LAW REFORM COMMISSION

Report


[LRC_R&P 137, October 2019]
About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of—
(a) a Chairperson, appointed by the Attorney-General;
(b) a representative of the Judiciary appointed by the Chief Justice;
(c) the Solicitor-General or his representative;
(d) the Director of Public Prosecutions or his representative;
(e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
(f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
(g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
(h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
(i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

The Commission may appoint staff on such terms and conditions as it may determine and it may resort to the services of persons with suitable qualifications and experience as consultants to the Commission.
LAW REFORM COMMISSION

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Executive Summary

[LRC_R&P 137, October 2019]

At the request of the Attorney-General's Office, the Law Reform Commission has prepared a Draft legislation for the domestication of the Cape Town Convention on International Interests in Mobile Equipment, and its Additional Protocols (Aircraft Equipment, Railway Rolling Stock, and Space Assets).

The Aircraft Protocol and the Cape Town Convention as applied to aircraft equipment entered into force on 1 March 2006 (Article 47 of the Convention and Article XXIX of the Aircraft Protocol). Mauritius would therefore have to accede to both instruments, according to its own internal procedure for ratification/accession of international treaties. As to the Rail and Space Protocols, they are not yet in force but will enter into force in accordance with Article XXXIII of the Luxembourg Rail Protocol and Article XXXVIII of the Space Protocol.

The Convention and the three aforementioned Protocols provide for the making of declarations by Contracting States. The complexity of the system of declarations, and the fact that declarations affect the rights and obligations of Contracting States, mean that particular care must be exercised by Contracting States in making their declarations. The Law Reform Commission has thus examined which declarations the Government of Mauritius could make.

The domestication of the Cape Town Convention and its Protocols would strengthen Mauritius as an International Financial Centre. The domestication of these instruments would generate great opportunities for the global business sector in respect of the African market, Mauritius would be called upon to play a pivotal role in relation to finance.

Since the publication of the Interim Report about « Domestication of Cape Town Convention on International Interests in Mobile Equipment, and its Additional Protocols (Aircraft Equipment, Railway Rolling Stock, and Space Assets) » in June 2019 (LRC_R&P 133), consultation has taken place with different Stakeholders, namely the Economic Development Board (EDB), UNIDROIT, Civil Aviation Group, Railway Working Group, Ministry of Finance and Economic Development, Ministry of Financial Services & Good Governance, Financial Services Commission, Air Mauritius, Department of Civil Aviation and other stakeholders. Views gathered during those consultations have resulted in some changes brought to the Draft Legislation as well as to the different Declarations to the Protocols, and which have been incorporated in this Final Report.
Background Note

The Law Reform Commission prepared, at the request of the Attorney-General’s Office, an Interim Report on the domestication of the Cape Town Convention on International Interests in Mobile Equipment and its additional protocols on Aircraft Equipment, Railway Rolling Stock and Space Assets, on the understanding that Mauritius would accede to the Cape Town Convention and Aircraft Protocol and sign and ratify the Rail and Space Protocols.

After the submission of the Interim Report [LRC_R&P 133, June 2019], the Law Reform Commission has held consultations with Mr. Howard Rosen, from the Rail Working Group and Mr. W. Brydie-Watson, from UNIDROIT on 2 September 2019. The aim of the meeting was to discuss the implementation of the Cape Town Convention and its three Protocols. Mr. Rosen and Mr. Brydie-Watson expressed their satisfaction with the Interim Report and were agreeable to the overall Draft Legislation and Declarations. They suggested some changes which could be made to improve same. These changes have been incorporated in the present Final Report.

Moreover, the LRC has gathered, with the assistance of the Economic Development Board, views from various stakeholders of the Sector relating to the implementation of the Cape Town Convention and its additional Protocols. LRC was thus apprised of the observations, inter alia, of the Ministry of Finance and Economic Development, Ministry of Financial Services and Good Governance, Financial Services Commission, Civil Aviation Group, Department of Civil Aviation, Air Mauritius, and BLC Robert & Associates.

- The Cape Town Convention

Mauritius has in May 2004, agreed, in principle to the ratifying of the Convention. The policy objectives behind the ratification of the Convention and its Protocols are primarily to enable-

(a) the national carrier, Air Mauritius, to benefit from the Cape Town Convention’s discount when financing aircrafts; and

(b) the use of the Mauritian jurisdiction to structure transactions relating to aircraft equipment, railway rolling stock and space assets.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

The Convention is in line with the Mauritius IFC Blueprint 2030\(^1\) for the financial services sector, which elaborates on the diversification of the product offering and ensuring accessibility.

The Convention on International Interests in Mobile Equipment, referred to as the Cape Town Convention, is a treaty which provides an internationally agreed Legal Order for the creation, enforcement, registration and priority of security and similar interest in high value internationally mobile equipment. The main purpose of the Cape Town Convention is to provide a uniform legal regime for the creation, registration and protection of a creditor’s interests held in high value types of mobile equipment, such as aircraft, railway and space objects.

The financing and leasing of aircraft, railway and space objects can be an uncertain and unpredictable investment. The nature of these types of equipment is such that they are likely to constantly overlap national borders which may render a creditor’s interest in them unprotected.\(^2\) If the equipment is relocated, the creditor may not always be certain that a validly created and enforceable interest held by it in the object will be recognised and protected in the new jurisdiction.\(^3\) Reliance on conflict of laws rules would mean dependence on different jurisdictions with varying attitudes to security and retention of title transactions: while some jurisdictions may be supportive of creditor’s rights, others may be less favourable. The absence of international uniform substantive rules governing the rights of creditors in these types of equipment has previously generated ambiguity and affected the availability of financing, which is particularly significant if the cost of these objects is taken into account.\(^4\)

If we take the example of aircrafts, airlines “can obtain the necessary capital to renew or expand their fleets either through the equity market or through the secured credit market — with the latter including, from a business perspective, such functional alternatives to traditional bank secured loans as financing leases and retention-of-title sales agreements which are often offered by aircraft manufacturers to promote the sale of their products. The secured credit market (...) is

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\(^1\) [Link to the Mauritius IFC Blueprint 2030](https://www.fsmauritius.org/media/67408/highlights-of-blueprint.pdf)


considered to be the more accessible option: due to the fact, unlike an equity investor, a secured creditor can look to the value of the aircraft object acquired by its financing as a back-up source of repayment if the debtor defaults. However, this assumption ultimately depends on the existence of a supportive legal framework." This is where the Convention comes into play. The Convention will apply if the parties “conclude a security agreement, a title reservation or a leasing agreement. The agreement should relate to uniquely identifiable mobile equipment and comply with the requirements prescribed by the relevant protocol”.

An important aspect of the Convention is the creation of what is known as the international registry. The purpose of this registry is to record the existence of loans and leases which are covered by the convention and to establish priority between them on a first come first served basis. In addition, in relation to aircraft and space assets, the registry also records sales but this is not the case in relation to the Rail Protocol.

The Cape Town Convention ambitions to give businesses involved in aircraft financing greater confidence in the remedies available to them if an airline defaults on an agreement. The resulting reduction in risk for financiers is expected to result in lower financing costs. Debtors are in turn protected from unwarranted seizure of the assets by creditors, provided they have maintained their obligations under the relevant documents.

The Convention is found in Schedule 1 of the Implementation Legislation at Annex 1.

- The Protocols to the Convention

The convention itself provides a general framework for an international legal basis for financing moveable assets. It is accompanied by three protocols containing more specific arrangements for aircraft equipment, railway rolling stock and space assets. The Protocol applies if the debtor has its centre of business (its “seat”) in a contracting state. The Aircraft Protocol extends this by

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7 The IR can be found at: [https://www.internationalregistry.aero/ir-web/](https://www.internationalregistry.aero/ir-web/)
creating a second nexus namely the state of registration of the aircraft, but this is not applicable in relation to railway rolling stock or space assets.

(i) The Aircraft Protocol

The Aircraft Protocol is designed to supplement and modify the Convention to meet the particular requirements of aircraft finance and sales. Its provisions reflect the use of structured financing by sophisticated parties, including many State-owned airlines, represented by international legal advisers. The Aircraft Protocol builds on the principle of party autonomy and commercial predictability while at the same time giving contracting States the right to weigh other considerations against economic benefits and not to exclude or modify certain provisions of the Protocol felt to be incompatible with the State’s legal structure and tradition. It seeks to adopt a practical approach to key issues in international asset-based civil aviation financing. Thus, an important feature of the Protocol is the timely availability of remedies. Although outright sales are outside the scope of the Convention, which is directed at security interests and conditional sale and leasing transactions, the provisions of the Aircraft Protocol extending the registration and priority rules to sales of aircraft objects are designed to take advantage of the registration system to provide a means of giving public notice of outright sales and of ensuring the buyer’s priority.8

This protocol is of particular relevance to the sector as aircraft financing institutions have held structures in Mauritius in the past, with keen interest in using the country as platform towards other regions such as Africa and South East Asia.

(ii) The Rail Protocol

The Rail Protocol is designed to supplement and modify the Convention to meet the particular requirements of railway rolling stock finance and leasing. Many railway systems are State-owned or heavily dependent on State funds and in a number of countries suffer from a chronic lack of capacity, with obsolete railway rolling stock at or near the end of its useful life. The primary objective of the Convention and Protocol is to stimulate much-needed investment in such systems through additional private financing at lower cost. The two instruments seek to achieve this objective by means of an international legal regime that provide secured lenders,

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conditional sellers and lessors with an autonomous international interest in railway rolling stock protected by registration in an International Registry, coupled with speedy and effective default remedies, both within and outside the debtor’s insolvency. But the Protocol recognises the need to balance creditor’s remedies against the interest of States in maintaining an essential public service after the debtor’s default. This it seeks to do by a carefully crafted public service exemption allowing a contracting State to make a declaration that it will continue to apply existing laws which suspend the exercise of Convention remedies in relation to public service railway rolling stock, while at the same time providing necessary safeguards for creditors.\(^9\)

(iii) The Space Protocol

The Space Protocol is destined to supplement and modify the Convention to meet the particular demand for and utility of space assets and the need to finance their acquisition and use. Space and the launching of satellites were originally the almost exclusive preserve of governments, who continue to play an important role. But this changed many decades ago with the development of the private space industry, which finances the construction and launch of satellites for a variety of purposes, including navigation, telecommunications, observation and weather monitoring, as well as military use. The primary objective of the Convention and Protocol is to stimulate much-needed investment in such systems through additional private financing at lower cost.

One of the special aspects of dealing with space assets is not only their cross-border character while on Earth (they may be produced in one country and transferred to the launch pad in a different country) but the fact that once in space they do not fall within the physical borders of any jurisdiction, so that dealings in them are not amenable to the normal conflicts rule applying the law of an object’s physical location. The Convention and Protocol greatly reduce this inconvenience by providing uniform substantive law rules which, within their scope, remove the need to have recourse to the conflict of laws altogether.\(^10\)

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It is to be noted that this Protocol could be of particular relevance to Mauritius as MiRT-SAT1, the first Mauritian satellite would be put into orbit before the end of the year. This would allow data to be collected more regularly, up to 4 times a day, for better decision-making, for example during inclement weather.\footnote{http://www.mrc.org.mw/English/News/Pages/Mauritian-Infrared-Satellite.aspx}

The aircraft, rail and space protocols are to be found respectively in Schedules 2, 3 and 4 of the Implementation Legislation at Annex 1.

- **Status of the Convention and of the Protocols**

  The Cape Town Convention has been ratified to date by 79 States and the Aircraft Protocol by 76 States, and also by the European Union in relation to its competences.

  The Railway Protocol (also known as the Luxembourg Protocol) was adopted in 2007. It needs 4 ratifications and a certificate of readiness from OTIF, as secretary to the Supervisory Authority, to enter into force. Only three countries have ratified it so far: Gabon, Sweden and Luxembourg, and by the European Union in relation to its competences. The Protocol has been signed by Italy, Switzerland, Germany, France, Mozambique and the United Kingdom. Some of these States are in the course of ratifying it, like Kenya.

