

SUPPLEMENTARY EXPLANATORY MEMORANDUM ON THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Title of the Treaty

Convention on International Interests in Mobile Equipment

Command Paper Number: 8786

Subject Matter

A separate supplementary Explanatory Memorandum covers the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment.

The Convention provides a new uniform international legal order for the creation, registration and enforcement of security and similar interests in high value internationally mobile equipment. It aims to support asset-based financing by giving greater certainty, clarity and confidence to financiers of such equipment that they can recover their asset should a borrower default on repayments, resulting in increased flows of capital at lower cost to the borrower and business opportunities for equipment suppliers. At the moment financiers are reliant upon national laws of the territories through which such mobile equipment passes to enforce their rights. These national laws differ in the extent to which a security interest is recognised, creating risks for the financier.

The Convention establishes a general regime which is intended to apply across a range of high value equipment. It works alongside the Protocol on matters relating to aircraft equipment which creates an additional set of rules specifically for aircraft finance transactions. Neither the Convention nor the Protocol has any effect alone and they should be read together. As a result, the policy considerations for the Convention and the Protocol are the same.

Ministerial Responsibility

The Secretary of State for Business, Innovation and Skills has responsibility for policy matters relating to the sponsorship of the aircraft industry and for the law on insolvency. The Ministry of Justice has responsibility for the law on jurisdiction and for managing the constitutional relationship between the UK and the Crown Dependencies. HM Government is responsible under international law for the Crown Dependencies' compliance with their treaty obligations. The Secretary of State for Transport has responsibility for aviation policy. The Secretary of State for Foreign and Commonwealth Affairs has overall responsibility for the conclusion and implementation of treaty obligations and responsibility for their application in Overseas Territories.

Policy Considerations

(1) General

A pivotal aspect of the Convention is the creation of an “international interest” in the categories of high value mobile equipment to which the Protocol applies. These interests can be granted by the chargor under a security agreement or vested either in a person who is the seller under a title reservation agreement or the lessor under a leasing agreement. An international interest is to be recognised in all Contracting States to the Convention and Protocol. This international interest can be registered in an electronic International Registry which establishes a clear system of prioritisation for registered interests and therefore enables financiers to protect their security interests against holders of interests which are registered subsequently and against unregistered interests.

The Convention and Protocol provide for the establishment of this International Registry and set out the framework within which it will operate. The international interest is effective in insolvency proceedings against the debtor if, prior to the commencement of such proceedings, the interest was registered in conformity with the Convention. The Convention and Protocol allow interests to be registered against aircraft engines. This is not possible on the UK’s national register run by the Civil Aviation Authority (CAA).

The Convention and Protocol establish the remedies which are available in the event of a default by the debtor. As a protection for the debtor the Protocol provides that in the absence of a default within the meaning of the Convention, the debtor is entitled to quiet possession and use of the aircraft equipment.

(2) Financial

There is likely to be a one-off familiarisation cost in completing the necessary documentation when registering international interests on the International Registry for the first time. However, not all UK airlines or businesses that register interests on the International Registry are likely to incur this familiarisation charge since many airlines and other businesses are already familiar with the International Registry, having used it to register transactions where one party is in a jurisdiction that has ratified the treaty. Businesses may also face additional costs if they wish to register interests against engines separately or if they wish to register their interests on the national register as well as on the International Registry. However, it would not be mandatory to register interests on the International Registry in the same way that it is not mandatory to register interests on the national register. It would be up to business to decide how best to protect its interests.

These costs are expected to be outweighed by the benefits to airlines and leasing companies of a reduction in the cost of raising finance to purchase or lease aircraft equipment covered by the treaty.

Reservations and declarations

The United Kingdom signed the Convention and Protocol on 16th November 2001. At that time the UK made a declaration that, in accordance with the Treaty establishing the European Community, the Community has competence to take action in relation to certain matters governed by the Convention.

The Convention and the Protocol contain a number of optional provisions available to Contracting States on ratification. The government held a consultation in 2014 on which of the optional provisions the UK should adopt. The government intends to make the following declarations under the Convention:

- (i) Article 39(1)(a) – Declaration that “all categories of non-consensual rights or interests (other than a non-consensual right to which Article 40 applies) which under that State’s law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside of insolvency proceedings”
- (ii) Article 39(1)(b) – Declaration that “the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or provider directly relating to those services in respect of that object or another object” are unaffected
- (iii) Article 39(4) – Rights or interests covered by the declaration under article 39(1)(a) “shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession”
- (iv) Article 53 – The relevant courts with jurisdiction are the High Court in England and Wales, the Court of Session in Scotland and the High Court in Northern Ireland
- (v) Article 54(2) – Declaration that “any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised without leave of the court”

Implementation

The Convention and Protocol have been specified as a European treaty order under s.1(3) of the European Communities Act 1972. Implementation of the provisions of the treaty will be through secondary legislation under s.2(2) of the European Communities Act 1972.

The subject matter of the main part of the Convention and Protocol is the law governing the rights of a secured creditor, conditional seller or lessor over aircraft objects (that is, aircraft engines, aircraft frames and helicopters that meet certain criteria on size and engine capacity) and the rights of creditors on insolvency. Therefore the secondary legislation will amend The Mortgaging of Aircraft Order 1972; The Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft for Eurocontrol) Regulations 2001; the Air Navigation Order 2009; the Greenhouse Gas Emissions Trading Scheme Regulations 2012/3038 and the Civil Aviation Act 1982. In addition the legislation will disapply section 859A of the Companies Act

2006; Part 1 of the Insolvency Act 1986 and Schedule B1 to that Act and ; the Bill of Sale Act 1878; the Bill of Sale Act (1878) Amendment Act 1882.

Some costs associated with ratifying the treaty fall within scope of One in, Two out.

Consultations

United Kingdom airlines, airline equipment manufacturers and public bodies such as the National Air Traffic Services Limited and the Civil Aviation Authority were consulted by the then Department of Trade and Industry and their views were taken into account to the extent possible within the framework of negotiating an international treaty. The then Secretary of State for the Department for Transport, Local Government and the Regions was also consulted.

The Department for Business, Innovation and Skills published a call for evidence in July 2010 to seek views on whether it would benefit the UK to move towards ratification. There was overwhelming support for UK ratification. A response to the call for evidence was published on 6th December 2013.

A further consultation on the detail of the implementing legislation and the various optional provisions was published on 16th June 2014 and closed on 11th August 2014.

The Secretary of State for Foreign and Commonwealth Affairs has been informed of the Convention and Protocol in relation to its possible application to the Overseas Territories.

The Secretary of State for Justice has been informed of the Convention and Protocol in relation to its possible application to the Crown Dependencies.

The Overseas Territories and Crown Dependencies have been consulted on whether they would like ratification to be extended to them. Extension of the treaty to any Overseas Territories and Crown Dependencies will be via declaration.



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