

Cape Town Convention and Aircraft Protocol – China – CAAC issues administrative rules

Background

This briefing follows on from our client briefings¹ on the Convention on International Interests In Mobile Equipment 2001 and the Protocol thereto on Matters specific to Aircraft Equipment 2001 (the "**Cape Town Convention**" and "**Protocol**"). It considers the administrative rules adopted by the Civil Aviation Administration of China ("**CAAC**") in applying the Cape Town Convention and Protocol² to China.

Registering International Interests in China

The Convention became effective in China on 1 June 2009. The CAAC has issued administrative rules (the "**Rules**") governing the application of the Convention in China as well as adopting procedures for registering interests with the International Registry. These Rules also came into effect as of 1 June 2009.

The Convention allows Contracting States to nominate national bodies as "designated entry points" ("**DEPs**") through which information relating to registrations shall or may be transmitted to the International Registry. The CAAC is the DEP for China. Applicants seeking to register international interests (and other registrable interests) in aircraft objects (i.e. for the purposes of the Rules, airframes, aircraft engines³ or helicopters) which have Chinese nationality under the provisions of the Convention need to apply to the CAAC for an authorisation code. Applicants (which can be the user or owner of the registrable interest or a professional entity on its behalf, such as a law firm) need to access the CAAC website (www.caac.gov.cn), using the user name and password granted by the CAAC and complete an application form for the creation of new interests, amendment of interests or discharge of interests, as the case may be. Applications must be completed in Chinese. Hard copies of supporting documentation (including a copy of the PRC Nationality Registration Certificate of the relevant aircraft, if applicable) should be submitted at the same time or promptly following submission of the electronic application form.

Key Issues

Background	1
Registering International Interests in China	1
Irrevocable De-Registration and Export Request Authorisation (" IDERA ")	2
Registration of pre-existing interests	2
Further information and advice	2

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¹ See [Cape Town Convention and Aircraft Protocol - Next Steps To Consider For Transactions](#), [Cape Town Convention and Aircraft Protocol – Outline](#) and [Cape Town Convention and Aircraft Protocol – China](#).

² For convenience, further references in this note to the "Convention" are references to the Convention as it applies to aircraft objects AND to the Protocol. The instruments will be referred to individually as the "Cape Town Convention" and the "Protocol".

³ It is understood that registrable interests in engines can be registered with the International Registry directly or together with an authorisation code obtained from the CAAC.

The CAAC will consider the application and, if approved, will issue an authorisation code or otherwise reject the application. Applicants will need to check the CAAC website (again using their user name and password) from time to time to determine the status of their application. The CAAC will not separately inform applicants whether an authorisation code has been issued or whether an application has been rejected. It is estimated that consideration of each application will take 2-3 business days, although this estimate may change as more and more applications are filed. No fees are currently applicable to applications for an authorisation code. The Rules require the CAAC not to disclose commercially sensitive information to third parties (other than as may be required by relevant laws and regulations).

Obtaining an authorisation code does not constitute registration of a registrable interest. Once an authorisation code has been issued by CAAC, applicants can use this code to obtain registration of their registrable interest with the International Registry. When filing the application for registration with the International Registry, applicants should ensure that the application is copied to the CAAC automatically by clicking the relevant boxes on the International Registry online application form to send copies to the CAAC at IRCAAC@caac.gov.cn.

Irrevocable De-Registration and Export Request Authorisation ("IDERA")

China has adopted Article XIII of the Protocol which provides for the registration and recognition of an IDERA granted by the relevant debtor. However, implementing rules have not as yet been issued in respect of registering an IDERA. Therefore, it is not clear at this stage whether the CAAC will accept the form of IDERA suggested by the Protocol and if so, whether any other formalities such as translation and notarisation are required.

Registration of pre-existing interests

China has not adopted the declaration on pre-existing interests so the Convention will not apply retrospectively to registrable interests created prior to the effective date in China (1 June 2009). While pre-existing interests can be registered on the International Registry, under the treaty rules such registration will not give rise to the treaty rights and remedies. Parties may, however, choose to enter into an agreement in relation to a pre-existing interest post-effective date which may then qualify as a registrable international interest. These matters are explained more fully in our Client Briefing of December 2005⁴.

Further information and advice

Please call the contacts listed on this briefing, or any of your usual contacts in the Global Asset and Structured Finance Group at Clifford Chance, if you have any questions.

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The above is based on our experience as international counsel representing clients in their business activities in China. As is the case for all international law firms licensed in China, we are authorized to provide information concerning the effect of the Chinese legal environment, however, we are not permitted to engage in Chinese legal affairs in the capacity of a domestic law firm. Should the services of such a firm be required, we would be glad to recommend one.

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⁴ See [Cape Town Convention and Aircraft Protocol - Next Steps To Consider For Transactions](#).