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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
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FINAL ACT

**of the 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
held at the invitation of the Government of the Republic of South Africa and under
the auspices of the International Institute for the Unification of Private Law (UNIDROIT)
in Pretoria from 11 to 22 November 2019**

(presented by the UNIDROIT Secretariat)

The Plenipotentiaries at the 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 met in Pretoria, at the invitation of the Government of the Republic of South Africa and under the auspices of the International Institute for the Unification of Private Law (UNIDROIT), from 11 to 22 November 2019 for the purpose of considering the *draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment*, prepared by an UNIDROIT Committee of Governmental Experts.

Representatives of the Governments of 41 States participated in the Conference.

The representatives of the Governments of the following 34 States and one Regional Economic Integration Organisation presented credentials in due and proper form:

Argentine Republic, the
Australia
Benin, the Republic of
Brazil, the Federative Republic of
Canada
Chile, the Republic of
China, the People's Republic of
Congo, the Republic of the
Côte d'Ivoire, the Republic of
Democratic Republic of the Congo, the

European Union, the
Finland, the Republic of
French Republic, the
Gambia, the Republic of the
Germany, the Federal Republic of
Ghana, the Republic of
Hellenic Republic, the
Holy See
Ireland
Italy, the Republic of

Japan	Sri Lanka, the Democratic Socialist
Korea, the Republic of	Republic of
Mexico (the United Mexican States)	Syrian Arab Republic, the
Namibia, the Republic of	Turkey, the Republic of
Paraguay, the Republic of	United Kingdom of Great Britain and
Poland, the Republic of	Northern Ireland, the
South Africa, the Republic of	United States of America, the
Spain, the Kingdom of	Uruguay, the Eastern Republic of
	Uzbekistan

The following seven States also participated in the Conference:

Cameroon, the Republic of	Russian Federation, the
Egypt, the Arab Republic of	Switzerland, Swiss Confederation
Indonesia, the Republic of	United Arab Emirates, the
Pakistan, the Islamic Republic of	

The following three intergovernmental organisations were represented by observers:

Intergovernmental Organisation for International Carriage By Rail (OTIF)
World Bank Group
World Customs Organization (WCO)

The following four international non-governmental organisations were represented by observers:

Aviation Working Group (AWG)
MAC Working Group
Rail Working Group (RWG)
Kozolchik National Law Center (NatLaw)

The following technical adviser participated in the Conference:

Aviareto, Registrar of the International Registry under the Aircraft Protocol

The Conference unanimously elected as President Ms Sandea de Wet (South Africa) and further unanimously elected as Vice-Presidents:

H.E. Ms Ana Luisa Fajer (Mexico)
Mr Pierre Oba (Republic of Congo)
H.E. Mr Cèsar Eneas Rodríguez Zavalla (Uruguay)
Mr Jun Ye (People's Republic of China)
Mr Marvin Yuen (Germany)

The Secretariat of the Conference was as follows:

Secretary General – Mr Ignacio Tirado, Secretary-General of UNIDROIT
Executive Secretary – Mr William Brydie-Watson, Senior Legal Officer of UNIDROIT
Deputy Secretary – Ms Anna Veneziano, Deputy Secretary-General of UNIDROIT
Deputy Secretary – Ms Marina Schneider, Principal Legal Officer &
Treaty Depositary of UNIDROIT

Assistant Secretary – Mr Hamza Hameed, Legal Consultant of UNIDROIT

Ms Audrey Chaunac and Ms Isabelle Dubois, members of the UNIDROIT Secretariat, provided administrative services to the Conference.

The Conference established a Commission of the Whole, which was chaired by Mr Dominique D’Allaire (Canada) and to which Sir Roy Goode (United Kingdom) acted as *Rapporteur*, and the following Committees:

Credentials Committee

Chairperson: Mr Koffi Rodrigue N’Guessan (Côte d’Ivoire)

Members: Australia
Brazil
Côte d’Ivoire
Japan
Spain

Adviser: South Africa

Drafting Committee

Co-Chairpersons: Mr Jean-François Riffard (France) / Mr Charles W. Mooney (United States of America)

Members: Australia
Canada
France
Germany
Japan
Mexico
South Africa
Spain
United Kingdom
United States of America

Final Clauses Committee

Co-Chairpersons: Mr Thembile Joyini (South Africa) / Reverend Mark Winton Smith (United Kingdom)

Members: Argentina
Australia
Brazil
Canada
China
Germany
Ghana
Japan
Mexico
Paraguay
South Africa

Spain
Syrian Arab Republic
United Kingdom
United States of America
Uruguay
Uzbekistan

Observers: Kozolchik National Law Center (Natlaw)
World Bank Group
World Customs Organisation (WCO)

Working Group on HS Codes

Chairperson: Mr Ole Böger (Germany)

Members: Australia
Canada
China
Germany
Indonesia
Japan
Poland
Republic of Congo
South Africa
United Kingdom
United States of America
Uzbekistan

Observers: Kozolchik National Law Center (NatLaw)
MAC Working Group
World Bank Group
World Customs Organization (WCO)

Following its deliberations, the Conference adopted the text of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment*.

