

NATIONAL INTEREST ANALYSIS

Convention on International Interests in Mobile Equipment 2001 and Protocol on Matters specific to Aircraft Equipment 2001

Executive summary

1. It is proposed that New Zealand formally accede to the *Convention on International Interests in Mobile Equipment* (the Convention) and to the associated *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment* (the Aircraft Protocol).
2. International investors in, or lessors of, mobile equipment such as aircraft have had to rely on differing national laws to protect their investments. When there is a default by the debtor, recovery of the property sometimes requires protracted legal proceedings across more than one jurisdiction. Consequently, financiers seek a premium on their lending as a hedge against the risks involved.
3. The Convention and the Aircraft Protocol are private legal instruments, supported by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO). They are intended to greatly improve protection and enforceability of security interests arising from cross-border transactions applying to high-value movable assets.
4. The Convention enables creditors (financiers) to register international security interests and provides standard remedies in the event of default by the debtor. The Aircraft Protocol supplements and modifies the Convention to meet the particular requirements of aircraft financing. The Aircraft Protocol offers creditors additional remedies, including the ability to require removal of an aircraft from the national civil aircraft register and export it.
5. Consequently, organisations involved in aircraft financing will have more confidence in transactions, and the resulting reduction in risk will permit discounted finance costs. Debtors are in turn protected from unwarranted seizure of the assets by creditors, provided they have maintained their financial obligations.
6. Accession to the Convention and Aircraft Protocol by New Zealand will support an international system to protect commercial security interests in mobile aircraft equipment, and potentially enable New Zealand aircraft operators to secure commercial advantages from savings in funding and transaction costs in future aircraft acquisitions.

Nature and timing of the proposed treaty actions

7. It is proposed that New Zealand accede to the Convention and Aircraft Protocol, in accordance with Articles 47 and XXVI respectively, as soon as practicable after satisfactory completion of the Parliamentary treaty examination process, and the passage of implementing legislation. Although separate instruments of accession are required (in accordance with Articles 49 of the Convention and XXVIII of the Aircraft Protocol), the Convention and Aircraft Protocol will come into force for New Zealand on the first day of the month following 3 months after the date of deposit of the instrument of accession to the Aircraft Protocol. The Convention does not apply to a category of objects until a relevant protocol is in effect. So in the case of aircraft objects, the Convention first applies when the Aircraft Protocol is in force in New Zealand.
8. The Convention and the Aircraft Protocol were adopted at a diplomatic conference organised by UNIDROIT and ICAO at Cape Town, South Africa, on 16 November 2001; and entered into force internationally on 1 March 2006. The Convention and Aircraft Protocol are attached as Appendices

1 and 2 respectively. The Convention and the Aircraft Protocol are to be read and interpreted together as a single instrument. The Convention is in force for 33 States¹ and the European Union, and the Aircraft Protocol is in force for 29 States² and the European Union.

Reservations and Declarations

9. While reservations are not permitted, Article 56 of the Convention and Article XXX of the Aircraft Protocol provide that States may make up to 20 declarations, 'opting in' or 'opting out' of various articles in the Convention and the Aircraft Protocol. Declarations are intended to allow some tailoring of the Convention and Aircraft Protocol to domestic circumstances. They enable contracting States to weigh other considerations against economic benefits and to exclude or modify provisions that are considered to be incompatible with a State's legal culture or tradition.

10. Some declarations must be made at the time of accession. Others may be made voluntarily afterwards. It would be tidier to make all necessary declarations at the time of accession. Annex A details the declarations permitted or required and the action proposed to be made, or not made, by New Zealand at accession (including a declaration that New Zealand's accession to the Convention and Aircraft Protocol shall not extend to Tokelau).

11. Articles 57 of the Convention and XXXIII of the Aircraft Protocol permit declarations to be made subsequently and could be utilised if, for example, a modification to a declaration is required.

12. Article 58 of the Convention and Article XXXIV of the Aircraft Protocol permit the withdrawal of declarations.

Reasons for New Zealand taking the Treaty actions

Current situation

13. International financiers of aircraft equipment have experienced difficulties in recovering their property in the event of default, even to the extent of aircraft sometimes being removed from the State of Registry to avoid repossession by the financier. Cross-border financial transactions involving laws of different States add complexity to financing arrangements for the purchase or lease of commercial aircraft, including helicopters and engines. Consequently, export credit agencies (ECAs) and financiers seek a premium on their guarantees or lending as a hedge against the risks involved.

