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MEMORANDUM OF DECLARATIONS

THE SYSTEM OF DECLARATIONS UNDER
THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
AS APPLIED TO RAILWAY ROLLING STOCK

AN EXPLANATORY MEMORANDUM FOR THE ASSISTANCE OF STATES AND REGIONAL ECONOMIC
INTEGRATION ORGANISATIONS IN THE COMPLETING OF DECLARATIONS

(PREPARED BY THE SECRETARIAT OF UNIDROIT, AS DEPOSITARY)

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PART I - COMMENTARY

Introduction

1. This memorandum has been prepared by the Secretariat of UNIDROIT to assist States and Regional Economic Integration Organisations in their preparation of declarations under the *Convention on International Interests in Mobile Equipment* (the Convention) and the *Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock* (the Luxembourg Protocol).

2. The Convention and Luxembourg Protocol provide for the making of declarations by Contracting States and Regional Economic Integration Organisations.¹ The complexity of the system of declarations, and the fact that declarations affect the rights and obligations of Contracting States mean that particular care must be exercised by Contracting States in making their declarations. This Memorandum is intended to ensure that Contracting States make their declarations in full compliance with the terms of the Convention and the Luxembourg Protocol. A table of all of the declarations that may be made by Contracting States and Regional Economic Integration Organisations under the Convention and Luxembourg Protocol is found at **Appendix 1**.

Background

3. During the development of the Convention and the Aircraft Protocol,² both of which were adopted at a Diplomatic Conference in Cape Town in November 2001, it became clear that the solutions advocated in some of their provisions might run so counter to the legal traditions of certain States as to make those provisions potentially unacceptable to those States. This could, for example, have been the case with the default provisions permitting the exercise of extra-judicial remedies. However, these provisions were generally seen as crucial to making the benefits of asset-based financing and leasing more widely available under the new international regimen. The solution adopted was to give Contracting States the possibility of making choices in respect of these matters under the Convention and the Aircraft Protocol through a system of declarations. This approach was also adopted during the development of the Luxembourg Protocol, although there are a number of differences between the declarations that Contracting States may make under the Luxembourg Protocol and those that may be made under the Aircraft Protocol.

4. The system of declarations provided for under the Convention and the Luxembourg Protocol is an essential element in the decisions to be taken by Contracting States regarding the policy objectives, and in particular the commercial policy objectives, that they see fit to pursue in the matter of the acquisition of railway rolling stock.

Types of declarations

(a) *Introduction*

5. The declarations provided for under Article 54(2) of the Convention, and Articles 48(2) of the Convention and XXII(2) of the Luxembourg Protocol,³ are mandatory declarations. All other declarations provided for under the Convention and the Luxembourg Protocol are optional in nature.

¹ Except where the context indicates otherwise, references in this Memorandum to Contracting States also includes Regional Economic Integration Organisations.

² Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

³ The declarations provided for under Article 48(2) of the Convention and Article XXII(2) of the Luxembourg Protocol are addressed to Regional Economic Integration Organisations.

(b) *Mandatory declaration (Contracting States)*

6. The Convention provides for one mandatory declaration to be made by Contracting States. This is the declaration provided for by Article 54(2) of the Convention as to whether or not remedies can only be exercised with leave of the court. Article 54(2) of the Convention provides that this declaration *must* be made at the time of a Contracting State's ratification, acceptance, approval of, or accession to, the Luxembourg Protocol. For this reason, instruments of ratification, acceptance, approval of, or accession to, the Luxembourg Protocol will not be able to be accepted by the Depositary unless they are accompanied by the mandatory declaration under Article 54(2) of the Convention.

7. However, a Contracting State that has previously deposited a declaration under Article 54(2) of the Convention upon its ratification of, or accession to, the Aircraft Protocol is not required to deposit another declaration under Article 54(2) upon its subsequent ratification of, or accession to, the Luxembourg Protocol.⁴

(c) *Opt-in declarations*

8. Opt-in declarations are those declarations which must be lodged by a Contracting State in order for a provision of the Convention, as implemented by the Luxembourg Protocol, to have effect in relation to that State. The provisions of the Convention and Luxembourg Protocol in respect of which opt-in declarations may be made are:

- Convention: Article 60; and
- Luxembourg Protocol: Articles VI, VIII, IX and X.

(d) *Opt-out declarations*

9. Opt-out declarations are those declarations which must be lodged by a Contracting State in order for a provision of the Convention *not* to have effect within that State. The provisions of the Convention in respect of which opt-out declarations may be made are:

- Convention: Articles: 8(1)(b), 13, 43, 50, and 54(1).

10. The Luxembourg Protocol does not make provision for any opt-out declarations.

(e) *Declarations relating to a Contracting State's Own Laws*

11. Certain optional declarations, which relate to a Contracting States own laws, are neither opt-in nor opt-out. These are the declarations which may be made in respect of the following provisions:

- Convention: Articles: 39, 40, and 53; and
- Luxembourg Protocol: XIII, XIV, XXIV and XXV.

(f) *Other declarations*

12. There is one declaration relating to the application of the Convention to territorial units which does not fall within any of the above categories, namely:

- Convention Article 52.

⁴ Article XXIX of the Luxembourg Protocol provides that declarations made under the Convention shall be deemed to have been also made under the Luxembourg Protocol unless stated otherwise.

