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STEERING AND REVISIONS COMMITTEE FOR THE CONSIDERATION OF THE  
PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY DRAFT UNIDROIT  
CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT  
ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

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

*(as reviewed by the restricted ad hoc Drafting Group, constituted by the second Joint Session,  
in the light of the Joint Session's second reading, at its meeting held in Rome  
from 25 to 27 November 1999):*

*PRELIMINARY DRAFT PROTOCOL  
ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK*

(as established by a working group organised and chaired by Mr H. Rosen,  
expert consultant on international rail finance matters to the UNIDROIT Study Group for the  
preparation of uniform rules on international interests in mobile equipment, at the invitation of  
the President, at the conclusion of its seventh session, held in London on 19 January 2000)

Rome, February 2000

## INTRODUCTORY NOTE

(by the UNIDROIT Secretariat)

At its 76<sup>th</sup> session, held in Rome from 7 to 12 April 1997, the UNIDROIT Governing Council approved a proposal to split the future UNIDROIT Convention on international interests in mobile equipment into a base Convention setting forth general rules universally applicable to all the different categories of equipment falling within its sphere of application and one or more equipment-specific Protocols containing such additional rules as might be necessary to adapt the general rules of the base Convention to the special financing patterns of specific categories of equipment.

Pursuant to this decision, the President of UNIDROIT on 23 December 1997 invited Mr H. Rosen, as expert consultant on international rail finance matters to the UNIDROIT Study Group for the preparation of uniform rules on international interests in mobile equipment, to organise and chair a working group to prepare a preliminary draft Protocol on matters specific to railway rolling stock (hereinafter referred to as the *R.W.G.*) capable of being submitted to UNIDROIT as early as possible.

The R.W.G. comprised representatives of the manufacturers, financiers and users of railway rolling stock as also of the interested international and national Organisations. It brought together expertise from Australia, Belgium, Canada, France, Germany, Italy, the Netherlands, Norway, South Africa, Sweden, Switzerland, the United Kingdom and the United States of America, as also from the European Company for the Financing of Railroad Rolling Stock (Eurofima), the Intergovernmental Organisation for International Carriage by Rail (hereinafter referred to as *O.T.I.F.*), the International Union of Private Wagons, the International Union of Railways, the Union of European Railway Industries and the Association of American Railroads. Observers of the Governments of South Africa, the United Kingdom and the United States of America also followed its work.

The text of a preliminary draft Protocol to the preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (hereinafter referred to as the *preliminary draft Rail Protocol*) was communicated by Mr Rosen to the President on 4 February 2000, in English-, French- and German-language versions. This text had been finalised by the R.W.G. at the conclusion of its seventh session, held in London on 19 January 2000, in the light of the texts of the preliminary draft Convention on International Interests in Mobile Equipment (UNIDROIT CGE/Int.Int/3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix I) (hereinafter referred to as the *preliminary draft Convention*) and of the preliminary draft Protocol thereto on Matters specific to Aircraft Equipment (UNIDROIT CGE/Int.Int/3-WP/2 – ICAO Ref. LSC/ME/3-WP/2, Appendix II) (hereinafter referred to as the *preliminary draft Aircraft Protocol*) established by a restricted *ad hoc* Drafting Group which had met in Rome from 25 to 27 November 1999.

At its 78<sup>th</sup> session, held in Rome from 12 to 16 April 1999, the UNIDROIT Governing Council had authorised the Secretariat to submit the preliminary draft Rail Protocol to a Steering and Revisions Committee, to be modelled on that established for the finalisation of the preliminary draft Convention and the preliminary draft Aircraft Protocol (C.D. (78) 23, at p. 36). This Committee will be held in Rome on 16 and 17 March 2000 in order to consider

the compatibility and consistency of the preliminary draft Rail Protocol with the preliminary draft Convention. The Committee will comprise representatives of the UNIDROIT Governing Council, of the R.W.G. and of the international and national Organisations which took part in the preparation of the preliminary draft Rail Protocol.

