



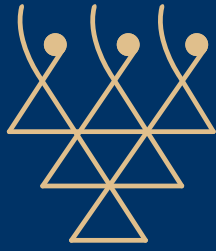
**INSOLVENCY  
LAW ACADEMY**

An Indian Institute of Excellence in Insolvency

# **The Aircraft Protocol of the Cape Town Convention and its applicability under Indian Insolvency Regime**

**THOUGHT PAPER**

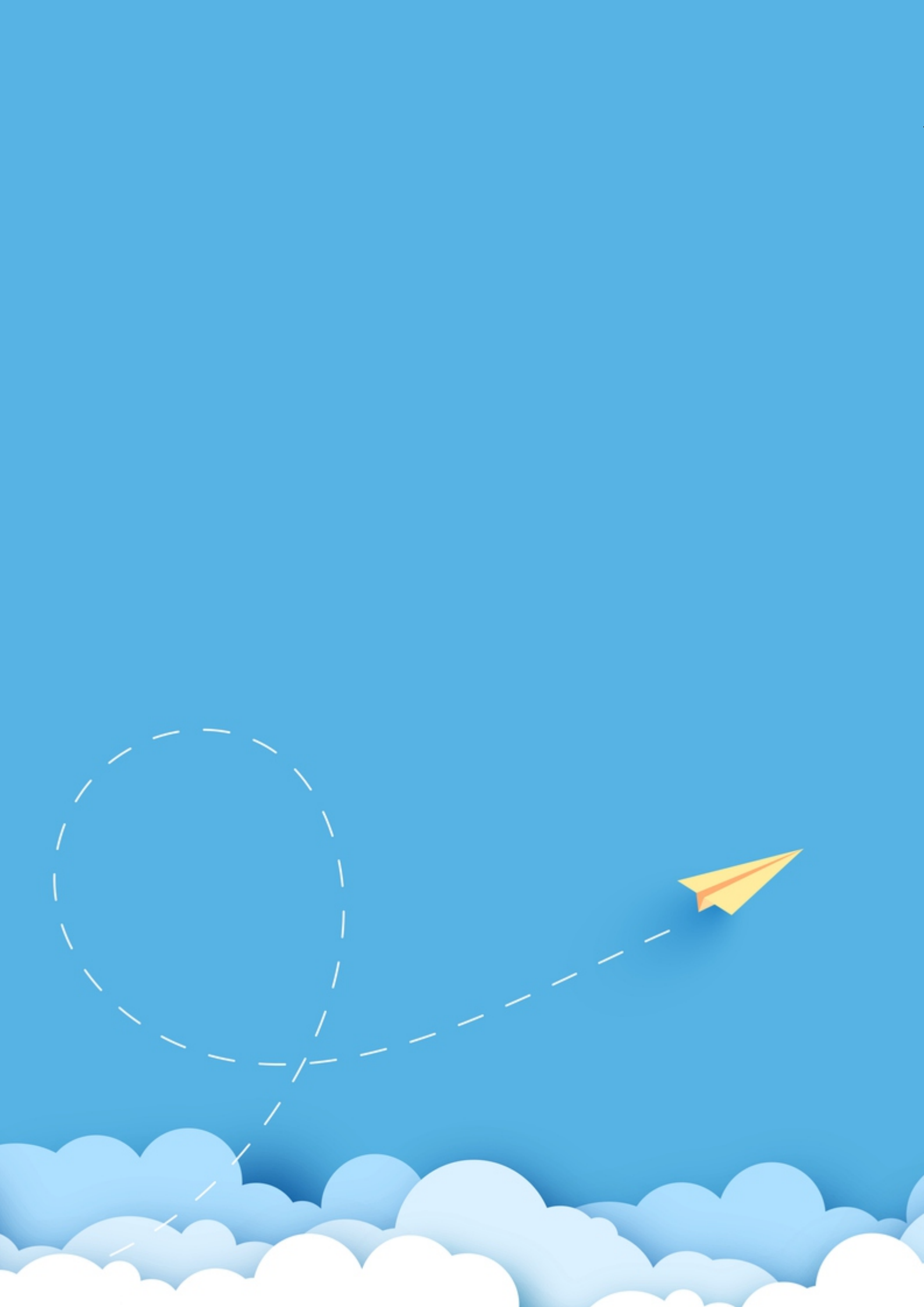




**INSOLVENCY LAW ACADEMY (ILA) IS AN INDIAN INSTITUTE OF EXCELLENCE IN INSOLVENCY. AN INDEPENDENT RESEARCH INSTITUTION, ILA CONTRIBUTES TO ROBUST AND EVIDENCE-BASED POLICY MAKING AND ENHANCEMENT OF PROFESSIONAL AND ETHICAL STANDARDS IN THE INSOLVENCY INDUSTRY THROUGH CUTTING-EDGE RESEARCH, INNOVATION AND DEVELOPMENT OF BEST PRACTICES. ONE OF THE HALLMARKS OF ILA IS TO DEVELOP A COMMUNITY IN PURSUIT OF EDUCATION, RESEARCH AND SCHOLARSHIP IN THE FIELD OF INSOLVENCY.**

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# Background

The Insolvency Law Academy has constituted a Standing Committee on UNIDROIT<sup>1</sup> (ILA Working Group) under the Chairmanship of Dr. M.S. Sahoo, Distinguished Professor, National Law University, Delhi, and former Chairperson, Insolvency and Bankruptcy Board of India, to take up for discussion the projects and programmes of UNIDROIT relevant to the activities of ILA.<sup>2</sup>

Presently, there is no provisions or law to legislate in case of conflict between the Aircraft Protocol of the Cape Town Convention (Cape Town Convention) and any other law in force in India. The need for a law has been felt over many years. The insolvency of two airline companies Jet Airways and Go first have brought this issue under spotlight.

ILA organised a round table on Sunday, 2nd July 2023, in New Delhi, to discuss the Cape Town Convention and its applicability under the Indian Insolvency Regime. The roundtable was attended by judges, Prof. Ignacio Tirado, Secretary-General, UNIDROIT and Stakeholders from the insolvency industry. In the roundtable, the stakeholders expressed the need to address the issues due to provisions creating compatibility between the Cape Town Convention and other laws in force, including Insolvency and Bankruptcy Code, 2016 (Code).

Following the round table, the ILA Standing Committee considered the issues raised, and concerns expressed in the roundtable, the ILA Standing Committee prepared a draft thought paper outlining Aircraft Protocol of the Cape Town Convention and its applicability under Indian Insolvency Regime (Thought Paper). The draft Thought Paper was shared with stakeholders and consultation held on Wednesday, 9th August 2023.

