

Guidance on the Application of the Cape Town Convention to the Isle of Man

1. Introduction

The Aviation (Cape Town Convention) (No.2) Order 2016 (“the Order”) implements the Cape Town Convention in the Isle of Man. However, due to provisions stipulated in the treaty, the Order does not bring the Cape Town Convention into effect on the Island until the first day of the month following the expiration of 6 months after the date of receipt by UNIDROIT (as the depositary for the Convention and Protocol) of the UK’s notification that its ratification is to be extended to the Isle of Man. Consequently, the Cape Town Convention will have effect on the Island on 1 January 2018.

This Registry Publication has been produced to provide guidance to aircraft owners, financiers, corporate service providers and other interested parties on the Order and its effects. The guidance document itself does not carry any legal authority and should be read in conjunction with the legislation, which is available at the Isle of Man Aircraft Registry (IOMAR) website:

<https://www.gov.im/ded/Aircraft/legislation.xml?menuid=24198>

2. Legislation

The Order applies to the Isle of Man, with modifications, the UK’s International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 (SI 2015 No.912) (“the Regulations”).

The Regulations implement the Convention on International Interests in Mobile Equipment (“the Convention”) and Protocol on Matters Specific to Aircraft Equipment (“the Aircraft Protocol”). The Regulations are subject to, and to be applied in accordance with, the provisions of the Convention, the Aircraft Protocol and the Protocol Regulations.

The Convention and the Aircraft Protocol are commonly referred to together as “the Cape Town Convention” and should be viewed as one treaty, as the Convention has no effect unless it is alongside a protocol. The Convention is a private international law treaty supported by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO). ICAO is the supervisory body for the treaty and UNIDROIT the depositary. The text of the Convention and the Aircraft Protocol are available at:

<http://www.unidroit.org/instruments/security-interests/cape-town-convention>

3. Background to the Treaty

The aim of the Convention is to reduce the cost of raising finance for large, high value mobile assets which routinely cross borders. The Convention provides an over-arching framework for high value mobile assets, whilst the accompanying protocols address issues raised in financing a specific type of asset. There are three protocols currently in existence for aircraft equipment, rolling railway stock and space objects. The Order gives effect to the Convention along with the Aircraft Protocol.

The Convention sets out standard remedies available to the creditor in the event of a default by the debtor, including the ability to take possession or control of an object, sell or grant a lease of an object and collect or receive any income or profits arising from the management or use of the

object. Other remedies include vesting an object in satisfaction or redemption, remedies for conditional sellers or lessors and interim relief pending final determination of a claim. The Aircraft Protocol modifies the Convention to meet the particular requirements of aircraft financing and leasing. The Protocol offers creditors additional remedies, including the ability to require the removal of an aircraft from the national civil aircraft register and to export it. The Aircraft Protocol applies the Convention to:

- aircraft which can carry at least 8 people or goods in excess of 2,750 kilograms;
- aircraft engines with thrust exceeding 1,750 pounds-force (7,800N) or 550 horsepower (410kW); and
- helicopters carrying 5 or more passengers.

The aim is to give those involved in aircraft financing greater confidence in the remedies available to them if a debtor defaults on an agreement concerning an aircraft object. The resulting reduction in risk for financiers is expected to result in lower financing costs. Debtors are protected from unwarranted seizure of the aircraft object by creditors, provided they have maintained their obligations under the relevant documents.

4. The International Interest

The Convention sets out the criteria for the creation of an international interest. This is modified by the Aircraft Protocol as set out in the Regulations. The aircraft object to which an international interest relates must be identifiable. Aircraft equipment is identified by:

- manufacturer's name;
- model designator; and
- manufacturer's serial number.

It is also possible to register assignments, acquisitions by legal or contractual subrogation and subordinates of interests. The Convention enables the registration of a prospective interest or prospective assignment. If the prospective interest becomes an international interest, it is treated as registered from the time of the registration of the prospective interest.

The Aircraft Protocol applies certain elements of the Convention to sales and prospective sales as if they were international interests or prospective international interests. This is set out in further detail in Article III of the Aircraft Protocol and also in the Regulations as applied to the Isle of Man.

5. The International Registry

The International Registry is an electronic notification system for international interests. Parties can register international interests and prospective international interests twenty-four hours a day, seven days a week, with the consent of all parties. Searches of the International Registry can be made with respect to uniquely identifiable aircraft objects but not transaction parties. Searches of the International Registry can also be conducted with respect to a specific country in order to confirm any applicable declarations.

