration, but does not include assignment, subrogation or subordination.

2.1.3 "Authorization" means an electronic authorization given by the administrator of a transacting user entity to one of its transacting users or to a professional user to transmit information to the International Registry to effect or consent to a registration on behalf of that transacting user entity.

2.1.4 "Authorized Representative" means a person authorized to effect a registration of an international interest, prospective international interest, or assignment or prospective assignment of any of the foregoing in an agency, trust or other representative capacity.

2.1.5 "Consent" means an electronic consent to a registration.

2.1.6 "Controlled entity" means a business entity, trust or association of any kind, however established, with capacity to be a named party in registrations, where a transacting user entity electronically asserts that it controls, manages or administers that business entity, trust or association.

2.1.7 "Identity" means the name, address and electronic address of the entity or person in respect of whom the identifying information is sought.

2.1.8 "Named party" means a party named as a party in a registration, and a "named representative" means a person named in a registration and acting for others in an agency, trust or other representative capacity in accordance with Article IV of the Protocol.

2.1.9 “Professional user entity” means a firm, limited liability partnership or corporation or other grouping of persons (such as an internal legal department of a transacting user entity) providing professional services to transacting user entities in connection with the transmission, to the International Registry, of information relating to registrations, and a “professional user” means an individual employee, member or partner of a professional user entity.

2.1.10 “Registration” means an interest electronically registered with the International Registry. For the purposes of Sections 4.3(c), 4.4 and 6, the term has the extended meaning set out in Section 6.1. A “registering person” means a registry user or an entity designated as an entry point transmitting information to the International Registry to effect a registration in accordance with Section 13 below.

2.1.11 “Registry user entity” means:

- (a) a transacting user entity; or
- (b) a professional user entity; and
- (c) a “registry user” means a transacting user or a professional user.

2.1.12 “Searching person” means a person making a search in accordance with Sections 7 or 8 of these Regulations.

2.1.13 “Transacting user entity” means a legal entity, natural person or more than one of the foregoing acting jointly intending to be a named party in one or more registrations, and a “transacting user” means an individual employee, member or partner of a transacting user entity or an affiliate of that entity.

2.2 The term or terms:

- (a) “entry point”, has the meaning set out in Section 13.1;
- (b) “International Registry Procedures” has the meaning set out in Section 17.1;
- (c) “priority search”, “priority search certificate”, “informational search listing”, “Contracting State search” and “Contracting State search certificate” have the meanings set out in Section 8;
- (d) “group registration” and “group search” shall mean respectively a registration of international interests held by a creditor in a multiple number of items of railway rolling stock identified in accordance with Article XIV of the Protocol and a search at the International Registry against such multiple number of items.

## Section 3 GENERAL PROVISIONS

3.1 The International Registry is established as the facility for effecting and searching registrations under the Convention and the Protocol.

3.2 Since the International Registry merely provides notice of registrations, the facts underlying any such registration or registered interest shall determine whether it falls within the scope of the Convention or the Protocol. Without limiting the foregoing registrations of

pre-existing rights and interests or assignment thereof shall have no legal effect under the Convention and the Protocol, except where, by virtue of a declaration under Article 60 (3) of the Convention, registration thereof is required. The contents of this Section 3.2 shall be prominently displayed by the International Registry as a general cautionary note on its website.

3.3 The International Registry shall be accessible 24 hours a day, 7 days a week, except if precluded by maintenance performed outside peak periods, or technical or security problems, as set out in the International Registry Procedures. The International Registry shall be available in English.

3.4 The Registrar shall operate the International Registry and perform the functions assigned to it by the Convention, the Protocol, these Regulations and the International Registry Procedures and such other functions and duties assigned to it or permitted by the Supervisory Authority. The Registrar shall not undertake other operations or responsibilities without the prior written consent of the Supervisory Authority.

3.5 Technical support shall be provided to registry users, searching persons and administrators by a help desk of the International Registry, which shall be available 24 hours a day, 7 days a week, via telephone and/or electronic mail, as set out in the International Registry Procedures.

3.6 The International Registry may be used for no other purpose than that set forth in Sections 3.1 and 3.2, unless approved in advance by the Supervisory Authority and subject to the terms of that approval.

