



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE PREPARATION OF A DRAFT PROTOCOL TO
THE CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
SPACE ASSETS: SUB-COMMITTEE TO EXAMINE
CERTAIN ASPECTS OF THE FUTURE INTERNATIONAL
REGISTRATION SYSTEM FOR SPACE ASSETS
First meeting
Rome, 26/27 October 2009**

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INTRODUCTORY NOTE

(prepared by the UNIDROIT Secretariat)

I. ESTABLISHMENT OF THE SUB-COMMITTEE

At the conclusion of its second session, held in Rome from 26 to 28 October 2004, the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee of governmental experts*) established a Sub-committee to develop proposals relating to the future international registration system for space assets (hereinafter referred to as the *Sub-committee*).¹ It was agreed that the Sub-committee should work between the second and third sessions of the Committee of governmental experts via electronic communication and that a decision on the Sub-committee's future working methods would be taken at the third session of that Committee.² The Sub-committee would be open to participation by all interested delegations, via notification to be given to the UNIDROIT Secretariat, that would act as co-ordinator of its work.³

It was agreed that the issues to be considered by the Sub-committee between the second and third sessions of the Committee of governmental experts should be:

- (a) the identification of space assets and related matters;
- (b) the practical operation of the future International Registry; and
- (c) the role of the Supervisory Authority.⁴

¹ Cf. Report on the second session of the Committee of governmental experts (C.G.E./Space Pr./2/Report), § 51.

² *Idem*.

³ *Idem*. Invitations for this meeting have been sent out to all those Governments and Organisations having notified the Secretariat of their interest in participating in the work of the Sub-committee.

⁴ *Idem*.

The Chairman of the Committee of governmental experts noted that it would be useful for interested delegations to provide their comments on these issues as soon as possible so as to enable the results of the work of the Sub-committee to be considered by delegations in advance of the third session of the Committee of governmental experts.⁵ To facilitate the work of the Sub-committee, the International Telecommunication Union (I.T.U.) established a special web forum to enable members of the Sub-committee to communicate with one another.

13 Governments,⁶ eight intergovernmental Organisations⁷ and five international non-governmental Organisations⁸ have notified the UNIDROIT Secretariat of their interest in serving on the Sub-committee or in the work thereof. However, notwithstanding all the UNIDROIT Secretariat's best efforts, only two Governments posted comments on the aforementioned web forum.

II. DEVELOPMENTS RECORDED IN RESPECT OF CERTAIN OF THE ISSUES REFERRED TO THE SUB-COMMITTEE

(a) *Identification criteria*

To deal, *inter alia*, with the resulting impasse, a special Government/industry meeting, hosted by the Royal Bank of Scotland, was organised by the UNIDROIT Secretariat and the S.W.G. in London on 24 April 2006. In the light of the conclusions reached at that meeting,⁹ the UNIDROIT Secretariat, judging the question of the identification of space assets for the purpose of their registration in the future International Registry for space assets as being, arguably, the most important of the issues referred to the Sub-committee, took the initiative itself of preparing and circulating a questionnaire on this subject among manufacturers, launch service providers and financial institutions to complement the information that had been supplied by the two Governments that had posted comments on the web forum.

On the basis of the information obtained by these two routes, the UNIDROIT Secretariat drew up an Interim report,¹⁰ in which it reported on the conclusions to be drawn.

One of the principal conclusions that emerged from this inquiry, endorsed not only by one of the two Governments having posted comments on the I.T.U. web forum but also by three of the seven respondents from the international commercial space and financial communities having responded to the UNIDROIT Secretariat's questionnaire was the desirability of a narrowing of the sphere of application of the preliminary draft Protocol being considered, whether on the ground that - as, *par excellence*, in the case of assets assembled or manufactured in space - a given class of asset was not yet the subject of separate financing and would not probably become so for the foreseeable future or - as in the case of components - another class of asset might, without further qualification, be considered to fall short of the basic requirements of "high value" predicated by the preamble to the Convention on International Interests in Mobile Equipment (hereinafter referred to as the *Convention*), and thus raise questions as to the justification of an ouster of domestic law.¹¹

⁵ *Idem*.

⁶ Algeria, Brazil, Canada, the Czech Republic, France, Germany, Greece, Italy, Japan, the Russian Federation, Ukraine, the United Kingdom and the United States of America.

⁷ The European Commission, the European Space Agency (E.S.A.), the International Civil Aviation Organization (I.C.A.O.), the International Mobile Satellite Organization (I.M.S.O.), the I.T.U., the United Nations Commission on International Trade Law, the United Nations Office for Outer Space Affairs and the World Intellectual Property Organization.

⁸ The African Leasing Association, the European Centre for Space Law, the International Astronautical Federation, the Space Working Group (S.W.G.) and the International Institute of Space Law.

⁹ Cf. The crucial role of industry in finalising an expansion of the Cape Town Convention to cover space assets: a Government/industry forum on the Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment (London, Monday, 24 April 2006) - Summary report (prepared by the UNIDROIT Secretariat).

¹⁰ The Interim report is reproduced as Appendix I to this Note.

¹¹ Cf. Interim report, § 36.

Opinions were divided on the issue as to whether the identification criteria to be employed in respect of the different categories of space asset covered by the preliminary draft Space Protocol should be specified in the future Protocol or rather be left to be determined by the Supervisory Authority, through regulations. However, given that only one Government posting comments on the web forum and one representative of the international commercial space and financial communities responding to the UNIDROIT Secretariat's questionnaire dealt with this issue, the Secretariat would submit that it is difficult to draw any firm conclusions from its inquiry on this point.¹²

The Interim report was considered by the second Government/industry meeting, organised by the UNIDROIT Secretariat and the S.W.G. and hosted by Millbank Tweed Hadley & McCloy L.L.P. (New York) in New York on 19 and 20 June 2007 (hereinafter referred to as the *New York meeting*), on the basis of a presentation made by Mr Rolf Olofsson, Partner, White & Case L.L.P., in which he analysed the conclusions drawn by the Secretariat from the responses to its questionnaire by class of asset.¹³

There was general agreement at the New York meeting as to the desirability of narrowing the sphere of application of the future Protocol, notably with a view to permitting its timeous completion and maintaining support among those best able to provide expertise. It was, moreover, opined that of the various classes of space asset that were currently the subject of asset-based financing transactions 80% were satellites in their entirety. The meeting, therefore, reached the provisional conclusion that the sphere of application should be narrowed in such a way as to concentrate, essentially, on the satellite in its entirety.

The question of identification criteria was one of the issues considered by the UNIDROIT Steering Committee established by the UNIDROIT General Assembly at its 61st session, held in Rome on 29 November 2007, to build consensus around the provisional conclusions reached at the New York meeting. It should, however, be borne in mind at this stage that, the entire question of the sphere of application of the future Protocol having been thrown into question, the Steering Committee in its deliberations, to the extent that it discussed this issue, looked at it rather from the angle of the place where such identification criteria should be spelled out, that is whether these should be spelled out in the future Protocol itself or rather in the regulations to be promulgated thereunder, the Steering Committee in general being of the view that, even if these could be supplemented in the regulations, some basic criteria would fall to be established in the future Protocol.¹⁴ To the extent that, on the basis of the provisional conclusions reached by the New York meeting, the Steering Committee considered it appropriate to draw up an alternative set of sphere of application provisions, referring notably to a wide range of new classes of space asset, the identification criteria identified in the responses to the UNIDROIT Secretariat's inquiry will, necessarily, need to be filled out. The Secretariat will shortly be launching an inquiry designed to identify possible identification criteria for these new classes of space asset. The information reflected in the Interim report regarding identification criteria for satellites, re-usable launch vehicles and transponders will, though, still be relevant.

(b) Practical operation of the future International Registry

It is to be recalled that one delegation attending the second session of the Committee of governmental experts advised that, in considering the structure of the future international registration system for space assets, careful consideration would need to be given to the economics of the future International Registry, given that, especially in the early stages, it was to be anticipated that the number of registrations in respect of space assets would probably be relatively small. Another delegation, though,

¹² *Idem*, § 38.

¹³ The slides used by Mr Olofsson in his presentation are reproduced as Appendix II to this Note.

¹⁴ Cf. Alternative text of the preliminary draft Space Protocol as prepared, at the request of the Steering Committee, for presentation to the Committee of governmental experts: Explanatory Memorandum on provisions of the alternative text implementing policy issues referred to and examined by the Steering Committee (prepared by Professor Sir Roy Goode (United Kingdom) and Mr Michel Deschamps (Canada)) (C.G.E./Space Pr./3/W.P. 5), § 34 and Article XVI(3) and (4) of the Alternative text itself. The alternative text, as also the text of the Convention and that of the preliminary draft Space Protocol as it emerged from the first session of the Committee of governmental experts, held in Rome from 15 to 19 December 2003, are available on the UNIDROIT website (www.unidroit.org).

suggested that, provided that the future international registration system was both electronic and well adapted to the needs of its users, it should be able to be operated economically.¹⁵ One way of responding to the economic challenge, it was suggested at the same session by one delegation, might be for an existing registry, such as that operated by the I.T.U., to be adapted.¹⁶ It was agreed that consideration of the potential role that existing registries might have could be included in the terms of reference of the Sub-committee.¹⁷

It is worthy of note in this connection that, at the New York meeting, the representative of Aviareto, the joint venture between the Société internationale de télécommunications aéronautiques (S.I.T.A.) and the Government of Ireland that has been acting as Registrar of the International Registry for aircraft objects, under the Aircraft Protocol, since 1 March 2006, officially announced that his company was interested in also running the future International Registry for space assets.¹⁸ While in no way seeking to prejudge the outcome of the selection process for the Registrar of the future International Registry – which is, clearly, yet to be launched – the Secretariat would, however, note that this might be expected to permit important economies of scale. This expression of interest was confirmed at the second session of the Steering Committee, held in Paris on 14 and 15 May 2009.

The Secretariat would submit, on the basis of the experience that it has acquired in the establishment of the International Registry for aircraft objects and the future International Registry for railway rolling stock, that the essential steps involved in the establishment of the future International Registry will consist in, first, preparation of the process for the submission of candidatures to the post of Registrar, secondly, launching of the process for the drawing up of the regulations to be promulgated pursuant to the future Protocol, thirdly, selection of the Registrar and, fourthly, resolution of other matters as may relate to the operability of the future International Registry, such as the question of the amount of insurance needing to be procured by the Registrar.

The Secretariat would note that the Sub-committee already has considerable food for thought regarding the procedures followed, and the documentation prepared in respect of the establishment of the existing International Registry for aircraft objects and the International Registry for railway rolling stock, which is in the process of being set up.

This being the case, the Request for Proposal document prepared by the Preparatory Commission set up by the Cape Town diplomatic Conference, at which the Protocol to the Convention on Matters specific to Aircraft Equipment (hereinafter referred to as the *Aircraft Protocol*) was opened to signature, for the purpose of establishing the International Registry for aircraft equipment, the draft Request for Proposal document prepared by the Secretariats of UNIDROIT and the Intergovernmental Organisation for International Carriage by Rail (OTIF) for the Preparatory Commission set up by the Luxembourg diplomatic Conference, at which the Protocol to the Convention on Matters specific to Railway Rolling Stock was opened to signature, for the purpose of establishing the International Registry for railway rolling stock (hereinafter referred to as the *Preparatory Commission*), the regulations – and the accompanying procedures – in force pursuant to the Aircraft Protocol and the most recent version of the draft regulations under preparation by the Preparatory Commission are reproduced as Appendices III, IV, V and VI to this Note respectively, for the guidance of the Sub-committee.

¹⁵ Cf. C.G.E./Space Pr./2/Report, § 50.

¹⁶ *Idem*, § 56.

¹⁷ *Idem*.

¹⁸ Cf. The views of industry and Government on how best to finalise an expansion of the Cape Town Convention to cover space assets: a special joint meeting of Government and industry representatives, hosted by Milbank, Tweed, Hadley & McCloy, LLP, to consider the outstanding key issues remaining to be dealt with in respect of the planned Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment and the most appropriate means of bringing said Protocol to timely completion (New York, 19/20 June 2007) - Background to the meeting (a memorandum prepared by the UNIDROIT Secretariat and the Space Working Group): Appendix IV - Registration of international financial interests in space assets (a memorandum prepared by Aviareto), which is reproduced as Appendix VII to this Note.

(c) *Role of the Supervisory Authority*

The basic role of the Supervisory Authority is set forth in Article 17 of the Convention. This is also summarised in § 7 of Attachment 1 to Appendix IV. Article XVII of the preliminary draft Space Protocol as it emerged from the first session of the Committee of governmental experts deals with the designation of the Supervisory Authority, the immunity to be enjoyed by the Supervisory Authority and the possibility for the Supervisory Authority to establish a commission of experts to assist it in the discharge of its functions.

The question of the body that might assume the functions of Supervisory Authority of the future International Registry for space assets is one that has exercised the minds of those participating in the project ever since it got underway. A number of international Organisations were the focus of attention in this regard during the first two sessions of the Committee of governmental experts.

One of these was the United Nations. The question of the desirability and feasibility of the United Nations exercising the functions of Supervisory Authority of the future International Registry for space assets was considered by the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space over a number of sessions;¹⁹ although there was considerable support for the idea of the United Nations exercising such functions, consensus could not be established around this idea, in particular on the ground that this would be incompatible with the fundamental mandate of the United Nations.

Another Organisation considered in this context was the I.T.U. At the second session of the Committee of governmental experts, it was made clear that the Union's consideration of the possibility of it acting as Supervisory Authority would, first, have to go through the I.T.U. Council and then be submitted to the I.T.U. Plenipotentiary Conference, for final decision. The observer attending that session on behalf of the I.T.U. noted that the Union would be in a better position to consider the issue when the role of the Supervisory Authority under the preliminary draft Protocol had been finally determined.²⁰

The I.M.S.O. Advisory Committee had also looked at the possibility of I.M.S.O. serving as Supervisory Authority, although, as the observer representing that Organisation at the second session of the Committee of governmental experts explained, a decision by I.M.S.O. to accept the functions of Supervisory Authority could only be taken by the Assembly of Parties of that Organisation and would require the amendment of its Constitution.²¹ I.M.S.O. had, in the meantime, been advised to follow developments and continue to participate in the work of the Committee of governmental experts and report to the Assembly of Parties.²²

Another potential candidate giving consideration to the idea was E.S.A. The observer representing that Organisation at the second session of the Committee of governmental experts noted that E.S.A. had considered the question of acting as Supervisory Authority and decided that it would be preferable to monitor the issue until all outstanding issues had been resolved. E.S.A. would, however, be prepared to offer technical assistance to the Sub-committee.²³

¹⁹ Cf. Report on the 41st session of the Legal Subcommittee (Vienna, 2/12 April 2002) (A/AC.105/787), §§ 108-112 and Annex III (Conclusions of the consultations undertaken through the *ad hoc* consultative mechanism); Report on the 42nd session of the Legal Subcommittee (Vienna, 24 March/4 April 2003) (A/AC.105/805), §§ 105-120 and Annex III (Report of the Chairman of the Working Group); Report on the 43rd session of the Legal Subcommittee (Vienna, 29 March/8 April 2004) (A/AC.105/826), §§ 74-89 and Annex III (Report of the Chairman of the Working Group); Report on the 44th session of the Legal Subcommittee (Vienna, 4/15 April 2005) (A/AC.105/850), §§ 86-90, 92, 94-103, 111-114 and Annex II (Report of the Chairman of the Working Group); Report on the 45th session of the Legal Subcommittee (Vienna, 3/13 April 2006) (A/AC.105/871), §§ 111-113, 115, 117-119 and 124-125; Report on the 46th session of the Legal Subcommittee (Vienna, 26 March/5 April 2007) (A/AC.105/891), §§ 114-115 and Report on the 48th session of the Legal Subcommittee (Vienna, 23 March/3 April 2009) (A/AC.105/935), §§ 107-108.

²⁰ Cf. Report on the second session of the Committee of governmental experts (*op. cit.*), § 53.

²¹ *Idem*, § 54.

²² Cf. Report on the first session of the Committee of governmental experts (C.G.E./Space Pr./1/Report), § 101.

²³ Cf. Report on the second session of the Committee of governmental experts (*op. cit.*), § 55.

Some UNIDROIT member States had even raised the question whether UNIDROIT might itself be able to act as Supervisory Authority.²⁴ Clearly, apart from the possible questions that might arise in this connection from the fact that UNIDROIT was already the Depositary of the Convention and, having been designated Depositary of the two existing Protocols to the Convention, there had to be a strong chance of it being designated Depositary of the future Space Protocol too, there would be serious financial implications in such a solution that UNIDROIT's member States would need to consider.

Another possible solution adumbrated by certain delegations at the second session of the Committee of governmental experts was the establishment of a mechanism similar to that established under Article XII of the Protocol to the Convention on Matters specific to Railway Rolling Stock, namely an *ad hoc* Organisation to be created by States, in particular States Parties, with a Secretariat to be provided by an existing international Organisation.²⁵

Moreover, if one were to follow through the logic of the argument of economies of scale adduced in the context of the expression of interest registered by Aviareto, the Registrar of the International Registry for aircraft equipment, in also acting as Registrar of the future International Registry for space assets,²⁶ then there might be a case for I.C.A.O., which already acts as Supervisory Authority of the International Registry for aircraft objects, also being considered as an appropriate candidate for the role of Supervisory Authority of the future Registry too.

III. FUTURE WORK

In line with the decision taken at the second session of the Committee of governmental experts,²⁷ it will be for the Committee of governmental experts, at its third session, to be held in Rome from 7 to 11 December 2009, to determine the future working methods of the Sub-committee. The Secretariat, whilst in no way wishing to prejudge the Committee of governmental experts' thinking, would simply note that, notwithstanding its repeated efforts and the kind placing by the I.T.U. of a web forum at the disposal of the Sub-committee, the decision taken at the second session of the Committee of governmental experts for the Sub-committee to work between that and the following session of that Committee by electronic means proved to be somewhat optimistic.

In planning the future work of the Sub-committee, it is perhaps useful to recall the projected time-table for completion of the project outlined by the Secretariat's representative at the second meeting of the Steering Committee: according to this time-table, a fourth and final session of the Committee of governmental experts would be held towards Spring 2010 and, subject to the granting of the necessary consent by the UNIDROIT Governing Council, a diplomatic Conference for adoption of the resultant draft Protocol either towards the end of 2010 or in the first quarter of 2011.

²⁴ Cf. Report on the first session of the Committee of governmental experts (*op. cit.*), § 103.

²⁵ Cf. Report on the second session of the Committee of governmental experts (*op. cit.*), § 50.

²⁶ Cf. p. 4, *supra*.

²⁷ Cf. Report on the second session of the Committee of governmental experts (*op. cit.*), § 51.

***THE VIEWS OF INDUSTRY AND GOVERNMENT ON HOW BEST TO FINALISE AN
EXPANSION OF THE CAPE TOWN CONVENTION TO COVER SPACE ASSETS***

A special joint meeting of Government and industry representatives, hosted by Milbank, Tweed, Hadley & McCloy, LLP, to consider the outstanding key issues remaining to be dealt with in respect of the planned Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment and the most appropriate means of bringing said Protocol to timeous completion

(New York, 19/20 June 2007)

INTERIM REPORT

***ON THE CRITERIA FOR THE IDENTIFICATION OF SPACE ASSETS
TO BE EMPLOYED IN THE PRELIMINARY DRAFT PROTOCOL
TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
ON MATTERS SPECIFIC TO SPACE ASSETS***

(prepared by the UNIDROIT Secretariat)

I. INTRODUCTION

1. At its second session, held in Rome from 26 to 28 October 2004, the UNIDROIT Committee of governmental experts for the preparation of a draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets (hereinafter referred to as the *Committee*) set up a sub-committee to develop proposals, to be submitted to the Committee at its following session, related to the international registration system to be established under the future Protocol (hereinafter referred to as the *Sub-committee*). The Sub-committee was asked to work by electronic means, with the UNIDROIT Secretariat acting as co-ordinator of its work. Very few comments having been posted on the web forum set up by the International Telecommunication Union (I.T.U.) to facilitate the work of the Sub-committee, the UNIDROIT Secretariat has, in the light of the conclusions reached at the special Government/industry Forum hosted by the Royal Bank of Scotland (RBS) in London on 24 April 2006, to take stock of the key outstanding issues to be dealt with in respect of the preliminary draft Protocol to the Cape Town Convention on Matters specific to Space Assets (hereinafter referred to as the *preliminary draft Protocol*), deemed it appropriate itself to seek to take forward work designed to advance consideration of one of the issues referred to the Sub-committee, namely the identification of space assets and related matters.

2. As a starting point, it is appropriate to note the questions set out on the I.T.U. web forum in this regard by the Secretariat. The questions are asked, first, which criteria should be employed for the identification of space assets, secondly, how far such criteria should be laid down in the future Protocol at the time of its adoption and how far the future Protocol should provide for them to be laid down by the regulations to be established under the future Protocol, thirdly, whether identification should be prescribed in the future Protocol as a matter fundamental to the application of the Convention in relation to space assets and whether the regulations should be limited to matters concerning the future International Registry for space assets, fourthly, how the Protocol should ensure that any criteria that it may lay down remain accurate and relevant, for example by providing for their updating pursuant to the aforementioned regulations, fifthly, what the criteria should relate to, in particular given that it may not always be possible, with all the different types of space asset covered by the preliminary draft Protocol, to identify criteria of the sort employed in respect of aircraft objects under the Protocol to the Convention on Matters specific to Aircraft Equipment, namely criteria relating to the asset in a finished state, in that, under the sphere of application of the preliminary draft Protocol as currently drawn, registration may need to be effected, first, against assets that are still in the process of being manufactured and, secondly, against a large number of component parts of a single asset, the registration of each of which may be considered to be unduly onerous, expensive and impractical, and, sixthly, whether the criteria to be employed should not only be asset-related but may also include elements of a debtor-based system, recalling that the Space Working Group, at its fifth session, held in Rome on 30 and 31 January 2002, noted that the inclusion of multiple search criteria would increase the reliability of searches.

3. The question of the identification of space assets is currently dealt with in Article VII (Identification of space assets), which provides that “A description of a space asset that satisfies the requirements established in the regulations is necessary and sufficient to identify the space asset for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.” A footnote to the word “identify” indicates that “[i]dentifiability is a crucial requirement because the registration system is asset-based”; cf. Sir Roy Goode, *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol thereto on Matters specific to Aircraft Equipment*, at 12. The concept of identifiability is to be understood in the context of the ‘notice filing’ registration system envisaged under the Convention, that is a system based on ‘the filing of particulars which give notice to third parties of the existence of a registration, leaving them to make enquiries of the registrant for further information, as opposed to a system which requires presentation and/or filing of agreements or other contract documents or copies’ (cf. *idem* at 88).

II. COMMENTS POSTED BY GOVERNMENTS

4. Only two responses to these questions have to date been posted on the I.T.U. web forum.²⁸ One respondent, in answer to the first three questions, indicated his preference for general identification criteria being laid down in the future Protocol and the task of developing identification criteria to be employed solely for the purpose of registration being left to the Supervisory Authority of the future International Registry for space assets, for promulgation in the regulations to be established under the future Protocol. Responding to the fourth question, this respondent recognised that identification criteria might have to be updated in order to remain accurate and relevant and proposed that the manner of such updating should be left to the regulations. On the fifth question, he suggested that the most practical means of finding the most appropriate criteria would be to look, as with aircraft objects under Article XX of the Aircraft Protocol, to the asset in a finished state, leaving it to the parties to the transaction to specify the appropriate moment for the registration of a given asset. He felt that the suggestion of the Space Working Group (hereinafter referred to as the *S.W.G.*), reflected in the sixth

²⁸ By the Governments of the Czech Republic and the United Kingdom.

question, required further consideration and asked for clarification from the S.W.G., as the author of this idea.

5. The other respondent suggested that one approach to the difficulties inherent in finding appropriate identification criteria for all the different types of asset caught by the preliminary draft Protocol's sphere of application was to ask oneself whether this was not drawn too widely. He noted that the preliminary draft Protocol covered *anything* that was intended to be launched in space or was launched in space. He submitted that this extended the preliminary draft Protocol's sphere of application far beyond the original sphere of application of the Cape Town Convention (hereinafter referred to as the *Convention*) itself, which was delimited only by reference to high-value objects. He noted, for instance, that the preliminary draft Protocol applied to all components of a space asset. Thus, once a component could be identified as a space asset, the Convention would apply and a creditor with an international interest in that component would need to register his interest in the future International Registry if he did not wish to lose priority to a creditor having registered another interest.

6. Thus, this respondent pointed out, the protection given under the preliminary draft Protocol to a supplier of a component by a reservation of title clause might be lost to a creditor of a manufacturer who had registered an interest in the space asset of that manufacturer, with the result that manufacturers of components would need to protect their interests in relatively low-value items by registration. As regards such low-value items, he took the view that allowing the Convention system to override national secured transactions law needed firm justification and clarity so that those with interests capable of being protected knew that this was the case. The reason for this was that the Convention had legal effects on interests that were *not registered*. It was his view that Contracting States were entitled to expect certainty and clarity as to the limits of the jurisdiction that they were ceding to the Convention system. And there could be no doubt as to the application of the Convention system and the need for registration to protect the interests of creditors where high-value objects such as airframes, aircraft engines and complete satellites were concerned.

7. His conclusion was that the certainty that there ought to be as regards the assets to which the preliminary draft Protocol applied was currently lacking. The existing definition of space assets did not, to his mind, satisfy this test. First, the scope of what was caught was in some cases subjective (the intention to launch) rather than objective. Secondly, space assets might be of low value. Thirdly, assets assembled or manufactured in space, even after being brought down to earth, will, as the preliminary draft Protocol is currently drafted, remain subject to the Convention system indefinitely, even though it has been conceived for assets that are in space.

8. This, in his opinion, highlighted both the unjustified extent of the transfer of jurisdiction from national legal systems to the Convention system under the preliminary draft Protocol and the considerable uncertainty that the latter would create for the suppliers of components and their creditors, for example, as to how to protect their interests.

9. As a possible solution to the problem raised, this respondent noted that there was clearly a need to build flexibility into the future Protocol with a view to accommodating likely future developments in respect of space assets. Treaties normally being a long time in the making and in entering into force, he suggested that thought be given to restricting the preliminary draft Protocol to a specific number of high-value space assets capable of being defined as objects to which the Convention ought to apply, such as satellites, transponders, space stations and re-usable launch vehicles, and providing for a simplified fast-track procedure for covering additional categories of space assets. He referred in this context to the proposal for a fast-track procedure for adding new categories of asset to the Convention system without the need for convening a full diplomatic Conference developed during the preparation of the

Convention.²⁹ While he recalled that this procedure was not acceptable to States as a means of adding wholly new categories of object to the Convention system, he suggested that it might be acceptable for the more limited purpose of adding new kinds of high-value space asset. He suggested that such a procedure could be triggered by a proposal made to UNIDROIT by a Contracting State to the future Space Protocol, requesting that an additional object be brought under that Protocol, after which it would be for UNIDROIT to circulate a draft amendment amongst other Contracting States for comment within a fixed period of time, after which UNIDROIT would circulate a final text among States, taking account of the comments submitted, for acceptance and subsequent ratification by Contracting States to that Protocol.

10. He submitted that this solution had the merit of cutting the sphere of application of the preliminary draft Protocol back to those categories of high-value object originally intended to be covered by the Convention while providing a system for extending its sphere of application by agreement without the need for a diplomatic Conference. He hoped that, in this way, the problems he had identified could be overcome and the problems implicit in the identification of space assets could be greatly reduced.

