

**25 February 2015**

**Interpretation and Guidance Note relating to the Aircraft (Third Amendment) Rules, 2015**

**Official Gazette of India, 10 February 2015 (released online on 25 February 2015)**

**Relating to Indian Implementation of the Cape Town Convention**

**Introduction**

This document is an interpretation and guidance relating to the Aircraft (Third Amendment) Rules, 2015 (the **CTC Indian Aircraft Rules**) relating to the Indian implementation of the Cape Town Convention (the **Convention**) as modified by the Protocol thereto on Matters Specific to Aircraft Objects (the **Protocol**) and taking account the declarations made by India when acceding to these instruments (the **Indian Declarations**). The Convention, as so modified by the Protocol and taking into account the Indian Declarations, is referred to as **CTC**.

This document, prepared by the Aviation Working Group (**AWG**),<sup>1</sup> is designed to assist governmental officials and other interested parties in interpreting, and by providing guidance on future clarifications of, the CTC Indian Aircraft Rules in light of CTC requirements. No party may rely on this document for any purpose and neither AWG and nor its members incur any liability for it. Rather, it is issued as a public interest document.

**Attachments**

Attached hereto are the CTC Indian Aircraft Rules (which include, at point 3(a), one amendment to the Aircraft Rules which applies whether or not CTC applies (**Annexure A**), an annotated version of the CTC Indian Aircraft Rules which includes an interpretation thereof, in light of CTC requirements (**Annexure B**), and guidance for future clarifications of CTC Indian Aircraft Rules in light of CTC requirements (**Annexure C**). Annexures B and C were prepared by AWG and have no official status.

**Summary**

The CTC Indian Aircraft Rules seek to align the Aircraft Rules with CTC requirements. It helpfully and expressly does so in the following respects.

First, and most importantly, a new CTC standard and process has been created for de-registering aircraft governed by CTC. For such aircraft, the DGCA now has a mandatory, non-discretionary, obligation (it 'shall') to de-register such aircraft on the application from the holder of a

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<sup>1</sup>AWG was created at the invitation of UNIDROIT to contribute to the development of CTC. It chaired the group that produced the initial draft of the Protocol, including the original form of IDERA. Its representatives chair the advisory board for the CTC International Registry and direct the CTC Academic Project, which operates under the joint auspices of the University of Oxford and Washington. It works with countries around the world on implementation and interpretation of, and compliance with, the Convention and Protocol.

CTC irrevocable de-registration and export request authorization (an **IDERA**).<sup>2</sup>That de-registration is required notwithstanding any government lien, as noted below. This produces a different result from pre-CTC law and practice, where questions arose concerning (i) whether a lease was terminated, (ii) whether an airline has consented or turned over documents such as a certificate of registration of airworthiness or otherwise taken action within its control, (iii) whether de-registration is in the public interest, and (iv) whether a governmental lien or detention right could prevent or delay de-registration. Henceforth, the only condition for de-registration pursuant to an IDERA is satisfaction of the limited documentary requirement in new R. 30(7). External facts may not be investigated by the DGCA. The de-registration action must be taken without delay.

Secondly, the CTC Indian Aircraft Rules, reflecting the Indian Declarations, eliminates any residual arguments concerning the availability of a 'fleet-type' lien in India.

The CTC Indian Aircraft Rules, drafted concisely, should be interpreted in light of, and clarified to reflect, CTC requirements. As set out in Annexures B and C, that would include:

First, providing a clear, transparent, and predictable timetable for de-registration within five days of submission of the application. While arguments can be made that the action should be immediate, a period not to exceed five days reflects the intent of CTC and is consistent with provisions in the texts.

Secondly, providing the CTC standard of facilitating the export of the CTC aircraft. That should include the same timetable, reflecting the CTC cooperation standard, and the need to ensure conformity with safety law.<sup>3</sup>

**END**

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<sup>2</sup>There is no obligation on the part of an airline to issue and IDERA, but if it does, the IDERA is binding and irrevocable. An IDERA goes further than, and is not the equivalent of, a power of attorney: an IDERA holder is acting in its own name, not as an agent of the airline / debtor, and is enforcing a treaty remedy in its own name.

