

THE MINING, AGRICULTURE AND CONSTRUCTION (MAC) PROTOCOL TO THE CAPE TOWN CONVENTION

OPERATION, BENEFITS FOR FINANCIERS, AND NEXT STEPS



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**Presentation for the Equipment Leasing and Financing Association (ELFA)
Washington DC, United States of America**

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Introduction to UNIDROIT

- **The International Institute for the Unification of Private Law (UNIDROIT)** is an independent intergovernmental organisation established in 1926.
- **65 Member States** drawn from the five continents and represent a variety of different legal, economic and political systems as well as different cultural backgrounds (90.7% of global nominal GDP, 73.6% of the world population).
- **Purpose:** Modernise, harmonise and coordinate private and commercial law between States.
- **Legislative function:** Formulate uniform law instruments, principles and rules.
- **Work areas:** Access to Credit, International Commercial Contracts, Agricultural Development, Law and Technology, Capital Markets and Financial Law, Transnational Civil Procedure, Cultural Property and Sustainable Development.



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UNIDROIT access to credit instruments

**ASSET
BASED
FINANCE**

**Cape Town
Convention
(2001)**

**Aircraft
Protocol
(2001)**

**Rail Protocol
(2007)**

**Space
Protocol
(2009)**

**Mining, Agriculture
and Construction
(MAC) Protocol
(2019)**

LEASING

**International
Financial Leasing
Convention (1989)**

**Model Law on
Leasing
(2008)**

FACTORING

**International
Factoring
Convention
(1989)**

**Model Law on
Factoring
(2023)**

**Factoring Guide
to Enactment
(2025)**

**AGRICULTURAL
FINANCE**

**UNIDROIT/UNCITRAL
Model Law on
Warehouse Receipts
(2024)**

**Legal Guide on
Agricultural Supply
Chain Finance
(2026)**



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Asset Based Finance – The Cape Town Convention

- **Starting point:** growing global need for financing (including private capital) in the acquisition and use of high value mobile equipment (particularly evident, initially, in the exponential growth of the aviation sector)
- **Emerging goals:** fostering legal reform for economic growth and sustainable development (e.g., Rail and MAC Protocol)

BUT:

- **LEGAL OBSTACLES** in effectively using asset-based financing and leasing, particularly in cross-border transactions, without uniform law → uncertainty and unpredictability



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Basics of the Cape Town Convention Treaty System

SOLUTION:

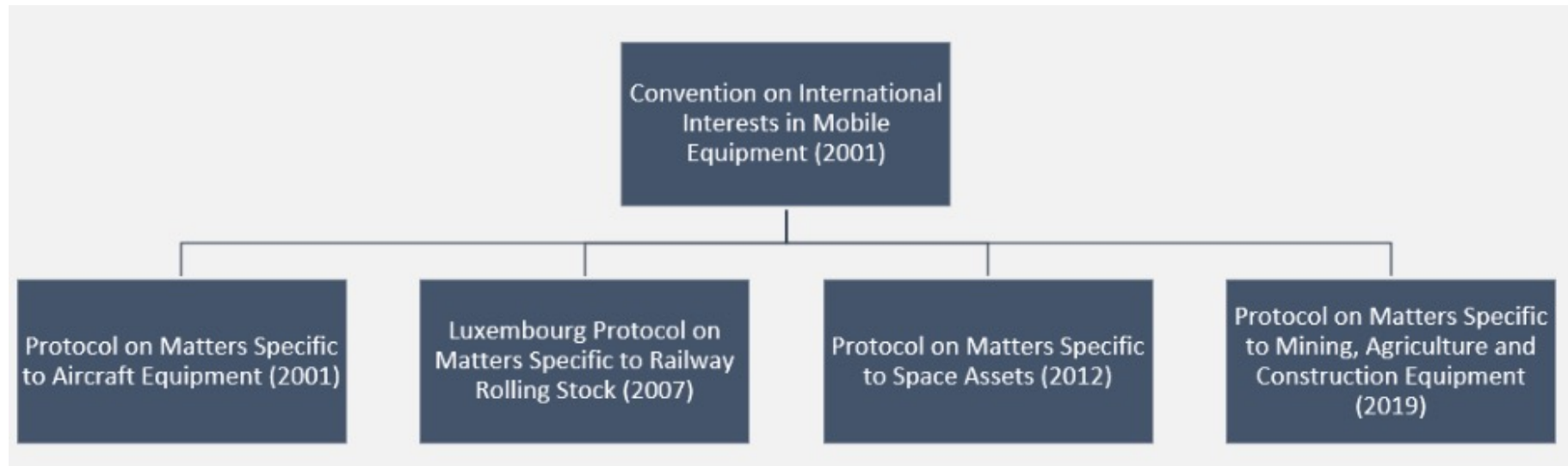
- Uniform legal regime created by treaty to remove legal obstacles and facilitate financing and leasing of certain types of uniquely identifiable, mobile high value equipment used in specific industry sectors:
 - Aviation industry (airframes, aircraft engines and helicopters)
 - Rail industry (railway rolling stock from high-speed trains to commuters to trams or undergrounds)
 - Space industry (satellites and other space assets)
 - Mining, agricultural and construction sectors (high value equipment used in these sectors)



