

GENERAL MEETING

18 May 2023

Internal items and projects – internal session

MATERIALS FOR INTERNAL ITEMS AND PROJECTS

09h00 – 10h00, 18 May 2023

Norton Rose Fulbright, London
3 More London Pl, London SE12AQ

This **private and confidential** document contains:

- In **Part I**, a summary of AWG items, internal and projects, with (a) select key materials annexed, and (b) other materials referenced. It has the following annexes, some of which will also be used during our internal meetings on 17.05, as noted herein:
 - **Annex I:** ASU assessment
 - **Annex II:** Insurance: observations, lessons, and future practices based on Russia experience presentation for 17 May session
 - **Annex III:** AWG work on mitigating political risk in the transactional context
 - **Annex IV:** AWG work on XBT
 - **Annex V:** Reinvigorating GATS
- In **Part II**, a list of recommended resolutions (the '**resolutions**') made by the Board to the members for discussion/approval at the meeting.

All referenced (and, for completeness, annexed and otherwise related) materials will be accessible from 15h00 London time on Monday, 15 May at:

URL: www.awg.aero

Instructions: Click on log in icon on the top right corner of the AWG website.

Username: 2023AWGMay

Password: awgDoc!23

PART I – SUMMARY OF AWG ITEMS, INTERNAL, AND PROJECTS

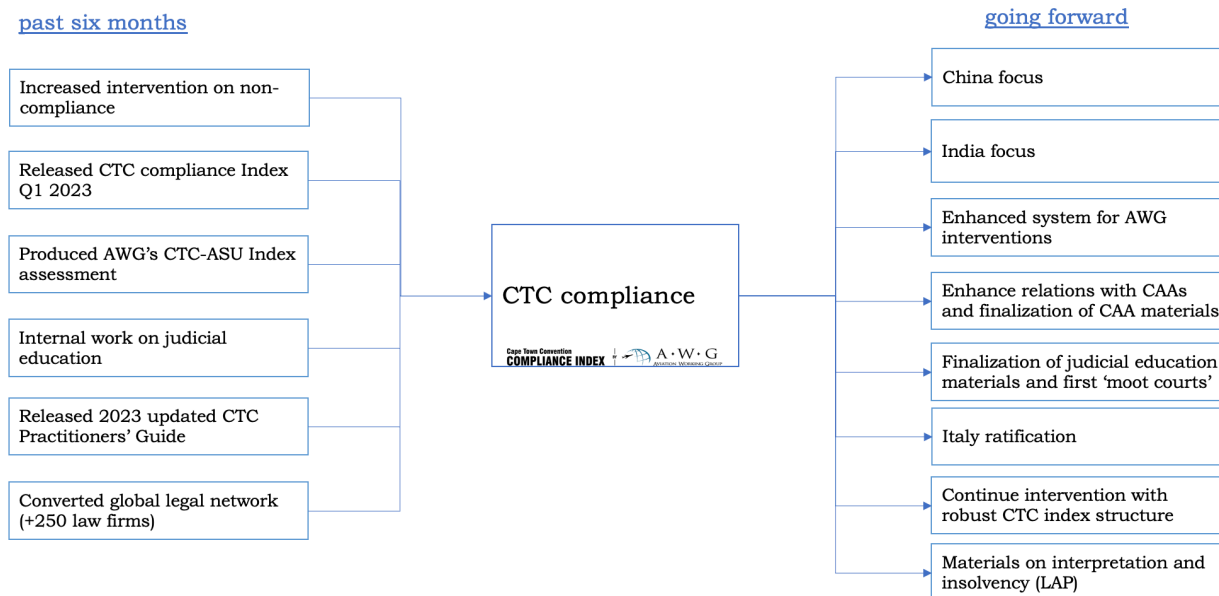
Membership and other group-related items

1. For reference, the minutes of the last group meeting (27.10.22), the AWG bye-laws, and the list of primary contacts are in the [e-binder](#).
2. In line with the authority granted by prior resolutions, we are in discussions with several parties regarding potential membership in AWG. Four such parties, Avilease, SkyLeasing, HighRidge Aviation, and Citibank, have been invited to the part of the meeting where guests are present (18.05).
3. **Resolution 1** contemplates filling the current AWG co-chairman and board and vacancies by electing Richard Hammond (Boeing) to these roles, in each case with a term ending in line with current officer and board appointments.
4. As previously advised, effective 01.01 Watson Farley Williams (WFW) became AWG's international supporting counsel. In line with established practice, the secretary joined WFW, and is seconded to AWG via our standard form secondment and support agreement, which is in place. A copy of that document is in the [e-binder](#). As with past changes, membership fees are not impacted by this move. The transition has been smooth and WFW is providing excellent support on a most AWG projects.
5. **Resolution 9** calls on AWG to prioritize further developing its key governmental relations, to a degree weakened given COVID period, including those with ICAO, OECD, the EU, UK, US, and Brazil, China, and India, by increased direct contact and consultation.
6. AWG is extremely busy on all projects described below. It does so with the limited resources. AWG (a) reached an agreement with the Sierra law firm to extend the secretariat support secondment of Miguel Ruelas and Karla Baston until the end of 2024, (b) reached an agreement with David Lloyd to provide us expert support on XBT until the end of 2024, and (c) reached an agreement with William Piels to provide us expert support on CTC items until March 2024. Like all AWG support, fixed fee arrangements are discounted and attractive to AWG.
7. A pie chart contained in the [e-binder](#) illustrates the use of the secretariat's time over the past six months: legal stability/Cape Town, 40%; Russia, 10%; ESG, 15%; cross border transferability, 15%; all other projects, 12.5%; and administrative and strategic planning, 7.5%.

Cape Town Convention

8. Government compliance is our main CTC focus. Two related points – which increase the importance of that compliance – are as follows. First, transitioning out of c-19, supply/demand recalibration has occurred and continues. That changes incentives to reposses and oppose repossession. Secondly, some current insolvencies are moving beyond ‘reserving positions’ on CTC to asserting them.

9. This chart depicts the major categories of action directly or indirectly focusing on and promoting CTC compliance. It includes action over the last 6 months and planned for the next 6 months.



10. Country specific information on CTC compliance can be found on this link to AWG's [CTC compliance index](#), whose semi-annual update occurred on 04.04. Per prior agreement, they will not be summarized in this document.

The platform for the index contains (a) current scores, (b) historical data on country scores over time, and (c) an interactive map showing current scores for all scored countries.

11. We encourage your review of the index on these countries, which reflect changes since the last AWG meeting:

Country	Developments	Conclusion/status
China	<p>Deregistration and export delays</p> <p>Facts: In applications for repossession of aircraft leased to Okay Airways following lease termination (Dec 2021), the Beijing Court did not issue orders granting remedies under Article 13 of the Convention (relief pending final determination) within 'speedy relief' timeframes in accordance to China's declaration under Article X of the Protocol.</p> <p>As of May 2023, one aircraft remains registered with the CAAC despite the lessor having possession and being the authorized party under an IDERA for such aircraft.</p>	<p>Despite the voluntary return of some of the aircraft by lessee, Article 13 remedies remained unavailable to lessor for the remaining aircraft after the lapsing of over 12 months. Such delay by the court in making Article 13 remedies available to the lessor within the timeframes committed to by China in its declarations is inconsistent with CTC.</p> <p>The cases highlight an issue within the existing CAAC IDERA guidelines when repossession of the aircraft is not in dispute between the parties.</p> <p>The CAAC guidelines, read strictly, require a court order for repossession in order to deregister pursuant to an IDERA, but, due to the voluntary redelivery of possession, a court has no grounds on which to issue such an order.</p>
Colombia	<p>Viva Air business recovery procedure</p> <p>Facts: Fast Colombia S.A.S. (dba Viva Air Colombia) ('Viva Air') commenced a business recovery procedure on 10.02.</p>	<p>AWG sent a letter to the debtors-in-possession, noting the applicability of Alternative A, as declared by Colombia, and outlining CTC requirements thereunder. This matter is on-going.</p>
Kenya	<p>Aircraft repossession under Article 13.</p> <p>Facts: Kenyan court issued an order granting a temporary injunction in favor of a lessee that restrained the lessor from exercising its CTC repossession remedy, on the condition that lessee cure defaults under the lease, including making overdue payments.</p> <p>The lessee subsequently filed an application to find the lessor in contempt for repossessing an aircraft after the issuance of the injunction.</p> <p>As the lessor was permitted to exercise remedies, its application for judicial review of the non-compliant temporary injunction was withdrawn.</p> <p>The lessor has repossessed its aircraft and no further administrative or judicial actions are expected.</p>	<p>An order denying Article 13 relief on the basis of a dispute over the specific amount of the payment default, any defences raised by the lessee, or weighing the 'balance of convenience' between the lessee and lessor is non-compliant with the requirements of CTC.</p> <p>The court ruled that the lessor was not in contempt and was free to exercise remedies as the lessee had violated the terms of the injunction, but did not address CTC compliance requirements.</p> <p>Kenya's variable B score has been decreased and removed from the CTC watchlist notice.</p>