<sup>3</sup>As de-registration is a legal act, safety laws generally are inapposite. In connection with export, which is not addressed in the CTC Indian Aircraft Rules, safety laws apply to the extent that *bona fide* safety issues are implicated. The basic standard is that of issuing a special flight permit, not the issuance of a certificate, or export certificate, of airworthiness.

**PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION 3, SUB-SECTION (i)**

**MINISTRY OF CIVIL AVIATION**

**NOTIFICATION**

New Delhi, the 09 February, 2015

**G.S.R. 78(E)** .— Whereas the draft of certain rules further to amend the Aircraft Rules, 1937, was published, as required by section 14 of the Aircraft Act, 1934 (XXII of 1934), *vide* notification of the Government of India in the Ministry of Civil Aviation, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), *vide* number G.S.R. 576 (E), dated the 04<sup>th</sup> August, 2014, for inviting objections and suggestions from all persons likely to be affected thereby before the expiry of period of thirty days from the date on which copies of the Gazette of India in which the said notification was published, were made available to public;

And whereas copies of the Gazette in which the said notification was published were made available to the public on the 11<sup>th</sup> August, 2014;

And whereas no objections or suggestions have been received from the public in respect of the draft rules within the period specified in the said notification;

Now, therefore, in exercise of the powers conferred by section 5 of the said Aircraft Act, the Central Government hereby makes the following rules further to amend the Aircraft Rules, 1937, namely:-

1. (1) These rules may be called the Aircraft (Third Amendment) Rules, 2015.
- (2) They shall come into force on the date of their final publications in the Official Gazette.
2. In the Aircraft Rules, 1937 (hereinafter referred to as the said rules), in rule 3,—
  - (a) after clause (10A), the following clause shall be inserted, namely :—

'(10AA) "Authorised Party" means the party referred to in Article XIII (3) of the Cape Town Protocol';
  - (b) after clause 11A, the following clauses shall be inserted, namely: —

'(11AA) "Cape Town Convention" means the Convention on international interests in mobile equipment signed at Cape Town, South Africa on the 16<sup>th</sup> of November, 2001, together with any regulations made in connection therewith as acceded to by India on March 31<sup>st</sup>, 2008;

(11AB) "Cape Town Protocol" means the Protocol to the Cape Town Convention on matters specific to Aircraft Equipment, signed in Cape Town, South Africa on 16<sup>th</sup> of November, 2001, together with any regulations made in connection therewith as acceded to by India on the 31<sup>st</sup> March, 2008;'

(c) after clause 28, the following clauses shall be inserted, namely:—

'(28A) "IDERA" means the irrevocable deregistration and export requested, authorisation as contemplated in Article XIII of the Cape Town Protocol and substantially in the form and manner provided as an Annexure to the Cape Town Protocol;

(28B) "IDERA Holder" means the authorised party under an IDERA or its certified designee;'

(d) after clause 47, the following clause shall be inserted, namely: —

'(47A) "Registered Interest" means any interest registered pursuant to Chapter V of the Cape Town Convention;'

3. In rule 30 of the said rules,-

(a) in sub-rule (6), in clause (iv), for the words "is not in force; or", the words "has expired or has been terminated in accordance with the terms of lease or" shall be substituted;

(b) after sub-rule (6), the following sub-rule shall be inserted, namely :-

"(7) The registration of an aircraft registered in India, to which the provisions of the Cape Town Convention or Cape Town Protocol apply, shall be cancelled by the Central Government, as provided in the Cape Town Protocol, if an application is received from IDERA Holder prior to expiry of the lease along with:-

- (i) the original or notarised copy of the IDERA; and
- (ii) a certificate that all Registered Interests ranking in priority have been discharged or the holders of such interest have consented to the deregistration and export:

Provided that the deregistration of an aircraft by the Central Government under sub-rule (6) or sub-rule (7) shall not affect the right of any entity thereof, or any inter-governmental organisation, or other private provider of public services in India to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the services provided by it in respect of that object".

[F. No. AV. 11012/1/2014-A]

ARUN KUMAR, Jt. Secy.

**Note:** The principal rules were published in the Gazette of India, *vide* notification number V-26, dated the 23rd March, 1937 and last amended *vide* notification number G.S.R. 32 (E), dated the 13th January, 2015.

