

# Cape Town Convention and Aircraft Protocol - UK Government Response - Adoption of Alternative A; Lex Situs rule clarification

The UK Government has published today its [long-awaited response](#) to consultation on the ratification and implementation of the Cape Town Convention and Aircraft Protocol (the "Treaty") by the UK.

## Summary of Declarations

Key decisions regarding the declarations which may or must be made under the Treaty include the following:

- The UK will adopt the Alternative A insolvency regime with a 60 day waiting period. The Government considers that aircraft objects are sufficiently unique assets to warrant a separate administration regime and that the potential economic benefits for the aviation industry warrant changing the balance of protections under the existing UK insolvency framework;
- The UK will allow the de-registration and export of aircraft by use of an irrevocable de-registration and export request authorisation (the "IDERA" provisions);
- Non-consensual rights under UK law which currently have priority over an interest equivalent to an international interest will continue to have such priority, without registration on the International Registry. Statutory detention

rights, including the so-called "Eurocontrol fleet lien", shall be retained;

- The Treaty's self-help remedies shall be available to creditors without leave of the court;
- Pre-existing interests shall retain their priority without the need for registration on the International Registry, that is, the Treaty registration rules shall not apply retrospectively; and
- The package of declarations required to obtain the benefit of a discount on the premium chargeable for Export Credit Agency supported financing (the "ASU qualifying declarations") will be made.

## Lex Situs Rule

Further, the UK Government considers that in order to implement the Treaty properly, clarification regarding the relationship between the English law *lex situs* rule governing the validity of a proprietary interest in a tangible movable and the recognition of an international interest constituted under the Treaty is required. The draft regulations by

which the Treaty will be implemented into UK law provide that an international interest has effect where the conditions of the Treaty are satisfied, **with no requirement to determine whether a proprietary right has been validly created or transferred pursuant to the common law *lex situs* rule.** This provision will apply only to Treaty cases involving an international interest; the *lex situs* rule will continue to be relevant in relation to domestic law interests.

The Government is holding a short technical consultation on the draft regulations until 15th March 2015, following which the final regulations will be presented to Parliament. The UK will also need to submit its instruments of ratification to Unidroit, the official Treaty depositary; according to the Treaty timetable, ratification will take effect on the first day of the month three months after the date of such submission.

A more detailed briefing will follow shortly.

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