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**REPORT**

*(prepared by the UNIDROIT Secretariat)*

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## REPORT

### **Agenda Item 1: Opening of the session and election of the officers**

1. Ms Anna Veneziano, Secretary-General a.i. of UNIDROIT, opened the second session of the Committee of Governmental Experts (hereinafter the “Committee”) for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment (hereinafter the “MAC Protocol”) at the Headquarters of the Food and Agriculture Organisation of the United Nations in Rome, on 2 October 2017 at 10.13 a.m. She emphasised the importance of the Cape Town Convention (hereinafter the “Convention”) in facilitating asset-based financing in countries where it is not readily available. She thanked the Intersessional Working Group on Registration Criteria and Transparency (IWGRC) for completing its work over the preceding six months, and also thanked all other parties that participated in intersessional work. She thanked the former UNIDROIT Secretary-General Mr José Angelo Estrella Faria for his strong support and guidance in the development of the MAC Protocol over preceding years. The Secretary-General a.i. noted that the progress accomplished had been very substantial, which raised the question whether the next step should be the convening of a Diplomatic Conference. She concluded by noting that the MAC Protocol project had great promise, which was reflected by the continued interest from the private sector and the increased number of delegations that had registered to attend the session.

2. *The Secretary-General a.i. invited Mr Dominique D’Allaire (Canada) to resume his position as the Chair of the Committee.*

3. The Chair opened the floor for nominations for the role of Vice Chair for the Africa region. One delegation nominated Mr Hazem Fawzy from the delegation of Egypt. Another delegation supported the nomination. *The Committee confirmed Mr Hazem Fawzy as Vice Chair for the Africa region.*

4. The Chair opened the floor for nominations for the role of Vice Chair for the Asia region. One delegation nominated Mr Liu Keyi from the delegation of the People’s Republic of China. *The Committee confirmed Mr Liu Keyi as Vice Chair for the Asia region.*

5. *The Chair invited Sir Roy Goode (United Kingdom) to resume his position as Reporter.*

6. 120 representatives from 51 Governments (33 UNIDROIT member States and 18 non-member States), five regional and intergovernmental organisations and five international non-governmental organisations registered to attend the session (the List of participants is reproduced at Appendix V of this report).

### **Agenda Item 2: Adoption of the annotated draft agenda and organisation of the session**

7. The Chair introduced the draft agenda (UNIDROIT Study 72K – CGE2 – Doc. 1). He suggested that in addition to the consideration of the report by the IWGRC, all intersessional work undertaken by delegations and observers should be considered under Item 3 of the draft agenda.

8. *The draft agenda (UNIDROIT Study 72K – CGE2 – Doc. 1) was adopted (the Agenda and Order of Business is reproduced at Appendix IV of this report).*

**Agenda Item 3: Report on intersessional work**

9. The Chair noted that the IWGRC had been given two mandates by the Committee during its first session: (i) consideration of the criteria required for registration of equipment in the International Registry under Article XVI of the preliminary draft MAC Protocol (hereinafter the “Protocol”), and (ii) transparency with regards to the applicability and use of the Harmonised System (hereinafter “HS”) codes for defining the scope of the MAC Protocol.

10. The Chair invited the Chair of the IWGRC to present his report to the Committee.

11. The Chair of the IWGRC began by thanking the 10 delegations that had participated in the IWGRC. He further thanked the Secretariat for providing assistance to the IWGRC. He noted that the formal report of the IWGRC (UNIDROIT 2017 - Study 72K - CGE2 - Doc. 11) had been made available to delegations on the UNIDROIT website.

12. He explained that the IWGRC had collectively felt that the registration criteria issue should be considered in detail, whereas the transparency issue could be addressed by the UNIDROIT Secretariat and individual IWGRC members. He elaborated upon why it was important to have defined registration criteria in the MAC Protocol, and that such criteria should be clear and unambiguous to allow assets to be easily searchable in the international registry. He noted that MAC equipment was not subject to one universal system of identification. However, most manufacturers had a practice of putting alphanumeric serial numbers on their equipment. Many manufacturers also followed the guidelines of the International Organisation for Standardisation (ISO) when serialising their equipment.

13. The Chair of the IWGRC explained that the conclusion reached by the IWGRC was that the primary registration criterion in the MAC Protocol should be the manufacturer-issued serial number, as supplemented by additional information to ensure uniqueness (to be set out in the regulations of the International Registry). He also explained alternative solutions that the IWGRC had ultimately rejected in coming to their recommendation. He concluded that the IWGRC had also prepared drafting suggestions to achieve their policy goal, which were set out in their written report.

14. One delegation queried the circumstances under which a registration would be rendered invalid. The Chair of the IWGRC noted that a registration would be rendered ineffective where there were errors in the indication of the manufacturer’s serial number or where the additional information was seriously misleading. As an example, he noted that where an asset was registered under a correct serial number but provided incorrect additional information which clearly referred to a different asset, the registration would be seriously misleading.

15. The Chair of the session thanked the Chair of the IWGRC for his presentation and further thanked all participants in the group for their contributions.

16. *The Committee accepted the report of the IWGRC. The drafting suggestions made by the IWGRC were referred to the Drafting Committee for further consideration.*

17. An observer that had participated in the IWGRC presented on the transparency issue. The observer described the operation of the HS and explained how it was used to delineate the scope of the MAC Protocol. It further explained the HS rules of interpretation and the process for revising the HS Codes.

18. A delegation asked why the same HS codes were contained in different Annexes to the MAC Protocol. An observer responded that equipment that was used in more than one of the agricultural, construction and mining sectors had been listed in more than one Annex.

19. Another delegation queried how the HS codes would be updated in the Protocol. The Chair responded that the procedure for amending the HS codes in the Annexes to the Protocol was located in Article XXXII.

20. A representative of the Secretariat presented on the development of the MAC Protocol project. He introduced the documentation that had been prepared for the session. In particular, he noted that on request by the Committee at its first session, the Secretariat had commissioned a group of independent economists to prepare an economic impact assessment for the MAC Protocol.

21. The Chair then invited a group of observers to present the MAC Protocol preliminary economic impact assessment. The observers reviewed the initial economic analysis conducted by the Center for the Economic Analysis for Law (CEAL) in 2013, and concluded that it had overstated the projected economic benefits of the Protocol. The observers explained their analytical methodology in refining the assumptions made in the CEAL assessment. They stated that after replicating the CEAL analysis with more realistic assumptions, the estimated annual global benefit of the MAC Protocol was USD 32 – 48 billion for developing countries and USD 36 - 50 billion for developed countries. The observers cautioned that their findings were only preliminary, and that a final economic assessment would be delivered towards the end of 2017.

22. The Chair opened the floor for questions and comments regarding the preliminary economic assessment of the MAC Protocol.

23. One delegation queried whether practical realities in developing countries had been considered in conducting the preliminary economic assessment. The same delegation also questioned whether the impact on individuals had been taken into account. The observers responded that the problems found in many developing countries with respect to access to finance were due to domestic political and/or economic factors beyond the control and scope of the MAC Protocol. They explained, however, that in certain circumstances the MAC Protocol would allow for easier access to finance provided by international financial institutions and foreign financial institutions which would lead to the improvement of local economies. They also noted that the impact on local communities was considered in the preliminary economic assessment, and that the MAC Protocol would be expected to have a positive impact on local markets, job creation, wages and economic conditions in developing countries.

24. Several delegations enquired about the methodology used in assessing the economic impact of the Protocol. The observers explained that for low income countries the assessment was primarily based on the valuation of the increase in production output that would be created by the acquisition of new MAC equipment.

25. One delegation enquired whether the economic assessment should take into account the impact of the MAC Protocol on local manufacturers of MAC equipment. It expressed concern that with greater access to international markets for large multinational manufacturers, the local manufacturers could lose market share of MAC equipment. The observers noted that better access to international finance would not necessarily lead to higher importation of MAC equipment, as local users of MAC equipment could use international finance to purchase domestically-produced equipment. The observers added that in terms of overall economic impact, it was anticipated that the potentially negative impact on local manufacturers would be less than the overall benefit of the MAC Protocol for a given jurisdiction, including consumers.

26. One delegation enquired whether the economic benefits provided by the MAC Protocol could be achieved through domestic law reforms of secured transactions law. According to the observers, there would be certain “network benefits” created by international law reform that would not be

replicated through complementary domestic law reform. Further, they noted that international law reform acted as a catalyst for national law reform.

27. Another delegation questioned whether the final economic assessment would take into account the various insolvency alternatives available to States under the Protocol. The observers noted that it would base its conclusions on the assumption that most States would opt for Alternative A, as consistent with the almost uniform practice under the Aircraft Protocol.

28. A delegation queried whether declarations under the Cape Town Convention disapplying it to domestic transactions were considered in the preliminary economic assessment. The observers noted that it was an issue that would be given further consideration in the final economic assessment.

29. One delegation queried whether the economic assessment considered environmental sustainability within the MAC industries. The Secretariat clarified that Article XXXII of the MAC Protocol contained a mechanism that would enable MAC equipment based on new technology, including environmentally friendly technology, to be added to the scope of the Protocol.

30. One delegation questioned whether the MAC Protocol would create a parallel reduction in the availability of financing that was based upon security over immovable property, and whether such effects were considered in the preliminary economic analysis. The observers noted that the issue would be given further consideration.

31. *The Committee noted the preliminary economic assessment of the MAC Protocol.*

32. The Chair opened the floor for any other comments on intersessional work.

33. A representative of the MAC Working Group explained the intersessional work undertaken by the private sector. He noted that there had been two multilateral private sector meetings in the intersessional period to ensure that the MAC Protocol was consistent with the expectations of manufacturers, financiers and end-users. He noted that the private sector had financially supported the preparation of the preliminary economic assessment. He encouraged all delegations to invite their domestic private domestic stakeholders to join the MAC Working Group to ensure a plurality of views would be taken into account.

#### **Agenda Item 4: Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment**

34. The Chair invited the Reporter to present the MAC Protocol. The Reporter introduced each Article of the Protocol, with a particular focus on Articles I, II, VII, X and XXXII. He concluded by differentiating between the meaning of the terms “Contracting States” and “States party to the Convention”.

35. One delegation queried what obligations the MAC Protocol would place on Contracting States. The Chair explained that Contracting States would normally be required to make reforms to their domestic law to give effect to the Articles of the Protocol. The Secretary-General a.i. further explained that in its capacity as Depositary, UNIDROIT would be able to assist Contracting States in their implementation of the MAC Protocol.

36. The same delegation further queried whether Arabic would be an official language of the MAC Protocol. The Secretary-General a.i. responded that as consistent with the working languages of

UNIDROIT, the preliminary draft MAC Protocol had been prepared in English and French, however further languages could be contemplated at the Diplomatic Conference.

37. The Chair thanked the Reporter for his summary of the operation of the MAC Protocol and then opened the floor for discussion of the text of the Protocol.

#### Title

38. One delegation noted that the title of the Protocol listed the industries it applied to in alphabetical order (the “AMC Protocol”), despite the Protocol widely being known as the “MAC Protocol”. The delegation proposed that the Protocol be renamed the “Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment”. It noted that this would prevent confusion in the future.

39. The Secretariat noted that MAC was an acronym commonly used in the digital sphere in reference to “Medium Access Control Protocol”. The Secretariat sought clarification on whether the proposal by the delegation would also entail a reorder of the Annexes to the Protocol, which were also in alphabetical order.

40. Several delegations expressed their support for changing the official title of the MAC Protocol. One delegation raised an objection and proposed the alphabetical order be kept and the acronym be changed to “ACM” as opposed to “MAC”.

41. Later in the session, the Chair reopened the discussion on the title of the Protocol. One delegation reintroduced its proposal to rearrange the order of the words “Agricultural, Construction and Mining” in the title and throughout the text to “Mining, Agricultural and Construction”, in order to formally reflect the acronym “MAC”, rather than “ACM”. Several delegations supported the proposal.

42. *The Committee decided that the words “Agricultural, Construction and Mining” in the title and throughout the text of the Protocol should be reordered to “Mining, Agricultural and Construction”. The Committee further decided that Annexes 1, 2 and 3 should also be reordered to reflect the change.*

#### Preamble

43. Several delegations suggested that the reference to developing countries should be removed from paragraph 5 of the preamble, on the basis that the Protocol would be globally beneficial.

44. *The Committee agreed to remove the reference to developing countries from the preamble.*

45. One delegation suggested merging paragraphs 2 and 5 as they covered the same ideas. This suggestion was not adopted after further discussion.

#### Article I

46. One delegation proposed adding a definition for the term “equipment” which would encompass the phrase “mining, agricultural or construction equipment” throughout the Protocol. A number of delegations voiced support for this proposal as it simplified the drafting of the Protocol. Other delegations opposed it, on the basis that the phrase “agriculture, construction or mining

equipment” might have different meanings in different contexts, and in certain circumstances the Protocol instead used the phrase “agriculture, construction and mining equipment”.

47. Different views were expressed by delegations as to whether the new definition of “equipment” would be an appropriate and useful mechanism for streamlining the text of the Protocol.

