

**AWG Statement on the Obligations of Contracting States to Support Enforcement of Remedies
Under the Cape Town Convention
Release Date: 31 March 2022**

- A. The Russian Federation has adopted the Cape Town Convention and Aircraft Protocol (**CTC**), making the CTC applicable to any security agreement, conditional sale agreement, or lease agreement with respect to an aircraft object (**agreement**) for which the debtor is situated in the Russian Federation (**Russian debtors**) if that agreement was concluded on or after 1 September 2011.
- B. On 24 February 2022, the Russian Federation took military action in Ukraine precipitating a series of actions by a number of governments around the world. The effect of such actions and subsequent ones by Russian debtors, including airline operators certificated by the Russian Federation, resulted in contract defaults under the agreements. Relying on the rights established by the CTC, and acting in the manner provided by the relevant agreements, certain creditors (as defined in CTC, **creditors**) have terminated the Russian debtors' rights to possess and use the aircraft objects, demanded that possession and control of such aircraft objects be returned to them, and have taken other non-judicial and judicial enforcement actions to enforce rights granted to them under the CTC (**enforcement actions**).
- C. This document comprises a statement by the Aviation Working Group (**AWG**) regarding the obligations of States that have adopted the CTC (**Contracting States**) to support the enforcement actions. The basis for and scope of such obligations may be summarized as follows:
1. General Statement. Each Contracting State is bound by international law to ensure that the terms of the CTC are given full effect within its jurisdiction, and any failure to do so constitutes a breach of its obligations under the CTC. [Official Commentary, 4th Ed (**oc**), ¶¶ 2.12 and 2.293]
 2. Principles Applicable to Fulfilling Contracting States' CTC Obligations.
 - a. Autonomous Law. The CTC establishes rights, interests, and remedies that are independent of national law. [oc ¶¶ 2.49, 2.92, 2.100 and 2.132] Such rights, interests and remedies must be accorded an autonomous interpretation that follows the text of the CTC, and where the text is silent, follows the principles of the CTC. [art 5; c Recitals; oc ¶¶ 2.23-2.24, 4.117]
 - b. Primacy Over Conflicting National Law. The rights, interests and remedies created by the CTC apply in each Contracting State whether or not they would be recognized by otherwise applicable national law, and supersede any conflicting national law. [c art 5; oc ¶¶ 2.10 and 2.12] As relevant to the obligations assumed by Contracting States to support the enforcement actions, the CTC allows Contracting States to make declarations regarding the availability of the remedies described in paragraph 3(a) of this statement (**non-judicial remedies**) [c art 54(2)] and described paragraph 4(a) of this statement (**advance judicial relief**) [c art 55; p art XXX(2)], with the resulting rights, interest, and remedies established by such declarations representing the Contracting State's explicit determination to make such remedies available and to override conflicting national law [oc ¶¶ 2.23, 2.107, 2.108, 2.132, 2.137, 2.327, 4.116, 4.117 and 4.125].

- c. Preeminence of Remedies; Gap Filling. The CTC's key objectives include providing creditors with basic default remedies. [oc ¶ 2.6] Where the CTC creates a remedy, a Contracting State is bound to enforce it whether or not a corresponding remedy exists under otherwise applicable national law [oc ¶ 2.294]. Where the CTC confers a right without prescribing a remedy, a Contracting State is bound to provide a remedy under national law that fulfills the purposes of the CTC [oc ¶ 2.24]. While the remedies created by the CTC are to be enforced pursuant the procedures of the applicable Contracting State [c art 14; oc ¶ 2.144], each Contracting State is bound to ensure that its procedures support and do not impede the exercise of the rights and remedies conferred by the CTC, which includes an obligation to establish supporting procedures where required to give effect to a CTC right or remedy [oc ¶¶ 2.74, 2.145, 2.327, 3.37, 3.44 and 4.69].
- d. Party Autonomy. The CTC's foundational principles require Contracting States to recognize and protect the international interests held by creditors under agreements and recognize the autonomy of the parties to establish and enforce the terms of such agreements. [c Recitals; oc ¶ 2.23] Contracting States are bound to recognize, notwithstanding any otherwise applicable national law limitations (i) the law chosen by the parties as the law governing the terms of the agreement [p art VIII], (ii) the jurisdiction of a court in a Contracting State selected by the parties as having jurisdiction to adjudicate claims [c art 42], (iii) the events as defined by the parties as constituting a default for purposes of the CTC [c art 11], (iv) that an enforcing creditor's compliance with the terms of the agreement between the parties creates a strong presumption that it has satisfied its obligation to proceed in a commercially reasonable manner [p art IX(3); oc ¶¶ 2.107 and 2.112], (v) in the case of a Contracting State that has made a declaration under Article 54(2) that entitles the creditor to exercise non-judicial remedies (**NJR authorizing State**), the right of such a creditor to exercise non-judicial remedies in conformity with the terms of the parties' agreement, subject only to the limitations (if any) included in the NJR authorizing State's declaration [oc ¶¶ 2.108 and 2.327] and the limited restrictions elsewhere in the text [c art 15]; and (vi) in the case of a Contracting State that has made a declaration under Article 55 and Article XXX(2) that entitles the creditor to obtain advance judicial relief (**advance judicial relief State**), the right of such a creditor to obtain an order granting advance judicial relief in conformity with the terms of the parties' agreement and in respect of the orders set out in the texts [c art 13 and p art. X], subject only to the limitations (if any) included in the advance relief State's declaration [oc ¶¶ 2.107, 2.108, 2.132, 2.137 and 4.117].