14. UNIDROIT recognised the problem as early as 1989, when it began developing a new legal regime, and involved ICAO in 1999. The Convention and Aircraft Protocol address the difficulties faced by international financiers of aircraft equipment in recovering their property in the event of default by lessors or purchasers.

The Convention

15. The Convention prescribes a new legal system for the creation of international interests in "mobile equipment" that will give greater security to financiers of such equipment. It improves financial security by providing for an International Registry (IR) in which international security interests (and certain other kinds of interest) in mobile equipment can be registered. It also provides a set of basic default remedies to the holders of registered interests, including the right to seize equipment in the event that the lessee or mortgagee defaults on its obligations to, for example, sell or lease the equipment to another party.

¹ Afghanistan; Albania; Angola; Bangladesh; Cape Verde; China; Colombia; Cuba; Ethiopia; India; Indonesia; Ireland; Kazakhstan; Kenya; Luxembourg; Malaysia; Mexico; Mongolia; Nigeria; Oman; Pakistan; Panama; Rwanda; Saudi Arabia; Senegal; Singapore; South Africa; Syria; Togo; United Arab Emirates; Tanzania; United States and Zimbabwe. (Accessions of Kazakhstan; Syria; Togo and Zimbabwe become effective when they accede to the Protocol.)

² As above, less Kazakhstan; Syria, Togo and Zimbabwe.

16. In the event of default, the IR gives a registered interest priority over other interests in the same equipment that are either registered later in time, or not at all. The decision on registration of an international interest in an aircraft object for use in New Zealand would be part of the commercial negotiation for provision of the finance between the creditor and debtor.

17. The Convention is not equipment-specific. Its provisions will apply in principle equally to any of the three categories of mobile equipment to which it relates, namely, aircraft objects (airframes, aircraft engines and helicopters), railway rolling stock and space assets. However, the Convention does not come into force for any category of equipment until a protocol has been made relating to that equipment.

The Aircraft Protocol

18. The Aircraft Protocol modifies and supplements the Convention to meet the particular needs of those involved in cross-border transactions applying to "aircraft objects". It provides the creditor with two additional remedies: deregistration from the State's civil aircraft register; and export of the aircraft concerned to another State. The Aircraft Protocol also establishes a special insolvency regime in relation to aircraft objects to strengthen a creditor's position in the event of insolvency. Debtors benefit from protection against seizure of the assets by creditors, provided they have maintained their financial obligations.

19. The Aircraft Protocol enables property interests in the following aircraft objects to be registered:

- aeroplanes certified to transport at least eight persons including crew, or goods in excess of 2,750 kilograms
- jet engines of at least 1,750lb of thrust or its equivalent, and turbine or piston engines of at least 550 rated take-off shaft horsepower or its equivalent
- helicopters certified to transport at least five persons including crew, or goods in excess of 450 kilograms.

20. Finally, the Aircraft Protocol places an obligation on contracting States to assist a creditor in exercising the remedies of de-registration and export, by removing aircraft from their national aircraft register at the creditor's request. This ensures that an aircraft cannot legally be flown to another State to avoid legitimate recovery of the asset by the investor or lessor. The registration of an *international interest* in a New Zealand-operated aircraft by the financier would be discretionary, and would be part of the commercial negotiation for provision of the finance.

21. This global system greatly improves predictability as to the enforceability of security interests arising from cross-border transactions applying to airframes, aircraft engines and helicopters. Commercial organisations involved in aircraft financing can have more confidence in transactions with aircraft operators in State Parties to the Convention and Aircraft Protocol. The reduction in risk permits discounted finance costs.

Advantages and disadvantages to New Zealand of the treaty actions

Advantages

22. The advantages to New Zealand of accession to the Convention and the Aircraft Protocol are:

- support for an international system to reduce risk applicable to asset-based financing and leasing transactions is consistent with New Zealand's approach to clear multilateral rules in the global trading system and as a 'good international citizen'
- the risk reduction increases the availability of and reduces the cost of aviation credit, thus broadening the spectrum of financing alternatives available to aircraft operators

- The aviation industry benefits through reduced financing costs and enhanced access to funds and funding sources, increased operating efficiency and improved profitability
- Greater certainty for New Zealand airlines and other aircraft operators that aircraft and engines financed/leased offshore cannot be seized by creditors provided they have maintained their financial obligations.

