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**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
(THE "MAC PROTOCOL")**

Pretoria, 11-22 November 2019

UNIDROIT 2019
DCME-MAC – Doc. 19
Original: English/French
15 November 2019

**INTERIM REPORT BY THE DRAFTING COMMITTEE
TO THE COMMISSION OF THE WHOLE**

(presented by the Chairman of the Drafting Committee)

INTRODUCTION

1. The Drafting Committee established by the Conference met on 14 November 2019 and reviewed the draft MAC Protocol on the basis of the decisions taken by the Commission of the Whole on Articles I, II, VII to X, XII, XIV and XXVII.
2. The changes proposed to the text of the aforementioned provisions of the draft Protocol submitted to the Conference in DCME-MAC – Doc. 3 are indicated by the crossing out by the relevant provision, where parts of the text would under these changes be deleted, and by underlining, where new provisions would be introduced.

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

Preamble

THE STATES PARTIES TO THIS PROTOCOL

CONSIDERING the significant benefits of the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention), as facilitating the financing and leasing of uniquely identifiable high-value mobile equipment, in the light of the purposes set out in the preamble to the Convention,

AWARE of the benefits of extending the Convention to mining equipment, agricultural equipment and construction equipment,

NOTING that the World Customs Organisation's Harmonized Commodity Description and Coding System governed by the International Convention on the Harmonized Commodity Description and

Coding System allows the determination of the categories of such equipment to which the extension of the Convention is warranted,

RECOGNISING the important role that mining equipment, agricultural equipment and construction equipment play in the global economy,

MINDFUL of the need to adapt the Convention to meet the particular requirements of mining equipment, agricultural equipment and construction equipment and their finance,
HAVE AGREED upon the following provisions relating to mining equipment, agricultural equipment and construction equipment:

CHAPTER I

SPHERE OF APPLICATION AND 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:
 - (a) "agricultural equipment" means an object that falls under a Harmonized System code listed in Annex 2 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto;
 - (b) "construction equipment" means an object that falls under a Harmonized System code listed in Annex 3 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto;
 - (c) "dealer" means a person (including a manufacturer) that sells or leases equipment in the ordinary course of its business
 - (d) "equipment" means mining equipment, agricultural equipment or construction equipment;
 - (e) "guarantee contract" means a contract entered into by a person as guarantor;
 - (f) "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;
 - (g) "Harmonized System" means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System, [as amended by the Protocol of Amendment of 24 June 1986](#);
 - (h) "immovable-associated equipment" means equipment that is so associated with immovable property that an interest [in, or right over,](#) ~~in~~ the immovable property extends to the equipment under the law of the State in which the immovable property is situated;
 - (i) "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;

(j) “inventory” means equipment held by a dealer for sale or lease in the ordinary course of its business;

(k) “mining equipment” means an object that falls under a Harmonized System code listed in Annex 1 to the Protocol, including all installed, incorporated or attached accessories, components and parts which do not fall within a separate Harmonized System code listed in that Annex, and all data, manuals and records relating thereto; and

(l) “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.

Article II – Application of the Convention ~~as regards mining equipment, agricultural equipment and construction equipment~~

1. The Convention shall apply in relation to mining equipment, agricultural equipment and construction equipment as provided by the terms of this Protocol and Annexes 1, 2 and 3 irrespective of any intended or actual use of the equipment.

~~2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to mining equipment, agricultural equipment and construction equipment.~~

~~3.~~ A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will limit the application of this Protocol to the entirety of the equipment comprised in one or two of the Annexes.

~~4.~~ This Protocol does not apply to objects falling within the definition of “aircraft objects” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, “railway rolling stock” under the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock or “space assets” under the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets.

~~4. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to mining equipment, agricultural equipment and construction equipment.~~

[...]

Article VII – Association with immovable property

1. Where immovable-associated equipment is situated in a non-Contracting State, this Protocol does not affect the application of any law of that State that determines whether at any time an international interest in the immovable-associated equipment ~~ceases to exist~~, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

2. A Contracting State⁷ shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that the entirety of Alternative A, B, or C of this Article shall apply in relation to an international interest in immovable-associated equipment which is situated in the Contracting State.