India	<p>Deregistration and export delays; Go Air insolvency application</p> <p>Facts:</p> <p>A deregistration application pursuant to an IDERA exercise by a lessor experienced delays due to lien claims by service providers that were not covered by India's declarations.</p> <p>Lien claims also caused authorities to restrict the lessor from exercising its export remedy under Article IX(1)(b) of the Protocol.</p> <p>Go Airlines submitted an application for voluntary insolvency. If admitted by the court, it will constitute an insolvency proceeding under CTC.</p>	<p>The DGCA's failure to deregister the aircraft in a timely manner upon the exercise of an IDERA, and the subsequent restriction on the lessor's export remedy, for lien claims falling outside of India's declarations under Article 39(1)(a) or (b) of the Convention is non-compliant with CTC.</p> <p>Prior to any such admission, and thus the imposition of a moratorium, certain lessors have filed applications for deregistration of aircraft on the basis of IDERAs with the DGCA.</p>
Vietnam	<p>Preliminary injunction reversing CAAV IDERA deregistration</p> <p>Facts:</p> <p>CAAV issued deregistration certificates upon a lessor's deregistration applications pursuant to IDERAs.</p> <p>CAAV provided prior notice of the deregistration applications to the lessee,</p> <p>Court granted a preliminary injunction requested by a shareholder of the lessee for revocation of the deregistration certifications by CAAV and permission for the lessee to continue management and operation of the aircraft despite the lessor's termination of the lease following default</p> <p>On appeal by CAAV, the court upheld the preliminary injunction, noting that (i) the English order is not a final judgement, and (ii) without the preliminary injunction, deregistration and export of the aircraft would proceed and seriously affect the legitimate rights and interests of the lessee's shareholders.</p>	<p>The preliminary injunction suspending CAAV's CTC-compliant deregistration action, and the appeals judgement's upholding of the same, are inconsistent with CTC.</p> <p>The appeals judgement's suggestion that a final judgement by the English court is required for the lessor's exercise of remedies and its examination of the rights and interest of the lessee's shareholders are also non-compliant with the requirements of CTC.</p> <p>This matter is on-going.</p>

12. AWG continues to make extensive use of watchlist notices through the index, which indicates that the current scorecard does not reflect potentially relevant information which is developing and/or being assessed. AWG has issued new watch list notices for 6 countries since October 2022:

Country	Reason for watchlist notice
Colombia	As a result of the Viva Air business recovery procedure
Kenya	<p>As a result of a court order restricting a lessor's exercise of Cape Town Convention remedies post-default.</p> <p>(<i>watchlist removed</i>, with Variable B decrease)</p>
Norway	<p>As a result of the Flyr liquidation</p> <p>(<i>watchlist removed</i>, with scoring confirmation notices, as a result of return of all aircraft to creditors prior to expiry of Alt. A waiting period.</p>

Vietnam	As a result of a preliminary injunction, upheld on appeal, in favor of an airline's shareholder ordering the Civil Aviation of Vietnam to reverse its compliant issuance of deregistration certificates upon application by the authorized party under an IDERA
UK	As a result of the Flybe administration (<i>watchlist removed</i> , with scoring confirmation notices, as a result of return of all aircraft to creditors prior to expiry of Alt. A waiting period)
USA	As a result of SAS Chapter 11 proceedings constituting an 'insolvency-related event' under Article I(2)(m)(i) of the Protocol, triggering application of Alternative A where that declaration has been made

13. **Resolution 2** sets out the CTC priorities. They include:

Country	Status
India	Primary legislation (AWG has submitted comments, supported by the full India contact group, on the claimed-to-be final draft, which was published in the Gazette). Addressing full-range of practical issues (including those arising in GoAir)
China	Seeking to re-engage on compliance generally (including in light of the problems set-out above)
Italy	Ratification with qualifying declarations
Saudi Arabia	Securing revised declarations (qualifying declarations)

14. AWG published [29.11.22] its assessment as to whether countries meet the standard set out in the Aircraft Sector Understanding (ASU) for eligibility for the Cape Town Convention discount under the 2011 ASU.

This assessment has been visually enhanced and updated as of 04.04. ASU assessment can be found on this link to AWG's [CTC compliance index](#), and **Annex I** hereto.

We took these steps given the OECD's unwillingness to (a) make direct or indirect use of our index, or (b) take related action whatsoever linked to the accuracy of its (static) eligibility list. This followed a 3 year process seeking to work with the OECD on enhancing the accuracy of that list. While we will continue consult with the OECD on this topic, our publication action will increase compliance incentives.

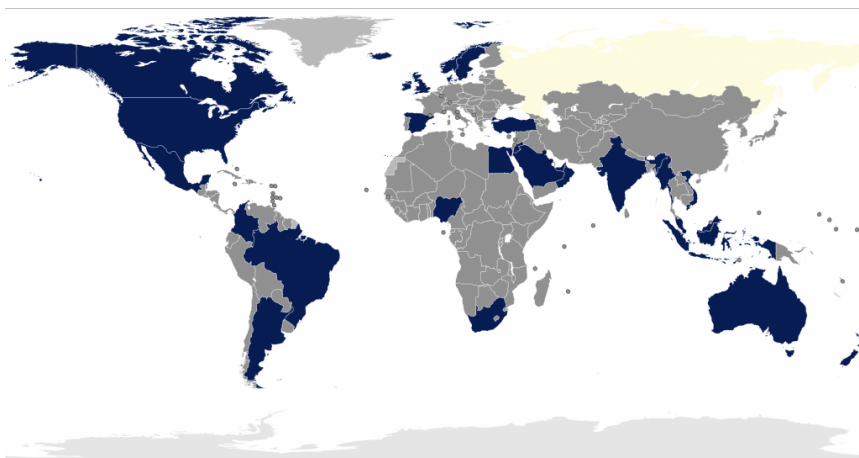
15. AWG's work through its *pro bono* legal advisory panel (LAP) and the Cape Town Convention Academic Project (CTCAP) address major substantive issues and promote compliance.

This chart sets out the LAP activities, which includes new subgroups on CTC insolvency and litigation, as well as under development guides for judges and civil aviation authority officials, a new version of the practitioners' guide, and a concise reference guide to the Official Commentary (draft). The full set of current materials is in the [e-binder](#).

Foundational CTC Materials	Purpose	Coordinating lead law firm
Practitioners' Guide	Guide setting out best practices on CTC items arising in the transactional context Released on March 2023 and available on the awg website	Norton Rose Fulbright
Official commentary (5 th edition): principles-based guide	Guide and reference document for using and understanding the Official Commentary to CTC and the principles on which it is based	AWG secretariat with support of Watson Farley & Williams
Judge's handbook	Handbook setting out fundamental CTC items arising in the litigation context	Norton Rose Fulbright
Case analysis	Analysis of cases applying CTC	A&L Goodbody Holland & Knight
Civil aviation authority guide	Guide setting out fundamental CTC items arising in the context of interaction with, actions and decisions by, civil aviation authorities	Basch & Rameh Abogados Sierra
Annotations to Official Commentary	Work proposing annotations to the Official Commentary for consideration by the CTC academic project	AWG secretariat and Rajah & Tan
Educational and informational materials	Develop educational materials on CTC for use by scholars, students, practicing lawyers, judges and other government officials and industry participants. Part of the CTC academic project	Pillsbury
Specific CTC topics and issues	Purpose	Coordinating lead law firm
Cross-border insolvency	Reference document for judges and practitioners addressing CTC related cross-border insolvency items	AWG secretariat and global legal network
Cross-border judicial relief	Reference document for judges and practitioners addressing CTC related cross-border judicial relief	Pillsbury
Non-judicial remedies and procedural law	Reference document for government authorities and practitioners on the relationship between non-judicial remedies and procedural law	Holland & Knight

Standing CTC topic groups	Purpose	Coordinating lead law firm
Litigation and CTC	Monitoring and assessing litigation and key related topics in the context of CTC	Norton Rose Fulbright
Insolvency and CTC	Monitoring and assessing insolvency and key related topics in the context of CTC	Watson Farley & Williams

The above work is undertaken with the support of AWG's global legal network, which we continuously seek to strengthen. Over 250 law firms, as firms, are in our network period. There are national (and regional) contact groups covering over 37 countries. The map below shows such coverage. The full list of firms directly or indirectly (via a contact group or otherwise) supporting AWG's work on the compliance index is in the [e-binder](#).

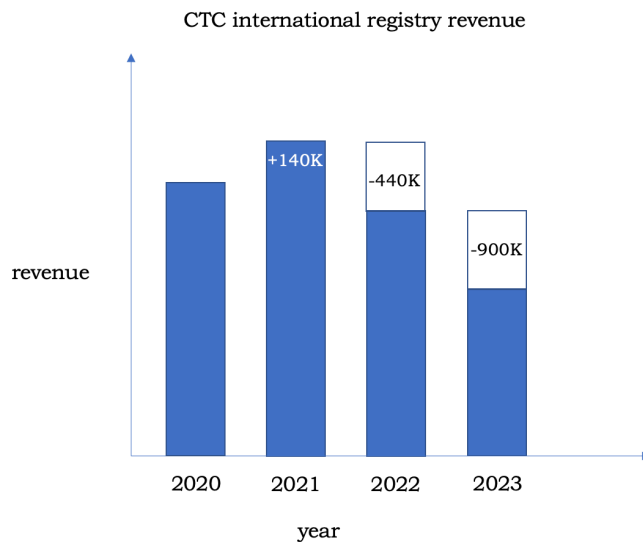


The CTCAP is a pillar of our CTC infrastructure, and undertakes a range of key compliance-related activities, including (i) CTC reporting, (ii) publishing (a) analysis of CTC legal activity, and (b) annotations to the Official Commentary, and (iii) producing educational materials.

It continues its cutting-edge yearly seminar, including the one held on 27/28.09 whose theme is 'enforcement and dispute resolution'. The save the date is in the [e-binder](#).

The CTCAP endorsed a global project designed to help *educate judges* on CTC. It will be an 'international moot court', with sitting judges presiding over the cases. Sessions of one type or another will be held or are being scheduled to be held in these countries: Brazil (15-.16.06), UK (26.09), Singapore – which may also include Malaysian and Indonesian judges (within 6-8.11), Kenya, Canada, Ireland, and India. The materials are in the [e-binder](#).