Based on the feedback, comments and observations received from the stakeholders, ILA Standing Committee has finalised this Thought Paper on the Aircraft Protocol of the Cape Town Convention and its applicability under the Indian Insolvency Regime, for the benefit of policy makers and stakeholders.

ILA acknowledges the contribution of ILA Standing Committee in particular, Mr. Suharsh Sinha, Partner, AZB & Partners and his team for their invaluable contributions in this finalisation of the Thought Paper.



# I. Brief Introduction

A diplomatic conference organized by the International Institute for the Unification of Private Law (“**UNIDROIT**”) took place in Cape Town on November 16, 2001, marking a significant moment in transnational commercial law-making. During this conference, the Convention on International Interests in Mobile Equipment (“**Cape Town Convention**”)³ and the Protocol on Matters Specific to Aircraft Equipment (“**Aircraft Protocol**”)⁴ were signed by twenty states, representing almost one-third of the total number of attendees.⁵

These agreements were designed to establish and secure enforceable rights in high-value assets such as aircraft objects, railway rolling stock, and space assets.⁶ These types of assets lack a fixed location and, in the case of space assets, are not even located on Earth. While the applicable law may be determined through the uniform conflict of laws conventions, such as the Geneva Convention on the International Recognition of Rights in Aircraft, 1948,⁷ the real challenge lies in the diverse approaches taken by legal systems regarding security and title reservation rights. This discrepancy leads to uncertainty for potential financiers, who question the effectiveness of their rights. Consequently, the availability of finance is hindered and borrowing costs increase.

The Cape Town Convention protects the interests of secured creditors, conditional sellers, and lessors of aircraft objects by creating an international interest in high value assets which will be recognized amongst all the contracting states.⁸ Further, the Cape Town Convention also provides for the establishment of an international registry, which will keep records of international interests and assignment of these international interests and protect creditors in securing priority and protection in the event of debtor's insolvency.⁹

Additionally, the Cape Town Convention and its supporting protocols also aim to achieve following fundamental objectives:¹⁰

1. to provide the creditor with a range of remedies and speedy interim relief pending final adjudication;
2. to meet the specific needs of an industry through various protocols; and
3. to give creditors greater confidence in extending credit, which would help in reducing borrowing costs.