Alternative A

3. If immovable-associated equipment is severable from the immovable property, its association with the immovable property does not affect the application of this Protocol, including the creation, existence, priority or enforcement of any international interest in that equipment. This Protocol does not apply to immovable-associated equipment that is not severable from the immovable property.

~~4.3. If immovable-associated equipment is removable [.....], the association of the equipment with the immovable property does not affect its status as equipment under this Protocol. Immovable-associated equipment is severable from the immovable property only if its estimated value after physical disconnection of the equipment from the immovable property would be greater than the estimated cost of the disconnection and of any restoration of the immovable property.~~

5. If immovable-associated equipment is severable from the immovable property at the time it became immovable-associated equipment or the time an international interest in the equipment was created, whichever is the later, there is a rebuttable presumption that it continues to be severable from that immovable property.

Alternative B

3. This Protocol does not affect the application of any law of the State where ~~the~~-immovable property is situated that determines whether at any time an international interest in immovable-associated equipment ~~ceases to~~ exist~~s~~, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property ~~to the extent that if~~ the equipment ~~loses has lost~~ its individual legal identity in accordance with the law of that State.

4. Where equipment subject to an international interest is immovable-associated equipment and ~~to the extent that it~~ has not lost its individual legal identity in accordance with the law of the State where the immovable property is situated, an interest in , or right over, the immovable property that extends to that equipment has priority over the registered international interest in the equipment only if the following conditions are fulfilled:

- (a) the interest in , or right over, the immovable property has been registered in accordance with the requirements of domestic law prior to the time of registration of the international interest in the equipment under this Protocol and registration of the interest in , or right over, the immovable property continues to be effective; and
- (b) the equipment became associated with the immovable property prior to the time of registration of the international interest in the equipment under this Protocol.

Alternative C

3. This Protocol does not affect the application of any law of the State where ~~the~~-immovable property is situated that determines whether at any time an international interest in immovable-associated equipment ~~ceases to~~ exists, is subordinated to any other rights or interests in the immovable-associated equipment, or is otherwise affected by the association of the equipment with immovable property.

CHAPTER II

DEFAULT REMEDIES AND PRIORITIES

Article VIII – Modification of default remedies provisions

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 equipment from the territory in which it is situated.

2. 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.

3. Article 8(3) of the Convention shall not apply to equipment. Any remedy given by the Convention in relation to equipment 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.

4. A chargee giving 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.

[5. Subject to any applicable safety laws and regulations, a Contracting State shall ensure that the relevant administrative authorities ~~[including but not limited to tax and customs authorities and transport infrastructure authorities]~~ expeditiously co-operate with and assist the creditor to the extent necessary for the exercise of the remedies specified in paragraph 1.]

6. A chargee proposing to procure the export of equipment 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 IX – 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(2) and to the extent stated in such declaration.

2. 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.

3. Article 13(1) of the Convention applies with the following being added immediately after subparagraph (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)”.

4. 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.

5. 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.

6. With regard to the remedies in Article VIII(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 13 of the Convention 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.

7. Paragraphs 2 and 6 shall not affect any applicable safety laws and regulations.

Article X – 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(3).

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

Alternative A

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the equipment to the creditor not 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 equipment if this Article did not apply.

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

5. Unless and until the creditor is given the opportunity to take possession under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the equipment 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 equipment under arrangements designed to preserve the equipment and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the equipment where, by the time specified in paragraph 3, 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.

~~8.~~ With regard to the remedies in Article VIII(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.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 3.

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

11. 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.

12. 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.

13. The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

~~3. 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(3) 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 equipment, in accordance with the applicable law.~~

~~4. The applicable law referred to in subparagraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.~~

~~5. The creditor shall provide evidence of its claims and proof that its international interest has been registered.~~

~~6. — If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 3, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the equipment but fails to do so, the court may permit the creditor to take possession of the equipment upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.~~

~~7. — The equipment shall not be sold pending a decision by a court regarding the claim and the international interest.~~

Alternative C

~~3. — 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 equipment in accordance with the applicable law.~~

~~4. — 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 and ending no later than the expiration of the agreement or any renewal thereof, and on such terms as the court considers just (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 or by the debtor as they become due and that the insolvency administrator or the debtor, as applicable, perform all other obligations arising during the suspension period.~~