48. *The Committee referred the matter to the Drafting Committee, with instructions to consider (i) whether a definition of “equipment” should be added to streamline the text, and (ii) whether the terms “agricultural, construction or mining equipment” and “agricultural, construction and mining equipment” were used consistently and appropriately throughout the Protocol.*

49. *The Committee adopted the definitions of “agricultural equipment”, “construction equipment”, and “mining equipment” as proposed in Article I(2)(a),(b) and (h) of the Protocol.*

50. One delegation proposed that “judicial interpretation” be defined in Article I of the Protocol, as it was used in Article XXXII(3). The delegation explained that “judicial interpretation” was a concept which was treated differently across different jurisdictions.

51. One delegation noted that while it would be beneficial for Contracting States to have a more precise definition of “judicial interpretation”, it suggested the matter be dealt with in the Official Commentary. Another delegation proposed that Article XXXII(2)(b) should refer to “interpretation” rather than “judicial interpretation”, as the interpretation of the text more generally was at issue and not only in relation to judicial interpretation.

52. *The Committee agreed that the issue of “judicial interpretation” and “interpretation” should be dealt with in the Official Commentary to the Protocol.*

53. One delegation proposed the inclusion of “natural or legal” within the definition of “guarantor” in Article I(2)(d). This was opposed by another delegation which noted that such an inclusion would exclude unincorporated entities and would lead to the exclusion of certain parties from the definition of “guarantor”.

54. One delegation noted that while they understood the policy behind the proposal, the corresponding definitions in the previous Protocols to the Cape Town Convention did not address the issue, and suggested that the MAC Protocol should adopt the same approach. Other delegations agreed with this proposition.

55. One delegation restated that the addition of the phrase “natural and legal” before the word “person” would exclude unincorporated associations which often conducted businesses in the MAC sectors. Other delegations added that the proposal would also exclude several other legal relationships commonly used in their jurisdictions.

56. The Reporter stated that the Official Commentaries to the previous Protocols explained that the word “person” should be interpreted to apply to all types of entities.

57. *The Chair concluded that there was consensus that no change should be made to the Protocol, and that the issue should be addressed in the Official Commentary. The Committee adopted the definitions of “guarantee contract” and “guarantor” as proposed in Article I(2)(c) and (d) the Protocol.*

58. *The Committee adopted the definition of “immovable-associated equipment as proposed in Article I(2)(f) of the MAC Protocol.*

59. *The Committee adopted the definition of "insolvency-related event" as proposed in Article I(2)(g) of the Protocol.*

60. *The Committee adopted the definition of "primary insolvency jurisdiction" as proposed in Article I(2)(i) of the Protocol.*

## Article II

61. One delegation proposed that an additional sentence be added to Article II(3) that reflected the substance of paragraph 64 of the Legal Analysis (UNIDROIT - Study 72K - CGE2 - Doc. 4), Paragraph 64. It was suggested that the following text be added as a separate sentence at the end of Article II(3): "in the event a Contracting State opts out of a particular annex where a type of equipment is included in that annex and another annex, the type of equipment would continue to be covered by the MAC Protocol in that Contracting State regardless of its final use".

62. It was noted that the intention of the proposed additional text was to provide an explicit reference to an underlying policy that was already implicitly understood to apply under the Protocol.

63. Several delegations noted that the additional text reflected their understanding of an implicit rule in the Protocol, and stated their support for its express inclusion in Article II(3).

64. *The Chair noted that the proposal for the addition of text to Article II(3) had been accepted and referred the matter to the Drafting Committee.*

65. In its Interim Report to the Committee (the Interim Report of the Drafting Committee is reproduced at Appendix I of this report), the co-Chairs of the Drafting Committee explained that the Drafting Committee had prepared additional text for Article II(3).

66. Several delegations noted that the proposed text achieved the policy goal of ensuring that the actual or intended use of MAC equipment would not affect the ability of a party to create an international interest in the MAC equipment or affect an existing international interest in the equipment.

67. One delegation suggested that there might be an inaccuracy in the French text of the proposed additional text in Article II.

68. *The Committee adopted the changes proposed to Article II of the MAC Protocol. The Chair referred consideration of the consistency of the French text to the Drafting Committee.*

## Article III

69. *The Committee adopted Article III as proposed in the Protocol.*

## Article IV

70. *The Committee adopted Article IV as proposed in the Protocol.*



### Article V

71. Two delegations proposed minor drafting changes to Article V. One delegation referred to their proposal in Study 72K – CGE2 – Doc. 14 that the word “the” in the second line of Article V(1) (appearing after the words “description of”) should be deleted as not all of the equipment would necessarily be dealt with at the same time. Another delegation suggested that the phrase “agricultural, construction and mining equipment” in Article V(2) should be replaced with “agricultural, construction or mining equipment”.

72. *The Committee adopted Article V in substance and referred both proposals to the Drafting Committee.*

### Article VI

73. One delegation queried whether there was an inconsistency in Paragraph 2 of the French text of Article VI. *The Chair referred the matter to the Drafting Committee.*

74. *The Committee adopted Article VI in substance.*

### Article VII

75. The Chair noted that Article VII had been the subject of significant debate during the Committee’s first session. He invited all delegations who had made written submissions with proposed changes to Article VII to present them to the Committee.

### Alternative A

76. One delegation presented their proposal as outlined in Study 72K – CGE2 - Doc. 10. It noted that the proposal in relation to Attachment A had the following key goals: (i) to limit the rule described to instances where there would not be irreparable physical damage to the immovable associated property resulting from removal of the equipment, (ii) to ensure that domestic law that deemed equipment to no longer be considered a movable asset would not affect an international interest in immovable associated equipment and (iii) to explicitly state that international interests in MAC equipment could still be created after it became associated with an immovable asset. Another delegation noted their support for the changes suggested, subject to amendments provided in Study 72K – CGE2 - Doc. 14. In particular, it was noted that the test of irreparable physical damage should apply both to damage to the immovable property and the equipment.

77. Several delegations expressed their support for the policy rationale behind the proposal in Study 72K – CGE2 - Doc. 10. However, a number of delegations raised concerns regarding the interpretation of “irreparable damage”. Some delegations proposed that the term should be understood to refer to circumstances under which the removal of the equipment would cause damage to the equipment and/or the immovable to the extent that the equipment’s removal would be “economically unfeasible”. Another delegation proposed the use of the term “constructive loss”, which the Reporter noted was a term commonly used in the satellite insurance industry. One delegation proposed that “irreparable damage” be replaced with an obligation on the party removing the equipment to compensate all damages incurred as part of the act of repossession of immovable associated equipment. Yet another delegation proposed the use of “without deterioration” instead of “irreparable loss”. Another delegation proposed the term “reasonableness” be added to the text.

78. Various views were discussed on whether “irreparable physical damage” was an appropriate standard for the limitation of the application of Alternative A. One delegation suggested that damage, no matter how severe, could always be repaired. Another delegation suggested that damage could be irreparable but not severe, such as a scratch on a marble column. Several other drafting alternatives were suggested, including “irreparable harm” and “deterioration”. One delegation proposed the definition “irreparable physical damage is damage that renders the equipment definitively out of order”. Another delegation suggested the test should be “substantial damage” or “damage which would impair the normal use of the immovable property”. One delegation suggested that the concept of “reasonableness” be used. The terms “anti-economic” and “burdensome” were also proposed.

79. One delegation noted that Article XVII(3) of the Space Protocol dealt with the physical removal of a space asset which was attached to another space asset in the following way: “a creditor may not enforce an international interest in a space asset that is physically linked with another space asset so as to impair or interfere with the operation of the other space asset”.

80. A number of delegations suggested that the standard should be whether the removal of the equipment would cause damage either to the equipment or to the immovable property to the extent that it would render its removal economically unfeasible. It was suggested that this standard could be reflected by the phrase “unreasonable physical damage”.

81. Other delegations suggested that the Protocol should provide a compensation mechanism for owners of the immovable for any physical damage caused by the removal of the MAC equipment. A number of delegations voiced their opposition to this proposal, noting that a system of compensation for damage caused by removal was beyond the scope of the Protocol.

82. One delegation noted that the consideration of irreparable physical damage under Alternative A would be a similar test to the consideration of loss of individual legal identity under Alternative B. A number of delegations distinguished the tests by stating that the irreparable physical damage test under Alternative A would be a question of fact, whereas the loss of individual legal identity test under Alternative B would be a question of law.

83. *The Chair summarised the discussion, and stated that there was consensus that the application of Alternative A should be limited to circumstances where the physical removal of the equipment would have a detrimental effect on the immovable. The Chair requested that the Drafting Committee change the proposed irreparable damage test to one based on an objective element, such as unreasonable damage, or reasonable conduct in a commercial context. The Committee agreed that it should be a factual test rather than a legal test. The matter was referred to the Drafting Committee for further consideration.*

84. In its Interim Report to the Committee (Appendix I), the Drafting Committee prepared new text to reflect the Committee’s decision in relation to Article VII Alternative A. The co-Chairs explained that the new proposed drafting of Alternative A maintained the same legal effect as the existing drafting of Alternative A, however it achieved the same legal effect in a much clearer and simpler manner. The co-Chairs noted that as instructed by the Committee, the Drafting Committee had removed the language “irreparable physical damage”, however instead of proposing a replacement term, an empty set of square brackets had been inserted in the proposed Article. The co-Chairs explained that the Drafting Committee had decided not to prepare any text that pertained to be a qualifier for the application of Alternative A. They suggested that the Secretariat should be requested to conduct research on the best possible formulation of the language that would be widely acceptable. Secretariat noted that it would undertake research on the issue for future consideration by negotiating States, and that it might present several alternative options if such an approach was

appropriate. The Chair emphasised that the qualifier language should consider concepts such as “commercial reasonableness” and “economic viability”.

85. Several delegations complimented the simplified language in the proposed text.

86. One delegation suggested that the Official Commentary should clarify that compensation mechanisms for damage caused by the removal of MAC equipment was outside the scope of the MAC Protocol and should be considered under the relevant domestic law.

87. *The Committee approved the proposed changes to Article VII Alternative A. The Committee requested that the Secretariat further consider how the qualifier limiting the application of Alternative A should be formulated.*

#### Alternative B

88. A delegation presented their proposal to add the words “in accordance with the law of the State where the immovable property is situated” after the words “individual legal identity” to Paragraph 4 of Alternative B.

89. *The Committee accepted the proposal relating to Alternative B Paragraph 4 and instructed the Drafting Committee to refine its wording.*

#### Alternative C

90. The Reporter recommended adding the words “any laws of the State where the immovable property is situated” to Alternative C to replace the phrase “any domestic laws”. He suggested that such an addition would add clarity to the meaning of the text.

91. *The Committee accepted the change to Alternative C proposed by the Reporter and referred the matter to the Drafting Committee.*

#### Article VIII

92. One delegation made reference to their comments on Article VIII(5) in Study 72K – CGE2 - Doc. 10. It noted that the obligations imposed on administrative authorities within States by Article VIII(5) were unclear. The delegation suggested that in the absence of clarity in relation to the obligations imposed and the types of administrative authorities that would be affected by Article VIII(5), that the paragraph should be deleted.

93. The Reporter noted that the assistance of administrative authorities in the physical transfer and export of equipment was important in the Aircraft Protocol context. He explained that administrative authorities performed a crucial role in the execution of Irrevocable Deregistration and Export Request Authorisations (IDERA) under the Aircraft Protocol. He concluded that there might not be the same urgent need to impose a similar obligation on States in the MAC Protocol context.

94. The Secretariat explained that further research had been undertaken intersessionally on the meaning of “administrative authorities”, which was contained at paragraphs 138 – 147 of the Legal Analysis in Study 72K – CGE2 – Doc. 4.

95. Several delegations noted that Article VIII(5) imposed a particularly high burden in Federal States. It was also noted that exportation would be a more commonly exercised remedy in the aircraft sector than in the MAC sectors. One delegation suggested that Article VIII(5) was unnecessary because administrative authorities would provide assistance to creditors in the normal course of performing their governmental functions.

96. One delegation noted the distinction between State authorities and administrative authorities and suggested that the Committee consider using the term “State authorities” instead. Another delegation proposed using the term “public authorities”. Other delegations responded that retaining the term “administrative authorities” was desirable insofar as it made it clear that judicial authorities fell outside the scope of the Article.

97. A number of delegations opposed the deletion on the basis that the assistance of administrative authorities in the physical transfer and export of equipment was required in both the Aircraft and Luxembourg Rail Protocols. It was suggested that the removal of the paragraph would have the implication that administrative authorities of the Contracting States were not required to assist creditors under the MAC Protocol to the same extent they were required to assist creditors under the earlier Protocols.

98. The Chair noted that no consensus had been reached on the matter, and suggested that Article VIII(5) should be put in square brackets, to allow States to consider it further and to submit written comments for future consideration.

99. At a later stage, two proposals were submitted by different delegations in relation to Article VIII(5) (Study 72K – CGE2 – W.P. 9 and Study 72K – CGE2 – W.P. 10). The Chair invited the delegation which drafted W.P.10 to present its proposal to the Committee.

