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The Interaction between International Private Law and Space Law and its Impact on Commercial Space Activities (2)

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THE UNIDROIT PROTOCOL TO THE CAPE TOWN CONVENTION ON MATTERS SPECIFIC TO SPACE ASSETS

Abstract

The transfer of ownership of an asset from one party to another is a fundamental characteristic of financing the type of which is dealt with under the legal regimen established by the Convention on International Interests in Mobile Equipment, opened to signature in Cape Town on 16 November 2012 (hereinafter referred to as the Convention), namely asset-based financing. In order for such financing to be possible, a creditor must be able to exercise its default remedies over an asset, including the taking of ownership of the relevant asset. However, the taking of ownership of high value mobile equipment, particularly of the type that regularly moves across national boundaries, can be extremely complex due to the nature of national and international rules governing the owning and operating of such equipment. No-where is this more true than in the case of space assets, such as satellites, where numerous regulations can lead to a high degree of uncertainty regarding the transfer of ownership of a space asset, thereby increasing the risks faced by creditors wishing to finance space assets and, consequently, raising the cost of financing for prospective space entrepreneurs. The cost is even higher for entrepreneurs located in those parts of the world where laws regarding financing are not as well defined as those in the developed world.

In this context, the experts who negotiated the Protocol to the Convention on Matters specific to Space Assets (hereinafter referred to as the draft Space Protocol) made sure to incorporate provisions in that Protocol that would facilitate the transfer of ownership of space assets under the Convention while respecting the existing national and international rules that apply to their ownership and operation. It is expected that such an instrument will lead to greater access to investment capital for a wider range of players in the commercial space sector, leading to increased competition which will, in turn, lead to an increase in the quality of services while simultaneously driving down the costs of those services for the general public.