



Department
for Business
Innovation & Skills

**RATIFICATION OF THE
CONVENTION ON INTERNATIONAL
INTERESTS IN MOBILE EQUIPMENT
AND PROTOCOL THERETO ON
MATTERS SPECIFIC TO AIRCRAFT
EQUIPMENT**

Response to consultation on
options on implementation

MARCH 2015

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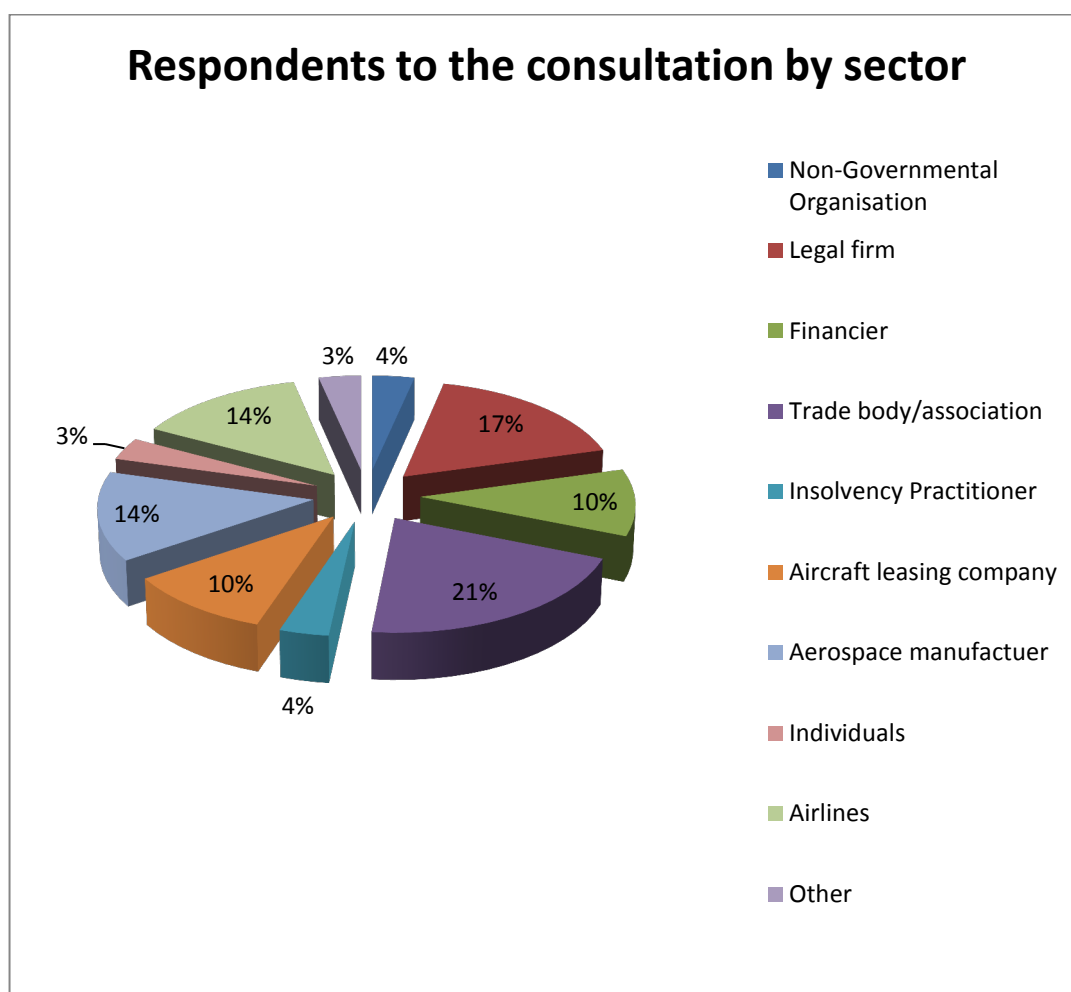
1. Introduction

1. Between June and August 2014 the Department for Business, Innovation and Skills (BIS) consulted on options to implement the Convention on International Interests in Mobile Equipment and the Protocol thereto on matters specific to Aircraft Equipment, commonly known as the Cape Town Convention.
2. The treaty aims to facilitate asset-based aircraft finance transactions by creating an international legal framework to govern the creation and registration of international interests (such as mortgages and leases) in helicopters, airframes and aircraft engines above a certain size and engine capacity. The treaty contains a framework to deal with any disputes arising under the treaty, such as the ability of creditors to recover an item of aircraft equipment should there be a default on repayment.
3. The treaty is a shared competence treaty with the EU. This means that some matters covered by the treaty fall within the competence of the EU and some fall within the competence of the UK. The treaty contains a number of optional provisions which the UK can decide whether or not to adopt. The consultation document asked for views on whether and how the UK should implement the optional provisions of the treaty.
4. The consultation asked for views on the following areas:
 - (i) Whether any non-consensual rights, such as liens for unpaid airport and air navigation charges should take priority over interests registered with the International Registry
 - (ii) Whether any non-consensual rights should be registered and treated as international interests
 - (iii) Whether the provisions of the treaty should apply to internal transactions (i.e. transactions where the aircraft object and all parties to the transaction are located in the same state when the agreement is concluded)
 - (iv) Whether creditors can lease an object when it is located in the Contracting State with the agreement of the debtor
 - (v) Whether creditors should be able to exercise extra-judicial remedies without leave of the court
 - (vi) Whether the provisions of the treaty should apply to pre-existing interests
 - (vii) Whether the term *speedy relief* should be defined
 - (viii) Additional relief on insolvency
 - (ix) The ability of creditors to de-register and export aircraft equipment
 - (x) Whether the UK should name a designated entry point or points to pass information to the International Registry

- (xi) Whether the UK should make declarations in line with the OECD's Aviation Sector Understanding (ASU)
- (xii) An estimate of the costs to business of ratifying the treaty
- (xiii) Equality considerations

2. Conducting the consultation exercise

5. BIS held a ten week consultation between June and August 2014. 29 responses were received to the consultation. In addition, BIS discussed the consultation and ratification of the treaty with stakeholders.
6. A breakdown of the number of responses received by sector is listed below. Where a company falls into more than one sector, it has been included with the sector that generates the majority of its business. A full list of the respondents is attached at annex A.



7. The largest number of responses came from trade bodies or associations. A number of different trade bodies responded to the consultation including those representing legal firms, insolvency practitioners and aerospace manufacturers. The second largest number of responses by sector was from legal firms, predominately firms specialising in asset finance transactions, followed by airlines and aerospace manufacturers.

8. BIS is grateful to all those who responded to the consultation or met with the Department to discuss the consultation document further.

3. Government Response

9. The consultation document posed 18 questions concerning implementation of the treaty in the UK. Not all respondents to the consultation responded to all the questions contained in the document. Some respondents only replied to the questions of relevance to them whilst others provided general comments on ratification but did not comment on the specific questions.
10. Since the subject matter of the treaty is private law, any legislative changes required to implement the treaty relate to private law only and any public law obligations will remain in place unless expressly stated otherwise.