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The Cape Town Convention Treaty System



- **Two Tier Structure:** Convention provides a common core of rules; Protocols adapt it to the needs of the particular equipment/market
- Convention applies only in relation to a specific Protocol, Protocols can derogate from the Convention and they prevail over the Convention



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Basics of the Cape Town Convention Treaty System

The Cape Town Convention and its Protocols facilitate and improve access to credit in key economic sectors

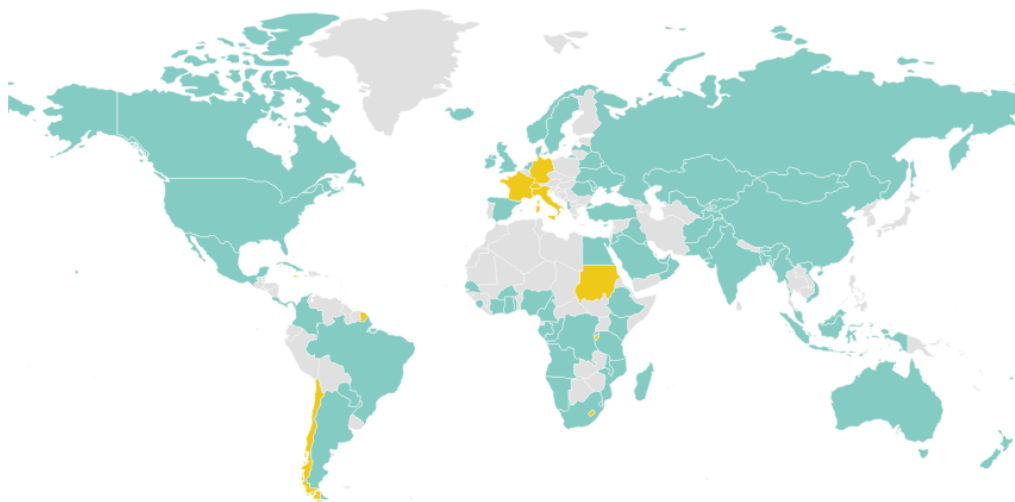


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International success of the Cape Town Convention: the example of the Aircraft Protocol

STATUS MAP OF THE PROTOCOL TO THE UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT - SIGNATURES, ENTRY INTO FORCE



Political acceptance

- **CTC: 86 contracting States + European Union**
- **AP: 83 contracting States + 1 European Union**

Volume of transactions

- **More than 1.6 Million registrations in the AP Registry since 2006, over 1 trillion USD in value of collateral**

Proven economic benefits

- **“Cape Town Discount” for Export Credit Agencies under OECD sector understanding (up to 10% discount applicable when debtor is located in a CTC contracting State)**
- **Improved rating in recourse to capital market debt financing (leasing agreements)**

CTC & Aircraft Protocol cover more than half of global financing in the aviation sector

Key legal features of the CTC model which apply to all Protocols

- **INTERNATIONAL INTEREST:** Parties can create an autonomous “international interest” over the equipment, deriving from a security agreement, a conditional sale or a lease agreement
- **INTERNATIONAL REGISTRY:** A dedicated international asset-based and wholly electronic registry ensures transparency and predictability as well as effectiveness as against competing creditors and in insolvency.
- **CLEAR PRIORITY RULES:** The registry provides a clear rule for determining priorities, including as against interests in domestic law, with limited and well-defined exceptions
- **EFFECTIVE ENFORCEMENT MEASURES APPLICABLE ALSO IN INSOLVENCY:** CTC provides effective and swift enforcement measures, applicable also in insolvency, including out-of-court remedies, if Contracting States so agree, and including advance relief pending final determination during court
- **FLEXIBILITY ACHIEVED THROUGH DECLARATIONS:** States can make policy choices through declarations to the Convention and to the Protocols
- **ENHANCED CREDITORS’ PROTECTION THROUGH PROTOCOLS:** Protocols allow States to strengthen creditor’s rights in enforcement and insolvency through declarations



