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INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL
CARRIAGE BY RAIL

**DIPLOMATIC CONFERENCE TO ADOPT A
RAIL PROTOCOL TO THE CONVENTION ON
INTERNATIONAL INTERESTS IN MOBILE
EQUIPMENT**

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**PART II OF THE REPORT BY THE DRAFTING COMMITTEE
TO THE COMMISSION OF THE WHOLE**

(presented by the Chairman of the Drafting Committee)

INTRODUCTION

1. The Drafting Committee held a sixth and seventh meeting on 20 February 2007, during which it considered for the first time the text of Article XXV of the draft Protocol and the text of a new Article XVIII *bis* dealing with notices of sale and made amendments to Article I(2)(e) and (f), Article VII(1), (4) and (5), Article VIII(5 *ter*) and (5 *quater*), Alternative A of Article IX(6 *bis*), Alternative C of Article IX(3),(4),(7 *bis*), (8) and (9), Article XIII(1) and (5), Article XIV and Article XVI *bis* (1) and (2), in particular in the light of the consideration of these provisions by the Commission of the Whole, notably following the presentation by the Chairman of the Drafting Committee of Part I of the Report of the Drafting Committee. The texts of these provisions as reviewed by the Drafting Committee on the occasion of these two meetings are set out in the Appendix to this Report.

2. The changes proposed to the text of the aforementioned provisions of the draft Protocol submitted to the Conference in DCME-RP – Doc. 3 are indicated by the crossing out of the relevant provision, where parts of the text would under these changes be deleted, and by underlining, where new provisions would be introduced.

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TO THE CONVENTION ON INTERNATIONAL INTERESTS
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DRAFT PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING it necessary to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as *the Convention*) as it relates to railway rolling stock, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of railway rolling stock and their finance,

HAVE AGREED upon the following provisions relating to railway rolling stock:

CHAPTER I GENERAL PROVISIONS

Article I Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:¹
 - (a) “guarantee contract” means a contract entered into by a person as guarantor;
 - (b) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
 - (c) “insolvency-related event” means:
 - (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
 - (d) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there is none, the place where the debtor is incorporated or formed, unless proved otherwise;

¹ The Official Commentary on Article 7(b) of the Convention makes clear that the “power to dispose” includes the power to permit the use of any object. The Drafting Committee considers therefore that neither a definition nor a similar provision should be added in this Protocol to confirm this position.

- (e) ~~“public service rolling stock” means railway rolling stock habitually used for transporting the public on scheduled services, together with locomotives and ancillary railway rolling stock habitually used to provide such services;~~
- (ef) ~~“railway rolling stock vehicle” means a vehicles movable on or directly above a fixed railway track or directly on, above or below a guideway, ~~together with~~ fixed superstructures, ~~or racks,~~ ~~installed or designed to be installed on such vehicles,~~ ~~including all~~ traction systems, engines, brakes, axles, bogies, ~~and~~ pantographs, ~~and in each case including~~ accessories and other components, equipment and parts, ~~in each case~~ installed on or incorporated therein the vehicles, and together with all data, manuals and records relating thereto, or attached thereto;~~
- (g) ~~“railway rolling stock” means railway vehicles and all operating and technical data, manuals, notebooks and other records identifiable in relation to a specific railway vehicle.~~

Article II

Application of Convention as regards railway rolling stock

1. The Convention shall apply in relation to railway rolling stock as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to railway rolling stock.

Article III

Derogation

~~In their relations with each other,~~ The parties may, by agreement in writing, [, exclude the application of Article IX and,] in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article VII(2) and (3).

Article IV

Representative capacities

A person may, in relation to railway rolling stock, enter into an agreement, effect a registration as defined by Article 16(3) of the Convention and assert rights and interests under the Convention, in an agency, trust or representative capacity ~~on behalf of a creditor or creditors.~~

Article V

Identification of railway rolling stock in the agreement

1. ~~For the purposes of Article 7 of the Convention, a description of an item of railway rolling stock is sufficient if: (a) it contains its manufacturer's name, its serial number and its model designation; or (b) it conforms to the method prescribed by the ensuing paragraphs.~~

1. For the purposes of Article 7(c) of the Convention and Article XIX(2) of this Protocol, a description of railway rolling stock is sufficient to identify the railway rolling stock if it contains:

(a) a description of the railway rolling stock by item;

(b) a description of the railway rolling stock by type;

(c) a statement that the agreement covers all present and future railway rolling stock;
or

(d) a statement that the agreement covers all present and future railway rolling stock except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in future railway rolling stock identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the railway rolling stock, without the need for any new act of transfer.