Questions 1 and 2 – Retention of non-consensual rights

11. The first two questions concerned the retention of non-consensual rights, including powers to detain aircraft for the non-payment of amounts owing for the provision of public services. Stakeholders were asked:
 1. **Do you agree that the UK should make a general declaration that all existing and future non-consensual rights with priority under UK law over an interest equivalent to an international interest should retain their priority under the terms of the treaty, including over any interests registered on the International Registry prior to ratification of the treaty in the UK? Why?**
 2. **Do you agree that the UK should make a declaration to retain any rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to that aircraft or another object are unaffected? Why?**
12. The majority of respondents to these questions did not agree that the UK should make a declaration that all existing and future rights with priority under UK law over an interest equivalent to an international interest should retain priority under the terms of the treaty. Nor did most respondents agree that the UK should retain rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to another object should be retained. There was not, however, the same level of concern regarding the retention of detention rights relating to non-payment of amounts for the detained aircraft alone.
13. The majority of the concerns raised related to the so called *fleet lien* which allows airports or the Civil Aviation Authority, acting on behalf of Eurocontrol, the EU wide body responsible for the provision of and collection of charges for air navigation services, to detain one aircraft to collect charges across an entire fleet.
14. A number of stakeholders stated that the use of the fleet lien by the UK is out of step with the enforcement methods taken by other EU Member States and places the UK as the main collection agent for Europe.

In our experience, leasing companies and financiers generally accept these aircraft-specific charges as part of the operation risk involved in leasing and financing such assets and in this respect, the UK position follows that of many other jurisdictions.

However, we understand that the UK is the only Member State of Eurocontrol which actually imposes the fleet lien, albeit that a few other Eurocontrol states may have equivalent powers under their national law.

Clifford Chance LLP

15. A number of other respondents raised concerns about the impact of the fleet lien on third parties and the economic impacts:

Beyond its inherent unfairness [given its impact on innocent parties], the fleet lien has a range of adverse economic and policy consequences, including (i) encouraging termination of leases and loans earlier than would otherwise be the case, (ii) increasing transactional risk, which, while difficult to quantify, increases transaction costs, and (iii) effecting a transfer of operational risk away from those best placed to efficiently manage it. Finally, there are more appropriate means of safeguarding collections, which have the additional benefit of incentivising better risk management techniques.

Aviation Working Group

16. However, the majority of stakeholders stated that they would not want any removal of the fleet lien to delay ratification of the treaty by the UK.
17. A minority of respondents to the consultation agreed with the proposal in the consultation document to retain non-consensual rights and detention powers, including the fleet lien. Some respondents stated that it is *essential* to ensure that airline operators pay air navigation charges which fund the provision of air navigation services across Europe, a safety critical service. One stakeholder noted that European skies are some of the busiest skies in the world and the collection of air navigation charges is important in maintaining this service. One stakeholder noted that the majority of airlines pay their detention charges on time and that detentions are rare. In addition Eurocontrol noted that there would be a financial impact on other airlines which pay their charges on time if the collection of charges was less effective:

[The European system] is intended to be financially self-supporting, the costs of operating it at the required safety levels are spread amongst those who derive an economic benefit by using the services offered. The cycle is such that, if these services are not properly charged for, or charges are not collected or are collected late, the costs will end up being fed back into the system, to be paid by the other operators who do pay their route charges.

This effectively means that operators who do pay their bills subsidise operators who do not...

...Effective detention powers ensure that the level playing field between operators is sustained and that good operators do not subsidise bad ones.

Eurocontrol

18. The Government has considered the responses to the consultation carefully and has decided to retain all existing and future non-consensual rights with priority under UK law over an interest equivalent to an international interest. The Government has also decided to retain any rights to arrest or detain an aircraft object for the non-payment of amounts owing for the provisions of public services relating to that aircraft object or another aircraft object within the same fleet. This includes retention of the *fleet lien*.
19. Eurocontrol provides a safety critical service and it is important that this is properly funded. Whilst Eurocontrol is responsible for the billing and collection of charges, enforcement for non-payment is a duty of Member States. Therefore, the UK has an obligation to ensure it has an effective collection method in place for outstanding charges. The UK fulfils this obligation by way of detaining aircraft to recover charges, including across an entire fleet where necessary. This ensures the air navigation system is able to carry out its functions, and that good operators are not penalised and put at a commercial disadvantage compared with operators that try to avoid paying their air navigation charges.
20. The UK is home to some of the busiest airports in the world and therefore is strategically well-placed to enforce non-payment of Eurocontrol charges due to the number of airlines which fly in and out of the UK on a daily basis. The fleet lien has been in place for a number of years and the Government believes it is an effective and efficient way of collecting outstanding charges. It would potentially be more disruptive for an airline to have several aircraft in its fleet detained rather than one aircraft for non-payment of charges, thus ensuring that airlines pay their outstanding charges promptly.
21. The Government notes the concerns raised regarding the potential impact of the fleet lien on third parties. This relates to the small possibility that, in a certain set of circumstances, the owner of the aircraft rather than the operator would become liable for the fleet charges. Before applying the fleet lien the Civil Aviation Authority carries out a stringent examination of whether the use of a fleet lien is justified. In addition Eurocontrol makes information available to creditors on whether an operator is up to date with payments for air navigation charges. Finally, the fleet lien is not the first

step in recovering outstanding charges and an operator will have received a number of requests for payment before such action would be taken. In light of these controls, the Government believes that there is a narrow range of circumstances where the application of a fleet lien could impact on third parties and that retention of the fleet lien is an important tool in ensuring air navigation services are funded across Europe.

Questions 3 and 4 – Registrable non-consensual rights

22. Questions 3 and 4 relate to whether any other non-consensual rights should be registrable on the International Registry. Stakeholders were asked:
- 3. Do you think UK should make a declaration under article 40 to allow a judgment creditor to register:**
- (a) Any specific type(s) of judgment debt, even where no separate enforcement order has been made?**
 - (b) Any judgment debt in respect of which a specific type of enforcement order has been made?**
- 4. If your answer is “yes” to either or both of the above questions, please list the types of judgment debt or the types of enforcement order that you think should give rise to the right of registration on the International Registry.**
23. The majority of stakeholders who responded to questions 3 and 4 agreed judgments debts should be registrable on the International Registry provided they can already be registered against a specific aircraft object under UK law. The majority of stakeholders raised concerns that allowing judgment creditors to register judgment debts against a specific asset on the International Registry where this right did not exist under national law would alter the priority given to certain creditors:

The effect of making a declaration of this kind would be, for the creditors identified in the Consultation (at para 38), to potentially elevate their priority, once registered, above the priority they would otherwise have, and would therefore involve a fundamental change to substantive rights, beyond that contemplated in relation to the interests relevant to Questions 1 and 2.

Insolvency Lawyers' Association

Having additional enforcement registrations which can be made against an aircraft will only complicate the enforcement processes and increase the possibility of nuisance registrations: that is registrations improperly made against the aircraft by (for example) disgruntled creditors of the lessee which will then require time and expense to be removed in an enforcement scenario.