## II. Remedies on insolvency under the Aircraft Protocol

The provisions of Aircraft Protocol protect the rights of creditors with respect to aircraft objects, which include airframes, aircraft engines and helicopters. The most notable provision is Article XI of the Aircraft Protocol,<sup>11</sup> which establishes two alternative regimes for insolvency remedies, subject to a declaration by a contracting state. Under this, a state has the option to choose either of the alternatives in its entirety or to not make any declaration and instead apply its own national insolvency law. The two proposed regimes are termed as Alternative A and Alternative B.

### a) Alternative A of the Aircraft Protocol

As per this alternative, upon the occurrence of an insolvency-related event,<sup>12</sup> the insolvency administrator / resolution professional or debtor (as applicable), by the end of the waiting period specified in the contracting state's declaration, or any earlier date on which the creditor / lessor would otherwise be entitled to possession under the applicable law, shall either:

- (a) give possession of the aircraft objects to the creditor / lessor; or
- (b) cure all defaults other than the default constituted by the opening of insolvency proceedings<sup>13</sup> and agree to perform all its future obligations specified under the relevant contract executed between the debtor and creditor / lessor.

During the waiting period, the insolvency administrator / resolution professional or debtor (as applicable) is required to preserve the aircraft object and maintain its value in accordance with the transaction documents until possession is given to the creditor / lessor. Further, no court permission is required at the end of the waiting period by the creditor / lessor in order to obtain possession.

### b) Alternative B of the Aircraft Protocol

As per this alternative, upon the occurrence of an insolvency-related event, the insolvency administrator / resolution professional or debtor (as applicable), upon the request of the creditor / lessor, shall give notice to the creditor within the time specified in a declaration of the contracting state, stating whether it will:

- (a) agree to perform all future obligations and to cure all defects agreed between the debtor and the creditor / lessor under the relevant contract, excluding the default arising from initiation of insolvency proceedings;<sup>14</sup> or
- (b) agree to provide the opportunity to the creditor / lessor to take back possession of the aircraft object subject to any additional step or the provision of any additional guarantee that the court may require in accordance with the applicable law.

The major difference between Alternative A and Alternative B is that under Alternative B, the discretion has been given to courts for the enforcement of remedies and no specific timeline has been provided for taking back the possession of aircraft objects.

# III. Global Implementation

## Status of the Aircraft Protocol

Sr. No.	Countries	Implementation in domestic laws	Alternative adopted	Overview of domestic laws
1.	United States of America	Cape Town Treaty Implementation Act of 2004 <sup>15</sup>	The United States of America has not adopted either alternative and rather follows the procedure under Section 1110 of its own Bankruptcy Code. <sup>16</sup>	<p>In 2004, the United States of America's senate ratified the Cape Town Convention and passed the Cape Town Treaty Implementation Act.<sup>17</sup></p> <p>The United States of America has not opted for either Alternative A or B under the protocol.<sup>18</sup> However, Section 1110 of the US Bankruptcy Code is in similar terms to the proposed Alternative A.<sup>19</sup> In fact, Alternative A insolvency regime derives from the US experience relating to Section 1110 of the United States Bankruptcy Code.<sup>20</sup> There are however, still differences between the two in terms of their applicability and enforcement.<sup>21</sup></p>
2.	Australia	The International Interests in Mobile Equipment (Cape Town Convention) Act 2013 <sup>22</sup>	Alternative A <sup>23</sup>	The International Interests in Mobile Equipment (Cape Town Convention) Act 2013 enacts the Aircraft Protocol to have the force of law as part of the law of the Commonwealth. <sup>24</sup>
3.	Ireland	International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (No. 15 of 2005), <sup>25</sup> S.I. No. 187/2017 - Mobile Equipment (Cape Town Convention) (Aircraft Protocol) Order 2017 <sup>26</sup>	Alternative A <sup>27</sup>	<p>International Interests in Mobile Equipment (Cape Town Convention) Act 2005, as enacted, provides that the Cape Town Convention and the Aircraft Protocol shall have the force of law in Ireland.<sup>28</sup></p> <p>Moreover, the International Interests in Mobile Equipment (Cape Town Convention) (Aircraft Protocol) Order 2017, adopts and enforces Alternative A. The waiting period required under Article XI of the Aircraft Protocol was set at 60 days under the order.<sup>29</sup></p>
4.	United Kingdom	The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 <sup>30</sup>	Alternative A <sup>31</sup>	<p>The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 implementing the UK's ratification of the Cape Town Convention entered into force in the UK in 2015.<sup>32</sup></p> <p>The United Kingdom clearly adopts 'Alternative A' under Regulation 37 of the International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015. The Regulation also adopts a waiting period of 60 days.<sup>33</sup></p>