III. STEPS TAKEN BY THE UNIDROIT SECRETARIAT TO ADDRESS THE PAUCITY OF COMMENTS POSTED

11. Faced by the failure of more than two Governments to contribute to the work of the Subcommittee, the UNIDROIT Secretariat, in the wake of the RBS Forum, took it upon itself to seek to move matters forward in relation to, in some ways, the most important of the questions referred to the Subcommittee, namely the identification of space assets for the purpose of the registering of international interests in space assets under the future Protocol. It prepared a questionnaire,³⁰ which it circulated among satellite manufacturers, launch service providers and financial institutions, designed to seek their opinion, first, as to, in their experience, the most appropriate identification criteria to be employed in respect of the four classes of space asset listed in Article I(2)(g) of the preliminary draft Protocol,³¹ secondly, if there were any unique identification criteria for these classes of asset and, if not, which alternatives might work for the class of asset in question, in particular in the light of the function that such criteria were intended to have under the future international registration system, and, thirdly, whether these criteria could be considered “necessary and sufficient” to identify the particular asset for the purposes of that system.

IV. RESPONSES TO THE UNIDROIT SECRETARIAT’S QUESTIONNAIRE

12. Again, the quantity of responses received by the UNIDROIT Secretariat to its questionnaire was not particularly high, although, at seven, it might be considered acceptable as the basis for drawing tentative conclusions, given that this represents better than a one-in-five response ratio to the number of questionnaires sent out.³²

²⁹ Cf. in particular preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment: discussion paper on the legal relationship between the preliminary draft Convention and its equipment-specific Protocols (prepared by Ms C. Chinkin and Ms C. Kessedjian) (Study LXXII – Doc. 47) and UNIDROIT CGE/Int.Int./3-Report ICAO Ref. LSC/ME/3-Report, §§ 30-32.

³⁰ A copy of this questionnaire is reproduced in Appendix I to this report.

³¹ Assets intended to be launched and placed in space or that are in space, assets assembled or manufactured in space, expendable launch vehicles or launch vehicles that can be re-used to transport persons or goods to and from space and a component forming a part of one of these assets or attached to or contained within such an asset.

³² Responses came in from Mr D. Arlettaz (Commerzbank), Ms F. Bessis (Arianespace), Mr R.W. Gordon (Boeing Capital Corporation), Mr S.Kozuka and Ms S. Aoki (on behalf of Mitsubishi Electric Corp., NEC Toshiba Space Systems, Inc., Mitsubishi Heavy Industries, Ltd, Ishikawajima-Harima Heavy Industries Co. Ltd and IHI Aerospace Co. Ltd.), Mr

13. The responses received focussed primarily on, first, the policy question as to whether the difficulties involved in finding suitable identification criteria for some of the categories of space asset at present covered by the preliminary draft Protocol should not be seen as raising a question-mark as to the appropriateness of their inclusion in the sphere of application of the preliminary draft Protocol and, secondly, the possible criteria to be employed in respect of those categories of space asset to be covered. The only respondent who addressed the issue as to whether identification criteria should be established in the future Protocol or might rather be left to be specified by the future Supervisory Authority, in regulations, considered that it would be more effective to do this in the future Protocol itself.

(a) *Appropriateness or otherwise of including all categories of asset currently covered*

14. The essential point to be made right away in respect of three out of the seven responses is that they would seem to support the point of view expressed by the aforementioned Government respondent, namely that there must be some question as to the appropriateness of seeking to cover classes of space asset other than the satellite in its entirety in the preliminary draft Protocol. The basic question to be asked in determining whether any of the other assets currently encompassed by the sphere of application of the preliminary draft Protocol should be so covered was, it was suggested by one respondent, whether it was an asset typically moving across national frontiers and, as a result, exposed to the risk of the application of the rules of various legal systems, depending on its actual location, since it was with the enhancing of legal certainty in respect of precisely such assets that the preliminary draft Protocol was concerned.

15. Another respondent noted that he was in favour of keeping the preliminary draft Protocol as simple and unambiguous as possible, whilst ensuring that the end-product was a tool that the capital markets would actually consider useful but that to achieve both simplicity and usefulness required constant balancing. He took the view that the class of assets to be covered by the sphere of application of the preliminary draft Protocol should be limited, cover the greatest amount of monetary value being invested by the commercial space industry and be of immediate value to the capital markets. For that reason, he would favour assets which were to-day of limited monetary value, limited commercial application and of limited benefit to the capital markets being excluded from the sphere of application of the preliminary draft Protocol. He considered that the future Protocol needed to be capable of having an immediate impact for both the space industry and the capital markets and took the view that, while the evolution of the commercial space industry would doubtless, with time, require changes to the future Protocol, it was important at present to deal with to-day's reality and leave tomorrow's possibilities to a process to be agreed for amendments to the future Protocol.

(i) *Satellites*

16. All respondents were agreed as to the appropriateness of the preliminary draft Protocol covering the satellite in its entirety. There was no dissenting opinion as to the appropriateness of treating the communications satellite as the primary focus of the preliminary draft Protocol; it was noted that this would include Low Earth Orbit (LEO's), Medium Earth Orbit (MEO's) and Geosynchronous Orbit (GEO's) satellites and the broadest variety of business activity, such as voice, data, imaging, radio and television. In this way, the future Protocol would, it was suggested, cover any non-governmental man-made object placed into earth orbit for commercial purposes.

(ii) Assets intended to be launched and placed in space

17. As regards those other assets currently encompassed by the sphere of application of the preliminary draft Protocol, opinions differed as to the appropriateness of covering assets intended to be launched and placed in space, namely satellites under construction. One satellite manufacturer respondent was basically against their inclusion in the preliminary draft Protocol, noting that, in asset-based financing terms, covering such assets in the preliminary draft Protocol would mean, in effect, covering interests taken in assets on earth, assets that some might, therefore, believe should rather be subject to municipal law. He pointed out that to understand the true realisable collateral value of a satellite during the construction process required an analysis of fungible value throughout the process. Equally importantly, it required an analysis of the alternative uses of the various parts which made up a satellite, many of which had limited or no other uses. Very little collateral value was built up during the first one-third of the contract; a growing but minimal value was built up in the second-third of the process and some value in the last stages of manufacturing. In any event, the lender was largely dependent upon the manufacturer to estimate the value to be realised from parts of a satellite.³³

18. A financial institution respondent, on the other hand, noted that for financial institutions the important question was to know whether a satellite would be re-usable. In principle, they were not re-usable but during the first half of their construction they were adaptable and could, therefore, be resold to another customer, whereas, once launched, they were not re-usable. For banks a satellite under construction was, therefore, only really interesting during the first half of its manufacture.

19. A third respondent noted that the municipal law applicable to such assets was moreover capable of being known in advance – the place of manufacture, the place of launch and the places which might be passed through during its transport to the launch pad were all eminently knowable in advance – so that the objective of providing legal certainty where it would not otherwise exist underpinning the preliminary draft Protocol did not arise in respect of such assets.

(iii) Assets assembled or manufactured in space

20. All the three respondents who addressed the issue as to whether the coverage of certain of the categories of asset currently covered by the preliminary draft Protocol was warranted felt that assets assembled or manufactured in space should not be covered. The point was made that they raised complex issues of intellectual property rights in space and that the practical need for asset-based financing in respect of such assets over the next decade had to be viewed as limited; it was noted that the day would, however, come when manufacturing processes in space would require financing but that to spend time on such assets at the present time was a distraction that was not likely to produce significant benefits. Moreover, so long as such assets, for example crystals, were intended to be brought down to earth, it was suggested that protection might not be necessary. It was added that such assets might be protected by the existing municipal law of the State of the launch pad or the State of the launching ground.

³³ He recognised, though, that a satellite operator would probably require financing during the construction process. He suggested, though, that this was not the unsolvable conundrum that it appeared to be, the answer lying in the development of a structure which included both pre-launch and post-launch financing (cf. *Satellite financing timeline* reproduced as Appendix II to this report). He assumed for these purposes that a space asset being constructed on earth was capable of being identified (via the manufacturer's contract number), that there was some amount of value which could be relied on, and that a pre-arranged post-launch financing commitment had to be available at delivery to enable construction financing to begin.

(iv) Expendable launch vehicles

21. All three respondents who addressed the issue as to whether the coverage of certain of the categories of asset currently covered by the preliminary draft Protocol was warranted recommended excluding expendable launch vehicles (hereinafter referred to as *E.L.V.'s*) from the sphere of application of the latter. One of these respondents noted that *E.L.V.'s* were not directly financeable, in that they were never "sold". It was pointed out that an operator requiring the orbital insertion of a new satellite would contract with a launch provider for a service but that the operator would not be allowed to buy the *E.L.V.* The only asset available for asset-based financing, it was further pointed out, would be the contract itself and in almost all cases this contract would have no value unless supported by the launching company, and then only if the latter had a robust backlog which made it obvious that the launch service could be shifted to a new customer willing to pay cash. The other respondent who questioned the justification for including *E.L.V.'s* queried the financial benefit of securing expendable launch vehicles once they were in space, since up until that time they would have been on earth and, to that extent, the need for providing legal certainty in respect of such assets would not arise.

(v) Re-usable launch vehicles

22. Two of the three respondents who addressed the issue as to whether the coverage of certain of the categories of asset currently covered by the preliminary draft Protocol was warranted favoured the exclusion of re-usable launch vehicles (hereinafter referred to as *R.L.V.'s*) from the sphere of application of the latter. One of these two respondents questioned whether, notwithstanding the fact that *R.L.V.'s* were, in theory, financeable, in the same way as commercial aircraft, their coverage was warranted when they would appear to have only minimal value to the capital markets over the next decade. The other respondent who basically favoured their exclusion noted that, once again, it would be possible to know the municipal law applicable to such assets in advance, thus eliminating the need for the additional legal certainty that the preliminary draft Protocol was designed to bring. On the other hand, a financial institution respondent was more positive about the case for the continued inclusion of *R.L.V.'s* in the sphere of application of the preliminary draft Protocol, noting that such assets, which looked more like aircraft than anything else, could be seized and were of especial interest to financial institutions, for example in the context of the Galileo project.

(vi) Components

23. Only one of the three respondents who addressed the issue as to whether the coverage of certain of the categories of asset currently covered by the preliminary draft Protocol was warranted, from a satellite manufacturer, recommended their exclusion from the sphere of application of the latter. Noting that the principal component had in mind was the transponder, he felt that it would be prudent to avoid getting into the subject of components when 90% of the value of the future Protocol could be realised by focussing solely on the satellite in its entirety. He recognised that others might disagree with his analysis, in that there were examples of transponder leases as sub-assets of the satellite which had itself attracted financing but pointed out that these were complex structures requiring inter-lessor agreements and that to include sub-assets in the sphere of application of the preliminary draft Protocol risked drawing out the process considerably.

24. Another respondent, this time from a financial institution, recognised that to exclude components would definitely tend to speed up the remaining process. However, while recognising that manufacturers would naturally have concerns about components, not least on account of the risk of creditors taking them to court in respect of such components, he stressed that there could be no gainsaying the fact that satellites were, after all, made up of components and he did not, therefore, favour components being left out.

(b) *Criteria to be employed in respect of space assets*

25. One respondent, noting that, first, no serial number or other uniform identification criteria for satellites, payloads or other space assets existed at present, secondly, there was no designator of existing registration systems (for example, the Committee on Space Research (Cospar)) commonly used by technicians and operators, and, thirdly, it was not realistic to seek to create a serial number system for space assets (for example, by E.C.S.S. criteria), concluded that identification criteria in general could only be used as a combination of two elements, orbital parameters (two-line elements) and communication protocols. Two-line elements were catalogued on and accessible via the Internet to a great extent. Communication protocols typically identified the satellite or the satellite identified the right communication protocol (by authentication). This respondent further noted that, in future, an independent identification criterion might be provided by the intellectual property address of an asset. Although such addresses did not exist at the moment, each satellite and payload (that is also the transponder, for example) will receive an independent I.P. address in future.

26. This and another respondent also raised the issue of the need to keep in mind the verification of identification criteria, pointing out that serial numbers or other such physical identification criteria could not be verified while the space asset was in space. Auxiliary criteria (such as Telemetry, Tracking and Command (T.T.&C.) signals, orbital parameters and the source code) could be employed to deal with this case, although they would not be necessary in the case of two-line elements and communication protocols. Referring to the possible use of orbital parameters as an auxiliary criterion, the other respondent noted that, where more than one satellite was placed on the same orbit, additional information would be required, such as an indication of the command code used for each of the satellites. That same respondent also suggested that the information recorded under the 1975 Convention on Registration of Objects Launched into Outer Space might also be useful in this regard.

27. One respondent, representing a financial institution, noted that an important criterion employed in practice that should also be employed under the preliminary draft Protocol, even if the basic intention under the Convention was for the international registration system for the different categories of asset covered thereunder to be asset-based, was the debtor's name. He noted that, before advancing the funds necessary for the financing of an asset, a financial institution had to be sure of being able to go against either the asset itself or the revenue stream from that asset and that the essential condition for its being able to do so was to know who was either the owner or the operator of that asset. From the point of view of a financial institution, it was fundamental, at any given moment, not only to know the identifying features of the asset being financed but also the identity of the person benefitting directly therefrom or that of the person in possession of the asset, as the persons against whom it would have to go in the event of default.

28. All those responding provided suggestions as to the most appropriate criteria to be employed for the identification of each of the specific classes of space asset currently covered by the preliminary draft Protocol, with the exception of assets assembled or manufactured in space, for which no criteria were suggested.

(i) *Satellites*

29. One satellite manufacturer suggested that an identification grid could be created in the future International Registry for space assets including any or all of the following information: the name of the satellite; its owner and the address of its owner; its purpose; the manufacturer of the satellite; the satellite's North America Aerospace Defense Command (Norad) or National Space Science Data Center (N.S.S.D.C.) number; its Cospar number; the date of its launch; its launch site; its launch vehicle; its

type of orbit; its perigee; its apogee; its inclination (in degrees); its period (minutes); its launch mass; its dry mass; its expected lifetime; its T.T.&C. manager and its primary ground stations.

30. Another satellite manufacturer indicated that, in his experience, the following criteria were used: the name given to the satellite by the buyer; the name under which it was registered by the I.T.U.; the name of the manufacturer; the name of the platform; the name of the anticipated or current control centres; the launcher used or to be used; the anticipated or current delivery orbit; the number of transponders and types thereof (F.S.S., B.S.S., band width, reception band frequency, transmission band frequency) and the dates of deposit and/or publication of the frequencies in respect of the satellite with the I.T.U.

31. A third respondent suggested that the model and serial number of the satellite and the name of the manufacturer and date of production might provide necessary and sufficient identification criteria. While recognising that serial numbers might not exist for satellites manufactured in the past, he pointed out that numbering according to the bus type would be possible. He added that the date of production was important for the sake of preventing fraud, as this information was known only to the manufacturer. In the case of delivery on orbit, the date of delivery could, he suggested, be substituted for the date of production.

(ii) Assets intended to be launched and placed in space

32. One satellite manufacturer respondent suggested use of the manufacturer's contract number, as already mentioned in footnote 6. A financial institution, on the other hand, suggested that the financing contract could be every bit as useful for identification of the satellite. He also suggested that one might also look at such criteria as chassis numbers and plaques, to the extent that they were employed.

(iii) Expendable and re-usable launch vehicles

33. One launch service provider respondent noted that her company did not sell launch vehicles owing to the very specific operations to be performed and the associated risks, which meant that the launch vehicle itself as an asset remained with the launch services agency and was not identified to the customer under the contract. The only asset was, therefore, the launch services contract itself. She suggested that the reference number of this contract would, accordingly, probably be the most appropriate identification criterion in this respect, although she noted that in some cases the satellite to be launched was assigned to a given contract at a later stage.

(iv) Components

34. One respondent noted that in the case of components like a transponder of a communications satellite or a rack in the International Space Station there was already a serial number that could be used.

V. CONCLUSIONS

35. It is not for the Secretariat to presume to draw conclusions from its enquiries as to either the appropriateness of covering this or that category of space asset in the preliminary draft Protocol or which would be the most appropriate criterion to be employed for those categories to be covered. The Secretariat nevertheless considers that the information contained in this report provides sufficient food for thought in itself on both these issues.

36. It is true that only two Governments posted comments on the I.T.U. web forum and it would be invidious to draw any firm conclusions from such a limited response on the part of Governments. However, to the extent that the conclusion drawn by one of the Government respondents as to the desirability of considering a narrowing of the sphere of application of the preliminary draft Protocol was borne out, to a greater or lesser degree, in the responses from three of the respondents from the international commercial space and financial communities, this is definitely a question that calls for due consideration at the New York meeting.

37. As regards possible criteria for the identification of those categories of space asset covered by the present text of the preliminary draft Protocol, the responses received from the international commercial space and financial communities provide rich food for thought indeed, with the notable exception, of course, of assets assembled or manufactured in space.

38. Finally, only one Government respondent and one respondent from the international commercial space and financial communities addressed the issue as to whether the identification criteria to be employed in respect of the different categories of space asset covered by the preliminary draft Protocol should be specified in the future Protocol or rather left to be determined by the Supervisory Authority, through regulations, and these responses were evenly divided in the views expressed so that it is clearly impossible to draw any conclusions therefrom.

ATTACHMENT I

Our refce.: S72J/ ...

Rome, 15 June 2006

Dear,

I am working on one of the key issues referred by the Committee of governmental experts preparing the future Space Protocol to a new Sub-committee looking into the basic aspects of the future international registration system for space assets, namely the criteria to be employed for the identification of space assets.

As you know, the current text of the preliminary draft Space Protocol refers the establishment of the criteria to be employed for the identification of space assets to the Supervisory Authority.

However, the original text of the preliminary draft Protocol that went to the Committee of governmental experts embodied a number of specific criteria for this purpose (name and address of debtor and creditor, general description of asset indicating name of manufacturer, its manufacturer's serial number and its model designation as well as its intended location, date and location of launch, and, in the case of a component, a description of such component, the space asset of which it forms a part, to which it is attached or within which it is contained) as well as providing for the possibility of additional criteria being specified in the regulations. And we believe that it is, in particular in the light of the fact that the Cape Town Convention system is predicated on the basis of an asset-based registration system, important to have a clear idea of the different options available in respect of the different classes of space asset covered by the preliminary draft.

Permit me, accordingly, to take a minute or two of your time to enquire as to the criteria that might, on the basis of your practical experience as a manufacturer/financial institution in this field, be employed for the four classes of space asset listed in Article I (2) (g). We are, of course, aware that some of these classes of asset, and in particular satellites under construction at the time when the secured financing is sought, may not have simple identification criteria of the type available, say, for aircraft.

In essence, I should, therefore, be grateful if you would kindly let me know, on the basis of your practical experience, first, whether there are any unique identification criteria for each of the following classes of asset, secondly, if so, what these are and, if not, which alternatives might work for the class of asset concerned, in particular in the light of the function that such criteria are designed to have under the future international registration system for space assets:

1. an asset intended to be launched and placed in space or that is in space;
2. an asset assembled or manufactured in space;
3. an expendable launch vehicle or one that can be re-used to transport persons or goods to and from space; and
4. a component forming a part of one of the aforementioned assets or attached to or contained within such an asset.

I realise that the first category of assets is going to include both assets that are completely manufactured at the time of financing and assets that will still be under construction. I should be grateful for your thoughts in respect of both.

In providing us with the benefit of your views on the available criteria for use in respect of each of the aforementioned classes of asset, it would furthermore be appreciated if you would also kindly let us know whether you would consider these criteria “necessary and sufficient” to identify the particular class of asset for the purposes of both the Convention and the future Protocol, that is in order to permit their registration in the future international registration system for space assets.



*International Institute for the Unification of
Private Law*

SWG

Space Working Group

SCOPE AND CRITERIA FOR IDENTIFICATION OF SPACE ASSETS

A special joint meeting of Government and industry representatives, hosted by Milbank, Tweed, Hadley & McCloy, LLP, to consider the outstanding key issues remaining to be dealt with in respect of the planned Space Assets Protocol to the Cape Town Convention on International Interests in Mobile Equipment and the most appropriate means of bringing said Protocol to timeous completion

(New York, 19/20 June 2007)

Rolf Olofsson
White & Case LLP

KEY OBJECTIVES

- **MAINTAIN FOCUS ON HIGH VALUE ASSETS**
- **ADVANCE ACTUAL COMMERCIAL INTERESTS**
- **MINIMIZE JURISDICTIONAL CONFLICTS**
- **AVOID DRAWING THE NET TOO WIDELY OR NARROWLY**
- **PROVIDE CERTITUDE AS TO PROPER IDENTIFICATION OF ASSETS**

SCOPE OF SPACE ASSETS:

OBJECT TYPE AND LOCATION

	IDENTIFIABLE ASSET TO BE PLACED IN SPACE 4) 5) 6)	IDENTIFIABLE ASSET TO BE ASSEMBLED IN SPACE 9)	IDENTIFIABLE LAUNCH VEHICLE – EXPENDABLE 10)	IDENTIFIABLE LAUNCH VEHICLE – REUSABLE 4) 11)	SEPARATELY IDENTIFIABLE COMPONENT FORMING PART OF AN ASSET 1) 5) 6)
PRE-LAUNCH	2) 7) 8)	N/A			
IN SPACE	8)		N/A		
RETURN TO EARTH		3)	N/A		

IDENTIFICATION CRITERIA

- **ABILITY TO DISTINGUISH FROM OTHER ASSETS**
- **INTENDED BENEFICIARY**
- **IMPLICATIONS FOR ASSOCIATED RIGHTS**

**Request for Proposal
(RFP)**

for the

International Registry

1. BACKGROUND

1.1 The Convention on International Interests in Mobile Equipment, and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (hereinafter referred to as the Convention and the Protocol, respectively), contemplate the establishment of a notice-based, electronic International Registry, the basic features and implications of which are summarized in Attachment 1, hereto. Article 17(2)(i) of the Convention contemplates an efficiently operated noticed-based, electronic International Registry that will perform the functions assigned by the Convention, Protocol, and Regulations. Article 19(2) provides that registration is effective upon entry of required information into the International Registry database so as to be searchable. Article XX(1) and (4) of the Protocol requires unique search criteria for aircraft objects and that the International Registry be operated on a twenty-four hour basis. It is clear that state-of-the-art, computer-based technology is needed for the International Registry to fulfill its functions.

2. KEY CONCEPTS

2.1 All Contracting States of the International Civil Aviation Organization (ICAO) will receive the Request for Proposal (RFP). It will also be posted on the ICAO public website and, subject to availability of sufficient funding, may be advertized in one or two suitable worldwide publications. Proposals to serve as Registrar may be made by public or private entities.

2.2 Any bid to serve as Registrar shall:

- 1) identify the State where the bidder will locate the Registry;
- 2) describe any undertakings such State is prepared to make with respect to the establishment and operation of the Registry; and
- 3) provide assurances from such State with respect to its intended undertakings, including, if it is not a Contracting State of the Cape Town instruments, its willingness to comply with all provisions of the Cape Town Convention and Protocol relating to the International Registry to the same extent as if it were a Contracting State, pending its ratification of the Protocol.

2.3 The Preparatory Commission for the Establishment of the International Registry, acting as Provisional Supervisory Authority, hereinafter referred to as the Preparatory Commission, is responsible for the establishment of the International Registry, that will register international interests in aircraft objects, and for the selection and appointment of the Registrar. The Preparatory Commission is also responsible for making the first regulations dealing with the operation of the International Registry. The International Registry will be by way of reference to the "Basic Features of the International Registry" found at Attachment 1, and the "Requirements Document (RD) for the International Registry" found at Attachment 2.

2.4 The Preparatory Commission contemplates entering into an agreement or contract with a State to fulfill the International Registry requirements. The International Registry does not necessarily have to be operated by a State entity.

2.5 Any formal agreement or contract resulting from this RFP shall be governed by the relevant ICAO rules.

2.6 The appointment of the Registrar shall be for a period of five (5) years after award of agreement or contract, pursuant to Article XVII (5) of the Protocol.

2.7 The entity with which the agreement or contract is placed will ensure that the International Registry is operational not later than twelve (12) months from the date that formal notice to proceed is provided by the Preparatory Commission.

2.8 This RFP contemplates both technical and cost/price proposals by interested entities¹. Details will be addressed at paragraphs 3 through 5 below. Each technical proposal will be evaluated and ranked in accordance with established criteria. A cost/price proposal is requested for information purposes and will be considered by the Preparatory Commission in making its selection. The selection will be based on best value considering technical and cost/price factors.

2.9 The Preparatory Commission will enter into negotiations with the entity that has the highest ranked technical proposal. Negotiations will include applicable terms and conditions to be incorporated in any resultant agreement or contract. Cost/price will be discussed; including reimbursement as may be appropriate for start-up costs. The transaction fees to be established by the Regulations to be charged users of the International Registry shall also be discussed.

2.10 Key milestone events and time lines/dates are provided as follows. Dates are provided for planning purposes only and are subject to revision.

Event	Time Lines/Dates
1) Issuance of RFP	by 1 August 2002
2) Receipt of Proposals	by 1 November 2002
3) Evaluation of proposals and recommended award	by 16 December 2002
4) Commencement of test phase	After award and notice to proceed
5) Completion of test phase and notice to proceed	No later than 8 months after award
6) Implementation and commissioning ²	No later than 12 months after award and notice to proceed

3. SUBMISSIONS

3.1 Proposals should address both technical capabilities, experience and cost/price issues as discussed in paragraphs 4 and 5 below. Proposals will be treated as confidential and will be reviewed and evaluated for award purposes only.

3.2 Proposals should be addressed to the competent [authority] at [address] so as to be received not later than [date].

¹ The Requirements Document at paragraph 3 requires proposals to address comprehensively financing of the system and exceptions for cost recovery. Financing of the system is considered integral to cost/price considerations.

² For discussion on Commissioning see the Requirements Document for the International Registry paragraph 4.

4. TECHNICAL PROPOSAL

4.1 Each technical proposal must address the following:

- a) The Requirements Document (Attachment 2) in detail;
- b) Responsible Entity and Locations of Facilities;
 - i) (Articles 16 and 17 of the Convention refer to the International Registry, to the Supervisory Authority that establishes it and to the Registrar that ensures its efficient operation (collectively the international registration system). The Registrar will therefore play a critical role in the functional design and operation of the International Registry. Therefore, for purposes herein, a bidder may assume that it, if selected for Registrar, will play a significant role in developing the functional design and operation of the International Registry.)
 - ii) Proposals shall describe the entity (e.g., government agency, contractor); its role (e.g., Registrar); responsibilities (e.g., develop software, hardware, specifications, provide site, etc.); and proposed location and facilities of the International Registry.
- c. Technical Capabilities and Capacities;
 - i) Technical Capabilities. Each bidder shall address its possession of the unique technical capabilities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).
 - ii) Technical Capacities. Each bidder shall address its possession of the unique technical capacities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).
- d. A Business Model. Ref. RD, paragraph 3, (Attachment 2); and
- e. Past Performance and Experience. Each bidder shall identify all relevant past and present performance experience with designing, implementing and managing systems of similar complexity and magnitude. The information provided should demonstrate the bidder's ability to perform the proposed effort.

5. COST/PRICE PROPOSAL

5.1 Each bidder is requested to provide a comprehensive schedule of estimated costs and prices in U.S. dollars and discuss the assumptions on which such estimates are based. The following list may be referred to as appropriate:

- a. Start up costs.