100. The delegation explained their proposed redraft of Article VIII(5) reflected three concepts: (i) a more precise but not exclusive identification of the administrative authorities that would be expected to provide assistance, (ii) a closer link to the relevant remedy of physical transfer and export and (iii) repurposing the provision to allow States to opt-out of its application. It was explained that the proposal suggested that the term “administrative authorities” be replaced with the word “authorities”, and that the meaning of authorities included but was not limited to tax and customs authorities and transport infrastructure authorities. It was noted that the two broad categories of authorities expressly referred to were discussed in Part 4Q of Study 72K – CGE2 – Doc. 4.

101. The Chair noted that the proposal should be considered alongside the alternative drafting proposal for Article VIII(5) as contained in Study 72K – CGE2 – W.P.9. It was explained that the alternative proposal replaced the reference to safety laws and regulations in the original draft of Article VIII (5) and instead made reference to the applicable laws and regulations of the Contracting State where the equipment was being used.

102. A number of delegations thanked the two delegations for submitting their thoughtful drafting proposals in relation to Article VIII(5). However, neither proposal received widespread support.

103. Several delegations expressed their support for the opt-out aspect contained in one of the proposals. It was noted that allowing Contracting States to opt-out of the provision might be valuable in Federal States, where it would be difficult for Contracting States to guarantee that local and provincial authorities would be able to provide the administrative assistance contemplated by the Article. However, a number of other delegations expressed their concern that a Contracting State opting-out of such a provision would create the impression that the State would not assist creditors in exercising their right of physical transfer and export under the Protocol.

104. *The Chair summarised the discussion and noted that no consensus had been reached. The Committee decided to place Article VIII(5) in square brackets, and include the additional sub-bracketed phrase “including but not limited to tax and custom authorities and transport infrastructure authorities” after “administrative authorities” in the Article.*

105. One delegation noted that the Protocol made reference to the assistance of administrative authorities in procuring the physical transfer and export of equipment in other circumstances in Article IX(6), Article X Alternative A(8) and Article X Alternative C(9). The delegation suggested, consistent with the Committee’s decision to insert square brackets around Article VIII(5), that other Articles that referred to administrative authorities should also be placed in square brackets.

106. Another delegation noted that certain aspects of Article IX(6) would need to be maintained in the Protocol, even if the Committee eventually decided to remove the parts of the paragraph associated with administrative authorities.

107. *The Committee decided to place Article IX(6), Article X Alternative A(8) and Alternative C(9) in square brackets on the same basis as Article VIII(5).*

#### Article IX

108. One delegation queried whether the reference to Article VIII(1) in the first line of Article IX(6) was correct. It was clarified that the reference was correct, on the basis that the reference to Article 13 of the Cape Town Convention in line 3 of Article IX(a) had erroneously referenced a different provision in previous Protocols, however the MAC Protocol had not reproduced that error.

109. One delegation further explained that Article IX(6) contemplated a two stage process. First, a creditor had to be granted a remedy as interim relief under Article 13 of the Cape Town Convention. Second, where such relief had been granted and the administrative authorities in a Contracting State had been notified, Article IX(6)(a) required administrative authorities in the Contracting State to assist with the physical transfer and export of the equipment within 7 calendar days.

110. *The Chair concluded that after discussion the Committee was of the view that there was no need to amend the reference to Article VIII(1) in the first line of Article IX (6).*

#### Article X

111. *Consistent with the approach in Article XIII(5), the Committee reaffirmed its decision to place Alternative A(8) and Alternative C(9) in square brackets. The Committee adopted the rest of Article X.*

#### Article XI

112. One delegation queried whether the term “Contracting State” needed to be repeated twice in the first two lines of Article XI(2). *The Chair referred the matter to the Drafting Committee.*

#### Article XII

113. *The Committee adopted Article XII as proposed in the Protocol.*

114. The Chair opened the floor for general questions in relation to Chapter 2 of the Protocol.

115. One delegation queried whether the Protocol contained a mechanism for addressing non-compliance by a Contracting State in fulfilling its obligations under the Protocol. The Reporter clarified that no such mechanism existed in the Protocol or in the previous Protocols to the Cape Town Convention. He concluded that the absence of such a mechanism in the Aircraft Protocol had not been detrimental to the overall effectiveness of the Cape Town Convention system.

#### Article XIII

116. Some delegations queried whether it would be beneficial for the Protocol to allow for different supervisory authorities and different international registries for the registration of agricultural, construction and mining equipment separately. It was suggested that such an approach would make it be easier to identify a supervisory authority for each of the three registries. It was further suggested that the Protocol should not expressly require three separate supervisory authorities and international registries, but that the text could contemplate more than one.

117. A number of delegations opposed the proposal on the basis that having multiple supervisory authorities and international registries would have the consequence that interests in equipment that could be used in each of the agricultural, construction and mining sectors would need to be registered in all three international registries. The MAC Working Group noted that this would be a significant burden on parties both in making registrations and searching for existing registrations. An observer noted that there were substantive costs associated with the operation of the Aircraft Protocol's International Registry, and that maintaining three separate international registries under the MAC Protocol would likely multiply the operational costs by three, which might render the international registries financially unviable.

118. *The Chair noted that there was no support for the proposal to allow for multiple supervisory authorities and multiple international registries under Article XIII.*

119. One delegation queried how the international registry would be established and financed.

120. The Reporter noted that Article 17(2) of the Cape Town Convention provided how the international registry would be established and financed. He explained that the operation of Article 17(2) of the Convention was in part modified by Article XVII of the MAC Protocol. He further explained that the costs of establishing and operating the international registry would be financed through the international registry's registration and search fees. An observer shared its experience in the operation and maintenance of the International Registry established under the Aircraft Protocol and stressed that the Supervisory Authority approved the annual budgets of the International Registry to ensure that it operated on a cost recovery basis.

121. *The Committee adopted Article XIII as proposed in the Protocol.*

#### Article XIV

122. One delegation proposed adding the phrase "in accordance with Article XXIII" to the end of the text in Article XIV. *The Chair referred the matter to the Drafting Committee.*

123. Another delegation proposed that instead of being a standalone provision, Article XIV should be an additional subparagraph of Article XIII. *The Chair referred the matter to the Drafting Committee.*

### Article XV

124. While noting its importance in previous Protocols to the Cape Town Convention, one delegation questioned whether the inclusion of Article XV in the MAC Protocol was necessary.

125. An observer explained some of the practical consequences of having a designated entry points Article in the Aircraft Protocol. It noted that in certain instances, domestic entry points charged substantial registration fees, and did not always act promptly or enter data correctly when making registrations in the International Registry. The observer further explained that States might prefer to have a designated entry point as it would allow them to keep track of transactions within their jurisdictions, although the same outcome could be achieved through coordination directly between the State and the International Registry.

126. One delegation noted that if Article XV were to be retained in the Protocol, the provision should identify the connecting factor that would determine whether a party was obliged to use a designated domestic entry point in registering an interest in the International Registry. Several delegations noted their agreement with the proposition. A number of delegations suggested that the location of the debtor should be the connecting factor. One delegation suggested that the connecting factor should be explicitly provided in Article XV, whereas another delegation suggested that it could be addressed in the Regulations.

127. One delegation proposed the deletion of Article XV, on the basis that it was not necessary in the MAC Protocol context. The delegation further noted that in contrast to the aviation sector, it was unlikely that there would be one single national authority with responsibility for agricultural, construction and mining equipment that could be designated as a domestic entry point. The proposed deletion of Article XV was supported by a number of delegations.

128. Other delegations queried whether deletion of Article XV was necessary, on the basis that it was not a compulsory Article and did not impose an obligation on Contracting States. A number of delegations also noted that the Article had been included in all three previous Protocols to the Cape Town Convention, and suggested that it should be retained to maintain consistency with the previous Protocols.

129. An observer noted that should the Committee decide to retain Article XV, States with modern personal property registries that wished to designate a domestic entry point should designate their personal property registry as that entry point.

130. One delegation noted that the deletion of Article XV would not prevent States from offering designated entry points, it would merely prevent them from making the use of a designated entry point compulsory.

131. The Chair summarised the discussion. He noted that the consensus of the Committee was that Article XV should be deleted.

132. At a later point, one delegation urged the Committee to reopen consideration of Article XV. It was suggested that after further informal discussions, several delegations had decided that they opposed its deletion. Several delegations confirmed their preference for Article XV to remain in the Protocol within square brackets and that the matter should be given further consideration in the future.

133. One delegation noted that the designation of a domestic entry point would ensure that parties used a domestic registration system that they were familiar with and that was operated in their local language to register interests in the International Registry. They suggested that this option would

improve the operation of the International Registry and reduce the likelihood of erroneous registrations.

134. *The Committee confirmed that its earlier decision to delete Article XV should be reversed. The Committee decided that Article XV should be retained and placed in square brackets.*

#### Article XVI

135. A number of delegations noted their support for the IWGRC's drafting proposal for Article XVI, as reflected in paragraph 3 of Study 72K – CGE2 – Doc. 11. The MAC Working Group expressed its appreciation for the excellent work undertaken by the IWGRC and also noted its support for the IWGRC's drafting proposal.

136. *The Committee accepted the revised text for Article XVI as proposed by the IWGRC. The matter was referred to the Drafting Committee.*

#### Article XVII

137. Several delegations noted their support for the IWGRC's drafting proposal for Article XVII(1), as reflected in paragraph 3 of Study 72K – CGE2 – Doc. 11. It was noted that it was logical for the identification criteria under Article XVI to be consistent with the International Registry search criteria under Article XVII(1), a policy objective that was achieved by the IWGRC's drafting proposal.

138. The MAC Working Group informed the Committee of a shift in the MAC sectors towards the use of 17 digit serial numbers ("ISO number") in accordance with the standard of the International Organization for Standardization. It was explained that this shift would be beneficial to the MAC Protocol as it would allow the identification of a MAC asset using only the ISO number. The MAC Working Group expressed its support for the IWGRC's proposed removal of manufacturer names as a search criteria under Article XVII(1). However, the Working Group queried whether the proposed removal of the reference to supplementary information to ensure uniqueness in Article XVII(1) was also necessary. A delegation responded that the removal of the reference to the supplementary information in Article XVII(1) did not have a substantive effect on the operation of the provision, and that the identification criteria in Article XVI (as specified in the Regulations according to the second sentence of Article XVI) would still be consistent with the search criteria in Article XVII(1), should the IWGRC's recommendations be adopted.

139. One delegation proposed that users of the International Registry should also be able to perform searches based on the name of debtor under Article XVII(1). Several delegations opposed the proposal. It was noted that the Cape Town Convention and its Protocols was an asset-based system, rather than a debtor-based system. It was explained that allowing searches to be made on the name of the debtor might mislead users of the International Registry, as a debtor identified by such a search might have changed name or already transferred the relevant asset to a third party.

140. *The Committee accepted the revised text for Article XVII(1) as proposed by the IWGRC. The matter was referred to the Drafting Committee.*

141. One delegation proposed that the reference in Article XVII(3) to Article 62 of the Convention should be changed to Article XXXII. It suggested that it was practical for the Depositary to recover reasonable costs in relation to their additional duties under Article XXXII, but should not be able to recover costs associated with their regular duties as set out in Article 62. The Secretariat reminded the Committee that the additional text in square brackets at the end of Article XVII(3) had been



added by the Committee at its first session, to denote that the Protocol should contemplate whether the Depositary should be able to recover costs associated with it performing its functions as Depositary. It was noted that the nature of the Cape Town Convention system with its various optional and mandatory declarations imposed a particularly heavy burden on the Depositary in assisting States to properly ratify or accede to the Convention and its Protocols.

142. *The Chair summarised that there was no support for the proposal to change the reference in Article XVII(3) from Article 62 of the Convention to Article XXXII of the Protocol. The Chair further concluded that there was no consensus to delete the bracketed text in Article XVII(3), and that the text should remain in square brackets for future consideration.*

#### Article XVIII

143. One delegation proposed the deletion of Article XVIII on the basis that it was not appropriate for the Protocol to allow for the registration of a notice of sale that had no legal effect under the Convention but might have an effect under domestic law. The Reporter explained that the provision had first originated in the Luxembourg Rail Protocol, and that the Aircraft Protocol and the Space Protocol both allowed for the registration of contracts of sale.

144. One delegation suggested that allowing for the registration of notices of sale might overburden the International Registry. Another delegation responded that the Article would not be burdensome on the International Registry as registrations were electronically automated. It was suggested that allowing the registration of notices of sale would actually have a beneficial economic effect on the International Registry as it would generate additional fees.

145. The MAC Working Group noted that private industry supported the Protocol allowing for the registrations of notices of sale. It further noted that Article XVIII was permissive in nature and did not impose an obligation on States.

146. One delegation opposed removing Article XVIII and emphasised the need for consistency with the approaches adopted in previous Protocols to the Cape Town Convention. It also noted that the Article would have practical utility in alerting creditors not to lend to prospective borrowers looking to finance an asset against which a notice of sale had already been registered. A number of other delegations also noted their support for retaining Article XVIII.

147. *The Chair concluded that the proposal to delete Article XVIII had not achieved consensus. The Committee adopted Article XVIII as proposed in the Protocol.*

#### Article XIX

148. One delegation sought clarity as to the purpose of Article XIX. The Reporter explained that in circumstances where MAC equipment was owned by a State entity, Article XIX provided that the State entity could waive its sovereign immunity from jurisdiction, enforcement, or both.