Sr. No.	Countries	Implementation in domestic laws	Alternative adopted	Overview of domestic laws
5.	Russia	Federal Law No. 60-FZ "On declaration of the Russian Federation in connection with the Protocol to the Cape Town Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment" <sup>34</sup>	Alternative A <sup>35</sup>	Federal Law No. 60-FZ was enacted in 2012 in pursuance to the Cape Town Convention. <sup>36</sup>  The Protocol entered into force in the Russian Federation on 1 August 2013. <sup>37</sup>
6.	New Zealand	Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 <sup>38</sup>	Alternative A <sup>39</sup>	Civil Aviation (Cape Town Convention and Other Matters) Amendment Act was enacted in 2010. <sup>40</sup>  Article XI of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act, 2010 explicitly opts for Alternative A and prescribes a waiting period to be specified in a declaration of the contracting state which is the primary insolvency jurisdiction. <sup>41</sup>
7.	Canada	Canada adopted International Interests in Mobile Equipment (Aircraft Equipment) Act 2005 on the matters specific to aircraft equipment. <sup>42</sup>	Alternative A <sup>43</sup>	Canada adopted International Interests in Mobile Equipment (aircraft equipment) Act, 2005. Under Section 4 of International Interests in Mobile Equipment (aircraft equipment) Act, 2005, the Cape Town Convention and Aircraft Protocol (subject to Canada's declarations) have the force of law with respect to aircraft objects in Canada. <sup>44</sup>
8.	Turkey	Amendment made in the Turkish Civil Aviation Law (2012); Directive on implementation and enforcement of the IDERA 2013; Amendment to the Financial Leasing Legislation (2013); Amendment to Law on Execution and Bankruptcy through the Omnibus Bill ("Omnibus Bill") (Torba Yasa) dated (2014). <sup>45</sup>	Alternative A <sup>46</sup>	Amendments made in the Turkish Civil Aviation Law in 2012 state that the treaty will have supremacy over domestic laws in the event of a conflict.  Amendments were also made in the Law on Execution and Bankruptcy. Consequently, with the enactment of the foregoing amendments; (i) the creditors can take possession or control of any object charged to the same in the event of a default of the debtor pursuant to Article 8/1 (a) of the Cape Town Convention and (ii) the conditional seller or the lessor can re-possess or control of any object related to a title reservation agreement or a leasing agreement in the event of default pursuant to Article 10/1(a) of the Cape Town Convention. <sup>47</sup>

Sr. No.	Countries	Implementation in domestic laws	Alternative adopted	Overview of domestic laws
9.	Netherlands	The Netherlands has not incorporated the Cape Town Convention into its domestic legislation.	The Netherlands has not opted for either alternative. <sup>48</sup>	The Netherlands has signed the Cape Town Convention (2001) but it has not entered into force. <sup>49</sup> The Netherlands submitted a Nota Verbale dated October 6, 2010, which states that Netherland Antilles cease to exist as a part of Netherlands and such modification structure shall not affect validity of the international agreements. <sup>50</sup>
10.	Singapore	International Interests in Aircraft Equipment Act, 2009. <sup>51</sup>	Alternative A <sup>52</sup>	Section 4 of International Interests in Aircraft Equipment Act, 2009 gives effect to Article XI of the Aircraft Protocol to the extent that it applies to Singapore as described in the declarations. Singapore has declared that it will apply Alternative A in its entirety to all types of insolvency proceedings and that the waiting period for the purposes of Article XI(3) of the Aircraft Protocol shall be thirty (30) calendar days. <sup>53</sup>
11.	Sweden	-	Not specified <sup>54</sup>	Kingdom of Sweden made a declaration that it will apply Article XII and Article XIII of the Aircraft Protocol but not specified the adoption of either alternative in its declaration to UNIDROIT. <sup>55</sup>
12.	Norway	-	Alternative A <sup>56</sup>	Kingdom of Norway made a declaration that it will apply Article VIII, Article XII and Article XIII of the Aircraft Protocol and declares that it will adopt Alternative A in its entirety and the waiting period for the purposes of Article XI(3) of the Aircraft Protocol shall be 60 (sixty) days in its declaration made to UNIDROIT. <sup>57</sup>