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The Mining, Agriculture and Construction (MAC) Protocol

Global challenges in supply chain financing of agricultural equipment

- The financing of mining, agricultural and construction (MAC) equipment remains challenging in many parts of the world.
- Financial institutions are unwilling to provide credit to companies in the MAC sectors to purchase or lease equipment, due to uncertainty created by domestic laws, the possible movement of assets across borders, or challenges in enforcing their rights upon default or insolvency.
- **Credit availability in the agricultural sectors remains constrained in many regions.** Credit may cover as little as 20% of product value in developing markets. In certain markets, borrowers have no choice but to self-finance entire sales. Companies also face challenges in securing credit using MAC equipment they already own as collateral.
- Consequently, many farmers cannot access credit on reasonable terms and thus lack the ability to acquire the equipment needed to improve productivity and performance.

The MAC Protocol was developed to address these issues.



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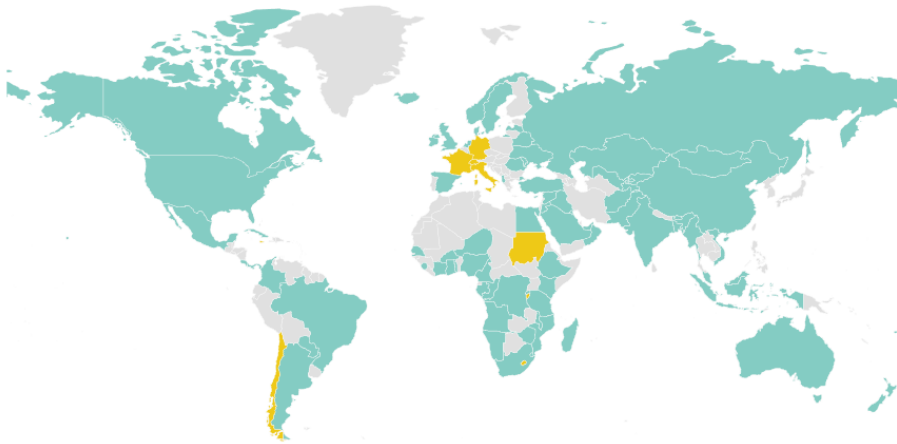
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The Mining, Agriculture and Construction (MAC) Protocol

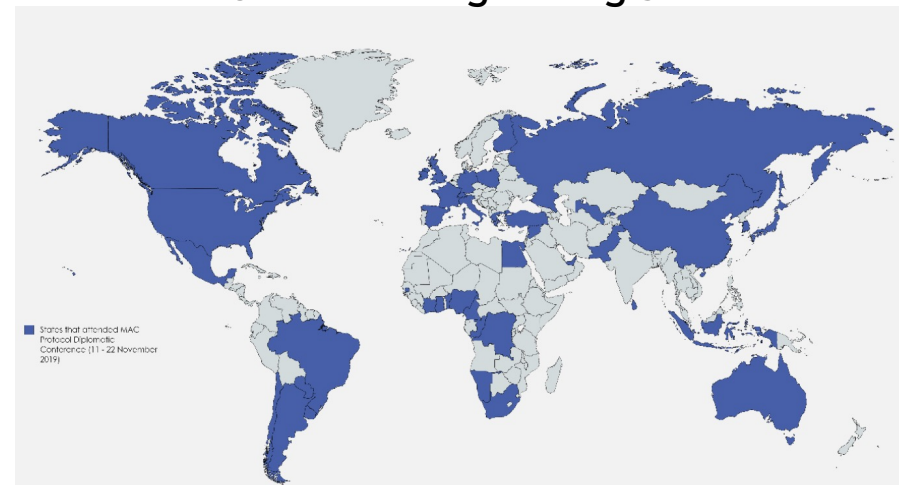
Introduction to the MAC Protocol

- Adopted by a Diplomatic Conference of 42 States in 2019, the MAC Protocol provides an international legal framework for the financing of MAC equipment.
- The MAC Protocol is an extension of the successful 2001 Cape Town Convention and its Aircraft Protocol, which has 86 Contracting States.