(g) *Mandatory declarations (Regional Economic Integration Organisations)*

13. Article 48(2) of the Convention provides for a mandatory declaration to be made by Regional Economic Integration Organisations, at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Convention in respect of which competence has been transferred to that Organisation by its Member States. Article XXII(2) of the Luxembourg Protocol provides for a mandatory declaration to be made by Regional Economic Integration Organisations, at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Luxembourg Protocol in respect of which competence has been transferred to that Organisation by its Member States.

Guide to the use of declaration forms

(a) *Role of Depositary, Supervisory Authority and Registrar*

14. Under Article 62 of the Convention and Article XXI of the Luxembourg Protocol, instruments of ratification, acceptance, approval or accession are to be deposited with UNIDROIT, as Depositary. Under Article 56(2) of the Convention and Article XXVIII(2) of the Luxembourg Protocol, any declaration or subsequent declaration or any withdrawal of a declaration made under the Convention is to be notified in writing to UNIDROIT, as Depositary.

15. Under Article 62 of the Convention and Article XXXIV of the Luxembourg Protocol, UNIDROIT, as Depositary, has the duty *inter alia* of providing the Supervisory Authority and the Registrar (established in accordance with Article 17 of the Convention) with a copy of each instrument of ratification, acceptance, approval or accession and each declaration or withdrawal or amendment of a declaration. UNIDROIT further has the duty of informing the Supervisory Authority and the Registrar of the date on which each such instrument and each such declaration or withdrawal or amendment of a declaration are deposited, so that the information contained therein may be easily and fully available.⁵

16. Under Article 23 of the Convention, the Registrar is required to maintain a list of declarations, withdrawals of declaration and of the categories of non-consensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40, and the date of each such declaration or withdrawal of a declaration.

(b) *Declaration forms for States: introduction*

17. Article 56 of the Convention provides that no reservations may be made thereto but that declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with those provisions. Article XXVIII of the Luxembourg Protocol provides that no reservations may be made thereto but that declarations authorised by Articles XIII, XIV, XXIV, XXV, XXVII, XXIX and XXX may be made in accordance with those provisions. Declaration forms are provided for all of these declarations, except declarations authorised by Articles 57 and 58 of the Convention and Article XXX of the Luxembourg Protocol.⁶

(c) *Use of the declaration forms*

18. Contracting States may lodge declarations in any form that complies with the requirements of the Convention and Luxembourg Protocol. However UNIDROIT, as Depositary, encourages all Contracting

⁵ Convention, Article 62(2)(c); Luxembourg Protocol, Article XXIX(2).

⁶ Article 57 of the Convention and Article XXX of the Luxembourg Protocol are concerned with the need for subsequent declarations to be notified to the Depositary, and Article 58 of the Convention is concerned with the need for the withdrawal of declarations to be notified to the Depositary. As these declarations do not modify the substantive rules of the Convention or Luxembourg Protocol they are not dealt with in this memorandum.

States to base their declarations on the declaration forms in this memorandum to ensure that their declarations comply with the requirements of the Convention and Luxembourg Protocol.

19. Except for the mandatory declaration provided for under Article 54(2), all the declarations under the Convention and Luxembourg Protocol are optional, and Contracting States are under no obligation to complete any of the forms relating to those declarations.

(d) *Selection of alternative forms*

20. Contracting States that choose to make one or more of the optional declarations under the Convention and the Luxembourg Protocol should consider that for the declarations in respect of some of the Articles there are *alternative* forms, reflecting the different possibilities permitted under the provisions in question.

21. For example, Form No. 1 deals with the case where a State wishes to make a *specific* declaration in relation to Article 39(1)(a) of the Convention (that is, declaring specific categories of non-consensual right or interest). Form No. 2 deals with the case where a State wishes to make a *general* declaration in relation to Article 39(1)(a) of the Convention. It follows that a State wishing to make a declaration in relation to Article 39(1)(a) should select only one of the alternative forms.

22. Another example arises in relation to Forms Nos 20 and 21. Form No. 20 deals with the case where a State wishes to make a declaration that it will apply Article VIII of the Luxembourg Protocol only in part. Form No. 21 deals with the case where that State wishes to make a declaration that it will apply Article VIII in its entirety. It follows that a State wishing to make a declaration in relation to Article VIII should select only one of the alternative forms.

(e) *Compatibility of declarations*

23. Contracting States should ensure that their declarations are compatible with each other. For example, a non-consensual right or interest may be the subject of a declaration in relation to either Article 39 of the Convention (when its effects do not depend on registration) or under Article 40 of the Convention (where registration is required) but not both. Contracting States should therefore ensure that the specific categories of non-consensual right or interest that are included in any declaration that is made in relation to Article 39(1)(a) (Form No. 1 or No. 2) are exclusive of any categories of non-consensual right or interest that are included in any declaration under Article 40 (Form No. 6).

24. Another example arises in relation to the declaration that a Contracting State may make in relation to Article 55 of the Convention (not to apply the provisions of Article 13 or Article 43 or both, wholly or in part) (Forms No. 14-17). If a Contracting State were to make a declaration under Article 55 that excluded Article 43 in its entirety but did not exclude Article 13, this would create a gap in the important issue of jurisdiction to grant relief under Article 13.