Judgment creditors in England are adequately protected by existing English law without the need for these additional rights.

Norton Rose Fulbright LLP

24. The Government has considered the responses it has received to the consultation and agrees with the majority of respondents that allowing judgment creditors to register judgment debts on the International Registry where they do not currently have the right to register a judgment debt against a specific asset would change the priority given to these creditors. This would place other unsecured creditors at a comparative disadvantage.
25. Under UK law, a judgment creditor would need to get a charging order against a specific class of asset, if that creditor wanted to register the judgment debt as an interest against that asset. Section 2 of the Charging Orders Act 1979, lists the classes of assets against which a charging order can be made. Aircraft objects are not listed in section 2 and so a charging order cannot be obtained against a specific aircraft object. As a result the Government has decided not to make a declaration under Article 40 of the Convention, as to do so would be a departure from existing domestic law.

Question 5 – Internal transactions

26. Question 5 asked stakeholders for views on the application of the treaty to internal transactions, i.e. transactions where all the parties and the aircraft object are in the UK when the deal is completed.
 5. **Do you agree that the treaty should apply to internal transactions as well as international transactions? Why?**
27. All of the stakeholders that responded to this specific question agreed that the treaty should apply to internal transactions. The majority of respondents to this question stated that it would be confusing if the treaty did not apply to internal transactions as two registration systems would then need to operate in parallel.

28. The Government agrees with the respondents to this question that the treaty should apply to internal transactions. If the treaty did not apply to internal transactions, business could face increased costs as well as additional confusion and complexity, in order to understand which interests can be registered on which system.

Question 6 – Ability to grant a lease of an aircraft object situated in the UK

29. Question 6 relates to the remedies available to creditors should there be a default on repayments. It specifically relates to the ability of a creditor to grant a lease of the aircraft object from within the UK.

6. Do you agree that a creditor should be able to grant a lease whilst the aircraft object is situated in the UK in the event of a default? Why?

30. All of the respondents to this question agreed that creditors should be able to grant a lease of an aircraft object from within the UK. Respondents commented that this remedy already exists in the UK and has worked well over a number of years.
31. The Government agrees with the respondents to this consultation that creditors should be able to grant a lease of an aircraft object when it is situated within the UK. Creditors and those buying and leasing aircraft objects are already familiar with and use these provisions in the UK. If the Government were to change existing law and not allow creditors to grant a lease of an aircraft object within the UK, airlines, leasing companies and creditors would need to adjust current practice which would increase costs. It would also create an unnecessary and confusing distinction between remedies available to creditors with regard to aircraft objects and remedies available to creditors with regard to other assets where the granting of a lease would still be permissible. Therefore the Government will continue to allow a creditor to grant a lease of an aircraft object situated in the UK.

Question 7 – Extra-judicial remedies

32. Question 7 asked for stakeholder views on the use of *extra-judicial remedies*. Extra-judicial remedies, also known as *self-help*, enables the creditor to take action against a debtor without leave of the court, providing the debtor has previously agreed to the use of these remedies. The remedies may include taking possession or control of an aircraft object, selling or granting a lease of an aircraft object or receiving income or profits from an aircraft object. The use of extra-judicial remedies is already permitted in the UK and stakeholders were asked whether this should continue.

7. Do you agree that the UK should continue to allow the use of extra-judicial remedies except where a moratorium is in place? Alternatively, what problems/issues do you envisage (if any) if there is no court involvement? Why?

33. All of the respondents to this question agreed that the UK should continue to allow the use of extra-judicial remedies. The majority of respondents stated that creditors would face a significant detriment if the use of self-help remedies for aircraft objects was no longer permitted.

As noted in paragraph 47 of the Consultation, extra-judicial remedies are well-known in the UK. They are highly effective and lie at the centre of English law on secured transactions and leasing. These remedies must be preserved, otherwise ratification of the Convention would effect a substantial reversal of current, commercially-oriented and efficient law.

Avolon

34. However, the majority of respondents to the consultation thought it would be unnecessary to state that any moratoria would remain unaffected. A number of stakeholders commented that insolvency measures are expressly not included within the extra-judicial remedies in the treaty and are considered separately. They raised concerns that expressly stating any moratoria in the case of administration would continue to apply would lead to confusion as to whether the UK had met the criteria for the Aviation Sector Understanding (ASU) discount. ASU is an OECD agreement whereby airlines from Contracting States to the Cape Town Convention may be eligible for a discount of up to 10% on the premium of export finance provided by Export Credit Agencies (ECAs). The ASU is discussed further in paragraphs 79-91.

*It is **unnecessary** for the UK to expressly carve out the period “where a moratorium is in place”, since the clear intent of Article 30(3)(b) of the Convention is to retain an insolvency-triggered moratorium, provided that **at the end of the waiting period** under Alternative A [assuming that provision is effected through national law, as discussed below], the insolvency administrator gives possession to the creditor [unless defaults are cured and the other terms of para 7 of Alternative A are complied with]. To support this technical point: no other contracting state has used this wording, despite having similar moratorium laws. UNIDROIT’s guide to declarations, likewise, does not include such or similar wording. Finally, that unnecessary carve out may also be harmful: it would raise questions as to whether the UK, in fact, made the qualifying declarations under the ASU.*

Aviation Working Group

35. The Government agrees that the use of extra-judicial remedies should continue in the UK. The use of these remedies is well-established and widely understood by creditors and companies hiring and leasing aircraft. As explained in paragraph 31 in the context of granting leases, stopping the use of extra-judicial remedies would lead to additional costs for business and separate regimes for aircraft objects and other types of assets.

36. The Government also agrees that expressly stating in the UK's declaration that the use of extra-judicial remedies when a moratoria is in place on administration is unnecessary. Insolvency measures are considered separately under the treaty and are discussed further in paragraphs 45-69.

Question 8 – Transitional provisions

37. Question 8 refers to transitional measures under the treaty and asked stakeholders for views on whether interests registered with the Civil Aviation Authority's (CAA) National Register of Aircraft Mortgages prior to ratification of the treaty should remain outside the scope of the treaty and retain their priority over subsequently registered international interests.
- 8. Do you agree that pre-existing rights registered on the National Register of Aircraft Mortgages should retain their priority over subsequently registered interests on the International Registry? Why?**
38. All of the stakeholders who responded to this question agreed that pre-existing rights registered on the National Register of Aircraft Mortgages prior to ratification of the treaty should retain their priority. Respondents were concerned that requiring pre-existing interests to be re-registered with the International Registry would increase costs and lead to confusion as to the relative priority of different interests.
39. The Government agrees with the respondents to the consultation that requiring businesses to re-register pre-existing interests with the International Registry would increase costs (both in terms of the fee to register an interest with the International Registry and the administrative costs in identifying pre-existing interests and deciding whether they should be re-registered) and lead to confusion regarding the relative priority of rights. BIS estimates that the costs of reviewing transactions, determining whether or not to register interests and if necessary filing interests with the International Registry would be £400 for each historical transaction. This is based on a time estimate of 2 hours to check each historical transaction, determine whether any filings need to be made and make the necessary filings; and internal costs of £200 per hour. No stakeholder identified any benefit to requiring the re-registration of interests.
40. The Government will not make a declaration under Article 60 of the Convention. Therefore, interests registered on the National Register of Aircraft Mortgages prior to ratification of the treaty will retain their priority and the Cape Town treaty shall not apply to them.

