

The Space Protocol of the Cape Town Convention:

An International Secured Transactions Regime for Space Assets

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The Space Protocol to the Cape Town Convention

- The **Space Protocol** to the Cape Town Convention is an international treaty adopted in 2012 at a diplomatic Conference in Berlin under the auspices of the International Institute for the Unification of Private Law (UNIDROIT)
- It is part of the **Cape Town Convention treaty system**, the aim of which is to facilitate **asset-based financing and leasing** for the manufacture, acquisition and use of specific high value equipment (such as aircraft, railway rolling stock, and space assets)
- The Space Protocol's aim is to adapt the CTC model to the specific characteristics of space assets and space activities

Outline of presentation

- The Space Protocol offers an additional opportunity for financing in the space industry
- The general framework of the Cape Town Convention model applies to the Space Protocol
- The Space Protocol adapts the Cape Town Convention model to space assets and their financing

The Space Protocol as an additional opportunity for the financing of space assets

- **Highly capital-intensive nature** of Space Industry makes it difficult for entrepreneurs and small companies, from developed and developing countries alike, to progress and compete in the global market
- The Space Protocol provides a **predictable international system** in which companies of all sizes can gain access to finance for their operations at better conditions and rates
- It does so by relying on **asset-based financing techniques**, which are presently extremely difficult to use and offer unreliable protection, due to the obstacles in obtaining international recognition and enforcement of creditors' and lessor's rights

The Space Protocol as an additional opportunity for the financing of space assets (2)

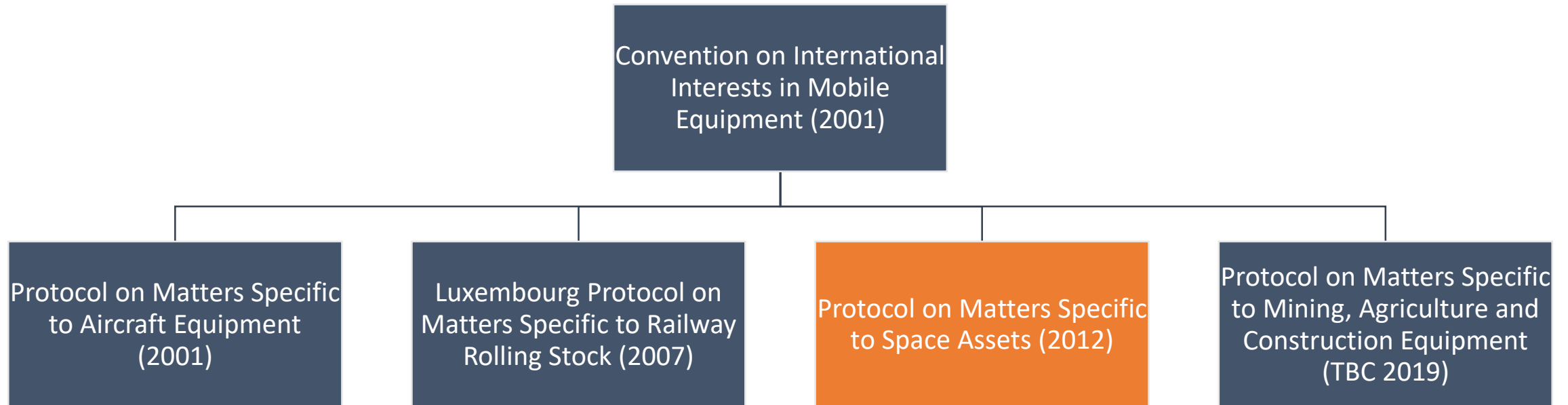
TWO IMPORTANT CLARIFICATIONS:

- The Space Protocol does not displace existing financing models
- Space operators are not obliged to use the Protocol but are free to decide whether to constitute an international interest or not

Key elements of the conventional regime

- The Cape Town Convention system **ENHANCES LEGAL PREDICTABILITY** in financing transactions regarding high value, uniquely identifiable mobile equipment, reducing creditor's risks and thereby lowering the cost of credit
- This goal is achieved by allowing parties to a security agreement, a conditional sale or a leasing agreement to create **AUTONOMOUS INTERESTS** on the equipment, which are **INTERNATIONALLY ENFORCEABLE** in States parties to the Convention and a relevant Protocol
- Creditors may register their interest in an **ELECTRONIC INTERNATIONAL REGISTRY**, which will give notice of their existence to third parties and enable the creditor to preserve its priority against subsequently registered interests and against unregistered interests and creditors in the debtor's insolvency
- The Convention and Protocols provide the creditor with a **RANGE OF BASIC DEFAULT AND INSOLVENCY-RELATED REMEDIES** and, where there is evidence of default, a means of obtaining speedy relief pending final determination of its claim on the merits

Two-tier structure Convention/Protocols



Special features of the Space Protocol – Scope of application

A 'Space Asset' is defined in Article I(2)(k) of the Protocol 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, 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.

Special features of the Space Protocol (2)

HOW IS IT POSSIBLE FOR CREDITORS TO EXERCISE THEIR REMEDIES UNDER THE SPACE PROTOCOL?

The Protocol takes into account the physical impossibility of repossession in two ways:

- ASSIGNABILITY OF DEBTOR'S RIGHTS

The Protocol recognises the Importance of revenue streams in relation to the space asset for the creditor, and it contains detailed provisions on the assignment of debtor's rights, broadly defined as “[...] rights to payment or other performance due or to become due to a debtor by any person with respect to a space asset”

- TT&C ENFORCEMENT MECHANISM

Moreover, the remedies section of the Protocol contains a provision on the **Tracking, Telemetry and Control (TT&C)** of space assets which can be found within the command codes associated to it (encryption keys which give control over the satellites)

Article XIX Prot allows the parties to specifically agree to the placement of command codes and related data and materials with a third party so that the creditor may establish control over, or operate the space asset

As a safeguard, however, laws and regulations of Contracting States can prohibit, restrict, or attach conditions to the placement of command codes with third parties

Conclusions

- The commercial space industry has seen tremendous growth which is expected to multiply in the near future
- To facilitate this growth in an efficient but also fair direction, it is important to allow access to finance to companies of all sizes and capacities and from developing and developed States alike
- The Space Protocol seeks to do this by allowing for capital to be injected into a company based primarily upon its work, while at the same time not displacing other forms of financing where available

Recommendations

The space industry has seen tremendous growth which is expected to multiply in the near future, Morgan Stanley estimates that the revenue generated by the global space industry will increase to **\$1.1 trillion or more in 2040**, up from \$350 billion in 2016.

Prior to the Space Protocol, there existed no international legal framework providing for asset-based financing within the space industry. To assist in the development of the space industry, **an efficient international regime** needed to be developed and this is exactly what the Space Protocol provides. The Space Protocol provides a **stable and secure legal environment** for transactions in space assets based on the **tried and tested mechanism** of asset-based financing.

To continue to facilitate the growth of the space industry, the following recommendations may be considered:

- Joint efforts be conducted to discuss issues faced by SME's in obtaining financing for their space ventures;
- International cooperation, through coordinated efforts by relevant international organisations, be further encouraged in order to promote more cross border investments and business in the space industry.



**Thank you for your attention
Any Questions?**

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