  The Space Protocol (also known as the Berlin Protocol) was concluded in 2012 and is not yet in force either. Only four countries have signed it so far: Burkina Faso, Germany, Saudi Arabia and Zimbabwe.

  The status of the Convention and of the different protocols can be consulted at Annexes 3A, 3B, 3C and 3D.
The Declarations to the Convention and the Protocols

The Convention provides for declarations by its Contracting States on various matters. One has to distinguish between a declaration and a reservation. The latter is a unilateral act of a Contracting State purporting to exclude or modify a provision of a treaty and, unless authorised by the treaty itself, is not binding on other States unless they accepted it. Reservations are prohibited by the Convention. A declaration, on the other hand, is a way of modifying the treaty which is foreseen by the treaty itself and therefore requires no acceptance by other States in order to be binding. The Convention and the Protocol provides for a variety of declarations by Contracting States to make it suitable for their respective policy decisions.\(^\text{12}\)

The declarations can be divided into: (i) opt-in,\(^\text{13}\) (ii) opt-out,\(^\text{14}\) and (iii) mandatory.\(^\text{15}\) The declarations are equipment-specific and cannot be made independently of the Protocol.

\(i\) Opt-in declarations

Convention: Articles 39, 40, 53 and 60
Aircraft Protocol: Articles VIII, X, XI, XII, and XIII
Luxembourg Protocol: Articles VI, VII, IX and X
Space Protocol: Articles XX, XXI, and XXII

\(ii\) Opt-out declarations

Convention: Articles 8(1)(b), 13, 43, and 50
Aircraft Protocol: Articles XXI and XXIV(2)
Luxembourg Protocol: none
Space Protocol: Article VIII

\(^{12}\) Von Planza, op. cit., p. 96.

\(^{13}\) In this respect a Contracting State is required to make a declaration, otherwise the relating provision does not apply with respect to that State.

\(^{14}\) These declarations have to be made in order to exclude their application with respect to the Contracting State.

\(^{15}\) With respect to the following provisions a Contracting State is required to make a declaration.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

(iii) Mandatory declarations

Article 48(2) of the Convention provides for a mandatory declaration to be made by Regional Economic Integration Organisations, at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Convention in respect of which competence has been transferred to that Organisation by its Member States.

A declaration under article 54 (2) of the Cape Town Convention is also mandatory. It must be made at the time of ratification and is a precondition of acceptance by UNIDROIT of an instrument of ratification by the State concerned.

Article XXVII(2) of the Aircraft Protocol provides for a mandatory declaration to be made by Regional Economic Integration Organisations, at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Aircraft Protocol in respect of which competence has been transferred to that Organisation by its Member States.

Article XXII(2) of the Luxembourg Protocol provides for a mandatory declaration to be made by Regional Economic Integration Organisations, at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Luxembourg Protocol in respect of which competence has been transferred to that Organisation by its Member States.

Article XXXVII(2) of the Space Protocol provides for a mandatory declaration to be made by Regional Economic Integration Organisations at the time of their signature, acceptance, approval or accession, specifying the matters governed by the Space Protocol in respect of which competence has been transferred to that Organisation by its Member States.

Compatibility of declarations

In relation to Article XI of the Aircraft Protocol (Remedies on insolvency), a Contracting State wishing to make a declaration in relation to that Article may opt for Alternative A in its entirety or Alternative B in its entirety; however, a declaration may not be made covering only a part of either of the alternatives, and nor may a declaration be made combining selected elements of Alternative A and Alternative B. If a Contracting State does not make a declaration in respect to Article XI of the Aircraft Protocol, its domestic insolvency law will continue to apply.
In relation to Article IX of the Luxembourg Protocol (Remedies on insolvency), a Contracting State wishing to make a declaration in relation to that Article may opt for Alternative A in its entirety, or Alternative B in its entirety, or Alternative C in its entirety; however, a declaration may not be made covering only a part of one or more of the alternatives. (If a Contracting State does not make a declaration in respect to Article IX of the Luxembourg Protocol, its domestic insolvency law will continue to apply.)

In relation to Article XXI of the Space Protocol (Remedies on insolvency), a Contracting State wishing to make a declaration in relation to that Article may opt for Alternative A in its entirety or Alternative B in its entirety (Forms Nos 22-25); however, a declaration may not be made covering only a part of either of the alternatives, nor may a declaration be made combining selected elements of Alternative A and Alternative B. (If a Contracting State does not make a declaration under Article XLI(4) of the Space Protocol in respect of Article XXI, its domestic insolvency law will continue to apply.)

The different declarations which have been drafted were made according to the Model Declaration Forms and in conformity with the Declarations Memorandum prepared by UNIDROIT. Declarations made by Contracting States to the Convention and Aircraft Protocol have also been considered.

The Declarations Matrix can be consulted on the following link: https://www.unidroit.org/english/conventions/mobile-equipment/depositoryfunction/declarations/capetownconv-aircraftprot-decltable-matrix.pdf

No country has deposited declarations under the Space Protocols. A declaration has been deposited by the Swedish government in relation to Article X of the Rail Protocol. In addition, the European Union has made a declaration under Article XXII (2) of the Protocol.

The Declarations which could be made by Mauritius to the Convention and the Aircraft, Rail and Space Protocols are referred to respectively in Annexes 2A, 2B, 2C and 2D.

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16 https://www.unidroit.org/depository-2001capetown
The Draft Implementation Legislation

The Draft legislation is the "International Interests in Mobile Equipment (Cape Town Convention) Act 2019". The purpose of the Act is to give effect to the Cape Town Convention which was adopted in 2001 and which came into force in 2006 and to the Aircraft, Rail and Space Protocols.

The Irish legislation (International Interests in Mobile Equipment (Cape Town Convention) Act 2005) was the main source of inspiration for preparation of the draft law. However, in order to be as comprehensive as possible and to take into account the legal context of Mauritius, other legislation were also relied upon to draft certain parts of the Mauritian law:

- the Canadian law on "Aircraft Registration Act (International Interests in Mobile Equipment)";
- the "Aircraft Registration Act" (Malta);
- and the "International Cape Town Convention (Regulations 2015)" of the UK.

Moreover, other countries which have ratified/acceded to the CTC have been examined, namely Turkey,17 Russia,18 Pakistan,19 Norway,20 Nigeria,21 New Zealand,22 Malaysia,23 India,24 and China.25

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17 Turkey signed the CTC on November 16, 2001 and a decade later the Convention and the Protocol were ratified by the Council of Ministers Decree ("Decree") (Notification of Ratification in the Official Gazette). With the provision of the Decree, the CTC and the Protocol came into force in Turkey on December 1, 2011.


21 By the enactment of the Civil Aviation Act, 2006 which domesticates the Cape Town Convention and the Aircraft Protocol by the Nigerian National Assembly.

22 Through the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act.

23 In order to implement the Convention and the Aircraft Protocol, a bill has been presented for debate in the Parliament. The bill was passed in the month of August 2006 and it has been named as the International Interests in Mobile Equipment (Aircraft) Act 2006 ("the Act"). The Act was published in the gazette on 31 August 2009 and came into force on 19 October 2006.
The domestication of the Cape Town Convention and its Protocols would strengthen Mauritius as an International Financial Centre. The domestication of these instruments would generate great opportunities for the global business sector in respect of the African market, Mauritius would be called upon to play a pivotal role in relation to finance and investment across Africa.

The Draft Implementation Legislation is to be found at Annex 1.
ANNEX 1: International Interests in Mobile Equipment (Cape Town Convention) Act

ARRANGEMENT OF SECTIONS

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3. Interpretation

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SCHEDULE 1

THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

SCHEDULE 2

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

SCHEDULE 3

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

SCHEDULE 4

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS
AN ACT TO GIVE EFFECT TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT, AND TO THE PROTOCOLS TO THAT CONVENTION ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT, TO RAILWAY ROLLING STOCK AND TO SPACE ASSETS AND TO PROVIDE FOR RELATED MATTERS.

PART 1 - PRELIMINARY MATTERS

1. Short title

This Act may be cited as the International Interests in Mobile Equipment (Cape Town Convention) Act 2019.

2. Purpose of Act

The purpose of this Act is to give effect in the Republic of Mauritius to—

(a) the Cape Town Convention,

(b) the Aircraft Protocol with regard to aircraft equipment,

(c) the Rail Protocol with regard to railway rolling stock, and

(d) the Space protocol with regard to space assets

3. Interpretation

(1) In this Act, unless the context otherwise requires—

“declaration” means a declaration or designation made by the Republic of Mauritius under the Convention or the Aircraft Protocol, Rail Protocol and Space Protocol;

“the Aircraft Protocol” means the Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Aircraft Equipment that was opened for signature at Cape Town on 16 November 2001, the text of which is set out in Schedule 2;
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“the Rail Protocol” means the Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Railway Rolling Stock that was opened for signature at Luxembourg on 26 February 2007, the text of which is set out in Schedule 3;

“the Space Protocol” means the Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Space Assets that was opened for signature at Berlin on 9 March 2012, the text of which is set out in Schedule 4;

“the Cape Town Convention” means the Convention on International Interests in Mobile Equipment that was opened for signature at Cape Town on 16 November 2001, the text of which is set out in Schedule 1;

“the Diplomatic Conference” means the Diplomatic Conference held under the joint auspices of the International Civil Aviation Organisation and the International Institute of Private Law at Cape Town from 29 October to 16 November 2001;

“the Minister” means the Minister of External Communications.

(2) In this Act, a reference to an Article of the Cape Town Convention or the Aircraft Protocol, Rail Protocol and Space Protocol, is a reference to that Article as it appears in the Schedule in which it is set out.

(3) Words and expressions used in this Act have the same meaning as the corresponding words and expressions used in the Cape Town Convention and the Aircraft Protocol, Rail Protocol and Space Protocol.

(4) In this Act—

(a) a reference to a Part, section or Schedule is a reference to a Part or section of, or a Schedule to, this Act, unless it is indicated that reference to some other enactment is intended, and

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(c) a reference to a specified enactment is a reference to that enactment as amended, adapted or extended by or under any subsequent enactment, including this Act.
(5) In interpreting the Cape Town Convention and the Aircraft Protocol, Rail Protocol and Space Protocol, a court or other interpreter can have recourse to—

(a) the consolidated text of that Convention and that Protocol of which the Diplomatic Conference took note in its Resolution No. 1, and

(b) the Official Commentary by Professor Sir Roy Goode that was prepared in response to Resolution No. 5 of that Conference, and

(c) such other texts as the court considers relevant to interpreting that Convention and that Protocol.

PART 2 - IMPLEMENTATION OF THE CONVENTION AND PROTOCOLS

4. Cape Town Convention, Aircraft Protocol, Rail Protocol and Space Protocol to have the force of law in the Republic of Mauritius

(1) Subject to subsection (2), the Cape Town Convention and the Aircraft Protocol, Rail Protocol and Space Protocol have the force of law in the Republic of Mauritius in relation to matters to which they apply.

(2) Subsection (1) applies on and after the day on which the Cape Town Convention and the Aircraft Protocol, Rail Protocol and Space Protocol enter into force in accordance with Article 49 of that Convention and Article XXVIII of the Aircraft Protocol, Article XXIII of the Rail Protocol and Article XXXVIII of the Space Protocol.
5. Inconsistent laws

A provision of this Act or a provision of the Convention or Aircraft Protocol, Rail Protocol and Space Protocol given force of law by section 4, that is inconsistent with any other law prevails over the other law to the extent of the inconsistency.

