



**AWG Statement on the Obligations of Contracting States Under the Cape Town Convention to Apply the Terms of Agreements, Recognizing Defaults as Defined by the Parties**  
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- 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. The Russian debtors and their creditors (as defined in the CTC, **creditors**) established the following obligations as matters that would constitute a default by the Russian debtors, and entitle the creditors to enforce remedies, if breached (**contractual defaults**): (1) make all payments of rentals and other amounts due under the agreements in the specified foreign currency (typically US Dollars or another currency); (2) maintain the aircraft on the nationality registry of the specified foreign country (typically Bermuda or Ireland, **specified state of registry**); (3) maintain a current and valid certificate of airworthiness issued by the specified state of registry; and (4) maintain insurance with respect to the aircraft on terms and with insurers and reinsurers that meets the standards of the agreement as to levels of coverage and the qualifications and identity of the insurers and reinsurers..
- 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 contractual defaults. Relying on the rights established by the CTC, and acting in the manner provided by the relevant agreements, certain 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**). 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), by taking several actions (**relevant State actions**) intended to directly or indirectly render the enforcement actions ineffective.
- C. In our statement of 31 March 2022 (**31 March statement**), we summarized the basis for, and scope of, the obligations that States who have adopted the CTC (**Contracting States**) have to support the enforcement actions. In our statement of 18 March 2022 (**18 March statement**), we addressed the relevant State actions and identified the provisions of the CTC that they breached.
- D. This document comprises a statement by the Aviation Working Group (**AWG**) regarding the obligations of Contracting States, in the context of enforcement actions, to apply the terms of the agreements, recognizing the contractual defaults as defined by the parties. 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] Referring to our 18 March statement, we note that the relevant State actions constitute a breach of the CTC and cannot form the basis for any other Contracting State to refrain from giving full effect to the terms of the CTC within its jurisdiction. [oc ¶2.10(1)]
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. [c 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]
  - c. 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 and 2.25] Party autonomy is intended to further the CTC's objectives by allowing the parties to allocate transaction risks. These include risks arising from non-performance of an obligation, and risks arising from an event outside the control of the parties (such as a change in law) that diminishes or negates the benefits or increases the risks which the parties anticipated at the inception of the transaction, or otherwise impedes their ability to perform under the agreement. [oc ¶¶ 2.102, 4.85 and 4.113]
3. Obligations to Apply Terms of Agreement.
  - a. Events Constituting Default. All Contracting States are bound to recognize, notwithstanding any otherwise applicable national law limitations, contractual defaults as constituting a default for purposes of the CTC [c art 11; oc 4.113]. The rights of a Russian debtor under the CTC to retain possession of an aircraft object are explicitly conditioned upon the absence of a default, as defined by the parties. [p art XVI(1); oc ¶ 3.112]<sup>1</sup> Applying the principles described in paragraph 2 of this statement, including the CTC's basic principle of permitting the parties to allocate transactional risk, a Russian debtor may not rely on the internal laws of the Russian Federation, whether expressed as a *force majeure*, intervening, or superseding event (or otherwise), or these concepts with reference to actions by other states, as overriding the contractual defaults, or having any relevance to interpretation of the contractual defaults. Any failure by a Contracting State to give effect to the terms of an agreement defining a contractual default, thereby permitting a Russian debtor to retain possession of an aircraft object following the

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<sup>1</sup> CTC also permits the creditor and the debtor to agree or other events, beyond contractual defaults, that give rise to CTC repossession and other remedies. Such can include, for example and where the same is not a default, termination and redelivery of the aircraft to the creditor upon the imposition of any law constituting the continued possession and use of the aircraft as illegal. As with defaults, all Contracting States are bound to enforce them.

occurrence of a contractual default, would constitute a breach of its obligations under the CTC.

- b. Law Governing Contractual Rights and Obligations. Any Contracting State that has made the relevant declaration under Article XXX(1) is bound to recognize the law chosen by the parties as the law governing the terms of the agreement, even where its otherwise applicable conflicts rules might require application of a different law [p art VIII; oc 2.76, 3.24, 3.25, 3.26]. Applying the principles described in paragraph 2 of this statement, a Russian debtor may not rely on the internal laws of the Russian Federation, or concepts *force majeure*, intervening, or superseding events (or otherwise), as forming a substantive defense to the performance of its obligations with respect to the contractual defaults, or as excusing it from contractual defaults (or an illegality termination event) that are tied to events other than performance. A Contracting State that gives effect to any such defense would be in violation of its obligations under the CTC.

**END**