#### Section 4 ACCESS TO THE INTERNATIONAL REGISTRY

4.1 No registry user, registry user entity or administrator of that entity shall have access to the International Registry unless that entity and administrator are first approved as such by the Registrar and are otherwise in compliance with these Regulations and the International Registry Procedures. For the purposes of the preceding sentence, such approval shall be given when the Registrar reasonably concludes:

- (a) that such entity and administrator are who they claim to be; and
- (b) on the basis of information submitted, and without undertaking specific legal analysis, that the latter is entitled to act as administrator of the former, in each case, following the standards and procedures set out in the International Registry Procedures.

An administrator may electronically delegate his/her powers to an “acting administrator” from time to time for periods not to exceed three (3) months.

4.2 No approved registry user shall be entitled to transmit information to the International Registry to effect a registration unless that user has first received authorization to do so. For the purposes of the preceding sentence, such electronic approval and authorization may be given at the sole discretion of the relevant administrator and may be revoked by such administrator at any time.

4.3 Notwithstanding the preceding paragraphs:

- (a) the administrator of a transacting user entity approved by the Registrar may electronically approve a controlled entity as a transacting user entity upon the payment to the Registrar of the fee provided for in Table 1 of the Appendix to the International Registry Procedures; and
- (b) in such a case, the rights, powers and obligations of the administrator of the approving transacting user entity and its transacting users, respectively, shall apply equally to the approved transacting user entity; and
- (c) a registration or a transfer of a right to discharge is valid if it is effected by a natural person who has been given the power to do so by a registry user authorized to effect such registration or such transfer of the right to discharge.

4.4 Subject to these Regulations and in accordance with the International Registry Procedures, a registration may only be effected, with an authorization, by a registering person on behalf of the transacting user entity, which is a named party required or permitted to effect that registration under Article 20 of the Convention.

4.5 No searching person shall have access to the International Registry unless that person is first in compliance with these Regulations and the International Registry Procedures.

## Section 5 INFORMATION REQUIRED TO EFFECT REGISTRATION

5.1 In order to effect a registration, use of electronic information provided by the International Registry relating to railway rolling stock is mandatory and, where so provided, is the sole means of satisfying the requirements of Section 5.3 (c) (i) to (ii). For the purposes of the foregoing, “information provided by the International Registry” excludes information submitted in a different format by the registering person. To the extent such information is not so provided at the time the registration data are submitted to the International Registry, it shall be electronically entered by a registering person using the format prescribed in the International Registry Procedures, except as regards named parties (other than those whose consent is not required under Sections 5.7, 5.9 or 5.11) because they must be approved transacting user entities.

5.2 Identity information shall be deemed complete only if each of the three elements contained in the definition of identity is provided and verified.

5.3 The information required to effect the registration of an international interest, a prospective international interest, a notice of a national interest or a registrable non-consensual right or interest is:

- (a) the identity and digital signature of the registering person and a statement identifying on whose behalf that person is acting;
- (b) the identity of the named parties, which in the case of the debtor shall include the state in which it is situated (in accordance with Article 4 of the Convention) both

at the time the international interest is created and on the effective date of registration of the international interest;

- (c) the following information identifying the item of railway rolling stock:
  - (i) identification number allocated by the Registrar pursuant to Article XIV(1) of the Protocol; and
  - (ii) the manufacturer's name and its unique identifier affixed to the item, if different to the identification number pursuant to Section 5.3 (c)(i) above; and
  - (iii) the number assigned to the item under a national or regional identification system stated by a declaration made by a Contracting State according to Article XIV(2) of the Protocol and affixed to the item.
- (d) the duration of the registration if the registration is to lapse prior to the filing of a discharge;
- (e) in the case of an international interest or a prospective international interest, the consent of the named parties, given under an authorization; and
- (f) the names and electronic addresses of persons to which the Registrar is required to send information notices pursuant to Section 6.

Where all of the information required in this Section 5.3 is not provided by the registry user entity at the time that a registration is attempted, the Registrar will be unable to effect that registration.