16. The [e-binder](#) includes various items relating to the International Registry (**IR**), including an updated presentation prepared by Aviareto (R. Cowan).



Revenues during 2023 are running significantly below 2022 (-6%). Registration volumes grew by 6% in Q1 2023 compared to the same period last year. Search volumes dropped by 9% comparing Q1 2023 to the same period last year. To date, there have been approximately 1.5 M registrations on the IR and 1.6M priority searches of the system. In each case, no material problems have occurred.

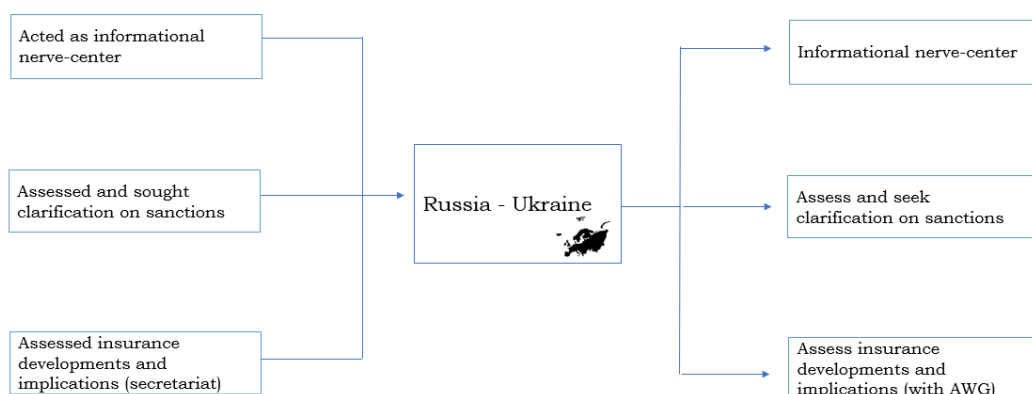
Aviareto has indicated to ICAO its intention to seek an additional 5-year mandate (2026-2031) to operate the international registry.

Compliance with sanctions due to the Russia-Ukraine constitutes a significant effort and cost for Aviareto. Account vetting is slower and Aviareto has blocked accounts which are subject to sanctions. Aviareto has received updated advice from several jurisdictions on sanctions and export control laws and has also communicated with the Irish Department of Foreign Affairs, Sanctions Section. Aviareto will invest in extra staff and software systems to ensure its customer service is not adversely impacted while complying with relevant laws.

The Trusted Communications facility was deployed in December 2022.

Russia-Ukraine

past six months



17. AWG has been and remains available to assist members in synthesizing, discussing, and, when agreed, taking collective action in matters pertaining to Russia-Ukraine. Based on member input, the contours of and process for potential insurance settlements has been a main focus. AWG has also been working with governments around the world on CTC requirements which would be implicated should subject Russian operated aircraft be flown into their countries.

18. Implementing prior AWG resolutions, the AWG secretariat, with the support of WFW, has been tracking and assessing all insurance cases. The main purpose of such assessment is to facilitate highest level AWG discussions on insurance developments and implications from the Russian experience. The first group discussion will take place during our internal meeting on 17.05. **Annex II** is the powerpoint which will provide a framework for discussions at that meeting. See also **resolution 4** (continued assessment of such developments).

19. Based on discussions at the last AWG meeting and the strategic planning board meeting, **Resolution 3** contemplates work designed to mitigate political risk in the transactional context. A discussion on this topic will take place at our internal meeting on 17.05. **Annex III** is the powerpoint that will provide a framework for discussions at that meeting.

Environmental, social and governance (ESG)

past six months



20. On 03.05 AWG submitted its comments to the EU taxonomy. A copy is in the [e-binder](#). On 17.05, we will have an internal meeting on ESG: a) EU taxonomy, and b) discussion of industry metrics. The materials for the internal meeting are in the [e-binder](#).

21. **Resolution 5** sets out the key priorities and actions on ESG, namely –

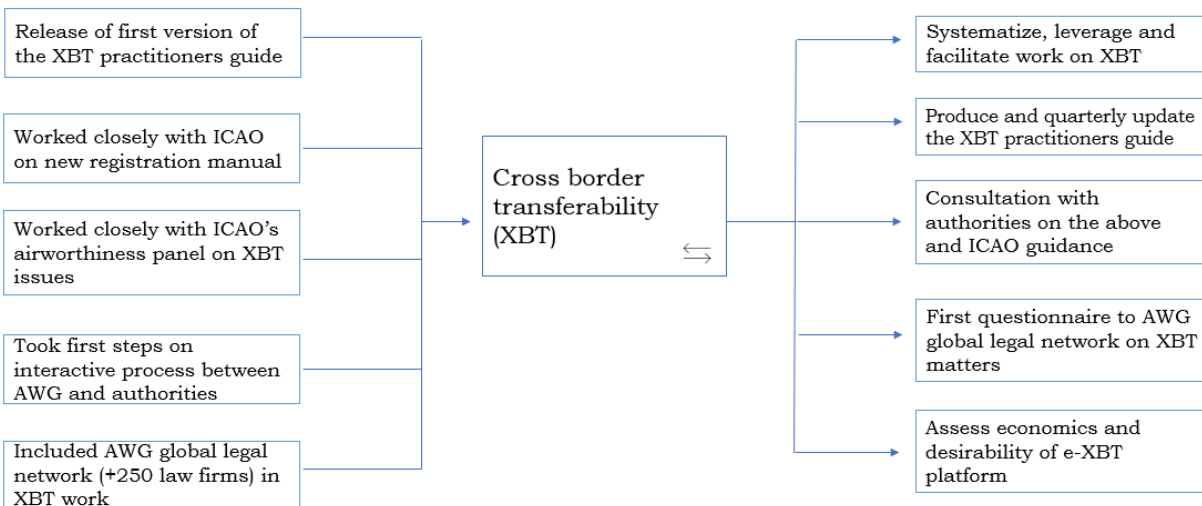
(a) AWG remain focused on (a) securing inclusion of aviation in the EU taxonomy (delegated act) in line with AWG positions, and

(b) AWG acting as a nerve center seeking information about and coordination among various industry initiatives on ESG which may impact aviation leasing and financing.

Cross-border transfers of aircraft registration (XBTs) and related matters

past six months

going forward



22. **Resolution 6** sets out the key priorities and actions on XBT.

23. The XBT subgroup met on 17.01 to review all the above items including, ICAO's airworthiness panel, ICAO new registration manual, AWG practitioners' guide. IATA, ICAO, FAA, the Irish Aviation Authority, and Bermuda Civil Aviation Authority participated in the meeting. An active schedule of subgroup meetings, many of them in Dublin, has been scheduled for the next 12 months. AWG will be participating in ICAO's roll-out of its work on XBT (29.08).

24. The initial version of the XBT handbook, previously called practitioners' guide has been published on the AWG website. That initial version has core text but a large number of appendices need to be developed and added to it. The handbook lays out XBT best practices and provides examples to cite for demonstrating the benefits of using XBT best practices, and provides cross-references to the newly published ICAO XBT guidance. The handbook will be evergreen, updated on a quarterly basis.

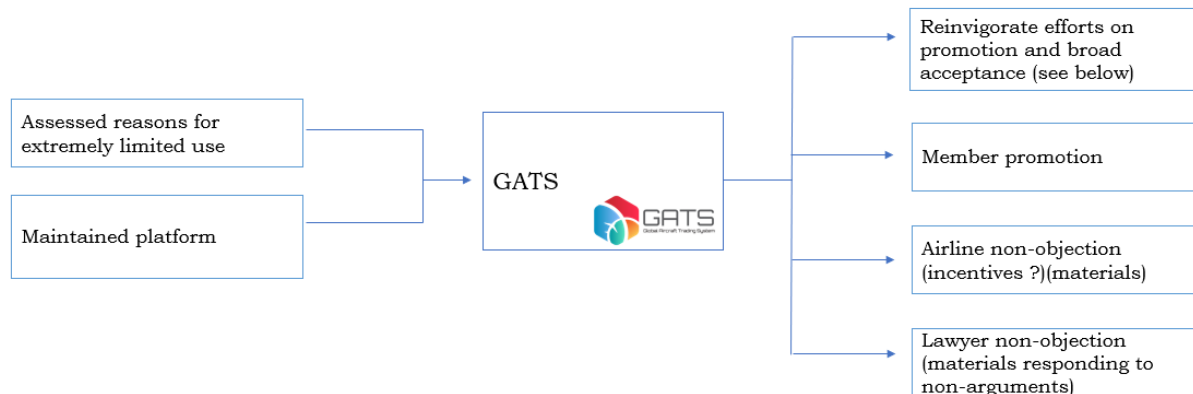
25. More generally, AWG is working on systematizing, leveraging, and facilitating the full range of its work on cross border transferability (XBT) which includes, without restriction (a) quarterly updates to its XBT practitioners' guide, (b) consultation with authorities on that guide and on ICAO guidance, (c) use of AWG's global legal network to advance our XBT objectives, and (d) continued assessment, from a cost-benefit perspective, of the desirability of an electronic platform for effecting XBTs.

26. A more detailed summary of AWG work on XBT is set out as **Annex IV**.

GATS

past six months

going forward



27. Exiting COVID - and with increased aircraft trading, we are now at a GATS *inflection point* in the sense of acceleration towards success or failure.

Resolution 7 contemplates member reinvigorate efforts to promote and gain broad acceptance of GATS.

28. **Annex V** sets out the main issues, elements, and actions related to promote GATS and gain its broad acceptance.

