

11 May 2023

Mr. Abhilash Lal

Alvarez & Marshal India Professionals Services LLP
C 192, Belvedere Towers DLF Phase II Sector Road
Gurgaon, Haryana 122008

Re: Corporate insolvency resolution process of Go Airlines (India) Limited ('GoFirst') and obligations under the Cape Town Convention

Dear Mr. Lal,

We refer to the corporate insolvency resolution process of GoFirst commenced on 10 May 2023 upon the admission by the National Company Law Tribunal of GoFirst's application pursuant to Section 10 of India's Insolvency and Bankruptcy Act, 2016 (the '**GoFirst insolvency proceedings**'), for which you were appointed the interim resolution professional. We are writing to you in your capacity as such interim resolution professional.

Aviation Working Group and the Cape Town Convention

1. We write on behalf of the Aviation Working Group (www.awg.aero, '**AWG**'). AWG, a not-for-profit entity co-chaired by Airbus and Boeing and comprised of the world's major aviation manufacturers, leasing companies, and financial institutions, was formed, at the request of governments, to contribute to the development of the Cape Town Convention (the '**Convention**') and its Aircraft Protocol (the '**Protocol**'). AWG is considered by many to be the leading expert on the Convention and the Protocol (collectively, the '**Cape Town Convention**').

2. Without limitation, AWG or its representatives (i) chaired the group that drafted the original Protocol, (ii) were involved in every meeting on the development, negotiation, and diplomatic agreement of the Convention, (iii) work with governments around the world on implementation of, and compliance with, the Convention and the Protocol, (iv) chair the advisory board to the International Registry for the Convention, and (v) direct the Cape Town Convention academic project (the '**CTCAP**'), which provides annotations to the *Official Commentary to the Cape Town Convention* (5th ed UNIDROIT 2022) (the '**Official Commentary**'). The Official Commentary, approved for distribution by the UNIDROIT Governing Council, is a critically important source for proper interpretation of the Cape Town Convention.

3. As part of its global undertaking to advance and seek full implementation of, and compliance by countries with, the Cape Town Convention, AWG consults with governments, submits expert, legal papers, and prepares other supporting materials. AWG does not address commercial matters, but, rather, focuses on the requirements of the Cape Town Convention, including international law obligations assumed by contracting states, and as implemented into or otherwise constituting national law. AWG works actively and reports on the proper implementation and interpretation of, and compliance with, the terms of the Cape Town Convention. AWG developed the CTC Compliance Index (<http://ctc-compliance-index.awg.aero>, the '**CTC Compliance Index**') which assesses and scores compliance by contracting states with their undertakings under the Cape Town Convention.

Cape Town Convention in India and obligations under Alternative A

4. India ratified the Cape Town Convention in March 2008 and the treaty came into effect on 1 July 2008 (the '**Effective Date**'), and, in connection therewith, declared applicable Alternative A. Thus, India has an international law obligation, pursuant to both the Cape Town Convention and the Vienna Convention on the Law of Treaties, to apply the treaty including Alternative A under Article XI of the Protocol (remedies on insolvency) ('**Alternative A**'), attached hereto as Annex 1.

5. The commencement of the GoFirst insolvency proceedings constitutes an insolvency-related event under the Protocol, and triggers application of Alternative A in relation to aircraft equipment to which the Cape Town Convention applies.

6. Under Alternative A, the applicable period by which, absent (i) consensual agreement otherwise by a creditor, or (ii) the curing of all defaults and agreement to perform all future obligations – its leased or financed aircraft equipment

must be returned is **the earlier of** (a) the end of the waiting period implemented by India under Alternative A (see Article XI(2)(a)), that being 60 days, and (b) the date on which that creditor would be entitled to repossession under Indian law if Alternative A did not apply (see Article XI(2)(b))¹.

Such timing may be **voluntarily extended** with the consent of a creditor holding an 'international interest' (which includes all leases). The Official Commentary, paras. 3.139 and 5.27, clarifies that holders of international interests under Alternative A and the insolvency administrator or the debtor may agree to (i) delay redelivery of the aircraft object to the creditor, and (ii) set conditions to such delay.

7. Furthermore, in accordance with Article XI(5) of the Protocol, there is an obligation to **preserve aircraft objects in the airline's possession and maintain it and its value** until the respective creditors and lessors are given an opportunity to take possession (see Official Commentary, paras. 3.143, 5.64). The foregoing is subject to the overarching right of parties to mutually agree otherwise.

8. Actions in the GoFirst insolvency proceedings may affect India's score, positively or negatively, on the CTC Compliance Index, depending on whether such actions are compliant with India's CTC-treaty commitments. These items would be expected to have a direct and material impact on future financings and leases to Indian airlines.

Thank you for your attention to the above. Please do not hesitate to reach out if AWG can be of any assistance.

Sincerely yours,



Jeffrey Wool
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Aviation Working Group
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CC:

Hon'ble Jyotiraditya M. Scindia, Minister of Civil Aviation
The Ministry of Civil Aviation

Mr. Rajiv Bansal, Secretary, Ministry of Civil Aviation
The Ministry of Civil Aviation

Mr. Satyendra Kumar Mishra, Joint Secretary, Ministry of Civil Aviation
The Ministry of Civil Aviation

Mr. Vikram Dev Dutt, Directorate General
The Directorate General of Civil Aviation

Mr. Ajay Chauhan, Director Airworthiness, Directorate General of Civil Aviation
The Directorate General of Civil Aviation

¹ AWG understands that pursuant to Embassy Property Developments Pvt. Ltd. vs State of Karnataka and Ors. (Civil Appeal Nos. 9170-9172 of 2019), the Supreme Court of India has held that an asset owned by a third party (i.e. a lessor), but which is in the possession of the debtor under contractual arrangements (i.e. a lease), is specifically excluded from the moratorium's prohibition on recovery of certain property that is occupied by or in possession of the debtor where such contractual arrangements were terminated or expired prior to the commencement of the moratorium. In such a case, the asset is neither the 'property' of the debtor nor is it lawfully 'occupied by' nor is it lawfully 'in the possession of' the debtor. To the extent a lessor's aircraft object is covered by such exclusion to the moratorium per the Embassy ruling, such aircraft object is required to be returned immediately (not at the end of the the 60-day waiting period) in accordance with Article XI(2)(b).

ANNEX 1 – Extract of Article XI (Alternative A) of the Protocol

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.