



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONALE POUR L'UNIFICATION DU DROIT PRIVE

OTIF



ORGANISATION INTERGOUVERNEMENTALE POUR LES
TRANSPORTS INTERNATIONAUX FERROVIAIRES

ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL

**DIPLOMATIC CONFERENCE TO ADOPT A
RAIL PROTOCOL TO THE CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT**

Luxembourg, 12 to 23 February 2007

UNIDROIT/OTIF 2006
DCME-RP – Doc. 3
Original: English/French
July 2006

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

1. The text of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (the *draft Rail Protocol*) has been prepared by a Joint UNIDROIT / OTIF Committee of Governmental Experts during three meetings (Berne, 15-16 March 2001; Rome, 17-19 June 2002; Berne, 5-13 May 2003). It was assisted by various groups, in particular the Rail Working Group and the Rail Registry Task Force (the RRTF) which held several meetings also after the third meeting of the Joint Committee of governmental experts (Rome, 20-22 March 2002; Washington, 19-20 March 2003; Brussels, 21-23 September 2004, Rome, 22-24 February 2005).

2. A Sub-Committee of the Drafting Committee of the Joint Committee of Governmental Experts, chaired by Sir Roy Goode, held its session on the occasion of the fourth meeting of the RRTF in February 2005 to review the draft articles of the draft Rail Protocol relating to registration on the basis of the discussions and decisions of the RRTF at its fourth session. This was done on the basis of the mandate given to the RRTF at the third session of the Joint Committee of governmental experts.

3. On the basis of the decisions taken by the RRTF, the following amendments have been made by the Sub-Committee of the Drafting Committee and agreed by the RRTF:

- (a) Adding a new introductory paragraph to Article V to specify the identification requirements for railway rolling stock for the purposes of Article 7 of the Convention;
- (b) Adding a new sentence at the beginning of Article V(2);
- (c) Amending Article V(2) (to be renumbered as Article V(3)) to include a factor to connect the Contracting State making the declaration with the item of railway rolling stock;
- (d) Amending Article V(6) (to be renumbered as Article V(7)) to clarify that failure to comply with the requirements of that article would not invalidate a registration;
- (e) Amending Article XIII(1) to replace "council of representatives, one representative" with "a body consisting of representatives";
- (f) Inserting new Article XIII(3) to provide for privileges and immunities of the Secretariat;
- (g) Amending Article XVII(4) to provide that the amount of insurance or financial guarantee shall be not less than the amount determined by the Supervisory Authority to be appropriate, although the factors for the Supervisory Authority to take into account are yet to be determined;
- (h) Amending Article XVIII(1) to reflect the requirement of the Convention that fees be set by the Supervisory Authority, and that fees might be required to be paid in connection with other services provided by the Registry;
- (i) Amending Article XVIII(2) to add "reasonable" before "costs establishing and implementing" and to refer to the "reasonable costs of the Supervisory Authority's Secretariat"; and
- (j) Deleting Article XVIII(3), in light of the amendment to Article XVIII(1).

4. The text of the revised draft articles V, XIII, XVII and XVIII is set out in a marked up version as against the version agreed by the Joint Committee of governmental experts in 2003. The revised draft articles are here submitted as a proposal by the Drafting Committee as the Joint Committee of governmental experts was not reconvened since they were drafted.

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

PREAMBLE

CHAPTER I GENERAL PROVISIONS

Article I	Defined terms
Article II	Application of Convention as regards railway rolling stock
Article III	Derogation
Article IV	Representative capacities
Article V	Identification of railway rolling stock
Article VI	Choice of Law

CHAPTER II DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article VII	Modification of default remedies provisions
Article VIII	Modification of provisions regarding relief pending final determination
Article IX	Remedies on insolvency
Article X	Insolvency assistance
Article XI	Modification of assignment provisions
Article XII	Debtor provisions

CHAPTER III RAILWAY ROLLING STOCK REGISTRY PROVISIONS

Article XIII	The Supervisory Authority and the Registrar
Article XIV	First Regulations
Article XV	Access to Registry
Article XVI	Designated entry points
Article XVII	Additional modifications to Registry provisions
Article XVIII	International Registry fees

CHAPTER IV JURISDICTION

Article XIX	Waivers of sovereign immunity
-------------	-------------------------------

CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS

Article XX	Relationship with other Conventions
------------	-------------------------------------

CHAPTER VI **FINAL PROVISIONS**

Article XXI	Signature, ratification, acceptance, approval or accession
Article XXII	Regional Economic Integration Organisations
Article XXIII	Entry into force
Article XXIV	Territorial units
Article XXV	Public service rolling stock
Article XXVI	Transitional provisions
Article XXVII	Declarations relating to certain provisions
Article XXVIII	Reservations and declarations
Article XXIX	Declarations modifying the Convention or certain provisions thereof
Article XXX	Subsequent declarations
Article XXXI	Withdrawal of declarations
Article XXXII	Denunciations
Article XXXIII	Review Conferences, amendments and related matters
Article XXXIV	Depositary and its functions

