Financing of high-value equipment: mining, agricultural and construction (MAC Protocol)

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HOW TO EXPAND THE CAPE TOWN SYSTEM

- Aircraft Protocol
- Rail Protocol
- Space Protocol
- Cape Town Convention
- Article 51(1) CTC
- MAC Protocol
- Other Protocols
EQUIPMENT CRITERIA

Article 51 (1) CTC

High-value

Mobile

Uniquely Identifiable
MAC EQUIPMENT

Article 51 (1) CTC

High-value?  Mobile?  Uniquely Identifiable?

[Diagram of equipment]
I.- Coverage: Mining, agriculture and Construction equipment

High-value  Mobile  Uniquely Identifiable

The HS System

Internationality
Actual or potential, natural, presumed

Interaction with domestic law or other harmonizing instruments

Immovable-associated equipment
MAC equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated

Internal Transactions (Article 50 CTC)
I. Coverage: Mining, agriculture and Construction equipment

- **High-value**
- **Mobile**
- **Uniquely Identifiable**

The HS System

**36 HS Codes**

- 20 codes in Annex 1
- 28 codes in Annex 2
- 17 codes in Annex 3
- 9 of 36 in the 3 Annexes

**FACTORS to select suitable HS codes (Tier 1):**

a). Used primarily in MAC industries – if general use, excluded
b). High value (from 10,000-7Mill USD – unit value 100,000USD)
c). Individually financed under current industry practice
d). Individual serial number
e). Only parts - excluded
f). Significant amounts of international trade
### 1). Definitions and scope

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<th>Annex 1 – Agricultural equipment - including forestry and fisheries (aquaculture equipment)</th>
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Definitions and scope

Annex 1 – Agricultural equipment
- including forestry and fisheries
  (aquaculture equipment)

Art. II.1.

“...irrespective of any intended or actual use ...”

843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Plows
Annex 2—Construction equipment

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“...irrespective of any intended or actual use ...”

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Definitions and scope
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Annex 3 – Mining equipment

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...
2). Multi-purpose equipment

3). Interaction with other Protocols

**ART. II.1. + ‘irrespective of actual or intended use’**

**ACTUAL USE IS NOT RELEVANT:** If covered by a HS code, Protocol applies – 9 of 36 HS codes are included in the 3 Annexes

**ART. II.4.**

**SCOPE-DELIMITING SOLUTION:** not applicable to objects falling within the definition of object under existing 3 Protocols

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<th>MAC equipment</th>
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Installation situations in the CTC

- **Item** (other than an object)
  - Art. 29(7) CTC

- **Object** (equipment)
  - Art. VII MAC Protocol

- **Immovable property**
Mac equipment that is **so associated** with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated.

- **Association**
- **Extension**
- **Law of situation**

Applicable law to define i.a.e. – consequences as per Alternative Art. VII
Innovations: Association with Immovable Property

Situations

- a). Cannot be created
- b). Has ceased to exist
- c). Is subordinated
- d). Is otherwise affected by association

Scope: Contracting and non-Contracting State

1). NCS: applicable law applies
2). CS: DECLARATION Alternative A, B or C

+ CGE2: post-association creation

Art. VII
Mandatory declaration

- Creation
- Existence
- Priority
- Other effect

- No NCS
- CS: A, B, C
Association with Immovable Property

ALTERNATIVES

A

NO EFFECT – PROTOCOL APPLIES: Immovable-associated equipment is severable [STANDARD]

- standard:
  uniform standard
  factual standard
  estimated value higher than cost and repair

- rebuttable presumption:
  association or creation of international interest (the later)
Association with Immovable Property

**Art. VII**

**ALTERNATIVES**

A. NO EFFECT – PROTOCOL APPLIES

1. LOST INDIVIDUAL LEGAL IDENTITY: domestic law applies
   - standard:
     - domestic law standard
     - legal standard

B. NO LOST IDENTITY: immovable property interest that extents over equipment has priority ONLY if:
   - registration of interest in immovable prior to registration of i.i.
   - association prior to registration of i.i.
Association with Immovable Property

**ALTERNATIVES**

**A**

NO EFFECT – PROTOCOL APPLIES

**B**

1). LOST INDIVIDUAL LEGAL IDENTITY: domestic law applies
2). NO LOST IDENTITY: immovable property interest that extents over equipment has priority ONLY if:
   - registration of interest in immovable prior to registration of i.i.
   - association prior to registration of i.i.

**C**

DOMESTIC LAW APPLIES
Certainty, predictability and sensitivity to legal traditions and domestic legal systems

'Rethinking' the concept of mobile equipment

Promotion of harmonized solutions:
- three uniform alternative
- uniform standard
- protection of international interest
II.2- Inventory-related provisions

Dealer means ‘a person that sells or leases equipment in the ordinary course of its business’

Inventory means ‘equipment held by a dealer for sale or lease in the ordinary course of its business’

CREDITOR 1 \(\rightarrow\) DEALER \(\rightarrow\) BUYER

CREDITOR 2

Inventory
II.2- Inventory-related provisions

**DEFINITIONS**

**OPT-IN DECLARATION**

**Place of Business**

- Buyer
- Conditional buyer
- Lessee

*free from any unregistered interest*

- Article 29(3)(b) / 29(4)(b)

Unless the applicable law otherwise provides'

**PRIORITY RULES MODIFICATION**

**Ordinary course**

- Buyer
- Conditional buyer
- Lessee

*free from any registered interest*

- Article 29(3)(b) / 29(4)(b)

Unless the applicable law otherwise provides'
Testing the soundness and adaptability of Cape Town Convention tenets: lessons from the MAC Protocol’s experience

Harmonization strategy

MAC Protocol

Other Protocols

Article 51(1) CTC

Aircraft Protocol

Rail Protocol

Space Protocol
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