Function related:

- | | | |
|-----|-------------------|----------|
| (1) | Hardware design | \$ _____ |
| (2) | Hardware assembly | \$ _____ |
| (3) | Software design | \$ _____ |
| (4) | Software creation | \$ _____ |

- | | | |
|-----|-------------------------------|----------|
| (5) | Communication system design | \$ _____ |
| (6) | Communication system creation | \$ _____ |
| (7) | Security system design | \$ _____ |
| (8) | Security system creation | \$ _____ |
| (9) | Real time backup system | \$ _____ |

Site and Facility Related:

- | | | |
|------|---|----------|
| (10) | Site acquisition cost (already owned, by purchase, or by lease) | \$ _____ |
| (11) | Site preparation | \$ _____ |
| (12) | Site construction | \$ _____ |
| (13) | Furniture and equipment | \$ _____ |

Miscellaneous:

- | | | |
|------|----------------|----------|
| (14) | Permits | \$ _____ |
| (15) | Insurance | \$ _____ |
| (16) | Legal expenses | \$ _____ |
| (17) | Other | \$ _____ |

Total: \$ _____

b. Yearly Operating Cost of International Registry.

- | | | |
|------|--|----------|
| (1) | Personnel (wages and benefits for Registry operations) | \$ _____ |
| (2) | Hardware replacement, update and maintenance (including personnel) | \$ _____ |
| (3) | Software replacement, update and maintenance (including personnel) | \$ _____ |
| (4) | Building maintenance and building janitorial (including personnel) | \$ _____ |
| (5) | Building security (including personnel) | \$ _____ |
| (6) | Rent (see 5.a.(9) above) | \$ _____ |
| (7) | Utilities | \$ _____ |
| (8) | Insurance | \$ _____ |
| (9) | Taxes | \$ _____ |
| (10) | Permit Renewals | \$ _____ |
| (11) | Legal expenses | \$ _____ |
| (12) | Other | \$ _____ |

Total \$ _____

6. **Instructions for Submission of Proposals.** The instructions for submission of technical and cost/price proposals are contained at Attachment 3.

7. EVALUATION

7.1 Proposals will be evaluated in accordance with a pre-established Evaluation Plan found at Attachment 4.

7.2 Proposals will be evaluated and award made on the basis of overall best value.

7.3 The proposals will be evaluated, rated, and scored based on submissions and subject to consideration of the following factors:

- (i) Technical requirements,
 - (ii) Technical capabilities and capacity,
 - (iii) Business model,
 - (iv) Past performance and experience,
 - (v) Cost/Price.
-

Basic Features
of the International Registry
contemplated by the Convention
on International Interests in Mobile Equipment
as modified by the Aircraft Equipment Protocol

This document sets out the basic features of the International Registry contemplated by the *Convention on International Interests in Mobile Equipment* (“Convention”)¹, as modified by the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* hereinafter refer to as the Convention and the Protocol respectively.

It does not address the particulars contained in the Requirements Document (“requirements document”), most notably the technological parameters contained therein. Rather, this document is intended to clarify basic conceptual matters impacting the system’s essential purpose and architecture.

Part I summarizes the basic characteristics of the International Registry. Part II describes the salient features of the Convention and the Protocol relating to the International Registry. Drawing upon Parts I and II, Part III addresses select operational aspects impacting the International Registry’s design.

Part I Summary of Basic Characteristics of the International Registry

1. The International Registry will be organized by aircraft object, not debtor. With respect to ratification instruments and their associated declarations, it will be organized by Contracting State.

Notes: Registrations² and searches will be made, and their results issued, with reference to the manufacturer’s serial numbers of aircraft objects. The Convention and the Protocol secondarily contemplates the publicity of ratification instruments, including declarations by Contracting States, via the International Registry. These will be organized and searchable by reference to Contracting States.

2. The International Registry will be wholly electronic.

Notes: Registrations and searches will be made solely by electronic means³.

3. The International Registry will serve the sole function of establishing priorities among competing, valid claims. The act of registration neither presupposes nor is an aspect of that essential validity.

Notes: The act of registration establishes first-in-time priority, should the interest notified in the registration exist, or, in the case of prospective interests, be created⁴. Registration does not presuppose a validly existing underlying interest. Nor does registration constitute a step in the process of creating an interest. It simply provides an objective rule-of-decision in the case of competing, valid claims.

4. Priority will be established on a first-in-time basis. First-in-time refers to when an interest is searchable in the International Registry.

Notes: This rule permits searching parties to rely on search results, thus enhancing the overall utility of the International Registry system. Registrants, theoretically burdened by this rule, can self-protect by

¹ See ICAO Doc 9793

² Unless specified otherwise, references herein to “registrations” include amendments, extensions and discharges. Cf. Convention, Art. 16(3).

³ The standard means of providing registration confirmations and search results will be electronic.

⁴ The criteria for valid creation is set out in the texts (e.g., Convention, Arts. 7 (international interests) and 31 (assignments) and Protocol, Art. V (contracts of sale), as supplemented by applicable law, to the extent required by Convention Art. 5(2).

searching for their own registrations prior to advancing funds or relinquishing possession, as the case may be. An advanced electronic system, coupled with the ability to register prospective interests, each contemplated by the Convention and the Protocol, permits such registrant self-protection.

5. The International Registry will be a minimalist, noticed-based system.

Notes: The absolute minimum information needed to put all searchers on notice of the asserted or contemplated existence of interests will be permitted and required: (i) names, (ii) contact details, (iii) type of registration (e.g., “international interest” or “contract of sale”) and duration, and (iv) asset description⁵. Documents may not be registered.

6. The Registrar’s role will be administrative, not interventionist, with risk management addressed through system design.

Notes: The Registrar will not assess the accuracy of submitted information or the authority of a registrant to act. However, the system will be designed with a view towards (i) minimizing the risks of unauthorized registrations bearing in mind the minimalist nature of the system, and (ii) preventing registrations which are manifestly implausible or which otherwise do not contain the required information.

7. The Supervisory Authority will supervise the Registrar and the operation of the International Registry in accordance with the basic principles of the Convention and the Protocol as summarized herein.

Notes: The Supervisory Authority, after consultations, promulgates regulations. Upon request, it may provide the Registrar with guidance. Finally, it will establish procedures for dealing with complaints. The foregoing, however, is understood in a broader context. The Supervisory Authority is to ensure that an efficient noticed-based registration system exists.

8. Contracting States may designate (exclusive or non-exclusive) entry points for transmission of registration information for select aircraft objects, and such entry points are not part of the International Registry as such.

Notes: In effect, such entry points or their designees are users, like any others, with one additional characteristic: Contracting States designating such entry points may impose conditions to be satisfied prior to transmission of such registration information to the International Registry. An entry point designation shall not, however, restrict the ability of parties to directly search the International Registry. The liability, if any, of entry point operators for their errors and omissions, is determined by applicable national law, not the Convention and the Protocol.

⁵ See *infra* note 57 for points relating to noting the nationality registration of select aircraft objects.

Part II Salient Features of the Convention and the Protocol relating to the International Registry

1. Various interests⁶ in aircraft objects,⁷ are prioritized⁸ on a first-in-time registration basis,⁹ by virtue of the Convention and the Protocol's basic priority rules.¹⁰ These rules are objective and not dependent on a registrant's lack of knowledge of other interests. Parties searching the International Registry can rely on the results. The only other rights or interests that may affect such priority are certain non-consensual ones,¹¹ declared by a Contracting State¹² as preferential and so publicized in the International Registry.¹³

⁶ International interests (security agreements, title reservation agreements and leases) and related subrogations, subordinations and assignments, together with non-consensual rights and interests, notices of national interests, and contracts of sale. See Convention, Art. 16(1) and the Protocol, Arts. III and V.

⁷ Aircraft engines, airframes and helicopters meeting the minimum specifications contained in aircraft protocol Art. I (b), (e) and (1), respectively.

⁸ If an interest was not validly created in accordance with the Convention and applicable law, see *supra* note 6 and accompanying text, it cannot be the subject of a priority dispute. For example, if the debtor lacked title or did not have the company power to enter into the transaction, it would not have the "power to dispose" of the object, as required by Convention, Art. 7(b). Thus, the fact that a creditor's international interest was registered would have no legal significance.

⁹ This includes "prospective" interests - intended future interests (see convention, Art. 1(x)-(y)) - which do not exist at the time of registration. For example, if a prospective international interest is registered and subsequently becomes an international interest, its priority is determined from the date of initial registration. See Convention, Art. 18(3). To ensure fairness in this regard, a debtor can require a creditor to discharge a prospective interest any time prior to that creditor's giving or committing to give value. See Convention, Art. 25(2).

¹⁰ See Convention, Art 29 and the Protocol, Art. XIV. In addition, registration of international interests and contracts of sale prior to the commencement of insolvency proceedings ensures that they will be effective in such proceedings. See Convention, Art.30 and the Protocol, Art. III.

¹¹ See Convention Arts. 1(s) (any right "conferred by law" to secure an obligation). A decision was made not to attempt to internationally harmonize priority rules in this sensitive area, thus avoiding the parallel problems encountered in several other international treaties.

¹² Yet, States must declare which nationally preferred non-consensual rights and interests have priority without registration and are to retain that preference. They are bound by that declaration, and may only amend it prospectively. However, States may make a general and/or prospective declaration. See Convention, Art. 39.

¹³ See *id.* Art. 23. More broadly, it is contemplated that the International Registry would publicize the contents of all ratification instruments (received from the depositary), including the various declarations contained therein. See the Protocol, Art. XXXVII(2)(c).

2. Registration status is obtained by electronic entry into an International Registry,¹⁴ operated by a Registrar appointed¹⁵ and supervised by a Supervisory Authority¹⁶ (that, in turn, periodically reports to Contracting States). Supervisory activities include the issuance of binding operational regulations, the establishment of complaint procedures, and the ability to provide requested guidance.¹⁷

3. In view of time differences and the need to avoid preferred regions, the International Registry will be operated on a twenty-four (24) hours a day, seven (7) days a week basis.¹⁸

4. As the Convention and the Protocol concerns itself with interests in specified aircraft objects, not general airline financing, registrations and searches are made against such objects, not the debtor's name. The criterion for an object is the manufacturer's serial number, supplemented (as necessary) in the regulations to ensure uniqueness.¹⁹

5. First-in-time denotes the time when a registration is "searchable," meaning when it is stored in durable form, may be electronically accessed at the International Registry, and is assigned a sequentially ordered file number.²⁰

6. The convention specifies who is legally entitled to submit registrations.²¹ In other words, if a party lacking that legal entitlement submits a registration, while it may appear on a search result, it would have no legal effect. Whether the submitting party is so entitled is justiciable: if in dispute, the matter - which may be legal, factual or both - will be settled by a court with jurisdiction under the convention.²² It will not be determined by the *ex ante* (time of registration) intervention²³ of the operator or supervisor of the International Registry.

¹⁴ Created on the legal authority of the Convention and the Protocol, and its contemplated establishment by the Supervisory Authority. See Convention, Arts. 1(p), 16(1) and 17(2)(a).

¹⁵ The texts contemplate an initial five (5) year appointment with the possibility of re-appointments. See the Protocol, Art. XVII(5).

¹⁶ See Convention, Art 17(1) and aircraft protocol, Art. XVII(1) (designation of Supervisory Authority). ICAO has agreed in principle to act as Supervisory Authority.

¹⁷ See Convention, Art, 17(2) (responsibilities of Supervisory Authority). Intentionally omitted from these supervisory functions is the power to require or permit the Registrar to change any data relating to a registration.

¹⁸ See the Protocol, Art. XX(4) (and contrast the standard business hours of designated "entry points").

¹⁹ See Convention, Art. 19(6) and the Protocol, Art. XX(1).

²⁰ See Convention, Art. 19(3). The effect of this provision is to permit searching parties to rely on their search results. Undisclosed submitted entries will not constitute "registered interests" for priority purposes.

²¹ The detailed provisions are contained in Convention, Art. 20 and the Protocol, Art. III. The general rule - applicable to international interests and contracts of sale, including prospective interests and assignments - is that either transaction party may register with the written consent of the other. Subordinations, subrogations and discharges are made by the party divesting itself of rights. Non-consensual rights and interests and notices of national interests are registrable by the holder thereof.

²² A claim that a registration was made by a party lacking the legal entitlement to do so would be a "claim brought under this [c]onvention" for purposes of the jurisdiction provisions. See Convention, Art. 42.

²³ See, e.g., Convention, Art. 18(2) (no "evidence" that a "consent to registration" is required as a condition to effecting a registration).

7. The implications of the preceding point - that in a limited-purpose, efficient electronic registry, there will be no human vetting - extend to other legal and factual questions. These include whether (i) the Convention and the Protocol applies at all,²⁴ (ii) a party has the rights that it purports to dispose,²⁵ and (iii) the submissions were made by a party with internal power to act.²⁶ Courts will settle these matters, in the case of dispute. Such matters will not be addressed by the Registrar as part of its administrative function.

8. Accordingly, the conditions to registration, namely, the items to be satisfied prior to registration, are minimal.²⁷ Compliance with the electronic application form,²⁸ together with a payment of the required fee,²⁹ is all that is required. Registrations that do not satisfy the foregoing conditions will be electronically rejected.

9. A different approach has been taken where a Contracting State declares that registrations may or must be submitted through a designated entry point in its territory.³⁰ It may do for select aircraft objects³¹ with a required nexus to that State.³² (No such declaration is permitted for searches of the International Registry, which may be made by any person, from any location, for any purpose.) Where such a declaration is made, the Contracting State may require that national conditions be satisfied prior to transmission of the registration information by the entry point to the International Registry.³³

²⁴ Whether an object meets the definition of an “aircraft object” (e.g., size requirements), see *supra* note 10 and accompanying text, and whether one of the Convention and the Protocol’s connecting factors has been satisfied (debtor being “situated” in a Contracting State, or, where relevant, actual or contemplated nationality registration therein). *See* Convention, Arts. 3 and 4 and the Protocol, Art. IV(1).

²⁵ Whether, for example, the debtor has title to the object. If not, an international interest would not be constituted. *See* Convention, Art. 7(b).

²⁶ Whether, for example, the debtor had received its required internal company or corporate approvals. If not, an international interest would not be constituted. *See id.*

²⁷ This concept (often couched in terms of “efficiency”) has been at the center of all developmental work on the proposed International Registry. Its remains a principal objective in finalizing the system. *See* paras. 2.3 and 3 of the Requirements Document.

²⁸ Limited, additional information (i.e., the initial registration file details) will be required on electronic forms for discharge and amendment.

²⁹ A cost-recovery fee schedule will be set by the Supervisory Authority. *See* Convention, Art. 17(2)(h) and the Protocol, Art. XX(3). Payment mechanism (debit arrangements and/or accounts) are matters of system design and/or of operational regulations.

³⁰ Permitted by Convention, Art. 18(5) and the Protocol, Art. XIX. Such entities are not part of the International Registry, in particular for purposes of liability, insurance requirements and fee arrangements. More broadly, the operators of the designated entry points are not subject to oversight and supervision by the Supervisory Authority (but, like any user, would need to comply with applicable use-related regulations).

³¹ As they lack nationality, aircraft engines are not subject to such a designation.

³² *See id.* (establishing a nexus of nationality registration in, or interests arising under, the laws of that Contracting State).

³³ *See supra* note 8 and accompanying text.

10. Registrations will remain effective until the earlier of (i) their discharge, and (ii) the expiry of the period specified in the registration.³⁴ Discharge is the responsibility of the beneficiary of a registration,³⁵ where the underlying obligations have been fully performed.³⁶ In the case of discharge - and amendment technological systems will be put in place to minimize the risk of unauthorized action by requiring a matching of the electronic signature of the initial registrant and that of the amending or discharging party.

11. The Supervisory Authority will do all things necessary to ensure that an efficient notice-based registration system exists.³⁷ It will own all proprietary rights in the data and archives of the International Registry,³⁸ have international legal personality,³⁹ and enjoy appropriate immunity from legal or administrative processes.⁴⁰

12. The Registrar will ensure efficient operation of the International Registry, and perform the functions assigned to it by the Convention and the Protocol⁴¹ and the regulations.⁴² It will be liable for compensatory damages for losses suffered by its error or omission or a malfunction of the International Registry.⁴³ The Registrar shall procure full insurance or financial guarantee covering its liability.⁴⁴

³⁴ See Convention, Art. 21.

³⁵ This creditor responsibility is without prejudice to a debtor's right to seek an in personam order against the creditor by a court with general jurisdiction under the Convention and the Protocol or, in the circumstances and by the court specified in Convention, Art. 44, relating to an order directly binding on the Registrar.

³⁶ See Convention, Arts. 20(3) (discharge by the favored party) and 24 (requiring discharge by the party entitled to do so in specified circumstances).

³⁷ See Convention, Art. 17(2)(i). This standard is simultaneously broad and confined. It is broad in the sense of providing the Supervisory Authority with plenary powers, subject to its obligation to periodically report to Contracting States. Yet it is confined. That power must be exercised in service of a International Registry system with certain characteristics: efficiency, electronics and notice-based priorities.

³⁸ See Convention, Art. 17(4). Questions relating to rights in the hardware and software will be addressed in the process of establishing the International Registry.

³⁹ See Convention, Art. 27(1). That provision implicitly acknowledges that a potential Supervisory Authority, for example, ICAO, may already have international legal personality. Where that is the case, it will be acting under the Convention and the Protocol with that status.

⁴⁰ See Convention, Art.27(2).

⁴¹ Expressly including the issuance of search results, see Convention, Art.22, which shall constitute prima facie proof of their contents. See Convention, Art. 24.

⁴² See Convention, Art. 17(5).

⁴³ The broad allocation of responsibility is designed to establish user confidence in the system, particularly in the start-up phase. See Convention, Art. 28(1).

⁴⁴ See Convention, Art. 28(2) and the Protocol, Art. XX(5).

13. Courts of the place of the Registrar's centre of administration⁴⁵ have limited but exclusive⁴⁶ jurisdiction over the Registrar. It is limited to (i) matters relating to the Registrar's liability, (ii) requiring discharges of registrations where parties required to so discharge no longer exist or cannot be found, and (iii) situations where a person fails to comply with an order of a court having jurisdiction under the Convention and the Protocol.⁴⁷ Unless waived by the Supervisory Authority, assets and materials of the International Registry will be immune from seizure or other legal or administrative process.

Part III Select Operational Aspects impacting the design of the International Registry

1. In view of the importance of search results, descriptive, synoptic search certificates will be issued chronologically summarizing all registrations, amendments and discharges⁴⁸ with respect to the searched aircraft object.

2. The system will be designed to ensure chronological processing,⁴⁹ and, correspondingly, sequential numbering of registrations. Precise timing information will be electronically contained in registrations and searches.

3. The contemplated wholly electronic, notice-based International Registry system produces significant efficiencies, including lower registry operating and insurance costs. The feasibility of multiple electronic signatures/consents will be explored, and, in any event, appropriate access and tracing procedures will be employed. State-of-the-art preservation and back-up systems, error-correction techniques, and security precautions will be utilized.⁵⁰

4. There is no need for extraneous information in registrations, given the limited function of the International Registry (notification and priority). The operational objectives of the International Registry will thus be achieved by requiring only⁵¹ the (i) names, (ii) contact details, (iii) type of registration (e.g., "international interest" or "contract of sale") and duration, and (iv) specific description of the object (manufacturer's serial number and manufacturer name and model).

⁴⁵ See Convention, Art. 44(1). This is a functional rather than formal standard (e.g. the statutory seat or place of incorporation), selected in light of the practicalities of the subject litigation.

⁴⁶ In this context, exclusive jurisdiction is required to avoid the prospect of inconsistent orders from different national courts, each purporting to bind the Registrar in connection with its treaty-based, international responsibilities. See Convention, Art. 44(4).

⁴⁷ See Convention, Art. 44(1)-(3). The limited nature of this jurisdiction reflects the basic philosophy of having courts with jurisdiction under the convention issue in personam orders against transaction parties (requiring them to take actions with respect to the International Registry), rather than having courts issue orders binding upon the registry. The residual jurisdiction noted in Art. 44 addresses only the identified problems in that regime.

⁴⁸ Whether or not the discharged registration is archived. This approach will permit a complete *history* of registered interests in the object, which may prove useful in the case of subsequent disputes.

⁴⁹ In line with Convention, Art. 18(4).

⁵⁰ The minimum requirements for these items are set out in the paras. 5-7 of the Requirements Document.

⁵¹ While there is no legal reason to include nationality registration information on the registration form, as the Convention and the Protocol establishes priority on the basis of registrations by manufacturer's serial number, in line with the text's definition of aircraft objects, certain practical advantages may be obtained from the inclusion of this information even if only for information and research purposes. However, since such information need not be updated, it may become inaccurate.

5. Electronic forms will be standardized and formalized, and all registrations, searches and certifications will be made using such forms.
6. Particularly during the start-up phase, there will be the need for an assistance desk to address pressing procedural or technical queries.⁵²
7. Should more than one language be employed by the International Registry, pluri-lingual electronic forms, with standardized translations, are required.

— END —

⁵² See para. 5.4 of the Requirements Document.

Requirements Document (RD)

for the

International Registry

Table of Contents

1.	Overview	1
2.	General Description of the International Registry Requirements (Also See Attachment 1 to the Request for Proposal Entitled “Basic Features of the International Registry”)	1
2.1	Convention and Protocol	1
2.2	The Preparatory Commission, the Supervisory Authority and the Registrar	1
2.3	Additional Characteristics	1
3.	Objectives and Business Model	1
4.	Testing and Implementation Schedule	2
5.	Technical Requirements	2
6.	Operational Requirements	4
7.	System Requirements	5
7.2	Environment	6
7.2.1	Telecommunications	6
7.2.2	Workstation	6
7.2.3	Database	6
7.2.4	Security	7
7.2.5	Maintenance	7
7.2.6	Connect Times	8
7.3	Application Infrastructure	8
7.3.1	Data	8
7.3.2	Edits	9
7.3.3	Applications	9
7.3.4	Interfaces	9
7.3.5	Reporting	9
7.3.6	Support	9
8.	Technology Enhancements	9
9.	Technical Terms	10

1. OVERVIEW

1.1 This is the baseline Requirements Document (RD) for the International Registry .

2. GENERAL DESCRIPTION OF THE INTERNATIONAL REGISTRY REQUIREMENTS (ALSO SEE ATTACHMENT 1 TO THE REQUEST FOR PROPOSAL ENTITLED “BASIC FEATURES OF THE INTERNATIONAL REGISTRY”)

2.1 Convention and Protocol

2.1.1 To facilitate asset-based financing of mobile equipment, particularly aircraft equipment, States have adopted the *Convention on International Interests in Mobile Equipment* and the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment* (hereinafter referred to as the *Convention* and the *Protocol*, respectively), including certain large airframes, engines, and helicopters. The Convention and the Protocol contemplate the establishment and operation of a modern, electronic International Registry which will enable lenders, conditional sellers, lessors and others to register their interests electronically. These interests shall then be immediately searchable electronically from anywhere.

2.2 The Preparatory Commission, the Supervisory Authority and the Registrar

2.2.1 The Preparatory Commission has responsibility for the establishment of the International Registry and appointment of the Registrar, the Supervisory Authority has responsibility for the reappointment and dismissal of the Registrar, and the Registrar has responsibility for the operation and maintenance of the International Registry.

2.3 Additional Characteristics

2.3.1 It is anticipated that the International Registry will register thousands of interests in aircraft objects annually. Registrations will contain only minimal information, such as names and addresses of parties, unique description of object, and type of transaction, e.g., security agreement, title reservation, agreement, or leasing agreement. It will be a notice-based, electronic system. The International Registry should be able to accommodate a multiple number of simultaneous entries and reviews. It is extremely important that interests be entered quickly and accurately, and that they be searchable immediately worldwide.

3. OBJECTIVES AND BUSINESS MODEL

3.1 The objectives are to provide an efficient, reliable and secure electronic registration system as contemplated by the Convention and the Protocol. States submitting proposals shall set out in detail their business model and methods to achieve these objectives, which shall describe all steps from the requirements analysis (and the assumptions made therein) through the delivery and implementation. Without limiting the foregoing, such proposal shall comprehensively address risk assessment and management as well as the financing of the system and expectations for cost recovery.¹

¹ Key terms with respect to cost recovery may include: Cost Recovery Mechanism, Forecast Period, Initial Funding Costs, Operating Funding Costs, Registry Costs, Registry Cost Assumptions, and Registry Use Assumptions.

4. TESTING AND IMPLEMENTATION SCHEDULE

4.1 The test phase shall be conducted no more than 6 months after contract award/notice to proceed to ensure that the International Registry will meet the requirements. Completion of the test phase shall be no more than 8 months after contract award/notice to proceed. Full implementation and commissioning² of the International Registry will be completed following a successful completion of the test phase no more than 12 months after contract award/notice to proceed.

5. TECHNICAL REQUIREMENTS

5.1 Languages of the International Registry³

5.2 The following assumptions shall be made in consideration of the language(s) of the International Registry :

- a) functions will relate to input, output, and customer services;
- b) it will be a one-language system, based on the Latin alphabet; or
- c) the system will support multiple languages, based on the Latin alphabet; or
- d) the system will support the six official languages of the International Civil Aviation Organization (ICAO), namely Arabic, Chinese, English, French, Russian and Spanish.

5.3 The International Registry shall require the implementation of a scaleable, i.e., would provide easy modification without the necessity of redesigning the entire system, Internet or Intranet architecture allowing for powerful servers dedicated to managing disk drives, printers, or network traffic, etc. This involves the construction or lease of a centralized, highly available client/server data center.

5.4 The International Registry will be required to be available 97 per cent (which is the industry standard) of the 7-day work-week for full users to accommodate operational facilities in all time zones. The 3 per cent non-availability contemplates maintenance, power outages, hardware problems, etc. Maintenance shall not be performed during peak periods (what constitutes peak periods will be defined at a later time) and will not be so extensive as to interfere with the accomplishment of maintenance.

5.5 The International Registry shall ensure that data is not manipulated, unauthorized registrations are not added and the data is not altered.

² Commissioning is likely to involve issuance of a document by the Preparatory Commission, which certifies the International Registry and authorizes the continuing performance of tasks related to the operation of the International Registry. It is understood that commissioning of the International Registry may take up to 3 months after implementation. However, the International Registry must be implemented and operational within 12 months after Contract Award/Notice to Proceed.

³ Offerors are invited to comment generally about technical and cost factors related to developing a system based on multiple languages and multiple alphabets.

5.6 The minimum requirements for technical support will be to provide a help desk to users 24 hours, 7 days a week via telephone and/or electronic mail. Support will be provided for any problems due to technical difficulties including but not limited to telecommunication failures, software problems, etc.

5.7 The International Registry shall have contingency and data recovery plans that ensure the integrity and restoration of the system. This plan would include, but not be limited to the following:

5.7.1 A document tracking capability for documents entered by users.⁴

5.7.2 A tracking capability to ensure an historical record of information and to allow point-in-time reporting of all data manipulation activities performed by each user, including date and time stamps, user identification, Internet Protocol (IP) addresses and dynamic Internet addresses on every record.

5.7.3 The International Registry shall maintain current and historical tables. In the case of a system failure, the International Registry shall be required to restore records to the point-in-time the system failed.

5.7.4 The International Registry shall have the capability to restore, in accordance with the Regulations one or more records, e.g., accidental release of an interest.

5.7.5 The records shall be stored on electronic media in a secure area at a separate location from the hardware and archived in reasonable time intervals for the International Registry.

5.8 Historical records shall be stored in the database. Any records deleted from the database, e.g., interests, which have been released, shall be archived indefinitely.

