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CAPE TOWN CONVENTION
SPACE PROTOCOL
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WHAT IS THE CAPE TOWN CONVENTION (1)

- CAPE TOWN CONVENTION 2001 – CO-SPONSORED BY UNIDROIT AND INTERNATIONAL CIVIL AVIATION ORGANISATION
- SETS OUT A BASIS FOR THE REGISTRATION, PERFECTION AND ENFORCEMENT OF INTERESTS IN HIGH-VALUE MOBILE EQUIPMENT THAT MOVES ACROSS INTERNATIONAL BORDERS
- INTENDED TO MAKE ASSET-BASED FINANCING MORE ACCESSIBLE (LEGAL CERTAINTY, REDUCED RISK, REDUCED COST OF FINANCING)
- UNIFORM RULES FOR CREATION, PERFECTION AND ENFORCEMENT OF INTERESTS IN AN INTERNATIONAL REGISTRY SYSTEM
- SHOULD BENEFIT ALL AS FINANCE OPPORTUNITIES BROADEN AND DEEPEN

WHAT IS THE CAPE TOWN CONVENTION (2)

- CONVENTION CONTAINS GENERAL RULES APPLICABLE TO ALL CLASSES OF EQUIPMENT IT COVERS. IN ADDITION, THERE ARE THREE SECTOR PROTOCOLS:
 - AIRCRAFT (IN EFFECT SINCE 2006, 70+ CONTRACTING STATES)
 - RAIL (ADOPTED IN LUXEMBOURG IN 2007, NOT YET IN EFFECT)
 - SPACE (ADOPTED IN BERLIN IN 2012, NOT YET IN EFFECT)
- CREATION OF INTERNATIONAL REGISTRY (24/7)
- PRIORITY TO INTEREST REGISTERED FIRST IN TIME
- PROSPECTIVE INTEREST CONCEPT
- SEARCHES ARE AGAINST THE ASSET, NOT THE DEBTOR (HENCE THE NEED FOR A UNIQUE IDENTIFIER)

AIRCRAFT PROTOCOL vs RAIL PROTOCOL

THE AIRCRAFT PROTOCOL WORKS WELL FOR AIRCRAFT

- STRICTLY ASSET-BASED FINANCE (NOT CORPORATE FINANCE OR PROJECT FINANCE)
- UNIFORMITY OF ASSET CLASS AND LIQUIDITY/REMARKETABILITY OF ASSET ITSELF
- ASSET CONSTANTLY MOVING FROM ONE JURISDICTION TO ANOTHER (AFFECTING, BUT FOR THE CONVENTION, THE ABILITY TO REPOSSESS THE ASSET)
- PHYSICAL REPOSSESSION AND REMARKETING TO REALISE RESIDUAL VALUE
- INCENTIVES TO RATIFICATION (INCLUDING “CAPE TOWN DISCOUNT” FOR ECA DEALS)
- SUPPORTED BY PANELS OF EXPERTS, CONSTANT IMPROVEMENT
- INCREASING SUPPORTED BY CASE LAW (MALTA, IRELAND, INDIA)

THE RAIL PROTOCOL SHOULD WORK EQUALLY WELL FOR ROLLING STOCK

SPACE PROTOCOL

- BERLIN CONFERENCE (MARCH 2012)
- DEFINITION OF “SPACE ASSET” (... ANY MAN-MADE UNIQUELY IDENTIFIABLE ASSET IN SPACE OR DESIGNED TO BE LAUNCHED INTO SPACE AND COMPRISING A SPACECRAFT..., A PAYLOAD... OR A PART OF A SPACECRAFT OR PAYLOAD SUCH AS A TRANSPONDER...)
- SPACE PROTOCOL TO APPLY TO INTERESTS THAT:
 - ARE DOCUMENTED
 - IDENTIFY THE SPACE ASSET (SERIAL NUMBER, MODEL DESIGNATION AND MANUFACTURER NAME AND OTHER DATA REQUIRED BY INTERNATIONAL REGISTRY)
 - IDENTIFY SECURED OBLIGATIONS
 - RELATE TO OBJECT OVER WHICH THE GRANTOR, CONDITIONAL SELLER OR LESSOR HAS POWER TO DISPOSE

SPACE PROTOCOL

POWERS OF SECURED CREDITORS

- POWERS OF SECURED CREDITOR UPON DEFAULT BY DEBTOR OF SECURED OBLIGATIONS:
 - TAKE POSSESSION OR CONTROL OF SPACE ASSET (TO EXTENT POSSIBLE)
 - SELL OR GRANT LEASE ON SPACE ASSET
 - COLLECT INCOMING RENTALS FROM SPACE ASSET
 - SEEK COURT ORDER FOR ANY OF THE 3 PRECEDING OPTIONS
- RECOURSE TO PHYSICAL ASSET OF LIMITED VALUE GIVEN LOCATION OF ASSET IN SPACE
- SOLUTION: CAPTURING REVENUE STREAM BY ASSIGNMENT OF DEBTOR'S RIGHTS (INCLUDING RIGHTS TO PAYMENT AND PERFORMANCE)
- ASSIGNMENT RECORDED AGAINST SPACE ASSET IN INTERNATIONAL REGISTRY
- DEFAULT REMEDIES LIMITED BY PUBLIC SERVICE

SPACE PROTOCOL

REMAINING ISSUES

REMAINING ISSUES INCLUDE:

- THE SPACE PROTOCOL CANNOT MAKE THE UNDERLYING LICENCE ASSIGNABLE
- OFAC / EXPORT CONTROLS (CONTROLLED GOODS / NATIONAL SECURITY)
- POTENTIAL FOR CONFLICT OF INTERESTS BETWEEN CREDITORS IN RESPECT OF DIFFERENT SPACE ASSETS THAT ARE PHYSICALLY LINKED TO EACH OTHER
- SPACE INDUSTRY REMAINS TO BE CONVINCED OF THE COST/USE/BENEFIT ANALYSIS
- SATELLITES DO NOT (UNDER THE UN CONVENTIONS) MOVE FROM ONE LEGAL JURISDICTION TO ANOTHER... STATE IN WHICH THE SATELLITE IS REGISTERED RETAINS JURISDICTION
- OVERLAP/CONFLICT WITH THE UN CONVENTIONS AND CUSTOMARY INTERNATIONAL LAW

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