5.3.1 The identification number referred to in Section 5.3(c)(i) shall be allocated in accordance with the system prescribed by Section XX of these regulations, shall be comprised of a 20-digit number, and must incorporate national or regional identification numbers where relevant (that is, where a Contracting State has made a declaration pursuant to Article XIV(2) of the Protocol). Further, an identification number may be issued in relation to an item of railway rolling stock only if that item of railway rolling stock:

- (a) is able to be operated with or without traction and does not share wheels or bogies with another vehicle;
- (b) may be physically separated, without the use of specialist equipment, from other vehicles and may continue to be operated under normal industry conditions after such separation; and
- (c) may be operated alone or contiguous to various other vehicles without the need for any special adaptation or use of additional special equipment.

Where an item of railway rolling stock is made up of a number of articulated sections which are physically and permanently fixed to each other, each articulated section is not, in itself, eligible to receive an identification number but the entire vehicle shall be eligible to receive an identification number.

5.4 The registry system will allow a registry user access to the International Registry in order to obtain or reserve the identification number specified in Section 5.3 (c) (i) above in accordance with the International Registry Procedures.

5.5 The registry system will allow a method or methods for group registrations and group searches, which may be further delineated as to type and other factors, consistent with filings

and search solutions in the International Registry Procedures which accommodate current railway rolling stock financing practices.

Unless and only to the extent permitted by the International Registry Procedures, free-form filings will not be permitted in the International Registry with regard to filings and searches of Convention interests that affect priority, perfection or enforcement. This requirement may, but need not, extend to non-Convention interests permitted to be filed pursuant to Section 7.

5.6 The information required to effect the registration of notices of sale and prospective notices of sale, which shall be subject to Article XVII of the Protocol, is:

- (a) the information referred to in Section 5.3(a) to (c) and (f)
- (b) the consent of the named parties, given under an authorization; and
- (c) in the case of a prospective sale, the duration of the registration, if that registration is to lapse prior to the time of discharge.

5.7 The information required to effect the registration of the assignment of an international interest, the prospective assignment of an international interest, the assignment of a registrable non-consensual interest or an international interest acquired through subrogation is:

- (a) the information referred to in Section 5.3(a) to (c);
- (b) the consent of the named parties, given under an authorization except for that of the assignor in the case of an absolute assignment or where it is otherwise agreed between the assignor and assignee that only the assignee's consent is required;
- (c) if the interest being assigned is a registered interest, the file number of the registration (if any) relating to that interest;
- (d) if the interest being assigned is not a registered interest, a description of the interest assigned and original debtor thereunder, using the format prescribed by the International Registry Procedures; and
- (e) in the case of an international interest acquired through subrogation, the file number of the registration of that interest.

5.8 The International Registry may provide a facility permitting the registration of all assignments included in a "block assignment registration request". A "block assignment registration request" shall include:

- (a) an electronic certification by the assignor that all of the underlying interests evidenced by registrations on the International Registry in which it is a named party have been assigned to the assignee, and
- (b) a consent thereto given by the assignee,
- (c) each given under an authorization.

5.9 The information required to discharge a registration is:

- (a) the information referred to in Sections 5.3(a) to (c);
- (b) the identity of the creditor, or holder of a national interest or registrable non-consensual right or interest, as the case may be;

- (c) except as provided in Sections 5.9(d) and 5.9.1, the consent of the named parties benefiting from the registered interest, given under an authorization;
- (d) where a right of consent to discharge a registration has been transferred, the consent of the party having this right;
- (e) the file number of the registration to be discharged; and
- (f) the date the discharge is to be effective.

5.9.1 The parties mentioned in Sections 5.9(c) and (d) do not include the debtor, assignor, subrogor or person subordinating the registered interest,

5.9.2 A party referred to in Section 5.9(c) may electronically transfer to a registry user entity, with the consent of that entity, the sole right to consent to the discharge of such registration. Such sole right to consent to the discharge may be further transferred by a holder thereof to another registry user entity with the consent of the latter.

5.9.3 The party holding the right to discharge a registration has the sole right to consent to the discharge of that registration.