The task of the Steering and Revisions Committee will be to prepare clean texts of the preliminary draft Rail Protocol in English and French capable of being submitted to the UNIDROIT Governing Council at its 79<sup>th</sup> session, to be held in Lisbon from 10 to 13 April 2000, for advice as to the most appropriate follow-up action to be taken. Both the UNIDROIT and the O.T.I.F. Secretariats believe that the preliminary draft Rail Protocol is, subject to the refining work to be done by the Steering and Revisions Committee, ready for transmission to Governments with a view to the convening of a Committee of governmental experts responsible for the preparation of a draft Rail Protocol, to be organised jointly by UNIDROIT and O.T.I.F., under the terms of their joint sponsorship of the intergovernmental consultation process on this text, authorised by the Fourth General Assembly of O.T.I.F. (Athens, 8-11 September 1997).

The preliminary draft Rail Protocol is reproduced hereunder.

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**TEXT OF THE PRELIMINARY DRAFT PROTOCOL TO THE PRELIMINARY  
DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING  
STOCK**

(as established by a working group organised, at the invitation of the President of UNIDROIT,  
by Mr H. Rosen, expert consultant on international rail finance matters to the UNIDROIT Study  
Group for the preparation of uniform rules on international interests in mobile equipment)

**PREAMBLE**

**CHAPTER I                    GENERAL PROVISIONS**

Article I	Defined terms
Article II	Implementation of Convention as regards railway rolling stock
Article III	Sphere of application
Article IV	Implementation of Convention as regards Railway Rolling Stock
Article V	Representative capacities
Article VI	Modification of default remedies
Article VII	Choice of Law
Article VIII	Speedy judicial relief
Article IX	Remedies on Insolvency
Article X	Insolvency assistance

**CHAPTER II                 RAILWAY ROLLING STOCK REGISTRY PROVISIONS**

Article XI	Supervisory Authority and the Registrar
Article XII	First Regulations
Article XIII	Access to Registry
Article XIV	Additional Modifications to Registry provisions
Article XV	International Registration Fee
Article XVI	
Article XVII	Waivers of sovereign immunity

**CHAPTER III                RELATIONSHIP WITH OTHER CONVENTIONS**

Article XVIII	Relationship with the 1988 UNIDROIT Convention on International Financial Leasing
Article XIX	Relationship with other Conventions

**CHAPTER IV**

**[OTHER] FINAL PROVISIONS**

Article XX	Adoption of Protocol
Article XXI	Entry into force
Article XXII	Territorial units
Article XXIII	Territorial application
Article XXIV	Declarations and reservations
Article XXV	Declaration disapplying certain provisions
Article XXVI	Subsequent declarations
Article XXVII	Withdrawal of declarations and reservations
Article XXVIII	Denunciations
Article XXIX	Review of the Protocol
Article XXX	Depositary arrangements

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

(as established by a working group organised, at the invitation of the President of UNIDROIT, by Mr H. Rosen, expert consultant on international rail finance matters to the UNIDROIT Study Group for the preparation of uniform rules on international interests in mobile equipment)

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING it necessary to implement the UNIDROIT Convention on International Interests in Mobile Equipment, as it relates to railway rolling stock, in the light of the purposes set out in the preamble to the Convention

MINDFUL of the need to adapt the Convention to meet the particular requirements of railway rolling stock and, their finance,

HAVE AGREED upon the following provisions relating to railway rolling stock :

**CHAPTER I  
GENERAL PROVISIONS**

Article I  
*Defined terms*

1.- In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.

2.- In this Protocol the following terms are employed with the meanings set out below:

- (a) «ATMF» means Admission technique du matériel ferrovaire ;
- (b) «deregister the railway rolling stock» means in respect of the state of registry the deregistration of the railway rolling stock from any registry maintained for recording ownership or title interests (including, but not limited to, security interests) in that country under such country's laws and regulations ;
- (c) «engines» means such diesel, electric, diesel electric, steam, gas turbine or other propulsion drive traction motor system designed to provide traction power for railway rolling stock ;

(d) «immatriculation» means the technical admission of railway rolling stock in a specific jurisdiction as being permitted to operate and registration to an operator thereof in accordance with applicable rules ;

(e) «national registry authority» means the national authority, or the common mark registering authority maintained in a Contracting State which is the State of registry responsible for the registration and de-registration of railway rolling stock in a national personal property register ;

(f) «national personal property register» means a personal property registry, [in a Contracting State,] whether national or local, in which inter alia, an interest governed by the Convention may be registered ;

