

IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)
Moon and Mars Settlement: Open Legal Issues (2)

Author: Mr. Hamza Hameed
Unidroit, Italy, h.hameed@unidroit.org

SECURITY INTERESTS IN EXTRA-TERRESTRIAL INFRASTRUCTURE

Abstract

As outer space becomes more commercial, financial models which involve creditors and debtors will become more viable and commonly used, as they are for the development of most infrastructure projects on Earth.

By definition, a security interest is a 'legal right granted by a debtor to a creditor over the debtor's property which enables the creditor to have recourse to the property if the debtor defaults in making payment or otherwise performing the secured obligations.' Common examples of financial models that result in the creation of security interests include reliance on leases, mortgages, charges, liens, or conditional sale agreements.

The regulation of security interests falls under the broader ambit of secured transactions law which is largely governed under national laws in most jurisdictions, with some international treaties developed to harmonise the applicable law to transactions in specific industries, such as the Convention on International Interests in Mobile Equipment, also known as the Cape Town Convention, which has specific Protocols that apply a uniform scheme of secured transactions laws to various industries. Presently, there exists a Protocol for aircraft object, railway rolling stock, space assets, and mining, agriculture and construction equipment.

A significant amount of security interests also relate to real estate, for which only national laws apply at the present moment. As commercial space mining on celestial bodies grows, a large amount of infrastructure will either be transported to celestial bodies or could alternatively even be built on celestial bodies. This paper will examine the secured transactions laws that would be applicable to this infrastructure and will analyse the presently available domestic and international law remedies available to creditors in cases of default by a debtor which has a majority of its assets in outer space.

Special attention will be paid to the Space Protocol of the Cape Town Convention which is an international regime applicable to space assets to secure rights of creditors in cases of insolvency and bankruptcy of parties where the assets over which creditors possess security interests are premised in outer space. The paper will conclude with recommendations on how the commercial environment in space can be improved to facilitate more transactions in space equipment, as well as enabling access to space, and space mining to more stakeholders, with special emphasis on affordable financing of high-value infrastructure and assets in outer space.