3. Obligations With Respect to Non-Judicial Remedies.

- a. Non-Judicial Remedies. The CTC establishes the following non-judicial remedies that may be exercised in the NRJ authorizing State in which the aircraft is located within the limits (if any) of that State's declaration: (i) in the case of a lease agreement or conditional sale, to terminate the possessory rights and interests of the debtor [c art 10(a)]; (ii) to take possession or control of the aircraft [c art 8(1), 10(a)]; and (iii) in the case of an aircraft registered in the name of the creditor, to exercise its own authority [p art IX(1)], and in the case of an aircraft registered in the name of the debtor, to exercise the authority granted to the creditor by an IDERA [p art IX(5), XIII], to deregister and/or export the aircraft.
- b. Contracting States' Obligations. Applying the principles described in paragraph 2 of this statement to the enforcement of non-judicial remedies leads to several conclusions. Each NJR authorizing State (including its courts, aviation authorities, airport authorities and other agencies) is obligated to recognize the non-judicial remedies that are held by a creditor and to permit and support the creditor's exercise of such remedies within its

jurisdiction. The procedural law of an NJR authorizing State must be applied in a manner that is compatible with the substantive rights granted to the creditor by the CTC, and is superseded to the extent incompatible. [c art 14] While an NRJ authorizing State may not take or omit to take actions (including with respect to airport access or flight approvals), or impose substantive or procedural requirements, that have the effect of impeding the creditor's exercise of non-judicial remedies, such State's procedures may include reasonable requirements relating to safety and security at airports, to confirm the creditor's identity and interest in the aircraft and under the agreement, and to confirm that the creditor holds non-judicial remedies and is exercising them in conformity with the agreement.

4. Obligations With Respect to Advance Judicial Relief

- a. Advance Judicial Relief. The CTC confers jurisdiction, including to issue advance judicial relief orders, on the courts (**available courts**) of any Contracting State (i) selected by the parties in their agreement [c art 43(1)], (ii) in whose territory the aircraft is located [c art 43(1)], (iii) where the debtor is situated [c art 43(2)], and (iv) where the aircraft is registered [p art XXI]. The CTC establishes the following six advance relief remedies, any or all of which, if agreed to by the creditor and the debtor, may be sought by a creditor, and, provided only that evidence of default by the debtor has been adduced, shall be granted by the available court on an expedited basis within the limits (if any) of that State's declaration: (i) preservation of the aircraft and its value [c art 13(1)(a)]; (ii) possession, control or custody of the aircraft [c art 13(1)(b)]; (iii) immobilization of the aircraft [c art 13(1)(c)]; (iv) lease or management of the aircraft [c art 13(1)(d)]; (v) sale of the aircraft and application of proceeds [p art X(3)]; and (vi) deregistration and export of the aircraft [p art IX(1), X(5)].
- b. Contracting States' Obligations. Applying the principles described in paragraph 2 of this statement to the enforcement of advance judicial relief remedies leads to several conclusions. An available court may not decline jurisdiction on application by a creditor, whether on a national law concept or otherwise. Any order of advance judicial relief issued by an available court must be recognized and respected by the courts of all other advance judicial relief States. [oc ¶2.142 and 4.127] Accordingly, the courts of an advance judicial relief State in whose territory the aircraft is located must recognize an order granting advance judicial relief when issued by an available court whose jurisdiction is based upon the agreement of parties or upon the registration of the aircraft. As a condition to issuing an order for advance judicial relief (but not to the recognition of an order issued by another relevant court), a relevant court may require the creditor to produce evidence of the default, but may not require an adjudication on the merits of any purported defenses of the Russian debtor, which would be assessed and addressed, and not prejudiced by the grant of advance judicial relief, in subsequent court proceedings in a full trial. [oc ¶4.117] Advance judicial relief remedies embodied in the agreement of the parties are available by the creditor's application to any available court in an advance judicial relief State, except to the extent that such State has limited the availability of the relevant remedy through its declarations. The procedural law of an advance judicial relief State must be applied in a manner that is compatible with the substantive advance rights granted to the creditor by that State, and is superseded to the extent incompatible. A ruling by an available court in an advance judicial relief State must be provided within the time period specified in the declaration by that State [p art X(2)], or in absence of a declaration, within a time period that is consistent with the plain meaning of the term 'speedy relief', and supporting the purposes of the CTC [c art 5].

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