The said Protocol has been opened for signature in Pretoria this day.

The texts of the said Protocol and the Resolutions adopted by the Conference are subject to verification by the Secretariat of the Conference under the authority of the President of the Conference within a period of ninety days from the date hereof as to the linguistic changes required to make the texts in the different languages consistent with one another.

The Conference furthermore adopted by consensus the following Resolutions, which are set out in appendices to this Final Act.

IN WITNESS WHEREOF the representatives,

HAVE SIGNED this Final Act.

DONE at Pretoria, this twenty-second day of November two thousand and nineteen in a single copy in the English and French languages, each text being equally authentic.

The President

The Secretary General

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

ANNEX II**RESOLUTION 1****RELATING TO THE ESTABLISHMENT OF THE PREPARATORY COMMISSION
FOR THE ESTABLISHMENT OF THE INTERNATIONAL REGISTRY
FOR MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE 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

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

HAVING REGARD to Article XIV of the Protocol;

BEARING IN MIND the Convention on International Interests in Mobile Equipment (the Convention), opened to signature in Cape Town on 16 November 2001;

CONSCIOUS of the need to undertake preparatory work regarding the establishment of the International Registry for mining, agricultural and construction equipment in order to ensure that it is operational by the time the Protocol enters into force;

CONSIDERING the advantages of formulating the policies and procedures as well as adapting the procedures employed in establishing the International Registry for aircraft objects and the International Registry for railway rolling stock in order to facilitate the expeditious establishment of the International Registry for mining, agricultural and construction equipment, and contain the costs thereof to the extent possible;

RESOLVES:

TO ESTABLISH, pending the entry into force of the Protocol, a Preparatory Commission to act with full authority as Provisional Supervisory Authority for the establishment of the International Registry for mining, agricultural and construction equipment, under the guidance and supervision of the Governing Council and the General Assembly of UNIDROIT.

Such Preparatory Commission shall be composed of:

- (1) Up to twenty representatives, who shall have the necessary qualifications and experience, appointed by UNIDROIT from those nominated by the following:
 - (a) States or Regional Economic Integration Organisations that have signed, ratified or acceded to the Protocol;
 - (b) Up to seven States from among the States that participated in the Conference (*negotiating States*);
 - (c) Up to seven States nominated by the sponsoring Organisation (UNIDROIT);
- (2) The UNIDROIT Secretariat, as the Secretariat of the Preparatory Commission;

- (3) The following may participate as observers to the meetings of the Preparatory Commission:
- (a) The Chair of each of the Commissions, Committees and Working Groups established by the Conference;
 - (b) The MAC Working Group;
 - (c) The International Registries of the other Protocols;
 - (d) The World Customs Organization, the World Bank Group and the Kozolchuk National Law Center (NatLaw).

Other negotiating States and relevant international organisations may also be invited to participate as observers.

THAT all participants in the Preparatory Commission's work shall participate without any financial implications for either the Preparatory Commission or UNIDROIT;

THAT the Preparatory Commission shall have such legal personality as may be necessary;

TO INSTRUCT the Preparatory Commission to carry out, under the guidance and supervision of the Governing Council and the General Assembly of UNIDROIT, the following functions:

- (1) to establish its rules of procedure and methods of work, including the appointment of its chair(s), the setting up of expert committees, and the determination of the place and dates of meetings to carry out its work;
- (2) with a view to guarantee the operability of the International Registry by the time of entry into force of the Protocol, to ensure that the Registrar managing the International Registry be selected in accordance with an objective, transparent and fair selection process, and that all necessary regulations and procedures be prepared and approved, with a target date of two years from the convening of the first meeting of the Preparatory Commission, which is to take place before six months have passed from the adoption of the Protocol;
- (3) to work on other matters relating to the International Registry for mining, agricultural and construction equipment as may be required with a view to ensuring the establishment of the International Registry;
- (4) to enter into a contract with the Registrar that makes provision for the development or testing of the software, the initial fees, the user application process and timelines, as well as other relevant details;
- (5) to ensure the necessary liaison and co-ordination with private industry which will be users of the International Registry; and
- (6) to initiate consultations capable of ensuring effective co-operation with relevant existing national and regional registries;

TO DIRECT the Preparatory Commission to make use, in the carrying out of its functions, to the maximum extent feasible and appropriate, of the prior experience acquired in the establishment and operation of the International Registry for other Protocols;

TO DIRECT the Preparatory Commission to work towards the establishment of the Supervisory Authority;

TO URGE the States participating in the Conference and interested private parties to make available, at the earliest possible date, the necessary start-up funding on a voluntary basis for the tasks of the Preparatory Commission and of UNIDROIT, required under this Resolution and to entrust UNIDROIT, with the task of administering such funds.