Question 9 – Defining “speedy” relief

41. The Convention contains provisions for creditors to obtain *speedy relief* from a court pending final determination of a claim against a debtor. Question 9 asked stakeholders for views on whether *speedy relief* should be defined.

9. Do you think that the UK should define the term *speedy* and if so how?

42. The majority of respondents stated that the UK should define the term *speedy* as this would be in line with the position taken by many other Contracting States. The majority of respondents also stated that this is one of the criteria for the ASU, citing this as an *emerging international standard*.

In line with the emerging international standard as seen in the ASU’s qualifying declarations, the UK should amend its national law to define “speedy” in respect of the remedies specified in (i) article 13(1)(a)-(c) of the Convention inclusive, as the number of working days which are not more than (10) calendar days, and (ii) art 13(1)(d)-(e) of the Convention, inclusive, as the number of working days which are not more than (30) calendar days, in each case from the date of filing of the application for relief from the court. Item (ii) above – as regards 13(1)(e) – assumes that the UK amends its national law to permit the relief set out in Article X(3) of the Protocol, which amends Article 13(1) of the Convention by adding the forms of relief set out in the former article.

Macquarie AirFinance

43. However, not all respondents to the consultation agreed with this view. A small number of respondents stated that these provisions are unnecessary in the UK where the courts are flexible in responding to requests for interim relief, particularly if the UK continues to allow the use of extra-judicial remedies. Under the terms of the ASU, a Contracting State is required to either allow the use of extra-judicial remedies or define the term *speedy*, but not both, to meet the ASU criteria.
44. The Government has carefully considered the response to whether the UK should define the term *speedy* under the Convention as it relates to the provision of interim relief. The Government agrees that such a definition is unnecessary to meet the criteria of the ASU because of the decision to continue to allow the use of extra-judicial remedies. The Government is not aware of any evidence that the courts are slow in providing interim relief to creditors whilst a claim is being considered. In addition, imposing a timetable on the courts in this way may increase pressures on court timetabling to the detriment of creditors with interests against other types of asset. Therefore the Government has decided it will not define *speedy* under the Convention.

Questions 10-13 – Remedies on insolvency

45. Questions 10-13 sought stakeholder views on the insolvency measures in the treaty. Under the treaty, Contracting States can adopt either Alternative A or Alternative B or retain national insolvency law.
46. Under Alternative A an insolvency practitioner or debtor is required to either (i) give up possession of the aircraft object to the creditor or (ii) cure all defaults and agree to perform all future obligations under the relevant transaction documents by the date specified in national law or by the end of the specified waiting period, whichever is earlier. Alternative A also requires the insolvency practitioner or the debtor to preserve the aircraft object and maintain it and its value in accordance with the transaction documents until possession of the aircraft object is given to the creditor.
47. Alternative A does not require a creditor to obtain permission from the court before taking possession of the aircraft object at the end of the waiting period. Under Alternative A, until the creditor has been given the opportunity to take possession of the aircraft object, the creditor can apply for any other forms of interim relief available under national law. Where a creditor takes possession of an aircraft object, the remedies of de-registration and export of the aircraft object are available and the registry authority must make these remedies available within five working days of notification from the creditor that they have a right to these remedies.
48. Alternative B requires the insolvency practitioner or the debtor to give notice to the creditor, upon the creditor's request, whether they will cure the defaults and perform all future obligations or give possession of the aircraft object to the creditor within the time period specified in the declaration. This is subject to any additional steps or guarantees that a court may order. If the insolvency practitioner or debtor fails to give notice of their intention, the court may permit the creditor to take possession of the aircraft object upon such terms as the court orders. The aircraft object cannot be sold pending a decision by the court.
49. The main differences between Alternative A and Alternative B are as follows. Under Alternative B the recovery of the aircraft object has to be initiated by the creditor and recovery of an aircraft object requires a court order, which may include conditions imposed at the court's discretion. Alternative B does not make available the remedies of de-registration and export of the aircraft object on an expedited basis. Furthermore, under Alternative B, the creditor has to provide evidence of its claim and proof that an international interest has been registered. The parties to a security agreement are entitled to contract out of the "Alternative" insolvency provisions whether Alternative A or Alternative B is adopted.
50. Current UK administration law encourages business rescue and places an immediate moratorium on any proceedings against the company in administration. Secured creditors and lessors require the consent of the administrator or the court to enforce their rights under their security agreements, including recovering possession of their assets. An administrator can apply to the court to sell secured assets. This would typically happen if the business could be sold as a going-concern or the value in the asset is substantially greater than the sum secured on it.

51. The consultation document asked for views on whether the UK should adopt Alternative A or retain current national insolvency law. The consultation document stated the Government did not intend to adopt Alternative B since it would not provide greater clarity for creditors, debtors or insolvency practitioners in the UK compared with national law.
52. The consultation document noted that adopting Alternative A could lower the cost of raising aircraft finance, particularly in the capital markets. It could, however, also restrict the ability of an airline in financial difficulties from effecting a turnaround of its business using the rescue provisions of the UK's insolvency regime. The consultation document asked the following questions concerning the insolvency provisions in the treaty:
- 10. Should the UK adopt the provisions in accordance with Alternative A or retain existing national insolvency law and why?**
 - 11. What impact do you think adopting Alternative A would have on the rescue of viable businesses in distress?**
 - 12. If you believe the UK should adopt provisions in accordance with Alternative A, what waiting period should the UK adopt?**
 - 13. If the UK does adopt Alternative A, what level of discount to the cost of financing would likely be attributable specifically to this measure?**
53. The majority of stakeholders responding to these questions were strongly supportive of the adoption of Alternative A. A number of stakeholders said that this is the provision that will lead to the greatest economic benefit to UK airlines in terms of a reduction in the cost of raising finance, particularly for finance raised through the capital markets. A number of respondents to the consultation acknowledged that the financial benefit attributable to the adoption of Alternative A alone is difficult to quantify, however a number suggested that the benefit for UK airlines, particularly those undertaking transactions in the capital markets, could be in the region of a reduction of 25-75 basis points (bps) or a 1-3 notch uplift on the rating given to the transaction.

As the CTC (Cape Town Convention) improves access to aircraft financing for airlines, it is essential that the declarations made in this context are those declarations with the maximum economic benefit, notably Alternative A under Article XI, with a 60 day calendar waiting period.

Clarity and certainty are both crucial to securing the most efficient form of financing. Anything that adds additional steps or requirements on the creditor in the event of an insolvency proceeding thereby reducing certainty will likely result in an increase in the airline's aircraft purchase funding costs as this additional uncertainty is priced in by financiers. Indeed, recent studies estimate that on a like-for-like basis, ratification by the UK of the CTC could improve financing costs for Capital Markets transactions in the region of between 25-75bps per annum. In addition, Export Credit financing provides a flat discount of 10% on the applicable premium payable by the airline if Alternative A is adopted under the qualifying declarations.