~~2. For the purposes of Chapter V of the Convention, the Supervisory Authority shall, in regulations, prescribe a system for the allocation of identification numbers by the Registrar to enable the unique identification of items of railway rolling stock. The identification number shall either be affixed to the item of railway rolling stock or be associated in the International Registry with a national or regional identification number so affixed.~~

~~3. For the purpose of the preceding paragraph, a Contracting State may by declaration state the system of national or regional identification numbers that shall be used [with respect to items of railway rolling stock subject to an international interest created by a debtor situated in that Contracting State at the time of the conclusion of the agreement creating or providing for the international interest]. Such a national or regional identification system shall ensure the unique identification of items of railway rolling stock and compliance with the basic informational requirements of the Convention and this Protocol for the operation of the International Registry.~~

~~4. A declaration by a Contracting State according to the preceding paragraph shall be made at the time of ratification, acceptance, approval of, or accession to this Protocol and shall include detailed information on the operation of the national or regional identification system.~~

~~5. The Supervisory Authority shall review the national or regional identification system set out in a declaration by a Contracting State pursuant to paragraph 3 and may give advice on the measures to be taken to ensure that the system complies with the conditions set out in paragraph 3.~~

~~6. Every registration in respect of a specific item of railway rolling stock shall be made against the identification number allocated by the Registrar pursuant to paragraph 2.~~

~~7. A registration in respect of an item of railway rolling stock for which a declaration pursuant to paragraph 3 has been made, shall specify all the national or regional identification numbers to which the item has been subject since the entry into force of this Protocol and the time during which each number has applied to the item. The debtor shall, and the creditor may, provide the International Registry with any new national or regional identification number allocated during the currency of the registration of the relevant interest. Any identification number so specified or provided shall be registered in the International Registry by the Registrar. Failure to comply with any of the above requirements shall not invalidate the registration.~~

Article VI
Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVII.
2. The parties to an agreement or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

CHAPTER II
DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article VII
Modification of default remedies provisions

~~1. Any court order under Articles 8(1)(a) and (2), 10 and 13(1)(b) of the Convention authorising the creditor to take possession, custody or control of the object may specify the reasonable measures to be taken by the debtor to make it possible for the creditor to exercise its rights in accordance with the order.~~

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter, procure the export and physical transfer of the railway rolling stock from the territory in which it is situated.

1bis. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.

2. Article 8(3) of the Convention shall not apply to railway rolling stock. Any remedy given by the Convention in relation to railway rolling stock shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.

3. A chargee giving ~~14~~ fourteen or more calendar days' prior written notice of a proposed sale or lease to interested persons as provided by Article 8(4) of the Convention shall be deemed to satisfy the requirement of giving the "reasonable prior notice" specified therein. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

4. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedy provided by paragraph 1.

5. A chargee proposing to procure the export of railway rolling stock under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed export to:

- (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
- (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the export.

Article VIII

Modification of provisions regarding relief pending final determination

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII and to the extent stated in such declaration.

~~2. Relief under Article 13(1) of the Convention shall not be dependent upon the agreement of the debtor.~~

3. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

4. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

- “(e) if at any time the debtor and the creditor specifically agree, sale of the object and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

5. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5bis The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

5ter With regard to the remedies in Article VII(1):

- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the creditor notifies such authorities that the relief specified in Article VII(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to procure those remedies in accordance with the Convention; and

- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

5 quater Paragraphs [3] and [5 ter] shall not affect any applicable safety laws and regulations.

~~6. Judicial relief under Article 13(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings in another State unless its application would contravene an international instrument or an instrument made by a Regional Economic Integration Organisation to which Article XXII(1) of this Protocol applies, being an instrument which in either case is binding on the Contracting State.~~

Article IX
Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVII.