25. In relation to Article IX of the Luxembourg Protocol (Remedies on insolvency), a Contracting State wishing to make a declaration in relation to that Article may opt for Alternative A in its entirety, or Alternative B in its entirety, or Alternative C in its entirety; however, a declaration may not be made covering only a part of one or more of the alternatives. (If a Contracting State does not make a declaration in respect to Article IX of the Luxembourg Protocol, its domestic insolvency law will continue to apply.)

(f) *Declaration forms for Regional Economic Integration Organisations*

26. Under Article 48(1) of the Convention and Article XXII(1) of the Luxembourg Protocol, Regional Economic Integration Organisations which are constituted by sovereign States and have competence over certain matters governed by the Convention and Luxembourg Protocol may sign, accept, approve or accede to those instruments in the same way as States and, where they do so, under Article 48(3) of the

Convention and Article XXII(3) of the Luxembourg Protocol, all references in the Convention and Luxembourg Protocol to “Contracting State” or “Contracting States” or “State Party” or “State Parties” are to apply equally to such Organisations where the context so requires.

27. Under Article 48(2) of the Convention and Article XXII(2) of the Luxembourg Protocol, such a Regional Economic Integration Organisation must lodge declarations with the Depositary at the time of its signature, acceptance, approval or accession, specifying the matters governed by the Convention and Luxembourg Protocol in respect of which competence has been transferred to that Organisation by its member States. Pursuant to the same provision, such an Organisation is also under an obligation to notify the Depositary promptly of any changes to the distribution of competence, including any new transfers of competence, specified in its declaration.

28. Thus, once a Regional Economic Integration Organisation has signed, accepted, approved or acceded to the Convention and Luxembourg Protocol and lodged such declarations with the Depositary in accordance with Article 48(1) and (2) of the Convention and Article XXII(1) and (2) of the Luxembourg Protocol, that Organisation in effect takes over the role of its member States for the purposes of the making of the declarations authorised under the Convention and Luxembourg Protocol as regards those matters in respect of which competence has been transferred to it, as specified in its declaration.

29. The declarations for which declaration forms are provided in this memorandum concern the declarations that may be made under Article 48(2) of the Convention and Article XXII(2) of the Luxembourg Protocol, both of which declarations are mandatory in nature.

(g) *Language of declarations*

30. Given that Contracting States’ declarations under the Convention and Luxembourg Protocol play an essential part in the operation of the international registration system and given the complexity of the issues involved in these declarations, and in particular the important consequences that will therefore flow from a Contracting State’s precise choice of words in the framing of each such declaration, the interest of guaranteeing efficiency in the operation of the international registration system militates strongly in favour of the employment of the minimum number of languages possible in the framing of such declarations. **Especial significance therefore attaches to the decision taken by the UNIDROIT Governing Council at its 81st session (September 2002), and confirmed by resolution of the General Assembly of UNIDROIT Member States (December 2002) to urge Contracting States to the Convention to ensure that, when they submit declarations under the Convention or a Protocol, that they do so in one or other of UNIDROIT’s working languages, English and French.**

(h) *Presentation of declaration forms*

31. UNIDROIT, as Depositary to the Convention and Luxembourg Protocol, has prepared model forms that Contracting States and Regional Economic Integration Organisations may refer to when drafting their declarations under the Convention and Luxembourg Protocol. These forms are organised as follows:

- Model Declaration Forms for Use by States Under the Convention (Part II);
- Model Declaration Forms for Use by States Under the Luxembourg Protocol (Part III);
- Model Declaration Forms for Use by Regional Economic Integration Organisations under the Convention and Luxembourg Protocol (Part IV).

PART II**MODEL DECLARATION FORMS FOR USE BY STATES
UNDER THE CONVENTION****Form No. 1****Specific declaration under Article 39(1)(a)⁷**

(Name of the State)declares that the following categories of non-consensual right or interest (*list the relevant categories*)^{8 9 10}

 have priority under its law over an interest in an object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings [*and whether registered before or after (name of the State)'s (ratification) (acceptance) (approval) (accession)*].¹¹

⁷ A Contracting State should use this form if it wishes to list the specific categories of non-consensual right or interest which under its law have priority over the equivalent of a registered international interest and which are to have priority over a registered international interest, whether in or outside insolvency proceedings. For a general declaration covering all categories of non-consensual right or interest, Form No. 2 should be used.

⁸ The categories to be listed by a Contracting State cannot be broader, but may be narrower, than the categories which, under the law of the Contracting State, have priority without registration over an interest equivalent to that of the holder of an international interest.

⁹ These categories may include specific categories to be created by the relevant Contracting State after the deposit of its declaration (cf. Article 39(2)).

¹⁰ A Contracting State that uses this form to list specific categories of non-consensual right or interest must ensure that those specific categories of non-consensual right or interest are exclusive of any categories of non-consensual right or interest that are included in a declaration made under Article 40 (Form No. 6).

¹¹ Strike out the words "and whether registered before or after (name of the State)'s (ratification) (acceptance) (approval) (accession)" if the specified categories of non-consensual right or interest will not have priority over an international interest registered prior to the date of the ratification, acceptance, approval (cf. Article 39(4)). If the words are not struck out, the name of the State and that State's mode of becoming a Contracting State (i.e. by ratification, acceptance, approval or accession) should be specified.