The International Registry can be found at: <https://www.internationalregistry.aero/ir-web/>

Further information on how to use the International Registry, make and remove entries as well as search the register can be found in the International Registry's user manual which can be found under the Help Documents at the following site:

<https://www.internationalregistry.aero/ir-web/downloadDocument?locale=en&pageSubTitle=-%20Documentation%20English>

The International Civil Aviation Organisation (ICAO) is the Supervisory Authority for the Aircraft Protocol. Regulations, procedures and fees for using the International Registry are published in ICAO Doc 9864, which can be found on the ICAO website:

<https://www.icao.int/publications/pages/publication.aspx?docnum=9864>

The Isle of Man Aircraft Registry only reviews the content of the International Registry and does not provide the International Register with any information.

6. Prioritisation of International Interests

The Regulations reflect the prioritisation of international interests as set out in the Convention and the Aircraft Protocol. Once an international interest, or prospective international interest, has been registered with the International Registry, it has priority over a subsequently registered international interest and over an unregistered interest, provided the conditions have been met for the creation of an international interest. The International Registry is a notification system only and registration of an international interest is no guarantee of its validity.

Under the Regulations as applied to the Isle of Man, certain non-consensual rights or interests which under Isle of Man law have priority over the equivalent to an international interest are given priority over a registered international interest. This priority extends to insolvency proceedings. The relevant rights and interests in the Isle of Man are:

- a possessory lien in respect of work done on the aircraft (whether before or after the creation or registration of the international interest or equivalent interest) in the express or implied authority of any persons lawfully entitled to possession of the object; and
- any right to detain the object under an enactment including an Act of Tynwald.

In addition, the Regulations do not affect the right of a public authority to arrest or detain an aircraft object under the laws of the Isle of Man for payment of amounts owed to a public authority directly relating to public services in respect of the object or another object.

The Regulations apply to the non-consensual interests and rights as set out in the Regulations as applied to the Isle of Man whether created before or after extension of the UK's ratification of the treaty to the Isle of Man.

The Regulations do not apply to interests registered with IOMAR prior to the UK's extension of ratification of the treaty to the Isle of Man. Any interests registered with IOMAR prior to extension will retain their priority.

The registration of an international interest remains effective until either it is discharged or the period specified in the registration is expired.

7. Declarations made by the UK on behalf of the Isle of Man

The Convention and Aircraft Protocol contain a number of optional provisions which Contracting States and their territorial units can decide whether or not to adopt. These optional provisions are set out in the form of declarations and are an integral part of the treaty system.

For the UK, as a Member State of the European Union when they made the Regulations and ratified the treaty, certain options fell within the competence of the EU. However, as the Isle of Man is outside of the EU in relation to civil aviation matters, those constraints are not binding on the Isle of Man or the UK Government with respect to the Island.

The Annex at the end of this document includes a table showing the options taken by the UK and the Isle of Man for each provision in the treaty, and how these can be traced to the content of the Regulation.

8. Irrevocable De-Registration and Export Request Authorisation (IDERA)

In relation to the IOMAR, the main impact of the treaty is the ability of the registered owner to request an IDERA over an eligible aircraft. Once an IDERA is recorded with Aircraft Registry, the party that has been declared by the registered owner as the "Authorised Party" or a "Certified Designee" will be the only party with the right to de-register and export the aircraft.

The IOMAR has published separate guidance and forms for the submission of an IDERA and related processes in [RP65](#).

9. Isle of Man Register of Aircraft Mortgages

The Isle of Man register of aircraft mortgages is maintained by the IOMAR. The register will remain open following extension of the Cape Town Convention to the Isle of Man and parties can continue to register interests with the IOMAR. There is no obligation to register interests and parties are free to decide how best to protect their interests.

10. Further Information

Further information on the Cape Town Convention and Protocol can be found:

- on the website of the International Registry;
- on the website of ICAO;
- on the website of UNIDROIT;
- in the Official Commentary to the Convention on International Interests in Mobile Equipment and Protocol thereto on matters specific to Aircraft Equipment by Professor Sir Roy Goode;
- on the website of the Aviation Working Group (AWG).

9. Frequently Asked Questions

Do I have to register interests with the International Registry?

- No, it is not mandatory to register interests on the International Registry in the same way that it is not mandatory to register interests on the IOMAR register of aircraft mortgages. Please be aware that the interests registered with the International Registry following extension to the Isle of Man of the UK's ratification of the Cape Town Convention will take priority over interests registered with the IOMAR. Interests registered on the IOMAR register of aircraft mortgages prior to ratification will retain their priority.

Will the Convention affect light aircraft and general aviation?