1bis References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 6, give possession of the railway rolling stock to the creditor no later than the earlier of:

- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of the railway rolling stock if this Article did not apply.

3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement; and
- (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

5. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve the railway rolling stock and maintain it and its value.

6. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement and related transaction documents. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

6bis. With regard to the remedies in Article VII(1):

(a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

7. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

8. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

9. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

10. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests.

11. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXVII whether it will:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the railway rolling stock, in accordance with the applicable law.

3. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.

5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the railway rolling stock but fails to do so, the court may permit the creditor to take possession of the railway rolling stock upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.

6. The railway rolling stock shall not be sold pending a decision by a court regarding the claim and the international interest.

Alternative C

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall within the cure period:

(a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or

(b) give the creditor the opportunity to take possession of the railway rolling stock in accordance with the applicable law.

3. Before the end of the cure period, the insolvency administrator or the debtor, as applicable, may apply to the court for an order suspending its obligation under sub-paragraph (b) of the preceding paragraph for a period commencing from the end of the cure period ~~for such period and~~ ending not later than ~~the~~ expiration of the agreement or any renewal thereof, and on such terms as the court considers just (the "suspension period"). ~~No such order shall be made unless the insolvency administrator or the debtor, as applicable, has undertaken to the court to pay all sums and perform all other obligations accruing to the creditor during the suspension period. Any such order shall require that all sums accruing to the creditor during the suspension period be paid from the insolvency estate as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.~~

4. If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the railway rolling stock ~~shall not be sold pending a decision an order of by~~ the court. If the application is not granted within such number of calendar days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made, the application will be deemed withdrawn unless the creditor and the insolvency administrator or the debtor, as applicable, otherwise agree.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the railway rolling stock and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the railway rolling stock under arrangements designed to preserve and maintain it and its value.

7. ~~The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock where, Where~~ during the cure period or any suspension period, ~~the insolvency administrator or the debtor, as applicable,~~ it cures all defaults other than a default constituted by the opening of insolvency proceedings and agrees to perform all future obligations under the agreement and related transaction documents, ~~the insolvency administrator or debtor may retain possession of the railway rolling stock and any order made by the court under paragraph 3 shall cease to have effect.~~ A second cure period shall not apply in respect of a default in the performance of such future obligations.

7 bis With regard to the remedies in Article VII(1):

- (a) they shall be made available by the administrative authorities in a Contracting State no later than seven calendar days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable safety laws and regulations.

8. Subject to paragraphs 3, ~~and~~ 4 ~~and~~ 7, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.

9. Subject to paragraphs 3, ~~and~~ 4 ~~and~~ 7, no obligations of the debtor under the agreement and related transactions may be modified in ~~the~~ insolvency proceedings without the consent of the creditor.

10. Nothing in paragraph 9 shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

11. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in ~~the~~ insolvency proceedings over registered interests.

12. The Convention as modified by Articles VII and XXV of this Protocol shall apply to the exercise of any remedies under this Article.

13. For the purposes of this Article, the “cure period” shall be the period, commencing with the date of the insolvency-related event, specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

Article X
Insolvency assistance

1. This Article applies only in a Contracting State which has made a declaration pursuant to Article XXVII (1).

2. The courts of a Contracting State in which railway rolling stock is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX, ~~so far as applicable.~~

*Article XI**Modification of assignment provisions*

~~Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):~~

~~"and (c) the debtor has not been given prior notice in writing of an assignment in favour of another person":~~

*Article XII**Debtor provisions*

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:

- (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4)(b) of the Convention unless and to the extent that the debtor has otherwise agreed; and
- (b) the holder of any interest to which the debtor's right or interest is subject pursuant to Article 29(4)(a) of the Convention, but only to the extent, if any, that such holder has agreed.

2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to railway rolling stock.