5.10 The information required to effect the registration of a subordination of an international interest, a prospective international interest, a national interest or a registrable non-consensual interest is:

- (a) the information referred to in Sections 5.3(a) to (c) and 5.7 (e), and for the purposes of the foregoing reference to Section 5.3 (b) and for the purposes of Section 5.10 (b), the “named parties” shall be the registry user entities subordinating their interest;
- (b) the consent of the named party whose interest is subordinated, given under an authorization;
- (c) the file number of the registration of the interest benefiting from the subordination;
- (d) if the interest being subordinated or benefiting from the subordination is a registered interest, the file number relating to each such interest; and
- (e) if the interest being subordinated or benefiting from the subordination is not a registered interest, a description of such interest and the original debtor thereunder, using the format prescribed by the International Registry Procedures.

5.11 Notwithstanding Sections 5.3 (e) and 5.7 (b), the information needed to effect the registration of a pre-existing right or interest required by virtue of a declaration under Article 60 (3) of the Convention (as amended by Article XXVI of the Protocol) need not include the consent of the debtor, assignor or person subordinating the right or interest.

5.12 Subject to Section 5.13, the information required to amend a registration or to amend information contained in an assignment, subrogation or subordination is:

- (a) the information referred to in Sections 5.3 (a) to (c) and 5.3 (f);

- (b) the consent of the named parties that consented to the registration to be amended and, where a right of consent to discharge a registration has been transferred, the consent of the party having this right in place of the immediate transferor;
- (c) the file number of the registration to be amended; and
- (d) the amendments to be made.

5.13 The following shall apply in respect of amendments to and discharges of amendments to registrations:

- (a) Registration of an amendment of information referred to in Section 5.3 (c) or a change of a category of registration shall be treated as a new registration in respect of the object or category to which the amending registration refers, with priority ranking from the time the amending registration is complete. The named parties to such amendment shall consent to the discharge of the previous registration under an authorization, which shall be effected automatically.
- (b) Registration of an amendment in which the information referred to in Section 5.3 (b) has been changed shall require the consent of the named parties that consented to that registration and of the named party to be specified in the amended registration, each given under an authorization save that a name change notification request as described in section [5.17] shall not require such consent.
- (c) Registration of an amendment in which the information referred to in Section 5.3 (d) has been changed shall have no effect on the priority of the original registration for the amended duration of that registration. The foregoing is without prejudice as to whether a new underlying interest has been constituted that requires registration under the Convention.
- (d) A change to a user capacity statement or the contact details of a registry user are outside of Section 5.13, and may be made after the Registrar reasonably concludes that such requested change is accurate.
- (e) When a registration is discharged, the party consenting to that discharge shall be deemed to consent to the discharge of all amendments to that registration, which shall be effected automatically.

5.14 The consent requirements of this Section 5 shall be satisfied: in the case of a registration initiated by an entry point in accordance with Article XIII (1) of the Protocol, when the International Registry receives the consent from all parties whose consent is required under the Convention, the Protocol, and these Regulations

5.15 Any registration may specify that multiple named parties hold or have granted an interest evidenced thereby.

5.16 With respect to an interest referred to in Section 5.15:

- (a) an increase or decrease to such interest arising by virtue of a sale or an assignment of an international interest shall be registered as such in accordance with Sections 5.5 or 5.7, respectively;
- (b) a decrease in such an interest arising by virtue of payment of a secured obligation shall be partially or wholly discharged in accordance with Section 5.9; and

- (c) an amendment changing such interest shall be permitted to correct an error when made in accordance with Section 5.12.

5.17 The International Registry will provide a facility for notice of a change of name to a registry user entity, where set out in a “name change notification request”. For purposes of the foregoing, a “change of name” means either that the registry user entity has changed its name or, that the registered interest has become vested in a new entity created by merger or otherwise by operation of law., or that a correction is required due to an error in the name. In such a case:

- (a) the Registrar shall confirm that such changed name has been effected following the standard set out in Section 4.1;
- (b) when so confirmed, all registrations on the International Registry in which that registry user entity is a named party shall, without amending registration information, be annotated to advise of the change of name, such annotation to be included in all priority search certificates;
- (c) following the time at which such annotation is made, the renamed or resulting entity shall be deemed to be a registry user entity for all purposes of the International Registry; and
- (d) the vesting shall have no effect on the priority of the original registration.