5.9 The sizing information/requirements identified in Table 1 are approximate.

⁴ The term users, as mentioned throughout the Requirements Document, shall mean either those who register international interests or those conducting searches within the International Registry.

Table 1⁵

Transactions⁶	Airframes	Aircraft Engines	Helicopters	Totals⁷
Totals (over a twenty year period)	174,000 filings 196,000 searches 131,000 certificates issued	400,000 filings 450,000 searches 302,000 certificates issued	55,000 filings 61,000 searches 42,000 certificates issued	629,000 filings 707,000 searches 475,000 certificates
Totals Per Year (assuming proportionate distribution of total)	8,700 filings 9,800 searches 6,550 certificates issued	20,000 filings 22,500 searches 15,100 certificates issued	2,750 filings 3,050 searches 2,100 certificates issued	31,450 filings 35,350 searches 23,750 certificates

6. OPERATIONAL REQUIREMENTS

6.1 The users of the system will be:

- a) the general public including, in particular, airlines and financial institutions and their legal counsel; and
- b) civil aviation authorities to the extent declared by States under the Protocol.

6.2 The International Registry shall provide:

6.2.1 A web site for the single point of entry. The system must accommodate Internet browsers released within the past two years.

6.2.2 Users' ability to review accuracy of data entry before the record is saved to the database.

6.2.3 A means to share information between processes, edit data upon entry, and reject, record, report bad data and prevent it from being stored in the database.

6.2.4 A method to issue a search certificate for each registration, providing for on-line display and printing by user.

6.2.5 A means for ensuring data cannot be altered once stored in the database.

⁵ The estimates in this chart are very tentative and wholly unofficial. They are based on a range of assumptions, including ratification of the Convention and the Protocol by States, which take the largest percentages of aircraft equipment deliveries. Other important assumptions address the duration of transactions and the applicable financing practices.

⁶ Transactions consist of secured debt financing, financial leases, operating leases, assignments or sales of interests in the foregoing transactions, contracts of sale and voluntary restatements of existing transactions.

⁷ Proposals should consider the effect of increases in total transactions each year. For example, consider a ten per cent increase each year for ten years.

- 6.2.6 A mechanism for registry personnel to correct errors.
- 6.2.7 A provision for multiple screens for data entry related to registration of a single interest.
- 6.2.8 The capability to archive records automatically in the database for registrations that are no longer valid in accordance with established criteria (to be determined).
- 6.2.9 Currency of the fees to be in 'x' country's currency.
- 6.2.10 Entry of information by users connected to an electronic signature having the following characteristics:
- a) Uniqueness and non-repudiation of signature;
 - b) Irrefutability of signature⁸;
 - c) Linkage of signature to document;
 - f) Inalterability of document; and
 - g) Capable of accommodating two electronic signatures (e.g., debtor and creditor).
- 6.2.11 *Ad hoc* reporting capabilities.
- 6.2.12 User's ability to download and/or query information, e.g., via file transfers, spreadsheets, for use with other software packages and automated systems.
- 6.2.13 The capability for printing information, e.g., reports, documents, certificates, etc.
- 6.2.14 An on-line help function to provide documentation for a particular data element on the screen.
- 6.2.15 On-line users' assistance to explain the capability of the International Registry, including search and indexing capabilities.
- 6.2.16 Training for all users, including but not limited to, web-based tutorial training developed by the system's developer, which will guide the user through the process of entering and viewing transactions.
- 6.2.17 Validations on a secure system of the user's credit card or direct debit information prior to registration of an interest in an aircraft object.
- 6.2.18 A method for collecting fees for viewing, if any.

7. SYSTEM REQUIREMENTS

- 7.1 The following are the minimum system requirements. The developer may add to these requirements by enhancements to the system.

⁸ e.g. biometrics. Bidder should consider and explain the relationship between higher levels of irrefutability and cost.

7.2 Environment

7.2.1 Telecommunications

7.2.1.1 The International Registry shall provide:

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

7.2.2 Workstation

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

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

7.2.3 Database

7.2.3.1 The International Registry shall provide:

- a) Standard data access methods to ensure adequate system and data availability for users.

- b) Data integrity and processing consistency by defining system level validation rules and business logic at the server database.
- c) Capabilities to perform hot backups to ensure high system availability while supporting up-to-the-minute database recovery.
- d) Enhanced configuration management support through a centralized implementation of business logic.
- e) Flexible access by users needing data access through other commercial-off-the-shelf software packages, e.g., downloads to manipulate data on a spreadsheet.
- f) Automated tools to assist in analyzing the data in respect to system performance.

7.2.4 Security

7.2.4.1 The International Registry's security shall provide:

- a) Firewalls to prevent unauthorized access to or from private networks. For greater security, data will be encrypted.
- b) Access to authorized users only.
- c) An automatic feature to logoff users because of inactivity.
- d) Limitations of access to appropriate system components, i.e., administrative database functions, data entry, views, or reporting of users based on roles, privileges, and access availability.
- e) Limitation of access for users to the operating system. Access will be only available through the presentation layer.
- f) Software encryption processing that occurs between the client application layer and the software server. All transactions for registration will utilize data encryption while in transmission.
- g) An on-line method to create and automatically assign user identifications and passwords.
- h) The International Registry shall include automated tools to record pertinent data in respect of the security and to provide assistance in analyzing this data.

7.2.4.2 Physical access security shall be required to the central service site.

7.2.5 Maintenance

7.2.5.1 Maintenance will include, but not be limited to hardware, software or telecommunication problems. All maintenance problems are expected to be resolved in a timely manner to ensure system availability in accordance with 5.4. If problems cannot be resolved immediately, users must be notified that the problem is being addressed and the approximate time it will take to resolve it.

7.2.6 Connect Times

7.2.6.1 Connect times shall allow for time outs that tolerate time for States who take more time to download web pages.

7.2.6.2 The International Registry shall provide for Intranet⁹ connect times for an entire action regardless of the number of users, as follows:

- a) Direct Connect - less than or equal to 5 seconds (e.g. T1).
- b) Remote Dial-Up - less than or equal to 20 seconds (e.g. ISDN or modem).

7.3 Application Infrastructure

7.3.1 Data

7.3.1.1 As will be set out in Regulations, the data elements to be accommodated and maintained in the database may include:

- a) Names of parties (two or more)
- b) Addresses of parties
- c) Description of object by manufacturer's make, model, and serial number
- d) Date of transaction
- e) Types of transaction, e.g., security agreement, lease, conditional sale, etc.
- f) Fees collected (describes the fee and amount in "x" country's currency)
- g) Date/time stamps, user identifications, and IP addresses
- h) Other information¹⁰

7.3.1.2 The International Registry shall provide:

- a) The flexibility to add new data fields to support changes in the system processes and regulatory requirements without excessive data modification.
- b) Unlimited capacity for new data elements in the database.
- c) Configuration management for software releases.

⁹ Internet connect time standards will not be imposed on the International Registry.

¹⁰ Consideration may be given to permitting parties to provide the Chicago Convention registration number when making filings with respect to airframes and helicopters. That information would be for information-purposes only, as the Convention and the Protocol employs a system which distinguishes between airframes and aircraft engines, and contemplates their respective manufacturers serial numbers as the sole identification criterion for registration.

7.3.2 Edits

7.3.2.1 The database shall have editing capability to display guidance when incorrect data is entered using list boxes, text boxes, check boxes or other GUI standards, to ensure compliance with Regulations, e.g., collection of fees, eligibility of aircraft objects, etc.

7.3.2.2 The International Registry shall ensure no interest may be registered until the fee has been paid. The amount of the fee will be determined at a later time.

7.3.2.3 The International Registry shall validate new data to ensure accuracy and consistency with existing data. For example, inconsistency of new data may prevent its entry into the system, such as inconsistency of assignment information with original interest.

7.3.3 Applications

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

7.3.4 Interfaces

7.3.4.1 The International Registry shall provide the capability for reasonable state-of-the-art interfacing to heterogeneous (unlike) systems and databases.

7.3.4.2 The International Registry shall provide the capability of high-speed data interfaces with the Chicago, Geneva, Non-Geneva Personal Property Registries databases and other databases, if desired.

7.3.5 Reporting

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

7.3.6 Support

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

8. TECHNOLOGY ENHANCEMENTS

8.1 Technology enhancements are contemplated and encouraged in order for the International Registry to remain current with advancing technology.

9. TECHNICAL TERMS

9.1	DBMS	Database Management System
9.2	GUI	Graphical User Interface
9.3	IP	Internet Protocol
9.4	ISDN	Integrated Services Digital Network
9.5	KBPS	Kilobytes per second
9.6	OLTP	On-Line Transaction Processing
9.7	OS	Operating System
9.8	RDBMS	Relational Database Management System
9.9	TCP/IP	Transmission Control Protocol/Internet Protocol
9.10	T1	Fixed bandwidth service to provide point-to-point links at a constant transmission rate of 1.544Mbps.

Glossary related to funding and cost matters :

Cost Recovery Mechanism - mechanism for recovery of International Registry costs through user fees, as adjusted from time-to-time.

Forecast Period - length of time over which International Registry costs will be recovered through user fees.

Initial Funding Costs - costs to create the International Registry.

Operating Funding Costs - expenses relating to the ongoing operational and supervision of the International Registry.

International Registry Costs - Initial Funding Costs plus Operational Funding Costs.

International Registry Cost Assumptions - assumptions relating to International Registry costs used in setting, and, as appropriate, adjusting fee schedules.

International Registry Use Assumptions - assumptions relating to the use of the International Registry in setting, and, as appropriate, adjusting fee schedules.

Instructions

For Submission of Proposals

(Technical and Cost/Price)

for the

International Registry System

1. PROPOSAL CONTENT AND FORMAT

1.1 The overall proposal consists of two physically separate and detachable volumes, individually titled as follows:

1.1.1 **VOLUME I - TECHNICAL PROPOSAL** - Technical proposals are to be submitted as separate and complete sections for each of the Technical Evaluation Factors outlined in Technical Evaluation Plan (TEP).

1.1.2 **VOLUME II - COST/PRICE PROPOSAL** - The cost/price proposal is to be submitted separately and will address estimated costs and prices as outlined in paragraph 5 of the RFP.

1.2 The required number of copies of each proposal volume is as follows:

Volume	Required Number of Copies
I (Technical)	5 copies
II (Cost/Price)	5 copies

1.3 Intending offerors should address any requests for clarification of the Request for Proposal documentation, which they may have, to [Addressee] not later than [Closing Date minus [4] weeks]. [Addressee] shall respond to all such requests for clarification not later than [Closing Date minus [1] week] by issuing to all intending offerors a copy of all of the requests for clarification received and the responses thereto.

1.4 Offerors are to submit a proposal which is clear and comprehensive without the need for additional explanation or information. The Supervisory Authority may make a final determination of the successful offeror solely on the basis of the proposal as initially submitted without requesting further information. Therefore, offerors are encouraged to provide their best proposal at the time of initial submission.

1.5 To facilitate the evaluation, proposals are to be written clearly and concisely, neatly organized, indexed (cross-indexed as appropriate), and assembled in a logical manner. The pages of each volume are to be numbered (consecutively) and dated.

2. PREPARATION OF VOLUME I (Technical)

2.1 The technical proposal must be sufficiently detailed to enable technically oriented personnel to make a thorough evaluation as to both its validity and practicality in order to arrive at a sound determination as to whether the proposed services meet the requirements set out in the Requirements Document (RD), Attachment 2 to the RFP. The proposal must be specific, detailed and complete to clearly and fully demonstrate that the offeror has a thorough understanding of the requirements for, and the technical problems inherent in, providing services of the character, scope and magnitude outlined in the RD.

2.2 Statements that the offeror understands, can, or will comply with all requirements of the RD, and statements paraphrasing the RD requirements or parts thereof, are considered insufficient. Phrases such as "standard procedures will be employed," or "well-known techniques will be used," etc., will be considered insufficient.

2.3 Proposals should contain a table of contents and a matrix tracing the requirements in English of the RD to technical proposal content. Proposals shall be in narrative form, typewritten (no smaller than 12 point type), double spaced with 1" margins, on standard 8-1/2" x 11" or 8-1/4" x 11-3/4" (A4) letter size paper, and page numbers and date at the bottom of each page. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are neither necessary nor desired.

2.4 The technical proposal will be limited to a total of 100 pages. Two-sided printing will be counted as 2 pages. Fold-outs will be counted as 2 pages.

3. **PREPARATION OF VOLUME II (Cost/Price)**

3.1 Each offeror must provide cost/price information to include sufficient details relating to the offeror's estimated price. As a minimum, cost/price information should address estimated costs and prices as outlined in paragraph 5 of the RFP.

3.2 In addition to the number of copies set forth in paragraph 1b above, the offeror should submit, on a 3.5" diskette(s), a copy of any spreadsheet(s) containing calculations used to produce the written cost/price information.

EVALUATION PLAN

FOR

INTERNATIONAL REGISTRY

1. OVERVIEW

1.1 This Evaluation Procedures will be used by Evaluation Team members in the evaluation of all technical and cost/price proposals received in response to the Request for Proposal (RFP) for the International Registry .

1.2 Evaluation Team

1.2.1 An Evaluation Team (ET) will be comprised of individuals possessing both knowledge and expertise in the area in which they will perform their evaluation (i.e., technical or cost/price). No ET member shall have a conflict of interest, objectively assessed, and, without limiting the foregoing, each ET member shall declare that no such conflict exists.

1.2.2 Advisors may be appointed to provide expert guidance to the ET and subteams in specialized areas.

1.2.3 Because of the sensitive nature of information provided in each offeror's proposal, ET members shall safeguard the proposals to insure confidentiality.

1.2.4 The ET members will be located at the same physical location during the evaluation process.

1.3 Proposals submitted in response to the RFP will be evaluated for the purpose of assisting the selection authority, to establish which offer constitutes the overall best value.

1.4 Summary results of the ET evaluations will be memorialized in the form of a written report. That report will provide a recommendation as to which offer represents the overall best value.

1.5 Overall best value means that an award may be made to an offeror other than the responsible offeror submitting the lowest cost/price proposal. As a result, best value determinations envision trade-offs between non-cost/price (hereafter collectively referred to as "technical") factors and cost/price factors. In this instance, technical factors are considered to be more important than cost/price.

2. THE EVALUATION PROCESS

2.1 The ET evaluators will make a careful written evaluation of the significant strengths, weaknesses, deficiencies, ambiguities, and risks found in each proposal. Such documentation must be made concurrent with the evaluation of each proposal and be made a part of the ET's written report. All evaluations, working papers, worksheets, etc., shall be signed and dated by ET evaluators.

2.2 The terms strength, weakness, deficiency, ambiguity, and risk are defined as follows:

2.2.1 **Strength.** A **strength** is an element of an offeror's proposal that brings added value beyond that of a minimum requirement set out in the RFP (further reference to RFP is intended to include the RD).

2.2.2 **Weakness.** A **weakness** is an element of an offeror's proposal that, while meeting the minimum requirements of the RFP, is presented in such a manner as to afford the offeror a less than desirable competitive position.

2.2.3 **Deficiency.** A **deficiency** is a failure to address a substantial requirement of the RFP which, unless corrected, would render the proposal unacceptable.

2.2.4 **Ambiguity.** An **ambiguity** refers to a relevant proposal statement that is incomplete or otherwise so vague that its intended meaning is unclear and, consequently, complete evaluation of the proposal would not be possible without obtaining a clarification.

2.2.5 **Risk.** Risk represents a potential danger to successful performance of the requirement.

2.3 Each technical proposal submitted will be evaluated taking into consideration the following four (4) technical factors.

2.3.1 **Factor 1: Technical requirements.** Each proposal must demonstrate the offeror's knowledge and understanding of the technical requirements of the International Registry Program as set out in the Requirements Document (RD). Technical requirements involve: Technical Requirements, Operational Requirements, and System Requirements, identified in the RD at paragraphs 5, 6 and 7.

2.3.1.1 Subfactor 1-1: Technical Requirements - It is critical that the system developed by the offeror represent the latest state-of-the-art technology, e.g. scalable, web-based, 97 percent availability, data integrity, and data recovery. (Reference paragraph 5 of the RD).

2.3.1.2 Subfactor 1-2: Operational Requirements - It is critical that system developed by the offeror consider the usability of the system, e.g. users, integrity of the system, online help, reports, and other special requirements such as search certificate or electronic signatures. (Reference paragraph 6 of the RD).

2.3.1.3 Subfactor 1-3: System Requirements - It is critical that the system developers consider latest technology to give optimal performance in developing the system, e.g. telecommunications, database structure, security, system failover, maintenance, system performance, GUI standards, and interfaces. (Reference paragraph 7 of the RD).

2.3.2 **Factor 2: Technical Capabilities & Capacity.** Each proposal must address the offeror's unique capabilities and capacity necessary to functionally design and implement the International Registry Program contemplated by the RD.

2.3.2.1 Subfactor 2-1: Technical Capabilities - It is critical that the offeror addresses the capabilities (i.e., unique abilities, skills, competencies, etc.) it will bring to performance of the requirement, e.g., employees with special knowledge, skills and competencies having experience to oversee this type of project.

2.3.2.2 Subfactor 2-2: Technical Capacity - It is critical that the offeror addresses its capacity to accommodate a modern International Registry Program of the size, magnitude and complexity of that contemplated by the RD, e.g., the offeror has equipment that has the capacity to meet the requirements considering the size of data and state-of-the-art equipment that will enable the system to meet future requirements; offeror has a workforce or ability to provide a workforce necessary to fulfill the requirements of the International Registry .

2.3.3 **Factor 3: Business Model.** Each proposal must present a Business Model as referenced in Paragraph 3 of the RD. The proposal should address the financing approach necessary to implement an International Registry Program.

2.3.3.1 Subfactor 3-1: Business Model - It is critical that the offeror set out, in detail, a business model that achieves an efficient, reliable and secure electronic registration system. The business model must describe all steps from the requirements analysis (and the assumptions made therein) through delivery and implementation of the system. It is critical that the business model comprehensively address risk assessment and management of the system.

2.3.3.2 Subfactor 3-2: Financing Approach - It is critical that the offeror set out a financing approach necessary to implement the International Registry. The offeror's financing approach must address expectations for cost recovery to include any reimbursement as may be appropriate for start-up costs as well as the need, if any, for establishment of transaction fees to be charged users of the International Registry. Funding or partial funding of the International Registry by a Government shall be regarded as a neutral element in the cost/price evaluation.

2.3.4 Factor 4: Past Performance and Experience. Each proposal should identify all relevant past and present performance and experience involving implementing efforts similar to those anticipated with the International Registry.

2.3.4.1 Subfactor 4-1: Past Performance - It is critical that the offeror demonstrate/possess relevant past performance in the successful development of web-based electronic systems similar to the system described using the latest technology available. Past performance may be shown by references to past performance provided by persons who may associate with the offeror to provide contract services.

2.3.4.2 Subfactor 4-2: Experience - It is critical that the offeror's key personnel and any contract personnel possess the capability and experience in the development of web-based systems, knowledge of telecommunication protocols, system security, system failover, and integration.

2.3.5 A distinction must be made between past performance and experience. Past performance represents "how well" an offeror accomplished the effort. Experience means an offeror has "done it." Of additional importance is that past performance and experience must be current and relevant as well as comparable in scope and magnitude to that described in the PWS.

2.4 The following items shall be addressed in order, during the evaluation process.

2.4.1 Clarifications of Ambiguities. As the initial evaluation is conducted, offers will be reviewed for the purpose of identifying any ambiguities that need clarification before actual initial detailed evaluation begins. Statements in various parts of the proposal, or a description of statement(s) that cannot be understood shall be identified so that any clarifying information can be obtained in a written form from offerors.

2.4.2 The evaluation is performed for the purpose of rating each proposal, and identifying weaknesses and deficiencies for possible identification to the offerors should discussions become necessary. In addition, significant strengths should be identified in the ET report. The recommendations of the evaluation report shall identify the names of the tenderers in order of priority to be submitted to the Preparatory Commission.

2.4.3 After the evaluation process has been completed and recommendations on the preferable tenderers in order of priority have been made, a final evaluation report and the short-listed proposals shall be submitted to the Preparatory Commission for approval.



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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OTIF



**ORGANISATION INTERGOUVERNEMENTALE POUR LES
TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL**

DRAFT

REQUEST FOR PROPOSAL

(RFP)

FOR THE

INTERNATIONAL REGISTRY

As amended by the Working Group

1. BACKGROUND

1.1 The Convention on International Interests in Mobile Equipment, and the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock (hereinafter referred to as the Convention and the Protocol, respectively), contemplate the establishment of a notice-based, electronic International Registry, the basic features and implications of which are summarized in Attachment 1 hereto. Article 17(2)i of the Convention contemplates an efficiently operated notice-based, electronic International Registry that will perform the functions assigned by the Convention, Protocol, and Regulations. Article 19(2) provides that registration is effective upon entry of required information into the International Registry database so as to be searchable. Articles XIV(1) and XV(4) of the Protocol require unique search criteria for items of railway rolling stock and that the International Registry be operated on a twenty-four hour basis. It is clear that a state-of-the-art, computer-based technology is needed for the International Registry to fulfil its functions. It is assumed that Luxembourg as the host country for the Protocol will become a party to the Convention and the Protocol before the Registry becomes operational. It is also assumed that the Registry will be situated in Luxembourg and that, if the host state has information regarding any undertakings it is prepared to make with respect to the establishment and operation of the Registry, it will communicate such to all bidders.

2. KEY CONCEPTS

- 2.1 All States of the following groups will receive the Request for Proposal (RFP)
- 1) States that participated in the Diplomatic Conference to adopt a Mobile Equipment Convention and an Aircraft Protocol held in Cape Town, South Africa from 29 October to 16 November 2001
 - 2) States that participated in the Diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment held in Luxembourg from 12 to 23 February 2007,
 - 3) UNIDROIT Member States not yet covered by 2,
 - 4) OTIF Member States not yet covered by 2 and 3,

It will also be posted on the Websites of UNIDROIT and OTIF and, subject to availability of sufficient funding, may be advertised in one or two suitable worldwide publications. Proposals to serve as Registrar may be made by public or private entities.

2.2 The Preparatory Commission for the Establishment of the International Registry, hereinafter referred to as the Preparatory Commission, will fulfil the necessary tasks so that the International Registry for railway rolling stock is fully operational in accordance with Articles XII(8) and XXIII(1)b of the Protocol. The first and subsequent appointments of Registrars will be performed according to Article XII(11) of the Protocol and the rules of procedure for the Supervisory Authority. The Preparatory Commission is in particular responsible for making the first regulations dealing with the operation of the International Registry. The International Registry will be operated by way of reference to the “Basic Features of the International Registry” found at Attachment 1, and the “Requirements Document (RD) for the International Registry” found at Attachment 2.

2.3 The appointment of the first Registrar shall be for a period of not less than five and not more than ten years consistent with Article XII(11) of the Protocol.

2.4 The appointed Registrar will ensure that the International Registry is operational not later than twelve (12) months from the date that formal notice to proceed is provided by the Preparatory Commission.

2.5 This RFP contemplates both technical and cost/price proposals by interested entities¹. Details will be addressed at paragraphs 3 through 5 below. Each technical proposal will be evaluated and ranked in accordance with established criteria. A cost/price proposal is requested for information purposes and will be considered by the Preparatory Commission in making its selection. The selection will be based on best value considering technical and cost/price factors.

2.6 The Preparatory Commission will enter into negotiations with the entity that has the highest ranked overall proposal. Negotiations will include applicable terms and conditions to be incorporated in the appointment of the Registrar. Cost/price will be discussed, including reimbursement as may be appropriate for start-up costs made by a party in its sole discretion. The transaction fees to be established by the Regulations to be charged users of the

¹ The Requirements Document at paragraph 3 requires proposals to address comprehensively financing of the system and exceptions for cost recovery. Financing of the system is considered integral to cost/price considerations.

International Registry shall also be a factor but will be determined prior to final approval of the new system.

2.7 Key milestone events and time lines/dates are provided as follows. Dates are provided for planning purposes only and are subject to revision.

Event	Time Lines/Dates
1) Issuance of RFP	By 30 November 2007
2) Period allowing bidders to submit questions with respect to the RFP and the Preparatory Commission to provide to all bidders answers to these questions.	By 31 December 2007
2) Receipt of Proposals	By 31 January 2008
3) Evaluation of proposals and recommended award	By 29 February 2008
4) Commencement of test phase	After award and notice to proceed
5) Completion of test phase and notice to proceed	No later than 8 month after award
6) Implementation and Commissioning ²	No later than 12 month after award and notice to proceed

3. SUBMISSIONS

3.1 Proposals should address both technical capabilities, experience and cost/price issues as discussed in paragraphs 4 and 5 below. Proposals will be treated as confidential and will be reviewed and evaluated for negotiations and award purposes only.

² For discussion on Commissioning see the Requirements Document for the International Registry paragraph 4.

3.2 Proposals should be addressed to the UNIDROIT secretariat at 28 Via Panisperna, 00184 Roma (Italia) so as to be received not later than 31.January 2008.

4. TECHNICAL PROPOSAL

4.1 Each technical proposal must address the following:

- 1) The Requirements Document (Attachment 2) in detail;
- 2) Responsible Entity and Locations of Facilities;
 - a) Articles 16 and 17 of the Convention refer to the International Registry, to the Supervisory Authority that establishes it and to the Registrar that ensures its efficient operation (collectively the international registration system). The Registrar will therefore play a critical role in the functional design and operation of the International Registry. Therefore, for purposes herein, a bidder may assume that it, if selected for Registrar will play a significant role in developing the functional design and operation of the International Registry.
 - b) Proposals shall describe the entity responsible for the International Registry and its proposed location and facilities.
- 3) Technical Capabilities and Capacities;
 - a) Technical Capabilities. Each bidder shall address its possession of the technical capabilities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).
 - b) Technical Capacities. Each bidder shall address its possession of the technical capacities required to perform along with its implementation approach in fulfilling the requirements contained in the RD (Attachment 2).
- 4) A Business Model. Ref. RD, paragraph 3, (Attachment 2) and
- 5) Past Performance and Experience. Each bidder shall identify all relevant past and present performance experience that it or any key member of its team has had with designing, implementing and managing systems of similar complexity

and magnitude. The information provided should demonstrate the bidder's ability to perform the proposed effort.

5. COST/PRICE PROPOSAL

5.1 Each bidder is requested to provide a comprehensive schedule of estimated costs and prices in EURO, as of the date the RFP is issued, and discuss the assumptions on which such estimates are based³. The following list may be referred to as appropriate:

5.2 Start up costs

Function related:

(1)	Hardware design	€
(2)	Hardware assembly	€
(3)	Software design	€
(4)	Software creation	€
(5)	Communication system design	€
(6)	Communication system creation	€
(7)	Security system design	€
(8)	Security system creation	€
(9)	Real time backup system	€

Site and Facility Related:

(10)	Site acquisition cost (already owned, by purchase, or by lease)	€
(11)	Site preparation	€
(12)	Site construction	€
(13)	Furniture and equipment	€

Miscellaneous

(14)	Permits	€
(15)	Insurance ⁴	€

³ Bidders need to set out what capital they will have as well as generally what resources they will have to finance the build-up of the Registry in the initial phase.

⁴ Details should be given of the type of insurance being arranged and deductibles on any insurance policy, stipulating that the latter should be not more than a defined amount.