CHAPTER III**REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN RAILWAY****ROLLING STOCK REGISTRY PROVISIONS***Article XIII**The Supervisory Authority and the Registrar*

~~1. The Supervisory Authority shall be a body consisting of representatives, one representative to be appointed by each State Party.~~

1. The Supervisory Authority shall be a body established by representatives, one representative to be appointed:

- (a) by each State Party;
- (b) by each of a maximum of three other States to be designated by the International Institute for the Unification of Private Law (UNIDROIT); and
- (c) by each of a maximum of three other States to be designated by the Intergovernmental Organisation for International Carriage by Rail (OTIF).

1 bis In the designation of the States referred to in sub-paragraphs (b) and (c) of the preceding paragraph regard shall be had to the need to ensure broad geographical representation.

1 ter The term of appointment of the representatives appointed pursuant to sub-paragraphs 1(b) and (c) of paragraph 1 shall be that specified by the designating Organisations. The terms of those representatives serving on the date when this Protocol enters into force for the tenth State Party shall expire no later than two years after that date.

1 quater The Supervisory Authority may adopt its initial rules of procedure by a simple majority vote.²

1 quinquies The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.

2. A secretariat (the Secretariat) The Intergovernmental Organisation for International Carriage by Rail shall be the Secretariat of the Supervisory Authority and shall assist the Supervisory Authority in the discharge performance of its functions, as directed by the Supervisory Authority. The Secretariat shall be OTIF.

2bis. In the event that the Secretariat becomes unable or unwilling to discharge its functions, the Supervisory Authority shall designate another Secretariat.

2ter. The Secretariat shall, on being satisfied that the International Registry is fully operational, forthwith deposit a certificate to that effect with the Depository.

3. The Secretariat shall have legal personality where not already possessing such personality, and shall enjoy, in relation to its functions under the Convention and this Protocol, the same exemptions and immunities as are provided to the Supervisory Authority under Article 27(3) of the Convention and to the International Registry under Article 27(4) of the Convention.

4. A ~~decision measure taken by of~~ the Supervisory Authority that affects only the interests of a State Party or a group of States Parties shall be made if such State Party or the majority of the group of States Parties also approve votes in favour of the ~~measure~~decision. A ~~decision measure~~ that could adversely affect the interests of a State Party or a group of States Parties shall have effect in such State Party or group of States Parties if such State Party or the majority of the group of States Parties also approve votes in favour of the ~~decision~~measure.

5. The first Registrar shall be appointed for a period of not less than five or more than not exceeding [10] ten years. Thereafter, the Registrar shall be appointed or re-appointed for successive periods each not exceeding [10] ten years.

² The principle embodied in Article XIII(1 quater) was approved by the Commission of the Whole without regard to Article XIII(1).

Article XIV
First regulations

The first regulations shall be made by the Supervisory Authority no later than ~~[three-six~~ months] prior to the entry into force of this Protocol and shall be made so as to take effect upon the entry into force of this Protocol. Prior to issuing regulations, the Supervisory Authority shall publish draft regulations in good time for review and comment and thereafter consult with representatives of manufacturers, operators and financiers thereon.*

~~*Article XV*~~
~~*Access to Registry*~~

~~The centralised functions of the International Registry shall be operated and administered by the Registrar on a 24-hour basis.~~

Article XVI
Designated entry points

A Contracting State may at any time designate, by declaration, an entity or entities as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or of a right or interest under Article 40 of the Convention in either case arising under the laws of another State. ~~Such designation may permit but shall not compel the use of such designated entry point.~~ The various entry points shall be operated at least during working hours in their respective territories.

Article XVI bis (former Article V(2)-(7))
Identification of railway rolling stock for registration purposes

21. For the purposes of Article 18(1)(a) Chapter V of the Convention, the Supervisory Authority shall, in regulations, shall prescribe a system for the allocation of identification numbers by the Registrar to enable the unique identification of items of railway rolling stock. The identification number shall either be affixed to the item of railway rolling stock or be associated in the International Registry with a manufacturer's name and identification number or a national or regional identification number so affixed.