## Section 6 CONFIRMATION AND NOTICE OF REGISTRATION

6.1 In this Section, the term "registration" includes, where appropriate, an amendment, extension, or discharge of a registration.

6.2 The Registrar shall provide prompt electronic confirmation of a registration to the named parties, the registering person and all other persons entitled to receive notice of that registration under Section 5. A confirmation shall contain the information set forth in Article 22 (2) (a) of the Convention.

6.3 When a registration is effected relating to an item of railway rolling stock, an electronic notice thereof shall be sent to the named parties and registering persons in any other registration relating to that item.

6.4 The confirmation and notice referred to in Sections 6.2 and 6.3, respectively, shall include information specified in Section 5 relating thereto and the file number of the registration.

6.5 Named parties may electronically elect not to receive the notices referred to in Section 6.3. Such elections shall require digital signatures. Registry users may request not to receive electronic notices in respect of one or more registrations.

7.1 To the extent approved by the Supervisory Authority, the Registrar shall provide for filings of other interests in railway rolling stock or contract information relating to international interests that are for the purposes of information only and do not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

7.2 Such filings shall be subject to search but the Registrar shall bear no responsibility for any errors or omissions, and search results whether or not effective shall not affect perfection, priority or other rights or obligations under the Convention or the Protocol.

8.1 A search of the International Registry as provided by Article 22 of the Convention in respect of an item of railway rolling stock shall be made by electronic means using one or more of the following criteria:

- (a) the identification number allocated to the item by the Registrar pursuant to Article XIV (1) of the Protocol;
- (b) the manufacturer's unique identifier (if this differs from the identification number allocated pursuant to Section 8.1 (a) above) or the number assigned to the item under a national or regional identification system where a declaration is made by a Contracting State according to Article XIV(2) of the Protocol; and
- (c) the Registrar's group file number in relation to a group registration.

Such information may be searched by means of a priority search or informational search, as set out in Sections 8.2 and 8.2 bis, respectively. A Contracting State search may also be made, as set out in Section 8.4. A search may be performed by any person who complies with the International Registry Procedures, whether or not that searching person has a specific interest. All searches shall be performed by electronic means.

8.2 A "priority search" is a search for registration information using the criteria specified in Section 8.1 (a), (b) and, if appropriate (c). Such information is searchable for purposes of Articles 19 (2) and (6) of the Convention and Article XV (1) of the Protocol.

8.3 An "informational search" is a search other than a priority search using the criteria specified in Section 8.1 (b), either alone or with another criterion set out in that Section. Such informational searches may include the use of symbols specified in the International Registry designed to produce inclusive search results. The results of an informational search, an "informational search listing", shall be a list of all matching items of railway rolling stock described by the items set out in Section 8.1(a) to (c). The facility to perform such an informational search does not make that information searchable for purposes of Articles 19 (2) and (6) of the Convention and Article XV (1) of the Protocol.

8.4 A "priority search certificate" is a certificate issued in response to a priority search. It shall:

- (a) set out the information required by Article 22 (2) (a) or (b) of the Convention, as applicable, and comply with Article 22 (3) of the Convention;
- (b) if Article 22(2)(a) of the Convention applies, list the registered information in both
  - (i) chronological order and
  - (ii) a manner which indicates the transactional history of each registered interest; and
  - (iii) indicate the current holder of the right to discharge a registration and set out in chronological order when that right to discharge has been transferred and the parties executing such transfer.

8.5 A “Contracting State search” is a search for all declarations and designations, and withdrawals thereof, made under the Convention and the Protocol by the Contracting State specified in the search. A “Contracting State search certificate” is a certificate issued in response to a Contracting State search. A Contracting State search certificate shall:

- (a) indicate, in chronological order, all declarations and designations, and withdrawals thereof, by the specified Contracting State;
- (b) list the effective date of ratification, acceptance, approval or accession of the Convention and the Protocol, and of each declaration or designation, and withdrawal thereof, by the specified Contracting State; and
- (c) attach, in the electronic form set out in the International Registry Procedures, a copy of all instruments deposited by the specified Contracting State relating to items within the scope of Section 7.

8.6 Each priority search certificate and listing shall be issued and made available in electronic form. Upon request, a printed copy of a priority search certificate or Contracting State search certificate shall be provided by the Registrar.