23. On the basis of information from the aviation industry as to aircraft acquisitions from 2011 to 2016, potential savings in finance costs over that period are estimated at between \$18 million (for ECA premium reductions alone) and approximately \$325 million (on the basis of a 1 percent saving on loan interest rates).

Disadvantages to New Zealand

24. Creditors and debtors will pay a scale of fees to utilise the international registry (IR) located in Ireland to record their interest. These fees are considerably higher than for use of the New Zealand Personal Property Security Register but, when considered in the context of the value of the equipment involved, the fees are not significant. The transaction costs for registering security interests are shown below:

<u>Activity</u>	<u>PPSR (\$NZ)</u>	<u>IR (US/NZ³)</u>
Registration of interest	\$3 (renewal \$5 after 5yrs)	\$100/146
Search register	\$1	\$35-100/51-146
Set-up fee (one year)	N/A	\$200/292
Set-up fee (more than two transactions within 5 yrs)	N/A	\$500/730

25. Placement of an interest on the IR is achieved electronically. Each participant to an aircraft transaction (creditor and debtor) must pay the appropriate set-up fee (\$US200 for 1 year or \$US500 for 5 years) to be able to register single or multiple interests over the period chosen. Either participant may then register an interest at a cost of a further \$US100. The consent of the other participant in the transaction to the registration is obtained by the IR before the interest is recorded.

26. While airline aircraft prices range from \$42–430 million, even the cost of general aviation “aircraft objects” covered by the Convention and Aircraft Protocol is sizeable. Examples of prices for common general aviation aircraft types used in New Zealand are:

- Cessna 207 (piston engined): \$0.7 million
- Cessna 208 (Caravan) (turbine-engined): \$2.1–3.5 million
- Bell 206 (turbine helicopter): \$1.6 million
- Aerospatiale 350 (Squirrel) (turbine helicopter): \$2.3–3.15 million.

27. In order to estimate the compliance costs, information about the number of aircraft registered by the Civil Aviation Authority (CAA) was used⁴. It typically registers some 40 qualifying aeroplanes and 45 qualifying helicopters annually. It is difficult to calculate total IR registration costs for these interests because the total will depend on whether set-up costs are required for each transaction (there are few aircraft financiers domestically or internationally and they would choose 5-year terms). Even in the unlikely event of *all* 85 transactions attracting set-up costs for both parties to the transaction, the total additional compliance cost for using the IR would be a maximum of around \$61,000 annually. Over the period 2011–2016, that would amount to some \$366,000.

28. The compliance costs are considered negligible in relation to: the cost of the equipment, the voluntary nature of registration, the returns on investment to financiers, and the greater certainty to

³ Conversion rate from \$US = 0.6846 as at 4 March 2010.

⁴ All aircraft must have nationality markings. The CAA registers those markings to the operators using the aircraft. It is not a securities register.

financiers, borrowers, lessors and lessees that is afforded by New Zealand's accession to the Convention and Aircraft Protocol.

Options available to the government

29. Retaining the status quo would not provide international financiers with assured remedies in New Zealand for recovery of their assets in the event of a default, including the legal ability to require de-registration of an aircraft to facilitate its cross-border repossession.

30. The remedies above could be introduced through legislative change without treaty action but that would exclude the commercial opportunity for the aviation industry to access more favourable finance rates on future aircraft acquisitions. The Organisation for Economic Co-operation and Development Sector Understanding on Export Credits for Civil Aircraft (OECD ASU) allows the export credit agencies of participants (US, EU, Brazil, Canada, Australia, Japan, Korea, Norway, Switzerland, and New Zealand) to offer favourable finance rates to aircraft operators – but for “Category 1” aircraft⁵ only the airlines must be from States party to the Convention and Protocol that have made certain qualifying declarations.

31. Accession is not essential for ECA financing support to New Zealand operators of Category 2⁶ and Category 3⁷ aircraft under the new ASU because New Zealand is a participant. Accession would, however, mitigate the credit risk of those operators because of the protection afforded to financiers. Thus there is potential for both ECA support and reduced finance costs for the remainder of the aviation industry.

32. On balance, it is in New Zealand's interests to accede to the Convention and the Aircraft Protocol because:

- it supports an international regime to improve the predictability of aircraft financing
- it offers commercial advantages to the New Zealand aviation industry
- the costs of compliance on the aviation industry are vastly outweighed by the savings
- the savings will assist the competitiveness of New Zealand aircraft operators in some international markets.