~~5. — If an application is made to the court under the preceding paragraph, the creditor shall not take possession of the equipment pending an order of 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.~~

~~6. — Unless and until the creditor is given the opportunity to take possession under paragraph 3:~~

~~(a) — the insolvency administrator or the debtor, as applicable, shall preserve the equipment 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.~~

~~7. — Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the equipment under arrangements designed to preserve and maintain it and its value.~~

~~8. — Where during the cure period or any suspension period the insolvency administrator or the debtor, as applicable, 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 equipment and any order made by the court under paragraph 4 shall cease to have effect. A second cure period shall not apply in respect of a default in the performance of such future obligations.~~

~~9. — With regard to the remedies in Article VIII(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.]~~

~~10. — Subject to paragraphs 4, 5 and 8, no exercise of remedies permitted by the Convention may be prevented or delayed after the cure period.~~

~~11. — Subject to paragraphs 4, 5 and 8, no obligations of the debtor under the agreement and related transactions may be modified in insolvency proceedings without the consent of the creditor.~~

~~12. — 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.~~

~~13. — 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.~~

~~14. — The Convention as modified by Article VIII of this Protocol shall apply to the exercise of any remedies under this Article.~~

~~15. — 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 XII — Provisions relating to inventory

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXVII(4) of this Protocol.

2. An interest in inventory created or provided for by an agreement under which the dealer is the debtor is not an international interest if the inventory is situated in a Contracting State referred to in paragraph 1 at the time the interest is created or arises.

3. Article 29(3)(b) and 29(4)(b) of the Convention do not apply to a buyer, conditional buyer or lessee of inventory from a dealer if the inventory is situated in a Contracting State referred to in paragraph 1 at the time that a buyer, conditional buyer or lessee acquires its interest in or rights over the inventory.

~~4. — Notwithstanding Article 29(3)(a) of the Convention, the buyer of inventory from a dealer acquires its interest in it free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.~~

~~2. — Notwithstanding Article 29(4)(a) of the Convention, the conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any registered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.~~

~~3. — Paragraphs 4 to 7 apply only where a Contracting State has made a declaration pursuant to Article XXVII(4).~~

~~4. — An interest in inventory created or provided for by an agreement under which the dealer is the debtor is not an international interest if the dealer is situated in a Contracting State referred to in paragraph 3 at the time the interest is created or arises.~~

~~5. — For the purposes of this Article a dealer is situated in a State where it has its place of business or, if it has more than one place of business in different States, its principal place of business.~~

~~6. — Notwithstanding Article 29(3)(b) of the Convention, if a State has made a declaration under paragraph 3, a buyer of inventory from a dealer acquires its interest in it free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.~~

~~7. — Notwithstanding Article 29(4)(b) of the Convention, if a State has made a declaration under paragraph 3, a conditional buyer or lessee of inventory of a dealer acquires its interest in or rights over that inventory free from any unregistered interest as to which the dealer is the debtor, unless the applicable law otherwise provides.~~

[...]

CHAPTER III

REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN MINING EQUIPMENT, AGRICULTURAL EQUIPMENT AND CONSTRUCTION EQUIPMENT

Article XIV – The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the Diplomatic Conference for the adoption of ~~this draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment~~, provided that such Supervisory Authority is able and willing to act in such capacity.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.

3. 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.

4. The first Registrar of the International Registry shall be appointed for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

[...]

Article XXVII – Declarations relating to certain provisions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply either or both of Articles VI and XI of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article IX of this Protocol, wholly or in part. If it so declares, it shall specify the time-period required by Article IX(2).
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will ~~apply the entirety of Alternative A, B or C of~~ Article X ~~of this Protocol~~ and, if so, shall specify the types of insolvency proceeding, if any, to which ~~Article X~~ will apply ~~Alternative A, B or C~~. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article X.
4. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply paragraphs 4 to 7 of Article XII.
5.
 - (a) Any declaration made pursuant to this Protocol shall apply to the entirety of the equipment to which this Protocol applies.
 - (b) A Contracting State that makes a declaration in respect of any Alternative provided for in Articles VII ~~or X~~ shall choose the same Alternative regarding the entirety of the equipment to which this Protocol applies.
6. The courts of Contracting States shall apply Article X in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.