6. Power of Minister to make declarations for the purposes of the Cape Town Convention, Aircraft Protocol, Rail Protocol and Space Protocol

(1) The Minister may, by order, make decisions about any matter in relation to which a State may make a declaration as provided for in Articles 39, 40, 50, 52, 53, 54, 55, 57 and 60 of the Convention and in Articles XXIV, XXX, XXXI and XXXIII of the Aircraft Protocol.

(2) If the Minister has made a declaration under the Cape Town Convention or the Aircraft Protocol (other than a declaration authorised under Article 60 of that Convention or Article XXXI of that Protocol), it may make a decision withdrawing from the declaration in accordance with Article 58 of that Convention or Article XXXIV of that Protocol.

(3) The Minister may make an order providing that the Aircraft Protocol shall have force of law in the State as provided under section 4 as if the entirety of Alternative A in Article XI of the Aircraft Protocol was in force as respects the State and applied to insolvency proceedings. The order may specify the waiting period required under Article XI of the Protocol as a period of 60 days.

(4) An order under this section may authorise the Minister to make the declaration or effect the withdrawal to which his decision relates.

7. Orders may include savings and transitional provisions

(1) An order under section 6 may include such transitional and consequential provisions as appear to the Minister to be appropriate.
(2) Such a provision may, if the order so provides, take effect on the date on which this Act comes into operation or a later date.

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its notification in the Government Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that notification, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that notification.

8. Relevant court for the purposes of the Cape Town Convention, Aircraft Protocol, Rail Protocol and Space Protocol

The Supreme Court is the relevant court for the purposes of the Cape Town Convention, the Aircraft Protocol, Rail Protocol and Space Protocol, including for the purposes of Article 53 of the Cape Town Convention.

9. Cape Town Convention, Aircraft Protocol, Rail Protocol and Space Protocol to be judicially noticed

All courts are required to take judicial notice of the provisions of the Cape Town Convention, the Aircraft Protocol, Rail Protocol and Space Protocol.

PART 3- MISCELLANEOUS PROVISIONS

10. Protection of operation of the International Registry

A court may not make an order or decision that would have the effect of binding the Registrar if the order or decision would prevent the Registrar from providing the services prescribed by the Cape Town Convention, Aircraft Protocol, Rail Protocol and Space Protocol.
11. Types of charges on Aircraft

(1) Notwithstanding the provisions found in any other statutes, engines and separate items on or in an aircraft may themselves be subject to special privileges.

(2) Where an engine has been attached to an airframe, which is not also owned by the airframe owner, each of the owners shall retain the ownership of their thing and the engine shall not accede to the airframe.

12. Power to amend or revoke orders made under this Act

(1) If the effect of an order made under this Act has not become spent, the Minister may, by further order, amend or revoke the order.

(2) For the purpose of subsection (1), “amend” includes add to, substitute and delete.

13. Orders to be laid before Parliament

The Minister shall arrange for every order made under this Act to be laid before Parliament as soon as practicable after it is made.

14. Parliament may annul order

(1) Parliament may, by resolution passed within 21 sitting days after the day on which an order was laid before it in accordance with section 12, annul the order.

(2) The annulment of such an order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the order before the passing of that resolution.
15. Expenses of the Minister

The expenses incurred by the Minister in the administration of this Act are payable from Consolidated Fund.

16. Regulations

The Minister may, for the purpose of this Act, make such regulations as he thinks fit.

17. Consequential Amendments

Sections 126 and 127 of the Companies Act 2001 shall not to apply to a charge which is an international interest.

18. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
SCHEDULE 1

THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

SCHEDULE 2

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

SCHEDULE 3

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

SCHEDULE 4

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS
SCHEDULE 1

THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

CONVENTION

ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

Chapter I

Sphere of application and general provisions

Article 1 — Definitions

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:
(a) "agreement" means a security agreement, a title reservation agreement or a leasing agreement;

(b) "assignment" means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;

(c) "associated rights" means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;

(d) "commencement of the insolvency proceedings" means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;

(e) "conditional buyer" means a buyer under a title reservation agreement;

(f) "conditional seller" means a seller under a title reservation agreement;

(g) "contract of sale" means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;

(h) "court" means a court of law or an administrative or arbitral tribunal established by a Contracting State;

(i) "creditor" means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;

(j) "debtor" means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;

(k) "insolvency administrator" means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;

(l) "insolvency proceedings" means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;

(m) "interested persons" means:

(i) the debtor;

(ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;

(iii) any other person having rights in or over the object;

(n) "internal transaction" means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the
time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);

(o) "international interest" means an interest held by a creditor to which Article 2 applies;

(p) "International Registry" means the international registration facilities established for the purposes of this Convention or the Protocol;

(q) "leasing agreement" means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;

(r) "national interest" means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);

(s) "non-consensual right or interest" means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;

(t) "notice of a national interest" means notice registered or to be registered in the International Registry that a national interest has been created;

(u) "object" means an object of a category to which Article 2 applies;

(v) "pre-existing right or interest" means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);

(w) "proceeds" means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;

(x) "prospective assignment" means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

(y) "prospective international interest" means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor's acquisition of an interest in the object), whether or not the occurrence of the event is certain;

(z) "prospective sale" means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;

(za) "Protocol" means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

(bb) “registered” means registered in the International Registry pursuant to Chapter V;

(cc) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;

(dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;

(ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);

(ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;

(gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;

(hh) “secured obligation” means an obligation secured by a security interest;

(ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;

(jj) “security interest” means an interest created by a security agreement;

(kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);

(ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;

(mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and

(nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

Article 2 — The international interest

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

(a) granted by the chargor under a security agreement;

(b) vested in a person who is the conditional seller under a title reservation agreement, or

(c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. The categories referred to in the preceding paragraphs are:

(a) airframes, aircraft engines and helicopters;

(b) railway rolling stock; and

(c) space assets.

4. The applicable law determines whether an interest to which paragraph 2 applies falls within subparagraph (a), (b) or (c) of that paragraph.

5. An international interest in an object extends to proceeds of that object.

**Article 3 — Sphere of application**

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.

2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

**Article 4 — Where debtor is situated**

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:

(a) under the law of which it is incorporated or formed;

(b) where it has its registered office or statutory seat;

(c) where it has its centre of administration; or

(d) where it has its place of business.
2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor’s place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5 — Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.

3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.

4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

Article 6 — Relationship between the Convention and the Protocol

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.

2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

Chapter II

Constitution of an international interest

Article 7 — Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

(a) is in writing;

(b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
(c) enables the object to be identified in conformity with the Protocol; and

(d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

Chapter III

Default remedies

Article 8 — Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:

(a) take possession or control of any object charged to it;

(b) sell or grant a lease of any such object;

(c) collect or receive any income or profits arising from the management or use of any such object.

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.

3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 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 security agreement except where such a provision is manifestly unreasonable.

4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:

(a) interested persons specified in Article 1(m)(i) and (ii); and

(b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.

5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.

6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered.
or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

**Article 9 — Vesting of object in satisfaction; redemption**

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.

3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.

4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.

5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee’s security interest has priority under the provisions of Article 29.

**Article 10 — Remedies of conditional seller or lessor**

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

(a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or

(b) apply for a court order authorising or directing either of these acts.

**Article 11 — Meaning of default**

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.
2. Where the debtor and the creditor have not so agreed, "default" for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12 — Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

Article 13 — Relief pending final determination

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests:

   (a) preservation of the object and its value;
   (b) possession, control or custody of the object;
   (c) immobilisation of the object; and
   (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:

   (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
   (b) fails to establish its claim, wholly or in part, on the final determination of that claim.

3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.

4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14 — Procedural requirements

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.
Article 15 — Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing, derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(2) to (6), 9(3) and (4), 13(2) and 14.

Chapter IV

The international registration system

Article 16 — The International Registry

1. An International Registry shall be established for registrations of:
   (a) international interests, prospective international interests and registrable non-consensual rights and interests;
   (b) assignments and prospective assignments of international interests;
   (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
   (d) notices of national interests; and
   (e) subordinations of interests referred to in any of the preceding sub-paragraphs.

2. Different international registries may be established for different categories of object and associated rights.

3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 17 — The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.

2. The Supervisory Authority shall:
   (a) establish or provide for the establishment of the International Registry;
   (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
   (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
(d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;

(e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;

(f) supervise the Registrar and the operation of the International Registry;

(g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;

(h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;

(i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and

(j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).

4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

**Chapter V**

Other matters relating to registration

**Article 18 — Registration requirements**

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:

   (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);

   (b) for making searches and issuing search certificates, and, subject thereto;

   (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.

3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.

4. The Registrar shall arrange for registrations to be entered into the International Registry database and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19 — Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.

2. A registration, if valid, shall be complete upon entry of the required information into the International Registry database so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:
   
   (a) the International Registry has assigned to it a sequentially ordered file number; and

   (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration shall be searchable in the International Registry database according to the criteria prescribed by the Protocol.

Article 20 — Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.
2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable non-consensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.

**Article 21 — Duration of registration**

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

**Article 22 — Searches**

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:

   (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or

   (b) stating that there is no information in the International Registry relating thereto.

3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

**Article 23 — List of declarations and declared non-consensual rights or interests**

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of nonconsensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.
Article 24 — Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

(a) that it has been so issued; and

(b) of the facts recited in it, including the date and time of a registration.

Article 25 — Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.

3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 — Access to the international registration facilities

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.
Chapter VI

Privileges and immunities of
the Supervisory Authority and the Registrar

Article 27 — Legal personality; immunity

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.

2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.

3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.

   (b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated.

4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.

5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

Chapter VII

Liability of the Registrar

Article 28 — Liability and financial assurances

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which
it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined by the Supervisory Authority, in accordance with the Protocol.

Chapter VIII

Effects of an international interest as against third parties

Article 29 — Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.

2. The priority of the first-mentioned interest under the preceding paragraph applies:

(a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and

(b) even as regards value given by the holder of the first-mentioned interest with such knowledge.

3. The buyer of an object acquires its interest in it:

(a) subject to an interest registered at the time of its acquisition of that interest; and

(b) free from an unregistered interest even if it has actual knowledge of such an interest.

4. The conditional buyer or lessee acquires its interest in or right over that object:

(a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and

(b) free from an interest not so registered at that time even if it has actual knowledge of that interest.

5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those interests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
6. Any priority given by this Article to an interest in an object extends to proceeds.

7. This Convention:
   
   (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
   
   (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

**Article 30 — Effects of insolvency**

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.

2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.

3. Nothing in this Article affects:
   
   (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
   
   (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

**Chapter IX**

Assignments of associated rights and international interests; rights of subrogation

**Article 31 — Effects of assignment**

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
   
   (a) the related international interest; and
   
   (b) all the interests and priorities of the assignor under this Convention.

2. Nothing in this Convention prevents a partial assignment of the assignor’s associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights
concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.

3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.

4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.

5. In the case of an assignment by way of security, the assigned associated rights re vest in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

Article 32 — Formal requirements of assignment

1. An assignment of associated rights transfers the related international interest only if it:

   (a) is in writing;

   (b) enables the associated rights to be identified under the contract from which they arise; and

   (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.

2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.

3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33 — Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:

   (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor; and

   (b) the notice identifies the associated rights.
2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.

3. Nothing in this Article shall affect the priority of competing assignments.

Article 34 — Default remedies in respect of assignment by way of security

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

(a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;

(b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;

(c) to the holder of the international interest were references to the assignee; and

(d) to the object were references to the assigned associated rights and the related international interest.

Article 35 — Priority of competing assignments

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.

2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Article 36 — Assignee’s priority with respect to associated rights

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:

(a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and

(b) to the extent that the associated rights are related to an object.
2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:

(a) a sum advanced and utilised for the purchase of the object;

(b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;

(c) the price payable for the object;

(d) the rentals payable in respect of the object; or

(e) other obligations arising from a transaction referred to in any of the preceding subparagraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

**Article 37 — Effects of assignor’s insolvency**

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

**Article 38 — Subrogation**

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.