Banking and Regulatory Items

29. Bank members have recommended, and the board concurs, that AWG should updates its 2016 study on loss given defaults and related items which was prepared in connection with work with Basel.

30. That update would be for elective use in position formulation and modeling relating to regulatory bank capital including in connection with current EU level proposals (EU) No 575/2013) as regards requirements for credit risk, credit valuation adjustment risk, operational risk, market risk and the output floor.

Resolution 8 contemplates that updated study, to be undertaken by Professor Vadim Linestsky, on the basis of data provided by AWG and non-AWG member banks.

Accounting

31. The sub-group continues to monitor ESG driven climate disclosure regulations and standards, including (a) practical issues in new leasing standard such as disclosures requires on financial impact metrics, expenditure metrics and the impact on financial estimates, and (b) the impact on internal control reporting. The **e-binder** includes background materials as presented to the subgroup on 14.10.22.

Export Credit

32. While there has been a gradual increase in the use of export credit, there have been no material developments for consideration by AWG since the last meeting.

Final Items

33. The next AWG meeting is planned for 18-19 October 2023 in New York.

34. AWG members are invited to provide an update on or mention on any other item.

35. This document and the [e-binder](#) are private and confidential, and may not be shared with non-AWG members.

END of PART I

Resolution 1

Resolved that, to fill recent vacancies, Richard Hammond be elected as a co-chairman and director, in each case, with a term ending on 31 December 2024.

Resolution 2

Resolved that, on matters relating to the Cape Town Convention, AWG prioritize:

- (a) compliance in India, through securing passage of CTC primacy legislation and addressing other practical issues that have arisen;
- (b) compliance in China, through a renewed general reengagement on all CTC items;
- (c) judicial education globally, based on the new materials of the legal advisory panel and the moot court program under the auspices of the CTC academic project;
- (d) ratification by Italy; and
- (e) revised declarations by Saudi Arabia.

Resolution 3

Resolved that, without limiting internal secretariat work under prior resolutions, AWG assess and effect means to *mitigate political risk in the transactional context*, which, as determined by the secretary, may include the following action:

- (a) re CTC contracting states, enhancing means and techniques for CTC compliance interventions and seeking support for that compliance from government bodies; and
- (b) re non-CTC contracting states (i) developing, posting, and keeping current metrics, standards, and/or scoring on the application of, and adherence to, asset-based financing and leasing (including timely, effective, and predictable remedies) and the rule of law principles, (ii) seeking means and techniques to enhance such application and adherence from government bodies, and (iii) prioritizing the foregoing based on states with high levels of leasing and financing transactions, on the one hand, and perceived transactional risks, on the other.

Resolution 4

Resolved that, without limiting work under prior resolutions relating to Russia – Ukraine, AWG continue its work on assessing insurance developments and their implications, in each case, without impacting litigation or asserted lines of argument therein.

Resolution 5

Resolved that, without limiting work under prior resolutions relating to ESG, AWG remain focused on (a) securing inclusion of aviation in the EU taxonomy (delegated act) in line with AWG positions, and (b) acting as a nerve center seeking information about and coordination among various industry initiatives on ESG which may impact aviation leasing and financing.

Resolution 6

Resolved that AWG take all necessary and desirable action to systematize, leverage, and facilitate the full range of its work on cross border transferability (XBT) which includes, without restriction (a) quarterly updates to its XBT practitioners' guide, (b) consultation with authorities on that guide and on ICAO guidance, (c) use of AWG's global legal network to advance our XBT objectives, and (d) continued assessment, from a cost-benefit perspective, of the desirability of an electronic platform for effecting XBTs.

Resolution 7

Resolved that AWG and its members reinvigorate efforts to promote and gain broad market acceptance of GATS.

Resolution 8

Resolved that AWG update its 2016 study on loss given default and related items for elective use in position formulation and modeling relating to regulatory bank capital including in connection with current EU level proposals.

Resolution 9

Resolved that AWG prioritize further developing its key governmental relations, to a degree weakened given COVID period, including those with ICAO, OECD, the EU, UK, US, and Brazil, China, and India, by increased direct contact and consultation.

END

Annex I: ASU assessment

AWG's ASU assessment -- as to whether countries meet the substantive standard set out in the ASU

ASU means the OECD's Aircraft Sector Understanding on Export Credits for Civil Aircraft for eligibility for the CTC discount.


AWG assesses whether countries meet the substantive standards set out in the ASU for eligibility for the Cape Town Convention discount as set out in the 2011 ASU (CTC discount).































The AWG assessment is independent of the OECD (and its participants) and their decision-making on eligibility for the CTC discount under the ASU. It assesses the substantive ASU standard without reference to whether a country is on the 'Cape Town list', as defined in the ASU.

























AWG has prepared an explanation and methodology for this assessment.

The basic framework for that methodology is as follows:

- Eligibility for the CTC discount requires satisfaction of the three conditions below: conditions 1 (making of the ASU 'qualifying declarations'), condition 2 (compliant implementation: primacy and completeness), and condition 3 (compliant precedent and experience: judicial and administrative).
- As the making of the qualifying declarations is a threshold requirement for meeting the substantive standard for the CTC discount, where condition 1 has not been satisfied (qualifying declarations have not been made), scoring on conditions 2 and 3 (compliant implementation and precedent and experience, respectively) have not been provided. To see such scores, see full compliance index.
- Where there is insufficient legal analysis to reach a sound view on conditions 2 and 3 (compliant implementation and precedent and experience, respectively), scoring on such conditions have not been provided (and is not available on the full compliance index).

Country ↑	Conclusion	Condition 1	Condition 2	Condition 3
 Afghanistan	Insufficient legal analysis	Yes	-	-
 Albania	Insufficient legal analysis	No	-	-
 Angola	Insufficient legal analysis	Yes	-	-
 Argentina	Yes	Yes	Yes	Yes
 Australia	Yes	Yes	Yes	Yes
 Bahrain	No	Yes	No	Yes
 Bangladesh	Insufficient legal analysis	Yes	-	-
 Belarus	No	No	No	No
 Bhutan	Insufficient legal analysis	No	-	-
 Brazil	No	Yes	Yes	No
 Burkina Faso	No	No	No	No
 Cameroon	No	No	No	No
 Canada	Yes	Yes	Yes	Yes

Country ↑	Conclusion	Condition 1	Condition 2	Condition 3
 Cape Verde	Insufficient legal analysis	Yes	-	-
 China	 No	No	Yes	No
 Colombia	 No	No	Yes	Yes
 Costa Rica	Insufficient legal analysis	No	-	-
 Cote d'Ivoire	No	Yes	No	Yes
 Cuba	Insufficient legal analysis	No	-	-
 Democratic Republic of the Congo	Insufficient legal analysis	No	-	-
 Denmark	Yes	Yes	Yes	Yes
 Egypt	No	Yes	No	No
 Eswatini	Insufficient legal analysis	No	-	-
 Ethiopia	No	Yes	No	No
 Fiji	Yes	Yes	Yes	Yes
 Gabon	Insufficient legal analysis	No	-	-
 Ghana	Insufficient legal analysis	No	-	-
 Iceland	Yes	Yes	Yes	Yes
 India	No	Yes	No	Yes
 Indonesia	No	Yes	Yes	No
 Ireland	Yes	Yes	Yes	Yes
 Jordan	Yes	Yes	Yes	Yes
 Kazakhstan	Yes	Yes	Yes	Yes
 Kenya	No	Yes	Yes	No
 Kuwait	No	Yes	No	No
 Kyrgyzstan	No	Yes	No	No
 Latvia	Yes	Yes	Yes	Yes
 Luxembourg	No	Yes	No	No
 Madagascar	Insufficient legal analysis	Yes	-	-
 Malawi	Insufficient legal analysis	Yes	-	-
 Malaysia	Yes	Yes	Yes	Yes

Country ↑	Conclusion	Condition 1	Condition 2	Condition 3
 Qatar	Insufficient legal analysis	Yes	-	-
 Republic of the Congo	Insufficient legal analysis	No	-	-
 Romania	Insufficient legal analysis	No	-	-
 Russia	Suspended	Yes	-	-
 Rwanda	No	Yes	No	No
 San Marino	Yes	Yes	Yes	Yes
 Saudi Arabia	Insufficient legal analysis	No	-	-
 Senegal	Yes	Yes	Yes	Yes
 Sierra Leone	Insufficient legal analysis	Yes	-	-
 Singapore	Yes	Yes	Yes	Yes
 South Africa	No	Yes	No	No
 Spain	No	No	Yes	Yes
 Sweden	Yes	Yes	Yes	Yes
 Tajikistan	No	Yes	No	Yes
 Tanzania	Insufficient legal analysis	Yes	-	-
 Togo	No	Yes	No	No
 Turkey	Yes	Yes	Yes	Yes
 Ukraine	Suspended	Yes	-	-
 United Arab Emirates	No	Yes	No	Yes
 United Kingdom	Yes	Yes	Yes	Yes
 United States of America	⚠ No	No	Yes	Yes
 Uzbekistan	Yes	Yes	Yes	Yes
 Vietnam	⚠ No	Yes	Yes	No
 Zambia	Insufficient legal analysis	No	-	-

Annex II: Insurance: observations, lessons, and future practices based on Russia experience presentation for 17 May session



Insurance – assessing developments and implications from Russia experience

Produced with the support of Watson, Farley & Williams LLP

17 May 2023 – AWG internal working session

Private and Confidential

These slides have been prepared for the sole purpose of illustrating the themes arising from the ongoing Russian experience. The material contained herein does not represent any views or analysis on the merits of the Russian litigation, the content of which has been extracted from public and/or court documents, nor does it represent or express the views or opinions of the members of the AWG.