149. *The Committee adopted Article XIX as proposed in the Protocol.*

#### Article XX

150. One delegation noted that the term “Conventions” was used in the title of Chapter V, even though Article XX, as the only Article in Chapter V, only applied to a single Convention. The delegation

proposed that the title of Chapter V be amended, or that Article XX be moved to Chapter VI of the Protocol. The Chair noted that the Chapter was intended to cover the relationship between the draft Protocol and any other international treaty with which it could interact and as such the use of the plural in the title of the Chapter is likely justified.

151. *The Chair referred the matter to the Drafting Committee.*

#### Chapter VI – Final Provisions

152. One delegation commented that the discussions on the final provisions had been extensive and fruitful at the first session of the Committee of Governmental Experts (CGE1). It was noted that a number of issues had been addressed as a result of the review of the Chapter at the previous session.

153. *The Chair indicated that it was not unusual for final provisions to be the subject of careful and detailed consideration only when a draft convention was presented to a Diplomatic Conference.*

#### Article XXV

154. The Chair then moved to discuss Article XXV of the Protocol.

155. One delegation commented that Article XXV accurately reflected the comments made and the views expressed at CGE1.

156. *The Chair concluded that the text was accepted by the Committee and no changes were needed.*

#### Article XXXII

157. The Chair opened the floor for comments on Article XXXII.

158. Two delegations submitted a joint drafting proposal. The delegations explained that the purpose of the submission was to highlight weaknesses in the existing text of Article XXXII. The delegations emphasised the need for Article XXXII to have a flexible and simple process to update the Annexes when a technical change had been made to a listed HS code. They noted that their proposal had several alternatives which contained different approaches to solving the existing issues in the text. They explained that the joint proposal improved on the existing text in several important areas: (i) it made a stronger distinction between how the Protocol would address technical and substantive changes to the HS System codes, (ii) it clarified the effect of a Contracting State exercising its right to opt-out of a change to the HS codes in the Annexes to the Protocol, (iii) it removed the requirement of constituting meetings for purely technical changes that would not affect the scope of the Protocol and (iv) it ensured that the Annexes would remain consistent with the most recent version of the HS System.

159. Delegations thanked the two delegations for their joint proposal. A number of delegations expressed the view that the effect of a Contracting State opting out of a change to a code in the Annexes under Article XXXII(4) was unclear. Several delegations noted that it would be problematic if the effect of the opt-out was that an outdated version of a HS code applied to the Contracting State that had exercised its right to opt-out. They stated that over time, such an approach would create a complex and imprecise patchwork of obligations under the Protocol. They further stated that such an

approach could create problems for private parties trying to determine whether the Protocol applied to a particular type of MAC equipment in a Contracting State. Several delegations noted that the continued existence of the right to opt-out of substantive changes to the Annexes was important.

160. Some delegations drew the Committee's attention to their written comments on Article XXXII (Study 72K - CGE2 – Docs. 10, 14 and 17). One delegation proposed that paragraph 5 of Article XXXII should require the World Customs Organisation to issue a certificate, which confirmed that a change to an HS code in the Annexes was of a technical nature and did not impact the scope of the Protocol. It explained that by having an expert neutral party verify the technical nature of an amendment, Contracting States could be fully confident that a change to the Annexes under paragraph 5 would not affect their obligations under the Protocol.

161. Several delegations noted the need for Article XXXII to balance the rights of Contracting States to control the scope of the Protocol with flexibility in amending the Annexes to relation to technical changes. They expressed their support for a flexible amendment mechanism that did not require a meeting of Contracting States where a change to a code in the Annexes was merely technical rather than substantive.

162. A number of delegations stated that while the joint proposal raised important issues that merited further consideration, the alternative options in the joint proposal should not replace the existing Article XXXII without further consideration. One delegation proposed that part of the joint proposal be added to Article XXXII in square brackets for further consideration. Other delegations disagreed with such an approach.

163. *The Chair summarised the discussion. He concluded that the Committee had not reached consensus on the adoption of the joint proposal in relation to Article XXXII and that the existing text would be retained and placed in square brackets. The Committee agreed that Article XXXII needed to balance the ability of Contracting States to control the content of the treaty, with a flexible mechanism for amending the Annexes to the Protocol in relation to technical changes made to the Harmonised System itself. The Committee reaffirmed that Article XXXII should contain different amendment mechanisms, adapted to the nature of the proposed change to the Annexes. The Committee further agreed that Article XXXII should ensure that the Annexes to the Protocol contained a list of codes that was coherent and precise to ensure the scope of the Protocol would be clear and predictable. The Committee tasked the Secretariat to work with interested States to develop an alternative text that was likely to attract wide support from negotiating States.*

## Annexes

164. The Secretariat explained the methodology used by the Study Group to determine whether an HS code was suitable for inclusion in the Annexes to the Protocol. It was explained that the MAC Working Group had provided the initial list of codes for consideration, and the necessary data to examine the code. The Study Group then applied the following criteria to determine whether an HS code should be added to the Annexes: (i) whether the equipment under the HS code was used almost exclusively in the MAC sectors, (ii) whether the majority of the equipment under the HS code was of sufficiently high value and was separately financeable in practice, (iii) whether the equipment under the HS code possessed individual serial numbers and (iv) whether the HS code applied to assets that were already covered under other Protocols to the Cape Town Convention.

165. Several delegations noted that private industry in their jurisdictions had suggested additional codes to be considered for inclusion in the Annexes to the Protocol. One delegation noted that the additional codes suggested by their domestic industry were outlined in Study 72K – CGE2 – Doc. 15. Another delegation suggested that HS code 843020 be added to Annex I, HS codes 847410 and

847420 be added to Annex II and HS codes 842831, 843039 and 847989 be added to Annex III. Other delegations noted that they did not have the technical knowledge regarding the equipment covered by the newly suggested HS codes to determine whether it was appropriate to include them in the Annexes to the Protocol.

166. *The Chair concluded that all States that wished to add new codes to the Annexes should provide their proposed additional codes to the Secretariat. The Secretariat would then review the codes in close consultation with the MAC Working Group, to determine whether they should be included. On completing the review process, the Secretariat would then form a recommendation for consideration by negotiating States as to whether specific additional codes should be added to the Annexes to the Protocol.*

167. One delegation queried whether the application of the Protocol could be extended to HS codes that covered low value equipment in circumstances where (i) the equipment had a significant economic value in its productive use or (ii) where the cumulative value of a number of different types of equipment used together was high. It was noted that while such an approach had merit, the burden of individual registration in the international registry of many low value types of equipment used together might place a large practical burden on parties to a secured transaction.

168. A number of delegations requested clarifications on the meanings of the headings used in the HS and the level of precision achieved by utilising the HS. The Chair noted that these matters were addressed in Study 72K – CGE2 – Doc. 4 and Study 72K – CGE2 – Doc. 5. The Secretariat noted that it was available to assist States in improving their understanding of the operation of the HS, and how it was used to define the scope of the Protocol.

169. A number of delegations queried whether parts were covered by the Protocol, and whether HS codes specifically applying to parts should be included in the Annexes. An observer responded that parts incorporated into complete types of equipment were covered by the definitions of “agricultural equipment”, “construction equipment” and “mining equipment” in Article I(2) of the Protocol.

170. One delegation noted that certain HS codes in the Annexes were not listed in numerical order. The Secretariat confirmed that the HS codes listed in the Annexes were intended to be in numerical order. *The matter was referred to the Drafting Committee.*

171. The Reporter queried whether the Protocol should explicitly provide that the rules of interpretation of the WCO System were applicable to the HS codes in the Annexes to the Protocol. An observer confirmed the Reporter’s understanding of the issue, and suggested that the existing definition of the HS in Article I(2) might sufficiently address the issue.

172. The Chair noted that, as explained in Study 72K – CGE2 – Doc. 6, the Annexes to the Protocol contained four HS codes (842481, 843230, 843240 and 870190) that had existed under the 2012 edition of the HS System but had been replaced by new codes in the 2017 edition. The Secretariat queried whether the Committee wished for the relevant codes in the Annexes to be replaced with the corresponding HS codes in the 2017 edition.

173. *The Committee agreed that the HS codes in the Annexes to the Protocol should be based on the 2017 edition of the HS System. The Committee requested that the Secretariat replace those HS codes that no longer existed in the 2017 edition with the corresponding new codes.*

174. *The Committee approved the Annexes to the Protocol, subject to the changes referred to the Drafting Committee and Secretariat.*

### Proposal on the treatment of inventory

175. A representative from the MAC Working Group proposed an additional rule on the application of the MAC Protocol to items held for sale by dealers. The representative proposed that an opt-out provision be added to the Protocol, which allowed States to exclude inventories held for sale by dealers from the application of the Protocol. In cases where States exercised the opt-out, dealers would be able to register what would otherwise be an international interest over their inventories under national law, rather than in the international registry. It was explained that this would allow for the practice of inventory financing to continue in States where existing arrangements already functioned efficiently.

176. The Reporter noted that the issue of inventory was not addressed in the previous Protocols, as the assets covered by the previous Protocols were not typically kept as inventory for sale by dealers.

177. Several delegations queried whether the proposal would apply only to charges, or also to conditional sales agreements, title retention agreements and floating charges for the financing of the dealer. It was also queried whether the proposal should apply not only to sales by the dealer, but also to leasing agreements by the dealer.

178. An observer noted the importance of inventory financing and agreed that the matter should be directly addressed in the Protocol. The observer noted that several jurisdictions did not allow for inventory financing due to its lack of specificity in defining collateral. The observer further noted that the proposal should also take into account the treatment of receivables that resulted from the sale of inventory and the treatment of warehouse receipts. The Reporter clarified that the Cape Town Convention only applied to receivables in extremely limited circumstances, and that the inventory proposal did not relate to the treatment of warehouse receipts.

179. One delegation explained its understanding of the MAC Working Group's proposal on inventory. The delegation explained that the opt-out provision proposed would only apply to equipment held in inventory for sale. The exclusion would only apply to dealers of MAC equipment and would operate such that interests over inventories would be registered under national law, if so provided under the applicable national law, whereas interests granted by a buyer following the sale of that inventory could be subject to international interests under the MAC Protocol. It was explained that the normal priority rules on the Convention would still apply, which meant that a later in time international interest in MAC equipment would take priority over an earlier inventory interest. The delegation further explained that the opt-out was beneficial in scenarios involving two dealers, as it would prevent a subsequent dealer registering their interest in the international registry to obtain a priority interest over an earlier inventory interest that had not been registered. The delegation also noted that under the opt-out, the types of security interests that could be used by dealers for inventory would depend on the applicable national law. It concluded that the proposed approach would allow existing inventory financing practices to continue, while also ensuring that end-users would still be able to use the MAC Protocol to obtain finance.

180. The Chair enquired whether this opt-out mechanism would be exercised by States rather than individual dealers, and whether a definition of "dealer" would have to be included in the Protocol. The delegation responded that the mechanism applied only to States and that further consideration should be given to the inclusion of definitions of "dealer" and "inventory".

181. One delegation queried how the proposal would affect the rights of a purchaser of MAC equipment that had been held as inventory, and whether the buyer's position would be affected by Article 29(3) of the Cape Town Convention. A delegation responded that Article 29(3) allowed a purchaser to acquire an interest in an object free from an unregistered interest, even if it had actual

knowledge of the unregistered interest. It was noted that under the opt-out, a subsequent purchaser would be able to acquire an interest in MAC equipment free of any prior inventory interest protected under domestic law. It was further noted that the subsequent purchaser would still acquire the interest free of a prior inventory interest, even if it had actual knowledge of the existing inventory interest, and the domestic law of many States might not normally allow the purchaser to take free in such circumstances. Several delegations queried whether this was the correct policy approach.

182. Several delegations expressed concern with respect to the rights of creditors who offered finance to dealers for inventory on the basis of conditional sale agreements. It was noted that under the opt-out, the registration of an international interest by a subsequent purchaser would have priority over the prior creditor's interest in the inventory under the domestic law.

183. A number of delegations noted that an opt-out procedure should only be employed as a last resort when trying to solve a problem in an international instrument. Other delegations noted that the inventory issue would be an appropriate subject for an opt-out clause, as it would allow the continuation of existing efficient inventory financing practices in some jurisdictions, and improve inventory financing practices in others.

184. Several delegations expressed support for the proposal but indicated that it would need to be considered in further detail once a draft text had been prepared.

185. The Secretary General a.i. queried whether the connecting factor to determine the applicability of the inventory provision should be considered under Article 4 or Article 60 of the Cape Town Convention. Some delegations favoured Article 4 as determining the connecting factor, whereas other delegations suggested that Article 60 should determine the connecting factor. *The Chair referred the matter to the Drafting Committee for further consideration, as it was felt that the variation between the two options were not substantive in nature.*

186. One delegation queried whether the Protocol applied to unfinished MAC equipment and allowed for the registration of assets in bulk. The Chair noted that the applicability of the Protocol was determined by the HS codes in the Annexes to the Protocol, and that Article V of the Protocol required objects to be individually identifiable. Another delegation noted that unfinished equipment would be within the scope of the Protocol if it was covered by an HS code in the Annexes and could be individually identified.