Boeing forecasts that from 2014-2033 UK airlines will require approximately 1,240 new jets worth nearly \$190 billion (equivalent to £112 billion). Adoption of Alternative A will reduce risk to financiers of aircraft generally, which should in turn result in better pricing for UK airlines. While the benefits of such reduced risks are difficult to quantify in certain types of transactions, the aggregate savings on the financing that UK airlines would obtain with respect to the £112 billion of aircraft that Boeing projects UK airlines will acquire over the next 20 years would be material.

Boeing

54. The majority of stakeholders disagreed that the adoption of Alternative A would affect the ability to turn around a viable business in distress, citing the US as an example. Alternative A is based on Section 1110 of the US bankruptcy code and a number of stakeholders provided examples of US airlines successfully restructuring through insolvency measures similar to Alternative A.

*While comparisons between (i) section 1110 of the US Bankruptcy Code in the context of that larger code and (ii) Alternative A in the context of UK insolvency law are not perfect, **experience under the former is the best available evidence of the likely effect of the latter.** The broad similarities compel assessment of that experience as the most compelling basis for actual evidence related to question 11. There is no better data.*

That experience firmly rebuts the proposition that any rule which restricts a liquidator's discretion may restrict rescue and reorganization....

....The experience and resulting strong circumstantial evidence that Alternative A will assist in rescues and reorganizations is based on the large number of successful reorganizations of US airlines over the years. In these successful cases, section 1110 [analogous to Alternative A] played a key and constructive role in rationalizing asset allocations and expediting decision-making, thus facilitating reorganizations...

...In contrast, several major airlines, in countries without a time-bound process for asset allocations, were liquidated despite laws designed to facilitate reorganizations, including Sabena, Swissair, Olympic, Malev and Spanair.

Aviation Working Group

55. All of the respondents to the consultation who supported adoption of Alternative A recommended a waiting period of 60 days. This is the maximum waiting period to meet the ASU criteria and is in line with the approach taken by the majority of countries which have already adopted Alternative A.

ADS also agrees with the majority of respondents to the original ratification consultation (2010) and who have been highlighted by BIS in the consultation document, that the waiting period through the adoption of Alternative A should be 60 days. This timeframe and adoption of Alternative A overall, will allow for an improved administration process under the terms of any insolvency procedure, sufficient time for successful rescues and reorganisations should they be required, and critically, signal the UK's intention to fully comply with the OECD's Aviation Sector Understanding (ASU). Alternative A's implementation is the vital component of the ASU.

ADS

56. Some of the respondents to the consultation stated that they are unaware of any UK airlines successfully exiting administration over the last thirty years, whilst another respondent questioned whether an airline in administration would be able to meet the necessary criteria to hold an Operating Licence. Without an Operating Licence, it would be difficult for an insolvency practitioner to keep the business going through an administration.

We appreciate that the Government needs to take into account the impact of introducing Alternative A on UK business, in particular airlines and leasing companies who are incorporated or have their centre of main interests in the UK and may be subject to UK corporate insolvency procedures. It is fair to say that the impact of Alternative A will be most significant in the context of a UK administration of an airline (or leasing company). We acknowledge that the principal objective of administration is to rescue the business and that the rights of creditors against the insolvent company during such process must be weighed against this objective. As a market-leading aviation legal practice with over 30 years' experience, we are not aware of any UK airline which has permanently and successfully emerged from administration and continued trading.

Clifford Chance LLP

57. Insolvency practitioners (and trade bodies representing insolvency practitioners) and some insolvency lawyers were in favour of retaining national insolvency law and raised concerns that the adoption of Alternative A would make it more difficult to restructure a business. Insolvency practitioners also raised concerns that the requirement to cure all defaults would give further protections to secured creditors at the expense of other creditors and that the requirement to perform all future

obligations under Alternative A would become a personal liability of the insolvency practitioner.

UK insolvency law provides a robust regime for secured creditors and lessors of chattels and those with other proprietary claims. Consequently, a clearly demonstrable benefit ought to be established before adopting changes which affect one aspect of a single industry and class of assets. We are not aware that there is evidence, or at least sufficient evidence, that makes out the case for change...

...Consideration should be given to the changes which would be required to existing national insolvency law in order to implement Alternative A. A debtor would be required to cure all defaults save for a default arising from the opening of insolvency proceedings and to perform all future obligations under the relevant transaction documents by end of the specified waiting period. Taken literally, this would require, for example, any defaults arising from a debtor's insolvency (as distinct from the opening of insolvency proceedings), payment defaults and breaches of financial covenants to be cured by the expiry of the waiting period. If any event had occurred which caused the loan amount to be accelerated, then the full amount would have to be repaid. If a waiting period of 60 days were chosen, we do not consider that realistically a debtor could be expected to cure anything other than payment defaults which had occurred prior to the date of curing. The obligation imposed on the debtor to perform all future obligations also gives rise to issues about the role and status of the administrator who will be keen to exclude any personal liability for subsequent breach by the debtor.

The City of London Law Society Insolvency Law Committee

We strongly doubt that the 60 day moratorium period under Alternative A will be sufficient to allow the implementation of a rescue or reorganisation of a business in administration. If that is the case the inadequacy of the period would be likely to increase the bargaining power of aircraft financiers in a restructuring enabling them to achieve a better outcome as against other creditors than is currently the case. It is also possible that the knowledge that they will be able to recover the financed equipment in a relatively short period, if the moratorium is likely to be too short to achieve a rescue, may encourage financiers to hold out against an informal restructuring.

We are concerned that the obligation to cure existing defaults after the 60 day period (which we understand would extend to pre-administration defaults) will further distort the UK regime in favour of aircraft equipment financiers to the detriment of other creditors. The costs involved can often be substantial if they include accumulated maintenance costs, and this would both elevate the lessor's claim to super-priority and deprive unsecured creditors of further funds.

Association of Business Recovery Professionals (R3)

Under Alternative A:

- (a) The moratorium would cease (in relation to Convention interests) at the end of the waiting period, proposed to be maximum of 60 days;*
- (b) The insolvency administrator would be under an obligation to preserve the aircraft object and maintain its value in accordance with the agreement; and*
- (c) Retention of possession following the end of the waiting period is subject to all defaults being cured and agreement to perform all future obligations.*

In relation to (b), we have concerns as to the extent of the obligations this would impose on the office-holder and envisage, as an additional burden to the already heavy regulatory/safety aspects, administration appointments in this sector will be increasingly unattractive to insolvency practitioners. In relation to the curing of all previous defaults, we note that there is specific provision in English law preventing specified creditors (namely utilities) from requiring, as a condition of continued supply, that the insolvency practitioner pay all outstanding charges incurred pre-insolvency; indeed the Government is currently consulting on a possible extension of these provisions to other "essential" suppliers, recognising that the ability of key creditors to demand "ransom payments" is inimical to the rescue of businesses which the administration procedure in particular seeks to achieve where possible. Administration funding can also be difficult to obtain in many cases, and the requirement to include amounts required to discharge pre-administration debts could in many cases preclude funding completely.