- No, light aircraft and aircraft used in general aviation are unlikely to meet the criteria for aircraft objects covered by the Aircraft Protocol. The airframes, helicopters and aircraft engines to which these Regulations apply are as follows:
 - Airframes on which appropriate aircraft engines are installed and which are type certified by the competent aviation authority to transport:
 - at least 8 people including crew; or
 - goods in excess of 2,750 kilograms,together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all related data, manuals and records.
 - "Helicopters" meaning heavier-than-air machines supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
 - at least 5 people including crew; or
 - goods in excess of 450 kilograms,together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all related data, manuals and records.
 - Aircraft engines powered by jet propulsion or turbine or piston technology and:
 - in the case of jet propulsion aircraft engines, have at least 1,750lb of thrust or its equivalent; and
 - in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all related data, manuals and records.

What happens if filings to the International Registry need to be amended?

Amendments can be made to the International Register and details of how to do this are given in the user guide on the website: <https://www.internationalregistry.aero/ir-web/downloadDocument?locale=en&pageSubTitle=-%20Documentation%20English>

Will extension of the UK's ratification of the Cape Town Convention to the Isle of Man impact existing transactions?

No, once a valid interest has been correctly registered, it will have a priority over another interest subsequently registered with the International Registry and over any unregistered interest. Any interests registered with the national Register of Aircraft Mortgages maintained by IOMAR prior to the extension of the UK's ratification of the treaty will retain their priority. Non-consensual rights and interests specified in the Regulations will have a priority over a registered interest whether in or outside insolvency proceedings.

What happens if a creditor fails to register an interest with the International Registry?

If a creditor fails to register an interest with the International Registry, some remedies may still be available under the treaty. However, the interest will be subordinate to any registered interests, including any interests created at a later date. It is a decision for the parties to decide how best to protect their interest and whether they wish to rely on remedies available for international interests under the treaty or not.

How do I discharge a registration?

The registration of an international interest remains effective until either it is discharged with the International Registry or the period specified in the registration has expired.

How does the treaty impact on public law?

This is a private law treaty and as such, matters of public law are unaffected unless expressly stated otherwise. Matters of public and criminal law continue to apply to an international interest so that the powers of confiscation and restraint are exercisable in respect of any aircraft object.

What remedies are available to the holder of a registered interest?

The Regulations as applied to the Isle of Man set out the remedies available in the event of a default. These include the ability to take possession or control of an object, sell or grant a lease of an object and collect or receive any income or profits arising from the management or use of any such object as well as vesting an object in satisfaction or redemption, remedies for conditional sellers or lessors and interim relief pending final determination of a claim.

ANNEX

Article	Effect	United Kingdom	Isle of Man	Regulation Reference
Convention on international interests in mobile equipment				
39 – Rights having priority without registration	Article 39 allows a Contracting State to make a declaration to retain or restrict existing rights, including detention rights for non-payment for the provision of public services, having priority without registration.	Yes – with respect to both Article 39(1) and (4)	Yes – with respect to Article 39(1) and (4)	Regulation 17
40 – Registrable non-consensual rights or interests	Article 40 allows a Contracting State to make a declaration listing the categories of non-consensual right or interest which are registrable under the Convention as if they were international interests.	No	No	Not applicable
50 – Internal Transactions	Article 50 allows a Contracting State to declare that the Convention does not apply to internal transactions.	No	No	Not applicable
52 – Territorial units	Article 52 allows a Contracting State to make a declaration extending the Convention to all or any of its territorial units.	Yes	Yes – UK will make a subsequent declaration under article 57 to extend the Convention to the Isle of Man in accordance with article 52.	Not applicable
53 – Determination of courts	Article 53 allows a Contracting State to declare the relevant courts which are to have jurisdiction under the Convention.	Yes (High Court in England & Wales, Court of Scotland in Scotland, High Court in Northern Ireland)	Yes (High Court of Justice of the Isle of Man)	Regulation 44

54(1) – chargee may not lease an object within the territory	Article 54(1) allows a Contracting State to declare that while a charged object is situated within, or controlled from, its territory, the chargee shall not grant a lease of the object in that territory.	No	No	Not applicable
54(2) – Declaration regarding remedies	Article 54(2) requires a Contracting State to declare to what extent extra-judicial remedies (also known as self-help remedies) will under the Convention be available in the UK.	Yes	Yes – any remedy available to the creditor under any provision of the Convention which is not there expressed to require application to the court may be exercised without the leave of the court	Not applicable
55 – Declarations regarding relief pending final determination	Article 55 allows a Contracting State to make a declaration that it will <i>not</i> apply the provisions of the Convention regarding interim remedies (specifically Article 13 or Article 43, or both, wholly or in part).	No (EU competence)	No – IOM have implemented provisions of Article 55 by applying regulations 25 and 43, therefore no declaration is required.	Not applicable
60 – Transitional provisions	Article 60 allows a Contracting State to declare that the Convention applies to a pre-existing right or interest, which retains the property it enjoyed under the applicable law before the effective date of the Convention.	No	No - regulation 51 clarifies that the Regulations do not apply to pre-existing rights.	Not applicable
VIII – Choice of law	A Contracting State can make a declaration under Article XXX(1) to apply Article VIII with respect to choice of law.	No (EU competence)	Yes - Declaration under XXX(1) to apply Article VIII to IOM.	Regulation 37B & by modifying - regulation 38(1)(g).