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Insurance – assessing developments and implications from Russia experience

1. Status of, and themes in, the litigation
2. Recurring legal themes of the litigation (lessor policies)
3. Review of current insurance practice
4. Insurance market conditions
5. Potential changes to insurance market practice

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Status of, and themes in, the litigation

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Status of, and themes in, the litigation

1. Litigation has been commenced in the UK courts, Irish courts, and US courts (various).
2. In many cases, defences have been filed by the insurers and in some cases replies / responses have been filed by the claimants.
3. Claims / complaints:
 - a. Generally fairly brief in nature, setting out the claims and brief description of the basis for the claims.
 - b. Legal arguments behind assertions to be further developed as cases proceed.**
4. Defences:
 - a. In the UK and Irish cases, the defences are generally detailed and specific, responding to each claim with admissions or denials and setting out detailed rationale for such positions (e.g. 'the defendants are not liable because there is no physical loss due to...').
 - b. In the US, the defences are more general and do not specifically respond to the points raised in the complaints (e.g. 'the defendants will not be liable to the extent that the claims do not involve loss or damage to the aircraft').
 - c. Several insurers are filing their own defences rather than joint defences with the other insurers under the policy.
5. There are recurring themes across the cases, in all jurisdictions (see later slides).
6. Some claims may be conducted in court together.
7. Timing – still in the early stages:
 - a. New claims continue to be filed.
 - b. Awaiting defences on a number of cases.
 - c. Court hearing dates awaited (some UK cases to be heard concurrently in a 12 week trial in October 2024).

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Recurring legal themes of the litigation

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Recurring legal themes of the litigation

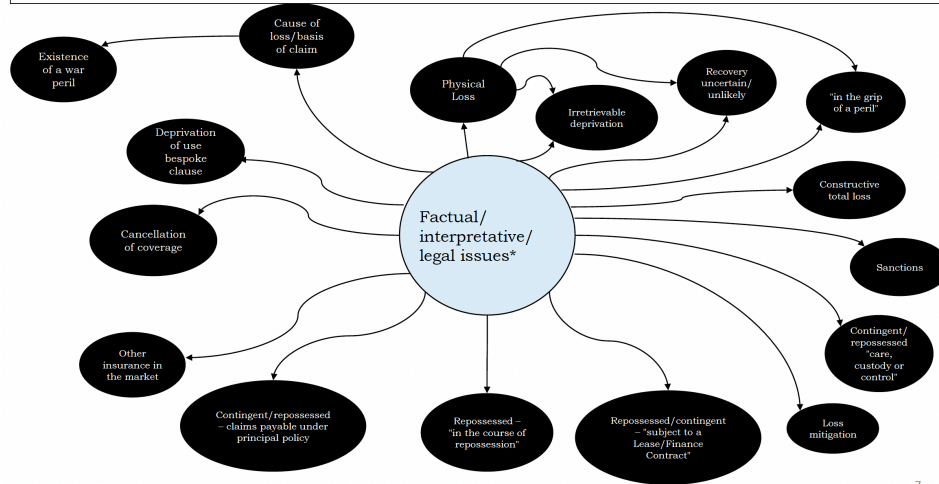
1. Type of loss suffered
2. Basis of claim (All Risks, War Risks, Other)
3. Contingent vs possessed cover
4. Sanctions
5. Cancellation / amendment of War Risks coverage
6. Loss Mitigation
7. Other insurance in the market

Note: the following is a distillation of the common arguments and defences found in the litigation materials that are available in the public domain or court documents – it does not include or represent any analysis of the merits of the arguments and defences being raised.

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Issue type: factual / interpretative / legal



view is expressed on whether these issues are factual, interpretative, legal, or mixed. These issues

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Type of loss suffered

LESSOR ARGUMENTS*	INSURER DEFENCES
Physical loss suffered constituting actual or constructive total loss: <ul style="list-style-type: none"> irretrievable deprivation; and/or deprivation of physical possession where recovery is uncertain and/or unlikely within a reasonable period of time. 	No physical loss: <ul style="list-style-type: none"> no irretrievable deprivation; any deprivation of possession has not continued for a reasonable period of time / not sufficiently permanent; uncertainty / unlikelihood of recovery not sufficient to recover for a total loss – an irretrievable deprivation must be shown; constructive total loss is a marine concept not applicable to aviation except where specifically stated in policy, which is not applicable in this scenario; any loss sustained is loss of use, which is not covered.
Or, aircraft were in the grip of a peril at the relevant time: <ul style="list-style-type: none"> which proximately caused irretrievable deprivation; or caused it to become unlikely or uncertain of recovery within a reasonable period or at all. 	Aircraft were not in the grip of a peril at the relevant time: <ul style="list-style-type: none"> cover only provided in respect of loss sustained during the period of insurance; any such peril has not proximately / factually caused a loss of the aircraft.
Relevant arguments: <ul style="list-style-type: none"> failure to return aircraft following termination notices; continued use of aircraft; unilateral re-registration of aircraft in Russia; cannibalisation of aircraft / lack of maintenance; ongoing months of conflict. 	Relevant arguments: <ul style="list-style-type: none"> aircraft re-registered in the names of the lessors – inconsistent with irretrievable deprivation; aircraft may yet be returned; lessees willing to continue to make payments; aircraft remains in existence and location is known.

* Arguments set out here reflect UK and/or Irish arguments. US arguments refer to suffering physical loss, without reference to the concepts of irretrievable damage and related matters.

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Basis of claim (All Risks, War Risks, Other)

1. All Risks (see Annex A page 2)

LESSOR ARGUMENTS	INSURER DEFENCES
<ul style="list-style-type: none"> Loss caused by acts of lessees in retaining possession for their own commercial purposes and economic interests. At the most the Russian government facilitated these commercial acts 	Loss caused by the acts of the Russian government causing the lessees to retain possession.
No exclusion under AVN48B operates.	AVN48B exclusions apply: <ul style="list-style-type: none"> acts of one or more persons done for political purposes confiscation and/or seizure and/or restraint and/or detention and/or appropriation by or under the orders of the government (whether civil, military or de facto). Aircraft out of the control of the insureds due to operation of a war peril.

2. War Risks (see Annex A page 2)

LESSOR ARGUMENTS	INSURER DEFENCES
Existence of a war peril or perils: <ul style="list-style-type: none"> acts of one or more persons done for political purposes confiscation and/or seizure and/or restraint and/or detention and/or appropriation by or under the orders of the government (whether civil, military or de facto) 	No war peril exists: <ul style="list-style-type: none"> no act of one or more persons done for political purposes; no confiscation and/or seizure and/or restraint and/or detention and/or appropriation by or under the orders of the government (whether civil, military or de facto); loss caused by acts of lessees in retaining possession for their own commercial purposes and economic interests; at the most the Russian government facilitated these commercial acts.

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Basis of claim (All Risks, War Risks, Other)

3. Other (see Annex A page 3)

LESSOR ARGUMENTS	INSURER DEFENCES
Deprivation of use and possession of the aircraft for a defined period of time pursuant to a specific deprivation clause set out in the policy.	Not yet seen.

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Contingent vs possessed cover

1. Contingent cover (see Annex A page 4)

LESSOR ARGUMENTS	INSURER DEFENCES
Coverage for aircraft that are leased and outside the care, custody or control of the insureds.	Only applies where aircraft suffer physical loss whilst in the care, custody and control of the relevant lessee: <ul style="list-style-type: none"> does not protect against a loss from being unable to repossess the aircraft on termination of leasing.
Leasing of the aircraft was terminated, not the leases themselves.	Requires aircraft to be subject to a lease agreement – leases were terminated and alleged loss occurred post-termination.
	Only applies to a loss that falls within the scope of the operator policies in respect of which the lessor has been unable to recover from the operator's insurers / reinsurers: <ul style="list-style-type: none"> does not apply to a loss which is not covered in the first place; mere making of claims that are not paid out is not sufficient.

2. Possessed cover (see Annex A page 4)

LESSOR ARGUMENTS	INSURER DEFENCES
Coverage for aircraft that are in the course of repossession: <ul style="list-style-type: none"> whether following termination of the leasing of the aircraft by the lessors or not. 	Aircraft is not in the course of repossession: <ul style="list-style-type: none"> the course of repossession cannot have commenced where the lessee is retaining possession; active and/or physical steps for repossession are needed to engage cover; mere making of demands for repossession is not sufficient; any notices of abandonment issued by lessors would serve to end repossession steps.
	Coverage does not apply where claims are payable, whether or not payment has been made, under other insurances (e.g. operator insurance).
	Applies where the aircraft are in the care, custody and/or control of lessor and does not respond where aircraft have not been physically lost and have remained in lessee's possession and use.

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Sanctions

(See Annex A page 5)

LESSOR ARGUMENTS	INSURER DEFENCES
AVN111 Sanctions and Embargo Clause not relevant: <ul style="list-style-type: none"> coverage provided to insured, who are not Russian; in circumstances where insured have demanded the return of the aircraft; and those aircraft remain in Russia against the will of the insureds. 	AVN111 Sanctions and Embargo Clause applies: <ul style="list-style-type: none"> aircraft were at all material times "for use in Russia".
Clarifications provided by the EU / UK authorities are at least probative of the true meaning and effect of the relevant legislation.	Prohibition applies notwithstanding any purported clarifications issued by the EU / UK authorities concerning the alleged meaning and effect of the Regulations. Any such purported clarifications are irrelevant to the true construction of the legislation.