Form No. 2
General declaration under Article 39(1)(a)¹²

(Name of the State)declares that all categories of non-consensual right or interest which under its law have [*and will in the future have*]¹³ priority over an interest in an object equivalent to that of the holder of a registered international interest shall have priority over a registered international interest, whether in or outside insolvency proceedings [*and whether registered before or after (name of the State)'s (ratification) (acceptance) (approval) (accession)*].¹⁴

¹² A Contracting State should use this form if it wishes to lodge a general declaration that all categories of non-consensual right or interest which under its law have priority over the equivalent of a registered international interest are to have priority over a registered international interest, whether in or outside insolvency proceedings. For a declaration covering specific categories only, Form No. 1 should be used.

¹³ The words "and will in the future have" should be struck out if the declaration is not intended to extend to categories to be created after the deposit of the declaration pursuant to Article 39(2)).

¹⁴ Strike out the words "and whether registered before or after (name of the State)'s (ratification) (acceptance) (approval) (accession)" if the specified categories of non-consensual right or interest will not have priority over an international interest registered prior to the date of the ratification, acceptance, approval (cf. Article 39(4)). If the words are not struck out, the name of the State and that State's mode of becoming a Contracting State (i.e. by ratification, acceptance, approval or accession) should be specified.

Form No. 3
Specific declaration under Article 39(1)(b)¹⁵

(Name of the State)declares that nothing in the Convention shall affect its right or that of (list the names of any relevant State entities, intergovernmental Organisations or other private providers of public services)
to arrest or detain an object under its laws for payment of amounts owed to it or to any such State entity, Organisation or provider directly relating to the services provided by it in respect of that object or another object (*strike out the words "or another object" if not wishing the declaration to apply in relation to rights under the State's laws to arrest or detain an object for payment of amounts owed in respect of another object*).

¹⁵ A Contracting State should use this form if it wishes to list specific State entities, intergovernmental Organisations or other providers of public services the right of which under its laws to arrest or detain an object for payment of amounts owed to it or to such State entities, intergovernmental Organisations or providers is not to be affected by anything in the Convention. Where entities generally are to be covered, Form No. 4 should be used.

Form No. 4¹⁶
General declaration under Article 39(1)(b)¹⁷

(Name of the State)declares that nothing in the Convention shall affect its right or that of any State entity, any intergovernmental Organisation or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to it or to any such State entity, Organisation or provider directly relating to the services provided by it in respect of that object or another object.

¹⁶ The next form is Form No. 6. There is no Form No. 5.

¹⁷ A Contracting State should use this form if it wishes generally to provide that nothing in the Convention is to affect its right or the right of any State entities, intergovernmental Organisations or other providers of public services under its laws to arrest or detain an object for payment of amounts owed to it or to such entities, intergovernmental Organisations or providers. If the declaration is to be confined to specific categories of State entities, intergovernmental Organisations or providers, Form No. 3 should be used.

Form No. 6¹⁸
Declaration under Article 40

(Name of the State)declares that the following categories of non-consensual right or interest (*list the relevant categories*)¹⁹.....shall be registrable under the Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly.²⁰

¹⁸ The previous form is Form No. 4. There is no Form No. 5.

¹⁹ A Contracting State that uses this form to list categories of non-consensual right or interest must ensure that those categories of non-consensual right or interest are exclusive of any categories of non-consensual right or interest that are included in a declaration made under Article 39(1)(a) (Form No. 1).

²⁰ Such a declaration may be modified from time to time (cf. Article 40).

Form No. 7
Specific declaration under Article 50²¹

(Name of the State)declares that the Convention shall not, subject to Article 50(2) thereof, apply to a transaction which is an internal transaction in relation to itself with regard to the following types of object (*list the relevant types of object*)
.....
.....

²¹ A Contracting State should use this form if it wishes to exclude the application of the Convention, with the exception of those provisions referred to in Article 50(2), in respect of certain specific types of object that are the subject of a transaction that is an internal transaction in relation to that State. For a general declaration covering all types of objects, Form No. 8 should be used.

Form No. 8
General declaration under Article 50²²

(Name of the State)declares that the Convention shall not, subject to Article 50(2) thereof, apply to a transaction which is an internal transaction in relation to itself with regard to all types of object.

²² A Contracting State should use this form if it wishes to exclude the application of the Convention, with the exception of those provisions referred to in Article 50(2), in respect of all objects that are the subject of a transaction that is an internal transaction in relation to that State. For a declaration covering only specific types of objects, Form No. 7 should be used.

Form No. 9
Specific declaration under Article 52²³

(Name of the State)declares that the Convention shall apply to the following of its territorial units *(list the relevant territorial unit or units)*²⁴ ²⁵ ²⁶.....

²³ A Contracting State should use this form if it wishes the Convention to apply to less than all its territorial units. For a declaration relating to all territorial units, Form No. 10 should be used.

²⁴ A State extending the application of the Convention to territorial units other than those listed in Form No. 9 may make separate declarations for each such other units under each of the declarations authorised under the Convention; cf. Article 52(4).

²⁵ A Contracting State having made a declaration under Article 52 may modify that declaration by submitting another declaration at any time; cf. Article 52(1).

²⁶ Where a Contracting State has not made any declaration under Article 52(1) the Convention will automatically apply to all territorial units of that State; cf. Article 52(3).

