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**Towards the Establishment of the International
Registry of Secured Interests in Space Objects: The
Space Protocol to the Cape Town Convention and
Rail Protocol**

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Towards the Establishment of the International Registry of Secured Interests in Space Objects

- Legal risks increase cost of equipment financing
 - Traditional approach for establishing the validity of an interest (*lex rei sitae*) not suited for highly mobile assets (*aircraft, railway rolling stock*) or for assets physically outside State jurisdiction (*space assets*)
 - Legal systems vary in their approach to **recognition** of security interests, the process for **enforcement**, and the **remedies** available
- Cape Town offers **clear, uniform rules** for establishing priority and provides the creditor with a range of **basic default and insolvency-related remedies** including means for obtaining **speedy repossession or control over the asset**
- Cape Town establishes **electronic international registries of international interests** to give notice to third parties and enable the creditor to preserve its priority



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Priorities and the International Registry

- **Interest** registry (not a 'nationality' or "ownership" registry)
- **Notice-based** registry (not a 'documentary' system)
- Registry determines **priority** among secured creditors (except for non-consensual interests under Art. 39(1)(a) of the Convention)
 - **'First in time, first in right'** eliminates disputes concerning knowledge/good faith
 - **Neither a condition** to creation of an interest, nor proof that it exists



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International Registry of Mobile Assets

- Operated by **Aviareto**, a private company, by appointment and under the supervision of International Civil Aviation Organisation (ICAO)
- Fully electronic registry accessible to 24/7
- More than **600,000** entries since 2006
- ‘Closed system’ for **registration**, but ‘open system’ for **searching**
- All parties must **consent to registrations**, except in the case of Art. 40 (registrable, non consensual interests). Only ‘benefiting party’ consents to discharge



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OECD Aircraft Sector Understanding

Part of the OECD **Arrangement on Officially Supported Export Credits** negotiated to avoid unfair competition through subsidised export credit rates

sets out the “**most favourable terms and conditions** on which officially supported export credits may be provided.”

ASU authorizes participating agencies to grant a reduction of **10% off the minimum premium rate** (“Cape Town Discount”) if the aircraft operator is based in a country that ratified the Cape Town Convention



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Cape Town Convention, Article 2 - The international interest

- 1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.**
- 2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7, in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:**
 - (a) granted by the chargor under a security agreement;**
 - (b) vested in a person who is the conditional seller under a title reservation agreement; or**
 - (c) vested in a person who is the lessor under a leasing agreement.**



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Cape Town Convention, Article 7 - Formal requirements

1. An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

(a) is in writing;

(b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;

(c) enables the object to be identified in conformity with the Protocol; and

(d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.



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Cape Town Convention, Article 17 - The Supervisory Authority and the Registrar

- 1. There shall be a Supervisory Authority as provided by the Protocol.**
- 2. The Supervisory Authority shall:**
 - (a) establish or provide for the establishment of the International Registry;**
 - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;**
 - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;**



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Cape Town Convention, Article 18 - Registration requirements

1. The Protocol and regulations shall specify the requirements, including the **criteria for the identification of the object**:

(a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);

(b) for making searches and issuing search certificates, and, subject thereto;

(c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.



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Space Protocol, Article I - Defined terms

(k) “space asset” means 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.



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Space Protocol, Article VII - Identification of space assets

For the purposes of Article 7(c) of the Convention and Articles V and IX of this Protocol, **a description of a space asset is sufficient to identify the space asset** if it contains:

- (a) a description of the space asset by item;**
- (b) a description of the space asset by type;**
- (c) a statement that the agreement covers all present and future space assets; or**
- (d) a statement that the agreement covers all present and future space assets except for specified items or types.**

2. For the purposes of Article 7 of the Convention, an interest in a future space asset identified in accordance with the preceding paragraph shall be constituted as an international interest as soon as the chargor, conditional seller or lessor acquires the power to dispose of the space asset, without the need for any new act of transfer.



