



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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**PREPARATORY COMMISSION FOR THE  
ESTABLISHMENT OF THE INTERNATIONAL REGISTRY  
FOR MAC EQUIPMENT PURSUANT TO THE MAC  
PROTOCOL**

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***Regulations Working Group  
First session (remote)  
14-15 September 2020***

**SUMMARY REPORT  
OF THE FIRST SESSION  
(Videoconference, 14 – 15 September 2020)**

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1. The first session of the Regulations Working Group established by the Preparatory Commission for the establishment of the International Registry for Mining Agricultural and Construction (MAC) equipment pursuant to the MAC Protocol took place via videoconference between 14 and 15 September 2020. The Commission was attended by 24 participants from seven Member States of the Commission, one observing State, three observing organisations, and *ex officio* observers from the Diplomatic Conference (the List of Participants is available in Annex I).

#### **Item No. 1 Opening of the session**

2. The *UNIDROIT Secretary-General* welcomed participants to the first session. He explained that the Regulations Working Group had been established by the MAC Protocol Preparatory Commission at its first session (hereafter "PC1") under Rule 6 of its Rules of Procedure. He then suggested that the first session of the Regulations Working Group should be dedicated to reaching policy consensus on open issues, which would allow for the preparation of an updated draft of the Regulations for consideration by the Regulations Working Group at its second session.

3. *The UNIDROIT Secretary-General declared the first session of the Regulations Working Group open.*

#### **Item No. 2 Adoption of the order of business of the session**

4. *The Commission adopted the draft Order of Business (MACPC/Regulations/W.G./1/Doc. 1, available in Annex II).*

#### **Item No. 3 Election of the Chair of the Regulations Working Group**

5. One participant nominated Mr Bruce Whittaker (Australia) for the position of Chair of the Regulations Working Group. Five other participants supported the nomination.

6. *Mr Bruce Whittaker (Australia) was elected Chair of the Regulations Working Group.*

#### **Item No. 4 Consideration of issues associated with draft Regulations**

7. *The Chair* suggested that the Working Group consider the matters raised in the Issues Paper (MACPC – Regulations W.G.1 - Doc. 2) and invited participants to raise any additional issues as discussions progressed.

#### General Approach to the Drafting of the Regulations

8. The Regulations Working Group discussed the use of the Aircraft Registry Regulations (MACPC1 – Doc. 4) as the basis of the drafting of the MAC Regulations. While it was agreed that the Preliminary Draft MAC Regulations (MACPC1 – Doc. 3), as modelled on the Aircraft Registry Regulations, did provide an appropriate starting point for the Working Group's discussions, they would need to be significantly adapted to suit the different range of actors who would use the MAC Registry. It was acknowledged that while the 8<sup>th</sup> edition of the Aircraft Registry Regulations was the most advanced version available, many of the changes from earlier versions had been the result of the rectification of issues and general development of the earlier versions. As such, there could be additional value in the Regulations Working Group also considering earlier, simpler editions of the Aircraft Registry Regulations.

9. It was noted that the Aircraft Registry Regulations provided a complex package of definitions that described the different range of actors who could perform different actions under the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (hereinafter the 'Aircraft Protocol'). It was queried whether the level of complexity in these definitions was desirable or necessary for the MAC Regulations. It was also suggested that the MAC Regulations should provide for simple procedures in relation to the registration of international interests, in order to facilitate use of the Registry by less sophisticated users who would be unlikely to undertake complex transactions, such as farmers or small creditors. Simplicity was however less important for other types of registrations, however, such as the registration of non-consensual rights or interests. It was also suggested that the simplicity and usability of the Registry would be enhance its credibility, and that this was essential to ensure it was trusted by the different parties using it.

10. The Regulations Working Group agreed that it was important for the Registry itself to be as simple as possible for users, whereas the need for simplicity was not as great for those aspects of the MAC Regulations that establish the general legal framework for the Registry. The Chair suggested that if the Registry provided for a range of access levels for different users, then it would be likely that the MAC Regulations would need to be complex to reflect the different access rules required. It was also suggested that the Regulations Working Group should ensure that potential liability risks for the Registrar should be minimised in designing the MAC Regulations, to ensure that the Registrar's insurance premiums could remain as low as possible.

