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Implementing the Cape Town Convention in the UK

Introduction

The UK Government is set to ratify the Cape Town Convention and Aircraft Protocol (together the **Convention**) and has published the draft regulations (the **Regulations**) setting out the way in which the Convention is expected to become law. There will be a short technical consultation covering the mechanical aspects of the Regulations ending on 15 March 2015 following which the Regulations will be laid before Parliament. Outlined below are some of the significant points to note arising from the Regulations. Highlighted terms below are defined in the Regulations and the full text of the Regulations can be found by clicking [here](#).

Repossession and Insolvency

The UK has decided to override existing insolvency law by adopting Alternative A of Article XI of the Protocol. Where a creditor has a correctly registered its international interest, the adoption of Alternative A will oblige an airline either to return the aircraft to the creditor within 60 days or to cure the breach of contract in which case it may retain the aircraft. Alternative A is therefore seen to assist creditors and promote cheaper funding and lease rates which has, in the Government's eyes, outweighed the rescue prospects provided to an airline by the existing administration regime.

Taking security and “Blue Sky”

As confirmed in the now well-known *Blue Sky*¹ case, English common law applies the principal of *lex situs* test in relation to the creation of security over moveable assets (including an English law mortgage over aircraft) which requires the aircraft is required to be in England (or in English airspace) or in another jurisdiction whose domestic laws recognise the creation of an English law mortgage at the time the security is created.



Whilst the Government did not remove the *lex situs* rule, as making such changes is not within the powers granted under the European Communities Act 1972 by which the Government is ratifying the Convention, Regulation 6 was included to address the issue for **international interests** under the Convention. Regulation 6 provides that an **international interest** will be recognised as a matter of English law and will have effect as an **international interest** where the conditions of the Convention have been met with no further requirement to determine whether the *lex situs* rule has been satisfied. English law will therefore not look to the *lex situs* rule to determine if an **international interest** has been created; it will simply look at the conditions of the Convention. Regulation 6 applies to **security agreements, title reservation agreements, sales and contracts for sale**.

IDERAs, Registrations and Eurocontrol

The Regulations bring **irrevocable de-registration and export request authorisations** (or **IDERAs**) into effect in the UK. An IDERA is an irrevocable authorisation from the operator of the aircraft for a named **creditor** to deregister and export the aircraft following a **default**. Following a **default**, the **creditor** would file the IDERA with the CAA which would oblige the CAA to deregister the aircraft (subject to safety requirements).

¹ *Blue Sky One Limited & Others v Mahan & Another* (2010) EWHC 63 (Comm)

International interests granted by UK companies will not themselves need to be registered at Companies House. However, most security documents will still contain a mortgage or charge and will therefore continue to require registration at Companies House. If the aircraft is registered with the UK aircraft registry, it will also still be important to register the security over the aircraft at the CAA.

The UK's ratification of the Convention will not alter Eurocontrol's entitlement to a lien over the aircraft for unpaid Eurocontrol charges or protect against the risk of arrest of aircraft in the UK for any such charges.

Conclusions

The Convention will enter into force in the UK three months after ratification. **Creditors** who do not register **international interests** created after that date will be at risk, not only from other **creditors** gaining priority by registering rights first, but also from a subsequent purchaser of the aircraft who can register their transaction and so take the aircraft free of unregistered interests.

Financiers and lessors need to ensure that their documentation takes advantage of the various rights, such as choice of law or remedies for default, that parties can choose under the Convention and that security documents create the required **international interests** to benefit from the rights and remedies provided under the Convention. It will remain important to have properly created English law security interests and to ensure that all necessary registrations are effected at the **International Registry**, with the CAA and with Companies House.

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