X – Modification of provisions regarding relief pending final determination	Article X allows a Contracting State to make declarations to modify provisions regarding relief pending final determination.	No (EU competence)	Yes – Isle of Man has implemented Article X in part. Declaration under XXX(2) to apply Article X(3), (4) and (5)	Regulations 25(1)(e), 20(7) & 9(2)
XI – Remedies on Insolvency	Article XI allows a Contracting State to make a declaration (under XXX(3)) to apply a special insolvency regime to govern the creditor’s rights where the debtor becomes subject to the insolvency proceedings. (Alternative A or B).	No declaration (EU competence) – but UK have implemented provisions of Alternative A via regulation 37.	No – Isle of Man have chosen at present to retain existing domestic insolvency regime and not to implement Alternative A or B. *(see Note at the end of this table for more information).	Not applicable
XII – Insolvency assistance	Article XII allows a Contracting State to make a declaration requiring courts of the Contracting State to cooperate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.	No (EU competence)	Yes – Declaration under Article XXX(1) to apply Article XII to the Isle of Man. Article XII.	Regulation 37A
XIII – De-registration and export request authorisation	Article XIII allows a Contracting State to make a declaration in relation to deregistration and export request authorisations.	Yes	Yes – Declaration under Article XXX(1) to apply Article XIII to the Isle of Man..	Regulation 22

XXI – Modification of jurisdiction provisions	<p>Article XXI provides for the courts of a Contracting State to have jurisdiction where the aircraft object is a helicopter or an airframe pertaining to an aircraft, for which that State is the State of registry.</p>	<p>EU competency – EU made a declaration at the time of accession that under XXX(5), Article XXI would not apply within the Community and that EC 44/2001 on jurisdiction and the recognition & enforcement of judgements in civil and commercial matters would apply to this matter for the Member States bound by the said Regulation or by any other agreement designed to extend its effects.</p>	<p>No (Article XXX(5) provision is to make a declaration if XXI is <i>not</i> applied, either in whole or in part).</p>	<p>Regulation 43(2A).</p>
XXIX – Territorial units	<p>Article XXIX allows a Contracting State to make a declaration extending the Protocol to all or any of its territorial units.</p>	<p>Yes</p>	<p>Yes – the UK to make a subsequent declaration to extend the Protocol to the IOM</p>	<p>Not applicable</p>

<p>XXX — Declarations relating to certain provisions</p>	<p>Article XXX(1) allows a Contracting State to declare that it will apply any one or more of Articles VIII, XII & XIII.</p> <p>Article XXX(2) allows a Contracting State to declare that it will apply Article X wholly or in part (if it so declares with respect to X(2) it must specify a time period).</p> <p>Article XXX(3) allows a Contracting State to declare that it will apply Alternative A or B of Article XI (and if Alt. A then to state time period).</p> <p>Article XXX(5) allows a Contracting State to declare that it will not apply Article XXI.</p>	<p>UK has made a declaration under XXX(1) to apply XIII but cannot make a declaration applying VIII or XII due to EU competence.</p> <p>UK cannot make a declaration under XXX(2) applying X due to EU competence.</p> <p>UK cannot declare under XXX(3) that it will apply Alternative A (due to EU competence) but has implemented the provisions of Alternative A via regulation 37.</p> <p>UK has not made a declaration under XXX(5) to apply XXI due to EU competence.</p>	<p>Declaration under XXX(1) to apply to the Isle of Man Article VIII, Article XII and Article XIII.</p> <p>Declaration under Article XXX(2) to apply Article X(3),(4) & (5) to the Isle of Man.</p> <p>Article XXX(3) – no declaration.</p> <p>Article XXX(5) – no declaration.</p>	<p>Not applicable</p>
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***Note:**

The decision was made not to adopt Alternative A under Article XI of the Aircraft Protocol following extensive research and consultation. The provisions of Alternative A are more creditor-friendly than the UK’s domestic insolvency regime and facilitate access to international aid with funding in some instances for airlines.

However, the Island’s insolvency regime is more creditor-friendly than the UK’s regime and effectively also more creditor-friendly than the provisions of Alternative A. Furthermore, qualifying for international funding aid for airlines is not relevant for the Isle of Man Aircraft Registry as commercial aircraft cannot currently be registered.

The ability for the Island to make a declaration to adopt Alternative A remains available and may become a future consideration if the Island’s insolvency regime is ever altered.