187. *The Chair summarised that there was consensus on the need for an article addressing inventory financing. The Chair also noted that there was general support for an opt-out mechanism that would allow States to declare whether to apply the Protocol to inventory. The Committee requested that the Drafting Committee prepare an opt-out article on inventory, and to suggest where such a clause should be located in the Protocol. The Committee further requested that the Drafting Committee consider whether the article should also apply to title reservation agreements and leasing agreements. The Drafting Committee was further requested to clarify in the provision that it applied to a person selling equipment in the ordinary course of business.*

188. In its Interim Report to the Committee (Appendix I), the co-Chairs of the Drafting Committee explained that the Drafting Committee had prepared three additional provisions to implement the Committee's decision in relation to inventory. They noted that the Drafting Committee had prepared (i) definitions of "dealer" and "inventory" for addition to Article I(2) of the Protocol, (ii) a new Article XXIII*bis* to allow Contracting States to opt-in to excluding the Protocol's application to inventory held by dealers (as debtors) of MAC equipment, and (iii) a new unnumbered Article *bis* that modified the Convention's priority provisions in relation to inventory.

189. The co-Chairs stressed that the package of provisions would allow States with well-established laws pertaining to inventory financing to continue applying their domestic legislation to dealers who utilise such arrangements, and the provisions would prevent the MAC Protocol from unnecessarily disrupting existing practices.

190. The Chair opened the floor for discussion on the new definitions of “dealer” and “inventory” proposed for inclusion in Article I(2) of Protocol.

191. Several delegations noted their support for the proposed definitions. One delegation noted that both definitions used the phrase “in the ordinary course of business”, and suggested that the Official Commentary should address how the phrase should be interpreted.

192. *The Committee adopted the new definitions as proposed in the interim report of the Drafting Committee.*

193. The Chair opened the floor for discussion of the proposed new Article XXIII*bis* and the new unnumbered Article *bis*. A number of delegations noted their support for the substance of the proposed drafting.

194. One delegation noted that the new unnumbered Article *bis* contained bracketed language which, if included in the draft, would restrict the modification of the priority rules in the Convention to circumstances where the dealer was the debtor. As such, the inclusion of the bracketed text would not allow a party buying MAC equipment from a dealer to take free of an existing international interest that had been granted by a previous owner. The MAC Working Group, alongside a number of delegations, suggested that the bracketed text be included in the proposed provision, as it would protect registered international interests that had been granted by a previous owner. It was also noted that such cases would only arise in transactions relating to used equipment being held as inventory, and it was not unreasonable to expect a buyer to search the International Registry to determine whether there was a pre-existing international interest in such circumstances.

195. *The Committee agreed that the bracketed language in the new unnumbered Article bis should be maintained in the proposed Article and the brackets should be removed.*

196. One delegation queried the interpretation of the term “place of business” in the proposed Article XXIII*bis*. The Chair explained that “place of business” had a pre-existing meaning in the Cape Town Convention system, it would also be further discussed in the future Official Commentary and the travaux préparatoires of the MAC Protocol would also shed light on the intention of this Committee.

197. A number of delegations suggested reordering the subparagraphs under the proposed Article XXIII*bis* and the unnumbered Article *bis*. Several delegations suggested that the drafting should amend the Protocol rather than amending the text of the Convention. It was noted that by virtue of Article 6 of the Convention, where there was any inconsistency between the Convention and the Protocol, the Protocol would prevail. One delegation proposed the new Article XXXIII *bis* be combined with the new Article *bis* as a complete provision regarding the treatment of inventory. It was further suggested that the entire provision be included in Chapter II of the MAC Protocol. A number of other delegations supported this proposal.

198. *The Committee agreed that Articles XXIIIbis and unnumbered Article bis be added to the Protocol as a single Article in Chapter 2 and referred the matter to the Drafting Committee.*

### Report of the Drafting Committee

199. The Chair opened the floor for discussion on the Report of the Drafting Committee (the Report of the Drafting Committee is reproduced at Appendix II of this report).

200. Several delegations noted slight inconsistencies between the English and the French preamble text and proposed minor changes. *The Committee accepted the changes.*

201. One of the co-Chairs of the Drafting Committee noted an error in the Report at Article XI *bis* (4). The co-Chair explained that the reference to “that State” should be replaced with “a contracting State referred to in Paragraph (3)”. *The Committee accepted the change.*

202. The Secretariat noted that the Report had amended the Annexes to the Protocol to reflect the Committee’s decision to update the listed codes from the 2012 to the 2017 version of the HS System, and to rectify minor errors in the listing of the codes.

203. One delegation queried whether small aircraft used for plantations had been added to the Annexes. The Chair explained that, consistent with the decision of the Committee, delegations were invited to propose additional codes to the Secretariat and that these proposals would be considered by negotiating States on the basis of analysis and recommendations by the Secretariat.

204. *The Report of the Drafting Committee was adopted by the Committee. The Committee decided that the draft text contained in the Report of the Drafting Committee should be used during consultations by the Secretariat and for the purpose of reporting to the UNIDROIT Governing Council.*

### **Agenda Item 5: Future work**

205. The Chair invited the Committee to consider the additional work required to finalise the MAC Protocol. He explained that the Committee could decide to submit a recommendation to the UNIDROIT Governing Council to approve the convening of a diplomatic Conference to finalise and adopt the MAC Protocol, or submit a recommendation to the Secretariat to organise a third session of the Committee of Governmental Experts.

206. The Secretary-General a.i. explained that the Secretariat would plan its future activity based on the decision by the Committee. She noted that if the Committee decided to recommend to the UNIDROIT Governing Council that a diplomatic Conference be convened, the Secretariat would focus on organising bilateral and multilateral meetings with negotiating States to assist them in their consideration of the Protocol. She noted that such an approach would aim at ensuring the highest possible turnout of actively engaged delegations at the diplomatic Conference. She explained that, alternatively, if the Committee recommended that a third session of the Committee was required, then the Secretariat would devote the majority of its resources to preparation of the third session.

207. Several delegations applauded the work done by the Secretariat and the Committee. A number of delegations noted that the Protocol was sufficiently advanced to recommend that the Governing Council approve the convening of a diplomatic Conference. One delegation suggested that a third meeting might be preferable.

208. One delegation noted that several legal issues had not been fully resolved, and queried whether a third session was required to address them. Another delegation noted that it believed three issues warranted further consideration: (i) Article VII Alternative A, (ii) Article XV and (iii) Article XXXII. A number of delegations responded that the number of open legal issues was very small, and that the MAC Protocol currently had fewer unresolved legal issues as compared to previous



Protocols to the Cape Town Convention at the time they were transferred to diplomatic Conferences for finalisation. A number of delegations stressed that the majority of the open legal issues had been resolved, and the unresolved aspects did not warrant a third Committee meeting. Several delegations recalled that the Committee had requested that the Secretariat progress the open issues intersessionally. One delegation suggested that the diplomatic Conference be scheduled sufficiently in advance to allow the Secretariat to progress the open issues.

209. *The Committee recommended that the UNIDROIT Governing Council approve the convening of a diplomatic Conference to finalise and adopt the MAC Protocol. The Committee instructed the Secretariat to assist negotiating States in their consideration of the Protocol through bilateral and multilateral fora in advance of the diplomatic Conference.*

#### **Agenda Item 6: Review of Report**

210. The Chair introduced the draft Report, as reflected in the Daily Reports (Study 72K –CGE2 - W.P. 2, Study 72K – CGE2 - W.P. 4 rev., Study 72K – CGE2 - W.P. 6 – Study 72K – CGE2 - W.P. 11 and Study 72K – CGE2 – W.P. 13).

211. *The Committee reviewed and adopted the Daily Reports.*

212. *The Committee entrusted the Secretariat with editing and correcting both linguistic versions of the Report and the preliminary draft Protocol.*

#### **Agenda Item 7: Any other business**

213. *No other business was raised.*

214. The Chair closed the final day of the second session of the Committee of Governmental Experts at 13:18 p.m.

**APPENDIX I****INTERIM REPORT OF THE DRAFTING COMMITTEE****4 October 2017****Article I(2)**

(b)*bis* “**dealer**” means a person (including a manufacturer) that sells or leases agricultural equipment, construction equipment or mining equipment in the ordinary course of its business.

(g)*bis* “**inventory**” means agricultural equipment, construction equipment or mining equipment held by a dealer for sale or lease in the ordinary course of its business.

**Article II**

1. The Convention shall apply in relation to agricultural, construction and mining equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3 irrespective of any intended or actual use of the equipment.

**Article VII***Alternative A*

3. If immovable-associated equipment is removable [.....], the association of the equipment with the immovable property does not affect its status as equipment under this Protocol.

**New Article XXIII*bis***

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that any interest in inventory created or provided for by an agreement under which the dealer is the debtor is not an international interest if the dealer is situated in that State at the time the interest is created or arises.

2. For the purposes of this Article a dealer is situated in a State where it has its place of business or, if it has more than one place of business in different States, its principal place of business.

***To be added in Article 29 of the Convention***

*3bis.* Notwithstanding paragraph 3(b), if a State has made a declaration under paragraph 1 of Article XXIII*bis*, a buyer of inventory from a dealer acquires its interest in it free from any

unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

*4bis.* Notwithstanding paragraph 4(b), if a State has made a declaration under paragraph 1 of Article XXIII*bis*, a conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

**New Article []*bis* –  
Modification of Priority Provisions**

In relation to [equipment] Article 29 of the Convention shall be modified as follows:

Insert after paragraph 4 the following:

“*4bis.* Notwithstanding paragraph 3(a), the buyer of inventory from a dealer acquires its interest in it free from any registered interest [as to which the dealer is the debtor], unless the applicable law otherwise provides.

*4ter.* Notwithstanding paragraph 4(a), the conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any registered interest [as to which the dealer is the debtor], unless the applicable law otherwise provides.”

**APPENDIX II****REPORT OF THE DRAFTING COMMITTEE****TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS  
SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT**

*as amended by the UNIDROIT Committee of Governmental Experts for the  
preparation of a draft Protocol to the Cape Town Convention on Matters specific  
to Agricultural, Construction and Mining Equipment at its second session, held  
in Rome from 2 – 6 October 2017*

**PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT**

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## **PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AGRICULTURAL, CONSTRUCTION AND MINING EQUIPMENT**

### **Preamble**

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING the significant benefits of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention), as facilitating the financing and leasing of uniquely identifiable high-value mobile equipment, in the light of the purposes set out in the preamble to the Convention,

AWARE of the benefits of extending the Convention to agricultural [equipment](#), construction [equipment](#) and mining equipment,

~~NOTING~~ that the World Customs Organisation's Harmonised Commodity Description and Coding System governed by the International Convention on the Harmonised Commodity Description and Coding System allows the determination of the categories of such equipment to which the extension of the Convention is warranted,~~]~~

RECOGNISING the important role that agricultural [equipment](#), construction [equipment](#) and mining equipment play in the global economy ~~and in particular for developing countries,~~

MINDFUL of the need to adapt the Convention to meet the particular requirements of agricultural [equipment](#), construction [equipment](#) and mining equipment and their finance,

HAVE AGREED upon the following provisions relating to agricultural [equipment](#), construction [equipment](#) and mining equipment:

### **CHAPTER I**

#### **SPHERE OF APPLICATION AND 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) "agricultural equipment" means an object that falls under a Harmonised System code listed in Annex 1 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
  - (b) "construction equipment" means an object that falls under a Harmonised System code listed in Annex 2 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto;
  - (c) ["dealer" means a person \(including a manufacturer\) that sells or leases equipment in the ordinary course of its business](#)

~~(e)~~(d) “equipment” means agricultural equipment, construction equipment or mining equipment;

~~(d)~~(e) “guarantee contract” means a contract entered into by a person as guarantor;

~~(e)~~(f) “guarantor” means a person, who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

~~(f)~~(g) “Harmonised System” means the Harmonised Commodity Description and Coding System governed by The International Convention on the Harmonised Commodity Description and Coding System;

~~(g)~~(h) “immovable-associated equipment” means ~~agricultural, construction or mining~~ equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated;

~~(h)~~(i) “insolvency-related event” means:

- (i) the commencement of the insolvency proceedings; or
- (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;

~~(i)~~(j) “inventory” means equipment held by a dealer for sale or lease in the ordinary course of its business;

~~(j)~~(k) “mining equipment” means an object that falls under a Harmonised System code listed in Annex 3 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonised System code listed in that Annex, and all data, manuals and records relating thereto; and

~~(k)~~(l) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise.

## **Article II – Application of the Convention as regards agricultural equipment, construction equipment and mining equipment**

1. ~~The Convention shall apply in relation to agricultural, construction and mining equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3.~~ The Convention shall apply in relation to agricultural equipment, construction equipment and mining equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3 irrespective of any intended or actual use of the equipment.

2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to agricultural equipment, construction equipment and mining equipment.

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will limit the application of the Protocol to the entirety of the equipment comprised in one or two of the Annexes.