Obligations which would be imposed on New Zealand by the treaty action, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms

33. The Convention and Aircraft Protocol focus on autonomy in contractual relationships between commercial parties. The commercial parties will determine what constitutes default and what gives rise to default remedies. The State Party does not become involved in the resolution of defaults and there is no dispute mechanism pertaining to State interests.

34. The Convention and the Aircraft Protocol would have the force of law in New Zealand, and New Zealand Courts would be required to take judicial notice of the Convention and Aircraft Protocol. Under Chapter III of the Convention, New Zealand will have an obligation to ensure that certain remedies are available to creditors in cases of default. These include re-possession, sale or lease, and rights to proceeds from objects subject to a security interest. The remedies must be exercised in a commercially reasonable manner.

35. The Director of Civil Aviation would be under an obligation to give a person with a registered international security interest in an aircraft, who has lodged with the CAA a signed irrevocable de-registration and export request authorisation (IDERA), the right to procure the removal of the aircraft

⁵ Narrow-body jet aircraft such as the Airbus A320, Boeing 737-800, and wide-body jet aircraft such as the Airbus A340, 350, 380 and Boeing 747, 777 and 787.

⁶ Turboprop airline aircraft such as the ATR-500, Bombardier Q-300 and 'regional jets'

⁷ Helicopters and jet, piston, or turboprop general aviation aircraft and small airline aircraft such as the Beech 1900D, Jetsream 32/41 turboprops.

from the New Zealand Register of Civil Aircraft in the event of default by the owner or lessee (if that is what is agreed by those parties). That person could also exercise these remedies, and the other remedies under the Convention and Aircraft Protocol, by recourse to the Courts. The Convention also sets out (in Chapter VIII) how priority should be allocated between competing international interests. Proposed amendments to the Personal Property Securities Act 1999 (PPSA) will ensure that, where the Convention and Aircraft Protocol and the PPSA apply, the Convention prevails. This is necessary to give full effect to the Convention.

36. The Convention does not permit reservations, but declarations are expressly provided for. As noted in paragraph 10, it is proposed that New Zealand make a number of declarations regarding the applicability of certain provisions of the Convention and Aircraft Protocol at the time of accession. A full list of intended declarations is attached as Annex A.

Measures the Government could or should adopt to implement the treaty actions, including specific reference to implementing legislation

Legislative changes

37. To enable New Zealand to accede to the Convention and the Aircraft Protocol the following amendments to domestic legislation would be required:

Civil Aviation Act 1990

38. The Civil Aviation Act would need to be amended 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.

39. The Convention enables States to make declarations opting in or out of various articles in the Convention and Aircraft Protocol. The Act would need to be amended to give the Governor General the power to make Orders in Council, to give domestic effect to certain provisions of the Convention and Aircraft Protocol in accordance with the declarations New Zealand makes at the time of accession, or in some cases afterwards.

40. The Aircraft Protocol provides for the recording and recognition of an IDERA issued by a debtor in favour of a creditor. An IDERA enables a creditor with a security interest in an aircraft to seek de-registration of an aircraft if a debtor defaults on its obligations to the creditor.

41. The Aircraft Protocol requires that, if a creditor seeks to enforce an IDERA and have the aircraft de-registered, the "registry authority" in the relevant State *must* de-register the aircraft. Amendments to the Act are needed to add this as a circumstance in which the Director of Civil Aviation and the CAA must de-register an aircraft from New Zealand's aircraft register.

42. Further amendments to the Act may be required to resolve any inconsistencies between it and requirements in the Convention and Aircraft Protocol relating to the registration and de-registration of aircraft.

Civil Aviation Rules

43. Amendments to Civil Aviation Rule Part 47 *Aircraft Registration and Marking* would be needed to set out the detail around the recording, removal and enforcement of an IDERA, and the obligations of the creditor and the Director of Civil Aviation in relation to enforcing and giving effect to an IDERA.

Personal Property Securities Act 1999

44. New Zealand's domestic legal framework governing security interests in personal property is the PPSA. The security interests in aircraft objects that the Convention and the Aircraft Protocol cover are one form of security interest in personal property. Therefore, there will be situations

where both regimes (the Convention and its Aircraft Protocol and the PPSA) will apply to the same security interest.

45. The Ministry of Economic Development advises that there may be situations in which a secured party may wish to register its interest on the Personal Property Securities Register (PPSR) as well as the IR, even though the PPSR interest would be subordinate to the interest registered on the IR. This is because in some situations the PPSA may provide additional protection to the lender. The United States and some Canadian Provinces have adopted this approach. Australia is also considering this approach.