(g) «primary jurisdiction» means the Contracting State in which the centre of the debtor's main interests is situated, which for this purpose shall be the place of the debtor's seat or domicile unless proved otherwise ;

(h) «railway rolling stock» means vehicles moveable either directly above (through magnetic levitation), or on flanged wheels on, a railway track being either

(i) self propelled vehicles (i.e. locomotives, whether diesel, diesel electric, steam, gas turbine or electric, and whether its source of power is inside or outside the vehicles);

(ii) tenders, motor cars and snow ploughs ;

(iii) any carriage, wagon or other vehicle for the transportation of

1) people and/or

2) goods including but not limited to tangible goods, mail, parcels,

animals, chemicals, gases, petroleum based products and agricultural produce and other things capable of being transported ;

(iv) light rail passenger locomotives and wagons, whether automatically or manually driven ;

(v) underground, power cars or wagons ;

(vi) tram or trolley cars ;

(vii) auto-racks, containers, swap bodies or other equipment attached to a wagon as a separate item of railway rolling stock

and engines which may be installed on (i) – (vi) and which may be separated from such without requiring any modification or alteration thereto including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other equipment and parts installed or incorporated therein or attached thereto and all operating and technical data manuals, notebooks and other records relating to all or part of any of the foregoing ;

(i) [«regional registry authority» shall mean a national personal property registry or registries approved by the Supervisory Authority for the purposes of acting as a portal into the International Registry] ;

(j) "registrar" means the entity initially designated or subsequently appointed or re-appointed as the Registrar, as the case may be, as specified in Article XI ;

(k) «RIV» means Regolamento Internazionale Veicoli ; and

(l) «RIC» means Regolamento Internazionale Carozze ;

(m) «subordinating party» means a party holding an international interest in railway rolling stock who agrees to subordinate such interest to another party holding an international interest in the same asset and who would otherwise hold such interest subject to the prior rights of the international interest pursuant to Article 27 of the Convention.

## Article II

### *Implementation of Convention as regards railway rolling stock*

1.- The Convention shall apply in relation to railway rolling stock as provided by the terms of this Protocol.

2. – The Convention and this Protocol shall be read and interpreted together as one single instrument and shall be known as the UNIDROIT Convention on International Interests in Mobile Equipment as applied to railway rolling stock.

## Article III

### *Sphere of application*

1. – In Article 4 (b) of the Convention the Convention shall apply if the railway rolling stock has its immatriculation in a Contracting State or is registered in a national personal property register therein but subject thereto, no other «close connection» to a Contracting State shall be applicable for the purposes of that paragraph.

2. – This Protocol shall apply to a purely domestic transaction. <sup>1</sup>

3. – In their relations with each other, the parties may not derogate from or vary any of the provisions of this Protocol except, by agreement in writing, Articles VI(1), VIII or IX(1) - (6).

4. – Any interest registered against railway rolling stock in a national personal property registry shall be subject to an international interest constituted pursuant to the Convention. In the event of a conflict, the appropriate national registry authority shall, on application by an debtor or creditor eliminate any such conflict by correcting entries in the national personal property register.

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<sup>1</sup> This does not follow the Aircraft Working Group (AWG) path and may require further discussion.



#### Article IV

##### *Implementation of Convention as regards Railway Rolling Stock*

A description of railway rolling stock that contains its roadcar number where applicable, its manufacturer's serial number or works number, the name of the manufacturer and its RIV/RIC or manufacturer's model designation or inscription according to ATMF Uniform Rules is necessary and sufficient to identify the object for purposes of sub-paragraph (c) of Article 7 of the Convention.

#### Article V

##### *Representative capacities*

A person may enter into an agreement and, register an international interest in railway rolling stock created or provided for by the agreement in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention to the exclusion of the person or persons represented.

#### Article VI

##### *Modification of default remedies*

1. – In addition to the remedies specified in of Article 8 (1) and in Article 10 and 14 (1) of the Convention, the creditor may

(a) to the extent that the debtor at any time has so agreed and in the circumstances specified in such Articles:

(i) deregister any conflicting security interest in the railway rolling stock from any national personal property register (where appropriate);

(ii) export and physically transfer the railway rolling stock from the territory in which it is situated ; and

(b) apply for a court order authorising or directing any of the above acts and/or obtain an order from the court in the jurisdiction in which the railway rolling stock is physically located, directing immediate delivery of the railway rolling stock to a location within or outside of such jurisdiction where thereafter the creditor can move the railway rolling stock into the international rail network without the need of traction to be provided by the defaulting debtor or any party related to or acting in concert with it.