# IV. India's experience with the Cape Town Convention and Aircraft Protocol

## (a) Applicability of International Treaties

Laws drafted in the international arena do not automatically apply to member states out of deference to the state's sovereignty. Each member state must explicitly express its consent to comply with the terms of the treaty by signing it and becoming signatories to the document. The legal instrument must then further be ratified according to the member state's own domestic legal requirements to have the binding effect.

The following are the relevant Articles of the Constitution of India with respect to the adoption of an international treaty:

- Article 253 of the Constitution empowers the parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.
- Article 51 of the Constitution of India further provides that India shall endeavor to promote international peace and security and maintain just and honorable relations between the nations and foster respect for international law and treaty obligations in the dealings of organised peoples with one another.

## (b) Status of the Cape Town Convention and Aircraft Protocol in India

India lodged the declarations and instruments of accession for the Cape Town Convention and Aircraft Protocol in 2008.<sup>58</sup> India has made a declaration to adopt Alternative A in its entirety under the Aircraft Protocol as a remedy for insolvency and specified that the waiting period would be of two calendar months.<sup>59</sup> However, the Aircraft Protocol has not been legislated into domestic law yet.

The Ministry of Civil Aviation of India has recently proposed the 'Protection and Enforcement of Interests in Aircraft Objects Bill, 2022' ("**CTC Bill**")<sup>60</sup> with an objective to discharge and implement the provisions of the Cape Town Convention and the Aircraft Protocol. The rationale behind the implementation of the CTC Bill is to recognize international interest created by lessors by giving them priority over the interest and rights created domestically and lessors can receive possession of their aircraft. However, the CTC Bill is yet to be introduced before the parliament and delay in introduction of the CTC Bill may defeat the objectives of the Cape Town Convention. Further, as per the Cape Town Convention Compliance Index maintained by Aviation Working Group ("**AWG**") which monitors and assess the implementation and application of the Cape Town Convention and Aircraft Protocol in the contracting state has assigned a score of 63.5 to India (quarter one of 2023), which was downgraded from 69 (quarter three of 2022)<sup>61</sup> upon admission of insolvency proceedings against Go Airlines (India) Limited<sup>62</sup> ("**Go Air**") which gave a negative impact on India's adherence to Cape Town Convention and in the global leasing market.

Therefore, India needs to adopt CTC Bill as Indian aviation sector is a fast-emerging industry in the global aviation sector with increasing growth in number of air passengers.<sup>63</sup>

### **(c) Insertion of Rule 30(7) and Rule 32A of Aircraft Rules, 1937**

It is pertinent to note that India has amended the Aircraft Rules 1937, by inserting Rule 30(7) to align itself with Article XIII of the Aircraft Protocol.<sup>64</sup> This rule provides that the registration of an aircraft registered in India, to which the provisions of the Cape Town Convention and Aircraft Protocol apply, shall be cancelled by the central government, within five working days, without seeking consent or any document from the operator of the aircraft or any other person, if an application is received from the Irrevocable De-registration & Export Request Authorisation ("**IDERA**") holder along with the original or notarised copy of the IDERA; and a priority search report from the international registry regarding all registered interests in the aircraft ranking in priority along with a certificate from the IDERA holder that all registered interests ranking in priority to that IDERA holder in the priority search report have been discharged or that the holders of such interests have consented to the deregistration and export of the aircraft. Further, Rule 32A of the Aircraft Rules 1937 was inserted to align it with Article IX of the Aircraft Protocol.<sup>65</sup> This rule facilitates the export and physical transfer of an aircraft along with spare engine (if any) once the aircraft is deregistered, subject to payment of dues and compliance with rules and regulations related to safety of aircraft. Additionally, Directorate General of Civil Aviation ("**DGCA**") issued a standard operating procedure on November 16, 2018<sup>66</sup> for implementation of Rule 32A of the Aircraft Rules, 1937.