2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.
Rights or interests subject to declarations by Contracting States

**Article 39 — Rights having priority without registration**

1. A Contracting State may at any time, in a declaration deposited with the Depositary of the Protocol declare, generally or specifically:

   (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State’s law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and

   (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.

3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.

4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

**Article 40 — Registrable non-consensual rights or interests**

A Contracting State may at any time in a declaration deposited with the Depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.
Chapter XI

Application of the Convention to sales

Article 41 — Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.
Chapter XII

Jurisdiction

Article 42 — Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.

2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43 — Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(d) in respect of that object.

2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:
   
   (a) by the courts chosen by the parties; or
   
   (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.

3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Article 44 — Jurisdiction to make orders against the Registrar

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.

2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
Chapter XIII

Relationship with other Conventions

Article 45 bis — Relationship with the United Nations Convention on the Assignment of Receivables in International Trade

This Convention shall prevail over the United Nations Convention on the Assignment of Receivables in International Trade, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

Article 46 — Relationship with the UNIDROIT Convention on International Financial Leasing


Chapter XIV

Final provisions

Article 47 — Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Convention may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

**Article 48 — Regional Economic Integration Organisations**

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

**Article 49 — Entry into force**

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:

   (a) as from the time of entry into force of that Protocol;

   (b) subject to the terms of that Protocol; and

   (c) as between States Parties to this Convention and that Protocol.

2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.
Article 50 — Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.

2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.

3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Article 51 — Future Protocols

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.

2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.

3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.

4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.

5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

6. Article 45 bis of this Convention applies to such a Protocol only if specifically provided for in that Protocol.
Article 52 — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Convention applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.

4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:

   (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;

   (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and

   (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53 — Determination of courts

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant “court” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.

Article 54 — Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.

2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this
Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

**Article 55 — Declarations regarding relief pending final determination**

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

**Article 56 — Reservations and declarations**

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

**Article 57 — Subsequent declarations**

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

**Article 58 — Withdrawal of declarations**

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.
Article 59 — Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.

3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article 60 — Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.

2. For the purposes of Article 1(v) and of determining priority under this Convention:

   (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and

   (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

Article 61 — Review Conferences, amendments and related matters

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider.
the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.

3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.

4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62 — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) each declaration made in accordance with this Convention, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Convention to all Contracting States;
(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.
SCHEDULE 2

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

PROTOCOL
TO THE CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON
MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

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 aircraft equipment, 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 aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

MINDFUL of the principles and objectives of the Convention on International Civil Aviation, signed at Chicago on 7 December 1944,

HAVE AGREED upon the following provisions relating to aircraft 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) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;

(b) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:

(i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and

(ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;

(c) “aircraft objects” means airframes, aircraft engines and helicopters;

(d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;

(e) “airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:

(i) at least eight (8) persons including crew; or

(ii) goods in excess of 2750 kilograms,

(together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;)

(f) “authorised party” means the party referred to in Article XIII(3);

(g) “Chicago Convention” means the Convention on International Civil Aviation, signed at Chicago on 7 December 1944, as amended, and its Annexes;

(h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;

(i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;

(j) “guarantee contract” means a contract entered into by a person as guarantor;

(k) “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;

(l) “helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:

(i) at least five (5) persons including crew; or

(ii) goods in excess of 450 kilograms,

(together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;
Law Reform Commission of Mauritius [LRC]


[LRC_R&P 137, October 2019]

(m) “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;

(n) “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;

(o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and

(p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

Article II — Application of Convention as regards aircraft objects

1. The Convention shall apply in relation to aircraft objects 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 aircraft objects.

Article III — Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;
Article 16(1)(a);
Article 19(4);
Article 20(1) (as regards registration of a contract of sale or a prospective sale); and Article 25(2) (as regards a prospective sale); and Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.
Article IV — Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.

2. For the purposes of the definition of “internal transaction” in Article 1 of the Convention:

(a) an airframe is located in the State of registry of the aircraft of which it is a part;

(b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and

(c) a helicopter is located in its State of registry,

at the time of the conclusion of the agreement creating or providing for the interest.

3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

Article V — Formalities, effects and registration of contracts of sale

1. For the purposes of this Protocol, a contract of sale is one which:

(a) is in writing;

(b) relates to an aircraft object of which the seller has power to dispose; and

(c) enables the aircraft object to be identified in conformity with this Protocol.

2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.

3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.
Article VI — Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII — Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII — Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The parties to an agreement, or a contract of sale, 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 IX — 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:

(a) procure the de-registration of the aircraft; and

(b) procure the export and physical transfer of the aircraft object 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 aircraft objects. Any remedy given by the Convention in relation to an aircraft object 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 ten or more working days’ prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing “reasonable prior notice” specified
in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:

(a) the request is properly submitted by the authorised party under a recorded irrevocable deregistration and export request authorisation, and

(b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.

6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed deregistration and 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 de-registration and export.

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**Article X — Modification of provisions regarding relief pending final determination**

1. This Article applies only where a Contracting State has made a declaration under Article XXX(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 working 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 sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale 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 IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(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 aviation safety laws and regulations.

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

**Article XI — 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 XXX(3).

**Alternative A**

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

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 aircraft object 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 aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object 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. 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 IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working 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 aviation 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 2.
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), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX 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 XXX(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 aircraft object, 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 if the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object 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 aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII — Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

2. The courts of a Contracting State in which an aircraft object 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 XI.

Article XIII — De-registration and export request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.

3. The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.

4. The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

Article XIV — Modification of priority provisions

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.

3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.

4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Article XV — 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 consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI — 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) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, 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) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, 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 an aircraft object.
Chapter III

Registry provisions relating to international interests in aircraft objects

Article XVII — The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.

3. 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.

4. 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.

5. The first Registrar shall operate the International Registry 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 XVIII — First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX — Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory 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 a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

Article XX — Additional modifications to Registry provisions

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer’s serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.

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 or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.

3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.

5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.

6. 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.

Chapter IV

Jurisdiction

Article XXI — Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII — 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 an aircraft object 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 aircraft object.
Chapter V

Relationship with other conventions

Article XXIII — Relationship with the Convention on the International Recognition of Rights in Aircraft

The Convention shall, for a Contracting State that is a party to the Convention on the International Recognition of Rights in Aircraft, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

Article XXIV — Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft

1. The Convention shall, for a Contracting State that is a Party to the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.

2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

Article XXV — Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention shall supersede the UNIDROIT Convention on International Financial Leasing, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

Chapter VI

Final provisions

Article XXVI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXVII — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII — Entry into force

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX — Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

Article XXX — 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 any one or more of Articles VIII, XII and XIII 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 X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.

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, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article XXXI — Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XXXII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.
Article XXXIII — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXV — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XXXVI — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority, and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof;

and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.
IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.
FORM OF IRREVOCABLE DE-REGISTRATION
AND EXPORT REQUEST AUTHORISATION

Annex referred to in Article XIII

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner] of the [insert airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer’s serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the “aircraft”).

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] (“the authorised party”) under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

(i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:

(a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944, and

(b) procure the export and physical transfer of the aircraft from [insert name of country]; and

(ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

Agreed to and lodged this [insert date]

By: [insert name of signatory]

Its: [insert title of signatory]

[insert relevant notational details]
SCHEDULE 3

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

LUXEMBOURG 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 (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

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) “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
Law Reform Commission of Mauritius [LRC]


[LRC_R&P 137, October 2019]

(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;

(e) “railway rolling stock ” means vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles, and together with all data, manuals and records relating thereto.

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

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(3) and (4).

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.

Article V — Identification of railway rolling stock in the agreement

1. For the purposes of Article 7(c) of the Convention and Article XVIII(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.
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. 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 railway rolling stock 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 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.

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 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 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. 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 sub-paragraph (d):

“(c) 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 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.

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

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.

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 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.
4. 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.

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 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 the railway rolling stock and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the railway rolling stock 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 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.

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

4. 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.

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 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.

7. The railway rolling stock 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 railway rolling stock 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 railway rolling stock 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 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.

7. 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.
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 railway rolling stock 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 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.

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 Articles VII and XXV 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 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.

Article XI — 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 railway rolling stock 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

Article XII --- The Supervisory Authority and the Registrar

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).

2. 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.

3. The term of appointment of the representatives appointed pursuant to sub-paragraphs (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.

4. The representatives referred to in paragraph 1 shall adopt the initial rules of procedure for the Supervisory Authority. Adoption shall require agreement of:

(a) a majority of all the representatives; and

(b) a majority of the representatives appointed pursuant to sub-paragraph (a) of paragraph 1.

5. The Supervisory Authority may establish a commission of experts consisting of:

(a) persons nominated by Signatory and Contracting States and having the necessary qualifications and experience; and

(b) other experts as necessary

and entrust the commission with the task of assisting the Supervisory Authority in the discharge of its functions.

6. A secretariat (the Secretariat) shall assist the Supervisory Authority in the discharge of its functions, as directed by the Supervisory Authority. The Secretariat shall be OTIF.
7. In the event that the Secretariat becomes unable or unwilling to discharge its functions, the Supervisory Authority shall designate another Secretariat.

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

9. 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.

10. A measure taken by the Supervisory Authority that affects only the interests of a State Party or a group of States Parties shall be taken if such State Party or the majority of the group of States Parties also approve of the measure. A 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 of the measure.

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

Article XIII — Designated entry points

1. 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. The various entry points shall be operated at least during working hours in their respective territories.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of notices of sale.

Article XIV — Identification of railway rolling stock for registration purposes

1. For the purposes of Article 18(1)(a) of the Convention, the regulations shall prescribe a system for the allocation of identification numbers by the Registrar which enable the unique identification of items of railway rolling stock. The identification number shall be:

(a) affixed to the item of railway rolling stock;

(b) associated in the International Registry with the manufacturer’s name and the manufacturer’s identification number for the item so affixed; or

(c) associated in the International Registry with a national or regional identification number so affixed.

2. 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 agreement. 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 item of railway rolling stock to which the system applies.
3. A declaration by a Contracting State according to the preceding paragraph shall include detailed information on the operation of the national or regional identification system.

4. A registration in respect of an item of railway rolling stock for which a declaration pursuant to paragraph 2 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.

**Article XV — 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 the regulations.

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 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 ten calendar days after written demand by the subordinated party delivered to or received at the beneficiary’s address stated in the registration.

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

5. The Registrar shall be liable under Article 28(1) of the Convention for loss caused up to an amount not exceeding the value of the railway rolling stock to which the loss relates. Notwithstanding the preceding sentence, the liability of the Registrar shall not exceed 5 million Special Drawing Rights in any calendar year, or such greater amount, computed in such manner, as the Supervisory Authority may from time to time determine by regulations.

6. The preceding paragraph shall not limit the Registrar’s liability for damages for loss caused by gross negligence or intentional misconduct of the Registrar and its officers and employees.

7. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall be not less than the amount determined by the Supervisory Authority to be appropriate, having regard to the prospective liability of the Registrar.

8. 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 XVI — 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, implementing and operating the International Registry, as well as the reasonable costs of the Secretariat associated with the performance of its functions. Nothing in this paragraph shall preclude the Registrar from operating for a reasonable profit.
Article XVII — Notices of sale

The regulations shall 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 XVIII — 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(1) of this Protocol.

Chapter V

Relationship with other Conventions

Article XIX — Relationship with the UNIDROIT Convention on International Financial Leasing


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

Chapter VI

Final provisions

Article XXI — Signature, ratification, acceptance, approval or accession

1. This Protocol shall be open for signature in Luxembourg on 23 February 2007 by States participating in the diplomatic Conference to adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment held at Luxembourg from 12 to 23 February 2007. After 23 February 2007 this Protocol shall be open to all States for signature at the Headquarters of UNIDROIT in Rome until it enters into force in accordance with Article XXIII.

2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. Any State which does not sign this Protocol may accede to it at any time.

4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXII — Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXIII — Entry into force

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession, and

(b) the date of the deposit by the Secretariat with the Depositary of a certificate confirming that the International Registry is fully operational.

