

**Russia -- Ukraine:****AWG Statement on CTC Convention Provisions Material to Creditors with respect to Aircraft Possessed by Russian Carriers and Located Outside the Territory of the Russian Federation****Release Date: 6 March 2022**

- A. 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, including sanctions that restrict the ability of air carriers certificated by the Russian Federation (**Russian carriers**) to perform their aircraft lease and/or finance obligations, and subsequent orders by the Russian Federation that have similar consequences. Affected obligations include making payments, providing insurance coverage, maintaining a valid certificate of airworthiness, maintaining registration on a designated aircraft registry, and performing maintenance tasks required to ensure airworthiness, (**primary obligations**), as well as taking or permitting actions in case of non-performance with primary obligations and other contractual terms.
- B. This document comprises a statement by the Aviation Working Group (**AWG**) on the provisions of the Cape Town Convention and Aircraft Protocol (**CTC**) that are material in the context of the current crisis to determining the remedies available to the creditor with respect to aircraft in the possession of Russian carriers and located outside the territory of the Russian Federation, thereby implementing and giving effect to the CTC. Ensuring the primacy of the CTC and its express and intended application are *binding international law obligations* on the States that have adopted the CTC (**Contracting States**).
- C. The material provisions of the CTC may be summarized as follows:
1. CTC Applicability and Binding Effect. The CTC applies to any security agreement, conditional sale agreement or lease agreement with respect to an aircraft (**agreement**) for which a Russian carrier is the debtor if that agreement was concluded on or after 1 September 2011. [c art 2, 3] All Contracting States, having adopted the CTC, are bound by law to give effect to its terms. [Official Commentary, 4th Ed (**oc**), ¶2.292]
  2. Default and Governing Law. The events that constitute a default under an agreement are defined by the creditor and the debtor in the relevant agreement [c art 11], and universal market practice is to define breach of any of the primary obligations as a default. The governing law for interpreting and enforcing the terms of an agreement is that selected by the parties under the agreement. [p art VIII]
  3. Non-Judicial Remedies. Following the occurrence of a default, in addition to exercising any remedies agreed upon by the parties, the CTC entitles the creditor to exercise the following remedies without application to a court unless (and except in the case of (a) below) the Contracting State in which the aircraft is located has made a declaration opting to require leave of the court. [c art 54(2)]
    - a. Termination. In the case of a lease agreement or conditional sale, to terminate the possessory rights and interests of the debtor. [c art 10(a)]
    - b. Possession. To take possession or control of the aircraft. [c art 8(1), 10(a)]
    - c. Deregistration and Export. 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 Russian carrier, to exercise the authority granted to the

creditor by an IDERA [p art XI(2), XIII] and otherwise in the CTC [p art IX(2), to deregister and/or export the aircraft. In all cases the holders (if any) of registered interests ranking higher than that of creditor must be given prior notice and consent to the deregistration [p art IX(2)], and, in the case of a creditor under a security agreement, additional requirements must be met. [p art IX(6)]

#### 4. Judicial Remedies

- a. Available Courts. The CTC confers jurisdiction, overriding any otherwise applicable national law limitations, on the courts (**available courts**) of any Contracting State (a) selected by the parties in their agreement [c art 43(1)], (b) in whose territory the aircraft is located [c art 43(1)], (c) where the debtor is situated [c art 43(2)], and (d) where the aircraft is registered [p art XXI]. Any remedy granted by an available court must be enforced by the courts of all other Contracting States. [oc ¶2.145]
- b. CTC Advance Remedies. The CTC establishes the following six remedies any or all of which, if agreed to by the creditor and the debtor, may be exercised on an expedited basis following the occurrence of a default by the debtor:
  - 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)]
  - vi. deregistration and export of the aircraft [p art IX(1), X(6)]

The granting of such remedies requires the creditor to produce evidence of the default, but does not require an adjudication on the merits of any purported defenses of the debtor. [oc ¶4.117] Such remedies are available by the creditor's application to any available court, except to the extent that the Contracting State in which such court is located has made a declaration opting out of, or (but only in the case of (v) above) neglecting to opt in to, the relevant remedy. [c art 55, p art X] A ruling by the available court must be provided within the time period specified in the declaration by the Contracting State in which it is located [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].

**END**