

Cape Town Treaty - Spain accedes to Aircraft Protocol - 1st March 2016 effective date

Spain has deposited its instrument of accession to the Aircraft Protocol dated 27th November 2015, as confirmed on 1st February 2016 by publication in the "Boletín Oficial del Estado". According to the treaty timetable, the Aircraft Protocol, together with the Cape Town Convention as it applies to aircraft objects, will come into force for Spain on 1st March 2016.

Notably, Spain has not made the Alternative A insolvency declaration. However, it has adopted the Protocol's provisions regarding the de-registration and export remedies (and has excluded the requirement to exercise such remedies with the leave of court). Spain has also nominated the "Registro de Bienes Muebles" as the authorised entry point for International Registry filings relating to aircraft and helicopters registered in Spain.

There are no further acts for the treaty to be effective as a matter of Spanish law and binding on the Spanish courts and against Spanish entities, so it will come into force at a national law level on 1st March 2016 as well. As a general statement, as a matter of Spanish law, there are significant legal concerns regarding the relationship between the Protocol rules and basic principles of Spanish law regarding movable assets, particularly property registration of such assets which is required to fulfil the provisions contained in Royal Decree 384/2015, 22 May, Regulation regarding aircraft registration.

Background

The Convention on International Interests in Mobile Equipment 2001

(the "**Cape Town Convention**") is an international harmonising treaty providing for the creation, recognition and enforcement of certain security and ownership interests in high value mobile equipment, in order to facilitate the cross-border leasing and financing of such equipment. The treaty establishes an "international interest" to be recognised by all Contracting States, subject to priority registration of such interests on an electronic register, and provides a uniform package of creditor rights and remedies available to holders of such interests on a default by the relevant obligor. The Convention is supplemented by 3 equipment specific protocols, the most advanced of which relates to aircraft objects (airframes, engines and helicopters), known as the Aircraft Protocol. The Aircraft Protocol introduces a special insolvency regime whereby upon an insolvency of the relevant obligor, the obligor or its insolvency officer is required to return the aircraft to the creditor within a specified period (e.g. 60 days), if the relevant default has not been cured by such time. This insolvency regime only applies where the Contracting State makes a specific declaration, known as the

"Article XI" or the "Alternative A" declaration.

On 28 June 2013, Spain formally acceded to the Convention and, in accordance with the treaty timetable, the Convention entered into force for Spain on 1 October 2013, as a matter of international law. Spain has made specific declarations confirming that treaty remedies will only be exercisable with the leave of the court (i.e. no self-help remedies) and that the treaty adoption is without prejudice to the status of Gibraltar and the relationship between Spain and the United Kingdom on this matter.

At such time, Spain did not accede to the Aircraft Protocol. Although the Convention establishes general rules applicable to each category of equipment, it does not apply to any objects within an equipment category unless and until the relevant Protocol firstly comes into force, and secondly, is adopted by the relevant Contracting State. While the Aircraft Protocol is already in force, the latter aspect of the previous position has now been rectified by Spain's accession to the Aircraft Protocol.

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