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

(as adopted by the Joint UNIDROIT/OTIF Committee of governmental experts
at its third session held in Bern from 5 to 13 May 2003,
with marked-up proposals to amend Articles V, XIII, XVII and XVIII made by the Drafting
Committee of the Joint UNIDROIT/OTIF Committee of governmental experts in February 2005)

THE STATES PARTIES TO THIS PROTOCOL

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

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

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

CHAPTER I GENERAL PROVISIONS

Article I Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:¹
 - (a) "guarantee contract" means a contract entered into by a person as guarantor;
 - (b) "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;
 - (c) "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;

¹ The Official Commentary to Article 7(b) of the Convention makes clear that the "power to dispose" includes the power to permit the use of any object. The Drafting Committee considers therefore that neither a definition nor a similar provision should be added in this Protocol to confirm this position.

(d) “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;

(e) “public service rolling stock” means railway rolling stock habitually used for transporting the public on scheduled services, together with locomotives and ancillary railway rolling stock habitually used to provide such services;

(f) “railway vehicle” means a vehicle moveable on or directly above a fixed railway track or guideway, or fixed superstructures or racks installed or designed to be installed on such vehicles, including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other components, equipment and parts installed or incorporated therein or attached thereto;

(g) “railway rolling stock” means railway vehicles and all operating and technical data, manuals, notebooks and other records identifiable in relation to a specific railway vehicle.

Article II

Application of Convention as regards railway rolling stock

1. The Convention shall apply in relation to railway rolling stock as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to railway rolling stock.

Article III

Derogation

In their relations with each other, the parties may by agreement in writing, derogate from or vary any of the provisions of this Protocol except Article VII(2).

Article IV

Representative capacities

A person may, in relation to railway rolling stock, 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 on behalf of a creditor or creditors.

Article V

Identification of railway rolling stock²

1. For the purposes of Article 7 of the Convention, a description of an item of railway rolling stock is sufficient if: (a) it contains its manufacturer's name, its serial number and its model designation; or (b) it conforms to the method prescribed by the ensuing paragraphs.

² Proposal to amend this Article by the Drafting Committee of the Joint UNIDROIT/OTIF Committee of governmental experts.

~~42.~~ For the purposes of Chapter V of the Convention, ~~the~~ Supervisory Authority shall, in regulations, prescribe a system for the allocation of identification numbers by the Registrar to enable the unique identification of items of railway rolling stock. The identification number shall either be affixed to the item of railway rolling stock or be associated in the International Registry with a national or regional identification number so affixed.

~~23.~~ A Contracting State may by a declaration state the system of national or regional identification numbers it will use ~~f~~ For the purpose of the preceding paragraph, a Contracting State may by declaration state the system of national or regional identification numbers that shall be used [with respect to items of railway rolling stock subject to an international interest created by a debtor situated in that Contracting State at the time of the conclusion of the agreement creating or providing for the international interest]. Such a national or regional identification system shall ensure the unique identification of items of railway rolling stock and compliance with the basic informational requirements of the Convention and this Protocol for the operation of the International Registry.

~~34.~~ A declaration by a Contracting State according to the preceding paragraph shall be made at the time of ratification, acceptance, approval of, or accession to this Protocol and shall include detailed information on the operation of the national or regional identification system.

~~45.~~ The Supervisory Authority shall review the national or regional identification system set out in a declaration by a Contracting State pursuant to paragraph ~~23~~ and may give advice on the measures to be taken to ensure that the system complies with the conditions set out in paragraph ~~23~~.

~~56.~~ Every registration in respect of a specific item of railway rolling stock shall be made against the identification number allocated by the Registrar pursuant to paragraph ~~42~~.

~~67.~~ A registration in respect of an item of railway rolling stock for which a declaration pursuant to paragraph ~~23~~ has been made, shall specify all the national or regional identification numbers to which the item has been subject since the entry into force of this Protocol and the time during which each number has applied to the item. The debtor shall, and the creditor may, provide the International Registry with any new national or regional identification number allocated during the currency of the registration of the relevant interest. Any identification number so specified or provided shall be registered in the International Registry by the Registrar. Failure to comply with any of the above requirements shall not invalidate the registration.

Article VI Choice of law

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

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.

