



Sub-Committee of the ICAO Legal Committee on the study of international interests in mobile equipment (aircraft equipment)



UNIDROIT Committee of governmental experts for the preparation of a draft Convention on International Interests in Mobile Equipment and a draft Protocol thereto on Matters specific to Aircraft Equipment

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PRELIMINARY DRAFT UNIDROIT CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT:

MEMORANDUM ON THE IMPORTANCE FOR SPACE PROPERTY OF THE INCLUSION OF ASSOCIATED RIGHTS WITHIN THE SPHERE OF APPLICATION OF THE PROPOSED CONVENTION AND THE PROPOSED SPACE PROPERTY PROTOCOL

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I. Overview

The preliminary draft UNIDROIT Convention on International Interests in Mobile Equipment (the “Convention”) is designed first and foremost to create a uniform international system to register security interests in a variety of high-value mobile equipment including airframes, aircraft engines, oil rigs, containers, railway rolling stock, and space property and thereby reduce certain risks associated with asset-based financing of mobile equipment.

To address adequately the unique aspects of each category of mobile equipment, the Convention contemplates the formulation of individual protocols to govern each category of mobile equipment. A space property protocol will be particularly important because the nature of, and the jurisdictional issues involved with space property are quite different in many respects from other categories of mobile equipment. For example, space property is not within the territory of any country once it is launched into space. Accordingly, the incorporation of “associated rights” with respect to space property remedy provisions is paramount to the operation of the future Space Property Protocol (the “Protocol”).

To clearly demonstrate the practical importance of “associated rights” and the unique characteristics of space property, the following discussion will examine the enforcement of security interests with regard to a satellite.

II. Importance of associated rights with respect to remedy provisions

In the event of default, a creditor's interest in "associated rights" to a satellite significantly aids the process of obtaining constructive repossession of such satellite. Although a satellite may be regarded as sophisticated mobile equipment, much of the value placed on a satellite is derived from various rights associated with the operation of that satellite. These "associated rights" include: (1) governmental licenses and permits the assignment of which is permissible under local law; (2) intangible rights necessary to control, operate or transfer ownership of, or rights in a satellite; (3) contractual rights relating to the launch and operation of a satellite; and (4) proceeds and revenues derived from the operation of a satellite. There is great significance in intangible rights and "control" in the context of "associated rights" such as governmental authorisations, intellectual property required to control, use and operate equipment, and contractual rights such as performance warranties. "Associated rights" are inextricably linked to a "physical" satellite and are integral to the commercial value of a satellite.

From a creditor's standpoint, the most likely and effective remedy with respect to an orbiting satellite is the taking of constructive repossession (or control) through telemetry, tracking, and command (TT&C). The most expeditious means of taking control is by using the existing TT&C facility. As this may pose legal and practical difficulties, the obligee should be entitled to seek judicial relief in any country that would have "line of sight" of the satellite. Such exercise will be simplified if the obligee possesses "associated rights" such as governmental licenses, permits, intellectual property and other intangible or contractual rights necessary for control and operation of the satellite. As a practical matter, an obligee's constructive repossession of a satellite cannot be assured without the appurtenant "associated rights" such as access to: (1) the relevant TT&C facility; (2) satellite command and control software; and (3) relevant satellite access codes.

The timeframe in which the above stated remedies can be enforced is of critical importance and may vary from one legal system to another. The effects of protracted justice and procedural delays are significant to obligees since equipment that requires immediate preservation, such as a satellite, necessitates speedy judicial relief. The Convention and Protocol contain a provision entitling an obligee that adduces *prima facie* evidence of default by an obligor to "speedy judicial relief" in the form of a variety of court orders. A Contracting State shall ensure that an obligee who adduces *prima facie* evidence of default by the obligor may, pending final determination of its claim and to extent that the obligor has so agreed, obtain speedy judicial relief in the form of such one or more of the following orders: (a) preservation of the object and its value; (b) possession, control or custody of the object; (c) immobilisation of the object; (d) sale, lease or management of the object; (e) application of the proceeds or income of the object. A creditor seeking to enforce remedies with respect to a satellite by means of the "speedy judicial relief" provision of the Convention and Protocol will benefit greatly from the "associated rights" to a satellite that allow such creditor promptly to effectuate a judicial order to obtain custody, possession, command and/or control of the asset.

From a creditor's or obligee's perspective, a satellite and its "associated rights" are inter-related commodities that function as a single asset. Exclusion of "associated rights" from a security interest in the satellite itself erodes the value of such satellite as collateral. For the aforementioned reasons, the inclusion of "associated rights" with respect to space property is vital to the future Space Property Protocol.