46. In addition, it appears preferable that the Convention and Aircraft Protocol and the PPSA govern *all* security interests in mobile equipment covered by the Convention and Aircraft Protocol, including internal (domestic) transactions. Although Cabinet had agreed in principle to exclude them (recommendation 9.5 of EDC Min (06) 22/9 of 6 December 2006), later analysis revealed potential problems with the proposal to register security interests arising out of internal and international interests on different registers (the PPSR and the IR), which could cause legal uncertainty for the parties. No other like-minded parties have exempted internal transactions from the Convention, and legal advice from experts advising the Ministry of Transport on the Convention is that New Zealand not do so.

47. It is clear that amendments to the PPSA will be necessary to clarify the relationship between the PPSA and the Convention. It is proposed that the PPSA be amended to provide that, where the Convention and Aircraft Protocol and the PPSA apply, the Convention prevails. This is necessary to give full effect to the Convention.

48. However, the exact nature of the relationship between the PPSA and the Convention and Aircraft Protocol and the necessary legislative amendments to the PPSA requires further analysis by the Ministry of Economic Development. It is proposed that these matters be clarified during drafting of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Bill, and the proposed way forward be referred for Cabinet policy approval before or at the time the Bill is ready for introduction.

Insolvency legislation

49. The Aircraft Protocol creates a special insolvency regime for aircraft objects. States are given the choice of one of two procedures to apply in the event of a debtor's insolvency. It is proposed that New Zealand make a declaration on accession adopting Alternative A, a 'hard', or 'rules based' procedure; that in the event of insolvency requires the insolvency administrator to automatically transfer possession of the aircraft object to the creditor, after the expiry of a specified waiting period. Under Alternative A, the obligations of the debtor cannot be modified without the creditor's consent.

50. The declaration to adopt Alternative A is a 'qualifying declaration' under the OECD ASU to secure discounted finance. Amendments to several Acts will be required to ensure that if an aircraft operator experiences an insolvency related event, the domestic insolvency procedures with respect to aircraft equipment are subject to the procedures of Alternative A. To do so, the following Acts will require amendment:

- Companies Act 1993
- Receiverships Act 1993
- Insolvency Act 2006
- Property Law Act 2007.

51. A consequence of these amendments is that the Alternative A procedure will make it less likely that companies owning aircraft will use the voluntary insolvency regime. The amendments will also constrain, to a certain extent, the ability of the courts to provide flexibility in unique or extraordinary situations in an insolvency context. Finally, Alternative A requires operators to

surrender aircraft within 60 days in the event that they are not able to fulfil their payment obligations. For the creditors of aircraft, this enhances their security world-wide in times of default.

52. However, the practical implications of these amendments appear to be limited, because Alternative A is largely consistent with domestic insolvency procedures. In particular, domestic insolvency procedures already afford priority to first ranking secured creditors and associated procedural protections to protect those interests. The primary benefit for creditors under Alternative A is that it gives them greater certainty (it is an international regime), rather than giving them any greater rights.

Statutory management legislation

53. Accession to the Convention and the Aircraft Protocol would also require New Zealand's statutory management legislation to be subject to Alternative A. This legislation includes the Corporations Investigation and Management Act 1989, the Reserve Bank of New Zealand Act 1989 and the Life Insurance Act 1908. Amending this legislation in order to accede would require a restriction on the power of Statutory Managers, to the benefit of secured creditors in situations where a company owns or leases aircraft that are subject to a security interest under the Convention. For instance, the Statutory Manager's ability to impose a moratorium period on assets sales would be reduced. This is one of the ways that the Statutory Manager might seek to ensure that the public interest is maintained in an exceptional insolvency situation. This would be important if the aircraft were required for the operations of the company or made up a significant portion of the company's asset.

54. The practical implications of these amendments appear to be limited and the risks low, because the Convention only applies to a limited number of companies and that statutory management is only used in exceptional circumstances.

Economic, social, cultural and environmental costs and effects of the treaty actions

55. The financial benefits afforded airlines (and potentially other aircraft operators) in New Zealand, by accession through discounted finance rates, outweigh the additional compliance cost of using the international registry, as illustrated in the table below.

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

56. The availability of discounted rates post-accession may have a positive influence on commercial decision-making around earlier acquisition of newer and more fuel-efficient aircraft by New Zealand aircraft operators, thus reducing the impact of aviation on the environment. There are no social, cultural or environmental costs or effects.