CHAPTER II DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article VII

Modification of default remedies provisions

1. Any court order under Articles 8(1)(a) and (2), 10 and 13(1)(b) of the Convention authorising the creditor to take possession, custody or control of the object may specify the reasonable measures to be taken by the debtor to make it possible for the creditor to exercise its rights in accordance with the order.
2. Article 8(3) of the Convention shall not apply to railway rolling stock. Any remedy given by the Convention in relation to railway rolling stock 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.
3. A chargee giving 14 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.

Article VIII

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 and to the extent stated in such declaration.
2. Relief under Article 13(1) of the Convention shall not be dependent upon the agreement of the debtor.
3. 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.
4. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (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)”.
5. 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.

6. Judicial relief under Article 13(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings in another State unless its application would contravene an international instrument or an instrument made by a Regional Economic Integration Organisation to which Article XXII(1) of this Protocol applies, being an instrument which in either case is binding on the Contracting State.

Article IX
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.

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 6, give possession of the railway rolling stock to the creditor no 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 railway rolling stock if this Article did not apply.

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

4. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

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

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

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

6. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, by the time specified in paragraph 2, 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.

7. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

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

9. 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.

10. 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.

11. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

2. 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 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 railway rolling stock, in accordance with the applicable law.

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

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

5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the railway rolling stock but fails to do so, the court may permit the creditor to take possession of the railway rolling stock upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. The railway rolling stock shall not be sold pending a decision by a court regarding the claim and the international interest.

Alternative C

2. 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 railway rolling stock in accordance with the applicable law.

3. 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 for such period ending not later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the “suspension period”). No such order shall be made unless the insolvency administrator or the debtor, as applicable, has undertaken to the court to pay all sums and perform all other obligations accruing to the creditor during the suspension period.
4. If an application is made to the court under the preceding paragraph, the railway rolling stock shall not be sold pending a decision by 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.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:
 - (a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.
6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve and maintain it and its value.
7. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, during the cure period or any suspension period, it 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. A second cure period shall not apply in respect of a default in the performance of such future obligations.
8. Subject to paragraphs 3 and 4, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.
9. Subject to paragraphs 3 and 4, no obligations of the debtor under the agreement and related transactions may be modified in the insolvency proceedings without the consent of the creditor.
10. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
11. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in the insolvency proceedings over registered interests.
12. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.
13. 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 X
Insolvency assistance

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII.
2. The courts of a Contracting State in which railway rolling stock is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX, so far as applicable.

Article XI
Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after subparagraph (b):

“and (c) the debtor has not been given prior notice in writing of an assignment in favour of another person”.

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 object 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 railway rolling stock.

CHAPTER III
RAILWAY ROLLING STOCK REGISTRY PROVISIONS

Article XIII
*The Supervisory Authority and the Registrar*³

1. The Supervisory Authority shall be a ~~body consisting of~~ body consisting of representatives, one representative to be appointed by each State Party.

³ Cf. footnote 2.

2. The Intergovernmental Organisation for International Carriage by Rail shall be the Secretariat of the Supervisory Authority and shall assist the Supervisory Authority in the performance of its functions.

3. The Secretariat shall have legal personality where not already possessing such personality, and shall enjoy, in relation to its functions under the Convention and this Protocol, the same exemptions and immunities as are provided to the Supervisory Authority under Article 27(3) of the Convention and to the International Registry under Article 27(4) of the Convention.

~~34.~~ A decision of the Supervisory Authority that affects only the interests of a State Party or a group of States Parties shall be made if such State Party or the majority of the group of States Parties also votes in favour of the decision. A decision that could adversely affect the interests of a State Party or a group of States Parties shall have effect in such State Party or group of States Parties if such State Party or the majority of the group of States Parties also votes in favour of the decision.

~~45.~~ The first Registrar shall be appointed for a period not exceeding [10] years. Thereafter, the Registrar shall be appointed or re-appointed for successive periods each not exceeding [10] years.

Article XIV
First Regulations

The first regulations shall be made by the Supervisory Authority no later than [three months] prior to the entry into force of this Protocol and shall be made so as to take effect upon the entry into force of this Protocol. Prior to issuing regulations, the Supervisory Authority shall publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon.

Article XV
Access to Registry

The centralised functions of the International Registry shall be operated and administered by the Registrar on a 24-hour basis.

Article XVI
Designated entry points

A Contracting State may at any time designate an entity or entities as the entry point or entry points through which there 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. Such designation may permit but shall not compel the use of such designated entry point. The various entry points shall be operated at least during working hours in their respective territories.