2. – The creditor may not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

3.– In relation to railway rolling stock the following provisions shall apply :

«1. – Any remedy given by this Convention shall be exercised in a commercially reasonable manner.

2.– An agreement between an debtor and an creditor as to what is commercially reasonable shall, subject to paragraph 3, be conclusive.

3.– An creditor may not take possession or control of railway rolling stock otherwise than by lawful means. For these purposes, the disruption of rail transport shall not in itself be deemed to be unlawful». <sup>2</sup>

4. – For the purposes of Article 8 (3) of the Convention, the chargor and chargee may agree in writing a notice period which shall be deemed to be reasonable if not less than 14 working calendar days.<sup>3</sup>

## Article VII *Choice of Law*

1.– The parties to an agreement and the related transaction documents may agree on the law to govern their contractual rights and obligations, wholly or in part. The agreement and transaction need not bear a relationship to the selected body of national law.

2.– Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or where that State comprises several territorial units, to the domestic law of the designated territorial unit.

## Article VIII *Speedy judicial relief*

1.– Notwithstanding the provisions of Article 14(1), relief shall not be dependent upon the consent of the debtor.

2.– Relief given under Article 14 (1) (a) of the Convention may specifically include directions as to normal maintenance and other necessary repair or modification of the object.

3.– The remedies specified in Article VI (1) (a) – (b) shall be made available by the national registry authority and other administrative authorities, as applicable, in a Contracting State and by the International Registry Authority, where appropriate, no later than [five] calendar days after the judicial relief is authorised or, in the case of judicial relief authorised by a foreign court, approved by courts of that Contracting State.

4. – Article 40 (1) of the Convention shall be amended by adding the following before the words «may exercise» :

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<sup>2</sup> Note deliberate departure from AWG draft.

<sup>3</sup> The AWG has suggested 10 days but this is surely too short.

«or the immatriculation of the railway rolling stock takes place, or the railway rolling stock is registered at a national property registry, in the jurisdiction of that court.»

5.- Judicial relief under Article 14(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings in another [Contracting] State unless its application would contravene an international instrument binding on either Contracting State.<sup>4</sup>

## Article IX *Remedies on Insolvency*

1.- For the purposes of this Article, «insolvency date» means the earliest date on which one of the events specified in paragraph 2 shall have occurred.

2.- This Article applies where :

(a) any insolvency proceedings against the debtor have been commenced by the debtor or another person in a Contracting State which is the primary insolvency jurisdiction of the debtor ; or

(b) the debtor is located in a Contracting State and has declared its intention to suspend, or has actually suspended, payment to creditors generally.

3.- Within a period not exceeding sixty days from the insolvency date (the «cure period») the debtor or an insolvency administrator (being, for the purposes of this Article, a person or body acting in an official and not personal capacity), or a third party reasonably acceptable to the creditor, shall :

(a) cure all defaults, and agree to perform all future obligations under the agreement and related transaction documents ; or

(b) give possession of the railway rolling stock to the creditor save where otherwise previously agreed in writing and otherwise in accordance with, and in the condition specified in the agreement and related transaction documents.

4.- Where possession has been given to the creditor pursuant to the paragraph 3, the remedies specified in Article VI (1) shall be made available by the court, the national registry authority and other administrative authorities, as applicable, no later than [five] calendar days after the date on which the railway rolling stock is returned.

5.- Unless and until the creditor is given possession under paragraph 3 :

(a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement ; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

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<sup>4</sup> Open for discussion.

6.- Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve and maintain it and its value.

7.- The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, during the cure period, it has cured all defaults and has agreed to perform all future obligations under the agreement. A second cure period shall not apply in respect of a default in the performance of such future obligations.

8.- No exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.

9.- No obligations of the debtor under the agreement and related transactions may be modified in the insolvency proceedings without the consent of the creditor.

10.- Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law [to terminate the agreement].

11.- No rights or interests, except for preferred non-consensual rights or interests listed in an instrument deposited under Article 38 of the Convention, shall have priority in the insolvency over registered interests [and no doctrine of reputed ownership shall defeat registered interests].

