

Frequently Asked Questions about the UNIDROIT Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Space Assets

Diplomatic Conference to be convened in February 2012 to adopt a new international law applicable to secured financing of space property.

What does this mean for the future of satellite financing?

What is the UNIDROIT Space Protocol?

The Convention on International Interests in Mobile Equipment of 2001 (known as the Cape Town Convention) and its equipment specific Protocols are an international treaty regime prepared by UNIDROIT. It is intended to facilitate asset-based financing of high value mobile equipment such as aircraft, railcars and satellites. The Protocol on Matters specific to Space Assets (the "Space Protocol") aims to provide rules and principles for financing space property and certain related rights.

What is UNIDROIT and what is its role in the Space Protocol?

The International Institute for the Unification of Private Law (known as UNIDROIT) is an intergovernmental organization that studies and formulates uniform international laws intended to modernize, harmonize and coordinate private (particularly commercial) law among countries. UNIDROIT has drafted the Space Protocol and transmitted it to a diplomatic conference of government representatives to be convened in Berlin in February/March, 2012 for its adoption into law by participating countries as part of the Cape Town Convention.

Why is UNIDROIT pursuing the Space Protocol?

At present, there is no global registration system for the creation, ranking and enforcement of security interests/mortgages/pledges in, sales of or leasing rights in space property, such as satellites. The Space Protocol would establish an international registry (the "Registry") to record and determine priority among creditor rights in space property on a first-to-register basis. Accordingly, the holder of a properly recorded interest will rank senior to all unregistered interests, irrespective of any knowledge on the part of such holder as to prior unregistered interests.

What assets and rights are intended to be covered by the Space Protocol?

The Space Protocol would apply to certain interests in Space Assets, defined as "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 ... ; (ii) a payload (whether telecommunications, navigation, observation, scientific or otherwise) ... ; or (iii) a part of a spacecraft or payload such as a transponder ... together with all installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto."

The interests covered by the Space Protocol, termed "international interests", are of three varieties: (1) those granted pursuant to a security agreement; (2) those vested in a conditional seller under a title reservation agreement; and (3) those vested in a lessor under a leasing agreement.

The Space Protocol also applies to sales, prospective sales, insurer salvage interests, rights assignments, rights reassignments and acquisitions of debtors' rights by subrogation. Numerous other elements integral to space projects are not covered. These include licenses, insurance, intellectual property and ground equipment, which would have to be addressed under applicable national laws.

Is a Space Protocol Necessary?

UNIDROIT maintains that by providing clear, substantive and commercially oriented international rules to govern asset-based financings of Space Assets and by creating and administering a uniform international system for the registration of security interests in such assets, the Space Protocol will reduce risks associated with asset-based space financings and support the commercial space industry. Detractors in the space business, including many satellite operators, spacecraft manufacturers and the financial institutions that finance them, believe the Space Protocol is unnecessary, complicated and burdensome and would create a supranational legal regime that would overlap and needlessly interfere with existing national laws.

What happens if the Space Protocol becomes law?

Assuming a small number of countries ratify or accept the Space Protocol, it will enter into force and then become law in those countries that adopt it. Thereafter, the Space Protocol will apply to any debtor situated in a contracting country. In light of the few countries needed for the Space Protocol to become effective, it is likely it will enter into force.

It is also expected that the upcoming diplomatic conference will consider selection of a candidate agency to serve as the Supervisory Authority to supervise the Registry.

How will the Space Protocol affect any future satellite financing?

The Space Protocol will not apply to rights or interests existing before the date of its entry into force and so will not affect existing financings of Space Assets. Once applicable, the Space Protocol will require creditors seeking to protect their international interests in Space Assets and related rights to properly register their interests. To do so, they will have to determine whether the assets involved in a financing are covered by the Space Protocol, they can be accurately described for purposes of registration and they can be differentiated from other rights that cannot be protected under the Space Protocol regime.

What should I be doing now in advance of the diplomatic conference?

The February/March 2012 diplomatic conference in Berlin is expected to be the final opportunity to express views about the desirability of the Space Protocol to the member countries of UNIDROIT that will be participating. Anticipating the implications for any satellite financing in process is advisable as is the importance of identifying what part of a space project collateral package will be affected by the Space Protocol. It will also be important to ensure registration, priority and perfection of all financed space property and related rights whether or not within the sphere of the Space Protocol.

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