

**AWG Statement on Russian State Action Constituting Breach of the Cape Town Convention**  
**Release Date: 18 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. Ensuring the primacy of the CTC and its effective application are *binding international law obligations* of every State that has adopted the CTC (**Contracting States**), including the Russian Federation.
- 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 and demanded that possession and control of such aircraft objects be returned to them (**enforcement actions**).
- C. The Russian Federation responded to the enforcement actions (as well as to action taken in accordance with the Chicago Convention on International Civil Aviation of 1944, **Chicago Convention**), by taking the following actions (**relevant State actions**): ordering Russian operators to return all aircraft held under agreements to the territory of the Russian Federation; requesting certain other Contracting States not to take action impeding such return; directing Russian operators not to comply with the enforcement actions; requiring the approval of a special commission for the redelivery of an aircraft to a creditor; directing Russian operators to operate and maintain the aircraft in accordance with the airworthiness standards of the Russian Federation; entitling Russian operators, without the consent of the creditor, to place aircraft on the registry maintained by the Russian Federation; and unilaterally modifying the agreements to override and replace terms that (i) constitute contractual defaults and termination events, (ii) require payment in US Dollars or another foreign currency, (iii) require aircraft registration in a jurisdiction other than the Russian Federation, (iv) require maintenance of an airworthiness certificate issued by an airworthiness authority other than the Russian Federation, and (v) require insurance underwritten by markets outside of the Russian Federation. The foregoing modifications affect the primary obligations of the Russian debtors under the agreements (**primary obligations**) and are contrary to the agreements.
- D. This document comprises a statement by the Aviation Working Group (**AWG**) regarding the provisions of the CTC that have been breached by the relevant State actions. The Russian Federation's breach of the CTC may be summarized as follows:
1. Primacy of CTC and Principles. All Contracting States, having adopted the CTC, are bound by law to give effect to its terms, in conformity with its principles and to the exclusion of any conflicting national law. [c art 5; Official Commentary, 4th Ed (oc), paras 2.10 and 2.292-2.294] The CTC's foundational principles require Contracting States to recognize and universally protect the international interests held by creditors under agreements and to respect the autonomy of the parties to establish the terms of such agreements. [c Recitals; oc 2.23] The CTC's key objectives include providing creditors with basic default remedies and giving creditors greater confidence in the decision to grant credit. [oc 2.6]

2. Violation of CTC Principles. The relevant State actions violate the principles of the CTC by (a) purporting to override the CTC through conflicting national law, (b) requesting certain other Contracting States to not detain aircraft when creditors exercise CTC remedies, such being inconsistent with such Contracting States' CTC treaty obligations, (c) ordering Russian debtors to disregard their obligations under the agreements, (d) failing to provide a means by which the creditors may enforce default remedies under the agreements in a time and manner consistent with the CTC, and (e) purporting to implement non-consensual *post-facto* modifications to the primary obligations of the Russian debtors.
3. Violation of CTC Terms. The relevant State actions deny creditors specific rights granted by the CTC, including the following:
  - a. Overriding Contractual Default Provisions. The CTC entitles the creditor and the debtor (the Russian debtors) to determine the events that constitute defaults under an agreement. [c art 11] The relevant State actions purport to override the CTC by replacing the agreed and binding provisions of the parties as to the primary obligations under the agreements with modified terms. In so doing, the relevant State actions restructure the international interests held by the creditors in violation of the CTC.
  - b. Possessory Remedies. Following the occurrence of a default (as defined by the parties), in addition to exercising any remedies agreed upon by the parties, the CTC (as adopted by the Russian Federation [c art 54(2)]) entitles the creditor to exercise most remedies without application to a court. Such remedies include terminating the debtor's (the Russian operator's) possessory rights and interests in the aircraft [c art 10(a)], and taking possession and control of the aircraft [c art 8(1), 10(a)], as outlined in more detail in our Statements on this topic released on [6 March 2022](#) and [8 March 2022](#). The relevant State actions seek to prevent, and render ineffective, such remedies by (a) directing the Russian debtors to retain possession and control of the aircraft objects notwithstanding receipt of a creditor's termination notice and demand for possession, (b) requiring the aircraft objects to remain in the territory of the Russian Federation, and (c) establishing a commission that must approve the redelivery of any aircraft.
  - c. Deregistration and Export. Following the occurrence of a default (as defined by the parties), the CTC grants the creditor the right to deregister the aircraft from its State of Registry under the Chicago Convention and export the aircraft [p art IX(1)]. These remedies may be effected through the authority of an irrevocable deregistration and export request authorization (**IDERA**) [p art XI(2), XIII], a critical right created by the CTC [oc 3.32]. IDERA rights protect the creditor from the risk that a defaulting debtor (the Russian debtor) will refuse to cooperate [oc 3.44]. The relevant State actions seek to prevent, and render ineffective, these IDERA rights and protections by placing the aircraft on the nationality registry of the Russian Federation. The effect of that action is to override the creditors' rights to control the deregistration of the aircraft upon default under the IDERAs lodged in the States of Registry (Bermuda and Ireland).
- E. This statement is based on the events prior to the release date. AWG may update this statement to reflect subsequent events, including action or inaction by, or creditor inaccessibility to, Russian courts and authorities.

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