

# **FINAL ACT**

**of the Diplomatic Conference for the adoption of the draft Protocol  
to the Convention on International Interests in Mobile Equipment  
on Matters specific to Mining, Agricultural and Construction Equipment**

**held at the invitation of the Government of the Republic of South Africa and under the  
auspices of the International Institute for the Unification of Private Law (UNIDROIT)  
in Pretoria from 11 to 22 November 2019**



**PRETORIA**

**22 NOVEMBER 2019**

## **RESOLUTION 1**

### **RELATING TO THE ESTABLISHMENT OF THE PREPARATORY COMMISSION FOR THE ESTABLISHMENT OF THE INTERNATIONAL REGISTRY FOR MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

HAVING REGARD to Article XIV of the Protocol;

BEARING IN MIND the Convention on International Interests in Mobile Equipment (the Convention), opened to signature in Cape Town on 16 November 2001;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry for mining, agricultural and construction equipment in order to ensure that it is operational by the time the Protocol enters into force;

CONSIDERING the advantages of formulating the policies and procedures as well as adapting the procedures employed in establishing the International Registry for aircraft objects and the International Registry for railway rolling stock in order to facilitate the expeditious establishment of the International Registry for mining, agricultural and construction equipment, and contain the costs thereof to the extent possible;

*RESOLVES:*

TO ESTABLISH, pending the entry into force of the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry for mining, agricultural and construction equipment, under the guidance and supervision of the Governing Council and the General Assembly of UNIDROIT.

Such Preparatory Commission shall be composed of:

- (1) Up to twenty representatives, who shall have the necessary qualifications and experience, appointed by UNIDROIT from those nominated by the following:
  - (a) States or Regional Economic Integration Organisations that have signed, ratified or acceded to the Protocol;
  - (b) Up to seven States from among the States that participated in the Conference (*negotiating States*);
  - (c) Up to seven States nominated by the sponsoring Organisation (UNIDROIT);
- (2) The UNIDROIT Secretariat, as the Secretariat of the Preparatory Commission;

- (3) The following may participate as observers to the meetings of the Preparatory Commission:
- (a) The Chair of each of the Commissions, Committees and Working Groups established by the Conference;
  - (b) The MAC Working Group;
  - (c) The International Registries of the other Protocols;
  - (d) The World Customs Organization, the World Bank Group and the Kozolchuk National Law Center (NatLaw).

Other negotiating States and relevant international organisations may also be invited to participate as observers.

THAT all participants in the Preparatory Commission's work shall participate without any financial implications for either the Preparatory Commission or UNIDROIT;

THAT the Preparatory Commission shall have such legal personality as may be necessary;

TO INSTRUCT the Preparatory Commission to carry out, under the guidance and supervision of the Governing Council and the General Assembly of UNIDROIT, the following functions:

- (1) to establish its rules of procedure and methods of work, including the appointment of its chair(s), the setting up of expert committees, and the determination of the place and dates of meetings to carry out its work;
- (2) with a view to guarantee the operability of the International Registry by the time of entry into force of the Protocol, to ensure that the Registrar managing the International Registry be selected in accordance with an objective, transparent and fair selection process, and that all necessary regulations and procedures be prepared and approved, with a target date of two years from the convening of the first meeting of the Preparatory Commission, which is to take place before six months have passed from the adoption of the Protocol;
- (3) to work on other matters relating to the International Registry for mining, agricultural and construction equipment as may be required with a view to ensuring the establishment of the International Registry;
- (4) to enter into a contract with the Registrar that makes provision for the development or testing of the software, the initial fees, the user application process and timelines, as well as other relevant details;
- (5) to ensure the necessary liaison and co-ordination with private industry which will be users of the International Registry; and
- (6) to initiate consultations capable of ensuring effective co-operation with relevant existing national and regional registries;

TO DIRECT the Preparatory Commission to make use, in the carrying out of its functions, to the maximum extent feasible and appropriate, of the prior experience acquired in the establishment and operation of the International Registry for other Protocols;

TO DIRECT the Preparatory Commission to work towards the establishment of the Supervisory Authority;

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of UNIDROIT, required under this Resolution and to entrust UNIDROIT, with the task of administering such funds.