### **(d) Conflict between the Insolvency and Bankruptcy Code, 2016 and Alternative A of Aircraft Protocol**

In its declaration, India adopted Alternative A of the Aircraft Protocol which facilitates a lessor to take back possession of their aircraft upon the commencement of insolvency-related events, by the end of the waiting period of 2 (two) calendar months or on any earlier date on which the lessor would otherwise be entitled to possession as per the relevant contract. However, on the commencement of the corporate insolvency resolution process ("**CIRP**") against a corporate debtor under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), a moratorium under Section 14 of the IBC becomes effective, which prohibits the lessor from recovering its aircraft which is occupied by or in the possession of the corporate debtor during the statutory duration of the CIRP, which is 180 days from the insolvency commencement date ("**ICD**") and extendable further by 90 days. The prescribed upper limit for the CIRP duration is 330 days from the ICD, it can also exceed that by several months in complex cases.

The impact of the above provision is reflected in the recent order dated July 26, 2023 passed by the National Company Law Tribunal ("**NCLT**") (New Delhi) in the matter of Go Airlines (India) Limited ("**Go First**")<sup>67</sup>, wherein, applications filed by aircraft lessors to take back the possession of aircrafts, whose leases were terminated prior to the commencement of CIRP but the physical possession / occupation was with the Go First on the ICD. The NCLT refused the lessor's plea and held that in terms of Section 14(1)(d) of the IBC, the lessors have no rights to claim possession of these aircrafts.

Further, the corporate debtor is also not obliged to cure its defaults towards the creditors as provided under Alternative A because on the commencement of CIRP, all the creditors of the corporate debtor are required to submit their claims before the resolution professional towards their outstanding dues as on the ICD and the outstanding dues of all the creditors shall be treated as per the terms of the resolution plan approved by the NCLT, which shall be binding on all the stakeholders / creditors of the corporate debtor in terms of Section 31(1) of the IBC.

Moreover, Section 238 clearly establishes the '*non-obstante*' nature of the IBC which gives an overriding effect of the provisions of IBC over any other contradictory laws. Therefore, though India has made a declaration to adopt Alternative A, however, provisions of IBC are contrary to the scheme of Alternative A.

## V. Critique of CTC Bill

Section 18 (Effects of Insolvency) and Section 19 (Remedies on Insolvency) of the CTC Bill stipulate the substantive provisions which shall apply to lessors and creditors of aircraft in case of airline insolvency. Section 19 of the CTC Bill gives effect to India's adoption of Alternative A and its declaration that the waiting period under Alternative A is two calendar months. Further, Alternative A of the Aircraft Protocol may also provide certain criteria such as extent of amount due under the lease, whether debtor (airline) is operating or not and potential cost benefit analysis of retaining versus releasing of aircraft, which would help resolution professional and committee of creditors to take an informed decision with respect to the leased aircraft.

The 'non-obstante' clause in Section 31 of the CTC Bill also provides overriding effect to the provisions of the CTC Bill which is likely to override the moratorium imposed by Section 14 of IBC. However, certain provisions may need further consideration. Section 19(4) of the CTC Bill provides that the creditor shall indemnify the insolvency administrator for costs incurred in the preservation and maintenance of aircraft – this provision does not find any reference either in the Cape Town Convention or the Aircraft Protocol.

Preservation of the debtor's estate including leased assets is the obligation of the debtor even during a CIRP. This provision undermines the contractual freedom of parties which is the legal basis of leasing and financing transactions. In this context, in order to provide comfort to the creditors, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 can be amended to provide that such costs incurred in the preservation and maintenance of aircraft until the waiting period would qualify as insolvency resolution process cost. In cases, where debtor (airline) is not operating and there is no income earned from such leased aircrafts, then in such cases, cost related to maintenance, preservations and parking for the aircraft should not be considered as insolvency resolution process cost, instead such cost should be borne by the ultimately beneficiary including lessors if eventually aircraft is returned to the lessors.