Form No. 10
General declaration under Article 52²⁷

(*Name of the State*) declares that the Convention shall apply to all its territorial units.^{28 29}

²⁷ A Contracting State should use this form if it wishes the Convention to apply to all its territorial units. For a declaration relating to less than all of a Contracting State's territorial units, Form No. 9 should be used.

²⁸ A Contracting State having made a declaration under Article 52 may modify that declaration by submitting another declaration at any time; cf. Article 52(1).

²⁹ Where a Contracting State has not made any declaration under Article 52(1) the Convention will automatically apply to all territorial units of that State; cf. Article 52(3).

Form No. 11
Declaration under Article 53

(Name of the State) declares that the following court(s)
.....
.....
..... is/are (*strike out whichever is inapplicable*) the relevant court(s) for
the purposes of Article 1 and Chapter XII of the Convention.

Form No. 12
Declaration under Article 54(1)

(Name of the State)declares that while the charged object is situated within, or controlled from, its territory the chargee shall not grant a lease of the object in that territory.

Form No. 13-A
Mandatory declaration under Article 54(2) applicable to all relevant remedies³⁰

(Name of the State)declares that all remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without / only with [*strike out either the word "without" or the words "only with"*] leave of the court.³¹

³⁰ A Contracting State should use this form if it wishes the scope of its declaration to apply in relation to all remedies that are available to the creditor under the Convention and which are not expressed under the relevant provision of the Convention to require application to the Court. For a declaration relating to some, but not all, such remedies, Form 13-B should be used.

³¹ The declarations of some Contracting States have replaced the phrase " [without] leave of the court" with the phrase "without court action and without leave of the court".

Form No. 13-B
Mandatory declaration under Article 54(2) requiring leave of the court in relation to specified relevant remedies³²

(Name of the State)declares that the following remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised only with leave of the court³³ (*list the relevant remedies*)

³² A Contracting State should use this form if it wishes some, but not all, of the remedies that are available to the creditor under the Convention and which are not expressed under the relevant provision of the Convention to require application to the Court. For a declaration relating to all such remedies, Form 13-A should be used.

³³ The declarations of some Contracting States have replaced the phrase “ [without] leave of the court” with the phrase “without court action and without leave of the court”.

Form No. 14
Declaration under Article 55 providing for the partial exclusion of Article 13^{34 35}

(Name of the State)declares that it will not apply the following provisions of Article 13 (*list the relevant provisions*)
.....
.....and that it will apply the remaining provisions of that Article under the following conditions (*list the relevant conditions*)³⁶
.....

³⁴ A Contracting State should use this form if it wishes Article 13 to be excluded only in part. For a declaration excluding all provisions of Article 13, Form No. 15 should be used.

³⁵ A Contracting State should take care to ensure that any declaration that it may make under Article 55 concerning Article 13 is consistent with any declaration that it may make under Article 55 concerning Article 43, and vice-versa. For example, a Contracting State making a declaration excluding Article 13 would also want to exclude Article 43.

³⁶ The words “under the following conditions” are intended to be interpreted as referring to the cases in which the State in question will apply Article 13.

Form No. 15
Declaration under Article 55 providing for the total exclusion of the application of Article 13^{37 38}

(Name of the State)declares that it will not apply any of the provisions of Article 13 and that the following other forms of interim relief will be available under its law (*list the relevant other forms of interim relief*)

³⁷ A Contracting State should use this form if it wishes to exclude the application of all provisions of Article 13. For a declaration relating to the partial exclusion of the provisions of Article 13, Form No. 14 should be used.

³⁸ A Contracting State should take care to ensure that any declaration that it may make under Article 55 concerning Article 13 is consistent with any declaration that it may make under Article 55 concerning Article 43 and vice-versa. For example, a Contracting State making a declaration excluding Article 13 would also want to exclude Article 43.

Form No. 16**Declaration under Article 55 providing for the partial exclusion of Article 43**^{39 40}

(Name of the State) declares that it will not apply the following provisions of Article 43 (*list the relevant provisions*) and that it will apply the remaining provisions of that Article under the following conditions (*list the relevant conditions*)⁴¹

³⁹ A Contracting State should use this form if it wishes Article 43 to be excluded only in part. For a declaration excluding all provisions of Article 43, Form No. 17 should be used.

⁴⁰ A Contracting State should take care to ensure that any declaration that it may make under Article 55 concerning Article 13 is consistent with any declaration that it may make under Article 55 concerning Article 43 and vice-versa. For example, a Contracting State making a declaration excluding Article 13 would also want to exclude Article 43.

⁴¹ The words “under the following conditions” are intended to be interpreted as referring to the cases in which the State in question will apply Article 43.

Form No. 17
Declaration under Article 55 providing for the total exclusion of the application of Article 43^{42 43}

(Name of the State) declares that it will not apply any of the provisions of Article 43 and that the following other forms of interim relief will be available under its law (list the relevant other forms of interim relief)
.....
.....

⁴² A Contracting State should use this form if it wishes to exclude the application of all provisions of Article 43. For a declaration relating to the partial exclusion of the provisions of Article 43, Form No. 16 should be used.

⁴³ A Contracting State should take care to ensure that any declaration that it may make under Article 55 concerning Article 13 is consistent with any declaration that it may make under Article 55 concerning Article 43 and vice-versa. For example, a Contracting State making a declaration excluding Article 13 would also want to exclude Article 43.