## **RESOLUTION 2**

### **RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY OF THE INTERNATIONAL REGISTRY FOR MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

HAVING REGARD to Article XIV(1) of the Protocol;

MINDFUL THAT the Convention on International Interests in Mobile Equipment (the Convention), opened to signature in Cape Town on 16 November 2001;

IN LIGHT OF the adoption by the Conference of Resolution 1 relating to the setting up of the Preparatory Commission for the establishment of the International Registry for mining, agricultural and construction equipment;

CONSIDERING the active participation in the preparatory work and at the Diplomatic Conference by the observer representing the International Finance Corporation (IFC) of the World Bank Group, and in the light of preliminary consultations with the said international financial institution;

#### ***RESOLVES:***

TO INVITE the governing bodies of the IFC to accept the functions of Supervisory Authority upon or after the entry into force of the Protocol, to take the necessary action in this regard, as appropriate, and to inform the Secretary-General of UNIDROIT accordingly;

TO INVITE the Preparatory Commission, to be established in light of the adoption by the Conference of Resolution 1, to consider the appointment of another international Organisation or entity as Supervisory Authority upon or after the entry into force of the Protocol, in the event that the IFC expressly decides not to become the Supervisory Authority or no express confirmation has been received within 6 months from the adoption of this Protocol;

TO INVITE the Supervisory Authority to establish a Commission of Experts consisting of not more than 15 members appointed by the Supervisory Authority from among persons nominated by the Signatory and Contracting States to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority in the discharge of its functions.

### **RESOLUTION 3**

#### **RELATING TO TECHNICAL ASSISTANCE WITH REGARD TO THE IMPLEMENTATION AND USE OF THE INTERNATIONAL REGISTRY FOR MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT

MINDFUL of the objectives of the Convention on International Interests in Mobile Equipment (the Convention) and the Protocol to the Convention on Matters Specific to Mining, Agricultural and Construction Equipment (the Protocol);

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry for mining, agricultural and construction equipment (the International Registry);

*RESOLVES:*

TO ENCOURAGE all negotiating States, international organisations and private parties, such as the mining, agricultural and construction manufacturing and financial industries, to assist developing States in any appropriate way, including the provision of facilities and the experience necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as soon as possible, and, to this effect, to set up a fund to which contributions shall be made on a voluntary basis and which will function under the authority of the Supervisory Authority.

## **RESOLUTION 4**

### **RELATING TO THE OFFICIAL COMMENTARY ON THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

MINDFUL of the existing Official Commentaries to the Convention on International Interests in Mobile Equipment and its existing Protocols, as well as their importance as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Note on the draft Protocol submitted to the Conference (DCME-MAC – Doc. 4 corr.) provides a suitable starting point for the further development of this official commentary;

#### *RESOLVES:*

TO REQUEST the preparation of an official commentary on the Protocol by the Rapporteur of the Diplomatic Conference, in close co-operation with the UNIDROIT Secretariat, and in co-ordination with the Chair of the Commission of the Whole, the Chairs of the Final Clauses Committee, and the Chairs of the Drafting Committee;

TO REQUEST that the Official Commentary be circulated for comment in draft form among the States and observers that participated in the Conference prior to its publication being authorised; and

TO REQUEST that a revised final version of the Official Commentary be transmitted by the UNIDROIT Secretariat to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.

## **RESOLUTION 5**

### **EXPRESSING THE GRATITUDE OF THE CONFERENCE TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR HOSTING AND ORGANISING THE CONFERENCE**

THE DIPLOMATIC CONFERENCE FOR THE ADOPTION OF THE DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

MINDFUL of the dedicated and facilitating role played by the Government of the Republic of South Africa in increasing attendance at the Diplomatic Conference as well as finalising the Protocol;

GRATEFUL to the Government of the Republic of South Africa for having played a substantial role in the planning, preparation and organisation of the Conference;

ACKNOWLEDGING the instrumental overall role of the Government Officials of the Department of International Relations and Cooperation of the Republic of South Africa;

EXPRESSES its deep gratitude and sincere appreciation to the Government of the Republic of South Africa and its officials;

*RESOLVES* that the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment shall also be known as the "Pretoria Protocol".