32. For the purposes of the preceding paragraph, a Contracting State may, by declaration, state the system of national or regional identification numbers that shall be used [with respect to items of railway rolling stock subject to an international interest that is created or provided for, or is intended to be created or provided for, by an agreement entered into by a debtor situated in that Contracting State at the time of the conclusion of that the agreement creating or providing for the international interest]. Such a national or regional identification system shall, subject to agreement between the Supervisory Authority and the Contracting State making the declaration, ensure the unique identification of each items of railway rolling stock to which the system applies ~~and compliance with the basic informational requirements of the Convention and this Protocol for the operation of the International Registry.~~

* This Article was not reviewed by the Drafting Committee as still being under consideration by the Commission of the Whole.

~~43.~~ A declaration by a Contracting State according to the preceding paragraph shall ~~be made at the time of ratification, acceptance, approval of, or accession to this Protocol and shall~~ include detailed information on the operation of the national or regional identification system.

~~5.~~ ~~The Supervisory Authority shall review the national or regional identification system set out in a declaration by a Contracting State pursuant to paragraph 3 and may give advice on the measures to be taken to ensure that the system complies with the conditions set out in paragraph 3.~~

~~6.~~ ~~Every registration in respect of a specific item of railway rolling stock shall be made against the identification number allocated by the Registrar pursuant to paragraph 2.~~

74. A registration in respect of an item of railway rolling stock for which a declaration pursuant to paragraph ~~23~~ has been made, shall, in order for the registration to be valid, specify all the national or regional identification numbers to which the item has been subject since the entry into force of this Protocol under Article XXIII(1) and the time during which each number has applied to the item.

5. The debtor ~~shall,~~ and the creditor may enter in, provide the International Registry ~~with~~ any new national or regional identification number allocated during the currency of the registration of the relevant interest. ~~Any identification number so specified or provided shall be registered in the International Registry by the Registrar. Failure to comply with any of the above requirements shall not invalidate the registration.~~

Article XVII

Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria at the International Registry shall be established by regulations of the Supervisory Authority.

2. For the purposes of Article 25(2) of the Convention, and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest shall take such steps as are within its power to procure the discharge of the registration no later than 40-ten calendar days after the receipt of the demand described in such paragraph.

3. Where a subordination has been registered and the obligations of the debtor to the beneficiary of the subordination have been discharged, the beneficiary shall procure the discharge of the registration no later than 40-ten calendar days after written demand by the subordinated party delivered to or received at the beneficiary's address stated in the registration.

3bis The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis.

4. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to [...]. ^{**}

5. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention. **

*Article XVIII
International Registry fees*

1. The Supervisory Authority shall set and may from time to time amend the fees to be paid in connection with registrations, filings, searches and other services the International Registry may provide, in accordance with its regulations.

2. The fees referred to in the preceding paragraph shall be determined so as to recover, to the extent necessary, the reasonable costs of establishing, ~~and~~ implementing ~~(amortised over [10] years)~~, and operating the International Registry, as well as the reasonable costs of the ~~Supervisory Authority and its~~ Secretariat associated with the performance of ~~the its~~ functions, ~~exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention provided that~~ ~~Nothing in this paragraph herein~~ shall preclude the ~~service provider~~ Registrar from operating for a reasonable profit.

Article XVIII bis
Notices of sale

The regulations authorise the registration in the International Registry of notices of sale of railway rolling stock. The provisions of this Chapter and of Chapter V of the Convention shall, in so far as relevant, apply to these registrations. However, any such registration and any search made or certificate issued in respect of a notice of sale shall be for the purposes of information only and shall not affect the rights of any person, or have any other effect, under the Convention or this Protocol.

**CHAPTER IV
JURISDICTION**

*Article XIX
Waivers of sovereign immunity*

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to railway rolling stock under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

2. A waiver under the preceding paragraph must be in writing and contain a description of the railway rolling stock as specified in Article V of this Protocol.

** This Article was not reviewed by the Drafting Committee as still being under consideration by the Commission of the Whole.

