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Aircraft Leasing - India's Stance On The Cape Town Convention

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1. What is the Cape Town Convention?

The relevant parts of international law that govern leasing of aircraft are the: (i) Convention on International Interests in Mobile Equipment (the “**Cape Town Convention**”/ “**Convention**”); and (ii) Protocol to the Convention on Matters Specific to Aircraft Equipment (the “**Protocol**”).

The Convention is an international treaty which protects the rights of lessors to repossess their leased high-value equipment like aircraft, helicopters, and engines in the event of a payment default. The legal instrument was adopted at a diplomatic conference held in Cape Town in November 2001, under the International Civil Aviation Organisation (ICAO) and the International Institute for the Unification of Private Law (UNIDROIT).

1. Primary Objective: To address the issues of obtaining certain and opposable rights to high-value aviation assets, namely airframes, aircraft engines, and helicopters which, by their nature, have no fixed location. This problem is borne from heterogeneous legal systems in different nations having divergent approaches to securities, title retention agreements and lease agreements, which creates uncertainty for lending institutions regarding the efficacy of their rights. This impedes the provision of financing for such aviation assets and surges the cost of borrowing^[1].
2. Issues in aircraft financing: For secured creditors, conditional sellers, and lessors (collectively referred to as “**Creditors**”), the mobile nature of aviation objects has

presented challenges. Among the challenges are the following: (i) security rights established by a specific jurisdiction's law not being recognized in another; (ii) remedies available in one jurisdiction being restricted in another; and (iii) conflicting priorities of competing security interests over an object.

3. **Role of the Convention:** It sets out a framework for global interest in mobile equipment's such as airframes, aircraft engines and helicopters, railway rolling stock, and space asset and for that purpose, creation of an international registration system for protection and preservation of those global interests. The Protocol further lays down an intricate operational framework for the enactment of the Convention specific to aircraft objects[2].

2. What is the stance of India in relation to the Convention and Protocol?

The Convention and the Protocol were acceded to by India on 1st July 2008, however, the same has not been ratified by the Government of India.

In May 2022, the Ministry of Civil Aviation invited comments from the public on the draft bill for implementation of the Convention and the Protocol. It was noted by the Ministry of Civil Aviation in its explanatory notes on the proposal for enactment of the Cape Town Convention Act, 2018, as well as the bill in 2022 that **an enabling legislation was required for bringing the full effect of the Convention and the Protocol in India**[3].

However, in the absence of any domestic legislation, and by virtue of India being a contracting state, the provisions of the Convention and the Protocol are applicable to, *inter alia*: (i) a debtor who, while situated in India creates an international interest in an aircraft object; and (ii) an aircraft object registered with the Directorate General of Civil Aviation (DGCA).

As there are no domestic laws to enforce the provisions of the Convention, in the event of a conflict with a domestic carrier, the latter prevails.[4] However, the below statutes are responsible for aircraft leasing in India:

a. Aircraft Rules, 1937 (the “**Aircraft Rules**”) and the Civil Aviation Requirements

The Government of India from time to time makes amendments to the Aircraft Rules and the Civil Aviation Requirements in line with the provisions of the Convention or the Protocol.

For instance, by inserting Rule 30(7) in the Aircraft Rules, which states that the registration of an aircraft registered in India, to which the provisions of the Convention or the Protocol apply, shall be cancelled by the Central Government, within (5) five working days from the date of receipt of an application for de-registration by an irrevocable de-registration and export request authorization (IDERA) holder.

b. Insolvency and Bankruptcy Code, 2016 (“**IBC**”)

In furtherance to its obligation under the Convention and the Protocol, the Ministry of Corporate Affairs *vide* its notification[5] dated 3rd October 2023 (“**Notification**”), exempted transactions, arrangements, or agreements relating to aircraft, aircraft engines, airframes, and helicopters from the application of the moratorium clause under Section 14(1) of the IBC.

3. Conclusion

Until any legislation is passed to implement the terms of the Convention and the Protocol in India, the Notification currently in place serves to exempt transactions, arrangements, and agreements which allow preservation of rights of the aircraft lessors and financiers to, *inter alia*, de-register aircrafts and repossess them on account of an airline company's default or insolvency. Many steps have been taken to give effect to the Convention including court orders and amendments made to the Aircraft Rules. However, India still needs a corroborating legislation to provide a proper reach to the Convention to ensure that Creditors' rights are protected[6].convention---indian-perspective-on-aviations-lynchpin-framework-