

Australia accedes to Cape Town Convention and Aircraft Protocol

On Tuesday 26 May 2015, Australia deposited its instruments of accession to the Cape Town Convention and Aircraft Protocol with the official treaty depositary, Unidroit. The Convention and the Aircraft Protocol establish an "International Registry" for the priority registration of certain creditor interests (known as "international interests") in aircraft objects (qualifying airframes, engines and helicopters) and offer a harmonised set of rights and remedies for holders of international interests against debtors on a default, including insolvency.

The Convention and the Aircraft Protocol will enter into force on 1 September 2015, in accordance with the treaty timetable (the "**Treaty Effective Date**"). However, the treaty will only be effective as a matter of national law and binding on entities and transactions subject to Australian law when relevant domestic legislation comes into force.

Australia has already passed enabling legislation in June 2013 providing for the treaty to have force of law in Australia. The operative provisions of such legislation will come into force on a date to be fixed by proclamation, such date to be no earlier than the Treaty Effective Date, that is, the earliest date the treaty will take effect as a matter of national law would be 1 September 2015. If no proclamation is made within 6 months of the Treaty Effective Date, then there is a default provision to allow such legislation to come into force on the day after the end of the 6 months, that is, the latest date the treaty will take effect as a matter of national law would be 1 March 2016.

Australia has made certain declarations under the following articles of the treaty:

- Convention Article 39(1)(a) – statutory liens registered under the Air Services Act 1995 shall be non-consensual rights having priority without registration on the International Registry;
- Convention Article 54(2) – any Convention remedies not expressed to require application to the court may be exercised without leave of the court (i.e. the treaty's self-help remedies shall be permitted);
- Convention Article 55 – notably, Australia will not adopt the Convention's interim relief remedies; and
- Protocol Articles XXX(1) and (3) – Australia will adopt the Protocol's choice of law provisions and de-registration and export remedy (the so-called "IDERA provisions") and will apply the "hard" insolvency regime, under Alternative A, with

a waiting period of 60 calendar days.

See here for links to previous client briefings dealing with the main treaty provisions and the steps to consider for transactions:

[Australia to accede to Cape Town Convention \(July 2013\)](#)

[Australia adopts Cape Town Convention on asset security interests \(November 2012\)](#)

Contacts

Paul Greenwell

Foreign legal Consultant, Hong Kong

T: +852 2825 8857

E: paul.greenwell@cliffordchance.com

Mukesh Rajalingam

Associate, Sydney

T: + 612 8922 8073

E: mukesh.rajalingam@cliffordchance.com

Nelda Turnbull

Counsel, Sydney

T: + 612 8922 8031

E: nelda.turnbull@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2015

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.