(16)	Legal expenses	€
(17)	Other	€
Total:		€
5.3	Yearly Operating Cost of International Registry	€
(1)	Personnel (wages and benefits for Registry operations)	€
(2)	Hardware replacement, update and maintenance (including personnel)	€
(3)	Software replacement, update and maintenance (including personnel)	€
(4)	Building maintenance and building janitorial (including personnel)	€
(5)	Building security (including personnel)	€
(6)	Rent (see 5.2(9) above)	€
(7)	Utilities	€
(8)	Insurance ⁵	€
(9)	Taxes	€
(10)	Permit renewals	€
(11)	Legal expenses	€
(12)	Secretariat of the Supervisory authority, audit	€
(13)	Other	€
Total		€

⁵ Details should be given of the type of insurance being arranged and deductibles on any insurance policy, stipulating that the latter should be not more than a defined amount.

6. INSTRUCTIONS FOR SUBMISSION OF PROPOSALS

The instructions for submission of technical and cost/price proposals are contained at Attachment 3.

7. EVALUATION

7.1 Proposals will be evaluated in accordance with a preestablished Evaluation Plan found at Attachment 4.

7.2 Proposals will be evaluated and award made on the basis of overall best value.

7.3 The proposals will be evaluated, rated, and scored based on submissions and subject to consideration of the following factors

- 1) technical requirements,
- 2) technical capabilities and capacities,
- 3) business model,
- 4) past performance and experience and
- 5) cost/price.

Attachment 1 Basic features of the International Registry

Attachment 2 Requirements Document (RD) for the International Registry

Attachment 3 Instructions for submission of technical and cost/price proposals

Attachment 4 Evaluation Plan

DRAFT

**BASIC FEATURES
OF THE INTERNATIONAL
REGISTRY (IR)**

This document is intended to clarify basic conceptual matters of the International Registry (IR) impacting the system's essential purpose and architecture.

Part I will summarize the basic characteristics of the IR.

Part II will describe the salient features of the convention/protocol relating to the IR.

Part III will, drawing upon Parts I and II, address select operational aspects impacting the design of the IR.

Part I Summary of Basic Characteristics of the IR

1. The IR will be organized by item of railway rolling stock, not debtor. With respect to ratification instruments and their associated declarations, it will be organized by Contracting State.

Notes: Registrations⁶ and searches will be made, and their results issued, with reference to the identification numbers of items of railway rolling stock⁷. The convention/protocol secondarily contemplates the publicity of ratification instruments, including declarations by Contracting States, via the IR. These will be organized and searchable by reference to Contracting States.

2. The IR will be wholly electronic.

Notes: Registrations and searches will be made solely by electronic means⁸.

3. The IR will serve the primary function of establishing priorities among competing, valid claims. The act of registration neither presupposes nor is an aspect of that essential validity except as provided below.

Notes: The act of registration establishes first-in-time priority, should the interest notified in the registration exist, or, in the case of prospective interests, be created⁹. Registration does not presuppose a validly existing underlying interest. Nor does registration constitute a step in the process of creating an interest. It simply provides an objective rule-of-decision in the case of competing, valid claims.

Registration of Notices of Sales and such other registration activities that may be agreed to by the Preparatory Commission or Supervisory Authority will also be permitted.

4. Priority will be established on a first-in-time basis. First-in-time refers to when an interest is searchable in the IR.

⁶ Unless specified otherwise, references herein to "registrations" include amendments, extensions and discharges. *Cf.* convention, Art. 16(3).

⁷ See protocol, Art. XIV.

⁸ The standard means of providing registration confirmations and search results will be electronic.

⁹ The criteria for valid creation are set out in the texts, e.g., convention, Arts. 2 (international interests) and 32 (assignments) and protocol, Chapter III (registry provisions), as supplemented by applicable law, to the extent required by convention Art. 5(2).

Notes: This rule permits searching parties to rely on search results, thus enhancing the overall utility of the IR. Registrants, theoretically burdened by this rule, can self-protect by searching for their own registrations prior to advancing funds or relinquishing possession, as the case may be. An advanced electronic system, coupled with the ability to register prospective interests, each contemplated by the convention/protocol, permits such registrant self-protection. The same goes for registered Notices of Sales and other activities as mentioned in 3. above.

5. The IR will be a minimalist, notice-based system.

Notes: The absolute minimum information needed to put all searchers on notice of the asserted or contemplated existence of interests will be permitted and required:

- (i) names,
- (ii) contact details,
- (iii) type (e.g., "international interest" or "contract of sale") and duration of registration, and
- (iv) asset description. Documents may not be searched because they are not part of the information to be registered.

6. The registrar's role will be administrative, not interventionist, with risk management addressed through system design.

Notes: The registrar will not assess the accuracy of submitted information or the authority of a registrant to act. However, the system will be designed with a view towards

- (i) minimizing the risks of unauthorized registrations bearing in mind the minimalist nature of the system, and
- (ii) preventing registrations which are manifestly implausible or which otherwise do not contain the required information.

7. The supervisory authority will supervise the registrar and the operation of the IR in accordance with the basic principles of the convention/protocol as summarized herein.

Notes: The supervisory authority, after consultations, promulgates regulations. Upon request, it may provide the registrar with guidance. Finally, it will establish procedures for dealing with complaints. The foregoing, however, is understood in a broader context. The supervisory authority is to ensure that an efficient notice-based registration system exists.

8. Contracting States may designate (exclusive or nonexclusive) entry points¹⁰ for transmission of registration information for select items of railway rolling stock, and such entry points are not part of the IR as such.

Notes: In effect, such entry points or their designees are users, like any others, with the sole additional characteristic that Contracting States designating such entry points may impose conditions to be satisfied prior to transmission of such registration information to the IR. An entry point designation shall not, however, restrict the ability of parties to directly search the IR. The liability, if any, of entry point operators for

¹⁰ See protocol, Art. XIII

their errors and omissions, is determined by applicable national law, not the convention/protocol.

Part II Salient Features of the Convention/Protocol relating to the IR

1. Various interests¹¹ in items of railway rolling stock¹² are prioritized¹³ on a first-in-time registration basis¹⁴, by virtue of the convention's basic priority rules¹⁵. These rules are objective and not dependent on a registrant's lack of knowledge of other interests. Parties searching the IR can rely on the results. The only other rights or interests that may affect such priority are certain non-consensual ones¹⁶, declared by a Contracting State¹⁷ as preferential¹⁸ and so publicized in the IR¹⁹. There may be other functions

¹¹ International interests (security agreements, title reservation agreements and leases) and related subrogations, subordinations and assignments, together with non-consensual rights and interests and notices of national interests, and contracts of sale, *see* convention, Art. 16(1).

¹² vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto, *see* protocol, Art. I(2)e.

¹³ If an interest was not validly created in accordance with the convention and applicable law, *see* Part I note 4 and accompanying text, it cannot be the subject of a priority dispute. For example, if the debtor lacked title or did not have the company power to enter into the transaction, it would not have the "power to dispose" of the item, as required by convention, Art. 7(b). Thus, the fact that a creditor's international interest was registered would have no legal significance.

¹⁴ This includes "prospective" interests (intended future interests, *see* convention Art. 1(x)-(y)), which do not exist at the time of registration. For example, if a prospective international interest is registered and subsequently becomes an international interest, its priority is determined from the date of initial registration, *see* convention, Art. 18(3). To ensure fairness in this regard, a debtor can require a creditor to discharge a prospective interest any time prior to that creditor's giving or committing to give value, *see* convention, Art. 25(2).

¹⁵ *See* convention, Art. 29. In addition, registration of international interests prior to the commencement of insolvency proceedings ensures that they will be effective in such proceedings.

¹⁶ *See* convention Arts. 1(s) (any right "conferred by law" to secure an obligation). A decision was made not to attempt to internationally harmonize priority rules in this sensitive area, thus avoiding the parallel problems encountered in several other international treaties.

¹⁷ Yet, States must declare which nationally preferred non-consensual rights and interests have priority without registration and are to retain that preference. They are bound by that declaration, and may only amend it prospectively. However, States may make a general and/or prospective declaration, *see* convention, Art. 40.

¹⁸ Convention, Art. 40 implies that the priority of such declared categories is established as of the time a declaration is "deposited" with the depositary. This standard is at odds with the "notice-based" nature of the system, which would require such priority from the time the declaration is "searchable" in the IR. This would be consistent with the thinking underlying convention, Art. 19.

¹⁹ *See id.* Art. 23. More broadly, it is contemplated that the IR would publicize the contents of all ratification instruments (received from the depositary), including the various declarations contained therein, *see* protocol, Art. XXX.

performed by the Registry, such as notices of sales and the registration of other interests.

2. Registration status is obtained by electronic entry into an IR²⁰, operated by a registrar appointed²¹ and supervised by a supervisory authority²² (that, in turn, periodically reports to Contracting States). Supervisory activities include the issuance of binding operational regulations, the establishment of complaint procedures, and the ability to provide requested guidance²³.
3. In view of time differences and the need to avoid preferred regions, the IR will be operated on a twenty-four (24) hours a day²⁴, seven (7) days a week basis.
4. As the convention/protocol concerns itself with interests in specified items of railway rolling stock, not general railway financing, registrations and searches are made against such items, not the debtor's name. The criterion for an item is the identification number, supplemented (as necessary) in the regulations to ensure uniqueness²⁵.
5. First-in-time denotes the time when a registration is "searchable," meaning when it is stored in durable form, may be electronically accessed at the IR, and is assigned a sequentially ordered file number²⁶.
6. The convention specifies who is legally entitled to submit registrations²⁷. In other words, if a party lacking that legal entitlement submits a registration, while it may appear on a search result, it would have no legal effect. Whether the submitting party is so entitled is justiciable: if in dispute, the matter – which may be legal, factual or

²⁰ Created on the legal authority of the convention/protocol, and its contemplated establishment by the supervisory authority, *see* convention, Arts. 1(p), 16(1) and 17(2)(a).

²¹ Art. XII(11) of the protocol contemplates an initial appointment for a period of not less than five and not more than ten years with the possibility of reappointments.

²² See convention Art 17(1) and protocol, Art. XII (designation of supervisory authority).

²³ See convention Art, 17(2) (responsibilities of the supervisory authority). Intentionally omitted from these supervisory functions is the power to require or permit the registrar to change any data relating to a registration.

²⁴ See protocol, Art. XV(4). Without qualifying the basic idea of all-time-zone coverage, some limited flexibility need to be added to this requirement reflecting technical, cost driven industry standards, *see* Para. 5.2 of the Requirements Document. Designated entry points need to be operated at least during working hours in their respective territories, *see* protocol, Art. XIII(1).

²⁵ See convention, Art. 18(1) and 19(6) and protocol, Art. .XIV(1) and XV(1).

²⁶ See convention, Art. 19(3)a. The effect of this provision is to permit searching parties to rely on their search results. Undisclosed submitted entries will not constitute "registered interests" for priority purposes.

²⁷ The detailed provisions are contained in convention, Art. 20. The general rule - applicable to international interests, including prospective interests and assignments - is that either transaction party may register with the written consent of the other. Subordinations, subrogations and discharges are made by the party divesting itself of rights. Non-consensual rights and interests are registrable by the holder thereof.

both - will be settled by a court with jurisdiction under the convention²⁸. It will not be determined by the *ex ante* (time of registration) intervention²⁹ of the operator or supervisor of the IR.

7. The implications of the preceding point – that in a limited-purpose, efficient electronic registry, there will be no human vetting – extend to other legal and factual questions. These include whether
 - (i) the convention/protocol applies at all³⁰,
 - (ii) a party has the rights that it purports to dispose³¹, and
 - (iii) the submissions were made by a party with internal power to act³². Courts will settle these matters, in the case of dispute. Such matters will not be addressed by the registrar as part of its administrative function.
8. Accordingly, the conditions to registration, namely, the items to be satisfied prior to registration, are minimal³³. Compliance with the electronic application form³⁴, together with a payment of the required fee³⁵, is all that is required. Registrations that do not satisfy the foregoing conditions will be electronically rejected.
9. A different approach has been taken where a Contracting State declares that registrations may or must be submitted through a designated entry point in its territory³⁶.
10. Registrations will remain effective until the earlier of
 - (i) their discharge, and

²⁸ A claim that a registration was made by a party lacking the legal entitlement to do so would be a "claim brought under this [c]onvention" for purposes of the jurisdiction provisions. See convention, Chapter III (jurisdiction).

²⁹ See, e.g., convention, Art. 18(2) (no "evidence" that a "consent to registration" is required as a condition to effecting a registration).

³⁰ Whether an object meets the definition of an "item of railway rolling stock", *see supra* note 7 and accompanying text, and whether one of the convention/protocol's connecting factors has been satisfied (debtor being "situated" in a Contracting State, or, where relevant, actual or contemplated nationality registration therein), *see* convention, Arts. 4 and 5.

³¹ Whether, for example, the debtor has title to the item. If not, an international interest would not be constituted. See convention, Art. 7(b).

³² Whether, for example, the debtor had received its required internal company or corporate approvals. If not, an international interest would not be constituted. See *id.*

³³ This concept (often couched in terms of "efficiency") has been at the center of all developmental work on the proposed IR. Its remains a principal objective in finalizing the system, *see* Paras. 2.3 and 3 of the Requirements Document.

³⁴ Limited, additional information (i.e., the initial registration file details) will be required on electronic forms for discharge and amendment.

³⁵ A cost-recovery fee schedule will be set by the supervisory authority, *see* convention, Art. 17(2)(h) and protocol, Art. XVI. Payment mechanism (debit arrangements and/or accounts) are matters of system design and/or of operational regulations.

³⁶ Permitted by convention, Art. 18(5) and protocol, Art. XIII. Such entities are not part of the IR, in particular for purposes of liability, insurance requirements and fee arrangements. More broadly, the operators of the designated entry points are not subject to oversight and supervision by the supervisory authority (but, like any user, would need to comply with applicable use-related regulations).

- (ii) the expiry of the period specified in the registration³⁷. Discharge is the responsibility of the beneficiary of a registration³⁸, where the underlying obligations have been fully performed³⁹. In the case of discharge and amendment technological systems will be put in place to minimize the risk of unauthorized action by requiring a matching of the electronic signature of the initial registrant and that of the amending or discharging party.
11. The supervisory authority will do all things necessary to ensure that an efficient notice-based registration system exists⁴⁰. It will own all proprietary rights in the data and archives of the IR⁴¹ have international legal personality⁴², and its secretariat shall enjoy appropriate immunity from legal or administrative processes⁴³.
 12. The registrar will ensure efficient operation of the IR, and perform the functions assigned to it by the convention/protocol⁴⁴ and the regulations⁴⁵. It will be liable for compensatory damages for losses suffered by its error or omission or a malfunction of the registration system. The registrar shall procure full insurance or financial guarantee covering its liability⁴⁶.
 13. Courts of the place of the registrar's centre of administration⁴⁷ have limited but exclusive⁴⁸ jurisdiction over the registrar. It is limited to
 - (i) matters relating to the registrar's liability,

³⁷ See convention, Art. 21.

³⁸ This creditor responsibility is without prejudice to a debtor's right to seek an in personam order against the creditor by a court with general jurisdiction under the convention/protocol, or, in the circumstances and by the court specified in convention Art. 44, relating to an order directly binding on the registrar.

³⁹ See convention, Arts. 20(3) (discharge by the favoured party) and 25 (requiring discharge by the party entitled to do so in specified circumstances).

⁴⁰ See convention, Art. 17(2)(i). This standard is simultaneously broad and confined. It is broad in the sense of providing the supervisory authority with plenary powers, subject to its obligation to periodically report to Contracting States. Yet it is confined. That power must be exercised in service of a registry system with certain characteristics: efficiency, electronics and notice-based priorities.

⁴¹ See convention, Art. 17(4). Questions relating to rights in the hardware and software will be addressed in the process of establishing the IR.

⁴² See convention, Art. 27(1). Legal personality may be necessary in case the supervisory authority be required to take juridical action under national law (e.g., contracting or litigating in respect of its proprietary rights in the IR).

⁴³ See convention, Art. 27(2) and protocol, Art. XII(9).

⁴⁴ Expressly including the issuance of search results, see convention, Art. 22, which shall constitute prima facie proof of their contents, see convention, Art. 24.

⁴⁵ See convention, Art. 17(5).

⁴⁶ See convention, Art. 28(4) and protocol, Art. XV(7).

⁴⁷ See convention, Art. 44(1). This is a functional rather than formal standard (e.g. the statutory seat or place of incorporation), selected in light of the practicalities of the subject litigation.

⁴⁸ In this context, exclusive jurisdiction is required to avoid the prospect of inconsistent orders from different national courts, each purporting to bind the registrar in connection with its treaty-based, international responsibilities. See convention, Art. 44(4).

- (ii) requiring discharges of registrations where parties required to so discharge no longer exist or cannot be found, and
- (iii) situations where a person fails to comply with an order of a court having jurisdiction under the convention/protocol⁴⁹.
- (iv) Otherwise, and unless waived by the supervisory authority, the registrar will have functional immunity, and its assets and materials will be immune from seizure or other legal or administrative process.

Part III Select Operational Aspects impacting the design of the IR

1. In view of the importance of search results, descriptive, synoptic search certificates will be issued chronologically summarizing all registrations, amendments and discharges⁵⁰ with respect to the searched item of railway rolling stock.
2. The system will be designed to ensure chronological processing⁵¹, and, correspondingly, sequential numbering of registrations. Precise timing information will be electronically contained in registrations and searches.
3. The contemplated wholly electronic, notice-based registry system produces significant efficiencies, including lower registry operating and insurance costs. The feasibility of multiple electronic signatures/consents will be explored, and, in any event, appropriate access and tracing procedures will be employed. State-of-the-art preservation and back-up systems, error-correction techniques, and security precautions will be utilized⁵².
4. There is no need for extraneous information in registrations, given the limited function of the IR (notification and priority). The operational objectives of the IR will thus be achieved by requiring only⁵³ the
 - (i) names,
 - (ii) contact details,
 - (iii) type and duration of registration, and
 - (iv) specific description of the item

⁴⁹ See convention, Art. 44(1)-(3). The limited nature of this jurisdiction reflects the basic philosophy of having courts with jurisdiction under the convention issue in personam orders against transaction parties (requiring them to take actions with respect to the IR), rather than having courts issue orders binding upon the registry. The residual jurisdiction noted in Art. 44 addresses only the identified problems in that regime.

⁵⁰ Whether or not the discharged registration is archived. This approach will permit a complete history of registered interests in the object, which may prove useful in the case of subsequent disputes.

⁵¹ In line with convention, Art. 18(3).

⁵² The minimum requirements for these items are set out in the Paras. 5-7 of the Requirements Document.

⁵³ While there is no legal reason to include nationality registration information on the registration form, as the convention/protocol establishes priority on the basis of registrations by identification number, in line with the text's definition of railway rolling stock, certain practical advantages may be obtained from the inclusion of this information even if only for information and research purposes. However, since such information need not be updated, it may become inaccurate.

5. Electronic forms will be standardized and formalized, and all registrations, searches and certifications will be made using such forms.
6. Particularly during the start-up phase, there will be the need for an assistance desk to address pressing procedural or technical queries⁵⁴.

The question of registry language(s) shall be addressed by the selected Registrar according to the choice made by the Preparatory Commission and Supervisory Authority respectively for the first language. The Registrar will have to consider a timeline for the inclusion of other than the initially selected language to be used for registrations and searches⁵⁵. From an operational perspective, should more than one language be employed, plurilingual electronic forms, with standardized translations, are required. The second selected language should be a Latin alphabet language from among the official UN languages. If furthermore an additional non-Latin-based official UN language is offered, the bidder should set forth the extra cost.

⁵⁴ The language(s) to be used when operating this desk is to be selected by the Preparatory Commission and Supervisory Authority respectively. The same goes for the help desk according to Para 5.4 of the Requirements Document.

⁵⁵ See Resolution N° 1 of the Luxembourg Diplomatic Conference.

Attachment 2

DRAFT

REQUIREMENTS DOCUMENT
(RD)
FOR THE
INTERNATIONAL REGISTRY

Table of Contents

1. OVERVIEW	3
2. GENERAL DESCRIPTION OF THE IR REQUIREMENTS	3
2.1 Convention and Protocol	3
2.2 The Supervisory Authority and Registrar	3
2.3 Additional Characteristics	3
3. OBJECTIVES AND BUSINESS MODEL	3
4. TESTING AND IMPLEMENTATION SCHEDULE	4
5. TECHNICAL REQUIREMENTS	4
6. OPERATIONAL REQUIREMENTS	6
7. SYSTEM REQUIREMENTS	7
7.1 Environment	7
7.1.1 Telecommunications	7
7.1.2 Workstation	8
7.1.3 Database	8
7.1.4 Security	8
7.1.5 Maintenance	9
7.1.6 Connect Times	9
7.2 Application Infrastructure	9
7.2.1 Data	9
7.2.2 Edits	9
7.2.3 Applications	10
7.2.4 Interfaces	10
7.2.5 Reporting	10
7.2.6 Support	10
8. TECHNOLOGY ENHANCEMENTS	10
9. TECHNICAL TERMS	10
10. GLOSSARY RELATED TO FUNDING AND COST MATTERS	11

1. OVERVIEW

This is the baseline Requirements Document (RD) for the International Registry (IR).

2. GENERAL DESCRIPTION OF THE IR REQUIREMENTS (also see Attachment 1 to the Request for Proposal entitled “Basic Features of the International Registry”)

2.1 Convention and Protocol

To facilitate asset-based financing of mobile equipment, States adopted on November 16th 2001 at Cape Town a Convention on International Interests in Mobile Equipment which entered into force on April 1st 2004. Along with the Convention a Protocol specific to aircraft equipment was adopted which entered into force on March 1st 2006. In a Diplomatic Conference held in Luxembourg States adopted on February 23rd 2007 a further instrument based on the same Convention namely the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock. That Protocol has not yet entered into force. The Convention and Protocols contemplate the establishment and operation of modern, electronic International Registries which enable lenders, conditional sellers, lessors and others to register their interests electronically. These interests should then be immediately searchable electronically from anywhere.

2.2 The Supervisory Authority and Registrar

The Supervisory Authority has responsibility for the establishment of the IR and the appointment and dismissal of the Registrar who in turn will operate and maintain the System.⁵⁶

2.3 Additional Characteristics

It is anticipated that the IR eventually will be responsible for registering thousands of interests in items of railway rolling stock annually. It is anticipated that registrations will contain only minimal information, such as names and addresses of parties, unique description of item, and type of transaction, e.g., security agreement, title reservation, agreement, or leasing agreement. It will be a notice-based, electronic system. The IR should be able to accommodate a multiple number of simultaneous entries and reviews.⁵⁷ This is addressed more fully in the draft regulations at 5.3 (i), and bidders may propose solutions to the situations set out therein. It is extremely important that interests be entered quickly and accurately, and that they be searchable immediately worldwide.

⁵⁶ The Supervisory Authority shall receive details of any subcontracting contracts so that the it can verify that the subcontractor has specific obligations in relation to the services being provided to the Registrar (including, in relation to software developers, etc, proper insurance cover), assess its ability to provide support as well as details of its financial strength.

⁵⁷ It is imperative that the Registry is able to accept multiple registrations as well as multiple searches based on a specific multiple registration. For this purpose the Registry may issue a form in a particular format to be completed by the creditor or debtor. One possibility is that every filing, whether it be multiple or single registration, is given a reference number and a multiple search can be made using such reference number. In the search criterion, it should also be possible for the searcher to search the Registry against a specific borrower.

With respect to 5.3 (j) of the draft regulations, bidders should take into account and may provide alternative bids in terms of costs, for the two solutions indicated below, and are allowed to propose additional solutions accompanied by separate cost estimates. Additional solutions may include a combination of (A) and (B) below.

The two solutions to include in each bid are

(A) IR systems for assigning unique identifiers (not be limited to numbers) based on filing/search logic established by the IR or derived from existing or future identification methodologies used in national or regional⁵⁸ systems, subject where appropriate to agreements with such systems as the basis for connectivity to the IR, and

(B) pre-established filing/search identifiers included in “drop-down” lists which can be updated as necessary, including coordination logic for searches made prior to updates.

With respect to the need to develop agreements with national or regional systems declared as such under the Protocol, bidders should assume that they will need to anticipate some unspecified level of work activity in order to conclude such arrangements.

The Registrar will need to maintain a “library” where unique identifiers, utilised for the purposes of the registration, are different to the manufacturer serial number as well as allocate an internal number for each item registered.

3. OBJECTIVES AND BUSINESS MODEL

The objectives are to provide an efficient, reliable and secure electronic registration system as contemplated by the Convention and Luxembourg Protocol. Bidders submitting proposals shall set out in detail their business model and methods to achieve these objectives, which shall describe all steps from the requirements analysis (and the assumptions made therein) through the delivery and implementation. Without limiting the foregoing such proposal shall comprehensively address risk assessment and management as well as the financing of the system and expectations for cost recovery⁵⁹.

⁵⁸ Bidders needs to provide for informational links into other agencies (for example, the UMLER system in the US or the ERA in central and western Europe).

⁵⁹ For key terms with respect to cost recovery see the Glossary under 10. below.

4. TESTING AND IMPLEMENTATION SCHEDULE

The test phase will be conducted no more than 6 months after contract award/notice to proceed to ensure that the IR will meet requirements. Completion of the test phase shall be no more than 8 months after contract award/notice to proceed. Full implementation and commissioning⁶⁰ of the System will be completed following a successful completion of the test phase no more than 12 months after contract award/notice to proceed.

5. TECHNICAL REQUIREMENTS

Languages of the Registry⁶¹

The following assumptions shall be made in consideration of the language(s) of the IR:

- Functions will relate to input, output, and customer services.
- The first language shall be chosen by the Preparatory Commission and Supervisory Authority respectively
- The second selected language shall be a Latin alphabet language from among the official UN languages.

5.1 The System shall require the implementation of a scaleable, i.e., would provide easy modification without the necessity of redesigning the entire system, Internet or Intranet architecture allowing for powerful servers dedicated to managing disk drives, printers, or network traffic, etc. This involves the construction or lease of a centralized, highly available client/server data center.

5.2 The IR will be required to be available 97 percent (which is the industry standard) of the 7-day workweek for full users to accommodate operational facilities in all time zones. The 3 percent non-availability contemplates maintenance, power outages, hardware problems, etc. Maintenance shall not be performed during peak periods as determined by statistical data, see under 7.2.5 below.

5.3 The System shall ensure that data is not manipulated, unauthorized registrations are not added and the data is not altered.

5.4 The minimum requirements for technical support will be to provide a help desk to users 24 hours, 7 days a week via telephone and/or electronic mail. Support will be provided for any problems due to technical difficulties including but not limited to telecommunication failures, software problems, etc.

5.5 The System shall have contingency and data recovery plans that ensure the integrity and restoration of the system. This plan would include, but not be limited to the following:

⁶⁰ Commissioning is likely to involve issuance of a document by the Supervisory Authority, which certifies the System and authorizes the continuing performance of tasks related to the operation of the IR. It is understood that commissioning of the System may take up to 3 months after implementation. However, the System must be implemented and operational within 12 months after Contract Award/Notice to Proceed.

⁶¹ Bidders are invited to comment generally about technical and cost factors related to developing a system in multiple languages.

5.5.1 A document tracking capability for documents entered by users⁶².

5.5.2 A tracking capability to ensure an historical record of information and to allow point-in-time reporting of all data manipulation activities performed by each user, including date and time stamps, user identification, Internet Protocol (IP) addresses and dynamic Internet addresses on every record.

5.5.3 The IR shall maintain current and historical tables. In the case of a system failure, the System shall be required to restore records to the point-in-time the system failed.

5.5.4 The System shall have the capability to restore, in accordance with the Regulations one or more records, e.g., accidental release of an interest.