12.- Nothing in this Article shall operate to modify Article 28 (3) of the Convention to which this Article shall be subject.

13.- Article VI of this Protocol and Article 8 of the Convention as modified by Article VI of this Protocol, shall apply to the exercise of any remedies under this Article.

#### Article X *Insolvency assistance*

The courts of a Contracting State in which railway rolling stock is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX.

## CHAPTER II RAILWAY ROLLING STOCK REGISTRY PROVISIONS

### Article XI

#### *Supervisory Authority and the Registrar*

1.- The Supervisory Authority shall be the Intergovernmental Organisation of Carriage by Rail or such successor organisation or other body as it may appoint. Subject to paragraph 2 below, the Supervisory Authority shall appoint a Registrar.

2.- The initial Registrar hereby designated to operate the International Registry shall, subject to paragraph 4 below, be a newly created, independent special purpose affiliate or division of [Eurofima European Company for the Financing of Railroad Rolling Stock] to be known as the Registry Operating Entity.

3.- The Registry Operating Entity shall be organised in consultation with the Supervisory Authority. Its constitutive documents shall contain provisions which :

- (a) restrict it to acting as Registrar and performing ancillary functions ;
- (b) ensure that it has no greater duties (fiduciary or otherwise) to members of [Eurofima European Company for the Financing of Railroad Rolling Stock] than to any person or entity in the performance of its functions as Registrar. <sup>5</sup>

4.- In relation to the initial Registrar or any successor Registrar, the appointment shall be subject to regulations made by the Supervisory Authority from time to time and to an operations agreement entered into with the Supervisory Authority setting out the basis on which the registry should function.

5.- The initial Registrar shall operate the International Registry for a period of [ten] years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or re-appointed at regular [ten]-year intervals by the Supervisory Authority or for such other period that the Supervisory Authority considers appropriate (but in any event not exceeding ten years)<sup>6</sup>.

6.- Notwithstanding the foregoing, the Supervisory Authority shall be entitled to appoint a replacement Registrar in the event that the Registrar

- (a) shall resign ;
- (b) shall become insolvent or generally be unable to pay its debts ;
- (c) shall be dissolved ; or
- (d) does not materially comply with its obligations herein, under the operations

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<sup>5</sup> In the contract with the Registrar there should be a requirement that it operates under a general duty of fairness and impartiality.]

<sup>6</sup> This allows some discretion bearing in mind the investment in training and software which will be required by the Registrar.

agreement or under regulations set out by the Supervisory Authority.

7.- The Registrar shall be entitled to contract out its duties to a third party «service provider» subject to the identity of the service provider [and to the conditions under which the service provider carries out duties on behalf of the Registrar] being accepted by the Supervisory Authority by a declaration in writing prior to such contracting out. Contracting out of its duties shall not relieve the Registrar of its obligations hereunder or under the regulations.

## Article XII *First Regulations*

The initial regulations shall be issued no later than the date that is [three months] prior to the entry into force of this Protocol. Prior to issuing regulations, the Supervisory Authority shall publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon.

## Article XIII *Access to Registry*

1.- The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.<sup>7</sup>

[2.- The Supervisory Authority shall designate regional registry authorities as it considers necessary from time to time and may set out such qualification requirements as it considers appropriate for a national personal property registry or other registry as a regional registry authority. Prior to any designation, the proposed regional registry authority, the Registrar and the Supervisory Authority shall enter into an operations agreement which shall, inter alia, provide for the delegation of the Registrar's duties in relation to a defined geographical area and shall otherwise be subject to the provisions of Article XI(4) and (6) herein.

3.- Notwithstanding the foregoing, any regional registry authority shall be operated and administered on a twenty-four hour basis, shall ensure that registration through it shall automatically result in a registration at the International Registry and, if it comprises more than one registry facility, shall provide equal access and full co-ordination between the respective facilities.

4.- Any regional registry authority shall be the exclusive access to the International Registry in relation to the geographical area covered by it.

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<sup>7</sup> Dependent on whether satellite registration facilities are established.

5.- At the time of ratification, acceptance, approval of, or accession to this Protocol, a Contracting State may make its ratification, acceptance, approval of, or accession conditional on the designation of a regional registry authority by the Supervisory Authority.]

