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**MAC Protocol  
Committee of Governmental Experts  
Second Session  
Rome, 2 – 6 October 2017**

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## **COMMENTS**

(Submitted by the World Bank Group)

1. The World Bank Group appreciates the opportunity to comment on the draft Protocol for the upcoming Second Session of the Committee of Governmental Experts, to be held at the Headquarters of the Food and Agriculture Organization of the United Nations in Rome, 2 to 6 October 2017.
2. We would first like to commend the UNIDROIT Secretariat and the Study Group on the MAC Protocol for their significant contributions in the overall drafting process and in finalizing the current draft text. The preparation of this new protocol has the potential to increase access to finance for MAC equipment for smallholder farmers and larger agricultural, mining and construction firms. Adding legal and cross-border certainty, under the present text, the MAC Protocol also has the potential to increase the manufacturing and sale of equipment, and to reduce financing costs, thereby contributing to further development and growth in these important economic sectors throughout the globe.
3. We would also like to commend the participants in the first session of the Committee of Governmental Experts for their excellent deliberations, comments and recommendations, which are reflected in the revised draft. We look forward to further discussion during the second session of the Committee and we provide the following initial comments for consideration by the delegations.
4. First, we would like to reiterate a prior comment to **Article XV (Designated entry points) of the draft Protocol**. The current draft allows Contracting States to either designate a local entry point or to allow direct access to the international registry. We have no comment on the optional nature of the selection or in cases where a State chooses not to designate a local entry point. However, when a Contracting State chooses to designate a local entry point—and that Contracting State already counts with an existing modern collateral registry—the MAC Protocol or its regulatory norms should require that the local entry point be at the existing local registry. As previously mentioned, adding this requirement would reduce the number of possible entry points and registries, and would also reduce possible confusion to end-users on where to file their security interests. It would also allow for lenders to more efficiently file security interests in cases where their collateral is a combined pool which includes equipment governed both by local law (and which requires filing in the local registry), and equipment covered by the MAC Protocol (and which requires filing in the international registry).

5. We support the conclusions reached by the Intersessional Working Group on the identification of equipment for registration and searching purposes. Although, as explained in the Working Group's paper (UNIDROIT 2017 – Study 72K – IWGRC – Doc. 2), there is a possibility for numerous manufacturers to use the same **serial number** for different items of equipment, we strongly agree with the conclusion that the serial number—attached to the item of MAC equipment serving as collateral—should be the exclusive method for identifying that collateral at the time of registration. It should also be the exclusive criterion for discovering existing liens at the time of searching. To limit uncertainties caused when two or more items of equipment are identified by the same serial number, we also support the Working Group's conclusion to require the filing party to include additional information as required in the registration form to ensure uniqueness in the identification of the encumbered item of collateral.

6. We are also supportive of the adoption of revised Article XVI (Identification of agricultural, construction or mining equipment for registration purposes) and Article XVII (Additional modifications to Registry provisions) as recommended by the Working Group (based on drafting alternative "C") for the organization of the registry, in the understanding that these amendments will be accompanied by administrative rules in a registry regulation which shall: 1) specify the format in which the manufacturer's serial number shall be included in the registration form; and 2) describe the additional information as required in the registration form to ensure uniqueness. The revised legal provisions will allow for the use of a highly transparent data element (the manufacturer's serial number), easily available to all parties, while providing further information if needed to ensure uniqueness (in the event of a dual serial number registration).

7. Additionally, we would like the Committee to consider revisiting the handling of **Harmonized System (HS) codes** to identify the categories of equipment included within the scope of the MAC Protocol. Although we are supportive of this methodology, we are also conscious that the World Customs Organization (the "**WCO**") can (and does) change the code numbering system with some frequency. Consequently, as discussed during the first session of the Committee, adding the HS codes within three annexes to the MAC Protocol (one for each type of equipment) may require public international law procedures to amend the MAC Protocol on each occasion the WCO makes changes to the codes. As some delegations proposed, adding only general guidelines for the MAC equipment intended to be covered in the text of the protocol may provide a solution, allowing the list of actual codes to be added in a regulation. In this way, amendments would not require addressing complicated issues related to treaty law and practice to revise the codes.

8. Finally, we are encouraged by steps undertaken by the Secretariat to develop an **effective impact assessment methodology for the MAC Protocol** and are happy to provide access to monitoring and evaluation resources developed for the World Bank Group's secured transactions collateral registry projects across the globe, designed to measure the economic impact of reforms.