5.5.5 The records will be stored on electronic media in a secure area at a separate location from the hardware and archived in reasonable time intervals for the System.

5.6 Historical records shall be stored in the database. Any records deleted from the database, e.g., interests, which have been released, shall be archived indefinitely.

5.7 The sizing information/requirements shall be based on assumptions identified in a form as suggested in Table 1 below.

Table 1

TRANSACTIONS⁶³	ITEMS TYPE X	OTHER ITEMS	TOTALS⁶⁴
Totals (over a twenty year period)	X filings Y searches Z certificates issued	X filings Y searches Z certificates issued	X filings Y searches Z certificates issued
Totals per year (assuming proportionate distribution of total)	X filings Y searches Z certificates issued	X filings Y searches Z certificates issued	X filings Y searches Z certificates issued

⁶² The term users, as mentioned throughout the RD, shall mean either those who register international interests or those conducting searches within the IR.

⁶³ Transactions consist of secured debt financing, financial leases, operating leases, assignments or sales of interests in the foregoing transactions, contracts of sale and voluntary restatements of existing transactions.

⁶⁴ Proposals should consider the effect of increases in total transactions each year. For example, consider a ten percent increase each year for ten years.

6. OPERATIONAL REQUIREMENTS

Users of the IR will be:

- All persons authorized entry in accordance with Registry requirements including, in particular, railway operators and financial institutions agents and their legal counsel, and,
- State authorities to the extent declared by States under the Luxembourg Protocol.

The IR shall provide:

6.1 A web site for the single point of entry. The system must accommodate Internet browsers released within the past two years.

6.2 Users will have the ability to review accuracy of data entry before the record is saved to the database.

6.3 A means to share information between processes, edit data upon entry, and reject, record, report bad data and prevent it from being stored in the database.

6.4 A method to issue a search certificate for each registration, providing for on-line display and printing by user.

6.5 A means for ensuring data cannot be altered once stored in the database.

6.6 A mechanism for registry personnel to correct errors.

6.7 A provision for multiple screens for data entry related to registration of a single interest.

6.8 The capability to archive records automatically in the database for registrations that are no longer valid in accordance with established criteria (to be determined).

6.9 Currency of the fees to be in 'x' country's currency.

6.10 Entry of information by users connected to an electronic signature having the following characteristics:

6.10.1 Uniqueness and non-repudiation of signature

6.10.2 Linkage of signature to document

6.10.3 Inalterability of document

6.10.4 Capable of accommodating one or more electronic signatures according to the registry regulations (e.g. those of the debtor and creditor as well as of a co-debtor or a guarantor)

6.11 Ad hoc reporting capabilities.

6.12 User's ability to download and/or query information, e.g., via file transfers, spreadsheets, for use with other software packages and automated systems.

- 6.13 The capability for printing information, e.g., reports, documents, certificates, etc.
- 6.14 An on-line help function to provide documentation for a particular data element on the screen.
- 6.15 On-line users' assistance to explain the capability of the system, including search and indexing capabilities.
- 6.16 Training for all users through web-based tutorial training developed by the systems developer, which will guide the user through the process of entering and viewing transactions. The Registrar may add other forms of training at its discretion.
- 6.17 Validations on a secure system of the user's credit card or direct debit information prior to registration of an interest in an item of railway rolling stock.

7. SYSTEM REQUIREMENTS

The following are the minimum system requirements. The developer may add to these requirements by enhancements to the system.

7.1 Environment

7.1.1 Telecommunications

The system shall provide:

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

7.1.2 Workstation

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

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

7.1.3 Database

The system shall provide:

7.1.3.1 Standard data access methods to ensure adequate system and data availability for system users.

7.1.3.2 Data integrity and processing consistency by defining system level validation rules and business logic at the server database.

7.1.3.3 Capabilities to perform hot backups to ensure high system availability while supporting up-to-the-minute database recovery.

7.1.3.4 Enhanced configuration management support through a centralized implementation of business logic.

7.1.3.5 Flexible access by users needing data access through other commercial-off-the-shelf software packages, e.g., downloads to manipulate data on a spreadsheet.

7.1.3.6 Automated tools to assist in analyzing the data in respect to system performance.

7.1.4 Security

The system's security shall provide:

7.1.4.1 Firewalls to prevent unauthorized access to or from private networks. For greater security, data will be encrypted.

7.1.4.2 Access to authorized users only.

7.1.4.3 A feature to logoff users because of inactivity.

7.1.4.4 Limitations of access to appropriate system components, i.e., administrative database functions, data entry, views, or reporting of users based on roles, privileges, and access availability.

7.1.4.5 Limitation of access for users to the Operating System. Access will be only available through the presentation layer.

7.1.4.6 Software encryption processing that occurs between the client application layer and the software server. All transactions for registration will utilize data encryption while in transmission.

7.1.4.7 An on-line method to create and assign user identifications and passwords.

7.1.4.8 The system shall include automated tools to record pertinent data in respect of the security and to provide assistance in analyzing this data.

7.1.4.9 Physical access security shall be required to the central service site.

7.1.5 Maintenance

Maintenance will include, but not be limited to hardware, software or telecommunication problems. All maintenance problems are expected to be resolved in a timely manner to ensure system availability in accordance with 5.2. If problems cannot be resolved immediately, users must be notified that the problem is being addressed and the approximate time it will take to resolve it.

7.1.6 Connect Times

Connect times should allow for time outs that tolerate time for States where it takes more time to download web pages. The System shall provide for Intranet⁶⁵ connect times for an entire action regardless of the number of users, as follows:

7.1.6.1 Direct Connect - less than or equal to [...] seconds (e.g. T1).

7.1.6.2 Remote Dial-Up – less than or equal to [...] seconds (e.g. ISDN or modem).

7.2 Application Infrastructure

7.2.1 Data

7.2.1.1 The data elements to be accommodated and maintained in the database may include:

- 7.2.1.1.1 Names of parties (two or more)
- 7.2.1.1.2 Addresses of parties
- 7.2.1.1.3 Description of object by manufacturer's make, model, and serial number
- 7.2.1.1.4 Date of transaction
- 7.2.1.1.5 Types of transaction, e.g., security agreement, lease, conditional sale, etc.
- 7.2.1.1.6 Fees collected (describes the fee and amount in 'x' country's currency)
- 7.2.1.1.7 Date/time stamps, user identifications, and IP addresses
- 7.2.1.1.8 Other information

7.2.1.2 The system shall provide:

- 7.2.1.2.1 The flexibility to add new data fields to support changes in the System processes and regulatory requirements without excessive data modification.
- 7.2.1.2.2 Unlimited capacity for new data elements in the database.
- 7.2.1.2.3 Configuration management for software releases.

7.2.2 Edits

7.2.2.1 The database shall have editing capability to display guidance when incorrect data is entered using list boxes, text boxes, check boxes or other GUI standards, to ensure compliance with Regulations, e.g., collection of fees.

7.2.2.2 The system shall ensure no interest may be registered until the fee has been paid.

7.2.2.3 The system shall validate new data to ensure accuracy and consistency with existing data. For example, inconsistency of new data may prevent its entry into the system, such as inconsistency of assignment information with original interest.

7.2.3 Applications

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

7.2.4 Interfaces

⁶⁵ Internet connect time standards will not be imposed on the system.

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

7.2.5 Reporting

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

7.2.6 Support

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

8. TECHNOLOGY ENHANCEMENTS

Technology enhancements are contemplated and encouraged in order for the system to remain current with advancing technology.

9. TECHNICAL TERMS

9.1	DBMS	Database Management System
9.2	GUI	Graphical User Interface
9.3	IP	Internet Protocol
9.4	ISDN	Integrated Services Digital Network
9.5	KBPS	Kilobytes per second
9.6	OLTP	On-Line Transaction Processing
9.7	OS	Operating System
9.8	RDBMS	Relational Database Management System
9.9	TCP/IP	Transmission Control Protocol/Internet Protocol
9.10	T1	Fixed bandwidth service to provide point-to-point links at a constant transmission rate of 1.544Mbps.

10. GLOSSARY RELATED TO FUNDING AND COST MATTERS

- 10.1 **Cost Recovery Mechanism** mechanism for recovery of Registry Costs through user fees, as adjusted from time to time⁶⁶.
- 10.2 **Forecast Period** length of time over which Registry Costs will be recovered through user fees.
- 10.3 **Initial Funding Costs** costs to create the IR.
- 10.4 **Operating Funding Costs** expenses relating to the ongoing operation and supervision of the IR.
- 10.5 **Registry Costs** Initial Funding Costs plus Operational Funding Costs.
- 10.6 **Registry Cost Assumptions** assumptions relating to Registry Costs used in setting, and, as appropriate, adjusting fee schedules.
- 10.7 **Registry Use Assumptions** assumptions relating to the use of the IR in setting, and, as appropriate, adjusting fee schedules.

⁶⁶ Bidders shall outline their pricing strategy, which includes the envisaged charges for registrations, searches and the annual registration fee for authorised users. Moreover there will need to be a pricing model for multiple searches and multiple registrations. In addition information should be given how the bidder would wish to allocate the revenue. So, for example, there could be a low registration fee with more of the revenue driven by search fees. In any case however there should be an equitable fee system, so it should allow for package prices etc. but whatever system is developed should be available equally to all parties. In addition the significant difference in value between items of railway rolling stock (f.i. a modern locomotive on the one hand and a freight wagon which could have a value, if it is old and simple, of only a few thousands €, on the other hand), consideration could be given to different registration and search fees depending on the item type.

Attachment 3

DRAFT

**INSTRUCTIONS FOR
SUBMISSION OF PROPOSALS
(TECHNICAL AND COST/PRICE)
FOR THE INTERNATIONAL
REGISTRY**

1. PROPOSAL CONTENT AND FORMAT

- 1.1. The overall proposal consists of two physically separate and detachable volumes, individually titled as follows:

VOLUME I - TECHNICAL PROPOSAL – The technical proposal is to be submitted in five copies as separate and complete sections for each of the Technical Evaluation Factors outlined in Technical Evaluation Plan (TEP).

VOLUME II - COST/PRICE PROPOSAL - The cost/price proposal is to be submitted separately also in five copies and will address estimated costs and prices as outlined in paragraph 5 of the RFP.

- 1.2 Bidders are to submit a proposal which is clear and comprehensive without the need for additional explanation or information⁶⁷. The Supervisory Authority may make a final determination of the successful bidder solely on the basis of the proposal as initially submitted without requesting further information. Therefore, bidders are encouraged to provide their best proposal at the time of the initial submission. If it is deemed necessary, however, the Evaluation Team, at its discretion, may request additional information from bidders concerning clarification without substantially changing any proposal as submitted. The Evaluation Team may communicate with one or more bidders at any time during the solicitation and evaluation process.

- 1.3 To facilitate the evaluation, proposals are to be written clearly and concisely, neatly organized, indexed (cross-indexed as appropriate), and assembled in a logical manner. The pages of each volume are to be numbered (consecutively) and dated. All proposals shall be submitted in one language selected by the Preparatory Commission so to avoid any discrepancies in the interpretation.

2. PREPARATION OF VOLUME I (Technical)

- 2.1 The technical proposal must be sufficiently detailed to enable technically oriented personnel to make a thorough evaluation as to both its validity and practicality in order to arrive at a sound determination as to whether the proposed services meet the requirements set out in the Requirements Document (RD), Attachment 2 to the RFP. The proposal must be specific, detailed and complete to clearly and fully demonstrate that the bidder has a thorough understanding of the requirements for, and the technical problems inherent in, providing services of the character, scope and magnitude outlined in the RD.

- 2.2 Statements that the bidder understands, can, or will comply with all requirements of the RD, and statements paraphrasing the RD requirements or parts thereof, are considered insufficient. Phrases such as “standard procedures will be employed,” or “well-known techniques will be used,” etc., will be considered insufficient.

⁶⁷ Prior to negotiations with the awardee, no bidder will be permitted to modify its offer without permission with respect to any relevant award factor. No request to modify will be considered until all other bidders have first been notified and been given an opportunity to make similar modification. After the evaluation process is completed and a selection has been made, negotiations with the awardee may be conducted. These negotiations may lead to modifications.

2.3 Proposals should contain a table of contents and a matrix tracing the requirements in English of the RD to technical proposal content. Proposals shall be in narrative form, typewritten (no smaller than 12 point type), double spaced with 1" margins, on standard 8-1/2" x 11" or 8-1/4" x 11-3/4" (A4) letter size paper, and page numbers and date at the bottom of each page. Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal are neither necessary nor desired.

2.4 The technical proposal will be limited to a total of 100 pages. Two-sided printing will be counted as 2 pages. Fold-outs will be counted as 2 pages.

3. PREPARATION OF VOLUME II (Cost/Price)

3.1 Each bidder must provide cost/price information to include sufficient details relating to the bidder's estimated price. As a minimum, cost/price information should address estimated costs and prices as outlined in paragraph 5 of the RFP.

In addition to the number of paper copies set forth in paragraph 1.1 above, the bidder should submit, on an electronic storage device (e.g. CD or DVD) a copy of any spreadsheet(s) containing calculations used to produce the written cost/price information.

DRAFT

EVALUATION PLAN FOR THE INTERNATIONAL REGISTRY

1. OVERVIEW

- 1.1 This Evaluation Plan constitutes the guidance to be used by Evaluation Team members in the evaluation of all technical and cost/price proposals received in response to the Request for Proposal (RFP) for the International Registry.
- 1.2 Evaluation Team
 - 1.2.1 An Evaluation Team (ET) will be comprised of individuals possessing both knowledge and expertise in the area in which they will perform their evaluation (i.e., technical or cost/price). No ET member shall have a conflict of interest, objectively assessed, and, without limiting the foregoing, each ET member shall declare that no such conflict exists.
- 1.3 Proposals submitted in response to the RFP will be evaluated for the purpose of assisting the Preparatory Commission, to establish which offer constitutes the overall best value.
- 1.4 Summary results of the ET evaluations will be memorialized in the form of a written report. That report will provide a recommendation as to which offer represents the overall best value.
- 1.5 Overall best value means that an award may be made to a bidder other than the responsible bidder submitting the lowest cost/price proposal. As a result, best value determinations envision trade-offs between non-cost/price (hereafter collectively referred to as “technical”) factors and cost/price factors. In this instance, technical factors are considered to be more important than cost/price.

2. GENERAL GUIDELINES & RESPONSIBILITIES

2.1 ET Responsibilities.

The ET responsibilities and duties include:

- 2.1.1 Exercising oversight of all aspects of the ET;
- 2.1.2 Scheduling and conducting ET meetings;
- 2.1.3 Safeguarding all documentation;
- 2.1.4 Tabulating the results of team members' ratings;
- 2.1.5 Review of all documentation and proposals submitted by the bidders; and
- 2.1.6 Providing a written report (See 1.4).

2.2 Advisors

Advisors may be appointed to provide expert guidance to the ET in specialized areas. They will participate on terms, and in the manner, established by the ET, as the case may be. Advisors have the same responsibilities concerning safeguarding of documentation and disclosure of information as ET members. They shall declare any conflict of interest. They have no voice in making recommendations.

2.3 Rating Process.

- 2.3.1 ET members are to have read and become familiar with this Evaluation Plan (EP), the RFP and the accompanying Requirements Document (RD) prior to undertaking the evaluation of any proposal.
- 2.3.2 Each ET member shall evaluate and rate each proposal independently.
- 2.3.3 Because of the sensitive nature of information provided in each bidder's proposal, ET members shall safeguard the proposals to insure confidentiality.
- 2.6.5 After completing evaluations of individual proposals, bidder's proposals may be compared with one another.
- 2.6.9 Upon conclusion of all evaluations, the ET will provide its recommendation to the Supervisory Authority, who will make the final selection.

3. THE EVALUATION PROCESS

3.1 The following items shall be addressed in order, during the evaluation process.

3.1.1 Clarifications of Ambiguities

As the initial evaluation is conducted, offers will be reviewed for the purpose of identifying any ambiguities that need clarification before actual initial detailed evaluation begins. Statements in various parts of the proposal or a description of statement(s) that cannot be understood shall be identified so that any clarifying information can be obtained promptly from bidders. If possible, and to save time, initial detailed evaluations should proceed without responses to ambiguities. Additional clarifications may be made throughout the process, if required. Bidder's responses to the request for clarifications should be considered by the ET in the initial evaluation ratings.

3.1.2 Initial Detailed Evaluations

This evaluation is for the purpose of rating each proposal, and identifying weaknesses and deficiencies for possible identification to the bidders should discussions become necessary. In addition, significant strengths should be identified in the ET report.

3.1.3 Communications with Bidders

Communications (discussions) with bidders is permitted. Communications with a bidder or bidders may be desired where there is a need to seek clarification of ambiguities or to address weaknesses/deficiencies and cost/price issues. Communications will be conducted in such a manner that avoids disclosure of the relative strengths and weaknesses of competing bidders, technical information or ideas, or cost/price data from any other bidder's proposal.

3.1.4 Prior to negotiations with the awardee, no bidder will be permitted to modify its offer without permission with respect to any relevant award factor. No request to modify will be considered until all other bidders have first been notified and been given an opportunity to make similar modification.

3.1.5 Final Evaluation

Following any communications with a bidder resulting in clarification of ambiguities, corrections of weaknesses or deficiencies, or in the case of cost proposals any adjustments of price, the ET will conduct a final evaluation of the proposal. All supplemental information or revision to proposals shall be taken into account. Revised ratings will be accomplished, where appropriate, using the same designated evaluation procedures. All revised ratings shall be supported by notes containing comments and rationale. Results will be summarized and included in the ET's written report. The

report shall, for each bidder, provide the evaluation results as determined by the evaluation factors for award.

- 3.1.6 After the evaluation process is completed and a selection has been made, negotiations with the awardee may be conducted. These negotiations may lead to modifications.

4. RISK ASSESSMENT

- 4.1 A risk assessment will be accomplished by the ET for each bid based upon perceived risks associated with both the technical and cost/price proposal to ensure the satisfactory performance of any resultant contract for the International Registry. At the conclusion of the overall evaluation process an overall risk assessment will be made by the ET.

- 4.2 Categories to be used in assessing risk are:
1. Little or no apparent risk,
 2. Low risk,
 3. Medium risk, or
 4. High risk

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TABLE OF CONTENTS

Page

REGULATIONS

Section 1.	Authority.....	R-1
Section 2.	Definitions	R-1
Section 3.	General provisions	R-3
Section 4.	Access to the International Registry	R-4
Section 5.	Information required to effect registration.....	R-6
Section 6.	Confirmation and notice of registration	R-13
Section 7.	Searches	R-14
Section 8.	Operational complaints	R-16
Section 9.	Confidentiality	R-17
Section 10.	Statistics	R-17
Section 11.	Annual report to the Supervisory Authority.....	R-18
Section 12.	Relations with the entry points.....	R-18
Section 13.	Fees	R-19
Section 14.	Liability and insurance.....	R-20
Section 15.	International Registry procedures	R-21
Section 16.	Publication	R-21
Section 17.	Amendments	R-22
Section 18.	Effective dates.....	R-22

PROCEDURES

Section 1.	Authority.....	P-1
Section 2.	Definitions	P-1
Section 3.	Functions of the Registrar.....	P-2
Section 4.	Functions of the registry user entity.....	P-3
Section 5.	Functions of the administrator of a registry user entity.....	P-3
Section 6.	Functions of the registry user.....	P-6
Section 7.	Access to the International Registry	P-8
Section 8.	Entry points.....	P-9

	<i>Page</i>
Section 9. Help desk and technical support	P-10
Section 10. Sign-up and approval — registry user entity and administrator	P-11
Section 11. Sign-up and approval — registry user	P-13
Section 12. Effecting, amending and discharging registrations.....	P-14
Section 13. Making searches and obtaining search results	P-16
Section 14. Operational complaints	P-17
Section 15. Claims against the Registrar	P-18
Section 16. Confidentiality	P-20
Section 17. Notifications.....	P-20
Section 18. Fees	P-21
Section 19. Publication	P-21
Section 20. Amendments	P-21
Section 21. Effective dates.....	P-22
Appendix. Fee schedule.....	P-23

REGULATIONS

Section 1

AUTHORITY

These “Regulations” are issued by the Supervisory Authority pursuant to Article 17 (2) (d) of the *Convention on International Interests in Mobile Equipment*, signed at Cape Town on 16 November 2001 (the “Convention”) and Article XVIII of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, signed at Cape Town on 16 November 2001 (the “Protocol”).

Section 2

DEFINITIONS

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

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

2.1.2 “Amendment”, unless the context suggests otherwise, means any change in registration information, including any change in the duration of a registration, but does not include assignment, subrogation or subordination.

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

2.1.4 “Consent” means an electronic consent to a registration.

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

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

2.1.7 “Named party” means the transacting user entity named in a registration, and a “named representative” means a person named in a registration and acting for others in an agency, trust or other representative capacity.

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

2.1.9 “Registration” means an interest electronically registered with the International Registry. For the purposes of Sections 4.4 and 6, the term has the extended meaning set out in Section 6.1. A “registering person” means the transacting user, professional user or direct entry point transmitting information to the International Registry to effect a registration.

2.1.10 “Registry user entity” means:

- (a) a transacting user entity; or
- (b) a professional user entity.

A “registry user” means a transacting user or a professional user.

2.1.11 “Searching person” means a person making a search in accordance with Section 7 of these Regulations.

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

2.2 The term or terms:

- (a) “entry point”, “authorizing entry point” and “direct entry point” have the meanings set out in Section 12.1;
- (b) “International Registry Procedures” has the meaning set out in Section 15.1; and
- (c) “priority search”, “priority search certificate”, “informational search listing”, “Contracting State search” and “Contracting State search certificate” have the meanings set out in Section 7.

Section 3

GENERAL PROVISIONS

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

3.2 Since the International Registry merely provides notice of registrations, the facts underlying any such registration or registered interest shall determine whether it falls within the scope of the Convention or the Protocol. Without limiting the foregoing, while there will be no technical impediment to the registration of pre-existing rights and interests or assignment thereof, such registrations shall have no legal effect under the Convention and the Protocol, except where, by virtue of a declaration under Article 60 (3) of the Convention, registration thereof is required. The contents of this Section 3.2 shall be prominently displayed by the International Registry as a general cautionary note.

3.3 The Registrar shall perform the functions specified in the Convention, the Protocol, these Regulations and the International Registry Procedures.

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

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

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

Section 4

ACCESS TO THE INTERNATIONAL REGISTRY

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

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

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

4.2 No registry user shall have access to the International Registry unless that user is first electronically approved as such by the administrator of the subject registry user entity and is otherwise in compliance with these Regulations and the International Registry Procedures. No approved registry user shall be entitled to transmit information to the International Registry to effect a registration unless that user has first received authorization to do so. For the purposes of the preceding sentence, such electronic approval and authorization may be given at the sole discretion of the relevant administrator and may be revoked by such administrator at any time.

4.3 Notwithstanding the preceding paragraphs:

- (a) the administrator of a transacting user entity approved by the Registrar may electronically approve a controlled entity as a transacting user entity upon the payment of the fee provided for in Table 1 of the Appendix to the International Registry Procedures; and
- (b) in such a case, the rights, powers and obligations of the administrator of the approving transacting user entity and its transacting users, respectively, shall apply equally to the approved transacting user entity.

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

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

Section 5

INFORMATION REQUIRED TO EFFECT REGISTRATION

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

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

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

- (a) the identity and electronic signature of the registering person and a statement on whose behalf that person is acting;
- (b) the identity of the named parties;
- (c) the following information identifying the aircraft object:
 - (i) type of aircraft object;
 - (ii) manufacturer’s name;
 - (iii) manufacturer’s generic model designation; and

- (iv) manufacturer's serial number assigned to the aircraft object;
- (d) in the case of an airframe or helicopter, the following information, if known:
 - (i) the current and, if different, intended State of Registry for nationality purposes; and
 - (ii) the current and, if different, intended aircraft nationality and registration marks assigned pursuant to the Chicago Convention;
- (e) the duration of the registration, if the registration is to lapse prior to the filing of a discharge;
- (f) in the case of an international interest or a prospective international interest, the consent of the named parties, given under an authorization; and
- (g) the names and electronic addresses of persons to which the Registrar is required to send information notices pursuant to Section 6.

5.4 The information required to effect the registration of a contract of sale or a prospective sale is:

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

5.5 The information required to effect the registration of the assignment of an international interest, the prospective assignment of an

international interest, the assignment of a registrable non-consensual interest or an international interest acquired through subrogation is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3 (g);
- (b) the consent of the named parties, given under an authorization;
- (c) if the interest being assigned is a registered interest, the file number of the registration relating to that interest; and
- (d) if the interest being assigned is not a registered interest, a description of the interest assigned and original debtor thereunder, using the format prescribed by the International Registry Procedures.

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

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

each given under an authorization.

5.7 The information required to discharge a registration, other than a registration relating to a contract of sale is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3 (g);
- (b) the consent of the named parties benefiting from the registered interest, given under an authorization, but not of

the debtor, assignor, subrogor or person subordinating the registered interest, or of the prospective seller in the case of a registration relating to a prospective sale;

- (c) the file number of the registration to be discharged; and
- (d) the date the discharge is to be effective.

For purposes of the foregoing Section 5.7 (b), both an assignor and an assignee, in the case of an assignment, and a subrogor and a subrogee, in the case of a subrogation, shall be deemed to be parties in whose favour a registration was made unless they electronically elect, in connection with and at the time of the registration of that assignment or subrogation, that (solely for such purposes) one of them shall be deemed to be that party, in which case that entity shall have the sole right to consent to a discharge of such assigned or subrogated international interest. The assignor and assignee or subrogor and subrogee may amend that election in accordance with Section 5.10. The rights established by application of the foregoing shall follow, and apply to, further assignments or subrogations of that assigned or subrogated international interest.

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

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3 (g), and for the purposes of the foregoing reference to Section 5.3 (b) and for the purposes of Section 5.8 (b), the “named parties” shall be the registry user entities subordinating their interest and benefiting from that subordination;
- (b) the consent of the named party whose interest is subordinated, given under an authorization;
- (c) if the interest being subordinated or benefiting from the subordination is a registered interest, the file number relating to each such interest; and

- (d) if the interest being subordinated or benefiting from the subordination is not a registered interest, a description of such interest and the original debtor thereunder, using the format prescribed by the International Registry Procedures.

5.9 Notwithstanding Sections 5.3 (f), 5.4 (b) and 5.5 (b), the information needed to effect the registration of a pre-existing right or interest required by virtue of a declaration under Article 60 (3) of the Convention need not include the consent of the debtor, assignor, seller or person subordinating the right or interest.

5.10 Subject to Section 5.11, the information required to amend a registration or to amend information contained in an assignment, subrogation or subordination is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3 (g);
- (b) the consent of the named parties that consented to the registration to be amended, given under an authorization;
- (c) the file number of the registration to be amended; and
- (d) the amendments to be made.

5.11 The following shall apply in respect of amendments to registrations:

- (a) Registration of an amendment of information referred to in Section 5.3 (c) or a change of a category of registration shall be treated as a new registration in respect of the object or category to which the amending registration refers, with priority ranking from the time the amending registration is complete. The named parties to such amendment shall consent to the discharge of the previous registration under an authorization, which shall be effected automatically.
- (b) Registration of an amendment in which the information referred to in Section 5.3 (b) has been changed shall

require the consent of the named parties that consented to that registration and of the named party to be specified in the amended registration, each given under an authorization.