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Space Protocol, Article XXX - Identification of space assets for registration purposes

A description of a space asset in accordance with the criteria for identification provided by the regulations is necessary and sufficient to identify the space asset for the purposes of registration in the International Registry.



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Space Registry Regulations – Revised Draft (11 November 2014), Section 3 - General Provisions

3.1 The International Registry is established as the facility for effecting and searching registrations under the Convention and the Protocol.

3.1 bis Registration may be effected in respect of:

- (a) a spacecraft,**
- (b) a payload,**
- (c) any part of a spacecraft or of a payload, where the part is of a kind listed in Annex 1 as from time to time amended.**



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Space Registry Regulations – Revised Draft (11 November 2014), Section 5 - Registration of an international interest

5.3 The information required to effect the registration of an international interest, a prospective international interest, a notice of a national interest or a registrable nonconsensual right or interest in a space asset is:

(a) the electronic signature of the registering person

(b) the name of each of the named parties

(c) the following **identification information:**

(i) the **manufacturer's name and, subject to sub-paragraph (ii), the **manufacturer's contract reference number**, which in the case of a contract covering two or more space assets shall include a unique suffix to the contract reference number for the space asset that is the subject of the registration, as provided by the manufacturer;**



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- (ii) where the manufacturer's contract has no reference number or the reference number is not available, the **reference number allocated by the registrar** and associated in the International Registry with the manufacturer's name and generic model designation of the space asset;**
- (iii) in the case of a spacecraft, the **initial name of the spacecraft** allotted to the spacecraft by its manufacturer;**
- (iv) in the case of a payload, or of a spacecraft forming part of another spacecraft, the **spacecraft on which the payload is carried** or the other spacecraft, as the case may be, identified by the information set out in sub-paragraphs (i)-(iii) of this paragraph;**



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(v) in the case of an interest in a space asset registered **after launch of the asset**, either the **Coordinated Universal Time (UTC)** of the launch and the **place of the launch** or any Committee on Space Research (**COSPAR**) unique identifier

(vi) any additional identification information specified for the space asset in Annex 1.

(d) In a creditor's notice under Article XXVII(4) of the Protocol, identification of the space asset to which the notice refers either by reference to the file number of the registration of the relevant right or interest or, if there has been no such registration, in accordance with the requirements of this Section and, if applicable, Annex 1



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Space Registry Regulations – Revised Draft (11 November 2014), Annex 1

This Annex (1) lists the categories of parts of a payload or parts of a spacecraft in respect of which registrations and searches may be made in the International Registry in accordance with these regulations, and (2) specifies the identification criteria for each category additional to the criteria prescribed by Section 5.3(c).

[Note: The Preparatory Commission has so far focused exclusively on communications payloads, so that Annex is confined to transponders and other parts of such payloads.. It will be necessary to seek advice from external experts as to whether parts of other categories of payload, e.g. equipment for weather and environmental monitoring, navigation, scientific purposes, remote sensing, positioning, are in practice separately financed and definable, and in each case the appropriate identification criteria]



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Space Registry Regulations – Revised Draft (11 November 2014), Annex 1

Category

Part of a payload or part of a spacecraft

Transponders and other Communications equipment

Additional identification criteria

The spacecraft to which the communications equipment is attached, identified in accordance with Section 5.3(c) equipment

The number assigned to the communications equipment by the manufacturer in the contract for the manufacture of the spacecraft or in a schematic block diagram identifying the equipment

The frequency band or bands and signal polarisation on which the communications equipment is capable of operating

For the purposes of this Annex “communications equipment” means a radiofrequency communications transponder or other piece of hardware that (1) comprises individually identifiable sets of equipment within the communications subsystem of the spacecraft and (2) provides one or more discrete paths to receive communications signals from Earth or elsewhere in space, translates and amplify such signals, and transmits them to Earth or elsewhere in space.



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Thank you for your attention!

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