It is an appreciable step by the Government that texts of Cape Town Convention and Aircraft Protocol have been modified to create a *sui generis* system for India. Therefore, it is suggested that a new provision be inserted which allows parties to enter into a contract that enables the creditor to consent to the extension of the application of a longer moratorium than 2 (two) calendar months if required by the resolution professional, subject to approval of the NCLT. This will provide a breathing space to the debtor to negotiate arrangements with creditors in respect to operation of aircraft essential for survival of the debtor. This is in line with the spirit of the IBC and will also uphold the legal principle of freedom of contract which is essential for smooth functioning of economic activities. In any event, Section 19(3)(a) of the CTC Bill casts an obligation on the insolvency administrator or the debtor to preserve the aircraft object and maintain it and its value till the possession of the aircraft is given back to the creditor, therefore, extension of waiting period timeline will not result in depreciation in the value and condition of the aircrafts.

The recital of the CTC Bill *inter alia* states as follows “*With Entry into Force on 1st July 2008*”. In this regard, it should be clarified that the CTC Bill once approved will only have prospective effect.

Further, the term 'all' used in the provision to Section 19(5) of the CTC Bill should be replaced with the term 'any' to read as follows:

*“Provided that where the insolvency administrator or the debtor fails to perform any all future obligations of the debtor as agreed under clause (b) of sub-section (5) by the time so specified in sub-section (7), the creditor may immediately exercise his right to take possession of the aircraft object as well as exercise other remedies provided under this Act.”*

The 'non-obstante' clause in Section 19(10) of the CTC Bill provides that no rights or interests, except for non-consensual rights or interests as listed in Part A of Third Schedule of CTC Bill, shall have priority in insolvency proceedings over registered interests. Notably, Part A of Third Schedule of the CTC Bill provides that (a) liens in favour of airline employees for unpaid wages; (b) liens or other rights of an authority of India relating to taxes or other unpaid charges; 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, shall have priority over a registered international interest, *whether in or outside insolvency proceedings*. It is to be noted that the priority of creditors for settlement dues has been clearly specified in the IBC and the IBC does not recognise such priority as mentioned in the CTC Bill. Such provision under CTC Bill appears contradictory to the provisions of the IBC. However, this clause seems to be in line with the declarations made by India during the ratification process of the Cape Town Convention. If these provisions need to be harmonized with the IBC (which came later in time) the declarations may need to be revised.



# Committee Composition

S.No.	Name	Designation/Affiliation	Role in the Committee
1.	<b>Dr. M. S. Sahoo</b>	Distinguished professor, National Law University Delhi; former Chairperson, Insolvency and Bankruptcy Board of India	Chairman
2.	<b>Sumant Batra</b>	President, Insolvency Law Academy	Member
3.	<b>Shailendra Ajmera</b>	Partner, Transaction Advisory Service, EY India	Member
4.	<b>Ashwin Bishnoi</b>	Partner, Khaitan & Co.	Member
5.	<b>Sumant Agarwal</b>	Director, Restructuring and Turnaround, EY India	Member
6.	<b>Surendra Gang</b>	Partner, Grant Thornton India	Member
7.	<b>Suharsh Sinha</b>	Partner, AZB & Partners	Member
8.	<b>Raghav Mittal</b>	Researcher, UNIDROIT	Member
9.	<b>Raghav Panday</b>	Assistant Professor, NLU, Delhi	Member
10.	<b>Vaidehi Gulati</b>	Research Associate, Insolvency Law Academy	Secretary



# Foot Note

<sup>1</sup> The International Institute for the Unification of Private Law is an independent intergovernmental Organisation with its seat in the Villa Aldobrandini in Rome. Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.

<sup>2</sup> UNIDROIT Work Programme for the triennial period 2023 – 2025  
*As adopted by the UNIDROIT General Assembly at its 81st session (15 December 2022)*

## A. Legislative activities

### 1. Secured Transactions

- a) Implementation of the Rail and Space Protocols to the Cape Town Convention
- (b) Implementation of the Protocol to the Cape Town Convention on Matters Specific to Mining, Agricultural and Construction Equipment
- (c) Preparation of further Protocols to the Cape Town Convention:
  - (i) Ships and maritime transport equipment
  - (ii) Renewable energy equipment
- (d) Development of a Model Law on Factoring
- (e) Development of a Model Law on Warehouse Receipts
- (f) Development of a Guide to Enactment of the UNIDROIT Model Law on Leasing

### 2. International Commercial Contracts

- (a) Formulation of principles of reinsurance contracts
- (b) UNIDROIT Principles of International Commercial Contracts and Investment Contracts

### 3. Private Law and Agricultural Development

- (a) Preparation of an international guidance document on Legal Structure for Agricultural Enterprises
- (b) Development of an Agricultural Financing Legal Guide

