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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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Background research and preliminary assessment regarding the suitability of the World Trade Organization (WTO) and the Multilateral Investment Guarantee Agency (MIGA) for the role of Supervisory Authority of the International Registry to be established under the Mining, Agriculture and Construction (MAC) Protocol of the Cape Town Convention.

1. This document supplements MACPC/2/Doc.3 which presented research on potential candidates for the role of Supervisory Authority of the International Registry of the MAC Protocol. Following the discussion on Doc.3, the Preparatory Commission requested the Secretariat to give preliminary consideration to the suitability of WTO and MIGA to undertake the role of Supervisory Authority.
2. All the information in this document is taken directly from the websites of the World Trade Organization (<https://www.wto.org/>) and the Multilateral Investment Guarantee Agency (<https://www.miga.org/>).

World Trade Organization (WTO)

3. Established in 1995 under the Marrakech Agreement, WTO is an intergovernmental organisation dealing with the rules of trade between nations. WTO has 164 Member States which represent 98 per cent of world trade. WTO had an annual budget of 197 million Swiss francs for 2020 and employed 623 secretarial staff members.
4. WTO serves as a forum for trade negotiations, with the Secretariat largely in charge of administering WTO trade agreements. The organisation handles trade disputes and monitors national trade policies, also providing technical assistance and training for developing countries as well as facilitating cooperation between countries.
5. WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers or by their ambassadors or delegates. Since August 2020, the position of WTO Director General has remained vacant. The highest authority of the WTO is the Ministerial Conference, which must meet at least every two years and is the body responsible for making all

major decisions. In between each Ministerial Conference, the daily work is handled by three bodies whose membership is the same; they only differ by the terms of reference under which each body is constituted: the General Council; the Dispute Settlement Body; and the Trade Policy Review Body. The General Council also has three subsidiary Councils (Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, and Council for Trade in Services) and a Trade Negotiations Committee.

6. While particularly important in facilitating trade, WTO has no experience working in the area of secured transactions law reform. It largely works towards reducing barriers to trade through multilateral efforts at a political level, rather than through technical law reform. WTO serves as an international organisation which develops rules of global trade and determines what constitutes appropriate rules and customs for handling trade in goods and services between countries. Its work does not intersect with secured transaction law. Additionally, the main functions of WTO are mostly to administer WTO trade agreements, set up a forum for trade negotiations, handle trade disputes and monitor national trade policies; as such, WTO has no experience managing electronic collateral registries and has no prior involvement or experience with the Cape Town Convention or any of its Protocols. Its ordinary activities seem very distanced from the type of work that would be expected from a Supervisory Authority.

7. As a multilateral body largely serving as a State-to-State platform for governments to initiate trade negotiations and resolve multilateral trade disputes relating to its agreements, the work of WTO is largely in the public sphere, with limited engagement of the private sector. It is also not involved with private financiers of equipment or other related organisations. While its work facilitates access to credit through multilateral cooperation and trade agreements, this is on a State-to-State level, rather than through enabling greater certainty in private cross-border transactions.

8. Following a preliminary assessment, WTO would not seem like a most suitable option for the role of Supervisory Authority of the International Registry for the MAC Protocol.

Multilateral Investment Guarantee Agency (MIGA)

9. Established in 1988, MIGA is part of the World Bank Group and serves as an international financial institution which offers political risk insurance and credit enhancement guarantees. Its mandate is to promote cross-border investment in developing countries by providing guarantees to investors and lenders.

10. MIGA's guarantees help protect investments against non-commercial risks and can help investors obtain access to funding sources with improved financial terms and conditions. MIGA's present strategy is to help countries and companies respond to the COVID-19 pandemic and its wider economic impact; to play a part in delivering the World Bank Group's twin goals and supporting the World Bank and IFC in meeting their capital package commitments; and to increase its proportion of guarantees in IDA countries and Fragile and Conflict-Affected Situations (FCS) and guarantees in support of Climate Finance.

11. MIGA has 181 member countries and is governed by its States. MIGA also has its own executive leadership and staff which carry out its daily operations. Its shareholders are member governments that provide paid-in capital and have the right to vote on its matters. It insures long-term debt and equity investments as well as other assets and contracts with long-term periods. The agency is assessed by the World Bank's Independent Evaluation Group each year.

12. While MIGA plays an important role in enabling creditors and financiers to lend with greater confidence, this is entirely through guarantees, rather than through the implementation of secured transactions law reform. MIGA focuses on providing political risk guarantees to protect investments against non-commercial risks, such as expropriation, breach of contract, war and civil disturbance, currency inconvertibility and transfer restriction, etc. Its credit enhancement products only provide protection against losses resulting from a failure of a sovereign, sub-sovereign, or State-owned enterprise to make a payment when due under an unconditional financial payment obligation or guarantee related to an eligible investment. Additionally, the availability of such products is also limited to governments or State-owned enterprises with satisfactory credit ratings.

13. Most of MIGA's work is primarily designed to answer the needs for protection against government instability, civil unrest, and expropriation events against funds held at central banks in emerging markets. While these products may assist investors to have guarantees against States, the model is very different from providing added certainty to cross-border transactions between private parties through a uniform system of secured transactions law. It has some experience working with electronic registries, but not of a secured transactions nature. It also does not have any association or experience relating to the Cape Town Convention or any of its Protocols. Its ordinary activities seem very distanced from the type of work that would be expected from a Supervisory Authority. Moreover, MIGA is a member of the World Bank Group, as was the IFC which already rejected the role of Supervisory Authority, despite its activities being functionally much closer to the scope of the Cape Town Convention.

14. Following a preliminary assessment, MIGA would not seem like a very suitable option for the role of Supervisory Authority of the International Registry for the MAC Protocol.

	WTO	MIGA
Prior knowledge and/or experience relating the Cape Town Convention and/or its Protocols	X	X
Portfolio of work in secured transactions law	X	X
Experience with electronic collateral registries	X	X
Suitable for the role of Supervisory Authority	X	X