

What is the Cape Town Convention? And why does it matter?

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Casual readers of recent articles involving aviation may have been baffled by references to the “Cape Town Convention”, or simply “Cape Town” as it’s known in the industry. Such mentions will only increase in number as the number of states that have ratified or acceded to this international agreement grows.

On 1 November this year (2015), for instance, the Cape Town regulations came into force in the United Kingdom – and by extension to the UK’s Overseas Territories of Gibraltar and the Cayman Islands and its Crown Dependency of Guernsey. So what has the UK signed up to and why is it important to potential corporate jet owners and the institutions that are in the business of financing these transactions?

“The Cape Town Convention” is shorthand for two related international treaties – the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on Matters Specific to Aircraft Equipment, which were both signed in Cape Town on 16 November 2001. The Convention was brought into force on 1 April 2004. By the time the Protocol took effect on 1 March 2006, only eight states, including Ireland and the USA, had signed and ratified the treaty.

Two further protocols, covering Railway Equipment and Space Assets, were subsequently agreed in 2007 and 2012 respectively. While these later protocols have seen limited international accession, the aviation rules have found increasing application and implementation around the world. As this article is written, 59 states have now ratified, or acceded to, both the Convention and Protocol, together with one supranational body, the European Union. Others, notably the Isle of Man, look set to follow suit in the near future.

In general terms, the aim of the aviation Convention and Protocol (Cape Town) is to facilitate financial transactions involving airframes, jet engines and helicopters, as well as to expand opportunities and reduce costs. Together they establish an internationally recognised set of rights that apply in the event of insolvency or debtor default in transactions involving such assets. These rights and interests are held on a single global register, which establishes and guarantees the priority of claims against other parties.

The International Registry of Mobile Assets (IRMA) was established under Cape Town and is headquartered and administered from Ireland. IRMA is web-based, so it is “always open”, easily accessible and transparent. In broad terms, priority is established on a “first-to-file” basis, which is then enforced in each of the states that have ratified or acceded to the Convention and Protocol. Registered interests take priority over unregistered interests.

Cape Town applies to mortgagors in a mortgage agreement, lessees under an aircraft lease, buyers under a conditional sale or sellers under a purchase agreement, provided that they are situated in an acceding state. The scope of registration covers: aircraft that can carry a minimum of eight passengers (or 2,750kg of freight); jet engines of more than 550 horsepower; and helicopters carrying five or more passengers.

The bottom line benefit of Cape Town is that it reduces creditor risk by providing an internationally recognised assurance of priority. Theoretically, this reduction in creditor risk should lead to lower lending charges or discounted credit financing. Financial institutions may be willing to reduce their lending charges in view of the enhanced creditor security that Cape Town brings. In the case of default, the repossession of assets should be quicker and more cost-effective under Cape Town. The fact that priority is established on a central and international register provides certainty in respect of conflicting national legal systems.

A large number of corporate aircraft transactions involve the use of special purpose vehicles (SPVs), generally established in tax neutral jurisdictions, through which funding and leasing arrangements may allow for certain tax, accounting and regulatory relief. Cape Town’s entry into force in the UK this month, and by extension in the three Overseas Territories or Crown Dependencies, means that SPVs established in these jurisdictions will now become even more attractive to financial institutions.

It is important to note that Cape Town does not apply retrospectively. The registration of a priority on IRMA does not affect pre-existing rights and interests.

The full text of the Convention and aviation Protocol can be found [here](#).