With regard to the administrator being obliged to perform all future obligations, the current state of the law as regards administration expenses is that the office-holder should make payment for the period in which the asset is used for the purposes of, and during the period of, the administration, and not further.

Insolvency Lawyers' Association

58. The Government has considered the responses it received to questions 10-13. None of the respondents to the consultation stated that current UK insolvency law does not provide creditors with adequate protection or that it is difficult for creditors to recover aircraft objects in cases of administration, although one stakeholder has raised concerns about the ability of an insolvency practitioner to sell a leased aircraft during the course of an administration. The majority of stakeholders, whether in favour of Alternative A or retention of national law, stated that UK insolvency law works well.
59. Since creditors are able to recover assets in cases of liquidation quickly, the adoption of Alternative A is only likely to have a material effect in administration. Therefore there are two important questions to consider when deciding whether or not the Government should adopt Alternative A or retain current law:

- (i) Do the potential economic benefits for aircraft financing associated with adopting Alternative A warrant changing the balance between secured creditors being able to recover their assets more quickly and without the need for a court order on the one hand, and the ability to rescue a potentially viable business on the other?
 - (ii) Are aircraft objects a sufficiently unique asset that they warrant a separate administration regime?
- 60. On balance the Government believes the answer to both of those questions is “yes” and has decided to adopt Alternative A for this type of asset where an international interest has been registered. The insolvency regime for all other types of assets will remain unchanged. Airlines and leasing companies need to raise large amounts of finance to purchase and lease aircraft and this finance may come from a variety of sources. Many experts in aviation financing expect the sources of finance to change over the next 10 years with capital markets expected to provide a greater proportion of aircraft financing. These capital markets investors may not be familiar with the UK administration regime and therefore may not wish to spend time and money investigating whether the UK insolvency regime offers adequate creditor protection when they can choose between a number of deals to invest in. The Government does not believe that adopting Alternative A is a pre-requisite for obtaining capital markets funding, as shown by British Airways’ capital markets transaction in 2013. However, on balance the Government believes it will help those UK airlines that wish to do so to access the capital markets as Alternative A is already well known amongst aviation finance investors and has been adopted by the majority of countries that have ratified the Cape Town treaty.
- 61. The precise financial benefit for UK airlines is difficult to quantify, as a number of respondents to the consultation acknowledged, because financiers consider a number of factors when pricing transactions, such as the underlying credit rating of the airline, the type of asset, the structure of the finance and many others. Depending on the individual circumstances of the business, some airlines may not see a reduction in the cost of raising finance as a result of adoption of Alternative A. This is particularly the case for airlines that do not wish to raise finance through the capital markets and continue to fund their fleets through traditional investors in aviation finance. These investors will already be aware of the protections offered by the UK insolvency regime for creditors. Due to the high value of these assets and the long-term nature of the financing transactions, a small uplift in the rating given to capital markets transactions and the likely consequential small reduction in bps, could have a significant impact in terms of a reduction in financing costs.
- 62. Adoption of Alternative A is one of the criteria for officially supported credits in the aviation sector under the Aviation Sector Understanding and this is discussed further in paragraph 79-91.
- 63. The Government notes the concerns raised by insolvency practitioners and insolvency lawyers regarding the ability to restructure a company in administration. The administration regime is designed to allow the restructuring of a viable business in distress to preserve the business and the associated jobs. This is an important part of the insolvency regime. However, there are strong arguments that aircraft

objects are a unique asset for the reasons set out below and that it would be very difficult for an airline to restructure successfully in an administration.

64. Aircraft objects regularly cross borders and a creditor cannot be sure in which jurisdiction an aircraft object will be located should an insolvency event occur and therefore how easy or difficult it will be to recover that object. This is particularly pertinent in the case of an aircraft as the aircraft condition deteriorates rapidly if not subjected to a regular cycle of maintenance. The Cape Town treaty tries to address these difficulties by creating a harmonised system that applies to all Contracting States.
65. Secondly, airline operators require an Operating Licence in order to undertake commercial transport flights. As stated by one of the respondents to the consultation, the Civil Aviation Authority, which is responsible for the implementation of Regulation (EC) 100/2008¹ under which an Operating Licence is granted and maintained, is required to act if an airline does not meet the qualifying criteria. One of the criteria for an Operating Licence is for the holder to have sufficient resources to meet its actual and potential obligations for the next 12 months. The Civil Aviation Authority has confirmed that whilst in principle it would be prepared to permit an airline to trade in administration, it would need to be satisfied:
 - i. that an airline had a reasonable prospect of being financially restructured and of exiting Administration;
 - ii. that safety requirements would not be compromised;
 - iii. that the airline had in place a comprehensive passenger protection plan
 - iv. that an administrator could demonstrate they had access to funds to support trading (for example from a potential purchaser).
66. The Civil Aviation Authority has advised that although there have been instances where airlines have continued to hold an Operating Licence whilst in administration, these have been exceptional and the airlines concerned have not sold services directly to the public. Without an Operating Licence, the administrator could not fly the aircraft and there would be no income to pay staff wages etc. making it more difficult to restructure the business. In addition, consumers may be reluctant to purchase tickets in advance on airlines in administration which may reduce the chances of restructuring a business successfully. This is not the case for many other sectors where consumers are not making advance purchases. By contrast airline tickets are often booked several weeks or months in advance.
67. The Government recognises the concerns raised by insolvency practitioners and insolvency lawyers regarding the requirement to pay all defaults in cases of administration and the concern that secured creditors would have no incentive to agree a repayment plan. The Government does not believe it is in the interests of creditors to hinder a repayment plan, as a creditor taking possession of an aircraft

¹ Regulation (EC) no 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the community (recast)

would have no guarantee it can sell or lease the asset quickly. They would also incur costs to store the asset, for on-going maintenance and potentially to refit and repaint the asset to another airline's specification.

68. The Government acknowledges the insolvency practitioners' and insolvency lawyers' concerns that the requirement to perform all future obligations under the treaty would be a liability of the insolvency practitioner. The Government does not believe this would be a hindrance since following a successful administration, the obligation to comply with the terms of the contracts would fall to the company that was formerly in administration.
69. For these reasons, the Government believes that aircraft objects are a sufficiently unique asset to warrant specific insolvency provisions, and that the potential economic benefits and the evidence that airlines would find it difficult to restructure successfully under current insolvency law, warrant changing the balance of protections in this case.