- (c) Registration of an amendment in which the information referred to in Section 5.3 (d) has been changed shall be without prejudice as to whether the original registration complied with Section 12.
- (d) Registration of an amendment in which the information referred to in Section 5.3 (e) has been changed shall have no effect on the priority of the original registration for the amended duration of that registration. The foregoing is without prejudice as to whether a new underlying interest has been constituted that requires registration under the Convention.
- (e) A change to a user capacity statement or the contact details of a registry user are outside of Section 5.10 and may be made after the Registrar reasonably concludes that such requested change is accurate.

5.12 Without prejudice to Section 12.6, the lack of information referred to in Section 5.3 (d), including where cross-referenced in other sections, does not invalidate a registration.

5.13 The consent requirements of this Section 5 shall be satisfied:

- (a) in the case of a registration initiated by a direct entry point in accordance with Section 12.1 (b), when the International Registry receives the consent from all parties whose consent is required under the Convention, the Protocol, and these Regulations; and
- (b) in the case of a registration authorized in accordance with Section 12.1 (a), in respect of the submitting party when the International Registry receives such registration together with the authorization.

5.14 Any registration may specify that:

- (a) it covers a fractional or partial interest in an aircraft object and, if so, the extent of such interest; and/or
- (b) multiple named parties hold or have granted an interest evidenced thereby.

5.15 With respect to an interest referred to in Section 5.14 (a):

- (a) an increase or decrease to such interest arising by virtue of a sale or an assignment of an international interest shall be registered as such in accordance with Sections 5.4 or 5.5, respectively;
- (b) a decrease in such an interest arising by virtue of payment of a secured obligation shall be partially or wholly discharged in accordance with Section 5.7; and
- (c) an amendment changing such interest shall be permitted to correct an error when made in accordance with Section 5.10.

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

- (a) the Registrar shall confirm that such changed name has been effected following the standard set out in Section 4.1;
- (b) when so confirmed, all registrations on the International Registry in which that transacting user entity is a named party shall, without amending registration information, be annotated to advise of the change of name, such annotation to be included in all priority search certificates;

- (c) following the time at which such annotation is made, the new or resulting entity shall be deemed to be a transacting user entity for all purposes of the International Registry; and
- (d) the vesting shall have no effect on the priority of the original registration.

Section 6

CONFIRMATION AND NOTICE OF REGISTRATION

6.1 In this section, the term “registration” includes, where appropriate, the amendment, extension or discharge of a registration.

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

6.3 When a registration is effected relating to an aircraft object, an electronic notice thereof shall be sent to the named parties and registering persons in any other registration relating to that object.

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

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

Section 7

SEARCHES

7.1 Searches of the International Registry may be performed against:

- (a) a manufacturer's name;
- (b) a manufacturer's generic model designation; and
- (c) a manufacturer's serial number of an aircraft object; and

in the case of an airframe or helicopter, against:

- (d) the State of Registry of the aircraft of which it is part; or
- (e) the nationality or registration mark.

Such information may be searched by means of a priority search or informational search, as set out in Sections 7.2 and 7.3, respectively. A Contracting State search may also be made, as set out in Section 7.5. A search may be performed by any person who complies with the International Registry Procedures, whether or not that searching person has a specific interest. All searches shall be performed by electronic means.

7.2 A "priority search" is a search for registration information using the three criteria specified in Article XX (1) of the Protocol, as set out in Section 7.1 (a) to (c). Such information is searchable for purposes of Articles 19 (2) and (6) of the Convention and Article XX (1) of the Protocol.

7.3 An "informational search" is a search other than a priority search, using the criterion set out in Section 7.1 (c) or, when available on the International Registry, Section 7.1 (e), in either case alone or with another criterion set out in that Section. Such informational searches may include the use of symbols specified in the International Registry designed to produce inclusive search results. The results of an informational search, an "informational search listing", shall be a list of all matching aircraft

objects, described by the items set out in Section 7.1 (a) to (c) and, if available in the International Registry, the items in Section 7.1 (d) to (e). The facility to perform such an informational search does not make that information “searchable” for the purposes of Articles 19 (2) and (6) of the Convention and Article XX (1) of the Protocol.

7.4 A “priority search certificate” is a certificate issued in response to a priority search. It shall:

- (a) set out the information required by Article 22 (2) (a) or (b) of the Convention, as applicable, and comply with Article 22 (3) of the Convention; and
- (b) in the case where Article 22 (2) (a) of the Convention applies, list the registered information in both:
 - (i) chronological order; and
 - (ii) a manner that indicates the transactional history of each registered interest.

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

- (a) indicate, in chronological order, all declarations and designations, and withdrawals thereof, by the specified Contracting State;
- (b) list the effective date of ratification, acceptance, approval or accession of the Convention and the Protocol, and of each declaration or designation, and withdrawal thereof, by the specified Contracting State; and

- (c) attach, in the electronic form set out in the International Registry Procedures, a copy of all instruments deposited by the specified Contracting State relating to items within the scope of Section 7.5 (b).

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

Section 8

OPERATIONAL COMPLAINTS

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

8.2 For the purposes of Section 8.1, a matter “concerns the operation of the International Registry” when the matter relates to the general procedures and policies of the International Registry and does not involve specific adjudication by the Registrar or Supervisory Authority.

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

8.4 The Supervisory Authority shall consider complaints, and where, on the basis of that consideration, it determines changes to the procedures or policies are appropriate, it shall so instruct the Registrar.

8.5 The International Registry Procedures shall set out details relating to the procedure contemplated by Sections 8.1 to 8.4.

Section 9

CONFIDENTIALITY

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

- (a) provided by the Registrar in response to a search under Section 7;
- (b) made electronically available to enable registry users to effect, amend or discharge registrations;
- (c) provided to the Supervisory Authority at the latter's request; or
- (d) used for the purposes of the statistics required by Section 10.

Section 10

STATISTICS

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

10.2 The registration statistics under Section 10.1 shall consist of:

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

Section 11

ANNUAL REPORT TO THE SUPERVISORY AUTHORITY

The Registrar shall prepare an annual report, including statistical data referred to in Section 10, and shall submit it to the Supervisory Authority.

Section 12

RELATIONS WITH THE ENTRY POINTS

12.1 A Contracting State may designate an entry point or entry points (“entry point”) under Article XIX (1) of the Protocol:

- (a) which shall or may authorize the transmission of information required for registration under the Convention and the Protocol to the International Registry (“authorizing entry point”); or
- (b) through which information required for registration under the Convention and the Protocol shall or may be directly transmitted to the International Registry (“direct entry point”).

12.2 A Contracting State may only designate a mandatory entry point in respect of:

- (a) registrations relating to airframes and helicopters for which it is the State of Registry; and/or
- (b) registrations of prospective international interests, prospective sales or prospective assignments of international interests in any airframe or helicopter for which it has taken regulatory steps to become the State of Registry.

12.3 A Contracting State designating an entry point shall notify the Depositary and the Supervisory Authority thereof, indicating whether such entry point is an authorizing or direct entry point. The Supervisory Authority shall keep the Registrar informed of such designations, and the Registrar shall maintain a current list thereof that is electronically accessible to users.

12.4 The Registrar shall establish arrangements applicable to the electronic transmission of registration information from, or authorized by, entry points to the International Registry and, after consultations with each designated entry point, shall specify the procedures applicable to that entry point. The foregoing shall not require the establishment of electronically coordinated systems but rather arrangements designed to enhance the efficient use of the International Registry by entry points.

12.5 The International Registry shall provide an electronic warning against a registration that is not effected:

- (a) through a direct entry point where use thereof is mandatory;
or
- (b) in accordance with procedures required by an authorizing entry point;

to the extent agreed between the International Registry and the Contracting State declaring that entry point.

12.6 A registration effected in violation of the terms of a designation under Sections 12.1 and 12.2 is invalid.

Section 13

FEES

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

13.2 Fees, including fees arising from operations through an entry point, must be paid to the Registrar prior to the requested operation unless otherwise agreed between the Registrar and such entry point.

13.3 Fees shall be collected according to a schedule issued by the Supervisory Authority, which shall state the amount of fees payable for each service.

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

Section 14

LIABILITY AND INSURANCE

14.1 For the purposes of Article 28 (1) of the Convention, “loss suffered” means loss or damage resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system, except as provided for by Article 28 of the Convention, but does not include loss or damage resulting from lack of access to the International Registry as a result of measures referred to in Section 3.4 of these Regulations.

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

- (a) shall be made in writing within the time period applicable under the laws of the State where the International Registry is located;
- (b) shall be subject to consultations between the claimant and the Registrar; and
- (c) if not resolved by such consultations, may be pursued by the claimant in accordance with Article 44 of the Convention.

14.3 The International Registry Procedures shall set out details relating to the procedure contemplated by Section 14.2.

14.4 The amount of insurance or financial guarantee required under Article 28 (4) of the Convention and Article XX (5) of the Protocol shall be determined and may be revised by the Supervisory Authority.

Section 15

INTERNATIONAL REGISTRY PROCEDURES

15.1 International Registry Procedures addressing items required by these Regulations or otherwise relating to the technical operation and administrative processes of the International Registry shall be established by the Supervisory Authority.

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

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

Section 16

PUBLICATION

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

16.2 The Registrar shall make an electronic version of the authentic texts referred to in Section 16.1, as may be amended as contemplated by Section 17, available to the public at no cost.

Section 17

AMENDMENTS

17.1 Requests for amendments to these Regulations or the International Registry Procedures may be submitted by the Registrar to the Supervisory Authority, which shall consider such amendments.

17.2 The authentic version of any amendments to these Regulations or the International Registry Procedures approved by the Supervisory Authority shall be published in an official publication of the Supervisory Authority.

Section 18

EFFECTIVE DATES

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

PROCEDURES

Section 1

AUTHORITY

(Section 15 of the Regulations)

These “Procedures” are issued by the Supervisory Authority of the International Registry under the *Convention on International Interests in Mobile Equipment*, signed at Cape Town on 16 November 2001 (the “Convention”), the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment*, signed at Cape Town on 16 November 2001 (the “Protocol”), and the *Regulations for the International Registry* (the “Regulations”). They address administrative items required by the Regulations as conditions to use of the International Registry or otherwise relating to the technical operation and administrative processes of the International Registry.

Section 2

DEFINITIONS

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

- (a) “Approval” means either:
 - (i) an electronic approval, by the Registrar, of an entity as a registry user entity and/or of an individual as that registry user entity’s administrator, in accordance with Section 10 below; or
 - (ii) an electronic approval, by the administrator, of an individual as a registry user of such registry user entity, in accordance with Section 11 below, and “approve” and “approved” shall be construed accordingly.

- (b) “Confirmation” means an electronic confirmation provided in accordance with Section 6 of the Regulations, automatically issued by the Registrar when a registration, amendment or discharge is searchable.
- (c) “CPS” means the Registrar’s certification practice statement, as displayed on the website.
- (d) “Digital certificate” means a digital certificate for use in communications with the International Registry, issued to an administrator or other registry user by the Registrar in accordance with these Procedures and the CPS.
- (e) “Final consent” means the electronic consent of the last of the named parties whose consent is required under Article 20 of the Convention in relation to a registration, amendment or discharge.
- (f) “Private key” means the private key associated with a digital certificate.
- (g) “Website” means the website that provides the public interface of the International Registry and associated content provided by the Registrar under the Uniform Resource Locator (URL):

<http://www.internationalregistry.aero>.

Section 3

FUNCTIONS OF THE REGISTRAR

(Section 3 of the Regulations)

The Registrar shall operate the International Registry and perform the functions assigned to it by the Convention, the Protocol and the Regulations.

Section 4

FUNCTIONS OF THE REGISTRY USER ENTITY

(Section 4 of the Regulations)

For the purpose of using the International Registry, the following functions fall within the scope of responsibility of each registry user entity:

- (a) the proper selection and appointment of its administrator;
- (b) any actions of its administrator, including any acting administrator, and of its registry users taken in relation to the Registry, which shall be deemed to have been duly authorized by that registry user entity;
- (c) the accuracy of the data transmitted to the International Registry on its behalf;
- (d) requesting, through its “back-up contact” referred to in Section 5.12 below, that the Registrar revoke the approval of the administrator acting on behalf of a registry user entity if the administrator ceases to be employed by that registry user entity or otherwise ceases to be authorized to act on its behalf;
- (e) abiding by the applicable terms and conditions in place from time to time governing use of the International Registry. The applicable terms and conditions can be accessed on the website.

Section 5

FUNCTIONS OF THE ADMINISTRATOR OF A REGISTRY USER ENTITY

(Section 4 of the Regulations)

5.1 An administrator, who may but need not be an employee of a registry user entity, shall be duly appointed by each registry user entity,

with authority to act on its behalf for the purposes of the International Registry, and such authority shall be represented during the approval process.

5.2 An administrator should hold appropriate formal professional qualifications commensurate with the requirements of the functions of administrator.

5.3 Each registry user entity may have only one administrator at any given time.

5.4 The administrator of a transacting user entity, who has been approved by the Registrar, is automatically authorized to effect, amend, discharge or consent to registrations in which that entity is a named party.

5.5 An administrator:

- (a) shall keep his/her password and digital certificate secure;
- (b) shall not transfer his/her digital certificate from the computer on which it was first installed, except to a replacement computer under his/her control, in which case he/she shall first apply to the Registrar for that purpose; and
- (c) is permitted to make a secure back-up copy of his/her digital certificate subject to the requirements of the CPS as amended from time to time.

5.6 Where an administrator electronically delegates his/her powers to an acting administrator in accordance with Section 4.1 of the Regulations, that acting administrator shall be deemed to be the administrator for the purposes of these Procedures.

5.7 Where an administrator electronically approves a registry user to act on behalf of a registry user entity in accordance with Section 4.2 of the Regulations, the Registrar shall issue an email to that registry user containing a link to a digital certificate in accordance with these Procedures.

5.8 An administrator shall, through the website:

- (a) keep up to date the email address and other details of the administrator and each registry user representing such registry user entity held by the International Registry;
- (b) promptly revoke the approval of a registry user representing such registry user entity in the event that such registry user leaves the employment of, or otherwise ceases to be associated with, such registry user entity; and
- (c) promptly revoke the authorization of a registry user representing such registry user entity in the event that such registry user is no longer authorized to effect, amend, discharge or consent to one or more registrations in which that entity is a named party.

5.9 In the event that an administrator is to leave the employment of the registry user entity on whose behalf he/she is authorized to act or if there is to be a change of administrator, the administrator shall electronically notify the Registrar thereof in a timely fashion. Should the registry user entity wish to appoint a replacement administrator, such appointment shall be subject to a set-up fee applicable to a new administrator.

5.10 The administrator of a registry user entity shall have the authority, through the website, to block and/or disable the user account of any registry user representing his/her registry user entity. It is the administrator's responsibility to take such action promptly in the event of a security breach relating to any such registry user's user account, of which he/she has actual knowledge, including but not limited to compromise of such registry user's private key.

5.11 The administrator of a registry user entity shall notify the Registrar of any security breach (for example, a breach compromising a private key), of which he/she has actual knowledge, that is expected to result in unauthorized registrations. If the security breach relates to a registry user account, the administrator may block and/or disable the account.

5.12 If the account of an administrator is subject to a security breach that could reasonably be expected to result in unauthorized access to and use of the International Registry, the Registrar and the registry user entity shall cooperate to expeditiously take corrective action appropriate under the circumstances. A registry user entity shall designate a “back-up contact” for these purposes.

5.13 On notification of a security breach, the Registrar may block and/or disable any user account.

5.14 The Registrar may make such reasonable identity checks of a proposed administrator as the Registrar considers necessary in relation to that person undertaking such function. The Registrar may make similar checks of a registry user, where deemed necessary by the Registrar.

5.15 Each administrator may electronically approve further registry users to act on behalf of the registry user entity which that administrator represents (when authorized to do so) and may approve the issue of a digital certificate to each of those registry users.

5.16 The administrator has sole responsibility for the selection of his/her registry user entity’s registry users and for ensuring that only individuals who are duly authorized to act on behalf of his/her registry user entity are appointed as registry users from time to time.

Section 6

FUNCTIONS OF THE REGISTRY USER

(Section 4 of the Regulations)

6.1 No individual other than an administrator may effect, amend, discharge or consent to registrations with the International Registry until he/she has been approved as a registry user by the administrator of the registry user entity that such person represents.

6.2 No registry user may transmit information to the International Registry to effect, amend or discharge a registration in respect of an aircraft object unless such registry user has first received authorization to do so in relation to such aircraft object either:

- (a) in the case of a transacting user, from the administrator of the transacting user entity that represents it; or
- (b) in the case of a professional user, from the administrator of the transacting user entity being such professional user's client.

6.3 Each registry user:

- (a) shall keep his/her password and digital certificate secure;
- (b) shall not transfer his/her digital certificate from the computer on which it was first installed, except to a replacement computer under his/her control, in which case he/she shall first apply to the Registrar for that purpose; and
- (c) is permitted to make a secure back-up copy of his/her digital certificate subject to the requirements of the CPS as amended from time to time.

6.4 Each registry user shall notify his/her respective administrator of any security breach, of which he/she is aware, that is expected to result in unauthorized registrations, including unauthorized use, disclosure or compromise of his/her password or private keys.

6.5 Each registry user acknowledges that his/her respective administrator may make such identity checks as the Registrar considers necessary in connection with such registry user's access to the International Registry.

Section 7

ACCESS TO THE INTERNATIONAL REGISTRY *(Section 4 of the Regulations)*

7.1 The International Registry can be accessed via the public Internet under the URL:

<http://www.internationalregistry.aero>.

7.2 The International Registry will initially be available in English only. It is envisaged that other languages will be added when the necessary financial means are available, taking into account the implications thereof as well as advantages for users.

7.3 To access the International Registry, an administrator, registry user or a searching person requires access to the Internet with a compatible browser(s), as specified on the website. Each such person shall establish his/her own arrangements for:

- (a) access to the Internet; and
- (b) contracting with, and paying the fees of, any third party Internet service provider.

The International Registry extends only to the access point to the Internet located at the Registrar's hosting location.

7.4 The International Registry shall be accessible 24 hours a day, 7 days a week, except if precluded by maintenance performed outside peak periods, or technical or security problems. Advance notice of any interruption in access, and expected resumption of service, shall, to the maximum extent practicable, be provided via the website.

7.5 Access to the International Registry is conditioned on:

- (a) in the case of an administrator and a registry user, having a valid digital certificate and complying with the applicable

part of the CPS relating to his/her use and, where required, entering the correct password;

- (b) following the steps and procedures provided on the website, including acceptance of the website terms and conditions, and of the CPS, and abiding thereby;
- (c) paying, in advance, the fees set by the Supervisory Authority and published on the website; and
- (d) complying with these Procedures.

7.6 If an administrator's or a registry user's password is entered incorrectly, that person shall be given the opportunity to re-enter the password or terminate the action. If there are three failed attempts to enter the correct password, the corresponding user account will be blocked until contact has been made with the help desk and the issue giving rise to the failure has been corrected.

Section 8

ENTRY POINTS

(Section 12 of the Regulations)

8.1 The Registrar shall establish arrangements applicable to the electronic transmission of registration information from, or authorized by, entry points to the International Registry designated under Article XIX (1) of the Protocol and Section 12 of the Regulations and, after consultations with each designated entry point, shall specify the arrangements applicable to that entry point. The arrangements applicable, designed to enhance the efficient use of the International Registry by entry points, shall be published on the website.

8.2 All registry users making registrations through a designated entry point or entry points under Article XIX (1) of the Protocol shall comply with the arrangements referred to in the preceding Section 8.1.

Section 9

HELP DESK AND TECHNICAL SUPPORT

(Section 3.5 of the Regulations)

9.1 To access the technical support function of the International Registry, an administrator, registry user or searching person may email or call the help desk, as specified on the website. It is recommended that the “help” pages of the website and email be used, where possible. Any person communicating with the help desk via email is requested to:

- (a) specify the nature of the problem or question;
- (b) provide his/her full name and company name;
- (c) identify which type of user he/she is (e.g. administrator, registry user or searching person); and
- (d) provide a main contact telephone number.

The Registrar may, to the extent consistent with applicable privacy law, verify the identity of all callers and log and record all calls to the help desk.

9.2 The terms of Section 3.4 of the Regulations and Section 7.4 of these Procedures shall apply to:

- (a) the hours of operation of the help desk, and exceptions thereto; and
- (b) notice of interruption and resumption of access to the help desk and its services.

9.3 The initial working languages of the help desk will be English, French and Spanish. It is envisaged that other languages will be added when the necessary financial means are available, taking into account the implications thereof as well as advantages for users.

9.4 Help desk response times will depend on demand and cannot therefore be guaranteed.

9.5 The help desk is for technical support only and cannot provide support on other matters, including legal questions. The help desk cannot respond to queries concerning an administrator's, a registry user's or a searching person's:

- (a) computer or network system;
- (b) system security policies;
- (c) Internet access, including its connectivity and performance;
or
- (d) browser.

Section 10

SIGN-UP AND APPROVAL — REGISTRY USER ENTITY AND ADMINISTRATOR

(Section 4 of the Regulations)

10.1 In connection with approvals under Section 4.1 of the Regulations, the proposed administrator of a proposed registry user entity shall complete and electronically submit to the Registrar, through the website, the form for approval of:

- (a) a registry user entity; and
- (b) an administrator of that entity.

Information designated as mandatory on the form shall be provided. Information designated as optional on the form may be provided. Names of organizations and persons must be their correct legal names. In exceptional cases (e.g. where the space on the form is insufficient), prior approval of the Registrar for using a name other than the correct legal name must be sought by email. A proposed registry user entity shall also electronically submit to the Registrar, with proper signature, confirmation that a proposed administrator is entitled to act in that capacity. At the specific request of the

Registrar, such confirmation shall be provided in hardcopy on the entity's letterhead with proper signature. All applications for approval shall include acceptance of these Procedures and of the website terms and conditions governing the use of the International Registry.

10.2 All applications for approval must be accompanied by full payment (by credit or debit card) of the appropriate non-refundable fee, together with value added tax (VAT), if required by law. The proposed administrator will be presented with a summary of the amount (in U.S. dollars) to be paid and prompted to enter credit or debit card details. Once the card details have been submitted and validated, payment will be taken from the relevant account and that person will be presented with a confirmation screen and the option to save a digital copy of the invoice.

10.3 All applications for approvals will be acknowledged to the electronic mail address provided on the submitted application form.

10.4 The proposed administrator shall promptly reply to requests for additional information from the Registrar in connection with the approval process. Such requests, made at the sole discretion of the Registrar, shall be consistent with applicable privacy laws.

10.5 If satisfied with the information provided, the Registrar shall issue to the proposed administrator, in electronic form, the Registrar's approval and a notification of the URL at which the administrator can access his/her digital certificate, together with appropriate instructions on its use.

10.6 The Registrar shall issue its approval (if given) as soon as is reasonably practicable and will endeavour to complete the approval process within 48 hours of receipt of the application.

10.7 Once the Registrar has issued its approval, the administrator shall test his/her ability to access the website.

10.8 The Registrar shall not approve a registry user entity or an administrator where the Registrar believes that the requirements of Section 4.1 of the Regulations have not been met. In such a case, the Registrar, if requested in writing shall:

- (a) specify in writing, via email, the reasons why such requirements have not been met; and
- (b) provide the applicant with a reasonable opportunity to take corrective action.

If not corrected, at the sole discretion of the Registrar, the application shall be declined. Refusal of an application shall not prevent an applicant from making a subsequent application for approval, provided that the requirements of these Procedures are fully complied with in respect thereto, and payment of the appropriate fee together with VAT (if applicable) is made.

10.9 The fee for issuing a replacement digital certificate shall be borne by the registry user entity. A person seeking a replacement digital certificate shall apply to the Registrar and follow the instructions specified on the website.

10.10 The Registrar may revoke the approval of a registry user entity and/or an administrator at any time where, in its view, there exists a material risk of fraudulent registrations or other misuse. In such a case, the Registrar and the registry user entity shall take all reasonable steps to cooperate to expeditiously take corrective action appropriate under the circumstances; the back-up contact designated under Section 5.12 may be used as required. The Registrar may block and/or disable any user account of the registry user entity concerned.

Section 11

SIGN-UP AND APPROVAL — REGISTRY USER

(Section 4 of the Regulations)

11.1 In connection with approval of registry users under Section 4.2 of the Regulations, a proposed registry user seeking to act on behalf of an approved registry user entity shall apply through the website, requesting electronic approval from the administrator of that entity.

11.2 An administrator has the sole right to approve one or more registry users employed by a registry user entity to act on his/her behalf. If the administrator elects to approve such registry users, the administrator shall take that action through the “approved registry user” page on the website, specifying the period of validity of a proposed registry user’s access to the International Registry and directing that the associated payment be made.

11.3 Upon receiving the approval of his/her administrator and following successful testing of his/her ability to access the website, a registry user will be issued a digital certificate by the administrator via an email containing a link to the website. The registry user should then download from the website the digital certificate, providing him/her with a private key.

Section 12

EFFECTING, AMENDING AND DISCHARGING REGISTRATIONS *(Sections 5 and 6 of the Regulations)*

12.1 To effect, amend or discharge a registration, a registering person shall:

- (a) follow the relevant process and instructions specified on the website; and
- (b) complete the electronic forms contained on the website, with the relevant information required by Section 5 of the Regulations.

Registration information electronically provided on the website shall be used by a registering person, as required by Section 5 of the Regulations. To the extent such information is not provided, registration information shall be inserted by a registering person following the instructions specified on the website.

12.2 Each named party, other than the registering party, required to consent under Article 20 of the Convention in order for a registration, amendment or discharge to become effective shall be electronically requested to consent thereto, in accordance with Article 18 (1) (a) of the Convention, prior to that registration, amendment or discharge becoming searchable. Once a registering person has entered registration, amendment or discharge information on the website and has digitally signed it, each named party identified in the registration:

- (a) will be notified thereof by electronic mail; and
- (b) shall be given the opportunity to consent thereto, through the website, for a period of 36 hours.

In the event that any such named party fails to give its consent within the 36-hour period, the registration, amendment or discharge will be automatically aborted.

12.3 Upon receipt of the final consent, the Registrar shall automatically issue a confirmation thereof by email to all parties entitled to receive a confirmation thereof under Section 6 of the Regulations, provided that the email addresses of all such parties have previously been provided.

12.4 An administrator may, at his/her sole discretion, authorize one or more of his/her approved registry users or professional users to effect, amend or discharge a registration. The authorization may cover one or more aircraft objects. Several users may be authorized to work on the same aircraft object or objects, but not simultaneously during the same registration session. An administrator may, at any time, revoke an authorization he/she has given and grant further authorizations to qualifying registry users.

12.5 Upon receipt of a confirmation, any named party wishing to ensure that the respective entry has been correctly made may undertake a priority search.

12.6 Rectification of any error or inaccuracy in a registration, once searchable, may only be effected through an amended registration.

12.7 Initiated, but not completed, registrations, amendments or discharges shall not appear on any search results.

Section 13

MAKING SEARCHES AND OBTAINING SEARCH RESULTS

(Section 7 of the Regulations)

13.1 Any person may, following payment of the required fee, search the International Registry, and that searching person shall:

- (a) follow the relevant process and instructions specified on the website; and
- (b) complete the electronic forms contained on the website, with the relevant information required by Section 7 of the Regulations.

13.2 The object of an informational search is to provide the searching person with sufficient information to perform a priority search.

13.3 An informational search listing shall be made available in electronic form to the person undertaking the search. For the avoidance of doubt, an informational search will not generate a search certificate. The Registrar shall not be liable in respect of the content of an informational search listing.