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Cancellation / amendment of War Risks coverage

(See Annex A page 6)

LESSOR ARGUMENTS	INSURER DEFENCES
Service of notices of amendment of geographical limits / cancellation of cover for Russia: <ul style="list-style-type: none">• losses had already occurred prior to service of such notices;• lessors already in the course of repossession of aircraft;• insurers not entitled to serve notices in respect of losses which had already occurred.	Amendment of geographical limits / cancellation of cover for Russia took effect prior to any alleged loss.

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Loss mitigation

LESSOR ARGUMENTS	INSURER DEFENCES
N/A	Failure to mitigate losses by the lessors: <ul style="list-style-type: none">• not shown they have taken all reasonable steps to recover aircraft;• not exhausted all routes under the operator policies.

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Cancellation / amendment of War Risks coverage

(See Annex A page 6)

LESSOR ARGUMENTS	INSURER DEFENCES
Service of notices of amendment of geographical limits / cancellation of cover for Russia: <ul style="list-style-type: none">• losses had already occurred prior to service of such notices;• lessors already in the course of repossession of aircraft;• insurers not entitled to serve notices in respect of losses which had already occurred.	Amendment of geographical limits / cancellation of cover for Russia took effect prior to any alleged loss.

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Loss mitigation

LESSOR ARGUMENTS	INSURER DEFENCES
N/A	Failure to mitigate losses by the lessors: <ul style="list-style-type: none"> not shown they have taken all reasonable steps to recover aircraft; not exhausted all routes under the operator policies.

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Other insurance in the market

(See Annex A page 7)

LESSOR ARGUMENTS	INSURER DEFENCES
N/A	Freestanding insurance policies exist in the market: <ul style="list-style-type: none"> covering the lessor in the event that it is unable to repossess; deprivation cover in a political risk policy.

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BOCA v. ABC and Volga-Dnepr [11 April 2023]

- Case brought by BOCA against airline (and guarantor)
- Brought in the New York courts
- Considered, among other things, whether an Event of Loss occurred under the lease agreement as a result of the Russian circumstances
 - held that an Event of Loss had occurred
 - among other things, held that a 'seizure' had occurred:
 - '(d) the condemnation, confiscation or seizure of, or requisition of title to, or requisition of use (for a period in excess of sixty (60) days, but in any event no longer than the last day of the Term) of such Item by any Government Body'
 - rejected that it was necessary for the Russian Federation to have taken possession of aircraft
 - language of limb (d) of definition (see above) is broad and includes actions involving possession (confiscation) and those that do not (requisition of title/use)
 - in other contexts the Supreme Court cited that possession not required to seize an asset
 - seizure occurs when 'there is some meaningful interference with an individual's possessory interests in that property'
 - in this context, sufficiently meaningful interference such that government takes one of the rights commonly associated with ownership such as the right to exclude or use
 - such interference does not need to be permanent
 - Russian Regulation 311 frustrated the rights of BOCA to repossess under the lease and the duties of the airline to return the aircraft, which constitutes a seizure even where aircraft not in physical possession of government

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Review of current insurance practice

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Review of current insurance practice

1. Airline cover:

- a. Non-receipt of insurance and reinsurance policies
 - i. Key features and implications unknown
 - Governing law
 - Dispute resolution
 - Effect of cut-through clauses (see below)
- b. Certificates 'subject to policy'
 - i. Policy not received (see above)
- c. Identifying insurers and reinsurers
 - i. Naming parties to litigation
 - ii. Establishing sanctions applicability
 - Insurers are severally liable
 - How many and in what proportions are subject to sanctions such as UK / EU regulations?
- d. Aggregate limits
 - i. On a policy basis, not on a per lessor basis
 - ii. Excess uninsured
 - iii. Allocation (assuming valid claims actually paid out)

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Review of current insurance practice

2. Reinsurance:

- a. Effectiveness of cut-through clauses (see Annex A page 9)
 - i. Difficult to assess in the absence of full policy disclosure
 - Form / exclusions
 - Jurisdiction – governing law may impact effectiveness
 - ii. English law
 - Incorporation of AVN72 (see Annex A page 9)
 - Purports to exclude applicability of Contracts (Rights of Third Parties) Act 1999
 - Question as to enforceability
 - iii. Typically state that direct payment to 'Contract Parties' **is subject to compliance with local law** (see Annex A page 9)
 - Unclear as to whether such clauses would contravene Russian law
 - Russian law re prohibition on Russian insurance companies from reinsuring risks with reinsurance companies in "unfriendly states" without a permit, including transfers of funds under contracts concluded before the new law came into effect
- b. Additional assignment of insurances and reinsurances:
 - i. Typically assigns as security insurance / reinsurance proceeds under hull and hull war cover
 - ii. Current and future practice – additive or necessary?
 - iii. Would an assignment make a difference in light of sanctions?

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Review of current insurance practice

3. Governing law of policies, dispute resolution, and expected cover:
 - a. Differing effect of governing law and forum, including “pro-insurer” or “pro-insured” jurisdictions
 - b. Availability of specific policy clauses
 - c. Defences available (third party involvement in litigation, non-disclosure)
 - d. Will potentially different decisions from different jurisdictions impact choice of governing law in the future?
4. Termination of the leasing of aircraft:
 - a. Termination mechanics in light of insurance (See Annex A page 10)
 - b. Provisions stated to survive termination – do they survive in a legally mandated termination?

Insurance market conditions

Insurance market conditions

1. Nuclear detonation and insurance:
 - a. AVN52E / LSW555D (see Annex A page 11)
 - b. Automatic termination
 - i. Upon outbreak of war (whether or not declared)
 - ii. Between any two or more of France, China, Russia, UK and US
 - iii. Or hostile detonation of any weapon of war employing nuclear fission
2. Overall sub-limits
 - a. Nuclear
 - b. China
 - c. Confiscation-type risks (see below)
3. Cap on All Risks hull insurances
4. New clauses being seen upon renewals
 - a. Loss Additional Premium (see Annex page 12)
 - b. Sub-limits for confiscation-type risks – different limits for different airlines – also on lessor contingency policies (see Annex A page 12)

Potential changes to insurance market practice

1. What do we see as potential changes to market practice going forward?
 - a. Changes to leasing terms and/or standard policy endorsements
 - i. Require policy
 - ii. Assignment of insurances / reinsurances
 - iii. Bolster 'change of market practice' clause (see Annex A page 13)
 - iv. Sanctions endorsements
 - b. Market views on AVN67B in light of Russian experience
 - c. When can something be stated to be a 'change to market practice'?
 - d. Collective action vis-à-vis the insurance market?



Insurance – assessing developments and implications from Russia experience

Annex A

Produced with the support of Watson, Farley & Williams LLP

May 2023

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Recurring legal themes of the litigation – Basis of claim (All Risks, War Risks, Other)

Sample excluded perils under an All Risks policy (AVN48B):

"(a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.

...

(d) Any act of one or more persons, whether or not agents of a sovereign Power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.

...

(f) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any Government (whether civil, military or de facto) or public or local authority.

...

Furthermore, this Policy does not cover claims arising whilst the Aircraft is outside the control of the Insured/Operator by reason of any of the above perils..."

Sample war perils under a War Risks policy (LSW 555 D):

"(a) War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, martial law, military or usurped power or attempts at usurpation of power.

...

(c) Any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional.

...

(e) Confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or de facto) or public or local authority.

...

Furthermore, this Policy covers claims excluded from the Hull "All Risks" Policy from occurrences whilst the aircraft is outside the control of the Assured by reason of any of the above perils..."

Sample Deprivation Clause

"In the event of the Insured being deprived of the use or possession of the whole or part of any Aircraft (whether or not said items are physically damaged), after a period of [X] calendar months has lapsed from the date it has become apparent to the Insured and advised to Insurers that they cannot remove the Aircraft from the country in which the Aircraft is operating and/or are prevented from reregistering the Aircraft, the Insurers will pay the agreed values of the items insured (or apportionable part thereof) of which the Insured is so deprived. It is warranted that the Insured co-operates with Insurers to make every reasonable and repeated effort to remove or reregister the property during the aforesaid period of [X] months."

Recurring legal themes of the litigation – Contingent vs possessed cover

Sample contingent cover clauses

"To pay for physical loss of or damage, sustained during the Period of Insurance, to Aircraft as per the Schedule of Aircraft, the subject of a Lease/Finance Agreement, that are not in the care, custody or control of the Insured and in respect of which physical damage coverage is required to be provided under the Principal Policy, in the event that the Insured is not indemnified in whole or in part under the Principal Policy."

Any property to which the contingent coverage applies "shall be subject to a Lease/Finance Agreement the terms of which require the Principal Policy to be endorsed with the Airline Finance/Lease Contract endorsements designated AVN67B/AVN67B (Hull War) or AVN67C/AVN67C (Hull War), as appropriate, or with comparable endorsement language intended to achieve a similar purpose, or with endorsement language notified to and approved by Insurers hereon."

"Principal Policy means the policy or policies required to be effected by the Operator pursuant to the provisions of the Lease/Finance Agreement (inclusive of policies such as hull deductible policies as may be necessary to meet the lease/finance requirements."

Sample possessed cover clause

"To pay for physical loss of or damage, sustained during the Period of Insurance, to Aircraft as per the Schedule of Aircraft:

- (1) awaiting the commencement of a Lease / Finance Agreement or closure of a sale, or
- (2) having been returned on the expiry or termination of a Lease / Finance Agreement, or
- (3) (i) having been repossessed, or
- (ii) which are in the course of repossession from a Lease / Finance Agreement, or
- (4) in the care, custody or control of the Insured."

Sample exclusion clauses re contingent cover / possessed cover

"This Policy does not cover...:

- (a) that part of any loss or damage for which indemnity is obtained as a claim under the Principal Policy.

...".

Insurers are not "liable for any claims which are payable, whether or not payment has been made, under any other insurance or insurances".