2. For other States this Protocol enters into force on the first day of the month following the later of:
(a) the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

**Article XXIV — Territorial units**

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time.

2. Any such declarations are to be notified to the Depositary and shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:

(a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which the Convention and this Protocol apply;

(b) any reference to the location of the railway rolling stock in a Contracting State refers to the location of the railway rolling stock in a territorial unit to which the Convention and this Protocol apply; and

(c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply.

**Article XXV — Public service railway rolling stock**

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 Depositary.

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 on which 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.

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 Depositary, 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 on which that declaration is received by the Depositary.

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.

Article XXVI — Transitional provisions

In relation to railway rolling stock Article 60 of the Convention shall be modified as follows:

(a) in paragraph 2(a), after “situated” insert “at the time the right or interest is created or arises”;

(b) replace paragraph 3 with the following:

“3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years and not later than ten years after the date on which the declaration becomes effective, when Articles 29, 35 and 36 of this Convention as modified or supplemented by the Protocol will become applicable, to the extent and in the manner specified in the declaration, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in that State. Any priority of the right or interest under the law of that State, so far as applicable, shall continue if the right or interest is registered in the International Registry before the expiration of the period specified in the declaration, whether or not any other right or interest has previously been registered.”

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 X.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article VIII, wholly or in part. If it so declares, it shall specify the time-period required by Article VIII(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 one of Alternatives A, B and C of Article IX and, if it so declares, it shall specify the type of insolvency proceeding, if any, to which it will apply such Alternative. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article IX under paragraph 4 of Alternative A, paragraph 3 of Alternative B or paragraphs 5 and 15 of Alternative C, as applicable.

4. The courts of Contracting States shall apply Article IX in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.

Article XXVIII — Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XIII, XIV, XXIV, XXV, XXVII, XXIX and XXX may be made in accordance with these provisions.

2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Article XXIX — Declarations under the Convention

1. Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60, shall be deemed to have also been made under this Protocol unless stated otherwise.

2. For the purposes of Article 50(1) of the Convention, an “internal transaction” shall also mean, in relation to railway rolling stock, a transaction of a type listed in Article 2(2)(a) to (c) of the Convention where the relevant railway rolling stock is only capable, in its normal course of use, of being operated on a single railway system within the Contracting State concerned, because of track gauge or other elements of the design of such railway rolling stock.

Article XXX — Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXIX under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXI — Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXIX under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the preceding paragraph, this Protocol shall continue to apply, as if no such withdrawal had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article XXXII — Denunciations

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XXXIII — Review Conferences, amendments and related matters

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by the Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;

(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by four States in accordance with the provisions of Article XXIII relating to its entry into force.

Article XXXIV — Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with UNIDROIT, which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:
(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of the deposit of the certificate referred to in Article XXIII(1)(b);

(iii) the date of entry into force of this Protocol;

(iv) each declaration made in accordance with this Protocol, together with the date thereof;

(v) the withdrawal or amendment of any declaration, together with the date thereof; and

(vi) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Luxembourg, this twenty-third day of February, two thousand and seven, in a single original in the English, French and German languages, all texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.
SCHEDULE 4

PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

PROTOCOL

TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it desirable to implement the Convention on International Interests in Mobile Equipment (hereinafter referred to as the Convention) as it relates to space assets, in the light of the purposes set out in the preamble to the Convention,

CONSCIOUS of the need to adapt the Convention to meet the particular demand for and the utility of space assets and the need to finance their acquisition and use,

TAKING INTO CONSIDERATION the benefits to all States from expanded space-based services and financing which the Convention and this Protocol may yield,

MINDFUL of the principles of space law, including those contained in the international space treaties of the United Nations and the instruments of the International Telecommunication Union,

RECALLING, for the carrying out of the transfers contemplated by this Protocol, the pre-eminence of State Party rights and obligations under the international space treaties of the United Nations by which the States Parties concerned are bound,

RECOGNISING the continuing development of the international commercial space industry and contemplating the expected benefits of a uniform and predictable regimen governing interests in space assets and in related rights and facilitating asset-based financing of the same,

HAVE AGREED upon the following provisions relating to space assets:

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:
Law Reform Commission of Mauritius [LRC]


[LRC_R&P 137, October 2019]

(a) “debtor’s rights” means rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset;

(b) “guarantee contract” means a contract entered into by a person as a guarantor;

(c) “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 standby letter of credit or other form of credit insurance;

(d) “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;

(e) “licence” means any permit, authorisation, concession or equivalent instrument that is granted or issued by, or pursuant to the authority of, a national or intergovernmental or other international body or authority, when acting in a regulatory capacity, to manufacture, launch, control, use or operate a space asset, or relating to the use of orbital positions or the transmission, emission or reception of electromagnetic signals to and from a space asset;

(f) “obligor” means a person from whom payment or other performance of debtor’s rights is due or to become due;

(g) “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;

(h) “rights assignment” means a contract by which the debtor confers on the creditor an interest (including an ownership interest) in or over the whole or part of existing or future debtor's rights to secure the performance of, or in reduction or discharge of, any existing or future obligation of the debtor to the creditor which under the agreement creating or providing for the international interest is secured by or associated with the space asset to which the agreement relates;

(i) “rights reassignment” means:

(i) a contract by which the creditor transfers to the assignee, or an assignee transfers to a subsequent assignee, the whole or part of its rights and interest under a rights assignment; or

(ii) a transfer of debtor’s rights under Article XII(4)(a) of this Protocol;

(j) “space” means outer space, including the Moon and other celestial bodies; and

(k) “space asset” means any man-made uniquely identifiable asset in space or designed to be launched into space, and comprising

(i) a spacecraft, such as a satellite, space station, space module, space capsule, space vehicle or reusable launch vehicle, whether or not including a space asset falling within (ii) or (iii) below;

(ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) in respect of which a separate registration may be effected in accordance with the regulations; or

(iii) a part of a spacecraft or payload such as a transponder, in respect of which a separate registration may be effected in accordance with the regulations,
together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto.

3. For the purposes of the definition of “internal transaction” in Article 1(n) of the Convention, a space asset, when not on Earth, is deemed located in the Contracting State which registers the space asset, or on the registry of which the space asset is carried, as a space object under one of the following:

(a) the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, signed at London, Moscow and Washington, D.C. on 27 January 1967;

(b) the Convention on Registration of Objects Launched into Outer Space, signed at New York on 14 January 1975; or

(c) United Nations General Assembly Resolution 1721 (XVI) B of 20 December 1961.

4. In Article 43(1) of the Convention and Article XXII of this Protocol, references to a Contracting State on the territory of which an object or space asset is situated shall, as regards a space asset when not on Earth, be treated as references to any of the following:

(a) the Contracting State referred to in the preceding paragraph;

(b) a Contracting State which has issued a licence to operate the space asset; or

(c) a Contracting State on the territory of which a mission control centre for the space asset is located.

Article II – Application of the Convention as regards space assets, debtor’s rights and aircraft objects

1. The Convention shall apply in relation to space assets, rights assignments and rights reassignments 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 space assets.

3. 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 except where such objects are primarily designed for use in space, in which case this Protocol applies even while such objects are not in space.

4. This Protocol does not apply to an aircraft object merely because it is designed to be temporarily in space.

Article III – Preservation of rights and interests in a space asset

Ownership of or another right or interest in a space asset shall not be affected by:

(a) the docking of the space asset with another space asset in space;
(b) the installation of the space asset on or the removal of the space asset from another space asset; or

(c) the return of the space asset from space.

Article IV—Application of the Convention to sales; salvage

1. — Article XL of this Protocol and the following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;
Article 16(1)(a); Article 19(4);
Article 20(1) (as regards registration of a contract of sale or a prospective sale);
Article 25(2) (as regards a prospective sale); and Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XXIII of this Protocol), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) of the Convention shall apply to contracts of sale and prospective sales.

2. — The provisions of this Protocol applicable to rights assignments also apply to a transfer to the buyer of a space asset of rights to payment or other performance due or to become due to the seller by any person with respect to the space asset as if references to the debtor and the creditor were references to the seller and the buyer respectively.

3. — Nothing in the Convention or this Protocol affects any legal or contractual rights of an insurer to salvage recognised by the applicable law. "Salvage" means a legal or contractual right or interest in, relating to or derived from a space asset that vests in the insurer upon the payment of a loss relating to the space asset.

Article V—Formalities, effects and registration of contracts of sale

1. — For the purposes of this Protocol, a contract of sale is one which:

(a) is in writing;

(b) relates to a space asset of which the seller has power to dispose; and

(c) enables the space asset to be identified in conformity with this Protocol.

2. — A contract of sale transfers the interest of the seller in the space asset to the buyer according to its terms.

3. — Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.
Article VI – Representative capacities

A person may, in relation to a space asset, enter into an agreement or a contract of sale, 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.

Article VII – Identification of space assets

1. For the purposes of Article 7(c) of the Convention and Articles V and IX of this Protocol, a description of a space asset is sufficient to identify the space asset if it contains:

(a) a description of the space asset by item;
(b) a description of the space asset by type;
(c) a statement that the agreement covers all present and future space assets; or
(d) a statement that the agreement covers all present and future space assets except for specified items or types.

2. For the purposes of Article 7 of the Convention, an interest in a future space asset 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 space asset, without the need for any new act of transfer.

Article VIII – Choice of law

1. This Article applies unless a Contracting State has made a declaration pursuant to Article XLI(2)(a) of this Protocol.

2. The parties to an agreement, a contract of sale, a rights assignment or rights reassignment 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.

Article IX – Formal requirements for rights assignment

A transfer of debtor’s rights is constituted as a rights assignment where it is in writing and enables:

(a) the debtor’s rights the subject of the rights assignment to be identified;
(b) the space asset to which those rights relate to be identified; and
(c) in the case of a rights assignment by way of security, the obligations secured by the agreement to be determined, but without the need to state a sum or maximum sum secured.
Article X – Effects of rights assignment

1. A rights assignment made in conformity with Article IX of this Protocol transfers to the creditor the debtor’s rights the subject of the rights assignment to the extent permitted by the applicable law.

2. Subject to paragraph 3, the applicable law shall determine the defences and rights of set-off available to the obligor against the creditor.

3. The obligor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the creditor.

Article XI – Assignment of future rights

A provision in a rights assignment by which future debtor’s rights are assigned operates to confer on the creditor an interest in the assigned rights when they come into existence, without the need for any new act of transfer.

Article XII – Recording of rights assignment or acquisition by subrogation as part of registration of international interest

1. The holder of an international interest or prospective international interest in a space asset who has acquired an interest in or over debtor’s rights under a rights assignment or by subrogation may, when registering the international interest or prospective international interest or subsequently by amendment to such registration, record the rights assignment or acquisition by subrogation as part of the registration. Such recording may identify the rights so assigned or acquired either specifically or by a statement that the debtor has assigned, or the holder of the international interest or prospective international interest has acquired, all or some of the debtor’s rights, without further specification.

2. Articles 18, 19, 20(1)-(4), 25(1), (2) and (4) and 30 of the Convention apply in relation to a recording made in accordance with the preceding paragraph as if:

(a) references to an international interest were references to a rights assignment;

(b) references to registration were references to the recording of the rights assignment; and

(c) references to the debtor were references to the obligor.

3. A search certificate issued under Article 22 of the Convention shall include the particulars recorded under paragraph 1.

4. Where a rights assignment has been recorded as part of the registration of an international interest which is subsequently transferred in accordance with Articles 31 and 32 of the Convention, the transferee of the international interest acquires:

(a) all the rights of the creditor under the rights assignment; and

(b) the right to be shown in the record as assignee under the rights assignment.
5. Discharge of the registration of an international interest also discharges any recording forming part of that registration under paragraph 1.