Cape Town Convention Contracting States



MAC Protocol Negotiating States



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The Mining, Agriculture and Construction (MAC) Protocol

WHY DEVELOP A MAC PROTOCOL?

- ✓ Outstanding success of the Cape Town Convention and Aircraft Protocol
- ✓ Desire to increase economic benefits for developing countries and emerging economies by extending to mining, agriculture and construction sectors
- ✓ Need to address other issues of global concern (food security, infrastructure, climate change)

MAC Protocol Timeline

- 2006 – 2013 Preliminary work, feasibility assessment
- 2014 – 2016 Study Group develops preliminary draft MAC Protocol
- 2017 Committee of Governmental Experts further negotiates draft
- 2019 **Adoption at Diplomatic Conference in Pretoria, South Africa**



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The Mining, Agriculture and Construction (MAC) Protocol

ROLE OF ELFA IN MAC PROTOCOL DEVELOPMENT



- The role of the private sector was essential in the development and successful conclusion of the MAC Protocol.
- During the main stages of negotiation (2015 – 2019), private sector interests were represented by the “MAC Working Group”, which included ELFA as one of its core members.
- During negotiations, ELFA acted as a bridge between the financing industry and the treaty negotiations, to ensure that industry interests were represented and taken into account in the final text (for example, creditor remedies on insolvency), and ensured that the negotiations maintained momentum.



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The Mining, Agriculture and Construction (MAC) Protocol

Operation of the MAC Protocol

- The MAC Protocol extends the CTC international legal framework for the creation, registration and enforcement of legal interests in MAC equipment.
- **Creation:** The treaty provides simplified rules for the creation of international interests in MAC equipment between creditors and debtors (security interests, leases and retention of title).
- **Registration:** Priority through registration in the international MAC Registry.
- **Enforcement:** Strong enforcement remedies on debtor default or insolvency: take possession, sell/lease, collect income,
- **International application:** As long as the debtor is in a Contracting State (creditor can be anywhere), the MAC Protocol will apply, even if the equipment moves.



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Specific Features of the MAC Protocol

The MAC Protocol generally reflects the rules in the existing Protocols regarding creation, priority, default, insolvency and remedies. However, the MAC Protocol also contains several unique provisions that suitably adapt it for application to the mining, agriculture, and construction sectors:

- Scope: It covers high-value and uniquely identifiable types of MAC equipment as identified through 6 digit **Harmonized System (HS System)** codes developed by the World Customs Organization. These codes are the basis of the global trade system and therefore widely understood by States and industry
- Inventory financing: Contracting States can choose not to apply the Protocol to **inventory financing**
- Immovable Property: Contracting States have different options in relation to the treatment of **immovable-associated MAC equipment**
- Simplified insolvency priority rules: Contracting States may adopt a rule granting creditors expeditious access to MAC equipment after an insolvency-related event, or may continue to apply their existing insolvency law



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The Mining, Agriculture and Construction (MAC) Protocol

EQUIPMENT COVERED BY THE MAC PROTOCOL

➤ The MAC Protocol Annexes list 56 HS codes that cover the equipment within the scope of the Protocol:

- Mining (Annex 1 – 25 HS codes)
- Agriculture (Annex 2 – 36 HS codes)
- Construction (Annex 3 – 35 HS codes)

The MAC Protocol covers **\$148 billion** worth of MAC equipment traded annually



HS Codes picked on following basis:

1. Equipment used in MAC sectors
2. High value equipment
3. Individual serial numbers
4. Complete equipment (not parts)
5. Equipment used on-site

Examples of agriculture equipment

- 870192: Tractors of an engine power exceeding 18 kW but not exceeding 37 kW (higher power tractors also included).