ANNEX III**RESOLUTION 2****RELATING TO THE ESTABLISHMENT OF THE SUPERVISORY AUTHORITY OF THE INTERNATIONAL REGISTRY FOR MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE 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

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

HAVING REGARD to Article XIV(1) of the Protocol;

MINDFUL THAT the Convention on International Interests in Mobile Equipment (the Convention), opened to signature in Cape Town on 16 November 2001;

IN LIGHT OF the adoption by the Conference of Resolution 1 relating to the setting up of the Preparatory Commission for the establishment of the International Registry for mining, agricultural and construction equipment;

CONSIDERING the active participation in the preparatory work and at the Diplomatic Conference by the observer representing the International Finance Corporation (IFC) of the World Bank Group, and in the light of preliminary consultations with the said international financial institution

RESOLVES:

TO INVITE the governing bodies of the IFC to accept the functions of Supervisory Authority upon or after the entry into force of the Protocol, to take the necessary action in this regard, as appropriate, and to inform the Secretary-General of UNIDROIT accordingly;

TO INVITE the Preparatory Commission, to be established in light of the adoption by the Conference of Resolution 1, to consider the appointment of another international Organisation or entity as Supervisory Authority upon or after the entry into force of the Protocol, in the event that the IFC expressly decides not to become the Supervisory Authority or no express confirmation has been received within 6 months from the adoption of this Protocol;

TO INVITE the Supervisory Authority to establish a Commission of Experts consisting of not more than 15 members appointed by the Supervisory Authority from among persons nominated by the Signatory and Contracting States to the Protocol, having the necessary qualifications and experience, with the task of assisting the Supervisory Authority in the discharge of its functions.

ANNEX IV**RESOLUTION 3****RELATING TO TECHNICAL ASSISTANCE WITH REGARD TO THE IMPLEMENTATION AND
USE OF THE INTERNATIONAL REGISTRY FOR MINING, AGRICULTURAL AND
CONSTRUCTION EQUIPMENT**

THE 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

MINDFUL of the objectives of the Convention on International Interests in Mobile Equipment (the Convention) and the Protocol to the Convention on Matters Specific to Mining, Agricultural and Construction Equipment (the Protocol);

DESIROUS of facilitating the implementation of the Convention and the Protocol as well as the prompt implementation and use of the International Registry for mining, agricultural and construction equipment (the International Registry);

RESOLVES:

TO ENCOURAGE all negotiating States, international organisations and private parties, such as the mining, agricultural and construction manufacturing and financial industries, to assist developing States in any appropriate way, including the provision of facilities and the experience necessary to use the International Registry, so as to allow them to benefit from the Convention and the Protocol as soon as possible, and, to this effect, to set up a fund to which contributions shall be made on a voluntary basis and which will function under the authority of the Supervisory Authority.

ANNEX V**RESOLUTION 4****RELATING TO THE OFFICIAL COMMENTARY ON THE PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO MINING, AGRICULTURAL AND CONSTRUCTION EQUIPMENT**

THE 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

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

MINDFUL of the existing Official Commentaries to the Convention on International Interests in Mobile Equipment and its existing Protocols, as well as their importance as an aid for those called upon to work with these documents;

RECOGNISING the increasing use of commentaries of this type in the context of modern, technical commercial law instruments; and

MINDFUL that the Explanatory Note on the draft Protocol submitted to the Conference (DCME-MAC – Doc. 4 corr.) provides a suitable starting point for the further development of this official commentary;

RESOLVES:

TO REQUEST the preparation of an official commentary on the Protocol by the Rapporteur of the Diplomatic Conference, in close co-operation with the UNIDROIT Secretariat, and in co-ordination with the Chair of the Commission of the Whole, the Chairs of the Final Clauses Committee, and the Chairs of the Drafting Committee;

TO REQUEST that the Official Commentary be circulated for comment in draft form among the States and observers that participated in the Conference prior to its publication being authorised; and

TO REQUEST that a revised final version of the Official Commentary be transmitted by the UNIDROIT Secretariat to all negotiating States and participating observers as soon as practicable after the conclusion of the Conference.

ANNEX VI**RESOLUTION 5****EXPRESSING THE GRATITUDE OF THE CONFERENCE
TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR HOSTING AND
ORGANISING THE CONFERENCE**

THE 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

HAVING ADOPTED the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Mining, Agricultural and Construction Equipment (the Protocol);

MINDFUL of the dedicated and facilitating role played by the Government of the Republic of South Africa in increasing attendance at the Diplomatic Conference as well as finalising the Protocol;

GRATEFUL to the Government of the Republic of South Africa for having played a substantial role in the planning, preparation and organisation of the Conference;

ACKNOWLEDGING the instrumental overall role of the Government Officials of the Department of International Relations and Cooperation of the Republic of South Africa;

EXPRESSES its deep gratitude and sincere appreciation to the Government of the Republic of South Africa and its officials.