The costs to New Zealand of compliance with the Convention and Aircraft Protocol

57. There are no mandatory compliance costs arising from accession to the Convention and Aircraft Protocol, as use of the international registry by international financiers is entirely voluntary and is a matter for commercial negotiation between the financier and purchaser/lessor. Third parties wishing to search the registry to discover whether or not there are any property interests registered would incur search fees.

58. It is not possible to accurately estimate the overall compliance costs associated with use of the international registry, when its use is voluntary and part of a larger commercial negotiation over aircraft financing. However, the information in paragraph 27 represents a reasonable picture of future compliance costs. The registration process itself would be a relatively minor aspect of the documentation to record the contractual arrangements for finance.

59. Finally, the CAA will need to establish a charge for additional administrative work, in the event that a creditor and debtor agree that an aircraft should be removed from the Civil Aircraft Register and exported in the event of a default. This prospect is being considered in the CAA funding review.

Completed or proposed consultation with the community and parties interested in the treaty actions

60. Consultation occurred with the aviation sector, the Financial Services Federation Inc (FSF) and Toll NZ Ltd in 2005/6, during consideration of this issue by the former government. In May 2009 further consultation was conducted on the subject of internal transactions, and additional aviation sector stakeholders were included because of the implications for operators other than Air New Zealand Ltd and general aviation. There is continuing support for accessions, as illustrated below:

- Air New Zealand Ltd first proposed consideration of accession and as a group of companies continues to support accession.
- Airwork NZ Ltd supports accession.
- The Qantas Group (in relation to its New Zealand subsidiary Jetconnect) had been neutral but now supports accession
- Pacific Blue was originally supportive, but did not respond on the subject of internal transactions.
- The Aviation Industry Association of New Zealand Inc (representing the commercial aviation sector) can see benefits to industry from accession and remains supportive of accession.
- The FSF was originally supportive provided internal transactions were excluded from coverage, but has since agreed to internal transactions being covered.
- The Royal New Zealand Aero Club (a general aviation interest group) supports accession.
- Toll NZ Ltd supported accession to the Convention, and wished to be consulted in future regarding accession to the Protocol on Railway Rolling Stock. KiwiRail has confirmed that position.
- Vincent Aviation Ltd supports accession.

61. The Aircraft Owners' and Pilots' Association (another general aviation interest group) was consulted but did not respond.

62. The Ministry of Economic Development, Ministry of Foreign Affairs and Trade, Ministry of Justice, The Treasury, the Department of Labour, the Inland Revenue Department, the New Zealand Customs Service, the CAA and the Reserve Bank have been consulted.

Subsequent protocols or amendments to the treaty, and their likely effects

63. Any amendment to the Convention or the Aircraft Protocol must be approved by at least a two-thirds majority of the State Parties participating in a Review Conference of the State Parties. Any amendment shall enter into force for States which have ratified, accepted or approved such amendment, when three States have ratified, accepted or approved the amendment.

64. A protocol relating to Railway Rolling Stock was adopted by UNIDROIT in February 2007 but is not yet in force, nor has an international registry been established to record rail assets. Accession to that Protocol can be considered at a future date. A protocol relating to space assets is still being drafted by UNIDROIT, and may need to be considered in future.

Withdrawal or denunciation

65. Any State Party may denounce the Convention by notifying the Depositary. Denunciation will be effective on the first day of the month following expiration of 12 months after the date on which notification is received by the Depositary. The Convention will, however, continue to apply to any rights and interests arising prior to the effective date of denunciation, as provided for in Article 59 of the Convention.

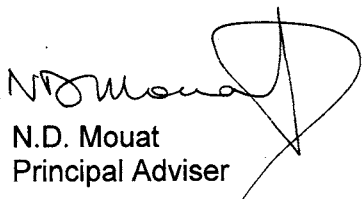
66. Any State Party may withdraw a declaration made under the Convention (other than a declaration authorised under Article 60 (transitional provisions) by notifying the Depositary. The withdrawal will be effective on the first day of the month following expiration of 6 months after the date the notification is received by the Depositary. Despite this, the Convention will continue to apply to any rights and interests covered by the declaration before the withdrawal becomes effective. Unless a State declares otherwise, the Convention will not apply to rights or interests that were in existence before the Convention entered into force.