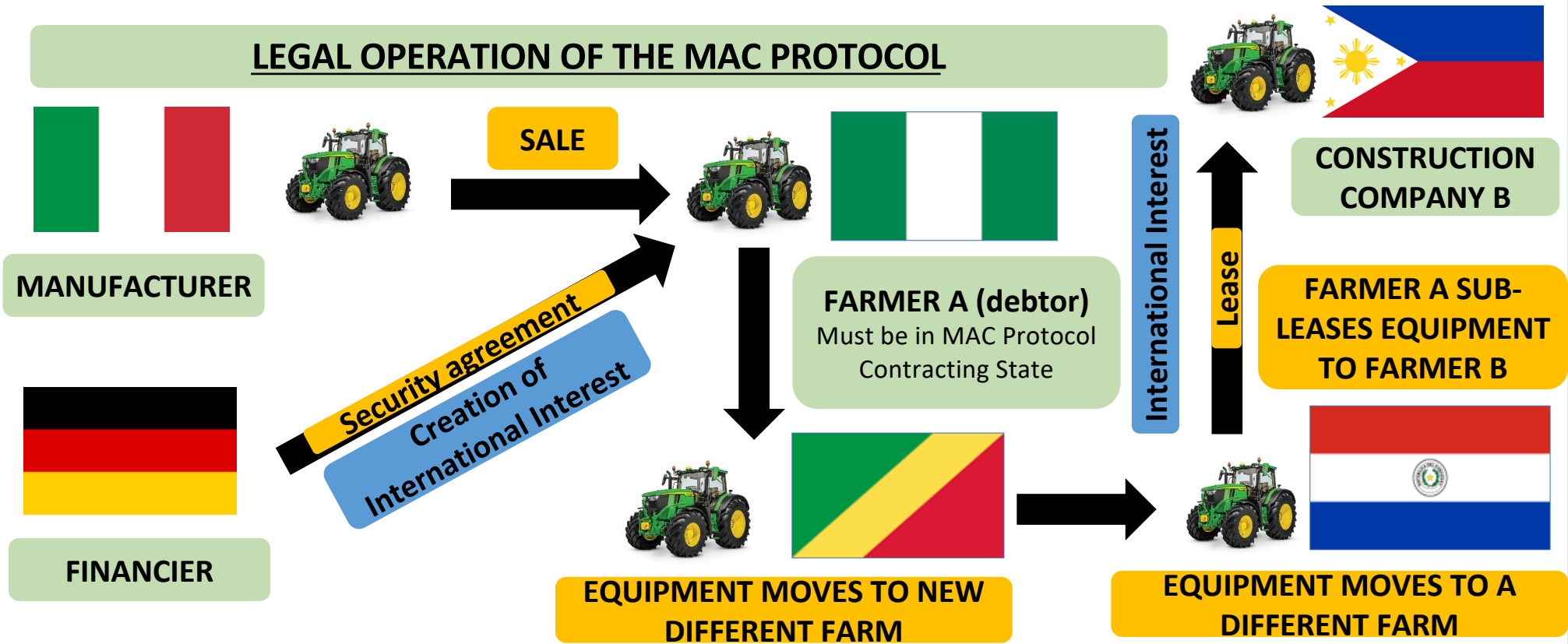


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The Mining, Agriculture and Construction (MAC) Protocol

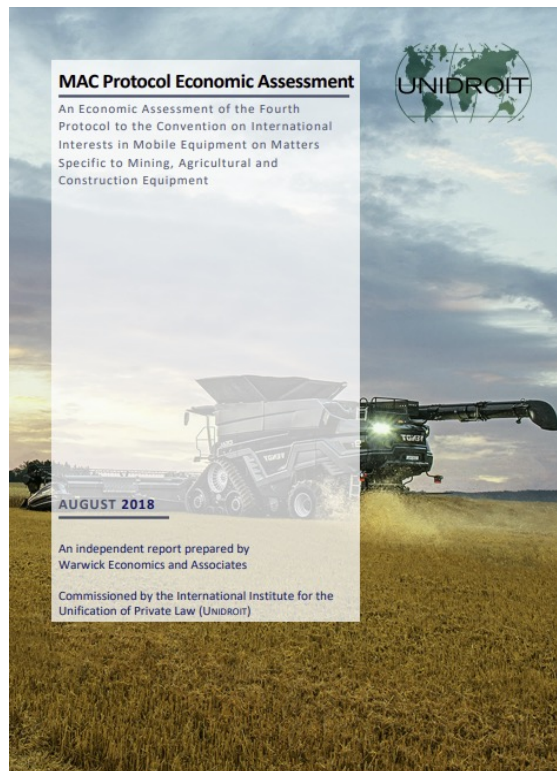
LEGAL OPERATION OF THE MAC PROTOCOL



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The Mining, Agriculture and Construction (MAC) Protocol



