

CAYMAN ISLANDS ADOPTS CAPE TOWN CONVENTION

by Caroline Barton

Earlier this year, the UK Parliament voted on the ratification of regulations implementing the Convention on International Interests in Mobile Equipment and the Protocol thereto on matters specific to aircraft equipment (together the **Convention**). It is anticipated that the implementing legislation will be in force on 1 November 2015.

Once ratified in the UK, our International Interests in Mobile Equipment (Cape Town Convention) Law, 2015 (**Law**) will give effect to the Convention once it is extended to the Cayman Islands.

The extension of the Convention will entitle the Cayman Islands to recognition (i) as a territorial unit of a contracting state to the Convention and (ii) of the declarations deposited by the UK on behalf of the Cayman Islands with the International Institute for the Unification of Private Law - UNIDROIT.

This is an important step in aligning treatment of aircraft assets in the Cayman Islands with an increasingly recognised international standard. This article looks at the impact adoption of the Convention may have on the Cayman aviation industry and what steps may need to be taken as a consequence.

THE RATIONALE FOR THE CONVENTION

The Convention and its adoption for Cayman is significant. The Convention was created to protect the interests of, among others, purchasers and creditors through the creation of an international legal framework for financial interests in aircraft objects recognised in all Contracting States, independent of domestic laws, to enable interested parties to protect or recover their assets with greater certainty and ease.

The Convention provides for the creation of international interests and their registration on the International Registry (**IR**) provided that requirements set out in the Convention are satisfied.

TAKING SECURITY OVER AIRCRAFT

In accordance with the Convention, an international interest may be registered on the IR if either (a) the aircraft is in a registered Contracting State or (b) the debtor is situated in a Contracting State. For the purposes of the Convention, the country where a debtor is deemed to be situated is based on either the laws of its country of incorporation or formation; its registered office or statutory seat; its centre of administration; or its place of business. Therefore, the interests of a Cayman Islands entity under the transaction documentation or a Cayman registered aircraft can be registered as an international interest on the IR.

Affected Cayman companies and owners of Cayman registered aircraft should begin preparations to ensure compliance with the Convention. As the IR only provides for registration of consensual security interests, transaction parties must first approve IR registration. To do so, each party must register as a Transacting User Entity (**TUE**) with the IR and identify an individual who will act as an administrator in respect of managing registrations on the IR. The administrator function can be outsourced to a Professional User Entity (**PUE**) (often a law firm), to reduce the administrative burden on the TUE.

PERFECTION OF SECURITY AND THE POSITION ON INSOLVENCY

It should be noted that perfection of any security granted over an aircraft is not affected by failure to file on the IR. However any such filing will go to evidence the priority of the security interest created and provide notice to third parties searching the register.

A creditor's rights on insolvency are not affected under the Convention. Pursuant to Article 30 of the Convention, as incorporated in the Law, the position under our local insolvency law remains unchanged and a creditor will be able to exercise self-help remedies before resorting to court action. Pursuant to Article 30(1) the priority of any security registered on the IR will be observed and given force under Cayman law.

The Cayman Islands has not made any specific provision in the Law, pursuant to Article 39 of the Convention, for the status of non-consensual security interests, such as lien rights, and as such, these non-consensual interests will continue to have priority over an international interest and do not need to be registered to have effect. Financiers and lessors therefore remain exposed in this regard, irrespective of the adoption of the Convention.

IS LOCAL REGISTRATION STILL RELEVANT?

There are still benefits to ensuring that any aircraft security is also registered with the Civil Aviation Authority of the Cayman Islands. The IR is not intended to replace the requirement for local registration of aircraft security, but rather works together with it to ensure that financiers are appropriately protected in the Cayman Islands. There will also be circumstances where the Convention does not apply (e.g. non-Contracting State owners or aircraft not falling within the Convention's weight qualifications). From the lender perspective, local registration of an aircraft mortgage should remain a vital safeguard to protect the value of the asset secured.

The Cayman Islands legislature has also amended the Cayman Islands Civil Aviation Authority Law to revoke the current Mortgaging of Aircraft Regulations, 1979 (**Current Regulations**) (with immediate effect from the Law coming into force) and introduce new regulations (with immediate effect from the revocation of the Current Regulations). The new regulations will recognise and take into account the registration of international interests on the IR pursuant to the Law and preserve the priority of existing aircraft mortgages on the local register. Following the implementation of the Convention, mortgages on the local register in respect of which

an international interest exists will have their priority determined in accordance with the priority rules of the Convention.

Appleby is able to provide comprehensive advice and transactional support on aircraft finance transactions from a Cayman perspective and we have extensive experience in handling registrations and related matters for our clients including conducting searches on the IR and providing title reports and legal opinions. We can also recommend and work closely with preferred specialised providers in the US who are registered as PUEs on the IR.

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