13.4 In making a priority search or a Contracting State search, the searching person shall state the name of the person or persons having the benefit of the search. The name of such person or persons shall appear on the priority search certificate or the Contracting State search certificate, as the case may be. Beneficiaries may include:

- (a) parties entering into, planning or forbearing from commercial transactions involving a named party of an aircraft object; or

- (b) parties providing legal or other professional advice to, or insuring, the parties specified in clause (a) immediately preceding.

13.5 Priority search certificates and Contracting State search certificates will be digitally signed by the Registrar and must be so signed in order to be valid. They shall be stored electronically by the Registrar. An electronic version thereof shall be issued and made available to the searching person. A printed version of either such certificate shall be made available upon payment of the required fee.

13.6 The fees for Contracting State searches undertaken by government authorities in Contracting States for official purposes shall be waived. The fees for other searches performed by such authorities may be waived pursuant to arrangements made with the Registrar.

Section 14

OPERATIONAL COMPLAINTS

(Section 8 of the Regulations)

14.1 In accordance with Section 8 of the Regulations, any person may submit an operational complaint to the Registrar through the “operational complaints” section of the website or by email as specified on the website. The receipt of an operational complaint shall be promptly acknowledged by the Registrar.

14.2 Operational complaints shall include a written statement containing full details of the facts said to give rise to the complaint.

14.3 The Registrar shall respond to the complaint or state why it is not able to do so, within 15 calendar days of receipt of the complaint or, if later, receipt of the full facts statement. The Registrar shall transmit a copy of its reply to the Supervisory Authority.

14.4 If, within 30 calendar days of making the complaint, the person does not consider that the matter has been or is being satisfactorily addressed by the Registrar, that person may submit the complaint to the Supervisory Authority (with a copy to the Registrar) for further consideration. Submission of the complaint to the Supervisory Authority shall be made stating the full facts of the case either by email to LEB@icao.int or by letter or facsimile to:

International Civil Aviation Organization
Supervisory Authority of the International Registry
c/o Legal Affairs and External Relations Bureau
999 University Street
Montréal, Quebec
Canada H3C 5H7

Fax: +1 514-954-8032

14.5 If the Supervisory Authority determines that changes to the procedures or policies of the International Registry are appropriate, it will instruct the Registrar to carry out such changes.

Section 15

CLAIMS AGAINST THE REGISTRAR

(Section 14 of the Regulations)

15.1 Claims may be brought against the Registrar under Article 28 of the Convention for loss suffered as defined in Section 14 of the Regulations. In accordance with Article 28 (2), the Registrar shall not be liable for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

15.2 All such claims shall be notified in writing to the Registrar by post and/or facsimile and by email at:

Aviareto Ltd.
Suite 3
Plaza 255
Blanchardstown Corporate Park 2
Blanchardstown
Dublin 15
Republic of Ireland

fax.: +353 (0)1 829 3508
email: registryofficials@aviareto.aero

and shall include a full statement of the facts giving rise to the claim pursuant to Article 28 of the Convention. Such statement shall be provided to the Registrar within three months of the person becoming aware of the existence of the claim.

15.3 All such claims shall be subject to a consultation period during which the claimant and the Registrar will in good faith attempt to resolve the claim. The consultation period shall be three months from the date the Registrar receives notification of the claim, or the statement of facts (if later). The three-month period may be extended by mutual agreement of the parties.

15.4 If, following the consultation period, the claim has not been resolved, the parties are encouraged to engage in mediation, conciliation, arbitration or other dispute resolution process but the claimant may, subject to the procedural requirements of the applicable law, commence proceedings against the Registrar in accordance with Articles 28 and 44 of the Convention.

15.5 Nothing in these Procedures shall:

- (a) operate to extend any limitation period applicable under the applicable law; or

- (b) affect a party's right to commence proceedings where otherwise a limitation period would expire.

Section 16

CONFIDENTIALITY

(Section 9 of the Regulations)

The Registrar shall keep all information in the International Registry confidential, except where:

- (a) it is provided in response to a priority search, a Contracting State search or informational search, or made electronically available to enable registry users to effect, amend or discharge registrations;
- (b) it is requested under Article 27, paragraph 5, of the Convention, or provided to the Supervisory Authority at the latter's request; or
- (c) it is used for the purposes of the statistics required by Section 10 of the Regulations for the International Registry.

Section 17

NOTIFICATIONS

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

Section 18

FEES

(Section 13 of the Regulations)

All applicable fees shall be paid in advance. The current fee schedule is set out in the Appendix to the present Procedures and may be adjusted from time to time by the Supervisory Authority, as provided by the Convention and the Protocol.

Section 19

PUBLICATION

(Section 16 of the Regulations)

19.1 The authentic version of these Procedures shall be published in an official publication of the Supervisory Authority.

19.2 The Registrar shall make an electronic version of these Procedures, as may be amended, available to the public at no cost by publishing it on the website.

Section 20

AMENDMENTS

(Section 17 of the Regulations)

20.1 Requests for amendments to these Procedures may be submitted by the Registrar to the Supervisory Authority, which shall consider such amendments.

20.2 The authentic version of any amendments to these Procedures approved by the Supervisory Authority shall be published in an official publication of the Supervisory Authority.

Section 21

EFFECTIVE DATES

(Section 18 of the Regulations)

These Procedures shall take effect on the date the Protocol enters into force. Any amendments to these Procedures shall take effect one calendar month after the date of their publication unless otherwise determined by the Supervisory Authority.

Appendix

Fee Schedule

1. FEES FOR USING THE INTERNATIONAL REGISTRY

User set-up fee

1.1 No person may register with the International Registry without having paid a “user set-up fee”. There shall be three options open to users:

- (a) a five-year subscription;
- (b) a one-year subscription;
- (c) a ten-user, five-year subscription.

1.2 For option (c), the person purchasing the subscription will be nominated as the administrator of the group of users and will be provided with a user credit to set up a further nine individual users in one or more user sessions.

1.3 The user set-up fee payable in respect of a controlled entity shall be levied as follows:

- (a) upon approval of the controlled entity by the administrator of an approved transacting user entity, after the coming into force of the Third Edition of the Regulations and Procedures for the International Registry; and
- (b) on the next date of the subscription renewal of an approved transacting user entity, where the administrator of said entity approved the controlled entity or the special purpose entity prior to the coming into force of the Third Edition of the Regulations and Procedures for the International Registry.

1.4 User set-up fees are defined in Table 1. These fees include the provision of a public key infrastructure (PKI) certificate that is installed on the user workstation. In the event of this certificate being lost or destroyed, a new certificate will be supplied on payment of a “lost certificate fee” as set out in Table 1.

Registration fee

1.5 A single registration fee shall be charged for all registrations initiated by the same registering party during a “registration session”, defined to mean one session with the International Registry permitting “all registrations” relating to:

- (a) one airframe and all engines regularly used thereon (or any subset thereof or any individual engine); or
- (b) one helicopter.

For this purpose, “all registrations” means all registrations reflecting transactions relating to the object or objects set out in clauses (a) or (b) entered into within a period of 24 hours from the time of the initiation of the first registration, as electronically confirmed by the registering and consenting parties, including those reflecting different or multiple types of registrations permitted under the Convention and the Protocol without limitation in number (e.g. an international interest (leasing agreement), a second international interest (security agreement), a third international interest (a second security agreement), subordination (of the second international interest to the first), and an assignment of one or more of the international interests). A “registration session” will last for 24 hours for the purposes of the “registration fee”.

1.6 That single registration fee shall be defined as the “registration fee”, the amount of which is set out in Table 1.

1.7 Spare engines (i.e. further engines beyond the number normally fitted to an airframe) that are to be registered with an airframe during a single registration session will be subject to an additional “spare engine fee”, the amount of which is defined in Table 1.

Priority search fee

1.8 A single search fee shall be charged for a priority search session. A “priority search session” is defined to mean “all priority searches” relating to:

- (a) one airframe and all engines to be regularly used thereon (or any subset thereof or any individual engine); or
- (b) one helicopter;

carried out within a sixty-minute period.

For this purpose, “all priority searches” means all priority searches made within a single sixty-minute period relating to the object or objects set out in clauses (a) or (b), as electronically confirmed by the searching party. That single search fee shall be defined as the “priority search fee,” the amount of which is set out in Table 1.

Table 1. Fees

<i>Description</i>	<i>Fee (in U.S. dollars)</i>
User set-up fee (5 years)	500
Controlled entity set-up fee (1 year)	180
User set-up fee (1 year)	200
Controlled entity set-up fee (5 years)	400
Ten-user set-up fee (5 years)	2 500
Registration fee	100
Spare engine fee	50
Priority search fee	35
Lost certificate fee	100

2. PROCEDURE FOR ADJUSTMENT OF FEES

2.1 At the end of the initial period (first year of the operational phase), fees shall be reviewed by the Supervisory Authority, in consultation with the contractor. New fees may then be set by the Supervisory Authority, based upon anticipated volume at that point, taking into account:

- (a) the contractor's cash reserves for working capital;
- (b) the level of insurance required by the Supervisory Authority;
- (c) any litigation budget required by the Supervisory Authority or the contractor above that contained in the cost schedule;
- (d) the Supervisory Authority costs;
- (e) any service enhancements requested by the Supervisory Authority or suggested by the contractor;
- (f) the transaction volume achieved by the Registry and the variation from the transaction volume projected by the contractor;
- (g) any other relevant factors.

2.2 The same review mechanism set out in paragraph 2.1 may be carried out at the end of the second, third and fourth years of operation.

3. IRISH VAT

Users will be invited to state their country of residence as part of their user profile and, if based in the European Union, will be asked for a company VAT number that will determine the application of Irish VAT (applies to Irish and European Union users). Under current legislation, European VAT is not applicable to services delivered to parties outside of Europe (therefore users outside of the European Union are not subject to VAT).

— **END** —



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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**ORGANISATION INTERGOUVERNEMENTALE POUR LES
TRANSPORTS INTERNATIONAUX FERROVIAIRES**

**ZWISCHENSTAATLICHE ORGANISATION FÜR DEN
INTERNATIONALEN EISENBAHNVERKEHR**

**INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL**

Preparatory Commission regarding the
establishment of the International Registry for
railway rolling stock according to the
Luxembourg Protocol

PrepCom/1/Doc.3/PROP REV

DRAFT

REGULATIONS FOR THE INTERNATIONAL REGISTRY

**As amended by the Working Group
marked up by the Rail Working Group
15th April 2008 and 5th June 2008**

DRAFT
REGULATIONS FOR THE INTERNATIONAL REGISTRY

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

CONTENTS

Section	1	AUTHORITY	3
Section	2	DEFINITIONS	3
Section	3	GENERAL PROVISIONS	3
Section	4	ACCESS TO THE INTERNATIONAL REGISTRY	4
Section	5	INFORMATION REQUIRED TO EFFECT REGISTRATION	4
Section	6	CONFIRMATION AND NOTICE OF REGISTRATION	6
Section	7	NON-CONVENTION FILINGS	7
Section	8	SEARCHES IN THE INTERNATIONAL REGISTRY	7
Section	9	OPERATIONAL COMPLAINTS	7
Section	10	CONFIDENTIALITY	8
Section	11	STATISTICS	8
Section	12	RELATIONS WITH THE SUPERVISORY AUTHORITY	8
Section	13	RELATIONS WITH THE ENTRY POINTS	9
Section	14	FEES	9
Section	14bis	RELATIONSHIP WITH REGIONAL AND NATIONAL SYSTEMS	9
Section	15	LIABILITY AND INSURANCE OF THE REGISTRAR	9
Section	16	INTERNATIONAL REGISTRY PROCEDURES	9
Section	17	PUBLICATION	10
Section	18	FINAL PROVISIONS	

Section 1 AUTHORITY

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

Section 2 DEFINITIONS

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

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

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

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

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

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

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

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

2.1.7 "Named party" means a party intending to be a named party in a registration, and a "named representative" means a person named in a registration and acting for others in an agency, trust or other representative capacity in accordance with Article IV of the Protocol.
[CHECK FOR CIRCULAR DEFINITION]

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

2.1.9 "Registration" means an interest electronically registered with the International Registry. For the purposes of Sections 4.4 and 6, the term has the extended meaning set out in Section 6.1. A "registering person" means the transacting user, professional user or an entity designated as an entry point transmitting information to the International Registry to effect a registration in accordance with Section 13 below.

2.1.10 "Registry user entity" means:

- (a) a transacting user entity; or
- (b) a professional user entity; and

a "registry user" means a transacting user or a professional user.

2.1.11 "Searching person" means a person making a search in accordance with Sections 7 or 8 of these Regulations.

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

2.2 The terms or terms:

- (a) "entry point", has the meaning set out in Section 13.1;
- (b) "International Registry Procedures" has the meaning set out in Section 16.1;
- (c) "priority search", "priority search certificate", "informational search listing", "Contracting State search" and "Contracting State search certificate" have the meanings set out in Section 8
- (d) "group registration" and "group search" shall mean respectively a registration of international interests in a multiple number of items of railway rolling stock identified in accordance with Article XIV of the Protocol and a search at the International Registry against such multiple number of items.

Section 3 GENERAL PROVISIONS¹

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

3.2 Since the International Registry merely provides notice of registrations, the facts underlying any such registration or registered interest shall determine whether it falls within the scope of the Convention or the Protocol. Without limiting the foregoing registrations of pre-existing rights and interests or assignment thereof shall have no legal effect under the Convention and the Protocol, except where, by virtue of a declaration under Article 60 (3) of the Convention, registration thereof is required. The contents of this Section 3.2 shall be prominently displayed by the International Registry as a general cautionary note on its website.

3.3 The International Registry shall be accessible 24 hours a day, 7 days a week, except if

¹ The Regulations will need to be further developed to establish a system for the allocation of identification numbers.

precluded by maintenance performed outside peak periods, or technical or security problems, as set out in the International Registry Procedures. The International Registry shall be available in English

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

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

Section 4 ACCESS TO THE INTERNATIONAL REGISTRY

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

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

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

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

4.3 Notwithstanding the preceding paragraphs:

- (a) the administrator of a transacting user entity approved by the Registrar may electronically approve a controlled entity as a transacting user entity upon the payment to the Registrar of the fee provided for in Table 1 of the Appendix to the International Registry Procedures; and

- (b) in such a case, the rights, powers and obligations of the administrator of the approving transacting user entity and its transacting users, respectively, shall apply equally to the approved transacting user entity.

4.4 Subject to these Regulations and in accordance with the International Registry Procedures, a registration may only be effected, with an authorization, by a registering person

on behalf of the transacting user entity, which is a named party required or permitted to effect that registration under Article 20 of the Convention.

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

Section 5 INFORMATION REQUIRED TO EFFECT REGISTRATION

5.1 [In order to effect a registration, use of electronic information provided by the International Registry² relating to railway rolling stock is mandatory and, where so provided, is the sole means of satisfying the requirements of Section 5.3 (d) (ii) to (iv).] For the purposes of the foregoing, “information provided by the International Registry” excludes information submitted in a different format by the registering person. To the extent such information is not so provided at the time the registration data are submitted to the International Registry, it shall be electronically entered by a registering person using the format prescribed in the International Registry Procedures, except as regards named parties (other than those whose consent is not required under Sections 5.5, 5.6 or 5.8) because they must be approved transacting user entities.

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

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

- (a) the identity and electronic signature of the registering person and a statement identifying on whose behalf that person is acting;
- (b) the identity of the named parties;
- (c) the identity of the debtor;
- (d) the following information identifying the item of railway rolling stock:
 - (i) manufacturer’s name;
 - (ii) manufacturer’s generic model designation;
 - (iii) type of railway rolling stock;
 - (iv) identification number allocated by the Registrar pursuant to Article XIV(1) of the Protocol; and
 - (v) the number assigned to the item under a national or regional identification system stated by a declaration made by a Contracting State according to Article XIV(2) of the Protocol and, where there is a manufacturer’s identification number affixed to the item, that number³.] **[TO BE REVIEWED]**
- (e) the duration of the registration if the registration is to lapse prior to the filing of a discharge;
- (f) in the case of an international interest or a prospective international interest, the consent of the named parties, given under an authorization;

² What is this information going to be and does it make registration too difficult

³ The identification number allocated by the Registrar shall be associated in the International Registry with the other identifying information set out in section 5.3(e)(iv).

(g) in the case of an international interest acquired through subrogation, the file number of the registration of that interest; and

(h) the names and electronic addresses of persons to which the Registrar is required to send information notices pursuant to Section 6.

5.4 The registry system will allow a method or methods for group registrations and group searches, which may be further delineated as to type and other factors, consistent with filings and search solutions in the International Registry Procedures which accommodate current railway rolling stock financing practices.;

Unless and only to the extent approved in advance by the Supervisory Authority by way of exception, free-form filings⁴ will not be permitted in the International Registry with regard to filings and searches of Convention interests that affect priority, perfection or enforcement. This requirement may, but need not, extend to non-Convention interests permitted to be filed pursuant to Section 7.

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

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

5.5 *bis* The International Registry may provide a facility permitting the registration of all assignments included in a "block assignment registration request". A "block assignment registration request" shall include (a) an electronic certification by the assignor that all of the underlying interests evidenced by registrations on the International Registry in which it is a named party have been assigned to the assignee, and (b) a consent thereto given by the assignee, each given under an authorization.

5.6 The information required to discharge a registration is:

- (a) the information referred to in Sections 5.3(a) to (d) and 5.3 (h);
- (b) the identity of the creditor, or holder of a national interest or registrable non-consensual right or interest, as the case may be;
- (c) the consent of the named parties benefiting from the registered interest, given under an authorization, but not of the debtor, assignor or person subordinating the registered interest ;
- (d) the file number of the registration to be discharged; and

⁴ Needs further consideration in light of multiple identification systems

- (e) the date the discharge is to be effective.

For purposes of the foregoing Section 5.6 (c), both an assignor and an assignee, in the case of an assignment, and a subrogor and a subrogee, in the case of a subrogation shall be deemed to be parties in whose favour a registration was made unless they electronically elect, in connection with and at the time of the registration of that assignment or subrogation, that (solely for such purposes) one of them shall be deemed to be that party, in which case that entity shall have the sole right to consent to a discharge of such assigned or subrogated international interest. The assignor and assignee or subrogor and subrogee may amend that election in accordance with Section 5.9. The rights established by application of the foregoing shall follow, and apply to, further assignments or subrogations of that assigned or subrogated international interest.

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

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

5.8 Notwithstanding Sections 5.3 (f) and 5.5 (b), the information needed to effect the registration of a pre-existing right or interest required by virtue of a declaration under Article 60 (3) of the Convention (as amended by Article XXVI of the Protocol) need not include the consent of the debtor, assignor or person subordinating the right or interest.

5.9 Subject to Section 5.9 *bis*, the information required to amend a registration or to amend information contained in an assignment, subrogation or subordination is:

- (a) the information referred to in Sections 5.3 (a) to (d) and 5.3 (g);
- (b) the consent of the named parties that consented to the registration to be amended, given under an authorization;
- (c) the file number of the registration to be amended; and
- (d) the amendments to be made.

5.9 *bis* The following shall apply in respect of amendments to registrations:

- (a) Registration of an amendment of information referred to in Section 5.3 (d) or a change of a category of registration shall be treated as a new registration in respect of the object or category to which the amending registration refers, with priority ranking from

the time the amending registration is complete. The named parties to such amendment shall consent to the discharge of the previous registration under an authorization, which shall be effected automatically.

(b) Registration of an amendment in which the information referred to in Section 5.3 (b) has been changed shall require the consent of the named parties that consented to that registration and of the named party to be specified in the amended registration, each given under an authorization save that a name change notification request as described in section [5.12.] shall not require such consent.

(c) Registration of an amendment in which the information referred to in Section 5.3 (e) has been changed shall have no effect on the priority of the original registration for the amended duration of that registration. The foregoing is without prejudice as to whether a new underlying interest has been constituted that requires registration under the Convention.

(d) A change to a user capacity statement or the contact details of a registry user are outside of Section 5.9, and may be made after the Registrar reasonably concludes that such requested change is accurate.

5.10 The consent requirements of this Section 5 shall be satisfied:

in the case of a registration initiated by an entry point in accordance with Article XIII (1) of the Protocol, when the International Registry receives the consent from all parties whose consent is required under the Convention, the Protocol, and these Regulations

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

5.11 *bis* With respect to an interest referred to in Section 5.11:

(a) an increase or decrease to such interest arising by virtue of a sale or an assignment of an international interest shall be registered as such in accordance with Sections 5.4 or 5.5, respectively;

(b) a decrease a decrease in such an interest arising by virtue of payment of a secured obligation shall be partially or wholly discharged in accordance with Section 5.6; and

(c) an amendment changing such interest shall be permitted to correct an error when made in accordance with Section 5.9.

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

(a) the Registrar shall confirm that such changed name has been effected following the standard set out in Section 4.1;

(b) when so confirmed, all registrations on the International Registry in which that transacting user entity is a named party shall, without amending registration information, be annotated to advise of the change of name, such annotation to be included in all priority search certificates;

(c) following the time at which such annotation is made, the new or resulting entity shall be deemed to be a transacting user entity for all purposes of the International Registry; and

(d) the vesting shall have no effect on the priority of the original registration.

Section 6 CONFIRMATION AND NOTICE OF REGISTRATION

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

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

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

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

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

Section 7 NON-CONVENTION FILINGS⁵

7.1 The Registrar shall provide for registrations of notices of sale subject to Article XVII of the Protocol but otherwise in accordance with these Regulations and the International Registry Procedures. In addition, to the extent approved by the Supervisory Authority, the Registrar shall provide for filings of other interests in railway rolling stock or contract information relating to international interests that are for the purposes of information only and do not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

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

Section 8 SEARCHES IN THE INTERNATIONAL REGISTRY

⁵ This section will require some refinement and will be subject to further discussion within the Preparatory Commission.

8.1 A search of the International Registry as provided by Article 22 of the Convention shall be made by electronic means using one or more of the following criteria:

- (a) the identification number allocated by the Registrar pursuant to Article XIV (1) of the Protocol;
- (b) the manufacturer's name and serial number or the number assigned to it under a national or regional identification system; and
- (c) the Registrar's group file number in relation to a group registration.

Such information may be searched by means of a priority search or informational search, as set out in Sections 8.2 and 8.3, respectively. A Contracting State search may also be made, as set out in Section 8.4. A search may be performed by any person who complies with the International Registry Procedures, whether or not that searching person has a specific interest. All searches shall be performed by electronic means.

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

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

- (a) set out the information required by Article 22 (2) (a) or (b) of the Convention, as applicable, and comply with Article 22 (3) of the Convention; and
- (b) if Article 22(2)(a) of the Convention applies, list the registered information in both
 - (i) chronological order and
 - (ii) a manner which indicates the transactional history of each registered interest.

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

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

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

Section 9 OPERATIONAL COMPLAINTS

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

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

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

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

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

Section 10 CONFIDENTIALITY

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

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

Section 11 STATISTICS

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

11.2 The registration statistics under Section 11.1 shall consist of

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

Section 12 RELATIONS WITH THE SUPERVISORY AUTHORITY

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

Section 13 RELATIONS WITH THE ENTRY POINTS

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

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

Section 14 FEES

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

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

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

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

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

Section 14bis RELATIONSHIP WITH REGIONAL AND NATIONAL SYSTEMS

14bis.1 Implementing or amending any procedures or mechanisms that involve declared national or regional systems shall require agreement between the Registrar and that system or systems and absent agreement cannot be imposed on that system or systems or vice versa.

Section 15 LIABILITY AND INSURANCE OF THE REGISTRAR⁶

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

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

(a) shall be made in writing within the time period applicable under the laws of the State where the International Registry is located;

(b) shall be subject to consultations between the claimant and the Registrar; and

(c) if not resolved by such consultations, may be pursued by the claimant in accordance with Article 44 of the Convention.

15.3 The International Registry Procedures shall set out details relating to the procedure contemplated by Section 15.2.

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

15.5 For the purposes of Article XV paragraph 7 of the Protocol, the amount of insurance or financial guarantee shall not be less than [20] million SDRs per calendar year and [5.1] million SDRs per event of loss. The latter coverage shall be available in respect of [three] events of loss per annual insurance period. The Registrar is obliged to maintain such insurance coverage throughout the period for which the insurance is obtained.

15.6 The amounts of liability and insurance cover or financial guarantee may be revised from time to time by the Supervisory Authority subject only, in the case of liability, to the minimum liability set forth in Article XV(5) of the Protocol.

15.7 For the purposes of this Section 15, an error or omission or malfunction relating to more than one item of railway rolling stock registered as part of one group registration shall be considered as one event of loss.

15.8 Nothing herein shall ascribe any liability to the Grand Duchy of Luxembourg or any entity controlled thereby or agency thereof (aside from, if appropriate, the Registrar) and any claimant may only make claims hereunder and under Article XV of the Protocol against the Registrar and not such parties,

⁶ This section reflects the outcome of the working group on insurance and liability which met in Berlin in September 2007. A final decision on these matters will have to be taken by the Preparatory Commission at a later date. For the bidders' purposes, the RFP notes that it should be assumed that insurance will be required so to cover 3 events a year at 5 million SDRs per event.

Section 16 INTERNATIONAL REGISTRY PROCEDURES

16.1 International Registry Procedures addressing items required by these Regulations or otherwise relating to the technical operation and administrative processes of the International Registry shall be established by the Supervisory Authority.

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

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

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

Section 17 PUBLICATION

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

17.2 The Registrar shall make an electronic version of the authentic texts referred to in Section 17.1, as may be amended as contemplated by Section 18, available to the public at no cost.

17.3 Copyright in all documents published and information displayed on the website of the International Registry or published by the Supervisory Authority, and the domain of the website of the International Registry shall belong to the Supervisory Authority. The contents of this Section 17.3 shall be prominently displayed by the International Registry on its website.

Section 18 FINAL PROVISIONS

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

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

DRAFT



Registration of International Financial Interests in Space Assets

1. The proposition:

There would seem to be a fairly strong case for accommodating the registration of international financial interests in space assets within the existing international registry for aircraft objects ("the IR"). This note attempts to identify the issues.

2. The case for inclusion of space objects in the IR:

There is a very small population of space assets (no more than 300?), there is a small annual inflow and there is limited secondary trading. Within any conceivably acceptable level of fees it is difficult to see how space assets could support a standalone registry. In addition, the IR is already well up the learning curve of managing a registry and has assembled the overhead for doing so. It seems fairly obvious that strong consideration should be given to finding a mechanism for including space assets in the aircraft objects registry before any other solutions are embarked on.

3. Mechanics of inclusion of space objects in the IR:

3.1 The IR currently provides for the registration of aircraft objects, spare engines and helicopters each as a distinct category. In the simplest form of their inclusion a category could be created for space assets.

3.2 If the space sector wanted more control over the process for space assets some form of direct entry point could be created through which space asset registrations could be processed.

4. Implications for the Space Assets Protocol:

The space assets protocol would have to be drafted in a manner that took account of the operational aspects of the IR. Some diversity could be accommodated but there would be limits if costly complexity and capital expenditure is to be avoided.

5. Implications for the Supervisory Authority

It would be extremely difficult to have a different supervisory authority for each of aircraft objects and space assets if both are to reside on the IR. It would be almost essential that ICAO fulfill the role of a unitary supervisory authority but perhaps with institutional adjustments such as the appointment of persons knowledgeable in the space assets sector to the Commission of Experts.

6. Other issues:

6.1 Overall Aviareto needs to develop a better understanding of the space assets business if it is to go much beyond these initial thoughts.

6.2 Even relatively small development costs and incremental operational and servicing costs could have a significant impact on space asset fees. These need to be investigated.

6.3 Liability issues need to be explored and understood.