Agency Disclosure Statement

67. The Ministry of Transport has prepared this extended national interest analysis and obtained financial information from Air New Zealand Ltd, the Aviation Industry Association Inc, and the international registry established by the Convention. It estimated the financial costs and benefits using this information and information from the CAA as to the average number of qualifying aircraft that might be registered annually:

- The compliance costs are estimates, as it is impossible to state with certainty the number of aircraft that may be registered on the international registry and the proportion of those that may be financed by a single financier.
- The benefits rely on information from Air New Zealand and projections provided by the Aviation Industry Association. Apart from the Air New Zealand information, it is not possible to estimate accurately how many aircraft may be financed at a discount through export credit agencies, as other New Zealand operators may finance their acquisitions from other sources.
- Further work is necessary on the relationship between the Convention, Aircraft Protocol and PPSA before PPSA amendments can be confirmed.

68. A consequence of accession to the Convention and Aircraft Protocol is the use of the international registry, which imposes compliance costs on businesses during the current economic recession. However, the compliance costs on each aircraft acquisition are negligible given the value of the assets involved.



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Prepared by: Ministry of Transport

NEW ZEALAND ACCESSION TO CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT AND AIRCRAFT PROTOCOL ON MATTERS SPECIFIC TO AIRCRAFT EQUIPMENT

TABLE OF DECLARATIONS PERMITTED/REQUIRED - CONVENTION

Article	Article heading	Summary	Opt in or opt out? ⁸	Proposed NZ action
39(1)(a)	Rights having priority without registration	Can declare categories of non-consensual rights and interests (except Art 40 rights and interests) having priority <i>without registration</i> (eg unpaid taxes; unpaid wages), if they would have priority over equivalent secured interests under domestic law.	Opt in	Make declaration based on Schedule 7 of the Companies Act 1993 (priority of payments to preferential creditors).
39(1)(b)	As above	Can declare that Convention does not affect right of public service providers to arrest or detain aircraft for unpaid services (e.g. unpaid airport charges), if this is available under domestic law.	Opt in	Do not make declaration. (No jurisdiction to arrest/detain aircraft for unpaid public services in New Zealand.
39(4)	As above	Can declare that rights or interests covered by declaration made under 39(1)(a) have priority over interests registered before accession.	Opt in	Do not make declaration.
40	Registrable non-consensual rights/interests	May list categories of non-consensual rights or interests that can be registered, i.e. rights or interests that would otherwise be subordinate	Opt in	Make Art 39(1) declaration instead (otherwise will have to register interests for every aircraft).
48(2)	Regional Economic Integration Organisations	Regional Economic Integration Organisation must declare matters that it has competence over.	Not applicable	
50	Internal Transactions	Can declare Convention provisions won't apply to internal transactions but Art 8(4), 9(1), 16, Ch V, Art 29 ⁹ and any provisions relating to registered interests continue to apply to internal transaction.	Opt out	Do not make declaration.
52(1)	Territorial units	Can declare that Convention is to apply to all or one or more	Opt in	Make declaration that the Convention is not

⁸ 'Opt-in' = declaration required for provision(s) to have effect. 'Opt-out' = declaration required in order for provision(s) not to have effect.

⁹ Art 8(4) – Reasonable notice must be given, if sale or lease of object proposed in event of default.

Art 9(1) – After default, may agree that ownership shall vest in chargee in satisfaction of the secured obligations.

Art 16 – International Registry established for inter alia registration of "national interests" (= interest secured by internal transaction covered by Art 50 declaration).

Ch V – Other Matters Relating to Registration (registration requirements, validity and time of registration, consent to registration, duration, searches of International Registry, list of declarations and non-consensual rights/interests, evidentiary value of certificates, discharge of registration, access to international registration facilities).

Art 29 – priority of competing interests (a registered interest has priority over any other interest subsequently registered and over an unregistered interest).

Article	Article heading	Summary	Opt in or opt out? ⁸	Proposed NZ action
		territorial units (i.e. if different systems of law apply). If no declaration made, Convention will apply to all.		binding on Tokelau unless and until Tokelau expresses its consent to be bound.
53	Determination of courts	May declare which Courts are to have jurisdiction under the Convention.	Opt in	Make declaration that High Court has jurisdiction with right of appeal to Court of Appeal then appeal by leave to Supreme Court.
54(1)	Declarations regarding remedies	Can declare that chargee shall not grant under 8(1)(b) ¹⁰ a lease of aircraft situated in or controlled from New Zealand.	Opt out	Do not make declaration.
54(2)	As above	Must declare whether or not remedies require leave of the Court, if this is not required by Convention itself.	Mandatory	Make declaration that leave of the Court is not required, as is consistent with security agreements for property entered into in New Zealand.
55	Declarations regarding relief pending final determination	May declare that provisions for interim relief (Arts 13 ¹¹ and 43 ¹²) do not apply wholly or in part. If the latter, must specify conditions in which relief available; if the former, must specify other forms of interim relief available.	Opt out	Make declaration that Art 13 and Art 43 will not apply because of the declaration in Art 54(2) above.
60(1)-(3)	Transitional provisions	Can declare that Convention will apply to pre-existing rights and interests not less than 3 years after the effective date of the declaration.	Opt in	Do not make declaration.