#### Access to the International Registry and Vetting

11. The Regulations Working Group discussed whether, and if so how, vetting of users should be undertaken in order for them to be granted access to the MAC Registry. It was explained that the Aircraft Registry required companies wishing to register an account to provide (i) documents that demonstrated the company existed, such as incorporation documents, website details or company registration documents; (ii) the personal details of the administrator; and (iii) evidence that the administrator had the right to act on behalf of the company. In cases where the administrator provided a qualified signature, the Registry could require an in-person meeting or a copy of their driver's licence to verify their identity. Once the administrator had been approved, the Registry did not vet the user entities authorised by the administrator in relation to the relevant company.

12. It was noted that many domestic Personal Property Security Registries (PPSR) did not undertake any vetting of individual users. In Australia, an administrator could establish an account by providing their contact details without the Registry undertaking any vetting. The administrator could then provide for further accounts under their secured party group. Under certain PPSR regimes in Africa, the Registries did undertake a certain level of manual vetting of users of the registry, similar to the processes under the Aircraft Registry. In China, the registry maintained branches in every city which allowed officials to check documents and manually vet individual creditors.

13. It was suggested that the MAC Registry should be able to ensure that administrators registering a company on the system were authorised to bind the company. This could be done through incumbency certificates that identified the authorised officers or individuals that could bind a company.

14. It was noted that because the international aviation industry generally conducted its business in English, the Aircraft Registry generally did not face significant language barrier issues. As such, it was common for companies to provide English translations of their incorporation documents. It was further noted that companies involved in international commerce were familiar with getting translations of business documents certified under the 1961 Apostille Convention. However, noting the large variety of expected users for the MAC Registry, it was likely that there would likely be larger language barrier issues, both in any vetting process and more broadly.

15. It was also suggested that designated entry points could be involved in any vetting process, which could to some extent address language barrier issues.

16. *The Regulations Working Group requested that the Secretariat prepare several flow charts explaining how the account establishment and vetting processes operated under the Aircraft Registry and domestic PPSR regimes for consideration by the Working Group at its next session.*

#### Intermediaries

17. The Regulations Working Group discussed how the Registry should treat intermediaries. It was explained that under the Aircraft Registry, "professional user entities" tended to charge approximately \$1000 to make a registration, which was 10 times the cost of the registration itself. It was suggested that the fee charged by intermediaries was reasonable, as it was often lawyers undertaking the registrations who had legal risk and staff costs.

18. It was noted that in Australia, 80% of registrations in the domestic PPSR were performed through intermediaries who played an important role in fostering and promoting use of the registry. The cost of using intermediaries varied in Australia, and while there had been some concerns regarding rent-seeking conduct, the regulator had not needed to intervene in the market. In the United States, it was common for large banks to use intermediaries to make registrations under the UCC, as registries differed between States. In Africa and Latin America, it was less common for registered agents or intermediaries to make filings, although it depended on how the systems had evolved.

19. It was suggested that in developing countries, intermediaries could perform an important role in facilitating access and use of the MAC Registry.

#### Vexatious registrations

20. The Regulations Working Group discussed whether there would be an increase in vexatious registrations if the MAC Registry did not vet the administrators. Under the Aircraft Registry, irregular registrations generally arose in relation to registerable non-consensual rights and interests. Under the PPSRs in Australia and Canada, vexatious registrations had not been a significant issue, despite the fact that the registries did not thoroughly vet administrators.

21. It was suggested that because the MAC Registry would be searchable by serial number, rather than by debtor, the likelihood of vexatious registrations was lower. It was further suggested that if the MAC Registry experienced a large number of vexatious registrations in its early years of operation, more stringent vetting processes could be implemented in future versions of the MAC Regulations.

#### Consent

22. The Regulations Working Group discussed the spectrum of consent required by parties in order to undertake different actions on the MAC Registry. It was noted that Article 20 of the Cape Town Convention set out the different circumstances in which consent was needed to undertake certain registrations, and that Article 18(1)(a) confirmed that the MAC Regulations were to specify the requirements for effecting a registration, including provision for prior electronic transmission of consent. However, Article 18(2) provided that the Registrar was not under a duty to enquire whether a consent to registration had in fact been given or was valid. It was suggested that requiring consent to be reflected in the Registry would increase confidence and trust in the Registry.

23. The Regulations Working Group discussed how the Registry should require a debtor to provide its consent to a registration. It was noted that while it would be possible to design a system that would verify the identity of the party consenting, the complexity and cost of such a system would outweigh its benefits. It was noted that if the Registry did want to attempt to establish the identity of the party providing consent, there were three levels of electronic signature that could be considered, (i) basic, (ii) advanced and (iii) qualified.

24. It was agreed that when a party attempted to make a registration, the Registry could send a notification by text message, email or other medium to the debtor's provided contact details. The debtor would then need to confirm their consent by clicking a box or other simple action, which would then allow the system to confirm the registration.