Article XIII -- Priority of recorded rights assignment

1. Subject to Article 29(6) of the Convention and paragraph 2 of the present Article, a recorded rights assignment has priority over any other transfer of debtor's rights (whether or not a rights assignment) except a rights assignment previously recorded.

2. Where a rights assignment is recorded in the registration of a prospective international interest, it shall be treated as unrecorded unless and until the prospective international interest becomes an international interest, in which event the rights assignment has priority as from the time it was recorded provided that the registration was still current immediately before the international interest was constituted as provided by Article 7 of the Convention.

Article XIV -- Obligor's duty to creditor

1. To the extent that the debtor's rights have been assigned to the creditor under a rights assignment, the obligor is bound by the rights assignment, and has a duty to make payment or give other performance to the creditor, if and only if:

(a) the obligor has been given notice of the rights assignment in writing by or with the authority of the debtor; and

(b) the notice identifies the debtor's rights.

2. For the purposes of the preceding paragraph, a notice given by the creditor after the debtor defaults in performance of any obligation secured by a rights assignment is deemed given with the authority of the debtor.

3. Irrespective of any other ground on which payment or performance by the obligor discharges the obligor from liability, payment or performance shall be effective for this purpose if made in accordance with paragraph 1.

4. Nothing in this Article shall affect the priority of competing rights assignments.

Article XV -- Rights reassignment

1. Articles IX to XIV of this Protocol apply to a rights reassignment by the creditor or a subsequent assignee. Where those Articles so apply, any references made to the creditor or holder are references to the assignee or subsequent assignee.

2. A rights reassignment relating to an international interest in a space asset may be recorded only as part of the registration of the assignment of the international interest to the person to whom the rights reassignment was made.

Article XVI -- Derogation

The parties may, by agreement in writing, exclude the application of Article XXI of this Protocol and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article XVII(1) and (2).
CHAPTER II - DEFAULT REMEDIES, PRIORITIES AND ASSIGNMENTS

Article XVII – Modification of default remedies provisions as regards space assets

1. — Article 8(3) of the Convention shall not apply to space assets. Any remedy given by the Convention in relation to a space asset 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.

2. — A chargee giving fourteen or more calendar days’ prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing “reasonable prior notice” specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.

3. — Unless otherwise agreed, a creditor may not enforce an international interest in a space asset that is physically linked with another space asset so as to impair or interfere with the operation of the other space asset if an international interest or sale has been registered with respect to the other space asset prior to the registration of the international interest being enforced. For the purposes of this paragraph, a sale or an interest equivalent to an international interest made or arising before the effective date of the Convention, as defined in Article XL of this Protocol, which is registered within three years from that date is deemed to be an international interest or a sale registered at the time of the constitution of the international interest or the sale, as the case may be.

Article XVIII – Default remedies as regards rights assignments and rights reassignments

1. — In the event of default by the debtor under a rights assignment by way of security, Articles 8, 9 and 11 to 14 of the Convention apply in the relations between the debtor and the creditor (and in relation to debtor’s rights apply in so far as those provisions are capable of application to intangible property) as if:

(a) references to the secured obligations and to the security interest were references to the obligations secured by the rights assignment and to the security interest created by that assignment;

(b) references to the object were references to the debtor’s rights.

2. — In the event of default by the assignor under a rights reassignment by way of security, the preceding paragraph applies as if references to the assignment were references to the reassignment.

Article XIX – Placement of data and materials

Subject to Article XXVI of this Protocol, the parties to an agreement may specifically agree for the placement of command codes and related data and materials with another person in order to afford the creditor an opportunity to take possession of, establish control over or operate the space asset.

Article XX – Modification of provisions regarding relief pending final determination

1. — This Article applies only where a Contracting State has made a declaration to that effect under Article XLI(3) of this Protocol and to the extent stated in such declaration.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

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 sub-paragraph (d):

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

and Article 43(2) of the Convention applies with the substitution of “Article 13” for the words “Article 13(1)(d) or other interim relief by virtue of Article 13(4)”.

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.

Article XXI – 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 XLl(4) of this Protocol.

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control over the space asset 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 or control over the space asset if this Article did not apply.

3. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 8 and to Article XXVI(2) of this Protocol, give possession of or control over the debtor’s rights covered by a rights assignment 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 or control over the debtor’s rights covered by the rights assignment.

4. 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.

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

6. Unless and until the creditor is given possession of or control over the space asset under paragraph 2 or the debtor’s rights under paragraph 3:
(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset 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 space asset under arrangements designed to preserve the space asset and maintain it and its value.

8. The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset and the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or 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. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or 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. This provision shall not derogate from the provisions of Article XXVI(2) of this Protocol.

13. The Convention as modified by Article XVII 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 XLI(4) of this Protocol 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 or control and operation over the space asset, 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 it has declared that it will give the creditor the opportunity to take possession of or control and operation over the space asset but fails to do so, the court may permit the creditor to take
6. The space asset shall not be sold pending a decision by a court regarding the claim and the international interest.

**Article XXII – Insolvency assistance**

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XLI(2)(b) of this Protocol.

2. The courts of a Contracting State: (i) in the territory of which the space asset is situated; (ii) from the territory of which the space asset may be controlled; (iii) in the territory of which the debtor is located; (iv) in the territory of which the space asset is registered; (v) which has issued a licence in respect of the space asset; or (vi) otherwise having a close connection with the space asset, shall, in accordance with the law of the Contracting State, cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XXI of this Protocol.

**Article XXIII – Modification of priority provisions**

1. The buyer of a space asset under a registered sale acquires its interest in that asset free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.

2. The buyer of a space asset under a registered sale acquires its interest in that asset subject to an interest previously registered.

**Article XXIV – Modification of assignment provisions**

Article 33(1) of the Convention applies with the following being added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

**Article XXV – 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 space asset 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 or, in the capacity of buyer, Article XXIII(1) of this Protocol, 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 or, in the capacity of buyer, Article XXIII(2) of this Protocol, 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 space assets.
Article XXVI – Preservation of powers of Contracting States

1. This Protocol does not affect the exercise by a Contracting State of its authority to issue licences, approvals, permits or authorisations for the launch or operation of space assets or the provision of any service through the use or with the support of space assets.

2. This Protocol further does not:

(a) render transferable or assignable any licences, approvals, permits or authorisations which, in accordance with the laws and regulations of the granting Contracting State or the contractual or administrative provisions under which they are granted, may not be transferred or assigned;

(b) limit the right of a Contracting State to authorise the use of orbital positions and frequencies in relation to space assets; or

(c) affect the ability of a Contracting State in accordance with its laws and regulations to prohibit, restrict or attach conditions to the placement of command codes and related data and materials pursuant to Article XIX of this Protocol.

3. Nothing in this Protocol shall be construed so as to require a Contracting State to recognise or enforce an international interest in a space asset when the recognition or enforcement of such interest would conflict with its laws or regulations concerning:

(a) the export of controlled goods, technology, data and services, or

(b) national security

Article XXVII – Limitations on remedies in respect of public service

1. Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider or the Contracting State may register a public service notice.

2. For the purposes of this Article:

(a) "public service notice" means a notice in the International Registry describing, in accordance with the regulations, the services which under the contract are intended to support the provision of a public service recognised as such under the laws of the relevant Contracting State at the time of registration; and

(b) "public services provider" means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State.

3. Subject to paragraph 9, a creditor holding an international interest in a space asset that is the subject of a public service notice may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol that would make the space asset unavailable for the provision of the relevant public service prior to the expiration of the period specified in a declaration by a Contracting State as provided by paragraph 4.

4. A Contracting State shall at the time of ratification, acceptance, approval of, or accession to this Protocol specify by a declaration under Article XLI(1) a period for the purposes of the preceding paragraph not less than three months nor more than six months from the date of registration by the creditor of a notice.
in the International Registry that the creditor may exercise any such remedies if the debtor does not cure its default within that period.

5. Paragraph 3 does not affect the ability of a creditor, if so authorised by the relevant authorities, temporarily to operate or ensure the continued operation of a space asset during the period referred to in that paragraph where the debtor is not able to do so.

6. The creditor shall promptly notify the debtor and the public services provider of the date of registration of its notice under paragraph 3 and of the date of expiry of the period referred to therein.

7. During the period referred to in paragraph 3:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service;

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a public service notice shall, as appropriate, give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority; and

(c) the creditor is not precluded from initiating proceedings with a view to the replacement of the debtor by another person as operator of the space asset concerned in accordance with the rules of the licensing authorities.

8. Notwithstanding paragraphs 3 and 7, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention or Chapter II of this Protocol if, at any time during the period referred to in paragraph 3, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

9. Unless otherwise agreed, the limitation on the remedies of the creditor provided for in paragraph 3 shall not apply in respect of an international interest registered by a creditor prior to the registration of a public service notice pursuant to paragraph 1, where:

(a) the international interest was created pursuant to an agreement made before the conclusion of the contract with the public services provider referred to in paragraph 1; and

(b) at the time the international interest was registered in the International Registry, the creditor had no knowledge that such a public services contract had been entered into.

10. The preceding paragraph does not apply if such public service notice is registered no later than six months after the initial launch of the space asset.
CHAPTER III – REGISTRY PROVISIONS RELATING TO INTERNATIONAL INTERESTS IN SPACE ASSETS

Article XXVIII – The Supervisory Authority

1. The Supervisory Authority shall be designated at, or pursuant to a resolution of, the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets, 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 shall establish a commission of experts, from among persons nominated by the negotiating 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.

Article XXIX – First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect on the entry into force of this Protocol.

Article XXX – Identification of space assets for registration purposes

A description of a space asset in accordance with the criteria for identification provided by the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.

Article XXXI – Designated entry points

A Contracting State may at any time designate an entity or entities in its territory 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 a right or interest under Article 40 of the Convention in either case arising under the laws of another State.

Article XXXII – Additional modifications to Registry provisions

1. Article 16 of the Convention applies with the following being added immediately after paragraph 1:

“1 bis The International Registry shall also provide for:

(a) the recording of rights assignments and rights reassignments;

(b) the recording of acquisitions of debtor’s rights by subrogation;
(e) the registration of public service notices under Article XXVII(1) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets; and

(d) the registration of creditors’ notices under Article XXVII(4) of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets.”.

2. For the purposes of Article 19(6) of the Convention, the search criteria for space assets shall be the criteria specified in Article XXX of this Protocol.

3. 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 or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than ten calendar days after the receipt of the demand described in such paragraph.

4. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers and discharge of the duties contemplated by Article 17(2) of the Convention.

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

6. The insurance or financial guarantee referred to in Article 28(4) of the Convention shall cover the liability of the Registrar under the Convention to the extent provided by the regulations.

7. 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.

CHAPTER IV - JURISDICTION

Article XXXIII - Waiver 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 a space asset 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 space asset in accordance with Article VII of this Protocol.

CHAPTER V - RELATIONSHIP WITH OTHER CONVENTIONS

Article XXXIV - Relationship with the UNIDROIT Convention on International Financial Leasing

The Convention as applied to space assets shall supersede the UNIDROIT Convention on International Financial Leasing in respect of the subject matter of this Protocol, as between States Parties to both Conventions.
Article XXXV – Relationship with the United Nations outer space treaties and instruments of the International Telecommunication Union

The Convention as applied to space assets shall not affect State Party rights and obligations under the existing United Nations outer space treaties or instruments of the International Telecommunication Union.

CHAPTER VI - FINAL PROVISIONS

Article XXXVI – Signature, ratification, acceptance, approval or accession

1. – This Protocol shall be open for signature in Berlin on 9 March 2012 by States participating in the diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Space Assets held in Berlin from 27 February to 9 March 2012. After 9 March 2012 this Protocol shall be open to all States for signature at Rome until it enters into force in accordance with Article XXXVIII.

2. – This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.

3. – Any State which does not sign this Protocol may accede to it at any time.

4. – Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

5. – A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Article XXXVII – Regional Economic Integration Organisations

1. – A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.