Recurring legal themes of the litigation – Sanctions

AVN111 Sanctions and Embargo Clause

Notwithstanding anything to the contrary in the Policy the following shall apply:

1. If, by virtue of any law or regulation which is applicable to an Insurer at the inception of this Policy or becomes applicable at any time thereafter, providing coverage to the Insured is or would be unlawful because it breaches an embargo or sanction, that Insurer shall provide no coverage and have no liability whatsoever nor provide any defence to the Insured or make any payment of defence costs or provide any form of security on behalf of the Insured, to the extent that it would be in breach of such law or regulation.
2. In circumstances where it is lawful for an Insurer to provide coverage under the Policy, but the payment of a valid and otherwise collectable claim may breach an embargo or sanction, then the Insurer will take all reasonable measures to obtain the necessary authorisation to make such payment.
3. In the event of any law or regulation becoming applicable during the Policy period which will restrict the ability of an Insurer to provide coverage as specified in paragraph 1, then both the Insured and the Insurer shall have the right to cancel its participation on this Policy in accordance with the laws and regulations applicable to the Policy provided that in respect of cancellation by the Insurer a minimum of 30 days notice in writing be given. In the event of cancellation by either the Insured or the Insurer, the Insurer shall retain the pro rata proportion of the premium for the period that the Policy has been in force. However, in the event that the incurred claims at the effective date of cancellation exceed the earned or pro rata premium (as applicable) due to the Insurer, and in the absence of a more specific provision in the Policy relating to the return of premium, any return premium shall be subject to mutual agreement. Notice of cancellation by the Insurer shall be effective even though the Insurer makes no payment or tender of return premium.

EU Regulation 2022/328

Article 3c(2) (applied with effect from 26 February 2022):

It shall be prohibited to provide insurance and reinsurance, directly or indirectly, in relation to goods and technology listed in Annex XI to any person, entity or body in Russia or for use in Russia.

UK Regulation

Reg 29A of the Russia (Sanctions) (EU Exit) Regulations 2019 prohibits the provision, directly or indirectly, of "insurance or reinsurance services relating to aviation and space goods or aviation and space technology" to a "person connected with Russia" or "for use in Russia". Applied with effect from 8 March 2022.

Recurring legal themes of the litigation – Cancellation / amendment of War Risks coverage

Sample clause

"Insurers may give notice effective on the expiry of 7 days from midnight GMT on the day which notice is issued, to review the rate of premium and/or the geographical limits. In the event of the review of the rate of premium and/or geographical limits not being accepted by the Insured then at the expiry of the said 7 days, this Section shall become cancelled at that date but only in respect of the insured property which is the subject of such notice."

Recurring legal themes of the litigation – Other insurance in the market

Sample Total Loss Only Clause

"In the event of a claim arising under this Section being settled as a Total Loss, Constructive Total Loss or Arranged Total Loss, the Insurers shall pay the Insured Proportion of the agreed value of the Aircraft, engine or component. ... Unless the Insurers elect to take the Aircraft, engine or component as salvage the Aircraft, engine or component shall at all times remain the property of the Insured who shall have no right of abandonment to the Insurers."

"Total Loss" means when:

- (a) the cost of repairs exceeds the agreed value of the Aircraft, engine or component; or
- (b) the Aircraft, engine or component is damaged to such an extent that it cannot be repaired; or
- (c) the Aircraft, engine or component is missing and not reported for a period of 24 hours or more."

"Constructive Total Loss" means when the cost of repairs to the Aircraft, engine or component is estimated at 75% or more of the agreed value of the Aircraft, engine or component. However, if, in respect of contingent coverage, a differing percentage is specified in the Lease/Finance Agreement, then the percentage specified in the Lease/Finance Agreement shall instead apply."

LSW147 – Insured Perils

"Means an action taken by, or refusal or failure by, the Foreign Government, being:

- (a) confiscation, seizure, appropriation, expropriation, nationalization, restraint, detention or requisition for title or use of the Insured Equipment by the Foreign Government; or
- (b) refusal or failure of the Foreign Government to allow the Assured to exercise its rights to repossess the Insured Equipment in accordance with the terms and conditions of the Lease Agreement; or
- (c) refusal or failure of the Foreign Government to allow the Assured to remove the Insured Equipment from the Foreign Country following the Assured's exercise of its rights to repossess the Insured Equipment in accordance with the terms and conditions of the Lease Agreement (or its mortgage over the Insured Equipment); or
- (d) refusal or failure of the Foreign Government to allow the Insured Equipment to be deregistered from the aviation register of the Foreign Country following the Assured's exercise of its rights to repossess the Insured Equipment in accordance with the terms and conditions of the Lease Agreement; or
- (e) refusal or failure of the Foreign Government, following a compulsory disposal or divestiture of the Equipment in the Foreign Country, to allow the Assured to obtain the proceeds of sale, disposal or divestiture in United States dollars or another currency which is freely convertible into US dollars in the international exchange markets, following Perils as per 1(a), (b) and (c) above,

provided always that Underwriters, hereon not be liable for any loss or damage to the Insured Equipment unless the action by the Foreign Government is effective for a period not shorter than the applicable Waiting Period specified in the Schedule hereto.

Review of current insurance practice – Termination of the leasing of aircraft

Review of current insurance practice – Reinsurance

Sample cut-through clause (AVN 109)

"The Reinsurers hereby agree, at the request and with the agreement of the Reinsured, that if a valid hull or aircraft spares claim arises hereunder the Reinsurers shall pay to the order of the party/ies entitled to indemnity under the original insurance effected by the Insured that portion of any loss which the Reinsurers would otherwise be liable to pay to the Reinsured, subject to the following provisions:

- (1) such loss payment shall be in lieu of payment to the Reinsured or its successors in interest and assigns, and shall fully discharge and release the Reinsurers from any and all liability in connection with such a claim under the hull and aircraft spares insurance;
- (2) such loss payment shall be made notwithstanding non-payment of the Reinsured's portion under the original insurance;
- (3) the Reinsurers reserve the right to set off against such payment any outstanding premiums due on the subject hull or aircraft spares;
- (4) if the Reinsured is declared insolvent, bankrupt, in liquidation, in dissolution or in administration by a court of competent jurisdiction to which the Reinsured is subject, the Reinsurers shall only be obliged to make payment under this Endorsement if the court consents to such payment and confirms that such payment fully discharges and releases Reinsurers from liability in relation to such a claim under the full or aircraft spares insurances, such consent and confirmation being in a form satisfactory to the Reinsurers. The Reinsurers shall take reasonable steps to obtain such consent and confirmation at Reinsurers' cost. If there is a dispute as to such matters, then the Reinsurers' liability shall be determined by such court at Reinsurers' cost, prior to payment;
- (5) Reinsurers shall not be obliged to make a payment under this Endorsement if such payment would contravene the laws of the jurisdiction to which the Reinsured is subject. The Reinsurers and the Reinsured shall each take all reasonable steps at their own cost to obtain any necessary governmental consent or licence in order to permit such payment to be lawfully made.

AVN72

"The rights of a person who is not a party to this insurance or reinsurance to enforce a term of this insurance or reinsurance and/or not to have this insurance or reinsurance rescinded, varied or altered without his consent by virtue of the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded from this insurance or reinsurance."

AVN67B vs AVN67C

"It is noted that the Contract Party(ies) have an interest in respect of the Equipment under the Contract(s). Accordingly, with respect to losses occurring during the period from the Effective Date until [the expiry of the Insurance or until the expiry or agreed termination of the Contract(s) or until the obligations under the Contract(s) are terminated by any action of the Insured or the Contract Party(ies)], whichever shall first occur, in respect of the said interest of the Contract Party(ies)] [in the date and time at which the Insurance expires or, if earlier, (ii) the date and time at which the Insured has no further obligation to insure the Equipment under the Contract(s), as notified in writing by the Designated Contract Party to the Insurers (via the Appointed Broker, if any) such notification to be given promptly and in any event within 30 days after such date],¹ and in consideration of the Additional Premium it is confirmed [in respect of the said interest(s) of the Contract Parties]² that the Insurance afforded by the Policy is in full force and effect and it is further agreed that the following provisions are specifically endorsed to the Policy....".

"Nevertheless, no Contract Party shall be entitled to claim a loss by theft or alleged theft of the Equipment under the hull insurances by reason of the actual or alleged dispossession or refusal or failure to redeliver the Equipment by the Insured or any other Contract Party, but this shall not exclude any claim by a Contract Party by reason of loss of or damage to the Equipment (other than loss by such theft) during the period of this Endorsement."⁴

¹ AVN67B
² AVN67C
³ AVN67C
⁴ AVN67C

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Insurance market conditions – New clauses being seen upon renewals

Loss Additional Premium

"In respect of the period from [X] to [Y], if the Insured or any Additional Insured has presented, or at any time in the future shall present, any claim(s) which result in Insurers paying an aggregate amount in respect of such claim(s) in excess of US[x] (inclusive of legal costs and expenses for which coverage is afforded under the policy) after the application of any deductible in any one annual period of insurance, the Insured shall be liable to pay to [underwriter] an additional net premium calculated at [X]% of the total amount paid by [underwriter] in respect of such claim(s), subject always to the following conditions:

a - This clause is not intended to extend or limit the requirement to give notice to insurers of the happening of any event likely to give rise to a claim under the Policy in accordance with their notification obligations under the Policy.

b - The additional premium shall be payable within [X] days of insurers paying to the Insured an aggregate amount in respect of any claim(s) that exceeds US[x]. In the event of a first party claim and without prejudice to the foregoing, the additional premium shall be offset against any indemnifiable loss under the Policy prior to payment to the Insured.

c - The amount of the additional premium paid by the Insured shall be adjusted (upward or downward) upon final settlement of the claim(s) with the final additional net premium calculated as [X]% of the total amount paid in excess of USD[x] in respect of any claim(s), less any recoveries made by insurers.

d - The additional premium shall be reduced proportionately by any salvages, recoveries and payments received by insurers subsequent to a loss settlement and [underwriter] agree to return to the Insured any refund due in respect of the recalculated additional premium within [X] days.