Form No. 18
Declaration under Article 60(1)

(Name of the State)declares that the Convention will become applicable to a pre-existing right or interest for the purpose of determining priority, including the protection of any existing priority, on *(specify the date chosen)*⁴⁴ but only to the following extent and in the following manner *(specify the extent and the manner of the Convention's application to such a right or interest)*⁴⁵

.....

.....

⁴⁴ Such date cannot be earlier than three years after the date on which the declaration becomes effective; cf. Article 60(3).

⁴⁵ For instance, whether the declaration is limited to certain types of pre-existing right or interest or to pre-existing rights or interests that already enjoy priority under the Contracting State's law.

**PART III
MODEL DELCARATION FORMS FOR USE BY
STATES UNDER THE LUXEMBOURG PROTOCOL**

**Form No. 19
Declaration under Article XXVII(1) in respect of Article VI**

(Name of the State).....declares that it will apply Article VI.

Form No. 20
Declaration under Article XXVII(2) in respect of Article VIII
providing for partial application of Article VIII ⁴⁶

(Name of the State)declares that it will apply only the following provisions of Article VIII *(specify the relevant provisions)* [(and where these include Article VIII(2)) and that the number of calendar days to be used for the purposes of the time-limit laid down in Article VIII(2) shall be *(specify the number of calendar days)* calendar days].

⁴⁶ A Contracting State should use this form if it wishes to apply only *certain* provisions of Article VIII. For a declaration relating to only certain provisions of Article VIII, Form No. 21 should be used.

Form No. 21
Declaration under Article XXVII(2) in respect of Article VIII providing for the application
of the entirety of Article VIII ⁴⁷

(Name of the State).....declares that it will apply Article VIII in its entirety and that the number of calendar days to be used for the purposes of the time-limit laid down in Article VIII(2) shall be *(specify the number of calendar days)*.....calendar days.

⁴⁷ A Contracting State should use this form if it wishes to apply Article VIII in its entirety. For a declaration relating to the application of Article VIII in its entirety, Form No. 20 should be used.

Form No. 22**Declaration under Article XXVII(3) in respect of Article IX providing for the application of Article IX, Alternative A to certain types of insolvency proceeding**⁴⁸

(Name of the State).....declares that it will apply Article IX, Alternative A to the following types of insolvency proceeding (*specify the relevant types of insolvency proceeding*) and that the waiting period for the purposes of Article IX(4) of that Alternative shall be.....

⁴⁸ A Contracting State should use this form if it wishes to apply Article IX, Alternative A to certain types of insolvency proceeding only. For a declaration relating to the application of Article IX, Alternative A to all types of insolvency proceeding, or relating to the application of other Article IX Alternatives, Form No. 23, 24, 25, 26 or 27 should be used.

Form No. 23
Declaration under Article XXVII(3) in respect of Article IX providing for the application
of Article IX, Alternative A to all types of insolvency proceeding ⁴⁹

(Name of the State).....declares that it will apply Article IX, Alternative A to all types of insolvency proceeding and that the waiting period for the purposes of Article IX(4) of that Alternative shall be.....

⁴⁹ A Contracting State should use this form if it wishes to apply Article IX, Alternative A to all types of insolvency proceedings. For a declaration relating to the application of Article IX, Alternative A to certain types of insolvency proceeding only, or relating to the application of other Article IX Alternatives, Form No. 22, 24, 25, 26 or 27 should be used.

Form No. 24**Declaration under Article XXVII(3) in respect of Article IX providing for the application of Article IX, Alternative B to certain types of insolvency proceeding**⁵⁰

(Name of the State)..... declares that it will apply Article IX, Alternative B to the following types of insolvency proceeding (*specify the relevant types of insolvency proceeding*).....and that the waiting period for the purposes of Article IX(3) of that Alternative shall be.....

⁵⁰ A Contracting State should use this form if it wishes to apply Article IX, Alternative B to certain types of insolvency proceeding only. For a declaration relating to the application of Article IX, Alternative B to all types of insolvency proceeding, or relating to the application of other Article IX Alternatives, Form No. 22, 23, 25, 26 or 27 should be used.

Form No. 25
Declaration under Article XXVII(3) in respect of Article IX providing for
the application of Article IX, Alternative B of the latter to all types
of insolvency proceeding⁵¹

(Name of the State).....declares that it will apply Article IX, Alternative B to all types of insolvency proceeding and that the waiting period for the purposes of Article IX(3) of that Alternative shall be.....

⁵¹ A Contracting State should use this form if it wishes to apply Article IX, Alternative B to all types of insolvency proceeding. For a declaration relating to the application of Article IX, Alternative B to certain types of insolvency proceeding only, or relating to the application of other Article IX Alternatives, Form No. 22, 23, 24, 26 or 27 should be used.

Form No. 26**Declaration under Article XXVII(3) in respect of Article IX providing for the application of Article IX, Alternative C to certain types of insolvency proceeding**⁵²

(Name of the State).....declares that it will apply Article IX, Alternative C to the following types of insolvency proceeding (*specify the relevant types of insolvency proceeding*), that the number of calendar days for the purposes of Article IX(5) shall be calendar days, and that the “cure period” specified in Article IX(15) shall be

⁵² A Contracting State should use this form if it wishes to apply Article IX, Alternative C to certain types of insolvency proceeding only. For a declaration relating to the application of Article IX, Alternative C to all types of insolvency proceeding, or relating to the application of other Article IX Alternatives, Form No. 22, 23, 24, 25 or 27 should be used.