Question 14 – Irrevocable De-registration and Export Request Authorisation (IDERA)

70. The treaty requires Contracting States to provide for the de-registration and export of aircraft equipment. One route for procuring this is via a court order where a declaration has been made to that effect. An alternative route is for the debtor to provide the creditor with an irrevocable de-registration and export request authorisation (IDERA) for presentation to the registry authority, in the case of the UK, the Civil Aviation Authority. Question 14 asked for stakeholders views on whether the UK should allow creditors to pursue de-registration and export remedies through the use of the IDERA.
- 14. Do you agree that the UK should allow debtors to provide creditors with an IDERA to enable a creditor to apply for the de-registration and export of an aircraft object in cases of default? Why?**
71. The majority of stakeholders that responded to this question supported the use of an IDERA within the UK. A number of stakeholders explained that the provisions of the IDERA are similar to the existing power of attorney provisions which allow a creditor to de-register an aircraft object where the debtor has previously agreed to do so. A number of stakeholders commented that the IDERA would improve upon the power of attorney system since it would offer greater predictability for creditors.

As noted in paragraph 84 of the Consultation, the core concepts embodied in the IDERA and its related provisions are well-known in the UK. The IDERA provisions improve them in some respects, and provide more predictability. This provision is also one of the qualifying declarations (for the ASU). It is therefore linked to the above-described economic benefits. Finally, with an exceptionally high percentage of contracting states making the IDERA declaration, it can safely be said that it now constitutes international best practice.

72. A minority of respondents to this question in the consultation did not support adoption of the IDERA in the UK as not all UK airlines grant de-registration powers of attorney and the current provisions for creditors to recover aircraft are sufficient.
73. The Government has considered the response to the consultation and has decided to allow the use of the IDERA in the UK. The concepts behind the IDERA are already available in the UK through the power of attorney system which allows the de-registration and export of aircraft equipment. Just as an airline or leasing company can agree to grant a de-registration power of attorney to a creditor, so may the airline or leasing company agree to grant an IDERA to a creditor. This is a matter for their commercial negotiations.
74. The Government notes that some respondents thought the existing powers to de-register an aircraft in the UK are sufficient, however the Government believes there is merit in adopting a single system for the de-registration and export of aircraft equipment across a number of Contracting States. This will save costs for businesses in terms of complying with the local rules set by each Contracting State.
75. The IDERA does not grant the creditor the right to de-register an aircraft in any and every circumstance as the Civil Aviation Authority retains the right not to de-register an aircraft if there is a relevant safety concern. Further guidance on how to register an IDERA will be provided by the Civil Aviation Authority.

Question 15 – Designated entry points

76. Question 15 asked stakeholders for views on whether the UK should adopt any mandatory or optional designated entry points. A designated entry point would act as a gateway to pass information to the International Registry.
- 15. Do you agree that the UK should not designate any entry points for the passing of information on registration of international interests in helicopters and airframes to the International Registry? Why?**
77. The majority of respondents to the consultation agreed that the UK should not designate entry points to pass information to the International Registry. A minority of respondents were unsure as to whether the UK should designate entry points and noted the Civil Aviation Authority would be the obvious choice to act as a designated entry point. None of the respondents to this specific question were in favour of the creation of mandatory or voluntary designated entry points.

Yes. One of the benefits of the International Registry is that it is on-line and accessible 24/7. Restricting access places a burden on users and negates the benefits of its accessibility.

78. The Government agrees with the majority of respondents that the creation of designated entry points would increase burdens to business and delay registering interests with the International Registry. Creation of designated entry points would also increase costs for business as the entry point would be entitled to charge a fee to cover its costs. Therefore the Government will not introduce any designated entry points to pass information to the International Registry.

Question 16 – Aviation Sector Understanding

79. Question 16 asked for stakeholders' views on whether the UK should ratify the treaty to comply with the rules of the Aviation Sector Understanding (ASU). The Sector Understanding on Export Credits for Civil Aircraft (commonly called the ASU) is an annex to the Organisation for Economic Co-operation and Development's (OECD's) Arrangement on Officially Supported Export Credits. This annex sets out the internationally agreed rules for officially supported export credits in the aviation sector. The ASU provides a framework for export credit support so that all the participating states use the same principles, creating a level playing field. The current participants in the ASU are Australia, Brazil, Canada, the EU, Japan, South Korea, New Zealand, Norway, Switzerland and the US. The Export Credit Agency (ECA) in the UK is UK Export Finance.
80. Under the ASU, a buyer or lessor in a Contracting State which has ratified the treaty and incorporated certain declarations is eligible for a discount of up to 10% on the premium rate of their export credit support. The level of the discount is at the discretion of the ECA.
81. The ASU states which declarations must be made under the treaty and which must not be made in order for a Contracting State to meet the eligibility requirements of the ASU. The declarations that Contracting States must make are:
- (i) Adoption of Alternative A on insolvency proceedings with a maximum waiting period of 60 days
 - (ii) Ability to de-register and export an aircraft object
 - (iii) Allowing parties to agree which law should govern their contractual rights and obligations
82. The Contracting State must also make one of the following declarations:
- (iv) Declare that the remedies available to creditors on default, which are available in the treaty without leave of the court, are indeed available without leave of the court
 - (v) Declare that the additional remedies available to creditors pending final determination of their claim are available, with the exception of the requirement to allow parties to an agreement to disapply the ability of the court to protect debtors as set out in Article 13(2). The term *speedy* should be defined as no

more than a certain number of days, depending on the type of relief to be granted.

83. In addition, Contracting States must not make the following declarations:
- (i) A declaration to exclude the remedies available to creditors pending final determination of their claim unless the Contracting State has made declaration (iv) above
 - (ii) A declaration opting-out of provisions which state that the treaty supersedes the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft
 - (iii) A declaration preventing the granting of a lease in the Contracting State's territory
84. The EU has not made a declaration regarding insolvency. However Member States can amend national law to reflect either Alternative A or B. In light of this, the ASU states that a Member State shall be deemed to have made the qualifying declaration regarding insolvency provisions provided that its national law reflects the terms of Alternative A with a maximum waiting period of 60 days.
85. The EU has made a declaration disapplying the provisions regarding choice of law and a declaration with respect to the availability of interim relief pending final determination of a claim. The ASU also states that the requirements regarding choice of law and remedies will be considered to be satisfied if the laws of the EU or the relevant Member State are substantially similar to those set out in the treaty. The OECD has confirmed that the laws of the EU with regard to choice of law are substantially similar.
86. If the UK makes declarations in line with the OECD's ASU, UK businesses which apply for and are granted export credit support would be eligible for a discount of up to 10% on the premium charged by the export credit agency. This is at the discretion of the export credit agency. Question 16 asked for views on whether the UK should ratify the treaty in a manner consistent with the ASU.
- 16. Considering your answers to the other questions in this consultation, do you believe the UK should make declarations in line with the Aviation Sector Understanding? Why?**
87. The majority of respondents to this question in the consultation were supportive of ratifying the treaty in line with the ASU criteria, stating that this would bring the greatest economic benefits to the UK and would be in line with international best practice.

Yes. Meeting the requirements to achieve the OECD's discount under the Aircraft Sector Understanding (ASU) has become the benchmark for declarations made upon Cape Town Convention ratification. Investors and financiers understand what is required in line with ASU compliant declarations and can quickly take comfort from a transaction that meets this standard. This in itself can reduce transaction costs paid for by the borrower as it reduces the requirement for lengthy legal opinions for the benefit of investors/financiers. Additionally it can create liquidity for aircraft finance as some investors/financiers can be binary when it comes to participation in a transaction that does or does not meet the standard to achieve the ASU Cape Town discount.