25. Under the proposed approach, the Registry would not be checking the identity of the debtor. It was noted that this approach could lower the likelihood of fraudulent or vexatious registrations. However, it would not eliminate the possibility of such registrations, as the party making the registration could provide the details of someone other than the debtor, who would then provide consent in order for the fraudulent registration to be made.

26. It was noted that the proposed approach would have the additional benefits of (i) reducing errors in the registry by allowing for the debtor to check the registration details before consenting, and (ii) allow the debtor to also consent to their information being made available on the registry, which would be required under the data protection rules of some States.

27. In relation to consent to discharge a registration, it was noted that only the administrator (creditor) would have the power to discharge the registration.

28. It was noted that language barrier issues could also arise if a debtor was sent an automated email from the registry requesting their consent in a foreign language.

29. *The Regulations Working Group agreed that the Registry needed to facilitate parties to provide consent for certain registrations, as required by Article 18 of the Cape Town Convention. It was further agreed that the Registrar should not be under an obligation to verify the identity of the party providing the consent and that the mechanism through which a party provided their consent should be as simple as possible.*

#### Registration Criteria

30. The Regulations Working Group discussed the criteria that should be included in the MAC Regulations in order to identify MAC equipment for the purposes of making a registration. It was agreed that Section 5.1(c) of the draft MAC Regulations should be redrafted to confirm that the manufacturer's serial number (which might be the ISO compliant PIN number) was the primary registration criterion and that no registration could be made in the registry without providing it. It was noted that serial numbers could include both numbers and Latin characters. In the future, new technologies could develop that would provide new types of serial numbers. If a manufacturer used an ISO standard PIN as the serial number for an item of MAC equipment, a secured creditor should be able to register an international interest using this sole criterion without providing additional data, as the unique nature of an ISO standard PIN would mean that the PIN alone would be sufficient to ensure the uniqueness that is required by article XVII of the MAC Protocol. It was noted that this approach could encourage manufacturers and industry bodies (such as the Association of Equipment Manufacturers) to continue to move towards using unique ISO standard PINs.

31. Subject to the point referred to in the previous paragraph regarding ISO compliant PINs, the Working Group agreed that a manufacturer's serial number alone may not be sufficient to guarantee uniqueness. Some participants suggested that it would be quite common for different MAC equipment to have the same serial number, whereas others suggested it would be a rare occurrence. It was noted that major manufacturers were increasingly using unique ISO PINs to identify their equipment, which meant that eventually it would be possible to uniquely identify MAC equipment with unique PIN numbers.

32. The Regulations Working Group discussed possible additional registration criteria at length, and whether it should be mandatory or optional for parties to satisfy such criteria in order to make a registration. It was suggested that the criteria should be readily ascertainable for creditors without placing a large burden on them. It was noted in particular that the information should be readily ascertainable by smaller creditors in developing countries who were likely to be significant beneficiaries under the MAC Protocol. Several different additional criteria were proposed:

- a. The brand name or the manufacturer name. Some participants noted that the brand name could be a preferable criterion rather than manufacturer name, as in many instances the brand name would be more readily apparent than the manufacturer name. Other participants suggested that the formulation in Section 5.1(c)(ii) could be useful, under which the brand name was the criterion, and the manufacturer's name would be used only if the brand name was unavailable.
- b. The model designation.
- c. A descriptive name for the equipment (e.g., "combine harvester" or "tractor"). It was suggested that the options for descriptive names could be found in a drop down list. Alternatively, parties could be encouraged to provide short descriptions. Other participants suggested that there would be no need to provide a descriptive name of the equipment if a free text box was provided. It was also suggested that this criterion should be voluntary rather than mandatory.
- d. The equipment's Harmonized System (HS) code. Some participants noted that where equipment was acquired domestically, the registering party may not know what the applicable HS code would be for the equipment.
- e. The location of the equipment at the time of registration. It was suggested that the location of the equipment of the time of registration would be readily known by the creditor. There were different views on whether the location should be specified at a national, provincial or city/town level. It was noted that at a domestic level, the use of the location of the equipment had been criticised as a registration criterion, on the basis that (i) the collateral moved and (ii) if a very specific location was provided, it could create security issues related to possible thefts.
- f. The place of manufacture.
- g. The year of manufacture.
- h. A picture of the equipment. Some participants suggested that a picture might be easy to ascertain for the debtor, but harder for the creditor. It was also suggested that pictures could be difficult to assess by judges where a dispute arose.
- i. A picture of the equipment's serial number plate.
- j. A free text box which would allow parties to include additional information, such as reference numbers from domestic registries. Some participants were supportive of the flexibility provided by the free text box, whereas other participants were concerned about the lack of clarity regarding what could be included and language barrier issues that could arise. It was agreed that the free text box, if included, should be a voluntary criterion rather than a mandatory criterion.