**THIS ANNEXURE IS AN AVIATION WORKING GROUP-PRODUCED INTERPRETATION AND ANNOTATION OF THE AIRCRAFT (THIRD AMENDMENT) RULES, 2015 PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY PART II, SECTION 3, SUB-SECTION (i)**

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(b) after sub-rule (6), the following sub-rule shall be inserted, namely :-

"(7) The registration of an aircraft registered in India to which the provisions of the Cape Town Convention or Cape Town Protocol apply, shall<sup>1</sup> be cancelled<sup>2</sup> by the Central Government, as provided in the Cape Town Protocol,<sup>3</sup>if an application is received from IDERA Holder prior to expiry of the lease<sup>4</sup> along with:-<sup>5</sup>

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<sup>1</sup>This is a mandatory, non-discretionary, rule. See Protocol, art IX (5). See also Protocol, art XIII. For a full and authoritative explanation, see Official Commentary at para 3.36. Accordingly, for CTC aircraft subject to an IDERA, it changes pre CTC law and practice. It is no longer relevant, and the DGCA may no longer investigate facts relating to whether (i) a lease is terminated, (ii) an airline has consented or turned over the certificate of registration or airworthiness or otherwise taken action within its control, (iii) deregistration is in the public interest, or (iv) there exists a governmental lien or right of detention (which may be asserted post de-registration).

<sup>2</sup>CTC also requires that the DGCA and other administrative authorities expeditiously cooperate with the export and the physical transfer of the aircraft and engines, a core CTC remedy and one covered by an IDERA. See Protocol, arts IX(1) and XIII.

<sup>3</sup>CTC requires that the de-registration action be done without delay. While arguments can be made that the action should be immediate, to ensure an orderly, transparent, and predictable process, insertion of five working day period reflects the intent of CTC and is consistent with provisions in the text. See Protocol, arts X (6) and XI(8).

<sup>4</sup>That is, any time before the expiry of the lease, including where, and whether or not, the lease is terminated.

- (i) the original or notarised copy of the IDERA; and
- (ii) a certificate<sup>6</sup> that all Registered Interests ranking in priority have been discharged or the holders of such interest have consented to the deregistration and export:

Provided that the deregistration of an aircraft by the Central Government under sub-rule (6) or sub-rule (7) shall not affect the right of any entity thereof, or any inter-governmental organisation, or other private provider of public services in India to arrest or detain or attach or sell<sup>7</sup> an aircraft object under its laws for payment of amounts<sup>8</sup> owed to the Government of India, any such entity, organisation or provider directly relating to the services provided by it in respect of that object".<sup>9</sup>

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<sup>5</sup>These documentary conditions are the only requirements or conditions that must be satisfied in order for the DGCA to be obliged to complete the de-registration. No other conditions, nor other documents, may be added – e.g., the DGCA may not require the IDERA Holder to deliver the original certificate of registration or airworthiness for the subject aircraft.

<sup>6</sup>CTC expressly states that the certification is by the IDERA holder. See Convention, art IX(5)(b).

<sup>7</sup>The Indian declaration does not address the sale of an aircraft.

<sup>8</sup>The Indian declarations expressly limit this lien to amounts arising following default under the subject contract. To provide predictability, the default notice should expressly refer to the intent to exercise CTC remedies, including the IDERA.

<sup>9</sup>This is a savings clause, which therefore creates no new rights in respect of the aircraft object.

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(b) after sub-rule (6), the following sub-rule shall be inserted, namely :

"(7) The registration of an aircraft registered in India to which the provisions of the Cape Town Convention or Cape Town Protocol apply, shall be cancelled by the Central Government, and action within the power of the Director General to facilitate physical export of such aircraft shall be taken, within five working days as provided in the Cape Town Protocol, if an application is received from IDERA Holder prior to expiry of the lease along with:-

(i) the original or notarised copy of the IDERA; and

(ii) a certificate from the IDERA Holder that all Registered Interests ranking in priority have been discharged or the holders of such interest have consented to the deregistration and export:

Provided that the deregistration of an aircraft by the Central Government under sub-rule (6) or sub-rule (7) shall not affect the right of any entity thereof, or any inter-governmental organisation, or other private provider of public services in India to arrest or detain or attach ~~or sell~~ an aircraft object under its laws for payment of amounts arising since the time of a declared default and owed to the Government of India, any such entity, organisation or provider directly relating to the services

provided by it in respect of that object".