## Section 9 OPERATIONAL COMPLAINTS

9.1 Any person may submit a complaint to the Registrar concerning the operation of the International Registry. If not satisfactorily addressed by the Registrar, that complaint may be further submitted by that person to the Supervisory Authority pursuant to the International Registry Procedures.

9.2 For the purposes of Section 9.1, a matter concerns the operation of the International Registry when the matter relates to general procedures and policies of the International Registry and does not involve specific adjudication by the Registrar or Supervisory Authority.

9.3 A person making a complaint shall substantiate his/her assertions in writing.

9.4 The Supervisory Authority shall promptly consider complaints and where, on the basis of that consideration, it determines changes in the procedures or policies are appropriate, it shall so instruct the Registrar or amend the International Registry Procedures.

9.5 The International Registry Procedures shall set out details relating to the procedure contemplated by Sections 9.1 to 9.4.

## Section 10 CONFIDENTIALITY

10.1 All information in the International Registry shall be confidential except where it is:

- (a) provided by the Registrar in response to a search under Section 8;
- (b) made electronically available to enable registry users to effect, amend or discharge registrations;
- (c) provided to the Supervisory Authority at the latter's request;
- (d) used for the purposes of the statistics required by Section 11, or
- (e) required to be disclosed by applicable law.

## Section 11 STATISTICS

11.1 The Registrar shall maintain updated registration statistics and shall publish them in an annual report. This report shall be electronically accessible to any person.

11.2 The registration statistics under Section 11.1 shall consist of

- (a) transactional volumes and revenues, subdivided, in each case, by registration type and geographic distribution, and
- (b) other compilations of non-confidential information requested by the Supervisory Authority.

## Section 12 RELATIONS WITH THE SUPERVISORY AUTHORITY

12.1 The Registrar shall prepare an annual report, including statistical data referred to in Section 11, and shall submit it to the Supervisory Authority. The annual report may include recommendations for changes in these Regulations or in the International Registry Procedures.

## Section 13 RELATIONS WITH THE ENTRY POINTS

13.1 The Registrar shall maintain a current list of Contracting States that have designated entry points under Article XIII (1) of the Protocol. The list shall also identify the entry points, the entities that operate them and their locations and shall be electronically accessible without limitation in the public domain.

13.2 Subject to any agreement between a Contracting State and the Supervisory Authority pursuant to Article XIV of the Protocol, the Registrar shall establish arrangements applicable to the electronic transmission of registration information from, or authorized by, entry points to the International Registry and, after consultations with each designated entry point, shall specify the procedures and costs applicable to that entry point. The foregoing shall not require the establishment of electronically coordinated systems but rather arrangements designed to enhance the efficient use of the International Registry by entry points.

13.3 A registration effected in violation of the terms of a designation under Section 13.1 is invalid.

13.4 A registration is not invalid if:

- (a) in the case of an authorizing designated entry point, an authorization code is not obtainable under its procedures; or
- (b) in the case of a direct entry point, use of that entry point is not permitted under its procedures;
- (c) based on the facts of the transaction to which it relates.

#### Section 14 FEES

14.1 Fees shall be established and adjusted by the Supervisory Authority as required by the Convention and the Protocol.

14.2 The Registrar shall collect a fee prior to undertaking services relating to the International Registry.

14.3 Fees, including fees arising from operations through an entry point, must be paid to the Registrar prior to the requested operation unless otherwise agreed between the Registrar and such entry point provided that the Registrar shall not be permitted to require payment more than [7] days prior to such operation.

14.4 Fees shall be collected according to a schedule issued by the Supervisory Authority which will be included in the International Registry Procedures and which shall state the amount of fees payable for each service.

#### Section 15 RELATIONSHIP WITH REGIONAL AND NATIONAL SYSTEMS

15.1 Implementing or amending any procedures or mechanisms that involve declared national or regional systems shall require agreement between the Registrar and that system or systems and absent agreement cannot be imposed on that system or systems or vice versa.

#### Section 16 LIABILITY AND INSURANCE OF THE REGISTRAR

16.1 For the purposes of Article 28 (1) of the Convention, “loss suffered” means loss or damage resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system, except as provided for by Article 28 of the Convention, but does not include loss or damage resulting from lack of access to the International Registry as a result of measures referred to in Section 3.3 of these Regulations.