33. *The Regulations Working Group tentatively agreed on the following registration criteria:*
- a. Serial number (such as, where used by the manufacturer, ISO standard PIN number) as the mandatory primary criterion*
  - b. In addition, where a serial number that is not an ISO standard PIN number was provided, the following criteria:*
    - i. The brand name of the equipment, or if unavailable, the name of the manufacturer, and*
    - ii. The manufacturer's generic model designation.*
- While a number of speakers suggested that these criteria should be mandatory where the serial number was not an ISO standard PIN number, a consensus was not reached on the point.*

34. The Regulations Working Group did not reach consensus on whether to allow for additional registration criteria, and whether they should be mandatory or voluntary. Some participants suggested that allowing additional voluntary criteria would be useful for parties in ensuring uniqueness, whereas other participants suggested that from a legal risk perspective, parties were unlikely to provide additional information beyond what was strictly necessary to effect a registration.

35. The Regulations Working Group agreed that, while the registration criteria chosen should try to achieve certainty in uniquely identifying equipment, Article 17 should be interpreted to ensure that where two different registrations relating to different equipment included the relevant registration criteria but the criteria did not ensure uniqueness between them, both registrations should remain valid.

36. The Working Group also discussed whether the Registrar should have a role in correcting errors in the Registry, and what the outcome of such a correction would be, without reaching a firm decision. It was noted that Section 5.11(a) provided that a change in the information required in Section 5.1(c) created a new priority point, and that Section 5.11(a) might need to be revisited once Section 5.1(c) had been redrafted.

37. The Regulations Working Group discussed the effect of errors in a registration. It was noted that the effect of the error would depend on the particular criterion it related to and whether it was seriously misleading. For example, a simple error in the serial number would likely to be seriously misleading, whereas a slight misspelling of a brand name (e.g., "Deere" vs "Deer") would be less likely to be seriously misleading.

#### Search Criteria

38. The Regulations Working Group noted the important relationship between search criteria and registration criteria. As consistent with Article XVIII(1) of the MAC Protocol, the primary search criterion would be the manufacturer serial number. It was suggested that the MAC Registry should allow users to filter searches made against the serial number using the other fields, such as the brand name or model designation. There was no consensus on whether these additional filter searches should be able to be made against only the mandatory additional criteria, or also against voluntary registration criteria.

39. It was suggested that the MAC Registry should allow for a "self-search" as provided for in the Aircraft Registry Regulations, through which an administrator could search all registrations to which it was a party.



### Notification to named parties

40. The Regulations Working Group discussed whether the Registry should send automatic notifications to parties when a registration was made against equipment which they had an existing interest in. It was noted that Section 6.3 of the draft Regulations would allow the Registry to provide a useful service, especially in relation to informing parties about the registration of non-consensual rights or interests.

41. It was suggested that the notification system could be an opt-in service which allowed a degree of personalisation by sending more information to named parties to the registration and less information to other parties. It was noted that the costs associated with providing such an automated service would not be very high.

42. It was noted that the notifications received by the parties could have effects under domestic law by affecting whether a party had knowledge of another interest in equipment.

43. If the notification system was based solely on the serial number, then it was likely that the system would generate some unnecessary emails in instances where there were registrations against different items of equipment with the same serial number. It was suggested that the risk of the notification system sending large numbers of unnecessary emails could be mitigated by either restricting the system to deal only with registrations of non-consensual rights or interests or by allowing further levels of personalisation in terms of the notifications received (e.g., users could opt-in to notifications relating to registrations against equipment with a certain serial number, brand name and model designation). No decision was made in this regard.

44. *The Regulations Working Group tentatively agreed to retain Section 6.3 as an opt-in service.*

### Designated Entry Points

45. The Regulations Working Group discussed how the MAC Regulations should provide for designated entry points (DEPs). It was recalled that the Aircraft Registry provided for both direct entry points and authorising entry points, although no direct entry points into the Aircraft Registry had ever been successfully created (the United Arab Emirates had initially created a direct entry point but then changed it to an authorising entry point after a number of issues arose).