Form No. 27**Declaration under Article XXVII(3) in respect of Article IX providing for the application of Alternative C of the latter to all types of insolvency proceeding**⁵³

(Name of the State).....declares that it will apply Article IX, Alternative C to all types of insolvency proceeding, that the number of calendar days for the purposes of Article IX(5) shall be calendar days, and that the “cure period” specified in Article IX(15) shall be

⁵³ A Contracting State should use this form if it wishes to apply Article IX, Alternative C to all types of insolvency proceeding. For a declaration relating to the application of Article IX, Alternative C to certain types of insolvency proceeding only, or relating to the application of other Article IX Alternatives, Form No. 22, 23, 24, 25 or 26 should be used.

Form No. 28
Declaration under Article XXVII(1) in respect of Article X

(Name of the State).....declares that it will apply Article X.

Form No. 29
Declaration under Article XIII(1) providing for the designation of entry points for compulsory use as transmitters of registration information⁵⁴

(Name of the State).....designates the following entity or entities (*list the relevant entity or entities*).....in its territory as the entry point / entry points (*strike out whichever is inapplicable*) through which there shall 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 the laws of another State.

⁵⁴ A Contracting State should use this form only if it wishes the designated entry point or entry points to serve as the compulsory transmitter or transmitters to the International Registry of information required for registration. If use of the designated entry point or entry points is to be optional, Form No. 31 or 32 should be used. If use of the designated entry point or entry points is to be extended to information required for registrations in respect of notices of sale, Form No. 30 or 32 should be used.

Form No. 30**Declaration under Article XIII(1) providing for the designation of entry points for compulsory use as transmitters of registration information and optional use for information required for registrations in respect of notices of sales**⁵⁵

(Name of the State)..... designates the following entity or entities (*list the relevant entity or entities*).....in its territory as the entry point / entry points (*strike out whichever is inapplicable*) through which there shall 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 the laws of another State, and which may be used for information required for registrations in respect of notices of sale.

⁵⁵ A Contracting State should use this form only if it wishes the designated entry point or entry points to serve as both (a) the compulsory transmitter or transmitters to the International Registry of information required for registration, and (b) an optional transmitter or transmitter of information required for registrations in respect of notices of sale. If use of the designated entry point or entry points is to be optional, Form No. 31 or 32 should be used. If use of the designated entry point or entry points is not to include information required for registrations in respect of notices of sale, Form No. 29 or 31 should be used.

Form No. 31
Declaration under Article XIII(1) providing for the designation of entry points for
optional use as transmitters of registration information⁵⁶

(Name of the State)..... designates the following entity or entities (*list the relevant entity or entities*)in its territory as the entry point or entry points (*strike out whichever is inapplicable*) 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 the laws of another State.

⁵⁶ A Contracting State should use this form only if it wishes the designated entry point or entry points to serve as an optional transmitter or transmitters to the International Registry of information required for registration. If use of the designated entry point or entry points is to be compulsory, Form No. 29 or 30 should be used. If use of the designated entry point or entry points is to be extended to information required for registrations in respect of notices of sale, Form No. 30 or 32 should be used.

Form No. 32**Declaration under Article XIII(1) providing for the designation of entry points for optional use as transmitters of registration information and optional use for information required for registrations in respect of notices of sales**⁵⁷

(Name of the State)..... designates the following entity or entities *(list the relevant entity or entities)*in its territory as the entry point or entry points *(strike out whichever is inapplicable)* 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 the laws of another State, and which may be used for information required for registrations in respect of notices of sale.

⁵⁷ A Contracting State should use this form only if it wishes the designated entry point or points to serve as both (a) the optional transmitter or transmitters to the International Registry of information required for registration, and (b) an optional transmitter or transmitter of information required for registrations in respect of notices of sale. If use of the designated entry point or entry points is to be compulsory, Form No. 29 or 30 should be used. If use of the designated entry point or entry points is not to include information required for registrations in respect of notices of sale, Form No. 29 or 31 should be used.

Form No. 33
Declaration under Article XIV(2)

(Name of the State)..... declares that 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 that is created or provided for, or is intended to be created or provided for, by an agreement entered into by a debtor situated in *(name of the State)* shall be *(state the system of national or regional identification numbers)*⁵⁸
⁵⁹

⁵⁸ Article XIV(2) of the Luxembourg Protocol provides that the system of national or regional identification numbers must, subject to agreement between the Supervisory Authority and the Contracting State making the declaration, ensure the unique identification of each item of railway rolling stock to which the system applies.

⁵⁹ Article XIV(3) of the Luxembourg Protocol provides that a declaration under Article XIV(2) must include detailed information on the operation of the national or regional identification system.

Form No. 34
Specific declaration under Article XXIV⁶⁰

(Name of the State).....declares that the Luxembourg Protocol shall apply to the following of its territorial units (*list the relevant territorial unit or units*)⁶¹
⁶².....