Article XVII

*Additional modifications to Registry provisions*⁴

1. For the purposes of Article 19(6) of the Convention, the search criteria at the International Registry shall be established by regulations of the Supervisory Authority.
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 10 calendar days after the receipt of the demand described in such paragraph.
3. Where a subordination has been registered and the obligations of the debtor to the beneficiary of the subordination have been discharged, the beneficiary shall procure the discharge of the registration no later than 10 calendar days after written demand by the subordinated party delivered to or received at the beneficiary's address stated in the registration.
4. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, ~~be not be~~ less than the ~~amount maximum value of [an item of] railway rolling stock as~~ determined by the Supervisory Authority ~~to be appropriate, having regard to [...]~~.
5. 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

*International Registry fees*⁵

1. ~~By way of modification of Article 17(2)(h) of the Convention, the Registrar shall, subject to the approval of t~~The Supervisory Authority ~~shall~~ set and may from time to time amend the fees to be paid in connection with registrations, filings, ~~and~~ searches ~~and other services the International Registry may provide, in accordance with its regulations.~~
2. The fees referred to in the preceding paragraph shall be determined so as to recover the ~~reasonable~~ costs of establishing and implementing (amortised over [10] years), and operating the International Registry as well as the reasonable costs of the Supervisory Authority and its Secretariat associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention provided that nothing herein shall preclude the service provider operating for profit.
3. ~~The fees referred to in paragraph 1 may be amended by the Registrar taking into account changed economic conditions provided that any increase of the fees by more than [10] per cent shall require the approval of the Supervisory Authority.~~

⁴ Cf. footnote 2.

⁵ Idem

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 railway rolling stock under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.
2. A waiver under the preceding paragraph must be in writing and contain a description of the railway rolling stock as specified in Article V of this Protocol.

CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS

Article XX *Relationship with other Conventions*

The Convention and this Protocol shall, for Contracting States which are parties to them, in the event of any conflict, take precedence over

- (a) the Rome Convention on the Law Applicable to Contractual Obligations 1980;
- (b) the Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1968 (as amended from time to time);
- (c) the Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1988;
- (d) the Inter-American Convention on the Law Applicable to International Contracts 1994;
- (e) the Convention Concerning International Carriage by Rail 1980 as modified by the Protocol of modification of 3 June 1999;
- (f) the UNIDROIT Convention on International Factoring 1988;
- (g) the UNIDROIT Convention on International Financial Leasing 1988;
- [(h) the Hague Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 2002; and]
- [(i) the European Union Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings and the European Union Council regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters,]

as they relate to railway rolling stock, to the extent that that convention [or regulation] is in force among them and that the terms of that convention [or regulation] are inconsistent with the provisions of the Convention or of this Protocol.

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 Railway Rolling Stock 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 on the first day of the month following the expiration of three months after the date of the deposit of the [third] instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.
2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 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 Depository 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
Public service rolling stock

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare which and to what extent the following sub-paragraphs shall apply to such Contracting State:

(a) the remedies provided in [Chapter III of the Convention and Articles VII to X of this Protocol] shall not be exercisable within its territory in relation to the public service rolling stock specified in its declaration or determined by a competent authority of that State notified to the Depositary;

(b) the remedies provided in [Chapter III of the Convention and Articles VII to X of this Protocol] shall not be exercisable within its territory in relation to railway rolling stock as far as it is used for the purpose of providing a service of public importance as specified in its declaration or determined by a competent authority of that State notified to the Depositary;

(c) the Contracting State making a declaration under either of the preceding sub-paragraphs shall take into consideration the protection of the interests of the creditor.

Article XXVI
Transitional Provisions

In relation to railway rolling stock Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after “situated” insert “at the time the right or interest is created or arises”;

(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 after the date on which the declaration becomes effective, 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.”

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 X 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 VIII of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article VIII(3).

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 one of Alternatives A, B and C of Article IX and, if it so declares, it shall specify the type of insolvency proceeding, if any, to which it will apply such Alternative. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article IX under paragraph 3 of Alternative A, paragraph 2 of Alternative B or paragraphs 4 and 13 of Alternative C, as applicable.

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

Article XXVIII

Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXV, XXVII, XXIX 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 XXIX

Declarations modifying the Convention or certain provisions thereof

1. Declarations made under the Convention, including those made under Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol unless stated otherwise.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will impose other conditions on the application of Articles VI and VIII as specified in its declaration.

3. For the purposes of Article 50(1) of the Convention an “internal transaction” shall also mean, in relation to railway rolling stock, a transaction of a type listed in Article 2(2)(a) to (c) of the Convention where the relevant object is only capable, in its normal course of use, of being operated on a single railway system within that Contracting State because of track gauge or other elements of the design of such railway rolling stock.

Article XXX

Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXIX 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.

[4. Declarations made pursuant to Articles 39 and 40 of the Convention shall be subject to this Article.]

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

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 12 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.

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 25 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 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 which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by three States in accordance with the provisions of Article XXIII relating to its entry into force.

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 entry into force of this Protocol;
- (iii) each declaration made in accordance with this Protocol, together with the date thereof;
- (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
- (v) 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.