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**MAC Protocol  
Committee of Governmental Experts  
First Session  
Rome, 20 – 24 March 2017**

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## **COMMENTS**

(Submitted by the Government of the Republic Of South Africa)

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

1. The Republic of South Africa values the opportunity to participate in the Committee of Governmental Experts on the drafting of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Agricultural, Construction and Mining Equipment, and we commend the UNIDROIT Secretariat, the Governing Council and the members of the Study Group on the extensive draft Protocol that was prepared.

2. The development of this new Protocol has the potential to facilitate access to credit for the purchase and lease of mining, agricultural, and construction equipment, and that, as a consequence, it may contribute positively to economic development and employment, small and medium business development, access to equipment, a reduced cost of production and growth of the manufacturing industry.

3. In general, we are supportive of the format, structure, processes and content reflected in the draft Protocol, and we believe that it is building on the success proven to exist in the previous iterations of Protocols under the Cape Town Convention on International Interests in Mobile Equipment. However, we would be grateful if the following comments could be considered by the Committee of Governmental Experts:

3.1 It is important that the level of security provided for creditors is not given such a priority as to completely exclude the role of courts. From a South African perspective, we believe that the right enshrined in Section 34 of the Constitution of the Republic of South Africa, 1996, where everyone is afforded the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum is shared by many other States. Where options are provided for States to exercise, it is important to retain an option that will allow a State to ratify the future MAC Protocol with the retention of the right of domestic courts to be the final arbitrator in legal disputes with reference to Article X.

3.2 We view simplification of a document that appears to be quite complex in many respects as a potential primary aim of the Committee of Governmental Experts, and in this

regard we are of the view that, instead of having three Annexes to the Protocol that largely repeats information, it is possible to combine the three Annexes into one document with three possible fields of application. States may then, instead of adopting particular Annexes, merely specify whether the Protocol will be applicable to Mining, Agricultural or Construction equipment, or any combination of the three.

3.3 The use of the Harmonized System (HS) codes clearly present a very efficient manner in which to identify equipment. However, the deficiencies of the HS system is also well known, and it may be simpler to delete the HS codes from the Annexes while retaining general descriptions therein, and then to allow the future international registry secretariat to administer the HS codes. Such a change would afford due flexibility in correcting minor mistakes, amending the lists, and generally updating lists as more products become available, as opposed to casting the lists in stone in Annexes that will require a lot of effort to amend.

3.4 South Africa is still in the process of verifying whether all South African manufactured or traded equipment is contained on the relevant lists, and we would value the opportunity to forward the relevant information on this aspect once the process in South Africa has been concluded.

3.5 With reference the association of equipment permanently affixed to immoveable property with that immoveable property in Article VII, we are of the view that it is necessary to retain choices of procedures to be adopted so as to enable South Africa to choose an option that allows it to deal with the issue in accordance with the constraints of South African domestic law.

3.6 We believe that a proper assessment may be required on the impact of the draft Protocol on manufacturers and traders of relevant equipment in smaller economies and developing States, and that it must be established that the draft Protocol will not have unintended consequences in weakening the position of such businesses *vis-à-vis* larger manufacturers in more established economies. In this regard, South Africa welcomes the opportunity to engage with other States on this pertinent question during the meeting of the Committee of Governmental Experts.

4. We look forward to participating in the drafting discussions of the Committee of Governmental Experts. We wish to add our appreciation to UNIDROIT for facilitating this event. South Africa remains committed to the negotiation of a fair, just and equitable MAC Protocol which balances the interests of all States through a consultative process of compromise and understanding.