16.2 Any claim against the Registrar under Article 28 (1) of the Convention:

- (a) shall be made in writing within the time period applicable under the laws of the State where the International Registry is located;
- (b) should be made, where practicable, following consultations between the claimant and the Registrar; and
- (c) may be pursued by the claimant in accordance with Article 44 of the Convention.

16.3 The International Registry Procedures shall set out details relating to the procedure contemplated by Section 16.2.

16.4 For the purposes of the second sentence of Article XV paragraph 5 of the Protocol, the liability of the Registrar is determined not to exceed 5.1 million SDRs per event of loss. An event of loss comprises all losses suffered as a result of the same error or omission or malfunction insofar as the losses are compensable under Article 28 paragraph 1 of the Convention and as elaborated herein.

16.5 For the purposes of Article XV paragraph 7 of the Protocol, the amount of insurance or financial guarantee shall not be less than 15.3 million SDRs per calendar year and 5.1 million SDRs per event of loss. The latter coverage shall be available in respect of three events of loss per annual insurance period. The Registrar is obliged to maintain such insurance coverage throughout the period for which the insurance is obtained.

[16.6 For the purposes of this Section 16, an error or omission or malfunction relating to more than one item of railway rolling stock registered as part of one group registration shall be considered as one event of loss.]<sup>18</sup>

## Section 17 INTERNATIONAL REGISTRY PROCEDURES

17.1 Subject to the approval of the Supervisory Authority and without prejudice to Article XVI of the Protocol, the Registrar may issue International Registry Procedures addressing items required by these Regulations or otherwise relating to the technical operation and administrative processes of the International Registry but should the Registrar fail to do so the Supervisory Authority may issue International Registry Procedures as it considers appropriate. . Unless specifically prohibited by the Supervisory Authority, in situations where such operation or processes need to be changed urgently, the Registrar shall be entitled to issue interim amendments to the International Registry Procedures in relation to such changes

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<sup>18</sup> This clause to be reviewed to clarify that it is subject to the general principle set out in Reg. 16.4.

which shall be notified to the Supervisory Authority as soon as reasonably practicable thereafter and immediately withdrawn if requested by the Supervisory Authority.

17.2 Without restricting their content, the International Registry Procedures shall set out the technical and administrative processes for:

- (a) effecting, amending and discharging registrations and making and obtaining copies of searches; and
- (b) obtaining the approvals and authorizations required to access the International Registry.

17.3 Subject to the approval of the Supervisory Authority, the Registrar shall issue guidance notes from time to time concerning the implementation of these Regulations and the International Registry Procedures.

## Section 18 PUBLICATION

18.1 The authentic version of these Regulations and the International Registry Procedures shall be published in an official publication of the Supervisory Authority on its website.

18.2 The Registrar shall make an electronic version of the authentic texts referred to in Section 18.1, as may be amended as contemplated by Section 19, available to the public at no cost.

18.3 Copyright in all documents published and information displayed on the website of the International Registry or published by the Supervisory Authority, and the domain of the website of the International Registry shall belong to the Supervisory Authority. The contents of this Section 18.3 shall be prominently displayed by the International Registry on its website.

## Section 19 NOTIFICATIONS

19.1 The Registrar may notify an administrator or a registry user entity, by email to the current email address provided by or for that person, of any matters affecting the International Registry. Any such notification shall be presumed to have been received 24 hours after it was sent.

## Section 20 FINAL PROVISIONS

20.1 Requests for amendments to these Regulations or the International Registry Procedures may be submitted by the Registrar to the Supervisory Authority which shall consider such proposed amendments. In considering any proposed amendments, the Supervisory Authority shall take into consideration the views of rail industry groups. Approval by the Supervisory

Authority, in consultation with the Registrar, shall be required to bring any amendments into effect.

20.2 The present Regulations and the initial International Registry Procedures shall take effect on the date the Protocol enters into force. Any amendments to these Regulations or the International Registry Procedures shall take effect one calendar month after the date of their publication unless otherwise determined by the Supervisory Authority.

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