



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**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 BY THE INFORMAL WORKING GROUP ON LIMITATIONS ON REMEDIES

The Informal Working Group on limitations on remedies met on 22 February 2011 to implement the conclusions reached by the Committee of governmental experts earlier that day in its consideration of Article XXVII *bis*. The meeting was attended by representatives of the Governments of Canada, the People's Republic of China, the Czech Republic, Germany, India, Japan, the Russian Federation and the United States of America, with Ms M. Leimbach (Groupe Crédit Agricole) and Mr B. Schmidt-Tedd (German Space Agency) as observers. Mr J.A. Estrella Faria, Secretary-General of UNIDROIT, acted as moderator.

The Informal Working Group agreed to propose to the Committee of governmental experts that a new definition of "public services provider" be inserted in Article I, paragraph 2, worded as follows:

" 'public services provider' means an entity of a Contracting State, another entity situated in that Contracting State and designated by the Contracting State as a provider of a public service or an entity recognised as a provider of a public service under the laws of a Contracting State"

and that Alternative C of Article XXVII *bis* be reworded as follows (with the amendments proposed to the text of Alternative C appearing in footnote 5 of C.G.E./Space Pr./5/W.P. 3 highlighted (with

deletions indicated by the relevant language being crossed out and additions indicated by the relevant language being underlined) *:

1. ~~An entity of a Contracting State that enters into a contract with~~ **Where** the debtor or an entity controlled by the debtor **and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed** for the provision of a **public** service ~~acknowledged by~~ **in a Contracting State**, the parties ~~as being a public service in that~~ **and the** Contracting State ~~and involving access to or the use of a space asset in respect of which the debtor has entered into an agreement with a creditor governed by this Protocol~~ **may agree that the public services provider** may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space asset **designated in such notice** is providing or intended to provide a **service under that contract (specifying the applicable portions thereof) that is needed to support the provision of a** public service ~~– recognised as such under the laws of the relevant Contracting State.~~

* The clean text of the revised Alternative C would be worded as follows:

1. Where the debtor or an entity controlled by the debtor and a public services provider enter into a contract that provides for the use of a space asset to provide services that are needed for the provision of a public service in a Contracting State, the parties and the Contracting State may agree that the public services provider may register a notice in the International Registry, in accordance with Article 16 of the Convention, stating that the space assets designated in such notice is providing or intended to provide a service under that contract (specifying the applicable portions thereof) that is needed to support the provision of a public service recognised as such under the laws of the relevant Contracting State.

2. A creditor holding an international interest in a space asset that is the subject of a notice registered in accordance with the preceding paragraph may not, in the event of default, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.

3. The Registrar shall notify the creditor, the debtor and the public services provider of the date of registration of the notice referred to in the preceding paragraph and of the date of expiry of the six-month period referred to therein.

4. During the period referred to in the preceding paragraph:

(a) the creditor, the debtor and the public services provider shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, as appropriate,

(b) the regulatory authority of a Contracting State that issued a licence required by the debtor to operate the space asset that is the subject of a notice registered in accordance with paragraph 1 shall give the public services provider the opportunity to participate in any proceedings in which the debtor may participate in that Contracting State, with a view to the appointment of another operator under a new licence to be issued by that regulatory authority.

5. Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the public services provider fails to perform its duties under the contract referred to in paragraph 1.

6. The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1, unless otherwise agreed by the parties.

2. A creditor holding an international interest in a space asset ~~of a kind that is~~ the subject of a notice registered in accordance with the preceding paragraph may not, **in the event of default**, exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol in respect of that space asset that would result in the interruption of the public service covered by that notice prior to the expiration of six months after its registration of a notice in the International Registry, in accordance with Article 16 of the Convention, of its intention to exercise any such remedies, if the debtor does not cure its default within that period.

3. The Registrar shall notify the ~~State entity~~ **creditor, the debtor and the public services provider of the date of registration of the notice referred to in the preceding paragraph and** of the date of expiry of the six-month period referred to ~~in the preceding paragraph~~ **therein**.

4. During the period referred to in the preceding paragraph:

(a) the creditor, the debtor and the ~~State entity~~ **public services provider** shall co-operate in good faith with a view to finding a commercially reasonable solution permitting the continuation of the public service; and, **as appropriate**,

(b) ~~the~~ **regulatory authority of a Contracting State entity may that issued a licence required by the debtor to operate the space asset that is the subject of a notice registered in accordance with paragraph 1 shall give the public services provider the opportunity to** participate in any proceedings of ~~the regulatory authority of the licensing State~~ in which the debtor may participate, ~~subject~~ **in that Contracting State, with a view** to the ~~approval~~ **appointment of the another operator under a new licence to be issued by that** regulatory authority ~~of that State if it is not a Contracting State~~.

{ 5. Notwithstanding paragraphs 2 and 3, the creditor is free to exercise any of the remedies provided in Chapter III of the Convention and Chapter II of this Protocol if, at any time during the period referred to in paragraph 2, the ~~State entity~~ **public services provider** fails to perform its duties under the contract referred to in paragraph 1-}.

{ 6. The limitation on the remedies of the creditor provided for in paragraph 2 shall not apply in respect of an international interest registered prior to the notice referred to in paragraph 1-} , **unless otherwise agreed by the parties**.