4. This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on



International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.

### **Article III – Derogation**

The parties may, by agreement in writing, exclude the application of Article X and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VIII (2) – (4).

### **Article IV – Representative capacities**

A person may, in relation to ~~agricultural, construction or mining~~ equipment, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

### **Article V – Identification of ~~agricultural, construction or mining~~ equipment**

1. For the purposes of Article 7(c) of the Convention and Article XIX of this Protocol, a description of ~~the agricultural, construction or mining~~ equipment is sufficient to identify the equipment if it contains:

- (a) a description of the equipment by item;
- (b) a description of the equipment by type;
- (c) a statement that the agreement covers all present and future equipment; or
- (d) a statement that the agreement covers all present and future equipment except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future ~~agricultural, construction and mining~~ equipment identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the equipment, without the need for any new act of transfer.

### **Article VI – Choice of law**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVI(1).

2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

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

### Article VII – Association with immovable property

1. Where immovable-associated equipment is situated in a non-Contracting State, this Protocol does not affect the application of any law of that State that determines whether an international interest in the immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.
2. A Contracting State, shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the entirety of Alternative A, B, or C of this Article shall apply in relation to an international interest in immovable-associated equipment which is situated in the Contracting State.

#### Alternative A

3. ~~An international interest in agricultural, construction or mining equipment is not affected by the association of the equipment with the immovable property and continues to exist and retain its priority as against any rights or interests in the immovable-associated equipment. If immovable-associated equipment is removable [.....], the association of the equipment with the immovable property does not affect its status as equipment under this Protocol.~~

#### Alternative B

3. This Protocol does not affect the application of any law of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property to the extent that the equipment loses its individual legal identity in accordance with the law of that State.
4. Where ~~agricultural, construction or mining~~ equipment subject to an international interest is immovable-associated equipment and to the extent that it has not lost its individual legal identity in accordance with the law of the State where the immovable property is situated, an interest in the immovable property that extends to that equipment has priority over the registered international interest in the equipment only if the following conditions are fulfilled:
  - (a) the interest in the immovable property has been registered in accordance with the requirements of domestic law prior to the time of registration of the international interest in the equipment under this Protocol and registration of the interest in the immovable property continues to be effective; and
  - (b) the equipment became associated with the immovable property prior to the time of registration of the international interest in the equipment under this Protocol.

#### Alternative C

3. This Protocol does not affect the application of any ~~domestic~~ laws of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

## CHAPTER II

### DEFAULT REMEDIES AND PRIORITIES

#### Article VIII – Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of ~~agricultural, construction or mining~~ equipment from the territory in which it is situated.

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

3. Article 8(3) of the Convention shall not apply to ~~agricultural, construction or mining~~ equipment. Any remedy given by the Convention in relation to agricultural, construction or mining equipment shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

4. A chargee giving fourteen or more calendar days' prior written notice of a proposed sale or lease to interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

[5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities [\[including but not limited to tax and customs authorities and transport infrastructure authorities\]](#) expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.]

6. A chargee proposing to procure the export of ~~agricultural, construction or mining~~ equipment under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

#### Article IX – Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

[6. With regard to the remedies in Article VIII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief specified in Article 13 of the Convention is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations]

7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.

### **Article X – Remedies on Insolvency**

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVI(3).

2. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

#### *Alternative A*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the ~~agricultural, construction or mining~~ equipment to the creditor not later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the ~~agricultural, construction or mining~~ equipment if this Article did not apply.

4. For the purpose of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the ~~agricultural, construction or mining~~ equipment and maintain it and its value in accordance with the agreement; and

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

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the ~~agricultural, construction or mining~~ equipment under arrangements designed to preserve the ~~agricultural, construction or mining~~ equipment and maintain it and its value.
7. The insolvency administrator or the debtor, as applicable, may retain possession of the ~~agricultural, construction or mining~~ equipment where, by the time specified in paragraph 3, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.
8. [With regard to the remedies in Article VIII(1):
- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
  - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.]
9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.
10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

#### *Alternative B*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVI(3) whether it will:
- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
  - (b) give the creditor the opportunity to take possession of the ~~agricultural, construction or mining~~ equipment, in accordance with the applicable law.
4. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.
5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

6. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the ~~agricultural, construction or mining~~ equipment but fails to do so, the court may permit the creditor to take possession of the agricultural, construction or mining equipment upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

7. The ~~agricultural, construction or mining~~ equipment shall not be sold pending a decision by a court regarding the claim and the international interest.

#### *Alternative C*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the ~~agricultural, construction or mining~~ equipment in accordance with the applicable law.

4. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the "suspension period"). Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.

5. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the ~~agricultural, construction or mining~~ equipment pending an order of the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency administrator or the debtor, as applicable, otherwise agree.

6. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the ~~agricultural, construction or mining~~ equipment 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.

7. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the ~~agricultural, construction or mining~~ equipment under arrangements designed to preserve and maintain it and its value.

8. Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, the insolvency administrator or debtor may retain possession of the ~~agricultural,~~

~~construction or mining~~ equipment and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.

[9. With regard to the remedies in Article VIII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.]

10. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.

11. Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.

12. 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.

13. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

14. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

15. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

## **Article XI – Insolvency assistance**

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVI(1).

2. The courts of a Contracting State in which ~~agricultural, construction or mining~~ equipment is situated shall, in accordance with the law of that ~~Contracting~~ State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article X.

### **Article XIbis – Provisions relating to inventory**

1. Notwithstanding Article 29(3)(a) of the Convention, the buyer of inventory from a dealer acquires its interest in it free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

2. Notwithstanding Article 29(4)(a) of the Convention, the conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

3. Paragraphs 4 to 7 apply only where a Contracting State has made a declaration pursuant to Article XXVI(4).

4. An interest in inventory created or provided for by an agreement under which the dealer is the debtor is not an international interest if the dealer is situated in that State at the time the interest is created or arises.

5. For the purposes of this Article a dealer is situated in a State where it has its place of business or, if it has more than one place of business in different States, its principal place of business.

6. Notwithstanding Article 29(3)(b) of the Convention, if a State has made a declaration under paragraph 3, a buyer of inventory from a dealer acquires its interest in it free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

7. Notwithstanding Article 29(4)(b) of the Convention, if a State has made a declaration under paragraph 3, a conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

#### **Article XII – Debtor provisions**

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the ~~agricultural, construction or mining~~ equipment in accordance with the agreement as against:

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and
- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to ~~agricultural, construction or mining~~ equipment.

### **CHAPTER III**

#### **REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN AGRICULTURAL EQUIPMENT, CONSTRUCTION EQUIPMENT AND MINING EQUIPMENT**

##### **Article XIII – The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment, provided that such Supervisory Authority is able and willing to act in such capacity.



2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

4. The first Registrar of the International Registry shall be appointed for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

#### **Article XIV – First regulations**

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

#### **Article XV – Designated entry points**

1. A Contracting State may at any time designate an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under laws of another State. The various entry points shall be operated at least during working hours in their respective territories.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale. <sup>1</sup>

#### **Article XVI – Identification of ~~agricultural, construction or mining~~ equipment for registration purposes**

A description of ~~agricultural, construction or mining~~ equipment that contains its manufacturer's serial number and such additional information as required to ensure uniqueness ~~the name of the manufacturer as supplemented by such additional information as may be provided by the regulations~~ is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention. The Regulations shall specify the format of the manufacturer's serial number and provide what additional information is required to ensure uniqueness.

#### **Article XVII – Additional modifications to Registry provisions**

1. For the purposes of Article 19(6) of the Convention, the search criterion a for ~~agricultural, construction or mining~~ equipment shall be ~~the name of its manufacturer and its~~ manufacturer's serial number, ~~supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.~~

2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest 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.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry[, and] the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention [and the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 62 of the Convention].
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
5. The Registrar shall be liable under Article 28(1) of the Convention for loss caused up to an amount not exceeding the value of the ~~agricultural, construction or mining~~ equipment to which the loss relates. Notwithstanding the preceding sentence, 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 by regulations.
6. The preceding paragraph shall not limit the Registrar's liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.
7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.
8. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

### **Article XVIII – Notices of Sale**

The regulations shall authorise the registration in the International Registry of notices of sale of ~~agricultural, construction or mining~~ equipment. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

## **CHAPTER IV**

### **JURISDICTION**

#### **Article XIX – Waivers of sovereign immunity**

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to ~~agricultural, construction or mining~~ equipment 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.

2. A waiver under the preceding paragraph must be in writing and contain a description of the ~~agricultural, construction or mining~~ equipment as specified in Article V(1) of this Protocol.

## CHAPTER V

### RELATIONSHIP WITH OTHER CONVENTIONS

#### Article XX – Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention on International Interests in Mobile Equipment as applied to agricultural, construction and mining equipment shall supersede the UNIDROIT Convention on International Financial Leasing in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

## CHAPTER VI

### FINAL PROVISIONS

#### Article XXI – Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in \_\_\_\_\_ on \_\_\_\_\_ by States participating in the Diplomatic Conference to Adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction or Mining Equipment held at \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_. After \_\_\_\_\_, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

#### Article XXII – Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this

Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

### **Article XXIII – Entry into force**

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational.

2. For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

### **Article XXIV – Territorial units**

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

2. Any such declarations are to be notified to the Depositary and shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol

apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

### **Article XXV – Transitional Provisions**

In relation to agricultural [equipment](#), construction [equipment](#) and mining equipment Article 60 of the Convention shall be modified as follows:

(a) replace paragraph 2(a) with the following:

“(a) “effective date of this Convention” means in relation to a debtor the latest of the time when:

(i) this Convention enters into force;

(ii) the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, and

(iii) the Protocol becomes applicable in that State to the equipment which is subject to the pre-existing right or interest.”

(b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration takes effect, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

(c) insert the following paragraph:

“4. For the purposes of paragraph 3, a declaration takes effect with respect to a pre-existing right or interest in equipment to which the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment becomes applicable in that State in accordance with Article XXXII(4) of that Protocol at the time the Protocol becomes applicable to that equipment.”

### **Article XXVI – Declarations relating to certain provisions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and XI of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article IX(2).

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, B or C of Article X and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A, B or C. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article X.

4. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply paragraphs 4 to 7 of Article XIbis.

54. (a) Any declaration made pursuant to this Protocol shall apply to the entirety of the equipment to which this Protocol applies.

(b) A Contracting State that makes a declaration in respect of any Alternative provided for in Articles VII or X shall choose the same Alternative regarding the entirety of the equipment to which this Protocol applies.

65. The courts of Contracting States shall apply Article X in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

#### **Article XXVII – Declarations under the Convention**

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.

#### **Article XXVIII – Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles II, VII, XXIV, XXVI, XXVII and XXIX may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

#### **Article XXIX – Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

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

### **Article XXX – Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXVII under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

### **Article XXXI – Denunciations**

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.
4. A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex.

### **Article XXXII – Review conferences, amendments and related matters**

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
  - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
  - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
  - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
  - (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.
3. Any amendment to this Protocol other than to the Annexes [pursuant to paragraphs 4 and 5] shall be approved by at least a two-thirds majority of States Parties participating in the Conference

referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by five States Parties in accordance with the provisions of Article XXIII relating to its entry into force.

[4. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonised System codes listed in the Annexes, or the inclusion of any additional codes covering uniquely identifiable high value mobile equipment of a type that is used in the agricultural, mining or construction sector that may warrant inclusion of such equipment in the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. The Depositary shall communicate to all Contracting States the adoption of the amendment. Contracting States shall notify the Depositary within a period of twelve months from the date of the communication if they do not accept to be bound by the amendment. Any such amendment shall become effective in respect of the other States ninety days after the end of that period of 12 months unless [XX%] or more of the Contracting States have notified the Depositary that they do not accept to be bound. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

[5. After each revision of the Harmonised System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonised System that have affected the Harmonised System codes listed in the Annexes without changing the scope of the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. After approval of an amendment by Contracting States the amendment will become effective upon the expiration of [ninety] days after such approval. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

6. Any revision to the Annexes shall not affect rights and interests arising prior to the date the revision becomes effective or applicable.

### **Article XXXIII – Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii) the date of the deposit of the certificate referred to in Article XXIII(1)(b);
  - (iii) the date of entry into force of this Protocol;
  - (iv) each declaration made in accordance with this Protocol, together with the date thereof;
  - (v) the withdrawal or amendment of any declaration, together with the date thereof; and
  - (vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;



- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

## ANNEXES TO THE PROTOCOL

### ANNEX 1 – AGRICULTURAL EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to agricultural equipment that falls under the following Harmonised System codes in this Annex.