TABLE OF DECLARATIONS – AIRCRAFT PROTOCOL

Article	Article heading	Summary	Opt in or opt out?	Proposed NZ action
VIII	Choice of law	Can issue declaration enabling the parties to agree on law of State/territorial unit that will govern contractual right/obligations.	Opt in	Make declaration.
X	Modification of provisions regarding	Declaration - <ul style="list-style-type: none"> • can define “speedy” ie the no. of days within which 	Opt in	Do not make declaration. New Zealand is not

¹⁰ Art 8(1)(b) – In event of default, one of the remedies is the sale or lease of the object.

¹¹ Art 13 – Court can order interim “speedy” relief pending final determination, if debtor agrees, as follows –

- (1)(a) - Preservation of the aircraft and its value;
- (1)(b) - Possession, control or custody;
- (1)(c) - Immobilisation;
- (1)(d) - Lease or management of aircraft plus income.

¹² Art 43 - Courts of contracting state chosen by parties and courts of contracting state within which object is located have jurisdiction to grant Art 13 orders.

Article	Article heading	Summary	Opt in or opt out?	Proposed NZ action
	relief pending final determination	<p>speedy relief is to be given</p> <ul style="list-style-type: none"> • can add sale and application of proceeds to speedy relief (if debtor/creditor agree) • can permit parties to exclude art 13(2)¹³ of Convention • can specify time limit (5 days) for making de-registration and export remedies available and require relevant authorities to co-operate. 		applying arts 13 and 43 that deal with interim relief pending final determination.
XI	Remedies on insolvency	<p>Upon insolvency-related event –</p> <p><i>Alternative A ('hard'; rule-based; a clear and unqualified rule).</i></p> <p>In the event of an insolvency the aircraft is automatically transferred to the creditor after a period.</p> <p><i>Alternative B ('soft'; discretionary; not required to do anything until creditor requests).</i></p> <p>The debtor gives notice whether it will cure defaults or give the creditor the opportunity to take possession.</p>	Opt in	Make declaration that alternative A will apply.
XII	Insolvency assistance	Can declare that Courts in contracting state in which aircraft is situated shall co-operate with foreign courts/insolvency administrators in carrying out Art XI.	Opt in	Make declaration.
XIII(1)	De-registration and export request authorisation	Can declare that, if debtor has issued an irrevocable de-registration and export request authorisation and submitted it to registry authority, the authorisation is to be recorded.	Opt in	Make declaration.
XIX	Designated entry points	State can designate a state 'portal' through which registrations shall or may be notified.	Opt in	Do not make declaration.

¹³ Art 13(2) - Court can impose terms to protect interested persons (e.g. debtor) from creditor failure to perform obligations or establish claim.

XXIV(2)	Relationship with the <i>Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft</i> (Rome Convention 1933)	Cape Town supersedes the Rome Convention (which limits the right to arrest an aircraft in pursuit of a claim by the creditor or owner).	Opt in	Do not make declaration (as New Zealand is not party to the Rome Convention).
XXVII	Regional Economic Integration Organisations	If REIO (i.e. EU) is to have competence, must declare matters in respect of which competence has been transferred by its member states.	Not applicable	
XXIX	Territorial units	Can declare Aircraft Protocol applies to all or one or more territorial units (if different systems of law apply). If no declaration, Aircraft Protocol applies to all.	Opt in	Make declaration that the Aircraft Protocol is not binding on Tokelau unless and until Tokelau expresses its consent to be bound.
XXX(5)	Declarations relating to certain provisions	Can declare that Article XXI ¹⁴ will not be applied wholly or in part. If the latter, must specify conditions under which XXI will apply. If the former, must specify other forms of interim relief available.	Opt out	Make declaration.

¹⁴ Art XXI - confers jurisdiction on courts to make orders for speedy relief under Art 13 of Cape Town.