46. It was suggested that the MAC Regulations should adopt a different approach to DEPs. It was noted that authorising entry points would not be an appropriate mechanism for the MAC Registry, as Article XVI(3) of the MAC Protocol provided that registrations were not invalidated by a failure to properly use an entry point. DEPs to the MAC Registry could provide a valuable service and assist in overcoming language barrier issues by facilitating access to the MAC Registry in local languages. It was further suggested that the MAC Registry could develop portal software that would allow States to link their existing domestic collateral registries with the MAC Registry.

47. The Regulations Working Group agreed that the connecting factor for a party to use a DEP should be the location of the debtor. Some participants suggested that there could be benefit in providing a connecting factor only for "mandatory" DEPs (through which parties would need to make registrations or risk domestic administrative sanction), whereas voluntary DEPs might not need a connecting factor. However, the Regulations Working Group agreed that it would be preferable for the debtor's location to be the connecting factor for both mandatory and voluntary DEPs, as such an approach would increase certainty and predictability for parties in relation to which DEPs they should use.

48. *The Regulations Working Group agreed that the MAC Regulations should not provide a distinction between authorising and direct entry points and that the connecting factor for the use of mandatory or voluntary designated entry points should be the location of the debtor.*

#### Discharge

49. *The Regulations Working Group agreed that the discharge provisions in the draft MAC Regulations needed to be amended to accurately reflect the operation of Article XIX of the MAC Protocol.*

### **Voluntary Functions**

#### Closing Room

50. The Regulations Working Group noted that the closing room function had been very valuable for the Aircraft Registry. It was queried whether the function would have the same utility for the MAC Registry, as complex financing arrangements would be less common. It was noted that the closing room was a trademark of Aviareto.

51. *The Regulations Working Group agreed that Section 5.17 should be retained.*

#### Block assignments

52. The Regulations Working Group discussed whether the block assignment function provided for in Section 5.5 of the draft MAC Regulations should be retained. It was noted that the function was commonly provided for in domestic PPSRs and would be useful in allowing banks and other parties to transfer a bundle of registrations. Some participants suggested that the functionality could be included in the Registry without being specifically provided for in the MAC Regulations.

53. *The Regulations Working Group decided that Section 5.5 should be retained in square brackets for further discussion at future meetings.*

#### Non-Convention Filings

54. The Regulations Working Group discussed whether the MAC Registry should allow for non-Convention filings as provided for under Section 7 of the draft MAC Regulations.

55. It was noted that the functionality had been included in the draft Rail Registry Regulations (MACPC1 – Doc. 5) to increase the volume of registrations and thereby improve the economic viability of the Registry. Some participants suggested that the likely volume of registrations under the MAC Protocol was already expected to be very high and that the MAC Registry should not face any economic viability issues. Other participants suggested that if allowing the Registry to provide for non-Convention filings meant that the cost of registering Convention interests in the Registry would be lower, there might be merit in retaining the functionality.

56. Some participants opposed the MAC Regulations providing for non-Convention filings on the basis that such filings could burden the system, negatively affect its usability for parties looking to register Convention interests and increase due diligence costs. Other participants suggested that the functionality should be retained as it could allow the Registry to provide an additional service in developing countries that did not have domestic registries.

57. *The Regulations Working Group decided to put Section 7 in square brackets for further consideration at a future meeting.*

**Item No. 5 Time-table and planning of further work**

58. *The Regulations Working Group agreed that its second session would be held via videoconference on 26 - 27 October 2020.*

59. *The Secretariat noted that it would prepare the requested flow charts, update the draft MAC Regulations and Issues Paper and circulate the documents in advance of the second session.*

**Item No. 6 Any other business**

60. *No other business was raised under this item.*

**Item No. 7 Closing of the Session**

61. *The Chair thanked all the participants for their attendance and positive contributions to the discussion.*

62. *The Chair closed the first session of the Commission.*

**ANNEX I****LIST OF PARTICIPANTS****REPRESENTATIVES****STATES**

AUSTRALIA	Mr Gavin MCCOSKER Deputy Chief Executive and Chief Operating Officer Australian Financial Security Authority
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	Ms Anna VENEZIANO Deputy Secretary-General
	Mr William BRYDIE-WATSON Senior Legal Officer
	Mr Hamza HAMEED Legal Consultant

**ANNEX II**

**ORDER OF BUSINESS**

1. Opening of the session
2. Adoption of the order of business of the session
3. Election of the Chair of the Regulations Working Group
4. Consideration of issues associated with draft Regulations
5. Time-table and planning of further work
6. Any other business
7. Closing of the session