



## Aircraft Protocol to Cape Town Convention Soars Past Third Anniversary: Spotlight on Expanded Creditor Rights under Cape Town

Sunday, March 1, marked the third anniversary of the entry into force of the Aircraft Protocol to the Convention on International Interests in Mobile Equipment. The Protocol and the Convention, together often referred to as the Cape Town Convention, standardize and improve creditor rights in aircraft transactions. In light of this occasion and current economic conditions, the expanded rights made available to creditors by Cape Town are worth noting.

The single most significant provision of the Convention, economically, deals with the legal rights and protections available to debtors and creditors in insolvency proceedings. Contracting states have the option (by way of declaration to specify whether one of two creditor rights regimes (Alternative A or B) will be applicable in their jurisdiction. Six countries (Albania, Cuba, Ireland, Saudi Arabia, the United Republic of Tanzania and the United States of America) have decided not to make any election in this regard, and therefore their national insolvency laws continue to apply without modification.

The vast majority of contracting states (21 in all), however, have selected Alternative A, the so-called "hard" version. Under this alternative, the insolvency administrator or debtor must deliver possession of the aircraft object to the creditor or cure all defaults by the end of a specified waiting period or any earlier date on which the creditor would otherwise be entitled to possession under applicable law. In contrast, under Alternative B, the "soft" or discretion-based version, upon a request by the creditor, the debtor must surrender the object *or* it can simply give notice that it will cure all defaults and perform all obligations. If it fails to do either, then the creditor must provide evidence of its claims to the applicable court which then *may* (but is not required to) permit the creditor to take possession of the aircraft object at issue. Mexico is the only contracting state to elect to apply the less creditor-friendly Alternative B.

The Protocol has been ratified or acceded to by the following 28 countries<sup>1</sup> (or "contracting states"):

Afghanistan, Albania, Angola, Bangladesh, Cape Verde, China, Colombia, Cuba, Ethiopia, India, Indonesia, Ireland, Luxembourg, Kenya, Malaysia, Mexico, Mongolia, Nigeria, Oman, Pakistan, Panama, Saudi Arabia, Senegal, Singapore, South Africa, the United Republic of Tanzania, the United States of America, the United Arab Emirates.

The Cape Town Convention is currently in force in all countries listed above other than Bangladesh, China, Cuba, Singapore and the Republic of Tanzania, all of which have effective dates falling by June of this year.

The system created by the Convention for the registration of various interests in aircraft objects has been well-used. Since its inception in 2006, interests have been registered against close to 50,000 airframes, engines and helicopters on Cape Town's International Registry. Interestingly, despite a continually growing number of contracting states, over 90 percent of user activity occurs within the United States.

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<sup>1</sup> A frequently updated list of signatory countries, along with the effective dates and lodged declarations and elections, can be found at the UNIDROIT web address: <http://www.unidroit.org/english/implement/i-2001-aircraftprotocol.pdf>.

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