GLOBAL ECONOMIC BENEFITS

- MAC Protocol predicted to increase the stock of MAC equipment by \$90 billion over 10 years
- Annually increase GDP \$23 billion (developing)
- Annually increase GDP \$7 billion (developed)
- **Total impact on global GDP equivalent to \$30 billion a year**



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The Mining, Agriculture and Construction (MAC) Protocol

ECONOMIC BENEFITS FOR DIFFERENT SECTORS



Farmers, will benefit from increased access to modern equipment at a lower cost, increasing mechanization, productivity and yields.

Manufacturers will benefit from higher demand for their equipment and increase output

Dealers and traders will be able to export and import more equipment and begin operations in new markets.

Financiers will benefit from greater legal protection in issuing credit, which will allow them to provide cheaper financing in existing markets and expand operations to new markets.



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The Mining, Agriculture and Construction (MAC) Protocol

BENEFITS FOR ELFA MEMBERS



- ✓ **MAC provides the CTC legal protections for creditors to the MAC equipment sector:**
 - Establish clear priority of legal interest in MAC equipment through registration
 - Priority over unregistered interests, domestic law interests
 - Strong remedies for creditors on debtor default and debtor insolvency
 - Creditors legal protections remain effective even where asset moves internationally

- ✓ **New articles in MAC Protocol provide additional protections and innovations for creditors:**
 - Protection of international interests vis-à-vis immovable property interests (Art VII alt A)
 - Ability to preserve existing inventory finance arrangements (optional declaration)
 - Strongest creditor protection in relation to debtor insolvency (optional declaration)



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The Mining, Agriculture and Construction (MAC) Protocol

BENEFITS FOR ELFA MEMBERS



- ✓ If widely implemented, the MAC Protocol will allow ELFA members to expand their credit operations across the world, especially in jurisdictions where the existing domestic legal framework make it challenging to do business.
- ✓ Benefits will accrue for captive finance companies, independent banks and international financial institutions.
- ✓ Benefits for different financing techniques and structures, including leasing (securitizations)
- ✓ Use of MAC electronic registry, provide a simple, one-stop shop for protecting legal interest through registration, improve certainty and efficiency, modern digital solution.



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The Mining, Agriculture and Construction (MAC) Protocol

Implementation of the MAC Protocol

Countries must ratify the MAC Protocol to utilise its legal and economic benefits.

The MAC Protocol will enter into force when it has been ratified by five countries.

Currently, the MAC Protocol has been signed by five States and the EU.

1. Republic of Congo (2019)
2. Gambia (2019)
3. Nigeria (2019)
4. Paraguay (2019)
5. United States of America (2020)
6. European Union

**MAC INTERNATIONAL
REGISTRY CURRENTLY
BEING DEVELOPED**



CURRENT FOCUS ON RATIFICATION AND DOMESTIC IMPLEMENTATION



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The Mining, Agriculture and Construction (MAC) Protocol

ROLE OF ELFA IN THE IMPLEMENTATION OF THE MAC PROTOCOL

- The success of the Aircraft Protocol predominantly due to the lobbying undertaken by the Aviation Working Group (AWG), made up of manufacturers (Airbus and Boeing), financiers and lawyers
- The speed of entry into force got the MAC Protocol depends on industry support
- ELFA can:
 1. **Work with other industry associations** (AEM, etc) to strengthen and formalise industry support for the MAC Protocol through the MAC Working Group
 2. **Promote ratification of the MAC Protocol in manufacturing countries and export markets (involve individual members in target countries), and promote certain declarations**
 3. **Support EU ratification of the MAC Protocol** through regional organisations and international financial institutions
 4. Provide input during the development of the registry to ensure that it is user-friendly



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THE MINING, AGRICULTURE AND CONSTRUCTION (MAC) PROTOCOL

FURTHER RESOURCES

- MAC Protocol text:
<https://www.unidroit.org/wp-content/uploads/2021/09/mac-protocol-e.pdf>
- MAC Protocol Economic Assessment:
<https://www.unidroit.org/english/documents/2018/study72k/1808-final-mac-protocol-ea.pdf>
- MAC Protocol overview:
<https://www.unidroit.org/instruments/security-interests/mac-protocol/history/>



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