#### Article XIV

##### *Additional Modifications to Registry provisions*

1.- For purposes of Article 19 (6) of the Convention, the search criterion for railway rolling stock shall be its or their roadcar number where applicable, its or their manufacturer's name and serial or works number, its or their type and its or their RIV/RIC or manufacturer model designation or inscription according to ATMF Uniform Rules, as supplemented to ensure uniqueness. Such supplemental information shall be specified in the Regulations.<sup>8</sup>

2.- For purposes of Article 23 of the Convention, the categories of preferred non-consensual creditors shall be searchable by the name of the declaring Contracting State.

3.- For the purposes of Article 25 (2) of the Convention, and in the circumstances there described, the holder of a registered prospective international security interest or a registered prospective assignment of an international security interest shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.

4.- For purposes of Article 21 of the Convention, registration of an international security interest shall, unless discharged or unless otherwise agreed, remain effective for an indefinite period of time.

5.- For the purposes of Article 20 (2) of the Convention :

(a) any subordination shall comply with the provisions of Article 7 (a) – (c) of the Convention ; and

(b) Article 25 (1) of the Convention shall also apply in respect of a subordinating party *mutatis mutandis* as if it was an debtor and the registration related to the subordination of an interest.

6.- The regulations shall prescribe the manner in which the following provisions of the Convention shall apply :

Article 16 (2) (d) ;

Article 17 ;

Article 21 ;

Article 22 (1) and (2) ;

Article 23 ; and

Article 24.

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<sup>8</sup> Review Data Protection Issues.

7.- The insurance referred to in Article 26 bis (3) shall be [full insurance].<sup>9</sup>

Article XV  
*International Registry Fee*

1.- The Registrar shall, subject to the approval of the Supervisory Authority, set and may from time to time amend :

(a) the fees to be paid on filing of an international security interest with the International Registry ;

(b) the fee schedule to be paid by the users of the International Registry or a regional registry authority ; and

[(c) the annual fees to be paid as compensation for the operation and administration of the International Registry and the registration facilities.]

2.- The fee schedule referred to in sub-paragraph (a) of the preceding paragraph shall be determined so as to recover the costs of operating the International Registry or a regional registry authority as appropriate and, in the case of the initial fee schedule, of designing and implementing the International Registry system over ten years [provided that nothing herein shall preclude the service provider operating for profit].<sup>10</sup>

3.- The fees and amounts referred to in paragraph 1 of this Article XV may be amended by the registrar taking into account changes economic conditions provided that any increase of the fees and amounts by more than [ten] per cent shall require the approval of the Supervisory Authority.

Article XVI

[intentionally left blank]

Article XVII

*Waivers of sovereign immunity*

1.- Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Articles 40 or 41 of the Convention or relating to enforcement of rights and interests relating to railway rolling stock under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

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<sup>9</sup> The term «full insurance» will need to be defined more precisely.

<sup>10</sup> A proposed initial fee schedule should be developed and transmitted to governments in the information package accompanying this Protocol.



2.- A waiver under the preceding paragraph must be in a[n authenticated] written form that contains a description of the railway rolling stock in the terms as specified in Article IV of this Protocol.

### **CHAPTER III**

#### **RELATIONSHIP WITH OTHER CONVENTIONS**

##### Article XVIII

##### *Relationship with the 1988 UNIDROIT Convention on International Financial Leasing*

The Convention shall, for Contracting States which are parties to it, in the event of any conflict, take precedence over the UNIDROIT Convention on International Financial Leasing of 1988 as relates to railway rolling stock to the extent that convention is in force among them and that convention's terms are inconsistent with the provisions of the Convention.

##### Article XIX

##### *Relationship with other Conventions*

The Convention shall supersede :

(a) the Rome Convention on the Law Applicable to Contractual Obligations 1980; and

(b) the Inter-American Convention on the Law Applicable to International Contracts 1994

to the extent that such conventions are in force and are inconsistent with the provisions of the Convention.

### **CHAPTER IV**

#### **[OTHER] FINAL PROVISIONS**

##### Article XX

##### *Adoption of Protocol*

1.- This Protocol is open for signature at the concluding meeting of the Diplomatic Conference for the Adoption of the Draft Protocol to the UNIDROIT Convention on International Interests in Mobile Equipment on Matters specific to railway rolling stock and will remain open for signature by all Contracting States at [...] until [...].

