

The Cape Town Convention and Aircraft Protocol

Treaty Examination Briefing
for
Transport and Industrial Relations Select Committee
29 April 2010



Background – previous consideration

- Treaties signed at Cape Town, 16 November 2001, came into force 1 March 2006
- MOT began work on accession 2004
- Former government agreed ‘in principle’ to accession in 2005, reconfirmed 2006, but further work was necessary before final recommendation to accede
- This government agreed to accession March 2010



Background – the need for these Treaties

- International financiers/lessors of “mobile equipment” reliant on differing national laws to protect their investments
- In a debtor’s default, recovery of property sometimes required protracted legal proceedings across more than one jurisdiction
- Financiers/lessors added a premium on their lending as a hedge against the risks involved



Background – what the Treaties do

- The Convention creates a registry for the recording of “international interests” in “aircraft objects” and provides standard remedies in the event of default by the debtor
- The Aircraft Protocol meets the particular requirements of aircraft financing by offering creditors additional remedies, including removal and export of an aircraft



Background – aircraft objects

- Airframes, when engines are installed and type certified to transport at least eight persons including crew, or goods in excess of 2,750kg
- jet engines >1,750lbs thrust; or turbine or piston engines > 550shp or equivalent
- helicopters type certified to transport at least five persons including crew; or goods in excess of 450kg



Background - Non-Judicial remedies in event of a default

- A creditor with the consent of the debtor, may take possession of the aircraft and
 - sell or grant a lease of it
 - receive the income
- Additionally, with consent of the debtor, a creditor may procure the de-registration of the aircraft and export it to another State



Background – Special Insolvency Regime

- The Aircraft Protocol creates a special insolvency regime for aircraft objects
- Alternative A is a ‘hard’ procedure; in the event of insolvency the insolvency administrator must automatically transfer possession of the aircraft object to the creditor, after the expiry of a specified waiting period
- Alternative A, with a period of 60 days is a ‘qualifying declaration’ in order to obtain OECD discounted export credits for narrow and wide-body jet aircraft (e.g. B737/A320 > B777 > B747 > A380)
- It is proposed that New Zealand adopt Alternative A



Background – the end result

- Organisations involved in aircraft financing will have more confidence enforcing transactions
- The resulting reduction in risk permits discounted export credits and finance costs
- Debtors are protected from unwarranted seizure of the assets by creditors (provided they have maintained their financial obligations)



The proposed Treaty actions

- That New Zealand accede to the Convention and Aircraft Protocol as soon as practicable after:
 - treaty examination process
 - passage of implementing legislation
- That on accession New Zealand makes 12 declarations, ‘opting in’ or ‘opting out’ of various articles in the Convention and the Aircraft Protocol.



Advantages and Disadvantages

- Support for an international “rules based” system
- Greater certainty for both creditors and debtors leading to
 - Reduced financing costs
 - Increased operating efficiency and improved profitability
- Fees to utilise the international registry in Ireland are considerably higher than for use of the New Zealand Personal Property Security Register
- When considered in the context of the value of the equipment involved, the fees are not significant



Economic costs and effects

Estimated savings in aircraft acquisition costs 2011–2016	Estimated compliance costs of using IR 2011–16
\$18m–\$325m	\$366,000

- In the period illustrated Air New Zealand will acquire 23 new aircraft
- The Aviation Industry Association estimates that its members will acquire 163 aeroplanes and 470 helicopters in the same period
- The economic effect of accession will continue indefinitely



Deficiencies of the status quo

- Retaining the status quo would not provide assured remedies in New Zealand
- Remedies could be introduced without treaty action but that would exclude New Zealand from more favourable finance rates
- New Zealand airlines could not obtain discounted export credit assistance for purchase of narrow and wide-body jet aircraft
- The remainder of the industry would be denied more favourable finance rates



Civil Aviation Act amendments to enable accession

- Amendment to the Act to give the Convention and Aircraft Protocol the force of law in New Zealand, and to provide that they will prevail over any inconsistent New Zealand law
- Amendment to the Act to add to the circumstances in which the Director of Civil Aviation and the Civil Aviation Authority must de-register an aircraft from New Zealand's aircraft register
- Possible amendments to Civil Aviation Rule Part 47 *Aircraft Registration and Marking*



Other legislative amendments

- Personal Property Securities Act 1999
- Companies Act 1993
- Corporations (Investigation and Management) Act 1989
- Receiverships Act 1993
- Insolvency Act 2006
- Property Law Act 2007.



Questions?