Rolls-Royce Capital Ltd

88. A minority of respondents to this question in the consultation thought that the UK should not make declarations in line with the ASU criteria and stated that UK airlines would not be able to benefit from the discount due to the “home market practice”.
89. The “home market practice” is the name given to the approach of the export credit agencies in the USA, France, Germany and the UK with regards to supporting aircraft manufactured by Boeing and Airbus being delivered to airlines in the manufacturing countries.
90. The Government has considered the responses to this question and will make the declarations necessary to meet the ASU criteria. The Government has decided on the approach to individual declarations on their own merit as explained in the preceding paragraphs. However the cumulative effect of this is that the UK will ratify the treaty in line with the ASU criteria. This will enable eligible airlines to benefit from a discount of up to 10% on the premium of their export credit support. This discount is at the discretion of ECAs and does not mean that every airline will benefit from a discount. Not all airlines will be eligible for or be granted export credit support and the application process and criteria for export credit support will remain unchanged.
91. The Government notes the concerns raised by some stakeholders regarding what they describe as the “home market practice”. Although applications for support for UK airlines have not been made for Boeing and Airbus manufactured aircraft, the UK Export Credit Agency would consider any application on its own merit. Export credit support under the ASU may be available for airlines purchasing aircraft from other manufacturers.

Question 17 – Familiarisation costs to business

92. Question 17 asked for views on the familiarisation costs to business of ratifying the treaty.

17. Do you agree with the Government's estimate of a one-off familiarisation cost to business of £5,000 to understand the provisions of the treaty and the declaration made by the UK? Why?

93. The majority of the respondents to this question in the consultation believed that £5,000 was a fair estimate of the familiarisation costs to business noting that a number of businesses are already familiar with the provisions of the treaty and free material is available to aid understanding of the treaty. As a result of the wide availability of material to businesses at no cost, a small number of respondents to this question felt that the familiarisation costs would be less than £5,000. A small number of respondents thought the estimate of £5,000 was low and the costs to business would be greater. However, no respondent to the consultation suggested an alternative figure for familiarisation costs.

The familiarisation costs may be less than the amounts suggested by BIS as many UK parties are already familiar with the Cape Town Convention.

Vedder Price LLP

We suspect most concerned organisations will be able to benefit from free assistance for familiarising themselves with the Convention provided by their professional advisors.

Norton Rose Fulbright LLP

94. The Government has not received any evidence that the estimate for familiarisation costs is incorrect. Therefore the Government will continue to use this figure to estimate the familiarisation costs for business of ratifying the treaty.

Question 18 – Equality impact

95. BIS has a duty to give due regard as to whether its policies would have an adverse impact on any communities or groups within communities. Question 18 asked stakeholders for views on this.

18. In your view, would any of the proposals in this document have an adverse impact on any community or group within a community? Why?

None of the respondents to this specific question identified any community or group within a community that would be affected by these proposals. Some respondents did note that the insolvency provisions outlined in paragraphs 48-69 may adversely impact on unsecured creditors; this is covered in the response to questions 10-13.

96. In line with respondents to the consultation, the Government has not identified any community or group within communities which would be adversely impacted by the proposals. These proposals impact on contractual negotiations between parties to an aircraft financing deal and therefore do not adversely impact on any groups defined by equality legislation.

Lex Situs

97. The majority of respondents to the consultation called on the Government to clarify the application of the *lex situs* rule to the creation of proprietary rights under UK law in the implementing regulations, provided this did not impact on the implementation timetable.
98. The consultation document did not specifically ask about this issue and BIS is grateful to everyone who has discussed this issue with us.
99. Under English law, the *lex situs* rule is applied to determine the validity of the creation of a proprietary right for example under a security agreement. This was confirmed in the *Blue Sky One Ltd & Ors v Mahan Air and anor* [2009] EWHC 3314 (Comm) and [2010] EWHC 631 (Comm) case. Under the *lex situs* rule, a transfer of a tangible moveable would only be valid if it was validly effected in the country in which the asset was located at the time the security interest was created.
100. This has led to uncertainty amongst asset finance lawyers concerning the requirements to establish the existence of an international interest under the treaty. This undermines English law for the taking of security over aircraft objects. Due to the global nature of the aircraft industry and the fact that English law is widely respected and chosen by parties with no domicile in the UK, it is very unlikely that the aircraft object will be located in the UK when the debtor enters into the security agreement, for example an English law mortgage. In fact there may be no intention for the aircraft to ever fly to the UK.
101. As part of its international obligations, the UK is required to implement the treaty correctly. There are three types of interest which are capable of giving rise to the creation of an international interest under the treaty. One of these is a *security interest*, which a *charger grants or agrees to grant under a security agreement*. The Official Commentary² suggests that the original purpose of the treaty was to exclude,

² 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

as far as possible, the application of conflict of interest laws. The aim of the international treaty is to create a harmonised system for the creation and registration of international interests under the treaty which can be applied equally in any Contracting State. Therefore the application *lex situs* to the creation of international interests would seem to conflict with this objective and would make the treaty less effective in the UK. An international interest is an autonomous class of interest, recognised between Contracting States. Therefore, the Government does not consider that domestic conflict of laws principles should be imported into the conditions for recognising an international interest.

102. The Government has decided to provide that an international interest is a proprietary right that takes effect in law once the conditions for the creation and registration of an international interest are satisfied, so that the treaty's remedies are available as intended. This falls within the powers to make implementing regulations under section 2(2) of the European Communities Act 1972. Regulation 6 in the draft regulations reflects this interpretation of the treaty provisions on security agreements and BIS would be grateful for comments on whether the wording of regulation 6 achieves this. This interpretation would only affect international interests created under the treaty. The validity of a *security interest* or a *security agreement* which is not an international interest created under the treaty would still be determined by the application of *lex situs*.

4. Next Steps

103. The Government has published the draft regulations to implement the treaty alongside this response to the consultation. These regulations implement the treaty in line with the Government responses as set out above. BIS is inviting technical comments on the practical effect of the regulations.

5. Contact Details

104. If you would like further details on the response to this consultation, please contact:

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020 7215 6096

Annex 1: List of respondents to the consultation

ADS

AerCap

Airbus

Association of Business Recovery Professionals (R3)

Aviation Capital Group

Aviation Working Group

Avolon

Blake, Cassels and Graydon LLP

Boeing

British Exporters Association

City of London Law Society – Financial Law Committee

City of London Law Society – Insolvency Law Committee

Clifford Chance LLP

Crédit Agricole

Eurocontrol

Flydubai

Freshfields Bruckhaus Deringer LLP

GE Aviation

Insolvency Lawyers' Association

International Airlines Group

KfW Bankengruppe

Macquarie AirFinance

Norton Rose Fulbright LLP

Professor Vadim Linetsky (Northwestern University)

PwC

Rolls-Royce Capital Ltd

TUI Travel PLC

Vedder Price LLP

Virgin Atlantic



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