



**UNIDROIT COMMITTEE OF GOVERNMENTAL EXPERTS
FOR THE PREPARATION OF A DRAFT PROTOCOL TO
THE CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT ON MATTERS SPECIFIC TO
SPACE ASSETS
Fifth session
Rome, 21/25 February 2011**

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PROPOSAL FOR A NEW ALTERNATIVE A OF ARTICLE XXII: ALTERNATIVE TO
THE APPLICATION OF NATIONAL LAW

(presented by the delegation of the United States of America)

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7 and to Article XXVII(2) of this Protocol, give possession and control over the space asset to the creditor no later than the earlier of:
 - (a) the end of the waiting period; and
 - (b) the date on which the creditor would be entitled to possession of or control over the space asset if this Article did not apply.
3. (a) Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7 and to Article XXVII(2) of this Protocol, give possession and control over the debtor's rights covered by a rights assignment to the creditor, no later than the earlier of:
 - (i) the end of the waiting period; and
 - (ii) the date on which the creditor would be entitled to possession of or control over the debtor's rights covered by the registered rights assignment.

(b) On or after the earlier of the aforesaid dates, the creditor may exercise its remedies provided for in Chapter III of the Convention and Chapter II of this Protocol under the rights assignment.
4. For the purposes of this Article, the "waiting period" shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
5. References in this Article to the "insolvency administrator" shall be to that person in its official, not its personal, capacity.
6. Unless and until the applicable creditor is given possession of and control over the space asset under paragraph 2 or the debtor's rights under paragraph 3:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the space asset and maintain it and its value in accordance with the agreement; and

(b) the applicable creditor shall be entitled to apply for any other forms of interim relief available under applicable law.

7. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the space asset under arrangements designed to preserve the space asset and maintain it and its value.

8. The insolvency administrator or the debtor, as applicable, may retain possession of and control over the space asset or the debtor's rights covered by a rights assignment where by the time specified in paragraph 2 or paragraph 3 it has cured all defaults other than the default constituted by the opening of the insolvency proceedings and has agreed to perform all future obligations under the applicable agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2 or paragraph 3.

10. No obligations of the debtor under the agreement or under the contract(s) providing for the debtor's rights covered by the rights assignment may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement or the contracts(s) providing for the debtor's rights covered by the rights assignment.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1) of the Convention, shall have priority in insolvency proceedings over registered interests. This provision shall not be interpreted to derogate from the provisions of Article XXVII(2) of this Protocol.

13. The Convention as modified by Article XVIII of this Protocol shall apply to the exercise of any remedies under this Article.