CHAPTER V RELATIONSHIP WITH OTHER CONVENTIONS

Article XX

Relationship with other Conventions

The Convention and this Protocol shall, for Contracting States which are parties to them, in the event of any conflict, take precedence over

- ~~(a) the Rome Convention on the Law Applicable to Contractual Obligations 1980;~~
- ~~(b) the Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1968 (as amended from time to time);~~
- ~~(c) the Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 1988;~~
- ~~(d) the Inter American Convention on the Law Applicable to International Contracts 1994;~~
- ~~(e) the Convention Concerning International Carriage by Rail 1980 as modified by the Protocol of modification of 3 June 1999;~~
- ~~(f) the UNIDROIT Convention on International Factoring 1988;~~
- ~~(g) the UNIDROIT Convention on International Financial Leasing 1988;~~
- ~~[(h) the Hague Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters 2002; and]~~
- ~~[(i) the European Union Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings and the European Union Council regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters;]~~

~~as they relate to railway rolling stock, to the extent that that convention [or regulation] is in force among them and that the terms of that convention [or regulation] are inconsistent with the provisions of the Convention or of this Protocol.~~

Article XX

Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention shall, to the extent of any inconsistency, prevail over the UNIDROIT Convention on International Financial Leasing, signed in Ottawa on 28 May 1988.

Article XXbis

Relationship with the Convention concerning International Carriage by Rail (COTIF)

The Convention shall, to the extent of any inconsistency, prevail over the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980 in the version of the Protocol of Modification of 3 June 1999.

CHAPTER VI
FINAL PROVISIONS ^{*}**

[Article XXV
Public service rolling stock

~~A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare which and to what extent the following sub-paragraphs shall apply to such Contracting State:~~

~~(a) the remedies provided in [Chapter III of the Convention and Articles VII to X of this Protocol] shall not be exercisable within its territory in relation to the public service rolling stock specified in its declaration or determined by a competent authority of that State notified to the Depository;~~

~~(b) the remedies provided in [Chapter III of the Convention and Articles VII to X of this Protocol] shall not be exercisable within its territory in relation to railway rolling stock as far as it is used for the purpose of providing a service of public importance as specified in its declaration or determined by a competent authority of that State notified to the Depository;~~

~~(c) the Contracting State making a declaration under either of the preceding sub-paragraphs shall take into consideration the protection of the interests of the creditor.]~~

1. A Contracting State may, at any time, declare that it will continue to apply, to the extent specified in its declaration, rules of its law in force at that time which preclude, suspend or govern the exercise within its territory of any of the remedies specified in Chapter III of the Convention and Articles VII to IX of this Protocol in relation to railway rolling stock habitually used for the purpose of providing a service of public importance ("public service railway rolling stock") as specified in that declaration notified to the Depository.

2. Any person, including a governmental or other public authority, that, under rules of law of a Contracting State making a declaration under the preceding paragraph, exercises a power to take or procure possession, use or control of any public service railway rolling stock, shall preserve and maintain such railway rolling stock from the time of exercise of such power until possession, use or control is restored to the creditor.

3. During the period of time specified in the preceding paragraph, the person referred to in that paragraph shall also make or procure payment to the creditor of an amount equal to the greater of:

- (a) such amount as that person shall be required to pay under the rules of law of the Contracting State making the declaration; and
- (b) the market lease rental in respect of such railway rolling stock.

The first such payment shall be made within ten calendar days of the date such power is exercised, and subsequent payments shall be made on the first day of each successive month thereafter. In the event that in any month the amount payable exceeds the amount due to the creditor from the debtor, the surplus shall be paid to any other creditors to the extent of their claims in the order of their priority and thereafter to the debtor.

^{***} All final provisions with the exception of Article XXV were the subject of consideration by the Final Clauses Committee and of its Report to the Conference (DCME RP- Doc. 26).

4. A Contracting State whose rules of law do not provide for the obligations specified in paragraphs 2 and 3 may, to the extent specified in a separate declaration notified to the Depository, declare that it will not apply those paragraphs with regard to railway rolling stock specified in that declaration. Nothing in this paragraph shall preclude a person from agreeing with the creditor to perform the obligations specified in paragraphs 2 or 3 or affect the enforceability of any agreement so concluded.

5. Any initial or subsequent declaration made under this Article by a Contracting State shall not adversely affect rights and interests of creditors arising under an agreement entered into prior to the date that declaration is received by the Depository.

6. A Contracting State making a declaration under this Article shall take into consideration the protection of the interests of creditors and the effect of the declaration on the availability of credit.

– END –