



Walkers Aviation: Ireland Adopts Cape Town Alternative A

May 2017

1. Introduction

The Irish Government has approved an Order¹ giving immediate effect to the "Alternative A" insolvency provisions of the Aircraft Protocol to the Cape Town Convention on International Interests in Mobile Equipment (the "Cape Town Convention").

The Cape Town Convention creates an international body of law to regulate interests and establish remedies in respect of qualifying Aircraft assets between conditional sellers, financiers and lessors.

The Order is made pursuant to section 5(2A) (inserted by section 53 of the State Airports (Shannon Group) Act 2014 (No. 27 of 2014) of the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (No. 15 of 2005)).

The Order provides that the waiting period required under Alternative A is 60 days.

The adoption of Alternative A demonstrates Ireland's continued commitment to the Aviation sector and augments Ireland's competitiveness as one of the leading jurisdictions for Aircraft financing and leasing.

The adoption of Alternative A brings Ireland's insolvency regime for qualifying Aviation assets in line with the US and provides a legislative basis for the involvement of Irish companies in EETCs and other similar products.

2. Why is adopting Alternative A significant?

a. What is Alternative A

Alternative A is set out under Article XI of the Aircraft Protocol to the Cape Town Convention. It is a rule-based system, the provisions of which are very similar to Section 1110 of the US Bankruptcy Code. Alternative A is specifically designed to meet the requirements of advanced structured financing and to give certainty as to the right of a creditor to repossess a qualifying Aircraft asset after a specified waiting period.

b. How does it work?

Alternative A requires that, upon the occurrence of an insolvency-related event, the insolvency practitioner or debtor either:

- i. gives up possession of the Aircraft object to the creditor; or
- ii. cures all defaults other than a default constituted by the opening of insolvency proceedings, and agrees to perform all future obligations under the relevant transaction documents (a second waiting period would not apply in respect of a default in the performance of such future obligations),

in each case, by the earlier of the end of the specified waiting period (i.e. 60 days in the context of Ireland) or the date on which the creditor would otherwise be entitled to possession of the Aircraft object if the Cape Town Convention did not apply.

¹ Statutory Instrument no. 187 of 2017 (International Interests in Mobile Equipment (Cape Town Convention) (Aircraft Protocol) Order 2017).



c. What are the practical implications of Alternative A?

- » During the waiting period the insolvency practitioner or debtor is required to preserve the Aircraft object and maintain its value in accordance with the transaction documents until possession is given to the creditor.
- » No court permission is required at the end of the waiting period by the creditor in order to obtain possession. Prior to obtaining possession, the creditor is also entitled to apply for other forms of interim relief available under Irish law.
- » Once possession has been obtained the creditor has the right, if it is the authorised party pursuant to a duly registered irrevocable deregistration and export request authorisation (IDERA), to deregister and export the Aircraft. The Irish Aviation Authority must make these remedies available to the creditor, subject to any applicable Aviation safety laws and regulations, on an expedited basis no later than 5 working days after notification from the creditor of its entitlement to deregister and export the Aircraft.
- » No exercise of remedies permitted by the Cape Town Convention may be prevented or delayed after the expiration of the waiting period. Consequently the adoption of Alternative A has altered Ireland's Examinership regime in respect of qualifying leasing and security arrangements. Prior to the adoption of Alternative A where a debtor had entered into Examinership proceedings this would prevent a creditor from exercising remedies against the debtor (either under Irish domestic law or under the Cape Town Convention) for 70 - 100 days or longer depending on the complexity of the Examinership. Post adoption of Alternative A this Examinership stay period may not extend beyond the 60 day waiting period.
- » The insolvency regime for all other types of assets (i.e. where the Cape Town Convention does not apply) remains unchanged.

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