842482±: Mechanical appliances (whether or not hand-operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines – Other appliances -- Agricultural or Horticultural

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders – Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Plows

843221: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Harrows, scarifiers, cultivators, weeders and hoes – Disc harrows

~~843230: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers—Seeders, planters and transplanters~~

[843231: Seeders, planters and transplanters; no-till direct seeders, planters and transplanters](#)

[843239: Seeders, planters and transplanters; other than no-till direct seeders, planters and transplanters](#)

~~843240: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers—Manure Spreaders and fertilizer distributors~~

[843241: Spreaders and distributors; for manure and fertilizers, for agricultural, horticultural or forestry use; manure spreaders](#)

[843242: Spreaders and distributors; for manure and fertilizers, for agricultural, horticultural or forestry use; fertiliser distributors](#)

843340: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Straw or Fodder Balers

843351: Harvesting or Threshing Machinery, including Straw or Fodder Balers; Grass or Hay Mowers; Machines for Cleaning, Sorting or Grading Eggs, Fruit or other Agricultural Produce; Other than Machinery of Heading 8437 – Combine Harvester or Thresher

843680: Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders -- Other machinery

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

~~870190: Tractors (other than tractors of heading 8709)—Other~~

[870191: Tractors – Other, of an engine power - Not exceeding 18 kW](#)

[870192: Tractors – Other, of an engine power - Exceeding 18 kW but not exceeding 37 kW](#)

[870193: Tractors – Other, of an engine power - Exceeding 37 kW but not exceeding 75 kW](#)

[870194: Tractors – Other, of an engine power - Exceeding 75 kW but not exceeding 130 kW](#)

[870195: Tractors – Other, of an engine power - Exceeding 130 kW](#)

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

## ANNEX 2 – CONSTRUCTION EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to construction equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermet

842641: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled -- On tires

842649: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled – Other

842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping on compacting machinery

843069: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Other

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

847432: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Machines for mixing mineral substances with bitumen

847910: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Machinery for public works, building or the like

847982: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter -- Other machines and mechanical appliances -- Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines.

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

~~870190: Tractors (other than tractors of heading 8709) – Other~~

[870191: Tractors – Other, of an engine power - Not exceeding 18 kW](#)

[870192: Tractors – Other, of an engine power - Exceeding 18 kW but not exceeding 37 kW](#)

[870193: Tractors – Other, of an engine power - Exceeding 37 kW but not exceeding 75 kW](#)

[870194: Tractors – Other, of an engine power - Exceeding 75 kW but not exceeding 130 kW](#)

[870195: Tractors – Other, of an engine power - Exceeding 130 kW](#)

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

870510: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)  
– Crane lorries

870540: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)  
– Concrete-mixer lorries

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof --  
Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

### ANNEX 3 – MINING EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to mining equipment that falls under the following Harmonised System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools -- Rock drilling or earth boring tools, and parts thereof --With working part of cermets

842911 - Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Other

842952: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° degrees revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers --Mechanical shovels, excavators and shovel loaders – Other

843010 : Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Coal or rock cutters and tunneling machinery – Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers -- Other boring or sinking machinery – Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers – Other machinery, not self-propelled – Tamping or compacting machinery

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand -- Mixing or kneading machines -- Concrete or mortar mixers

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

~~870190: Tractors (other than tractors of heading 8709) – Other~~

[870191: Tractors – Other, of an engine power - Not exceeding 18 kW](#)

[870192: Tractors – Other, of an engine power - Exceeding 18 kW but not exceeding 37 kW](#)

[870193: Tractors – Other, of an engine power - Exceeding 37 kW but not exceeding 75 kW](#)

[870194: Tractors – Other, of an engine power - Exceeding 75 kW but not exceeding 130 kW](#)

[870195: Tractors – Other, of an engine power - Exceeding 130 kW](#)

870410: Motor vehicles for the transport of goods -- Dumpers designed for off-highway use

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -- Self-loading or self-unloading trailers and semi-trailers for agricultural purposes



**APPENDIX III**

**TEXT OF THE REVISED PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION  
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC  
TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

*as amended by the UNIDROIT Committee of Governmental Experts for the  
preparation of a draft Protocol to the Cape Town Convention on Matters specific  
to Mining, Agricultural and Construction Equipment at its second session, held  
in Rome from 2 – 6 October 2017*

**PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING,  
AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

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**PRELIMINARY DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL  
INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING,  
AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

**Preamble**

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING the significant benefits of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention), as facilitating the financing and leasing of uniquely identifiable high-value mobile equipment, in the light of the purposes set out in the preamble to the Convention,

AWARE of the benefits of extending the Convention to mining equipment, agricultural equipment and construction equipment,

NOTING that the World Customs Organisation's Harmonized Commodity Description and Coding System governed by the International Convention on the Harmonized Commodity Description and Coding System allows the determination of the categories of such equipment to which the extension of the Convention is warranted,

RECOGNISING the important role that mining equipment, agricultural equipment and construction equipment play in the global economy,

MINDFUL of the need to adapt the Convention to meet the particular requirements of mining equipment, agricultural equipment and construction equipment and their finance,

HAVE AGREED upon the following provisions relating to mining equipment, agricultural equipment and construction equipment:

**CHAPTER I**

**SPHERE OF APPLICATION AND 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) "agricultural equipment" means an object that falls under a Harmonized System code listed in Annex 2 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto;
  - (b) "construction equipment" means an object that falls under a Harmonized System code listed in Annex 3 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto;
  - (c) "dealer" means a person (including a manufacturer) that sells or leases equipment in the ordinary course of its business

- (d) “equipment” means mining equipment, agricultural equipment or construction equipment;
- (e) “guarantee contract” means a contract entered into by a person as guarantor;
- (f) “guarantor” means a person, who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (g) “Harmonized System” means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System;
- (h) “immovable-associated equipment” means equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated;
- (i) “insolvency-related event” means:
  - (i) the commencement of the insolvency proceedings; or
  - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (j) “inventory” means equipment held by a dealer for sale or lease in the ordinary course of its business;
- (k) “mining equipment” means an object that falls under a Harmonized System code listed in Annex 1 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto; and
- (l) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise.

## **Article II – Application of the Convention as regards mining equipment, agricultural equipment and construction equipment**

1. The Convention shall apply in relation to mining equipment, agricultural equipment and construction equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3 irrespective of any intended or actual use of the equipment.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to mining equipment, agricultural equipment and construction equipment.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will limit the application of the Protocol to the entirety of the equipment comprised in one or two of the Annexes.
4. This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space

assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.

### **Article III – Derogation**

The parties may, by agreement in writing, exclude the application of Article X and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VIII (2) – (4).

### **Article IV – Representative capacities**

A person may, in relation to equipment, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention in an agency, trust or representative capacity.

### **Article V – Identification of equipment**

1. For the purposes of Article 7(c) of the Convention and Article XX of this Protocol, a description of equipment is sufficient to identify the equipment if it contains:

- (a) a description of the equipment by item;
- (b) a description of the equipment by type;
- (c) a statement that the agreement covers all present and future equipment; or
- (d) a statement that the agreement covers all present and future equipment except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future equipment identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the equipment, without the need for any new act of transfer.

### **Article VI – Choice of law**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVII(1).

2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.

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

### **Article VII – Association with immovable property**

1. Where immovable-associated equipment is situated in a non-Contracting State, this Protocol does not affect the application of any law of that State that determines whether an international interest in the immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

2. A Contracting State, shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the entirety of Alternative A, B, or C of this Article shall apply in relation to an international interest in immovable-associated equipment which is situated in the Contracting State.

#### *Alternative A*

3. If immovable-associated equipment is removable [.....], the association of the equipment with the immovable property does not affect its status as equipment under this Protocol.

#### *Alternative B*

3. This Protocol does not affect the application of any law of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property to the extent that the equipment loses its individual legal identity in accordance with the law of that State.

4. Where equipment subject to an international interest is immovable-associated equipment and to the extent that it has not lost its individual legal identity in accordance with the law of the State where the immovable property is situated, an interest in the immovable property that extends to that equipment has priority over the registered international interest in the equipment only if the following conditions are fulfilled:

(c) the interest in the immovable property has been registered in accordance with the requirements of domestic law prior to the time of registration of the international interest in the equipment under this Protocol and registration of the interest in the immovable property continues to be effective; and

(d) the equipment became associated with the immovable property prior to the time of registration of the international interest in the equipment under this Protocol.

#### *Alternative C*

3. This Protocol does not affect the application of any law of the State where the immovable property is situated that determines whether an international interest in immovable-associated equipment ceases to exist, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

## CHAPTER II

### DEFAULT REMEDIES AND PRIORITIES

#### Article VIII – Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of equipment from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to equipment. Any remedy given by the Convention in relation to equipment shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving fourteen or more calendar days' prior written notice of a proposed sale or lease to interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
- [5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities [including but not limited to tax and customs authorities and transport infrastructure authorities] expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.]
6. A chargee proposing to procure the export of equipment under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:
  - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
  - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

#### Article IX – Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII(2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, "speedy" in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (d):

"(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom",



and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

[6. With regard to the remedies in Article VIII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief specified in Article 13 of the Convention is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations]

7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.

### **Article X – Remedies on Insolvency**

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVII(3).

2. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

#### *Alternative A*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the equipment to the creditor not later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the equipment if this Article did not apply.

4. For the purpose of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

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

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

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

7. The insolvency administrator or the debtor, as applicable, may retain possession of the equipment where, by the time specified in paragraph 3, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

[8. With regard to the remedies in Article VIII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.]

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

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

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

#### *Alternative B*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVII(3) whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the equipment, in accordance with the applicable law.

4. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

6. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the equipment but fails to do so, the court may permit the creditor to take possession of the equipment upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

7. The equipment shall not be sold pending a decision by a court regarding the claim and the international interest.

*Alternative C*

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:

- (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
- (b) give the creditor the opportunity to take possession of the equipment in accordance with the applicable law.

4. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the “suspension period”). Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.

5. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the equipment pending an order of the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency administrator or the debtor, as applicable, otherwise agree.

6. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the equipment 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.

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

8. Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, the insolvency administrator or debtor may retain possession of the equipment and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.

[9. With regard to the remedies in Article VIII(1):

- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.]

10. Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
11. Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.
12. 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.
13. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.
14. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.
15. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

#### **Article XI – Insolvency assistance**

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII(1).
2. The courts of a Contracting State in which equipment is situated shall, in accordance with the law of that State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article X.

#### **Article XII – Provisions relating to inventory**

1. Notwithstanding Article 29(3)(a) of the Convention, the buyer of inventory from a dealer acquires its interest in it free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.
2. Notwithstanding Article 29(4)(a) of the Convention, the conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.
3. Paragraphs 4 to 7 apply only where a Contracting State has made a declaration pursuant to Article XXVII(4).
4. An interest in inventory created or provided for by an agreement under which the dealer is the debtor is not an international interest if the dealer is situated in a Contracting State referred to in paragraph 3 at the time the interest is created or arises.
5. For the purposes of this Article a dealer is situated in a State where it has its place of business or, if it has more than one place of business in different States, its principal place of business.

6. Notwithstanding Article 29(3)(b) of the Convention, if a State has made a declaration under paragraph 3, a buyer of inventory from a dealer acquires its interest in it free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

7. Notwithstanding Article 29(4)(b) of the Convention, if a State has made a declaration under paragraph 3, a conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.

### **Article XIII – Debtor provisions**

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the equipment in accordance with the agreement as against:

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and
- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to equipment.

## **CHAPTER III**

### **REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN MINING EQUIPMENT, AGRICULTURAL EQUIPMENT AND CONSTRUCTION EQUIPMENT**

#### **Article XIV – The Supervisory Authority and the Registrar**

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment, provided that such Supervisory Authority is able and willing to act in such capacity.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

4. The first Registrar of the International Registry shall be appointed for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

### **Article XV – First regulations**

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

### **[Article XVI – Designated entry points**

1. A Contracting State may at any time designate an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under laws of another State. The various entry points shall be operated at least during working hours in their respective territories.
2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale.]

### **Article XVII – Identification of equipment for registration purposes**

A description of equipment that contains its manufacturer's serial number and such additional information as required to ensure uniqueness is necessary and sufficient to identify the object for the purposes of Article 18(1)(a) of the Convention. The Regulations shall specify the format of the manufacturer's serial number and provide what additional information is required to ensure uniqueness.

### **Article XVIII – Additional modifications to Registry provisions**

1. For the purposes of Article 19(6) of the Convention, the search criterion for equipment shall be its manufacturer's serial number.
2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest 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.
3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry[, and] the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention [and the reasonable costs of the Depositary associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 62 of the Convention].
4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.
5. The Registrar shall be liable under Article 28(1) of the Convention for loss caused up to an amount not exceeding the value of the equipment to which the loss relates. Notwithstanding the preceding sentence, 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 by regulations.

6. The preceding paragraph shall not limit the Registrar's liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.

7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.

8. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

### **Article XIX – Notices of Sale**

The regulations shall authorise the registration in the International Registry of notices of sale of equipment. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

## **CHAPTER IV**

### **JURISDICTION**

#### **Article XX – Waivers of sovereign immunity**

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to equipment 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.

2. A waiver under the preceding paragraph must be in writing and contain a description of the equipment as specified in Article V(1) of this Protocol.

## **CHAPTER V**

### **RELATIONSHIP WITH OTHER CONVENTIONS**

#### **Article XXI – Relationship with the UNIDROIT Convention on International Financial Leasing**

The Convention on International Interests in Mobile Equipment as applied to agricultural, construction and mining equipment shall supersede the UNIDROIT Convention on International Financial Leasing in respect of the subject matter of this Protocol, as between States Parties to both Conventions.