⁶⁰ A Contracting State should use this form if it wishes the Luxembourg Protocol to apply to less than all its territorial units. For a declaration relating to the application of the Luxembourg Protocol to all territorial units, Form No. 35 should be used.

⁶¹ A Contracting State that extends the Luxembourg Protocol to one or more of its territorial units may make declarations 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; cf. Article XXIV(4).

⁶² If a Contracting State has not made any declaration under Article XXIV the Luxembourg Protocol will automatically apply to all territorial units of that State; cf. Article XXIV(3).

Form No. 35
General declaration under Article XXIV⁶³

(Name of the State).....declares that the Luxembourg Protocol shall apply to all its territorial units.^{64 65}

⁶³ A Contracting State may use this form to make a declaration under Article XXIV that the Luxembourg Protocol will apply to all its territorial units. If a Contracting State does not make a declaration under Article XXIV, the Luxembourg Protocol will apply to all of its territorial units; cf. Article XXIV(3). For a declaration relating to the application of the Luxembourg Protocol to less than all of a Contracting State's territorial units, Form No. 34 should be used.

⁶⁴ A Contracting State having made such a declaration may modify the latter by submitting another declaration at any time; cf. Article XXIV(1).

⁶⁵ Where a Contracting State has not made any declaration under Article XXIV(1) the Luxembourg Protocol will automatically apply to all territorial units of that State; cf. Article XXIV(3).

Form No. 36
Specific declaration under Article XXV(1) in relation to
public service railway rolling stock ⁶⁶

(Name of the State)..... declares that the following rules of its law, in force at the time of the making of this declaration, which preclude, suspend or govern the exercise within its territory of one or more of the remedies specified in Chapter III of the Cape Town Convention and Articles VII-IX of the Luxembourg Protocol (*specify the rules*)..... will continue to be applied by it to the following extent (*specify the extent of the application of the laws*).....in relation to the following railway rolling stock that is habitually used for the purpose of providing a service of public importance (*specify the railway rolling stock*).....

⁶⁶ A Contracting State making a declaration under Article XXV is required to take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

Form No. 37
General declaration under Article XXV(1) in relation to
all public service railway rolling stock ⁶⁷

(Name of the State)..... declares that it will continue to apply all rules of its law, in force at the time of the making of this declaration, which preclude, suspend or govern the exercise within its territory of any of the remedies specified in Chapter III of the Cape Town Convention and Articles VII to IX of the Luxembourg Protocol in relation to all railway rolling stock that is habitually used for the purpose of providing a service of public importance.

⁶⁷ A Contracting State making a declaration under Article XXV is required to take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

Form No. 38
Specific declaration under Article XXV(4) in relation to
the application of obligations under Article XXV(2) and (3) ⁶⁸

(Name of the State)..... declares that its rules of law do not provide for the obligations specified in Article XXV(2) and (3) of the Luxembourg Protocol, and that it will not apply those paragraphs with regard to the following railway rolling stock (*specify the railway rolling stock*).....

⁶⁸ A Contracting State making a declaration under Article XXV is required to take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

Form No. 39
General declaration under Article XXV(4) in relation to
the application of obligations under Article XXV(2) and (3)⁶⁹

(Name of the State)..... declares that its rules of law do not provide for the obligations specified in Article XXV(2) and (3) of the Luxembourg Protocol, and that it will not apply those paragraphs with regard to all railway rolling stock.

⁶⁹ A Contracting State making a declaration under Article XXV is required to take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

PART IV
MODEL DECLARATION FORMS FOR USE BY REGIONAL ECONOMIC INTEGRATION
ORGANISATIONS
UNDER THE CONVENTION AND THE LUXEMBOURG PROTOCOL

Form No. 40
Mandatory declaration under Article 48(2)

(Name of the Organisation).....declares that competence has been transferred to it by its member States in respect of the following matters governed by the Convention *(specify the matters concerned)*

.....

.....

Form No. 41
Mandatory declaration under Article XXII(2)

(Name of the Organisation).....declares that competence has been transferred to it by its member States in respect of the following matters governed by the Luxembourg Protocol *(specify the matters concerned)*
.....
.....
.....

**Table of Declarations That May Be Made Under
the Convention and Luxembourg Protocol**

CONVENTION

Related Article	Description	Form
39(1)(a) / 39(4)	Priority of non-consensual rights and interests without registration	1, 2
39(1)(b)	Preservation of right of providers of public services to arrest or detain	3, 4
40	Registrable non-consensual rights or interests	6
48(2)	Competence of Regional Economic Integration Organisation	40
50	Application of Convention to internal transactions	7, 8
52	Application of Convention in relation to territorial units	9, 10
53	Determination of courts	11
54(1)	Granting of lease over charged object by chargee	12
54(2)	Exercise of remedies with leave of the court	13-A, 13-B
55	Relief pending final determination	14, 15, 16, 17
60	Transitional	18

LUXEMBOURG PROTOCOL

Related Article	Description	Form
VI	Choice of law	19
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IX	Remedies on insolvency	22, 23, 24, 25, 26, 27
X	Insolvency assistance	28
XIII	Designation of entry point	29, 30, 31, 32
XIV	Identification of railway rolling stock	33
XXII	Competence of Regional Economic Integration Organisation	41
XXIV	Territorial units	34, 35
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XXIX	Application of Protocol in relation to territorial units	33, 34