2. – The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary in writing of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. – Any reference to a “Contracting State”, “Contracting States”, “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.
Article XXXVIII – Entry into force

1. This Protocol enters into force between the States which have deposited instruments referred to in sub-paragraph (a) on the later of:

(a) the first day of the month following the expiration of three months after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession; and

(b) the date of the deposit by the Supervisory Authority with the Depositary of a certificate confirming that the International Registry is fully operational.

2. For other States this Protocol enters into force on the first day of the month following the later of:

(a) the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession; and

(b) the date referred to in sub-paragraph (b) of the preceding paragraph.

Article XXXIX – Territorial units

1. If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of signature, ratification, acceptance, approval or accession, make an initial declaration that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.

2. Any such declaration shall state expressly the territorial units to which this Protocol applies.

3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.

4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.

5. In relation to a Contracting State with two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, any reference to the law in force in a Contracting State or to the law of a Contracting State shall be construed as referring to the law in force in the relevant territorial unit.

6. If a Contracting State has a federal system where the federal legislative power has competence over matters governed by this Protocol, that Contracting State shall have the same rights and obligations over those matters as those Contracting States which do not have a federal system.

Article XL – Transitional provisions

1. Article 60 of the Convention shall not apply in relation to space assets.

2. Subject to the second sentence of Article XVII(3) of this Protocol, the Convention does not apply to a right or interest of any kind in or over a space asset created or arising before the effective date of the
Convention, which retains the priority it enjoyed under the applicable law before the effective date of the Convention.

3. For the purposes of this Protocol:

(a) “effective date of the Convention” means in relation to a debtor the time when the Convention enters into force or the time when the State in which the debtor is situated at the time the right or interest is created or arises becomes a Contracting State, whichever is the later; and

(b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.

Article XLI – Declarations relating to certain provisions

1. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to this Protocol, make a declaration pursuant to Article XXVII(4) of this Protocol.

2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare:

(a) that it will not apply Article VIII;

(b) that it will apply Article XXII.

3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XX wholly or in part. If it so declares with respect to Article XX(2), it shall specify the time-period required thereby.

4. 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, or the entirety of Alternative B of Article XXI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XXI.

5. The courts of Contracting States shall apply Article XXI in conformity with the declaration made by the Contracting State that is the primary insolvency jurisdiction.

Article XLII – Declarations under the Convention

Declarations made under the Convention, including those made under Articles 39, 40, 53, 54, 55, 57 and 58 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

Article XLIII – Reservations and declarations

1. No reservations may be made to this Protocol but declarations authorised by Articles XXXIX, XLI, XLII and XLIV may be made in accordance with these provisions.

2. Any declaration, subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

Article XLIV – Subsequent declarations

1. - A State Party may make a subsequent declaration at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.

2. - Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.

3. - Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declaration had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XLV – Withdrawal of declarations

1. - Any State Party having made a declaration under this Protocol may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. - Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal of declaration.

Article XLVI – Denunciations

1. - Any State Party may denounce this Protocol by notification in writing to the Depositary.

2. - Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.

3. - Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article XLVII – Review Conferences, amendments and related matters

1. - The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regimen established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.

2. - At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

(a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the assets covered by its terms;

(b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
(c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and

(d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.

3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States Parties which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by ten States Parties in accordance with the provisions of Article XXXVIII relating to its entry into force.

Article XLVIII – Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

2. The Depositary shall:

(a) inform all Contracting States of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;

(ii) the date of entry into force of this Protocol;

(iii) each declaration made in accordance with this Protocol, together with the date thereof;

(iv) the withdrawal or amendment of any declaration, together with the date thereof; and

(v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

(b) transmit certified true copies of this Protocol to all Contracting States;

(c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and

(d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Berlin, this ninth day of March, two thousand and twelve, in a single original in the English and French languages, both texts being equally authentic, such authenticity to take effect upon verification by the Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the consistency of the texts with one another.
ANNEX 2A: Declarations which could be made by the Government of Mauritius under the Cape Town Convention

With regard to the various declarations, they relate to the following articles of the Convention:

- Article 39 (1) (a) and Article 39 (4) - Rights having priority without registration;
- Article 40 - Registrable non-consensual rights or interests;
- Article 52 - Territorial units;
- Article 53 - Determination of courts; and
- Article 54 (2) - Declarations regarding remedies

Declarations to the CTC which the Republic of Mauritius should not make

➢ Was not included a declaration on Article 50 (which is an opt-out), which deals with internal operations. Only five countries (China, Mexico, Panama, Turkey and Ukraine) have made such a declaration and it is doubtful whether it would apply to the context of Mauritius. Indeed, according to the official commentary by Sir Roy Goode, this Article would not apply to Space assets and is unlikely of being applied to Aircraft equipment but could only possibly apply to railway rolling stock.

➢ Similarly, declaration for Article 55 (opt-out) was not reproduced, which concerns relief pending final determination. Few countries have made declarations to this effect, namely Australia, Denmark, Namibia, Norway and New Zealand, in addition to the European Community. Such a declaration that permits that all or some of the provisions of Article 13 or Article 43 of the Convention (relating to provisional measures which may be requested by the creditor), or both, should not be applied, could make Mauritius less attractive as a fundraising sector, which would defeat the purpose of adhering to such a Convention. In any event, according to Sir Roy Goode, even if such a declaration is not made at the time of ratification, it can be made subsequently, in accordance with Article 57 of the Convention.

➢ Finally, was not included a declaration for section 60 (1) (opt-in). Only Canada, Ghana and Mexico have done so. Such a declaration runs counter to pre-existing rights and has the effect of retroactively reverting a prior right or guarantee.
Declarations to the CTC which the Republic of Mauritius could make

Declaration under Article 39(1)(a)

The Republic of Mauritius declares that the following categories of non-consensual right or interest:

(a) liens in favour of workers for unpaid wages arising since the time of a declared default under a contract to finance or lease the subject object;

(b) taxes, duties and other unpaid charges due to a State entity and its sub-divisions following a declared default;

(c) liens in favour of repairers of a mobile equipment to the extent of service or services performed on and value added to that mobile equipment

have priority under its laws over an interest in a mobile equipment equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

The Republic of Mauritius also declares, in accordance with Article 39(1)(a) of the Convention, that a legal hypothec under articles 2170 to 2172 of the Code Civil Mauricien existing at the date of this declaration or created after that date, shall have priority over an international interest subsequently registered in the international Registry established under the Convention and the Protocol, whether in or outside insolvency proceedings.

The Republic of Mauritius declares that nothing in this Convention shall affect its right or the right of a State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under its laws for payment of amounts owed to it directly relating to those services in respect of that object or another object.

Note:

Non-consensual rights or interests covered by a declaration under this Article have priority over registered interests and by necessary implication unregistered international and other interests as well.

The priority is not a Convention priority but one given by the law of the declaring State, and is therefore not entitled to recognition in another Contracting State unless the conflict of law rules of that State so requires.
With respect to the declaration under section 39 (1) (a) (opt-in), the Mauritian declaration partly echoes the one made by Canada, since Canada has a similar civil law to ours. Indeed, the Canadian declaration provides that the legal hypothec has priority over an international interest. It might be appropriate for Mauritius to do the same thing, therefore, a paragraph in that sense was drafted in the declaration that takes this into account.

Declaration under Article 39(4)

Pursuant to Article 39(4) of the Convention, the Republic of Mauritius declares that a right or interest of a category covered by a declaration under Article 39(1)(b) has priority over an international interest registered prior to the date of deposit of its instrument of accession.

Note:
The relevant declaration for this purpose is that of the Contracting State where the aircraft is located at the time the non-consensual right or interest is sought to be exercised.

Declaration under Article 40

The Republic of Mauritius declares that the following non-consensual rights or interests:

(a) the rights flowing from the arrest of an aircraft object in partial or complete performance of a judgment;

(b) the right enjoyed by a State entity under fiscal liens or by reason of other unpaid dues of any kind which are not the subject of the declaration made under Article 39(1)(a) of the Convention; and

(c) any other category of non-consensual right or interest which is not the subject of the declaration made under Article 39(1)(a) of the Convention,

shall be registrable in the International Registry as if these rights or interests were international interests and shall be regulated accordingly.
Note:

Article 40 enables a Contracting State to extend the application of the Convention by making a declaration listing categories of non-consensual right or interest to be registered as if they were international interests.

Articles 39 and 40 are mutually exclusive in that a Contracting State cannot make a declaration under both Articles covering the same rights or interests.

Declaration under Article 52

The Republic of Mauritius declares that the Convention is to apply to all its territorial units.

Note:

It is open to a Contracting State to make a declaration extending the Convention to all its territorial units or only to one or more of them.

Declaration under Article 53

The Republic of Mauritius declares that The Supreme Court of Mauritius is the relevant Court for the purposes of Article 1 and Chapter XII of the Convention.

Note:

Article 1 (h) defines a court as a court of law or an administrative or arbitral tribunal established by a Contracting State but not a private administrative or arbitral tribunal.
Declaration under Article 54(2)

The Republic of Mauritius declares that any remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without court action and without leave of the court.

Note:

A declaration under article 54 (2) is mandatory. It must be made at the time of ratification and is a precondition of acceptance by UNIDROIT of an instrument of ratification by the State concerned.

Declaration under Article 60 (1) – for the Rail Protocol only

The Republic of Mauritius declares that the Convention will become applicable to a pre-existing right or interest for the purpose of determining priority, including the protection of any existing priority, on that date which follows the third anniversary of the date on which this declaration becomes effective.

Note:

According to the Declarations Memorandum (p. 26) provided by UNIDROIT, such date cannot be earlier than three years after the date on which the declaration becomes effective.
ANNEX 2B: Declarations which could be made under the Aircraft Protocol

Texts of declarations deposited under the Aircraft Protocol are as follows:

- Article XIX (1) Designated entry points
- Article XXIX Territorial units
- Article XXX (1) Declarations relating to certain provisions
- Article XXX (2) Declarations relating to certain provisions
- Article XXX (3) Declarations relating to certain provisions

➤ ARTICLE XIX (1)

The Department of Civil Aviation of Mauritius is designated as the entry point for information.

Note:

A contracting State which designates an entity pursuant to this Article will be free to add such additional requirements (including the payment of fees) as it considers necessary for transmission of date to the International Registry.

➤ ARTICLE XXIX

The Republic of Mauritius declares that the Aircraft Protocol is to apply to all its territorial units.

Note:

This Article applies to the Aircraft Protocol the same provisions as apply to the Convention under Article 52.
ARTICLE XXX (1)
The Republic of Mauritius declares that it will apply Article VIII.

The Republic of Mauritius declares that it will apply Article XII.

The Republic of Mauritius declares that it will apply Article XIII.

Note:

Article VIII is about Description of aircraft objects.

Article XII is about Insolvency assistance. According to the latter, the courts of a Contracting State in which an aircraft object 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 XI (Remedies on insolvency).

And Article XIII is about De-registration and export request authorisation.

ARTICLE XXX (2)
The Republic of Mauritius declares that it shall apply Article X of the Protocol in its entirety and that the number of working days to be used for the purposes of the time limit laid down in Article X (2) of the Protocol shall be no more than:

a. ten (10) calendar days in respect of the remedies specified in Articles 13(1)(a), (b) and (c) of the Convention (respectively, preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and, immobilisation of aircraft objects); and,

b. thirty (30) calendar days in respect of the remedies specified in Articles 13(1)(d) and (e) of the Convention (respectively, lease or management of aircraft objects and the income thereof; and, sale and application of proceeds from aircraft objects).

Note:

For (a) above, most Contracting States have specified a period of 10 calendar days, thereby emphasising the urgency of the proceedings in the light of the fact that without rapid action aircraft may suffer physical or commercial deterioration.
XXX (3)

The Republic of Mauritius declares that it will apply Article XI, Alternative A in its entirety to all types of insolvency proceeding and that the waiting period for the purposes of Article XI(3) of that Alternative shall be sixty (60) calendar days.