## CHAPTER VI

### FINAL PROVISIONS

#### **Article XXII – Signature, ratification, acceptance, approval or accession**

1. This Protocol shall be open for signature in \_\_\_\_\_ on \_\_\_\_\_ by States participating in the Diplomatic Conference to Adopt a Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment held at \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_. After \_\_\_\_\_, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXIV.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

#### **Article XXIII – Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a "Contracting State" or "Contracting States" or "State Party" or "States Parties" in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

#### **Article XXIV – Entry into force**

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:



- (a) the first day of the month following the expiration of three months after the date of the deposit of the [fifth] instrument of ratification, acceptance, approval or accession, and
  - (b) the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational.
2. For other States this Protocol enters into force on the first day of the month following the later of:
- (a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and
  - (b) the date referred to in sub-paragraph (b) of the preceding paragraph.

### **Article XXV – Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.
2. Any such declarations are to be notified to the Depositary and shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
- (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;
  - (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
  - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

### **Article XXVI – Transitional Provisions**

In relation to agricultural equipment, construction equipment and mining equipment Article 60 of the Convention shall be modified as follows:

- (a) replace paragraph 2(a) with the following:
  - “(a) “effective date of this Convention” means in relation to a debtor the latest of the time when:

- (i) this Convention enters into force;
  - (ii) the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, and
  - (iii) the Protocol becomes applicable in that State to the equipment which is subject to the pre-existing right or interest.”
- (b) replace paragraph 3 with the following:
- “3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration takes effect, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”
- (c) insert the following paragraph:
- “4. For the purposes of paragraph 3, a declaration takes effect with respect to a pre-existing right or interest in equipment to which the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural and Construction Equipment becomes applicable in that State in accordance with Article XXXIII(4) of that Protocol at the time the Protocol becomes applicable to that equipment.”

#### **Article XXVII – Declarations relating to certain provisions**

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and XI of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article IX(2).
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, B or C of Article X and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A, B or C. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article X.
4. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply paragraphs 4 to 7 of Article XII.
5. (a) Any declaration made pursuant to this Protocol shall apply to the entirety of the equipment to which this Protocol applies.  
 (b) A Contracting State that makes a declaration in respect of any Alternative provided for in Articles VII or X shall choose the same Alternative regarding the entirety of the equipment to which this Protocol applies.
6. The courts of Contracting States shall apply Article X in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

### **Article XXVIII – Declarations under the Convention**

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol, unless stated otherwise.

### **Article XXIX – Reservations and declarations**

1. No reservations may be made to this Protocol but declarations authorised by Articles II, VII, XXV, XXVII, XXVIII and XXX may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

### **Article XXX – Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXVIII under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

### **Article XXXI – Withdrawal of declarations**

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXVIII under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

### **Article XXXII – Denunciations**

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

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

4. A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex.

### **Article XXXIII – Review conferences, amendments and related matters**

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

- (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
- (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
- (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol other than to the Annexes [pursuant to paragraphs 4 and 5] shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by five States Parties in accordance with the provisions of Article XXIV relating to its entry into force.

[4. After each revision of the Harmonized System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonized System that have affected the Harmonized System codes listed in the Annexes, or the inclusion of any additional codes covering uniquely identifiable high value mobile equipment of a type that is used in the mining, agricultural or construction sector that may warrant inclusion of such equipment in the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. The Depositary shall communicate to all Contracting States the adoption of the amendment. Contracting States shall notify the Depositary within a period of twelve months from the date of the communication if they do not accept to be bound by the amendment. Any such amendment shall become effective in respect of the other States ninety days after the end of that period of 12 months unless [XX%] or more of the Contracting States have notified the Depositary that they do not accept to be bound. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

[5. After each revision of the Harmonized System, or such other times as the circumstances may require, the Depositary, after consultation with the Supervisory Authority, shall convene a meeting of Contracting States to consider any amendments to the Annexes that reflect changes to the Harmonized System that have affected the Harmonized System codes listed in the Annexes without changing the scope of the Annexes. Each such amendment shall be approved by at least a two-thirds majority of States participating in the meeting. After approval of an amendment by Contracting States the amendment will become effective upon the expiration of [ninety] days after such approval. The Depositary shall immediately notify all Contracting States of the amendment and the date at which the amendment becomes effective.]

6. Any revision to the Annexes shall not affect rights and interests arising prior to the date the revision becomes effective or applicable.

#### **Article XXXIV – Depositary and its functions**

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

- (a) inform all Contracting States of:
  - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
  - (ii) the date of the deposit of the certificate referred to in Article XXIV(1)(b);
  - (iii) the date of entry into force of this Protocol;
  - (iv) each declaration made in accordance with this Protocol, together with the date thereof;
  - (v) the withdrawal or amendment of any declaration, together with the date thereof; and
  - (vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;
- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.

## **ANNEXES TO THE PROTOCOL**

### **ANNEX 1 – MINING EQUIPMENT**

1. As consistent with Article II, the Convention shall apply in relation to mining equipment that falls under the following Harmonized System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools - Rock drilling or earth boring tools -- With working part of cermets

842911 - Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Other

842952: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Other

843010 : Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Coal or rock cutters and tunnelling machinery -- Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Coal or rock cutters and tunnelling machinery -- Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other boring or sinking machinery -- Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other boring or sinking machinery -- Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers – Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers – Other machinery, not self-propelled -- Tamping or compacting machinery

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand - Mixing or kneading machines -- Concrete or mortar mixers

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870191: Tractors – Other, of an engine power - Not exceeding 18 kW

870192: Tractors – Other, of an engine power - Exceeding 18 kW but not exceeding 37 kW

870193: Tractors – Other, of an engine power - Exceeding 37 kW but not exceeding 75 kW

870194: Tractors – Other, of an engine power - Exceeding 75 kW but not exceeding 130 kW

870195: Tractors – Other, of an engine power - Exceeding 130 kW

870410: Motor vehicles for the transport of goods - Dumpers designed for off-highway use

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof - Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

## ANNEX 2 – AGRICULTURAL EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to agricultural equipment that falls under the following Harmonized System codes in this Annex.

842482: Mechanical appliances (whether or not hand-operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines – Other appliances -- Agricultural or Horticultural

842911: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers – Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Other

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other boring or sinking machinery -- Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers – Other machinery, self-propelled

843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Ploughs

843221: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers - Harrows, scarifiers, cultivators, weeders and hoes -- Disc harrows

843231: Seeders, planters and transplanters; no-till direct seeders, planters and transplanters



843239: Seeders, planters and transplanters; other than no-till direct seeders, planters and transplanters

843241: Spreaders and distributors; for manure and fertilizers, for agricultural, horticultural or forestry use; manure spreaders

843242: Spreaders and distributors; for manure and fertilizers, for agricultural, horticultural or forestry use; fertiliser distributors

843340: Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437- Straw or fodder balers, including pick-up balers

843351: Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437 - Other harvesting machinery; threshing machinery -- Combine harvester-threshers

843680: Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment, poultry incubators and brooders - Other machinery

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870191: Tractors – Other, of an engine power -- Not exceeding 18 kW

870192: Tractors – Other, of an engine power -- Exceeding 18 kW but not exceeding 37 kW

870193: Tractors – Other, of an engine power -- Exceeding 37 kW but not exceeding 75 kW

870194: Tractors – Other, of an engine power -- Exceeding 75 kW but not exceeding 130 kW

870195: Tractors – Other, of an engine power -- Exceeding 130 kW

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof - Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

### ANNEX 3 – CONSTRUCTION EQUIPMENT

1. As consistent with Article II, the Convention shall apply in relation to construction equipment that falls under the following Harmonized System codes in this Annex.

820713: Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools - Rock drilling or earth boring tools -- With working part of cermets

842641: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled -- On tyres

842649: Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane - Other machinery, self-propelled -- Other

842911: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Track laying

842919: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Bulldozers and angledozers -- Other

842920: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Graders and levelers

842930: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Scrapers

842951: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Mechanical shovels, excavators and shovel loaders -- Front-end shovel loaders

842952: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Machinery with a 360° revolving superstructure

842959: Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Other

843010: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow ploughs and snow-blowers - Pile-drivers and pile-extractors

843031: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Coal or rock cutters and tunneling machinery -- Self-propelled

843039: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Coal or rock cutters and tunnelling machinery -- Other

843041: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other boring or sinking machinery -- Self-propelled

843049: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other boring or sinking machinery -- Other

843050: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other machinery, self-propelled

843061: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other machinery, not self-propelled -- Tamping or compacting machinery

843069: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers - Other machinery, not self-propelled -- Other

847431: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand - Mixing or kneading machines -- Concrete or mortar mixers

847432: Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand - Mixing or kneading machines -- Machines for mixing mineral substances with bitumen

847910: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter - Machinery for public works, building or the like

847982: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter - Other machines and mechanical appliances -- Mixing, kneading, crushing, grinding, screening, sifting, homogenising, emulsifying or stirring machines.

870130: Tractors (other than tractors of heading 8709) – Track-laying tractors

870191: Tractors – Other, of an engine power -- Not exceeding 18 kW

870192: Tractors – Other, of an engine power -- Exceeding 18 kW but not exceeding 37 kW

870193: Tractors – Other, of an engine power -- Exceeding 37 kW but not exceeding 75 kW

870194: Tractors – Other, of an engine power -- Exceeding 75 kW but not exceeding 130 kW

870195: Tractors – Other, of an engine power -- Exceeding 130 kW

870410: Motor vehicles for the transport of goods - Dumpers designed for off-highway use

870510: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)  
– Crane lorries

870540: Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units)  
– Concrete-mixer lorries

871620: Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof -  
Self-loading or self-unloading trailers and semi-trailers for agricultural purposes

**APPENDIX IV****AGENDA AND ORDER OF BUSINESS**

(Prepared by the UNIDROIT Secretariat)

1. Opening of the session and election of the officers.
2. Adoption of the annotated draft agenda and organisation of the session.
3. Report on intersessional work.
4. Consideration of the preliminary draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Agricultural, Construction and Mining Equipment.
5. Future work.
6. Review of Report.
7. Any other business.

**Monday 2 October**

- 08:30 Registration
- 10:00 – 12:30 *Morning session*  
**Item 1:** Opening of the session and election of the officers  
**Item 2:** Adoption of the Agenda and Organisation of the session  
**Item 3:** Report on Intersessional Work
- 14:00 – 17:00 *Afternoon session*  
**Item 3:** Report on Intersessional Work (continued)  
**Item 4:** Consideration of the preliminary draft Protocol  
Article I – Defined terms  
Article II – Application of the Convention  
Article XXXII - Review conferences, amendments and related matters  
Annex 1  
Annex 2  
Annex 3
- 18:00 Drafting Committee

**Tuesday 3 October**

- 08:30 Registration
- 09:00 – 12:30 *Morning session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article II – Application of the Convention (continued)  
Article XXXII - Review conferences, amendments and related matters  
Annex 1  
Annex 2  
Annex 3
- 14:00 – 17:00 *Afternoon session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article III – Derogation  
Article IV – Representative Capacities  
Article V – Identification of agricultural, construction and mining equipment  
Article VI – Choice of law
- 18:00 Drafting Committee

**Wednesday 4 October**

- 09:00 – 12:30 *Morning session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article VII – Association with immovable property
- 14:00 – 17:00 *Afternoon session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article VII – Association with immovable property (continued)
- 18:00 Drafting Committee

**Thursday 5 October**

- 09:00 – 12:30 *Morning session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article VIII – Modification of default remedy provisions  
Article IX – Modification of provisions regarding relief pending final determination  
Article X – Remedies on insolvency  
Article XI – Insolvency assistance  
Article XII – Debtor provisions  
Article XIII – The Supervisory Authority and the Registrar  
Article XIV – First regulations  
Article XV – Designated entry points
- 14:00 – 17:00 *Afternoon session*  
**Item 4:** Consideration of the preliminary draft Protocol  
Article XVI – Identification of agricultural, construction or mining equipment for registration purposes  
Article XVII – Additional modifications to Registry provisions  
Article XVIII – Notices of Sale  
Article XIX – Waivers of sovereign immunity  
Article XX – Relationship with the UNIDROIT Convention on International Financial Leasing  
Article XXI – Signature, ratification, acceptance, approval or accession  
Article XXII – Regional Economic Integration Organisations  
Article XXIII – Entry into force
- 18:00 Drafting Committee

**Friday 6 October**

09:00 – 12:30

*Morning session*

**Item 4:** Consideration of the preliminary draft Protocol  
Article XXIV - Territorial units  
Article XXV - Transitional Provisions  
Article XXVI - Declarations relating to certain provisions  
Article XXVII - Declarations under the Convention  
Article XXVIII - Reservations and declarations  
Article XXIX - Subsequent declarations  
Article XXX - Withdrawal of declarations  
Article XXXI - Denunciations  
Article XXXIII - Depositary and its functions

14:00 – 17:00

*Afternoon session*

**Item 4:** Consideration of the preliminary draft Protocol  
**Item 5:** Future work  
**Item 6:** Review of report  
**Item 7:** Any other business

**Close of meeting**



**APPENDIX V**

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