### 4. Law and Technology

- (a) Digital Assets and Private Law
- (b) Legal nature of Voluntary Carbon Credits
- (c) Global Value Chains: Governance issues and digital challenges
- (d) Digital transformation, data governance and artificial intelligence: exploratory work

### 5. Capital Markets and Financial Law

- (a) Bank Insolvency

### 6. Transnational Civil Procedure

- (a) Formulation of Best Practices for Effective Enforcement
- (b) International Civil Procedure in Latin America
- (c) Access to Justice in Environmental Matters: exploratory work

### 7. Cultural Property

- (a) Private art collections

### 8. Sustainable Development

- (a) Development of a guidance document on Corporate Sustainability Due Diligence in Global Value Chains

### 9. Private Law and Intellectual Property

- (a) Private Law and Contemporary Health Research: Intellectual Property issues in the field of Personalised Medicine: exploratory work
- (b) Standard-Essential Patents: exploratory work

## B. Implementation and promotion of UNIDROIT instruments



<sup>3</sup> Cape Town Convention, 2001. Accessible at Cape Town Convention - UNIDROIT.

<sup>4</sup> Aircraft Protocol, 2001. Accessible at Aircraft Protocol - UNIDROIT.

<sup>5</sup> Overview - Cape Town Convention. Accessible at Overview - UNIDROIT.

<sup>6</sup> *Ibid.*

<sup>7</sup> Geneva Convention on the International Recognition of Rights in Aircraft, 1948. Accessible at Microsoft Word - geneva.com (icao.int).

<sup>8</sup> Article 2 of Cape Town Convention, 2001. Accessible at Cape Town Convention - UNIDROIT.

<sup>9</sup> Article 16 of the Cape Town Convention, 2001. Accessible at Cape Town Convention - UNIDROIT.

<sup>10</sup> *Supra* note 3.

<sup>11</sup> Article XI of Aircraft Protocol, 2001. Accessible at Aircraft Protocol - UNIDROIT.

<sup>12</sup> As per Article I(2)(m) of the Aircraft Protocol, 2001: "insolvency-related event" means: (i) the commencement of the insolvency proceedings; or (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor's right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action.

<sup>13</sup> As per Article 1(l) of the Cape Town Convention, 2001 "insolvency proceedings" means: bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation.

<sup>14</sup> *Ibid.*

<sup>15</sup> Cape Town Treaty Implementation Act (2004), United States, accessible at <https://govinfo.gov/content/pkg/PLAW-108publ297/pdf/PLAW-108publ297.pdf>

<sup>16</sup> UNIDROIT, "Declarations Lodged by the United States Under the Aircraft Protocol at the Time of the Deposit of its Instrument of Ratification". Accessible at D - United States of America - UNIDROIT.

<sup>17</sup> Cape Town Convention Academic Project-National Implementation Material, "US COUNTRY SUMMARY NOTE", prepared by Fullbright and Jaworski. Accessible at <https://ctcap.org/wp-content/uploads/2020/03/USA-Country-Summary-Note.pdf>.

<sup>18</sup> *Supra* note 14.

<sup>19</sup> Jeffrey Wool and Andrew Littlejohns, Freshfields Bruckhaus Deringe, "Cape Town Treaty in the European context: The case for Alternative A, Article XI of the Aircraft Protocol" in the Airfinance Annual. Accessible at wool.qxd (awg.aero, Page3; Section 1110 of the United States Code, Title 11 - BANKRUPTCY. Accessible at < <https://www.govinfo.gov/content/pkg/USCODE-2011-title11.html>>.

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<sup>28</sup> *Supra note 23.*

<sup>29</sup> *Supra note 24.*

<sup>30</sup> The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015, United Kingdom. Accessible at The International Interests in Aircraft Equipment (Cape Town Convention) Regulations 2015 ([legislation.gov.uk](https://legislation.gov.uk)).

<sup>31</sup> UNIDROIT, "Declarations Lodged by the United Kingdom Under the Aircraft Protocol at the Time of the Deposit of its Instrument of Ratification". Accessible at D - United Kingdom - UNIDROIT.

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<sup>37</sup> *Ibid.*

<sup>38</sup> Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010, New Zealand. Accessible at <https://ctcap.org/wp-content/uploads/2020/03/Russia-Country-Summary-Note.pdf>.

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