

# Ireland adopting Cape Town's Alternative A

Ireland's long tradition and enviable reputation in the area of aviation finance and leasing have come about as a result of many factors, including a favourable tax regime, a wide double tax treaty network and world class expertise across the industry. In addition, successive Irish governments have been committed to growing and supporting the aviation industry here, and the current administration has, in recent years, taken a number of steps to further strengthen the country's dominant position in the market. **Conor Keaveny and Kate Curneen of Dillon Eustace** discuss the benefits of Ireland adopting Alternative A of the Cape Town Convention.

**IRELAND WAS THE FIRST** EU member state to sign and ratify the Convention on International Interests in Mobile Equipment (the "Convention") and the associated Aircraft Protocol (the "Protocol"), through the enactment of the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 (the "2005 Act").

## **Ireland and the Cape Town Convention**

The benefits of the Convention are numerous and well-acknowledged both for aircraft financiers and for airlines. For financiers, it brings speed, certainty and cost savings to the process of aircraft repossession and otherwise realising value from aircraft and engines upon the occurrence of events of insolvency or other default, particularly where the assets are in a jurisdiction with a legal system which would otherwise give cause for concern. It also protects the relevant parties' title and security interests in aircraft and engines by facilitating their registration with the International Registry (which is located in Ireland).

The ensuing benefits for financiers mean that there are reduced costs associated with financing for airlines and lessors.

However, in accordance with EU rules, Ireland did not make a declaration in respect of the insolvency remedies provided for in the Convention nor did it modify its domestic insolvency regime to incorporate such remedies. Because of this, initially Ireland



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stopped short of full implementation of the Convention.

Now, the recently enacted State Airports (*Shannon Group*) Act 2014 (the "2014 Act") enhances Ireland's aviation insolvency regime by giving effect to Alternative A in Article XI of the Protocol ("Alternative A"). It is hoped that this will serve to further strengthen Ireland's long-established reputation as the pre-eminent jurisdiction for aviation finance and leasing.

## **Alternative A**

Alternative A is very similar to the well-established Chapter 1110 regime in the US, an insolvency regime which has proven very effective from a practical perspective in dealing with airline reorganisations. Restructurings under the regime have been undertaken by numerous notable players in the industry, including Continental, Delta, US Airways and United.

In line with the generally recognised benefits of the

Convention in terms of providing certainty, speed and cost savings in insolvency and enforcement proceedings in respect of “aircraft objects” (as defined in the Convention), Alternative A provides a definite deadline for the insolvency administrator or debtor, as appropriate, and the creditor to negotiate the retention or return of the relevant aircraft object.

Upon the occurrence of an “insolvency-related event” (as defined in the Protocol), Alternative A requires the insolvency administrator or the debtor, by the earlier of: (a) the end of the relevant “waiting period” determined by the Contracting State which is the primary insolvency jurisdiction; or (b) the date on which the creditor would otherwise be entitled to possess the aircraft object, to either:

- i. give possession of the aircraft object to the creditor; or
- ii. cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the relevant agreements.

The 2014 Act amends the 2005 Act to afford the Irish government the power to make an order to give effect to this Alternative A. Moreover, the explanatory memorandum to the 2014 Act provides that the order may specify that the “waiting period” required under Article XI of the Protocol will be a period of 60


days, which is the waiting period adopted by most Contracting States. As such, an insolvent debtor would have 60 days following an insolvency-related event to either discharge all liabilities due in respect of the relevant aircraft object to the creditor or return the aircraft object to the creditor.

The aviation insolvency regime to be introduced by virtue of the 2014 Act will therefore be more consistent with international best practice and should provide a clear timeframe and framework for consensual negotiations by the relevant parties thereby increasing efficiencies and reducing costs in the administration process.

In addition, it will ensure that the cost benefit calculations taken by debtor/insolvency officers will enhance the likelihood of a successful rescue. As such, the 2014 Act should enable Ireland to more fully capitalise on the advantages offered by the Convention.

#### Further benefits of adopting Alternative A

**EETCs.** The Irish government has recently introduced measures, such as the exemption from stamp duty in the Finance Act 2013, in order to increase the attractiveness of, and generate a market in Ireland in, specific forms of aircraft financing, particularly enhanced equipment trust certificates (“EETCs”).



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Adopting Alternative A could further assist and enable Irish-based airlines and leasing companies to access finance on more competitive terms, particularly where financing is being provided by Export Credit Agencies.

The efficiencies, reduced costs and other benefits which can be obtained in aviation insolvency and enforcement proceedings by virtue of Alternative A are likely to facilitate the issuance by Irish vehicles of EETCs and thereby tempt operators from Europe, the Middle East and Asia to issue their EETCs from here.

Increasing Ireland's attractiveness for investors and financiers in this manner is particularly timely given the increasing popularity and use of such alternative financing structures by industry players.

**Convention discount.** Adopting Alternative A could further assist and enable Irish-based airlines and leasing companies to access finance on more competitive terms, particularly where of financing is being provided by Export Credit Agencies ("ECAs"). This is due to the fact that the OECD's Aircraft Sector Understanding (the "ASU") provides for a discount from the ECA premium rate on ASU supported transactions where, *inter alia*, the Contracting State in which an aircraft is registered has adopted Alternative A.

### A welcome development

The coming into force on July 27, 2014 of the 2014 Act is clearly a welcome development as it paves the way for an augmented domestic aviation insolvency regime, further enhances the attractiveness of Ireland as a location for aircraft leasing and should facilitate the on-going development of the sector in Ireland.

The ministerial order required to actually adopt Alternative A and thereby enable Irish operators avail of the abovementioned benefits has not at the time of writing been made, but it is antic-

ipated that this should happen once the Irish parliament returns from its summer recess in the later stages of 2014.

### About Dillon Eustace:

Dillon Eustace has an established practice in the area of aviation leasing and finance and advises clients, including financiers, operating lessors and airlines on the financing, acquisition, leasing and disposal of aircraft. Our work has included aviation-related joint ventures, portfolio acquisitions, cross-border and syndicated financings, tax based leasing, and aircraft repossessions. In addition, our listing department, established in 2001, is a leading sponsor of debt, asset backed securities and investment funds listing on the Irish Stock Exchange. Our listing team provides a proactive, flexible and low-cost listing process to a range of Irish and international issuers.

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