2.- This Protocol is subject to ratification, acceptance or approval of Contracting States which have signed it.

3.- This Protocol is open for accession by all States which are not signatory Contracting States as from the date it is open for signature.

4.- Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the depositary.<sup>11</sup>

#### Article XXI

##### *Entry into force*

1.- This Protocol enters into force on the first day of the month following the expiration of six months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.

2.- For each Contracting State that ratifies, accepts, approves or accedes to this Protocol after the deposit of the [third] instrument of ratification, acceptance, approval or accession, this Protocol enters into force in respect of that Contracting State on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

#### Article XXII

##### *Territorial units*

1.- If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2.- These declarations are to be notified to the depositary and are to state expressly the territorial units to which this Protocol extends.

3.- If a Contracting State makes no declaration under paragraph 1, this Protocol is to extend to all territorial units of that Contracting State.

#### Article XXIII

##### *Temporal application*

This Protocol applies in a Contracting State to rights and interests in railway rolling stock created or arising on or after the date on which this Protocol enters into force in that Contracting State.

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<sup>11</sup> It is recommended that a resolution be adopted at, and contained in the Final Acts and Proceedings of, the Diplomatic Conference, contemplating the use by Contracting States of a model ratification instrument that would standardise, *inter alia*, the format for the making and/or withdrawing of declarations and reservations.

Article XXIV  
*Declarations and reservations*

No declarations or reservations are permitted except those expressly authorised in this Protocol.

Article XXV  
*Declarations disapplying certain provisions*

1.- A Contracting State at the time of ratification, acceptance, approval of, or accession to this Protocol :

(a) may declare that it will not apply any one or more of the provisions of Articles VII to IX of this Protocol ;

(b) may declare that it will impose other conditions on the application of Articles VII [, V(1) and IX as specified in its declaration].

2.- The courts of Contracting States shall apply Article IX in conformity with the declaration made by the State which is the primary jurisdiction.

Article XXVI  
*Subsequent declarations*

1.- A Contracting State may make a subsequent declaration at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2.- Any such subsequent declaration shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument in which such declaration is made with the depositary. Where a longer period for that declaration to take effect is specified in the instrument in which such declaration is made, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3.- Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of that subsequent declaration.

Article XXVII  
*Withdrawal of declarations and reservations*

Any Contracting State which makes a declaration under, or a reservation to this Protocol may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of [three] months after the date of the receipt of the notification by the depositary.

Article XXVIII  
*Denunciations*

1.- This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State, by the deposit of an instrument to that effect with the depositary.

2.- Any such denunciation shall take effect on the first day of the month following the expiration of [twelve] months after the date of deposit of the instrument of denunciation with the depositary. Where a longer period for that denunciation to take effect is specified in the instrument of denunciation, it shall take effect upon the expiration of such longer period after its deposit with the depositary.

3.- Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of that denunciation.

Article XXIX  
*Review of the Protocol*

At the request of not less than twenty-five per cent of the Contracting States, conferences of the Contracting States shall be convened from time to time to consider :

(a) the practical operation of this Protocol and its effectiveness in facilitating the asset-based financing and leasing of railway rolling stock ;

(b) the judicial interpretation given to the terms of the Convention, this Protocol and the regulations ;

(c) the functioning of the international registration system and the performance of the Registrar and its oversight by the Supervisory Authority ; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

Article XXX  
*Depositary arrangements*

1.- This Protocol shall be deposited with the [Supervisory Authority].

2.- The [Supervisory Authority] shall :

(a) inform all Contracting States which have signed or acceded to this Protocol and [...] of :

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof ;

(ii) each declaration made in accordance with this Protocol ;

- (iii) the withdrawal of any declaration ;
  - (iv) the date of entry into force of this Protocol ; and
  - (v) the deposit of an instrument of denunciation of this Protocol together with the date of its deposit and the date on which it takes effect ;
- (b) transmit certified true copies of this Protocol to all signatory Contracting States, to all Contracting States acceding to the Protocol and to [...] ;
  - (c) provide the Supervisory Authority with the contents of each instrument of ratification, acceptance, approval or accession so that the information contained therein may be made publicly accessible ; and
  - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Protocol.