

**Convention on International Interests in Mobile Equipment signed at Cape Town on 16<sup>th</sup> November 2001 (the “Convention”) and the Protocol to the Convention on International Interest in Mobile Equipment on Matters specific to Aircraft Equipment (the “Protocol”) (together the “Convention and Protocol”)  
-Marylou Bilawala**





## **AIM of the convention**

- The primary aim of the Convention is to protect international interest in certain categories of mobile equipment of high value or particular economic significance and associated rights viz:
  - (a) airframes, aircraft engines and helicopters;
  - (b) railway rolling stock; and
  - (c) space assets
- This was necessitated to ensure that interests in such equipment are recognized and protected universally.



## **Overview of the protocol**

- The Protocol contains provisions relating to aircraft objects which includes airframes, aircraft engines and helicopters.



## Applicability of the Convention and Protocol

- The Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the “debtor” is situated in a Contracting State. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention. “debtor” means a “charger” under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest.



# International Registry

- An International Registry was created under the Convention to record international interests (and national interests, for such Contracting States as have opted for the Convention and Protocol to apply to internal transactions) in aircraft objects in connection with buying, selling, leasing and financing aircraft objects to protect the interest of the sellers, purchasers and creditors.



## **Some provisions of the Convention and Protocol which may be noted:**

- (1) Registration on the International Registry of international interests and national interests in aircraft objects. [*Note: A registered interest has priority over any other interest subsequently registered and over an unregistered interest*]. Searches can be taken of the registered interests. [See Articles 16 and 29 of the Convention]
- (2) Remedies in the case of default by the Debtor including termination of the agreement and repossession of the object and speedy relief pending final determination of the claim of the creditor in the form of one or more of the following orders as the creditor requests; like (a) preservation of the object and its value; possession, control or custody of the object; immobilisation of the object; etc [See Articles 8, 10 and 13 of the Convention]



## Some provisions of the Convention and Protocol which may be noted:

- (3) Deregistration and export of the aircraft by the creditor, within a stipulated period, in exercise of its rights under an irrevocable de-registration and export request authorisation issued by the debtor in favour of the creditor (IDERA), recorded with the registry authority/DGCA. [See Article IX of the Protocol]
- (4) Right to repossess aircraft in the case of insolvency of the debtor: Upon the occurrence of an insolvency- related event, the creditor shall be entitled to recover possession of the aircraft within a stipulated period from the insolvency administrator (in India-the insolvency professional) or debtor. [See Article XI of the Protocol]
- (5) Choice of law: Parties have the right to choose the law which will govern their contractual rights and obligations under the Convention, wholly or in part. [See Article VIII of the Protocol]



# INDIA AS A PARTY

- 82 countries have acceded to the Convention.
- India acceded to the Convention and Protocol on 1 July 2008. Pursuant to its accession, India made certain declarations (dealt with below), in connection with its implementation of the Convention and Protocol in India.
- Article 50 of the Protocol provides that a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that the Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them. India did not make such a declaration and therefore the Convention would also apply to “internal transactions” in India, if the parties opt to apply the Convention to the transaction.





## **Some of the declarations made by India under the Convention and Protocol and position under Indian statutory law.:**

- **1. Enforcement of IDERA**

- Declaration under Article XXX(1) in respect of Article XIII of the Convention.
- India agreed to apply Article XIII of the Protocol [dealing with the enforcement of the IDERA]
- On an application made by the creditor for deregistration and export of the aircraft following a default by the debtor, the DGCA will deregister the aircraft within the stipulated period of 5 working days.
- *Note: India has amended its Aircraft Rules 1937 (See Rule 30 (7) and Rule 32A) and also issued a standard operating procedure AIC 12/2018 (SOP) for recording of the IDERA and enforcement of the IDERA, which includes the procedure for deregistration and export of the aircraft.*



# 1. Enforcement of IDERA

- *Under the amended Rules and the SOP, when the IDERA is enforced:*
  - (a) The registration of the aircraft shall be cancelled within five working days after receiving the application for deregistration in the prescribed form.
  - (b) The Central Government shall take action to facilitate the export and physical transfer of the aircraft, along with spare engine, if any, subject to (i) the payment of outstanding dues in respect of the aircraft; and (ii) the compliance of the rules and regulations relating to the safety of the aircraft operation.



# 1. Enforcement of IDERA

- (c) the cancellation of registration of an aircraft shall not affect the right of the Central Government or any entity thereof, or any inter-governmental organisation in which India is a member, or other private provider of public services in India to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organization or provider directly relating to the services provided by such aircraft in respect of that object.
- (d) current and accumulated dues of the airports authorities shall include only such dues that accrued in respect of that aircraft and in relation to flights operated by that aircraft during the period comprised of three months immediately preceding the date of declared default and the period subsequent to the date of declared default up to the date of departure of the aircraft from India and that the Competent Authority shall retain the right to recover the balance dues, if any from the concerned airline.

*[Note: Certain additional procedures and processes still require to be put in place by the Government of India in order to ensure that the aircraft can be exported without delay. While deregistration has been effected within the period of 5 working days, as per the SOP, export of the aircraft has been delayed in various cases]*



## 2. Speedy Interim Relief

*[Declarations under Article XXX(2) in respect of Article X of the Protocol]*

- India agreed to apply Article X in its entirety
- Interim remedies in the form of preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and immobilization of aircraft objects is to be provided in 10 working days and remedies for lease or management of aircraft objects and the income thereof; and, sale and application of proceeds from aircraft objects is to be provided in 30 working days.
- *[Note: Indian statutory law has not been amended to give effect to this declaration]*



### 3. Non-Consensual rights having a priority or interest

*[Declaration under Article 39(1)(a) of the Convention]*

- The following categories of non-consensual right or interest have priority over a registered international interest, whether in or outside insolvency proceedings, namely:-
  - (a) liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or lease and aircraft object;
  - (b) liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and
  - (c) liens in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object.
- *[Note: (b) above is covered in Rule 30 (7), Rule 32 A and the SOP]*



## **4. Right to Arrest or detain for non-payment of dues**

*[Declaration under Article 39(1)(b) of the Convention]*

- Nothing in the Convention shall affect the right of the Government of India or that of any entity thereof, or any intergovernmental organization in which India is a member, or other private provider of public services in India, to arrest or detain an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organization or provider directly relating to the service or services provided by it in respect of that aircraft object.
- *[Note: This is reflected in the proviso to Rule 30 (7) and the SOP]*



## 5. Right to repossess in the case of insolvency

*[Declaration under Article XXX(3) in respect of Article XI) providing for the application of Alternative A in its entirety to all types of insolvency proceedings]*

- Upon the occurrence of an insolvency- related event, the insolvency administrator or the debtor shall give possession of the aircraft object to the creditor no later than the earlier of 2 (calendar) months and the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

*[Note: Indian laws have not been amended to give effect to the above declaration and accordingly further amendments need to be carried out under Indian statutes to give effect to the above declaration].*