Note:

According to Alternative A, upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall give possession of the aircraft object 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 aircraft object if this Article did not apply.
ANNEX 2C: Declarations which could be made under the Rail Protocol

No State has yet made a declaration under this Protocol. Only the European Union lodged such a declaration, under Article XXII (2).

The following declarations can be made under the Rail Protocol in respect of the following articles:

Article VI    Choice of law
Article VIII  Relief pending final determination
Article IX    Remedies on insolvency
Article X     Insolvency assistance
Article XIII  Designation of entry point
Article XIV   Identification of railway rolling stock
Article XXIV  Territorial units
Article XXV   Public service railway rolling stock
Article XXIX  Application of Protocol in relation to territorial units

Note:

Articles VI, VIII, IX and X are opt-in declarations.

The Luxembourg Protocol does not make provision for any opt-out declarations.

Certain optional declarations, which relate to a Contracting State's own laws, are neither opt-in nor opt-out. These are the declarations which may be made in respect of the following provisions in the Rail Protocol: Articles XIII, XIV, XXIV and XXV.

Declaration under Article XXVII (1) in respect of Article VI

The Republic of Mauritius declares that it will apply Article VI.

Note:

By Article VI, the parties to an agreement or a related guarantee contract or subordination agreement or contract of sale, are free to choose the law to govern their contractual rights and obligations, wholly or in part, and unless otherwise agreed, their choice is taken to be a reference to the domestic rules of law of the designated State (i.e. excluding its conflict of law rules). This choice must be respected by the courts of a Contracting State but only if it is a Contracting State which has made a declaration under Article XXVII.
Declaration under Article XXVII (2) in respect of Article VIII providing for the application of the entirety of Article VIII

The Republic of Mauritius declares that it will apply Article VIII in its entirety and that the number of calendar days to be used for the purposes of the time-limit laid down in Article VIII (2) shall be sixty (60) calendar days.

Note:

A contracting State which makes a declaration under Article VIII is required by Articles XXVII(2) to specify a binding time-period for the purpose of paragraph 2 of Article VIII within which the speedy relief sought is to be given.

On the principle that a party cannot complain of matters caused by its own acts or omissions, a creditor will not have grounds for complaint if a court fails to give relief within the specified time because, for example, the creditor has not filed the correct documents or followed the proper procedures.

Declaration under Article XXVII (3) in respect of Article IX providing for the application of Article IX, Alternative A to all types of insolvency proceeding

The Republic of Mauritius declares that it will apply Article IX, Alternative A to all types of insolvency proceeding and that the waiting period for the purposes of Article IX (4) of that Alternative shall be sixty (60) calendar days.

Note:

According to Alternative A, 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 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.
Declaration under Article XXVII (1) in respect of Article X

The Republic of Mauritius declares that it will apply Article X.

Note:

According to Article X, the courts of a Contracting State in which railway rolling stock is situated shall, in accordance with the law of the Contracting State, cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article IX.

Declaration under Article XIII (1) providing for the designation of entry points for optional use as transmitters of registration information and optional use for information required for registrations in respect of notices of sales

Note:

No declaration to be made yet due to lack of competent entities in relation to entry points in relation to registration of railway rolling stock.

Declaration under Article XIV (2)

Note:

No declaration to be made yet due to the lack of a system of national or regional identification numbers (Article XIV (3) of the Luxembourg Protocol provides that a declaration under Article XIV (2) must include detailed information on the operation of the national or regional identification system).
General declaration under Article XXIV

The Republic of Mauritius declares that the Luxembourg Protocol shall apply to all its territorial units.

Note:

If a Contracting State does not make a declaration under Article XXIV, the Luxembourg Protocol will apply to all of its territorial units.

A Contracting State having made such a declaration may modify the latter by submitting another declaration at any time.

General declaration under Article XXV (1) in relation to all public service railway rolling stock

Note:

No declaration to be made under this article as it might discourage financing by creditors.
ANNEX 2D: Declarations which could be made under the Space Protocol

No country has made a declaration yet under this protocol.

The following declarations can be made under the Space Protocol in respect of the following articles:

- Article VIII Choice of law
- Article XX Relief pending final determination
- Article XXI Remedies on insolvency
- Article XXII Insolvency assistance
- Article XXVII (4) Limitations on remedies in respect of public service
- Article XXXI Designation of entry points
- Article XXXIX Territorial units

Note:

The provisions of the Space Protocol in respect of which opt-in declarations may be made are Articles XX, XXI, and XXII.

The provisions of the Space Protocol in respect of which opt-out declarations may be made is Article VIII.

⇒ Declaration under Article XLI(2)(a) in respect of Article VIII

No declaration to be made under this article.

Note:

Article VIII applies unless excluded by a Contracting State’s declaration under Article XLI(2), and it allows the parties to an agreement or a related guarantee contract or subordination agreement or a contract of sale to choose a law governing their relations *inter se* without restrictions of this kind.

As most State Parties to the Aircraft Protocol have regularly made opt-in declarations (Karl F. Kreuzer (2013) *Jurisdiction and choice of law under the Cape Town Convention and the Protocols thereeto, Cape Town Convention Journal*, 2:1, 160), the advantages to allow parties to choose the governing law seem to exceed the disadvantage linked to the possibility that they do not.
Law Reform Commission of Mauritius [LRC]
[LRC_R&P 137, October 2019]

States that are not prepared to permit an unqualified selection by the parties will opt out of this provision.

➢ Declaration under Article XLI(3) in respect of Article XX providing for the application of the entirety of Article XX
The Republic of Mauritius declares that it will apply Article XX in its entirety and that the number of calendar days to be used for the purposes of the time-limit laid down in Article XX (2) shall be sixty (60) calendar days.

Note:
According to Article XLI (3), A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article XX wholly or in part. If it so declares with respect to Article XX(2), it shall specify the time-period required thereby.

➢ General declaration under Article XLI(4) in respect of Article XXI providing for the application of Alternative A in its entirety to all types of insolvency proceeding
The Republic of Mauritius declares that it will apply Article XXI, Alternative A in its entirety to all types of insolvency proceeding and that the waiting period for the purposes of Article XXI (4) of that Alternative shall be sixty (60) calendar days.

Note:
According to Article XLI (4), 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, or the entirety of Alternative B of Article XXI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Alternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a
declaration pursuant to this paragraph shall specify the time-period required by Article XXI.

➢ Declaration under Article XLI(2)(b) in respect of Article XXII

The Republic of Mauritius declares that it will apply Article XXII.

Note:

According to Article XXII, the courts of a Contracting State: (i) in the territory of which the space asset is situated; (ii) from the territory of which the space asset may be controlled; (iii) in the territory of which the debtor is located; (iv) in the territory of which the space asset is registered; (v) which has issued a licence in respect of the space asset; or (vi) otherwise having a close connection with the space asset, 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 XXI of this Protocol.

➢ Declaration under Article XLI(1) in respect of Article XXVII (4)

The Republic of Mauritius declares that, pursuant to Article XXVII(4), the period to be applied for the purposes of Article XXVII(3) shall be six (6) months.

Note:

This is a mandatory declaration and should be made irrespective of whether or not a State has public service providers reliant on the use of space assets.
Declaration under Article XXXI providing for the designation of entry points for optional use as transmitters of registration information to the International Registry

Note:

No declaration to be made yet due to lack of competent entities in relation to entry points in relation to registration Space assets.

General declaration under Article XXXIX

The Republic of Mauritius declares that the Space Protocol shall apply to all its territorial units.

Note:

Having made such a declaration under Article XXXIX, a Contracting State may modify its declaration by submitting another declaration at any time; cf. Article XXXIX (1).
ANNEX 3A: STATUS CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Adoption: Place: Cape Town / Lieu: Le Cap
Date: 16.11.2001

Entry into force / Entrée en vigueur: 01.03.2006 (Art. 49(1))

Contracting States / États: 79

contractante:
Regional economic integration
organisations / Organisations
d'intégration économique
régionale:

Depositary / Dépositaire: UNODIT

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1. Entry into force subject to / sous réserve de: Convention Article 49(2)

2. This State has provided UNIDROIT with information about its laws and policies in relation to the Convention / Cet Etat a fourni à UNIDROIT des informations concernant la situation au regard de la législation et des politiques applicables aux matières couvertes par la Convention.


3. The Kingdom of the Netherlands deposited its instrument of accession to the Convention on 20 July 2010 for the Netherlands Antilles (Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba) and Aruba (entry into force on 1 September 2010). As from 10 October 2010, following a modification of the internal constitutional relations within the Kingdom of the Netherlands, the reference to the "Netherlands Antilles" is to be replaced by "Curaçao, Sint Maarten, the Caribbean part of the Netherlands (the islands of Bonaire, Saba and Sint Eustatius)" / Le Royaume des Pays-Bas a déposé son instrument d'adhésion à la Convention le 20 juillet 2010 pour les Antilles néerlandaises et Aruba (entrée en vigueur le 1er septembre 2010). A compter du 10 octobre 2010, suite à une réforme des relations constitutionnelles au sein du Royaume des Pays-Bas, la référence aux "Antilles néerlandaises" doit être remplacée par "Curaçao, Sint Maarten et la partie caribéenne des Pays-Bas (les îles de Bonaire, Saba et Sint Eustatius)"

4. Regional Economic Integration Organisation / Organisation régionale d'intégration économique: Convention Article 48

   Affected by withdrawal and/or subsequent declaration / Fait l'objet d'un retrait et/ou d'une déclaration subséquente
ANNEX 3B: PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

Adoption: Place: Cape Town / Lieu: Le Cap
Date: 16-11-2001

Entry into force: 01.03.2006 (Art. XXVIII(1))

Entrée en vigueur:

Contracting States / États contractants:

Regional economic integration organisations / Organisations d'intégration économique régionale:

Depositary / Déléguée:

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1. This State has provided updates with information about its laws and policies in relation to the Aircraft Protocols. See http://www.unidroit.org/nationalinfo-2020/capetown-aircraft

2. The Kingdom of the Netherlands deposited its Instrument of accession to the Aircraft Protocol on 20 July 2010 for the Netherlands Antilles (Curaçao, Sint Maarten, Bonaire, Sint Eustatius and Saba) and Aruba (entry into force on 1 September 2010). As from 10 October 2010, following a modification of the internal constitutional relations within the Kingdom of the Netherlands, the reference to the “Netherlands Antilles” is to be replaced by “Curaçao, Sint Maarten and the Caribbean part of the Netherlands (the islands of Bonaire, Saba and Sint Eustatius)” / Le Royaume des Pays-Bas a déposé son Instrument d’adhésion au Protocole aéronautique le 20 juillet 2010 pour les Antilles néerlandaises et Aruba (entrée en vigueur le 1er septembre 2010). À compter du 10 octobre 2010, suite à une réforme des relations constitutionnelles au sein du Royaume des Pays-Bas, la référence aux “Antilles néerlandaises” doit être remplacée par “Curaçao, Sint Maarten et la partie caribéenne des Pays-Bas (les îles de Bonaire, Saba et Sint Eustatius)”

3. Regional Economic Integration Organisation / Organisation régionale d’intégration économique: Protocol / Protocole Article XXVII

1. Affected by withdrawal and/or subsequent declaration / Fait l’objet d’un retrait et/ou d’une déclaration subséquente
ANNEX 3C: STATUS LUXEMBOURG PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO RAILWAY ROLLING STOCK

Adoption: Place: Luxembourg
Date: 23.02.2007
Entry into force: Not in force (ex Art. XXIII)

Depository: UNIDROIT

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ANNEX 3D: STATUS PROTOCOL TO THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO SPACE ASSETS

Adoption: Place: Berlin
Date: 09.03.2012

Entry into force: Not in force (Art. XXVIII)

Depository: UNIDROIT

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