Net in this context shall be construed to mean after all deductions, brokerage fees, overrides."

Insurance market conditions – Nuclear detonation and insurance

LSW 555 D – Cancellation Clause

"Notwithstanding Condition [X] above, this Section is subject to automatic review by Insurers of the rate of premium and/or conditions and/or the geographical limits effective on the expiry of 7 days from the time of any hostile detonation of any device including any weapon of war employing automatic of nuclear fission and/or fusion or other like reaction or radioactive force or matter wheresoever or whensoever such detonation may occur and whether or not the insured property may be directly affected. In the event of the review of the rate of premium and/or conditions and/or geographical limits not being accepted by the Insured then at the expiry of the said 7 days this Section shall become cancelled at that date."

Confiscation-type risks

"This Policy is subject to an aggregate sum insured limit of USD750,000,000 applying over the Insured's fleet of aircraft and spares, with sub-limit of USD180,000,000 in respect of confiscation, nationalisation, seizure, restraint, detention, appropriation, requisition for title or use by or under any Government."

Potential changes to insurance market practice

Sample clauses in respect of change of insurance market

"Lessor may from time to time stipulate such other requirements for the Insurances as Lessor reasonably considers necessary to ensure that the scope and level of cover is maintained in accordance with the then prevailing industry practice in relation to aircraft of the same type as the Aircraft and in relation to air carriers similarly situated as Lessee. In the event that Lessor makes any such stipulation, Lessor shall notify Lessee accordingly and Lessor and/or its brokers shall then consult in good faith with Lessee and Lessee's brokers (as for the time being approved by Lessor) with regard to such stipulation. Following the consultation, if Lessor confirms that the stipulation should be made, Lessee shall then comply with the stipulated requirements."

"The Lessor may from time to time stipulate other requirements for the Insurances based on what is generally available in the leading international aviation insurance markets so that:

- (i) the scope and level of cover are maintained in line with best industry practice; and
- (ii) the interests of the Relevant Parties continue to be fully protected."

"If any time during the Lease Term, Lessor or Lessee considers that the Insurances:

- (a) are no longer available in the aviation insurance market on commercially reasonable terms; or
- (b) no longer reflect market practices of other international airlines of similar repute as Lessee operating similar types of Aircraft,

Lessor or Lessee (as the case may be) shall be entitled to notify the other party, and the parties shall consult in good faith to agree and effect any changes to the insurance requirements set out in this Agreement."

Annex III: AWG work on mitigating political risk in the transactional context



AWG work on mitigating political risk in the transactional context

17 May 2023

London

Jeffrey Wool

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Index

1. Proposed resolution 3 (political risk mitigation)
2. Mitigation of political risk in the transactional context
3. Mitigating political risk in transactional contexts in CTC countries – resolution 3a
4. Mitigating political risk in transactional contexts in non-CTC countries – resolution 3b

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Proposed resolution 3 (political risk mitigation)

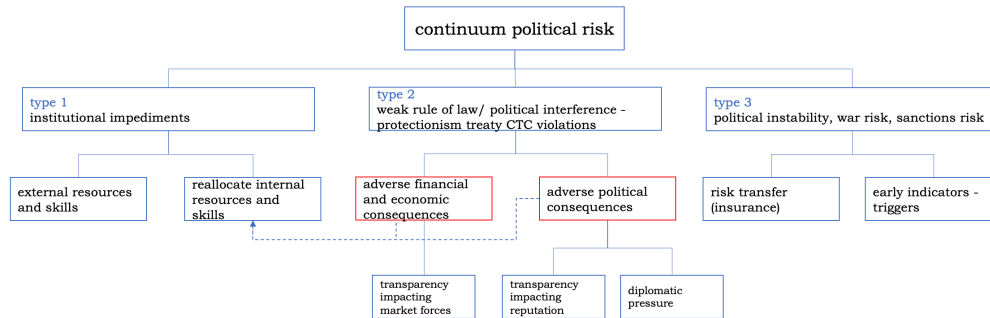
Without limiting internal secretariat work under prior resolutions, AWG assess and effect means to **mitigate political risk in the transactional context**, which, as determined by the secretary, may include the following action:

- (a) re CTC contracting states, enhancing means and techniques for CTC compliance interventions and seeking support for that compliance from government bodies; and
- (b) re non-CTC contracting states (i) developing, posting, and keeping current metrics, standards, and/or scoring on the application of, and adherence to, asset-based financing and leasing (including timely, effective, and predictable remedies) and the rule of law principles, and (ii) seeking means and techniques to enhance such application and adherence from government bodies.

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Mitigation of political risk in the transactional context

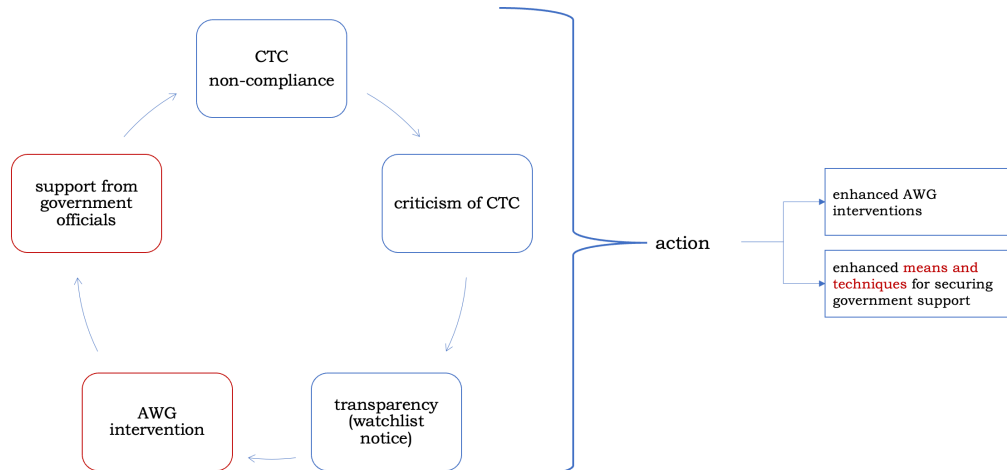


*/ review contract provisions, including on disputes and real-time access to e-records impacting all types

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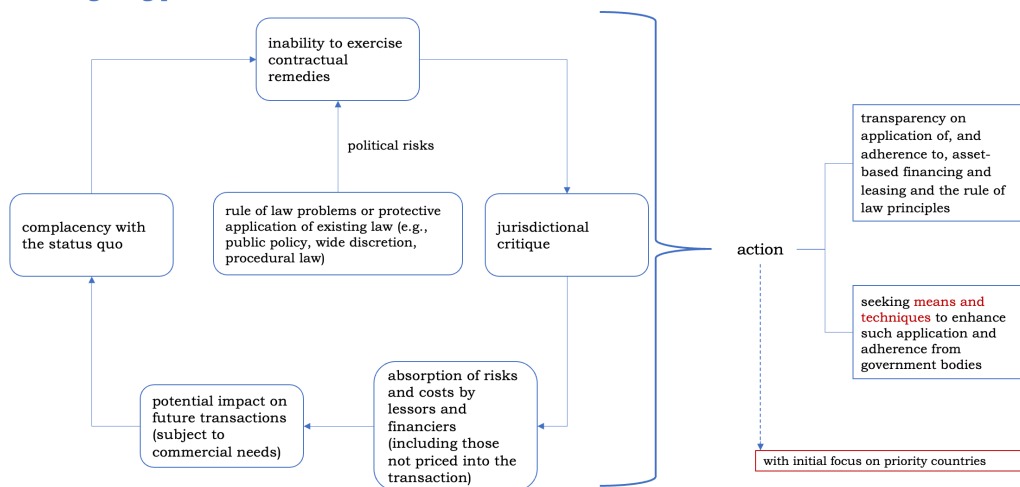
Mitigating political risk in transactional contexts in CTC countries – resolution 3a



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Mitigating political risk in transactional contexts in non-CTC countries – resolution 3b



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ICAO XBT guidance materials and related developments

1.1 **ICAO XBT guidance materials.** As anticipated, in early November 2022, ICAO published, in unedited form, a new Registration and Deregistration Manual as well as new guidance on maintenance of aircraft without registration that supplements previously issued amendments to Annexes 7 and 8. Amendments to the ICAO Airworthiness Manual recommended by the XBT-TF have been approved by all necessary ICAO processes and ICAO currently expects to publish them in unedited form by the end of 2023 as part of a large number of revisions unrelated to XBT matters. The substance of published unedited guidance may be relied upon because the remaining work only involves translation of the text into the other ICAO official languages and conformation of formats to ICAO style.

1.2 **Baseline airworthiness criteria.** AWG was granted permanent status on the ICAO Airworthiness Panel (**AIRP**) in 09.2022. This allows AWG to designate an individual to participate in AIRP and its working groups and to designate advisors to other AIRP projects. Under ICAO protocols organizational representatives are considered to be individual experts speaking for themselves. AWG's current designee is Paul Dillon (Abelo). In 2022, on a recommendation by the XBT-TF, AIRP Working Group 1 (**WG1**) formed a task force to consider the advisability of establishing a globally harmonized set of criteria for assessing the airworthiness of an aircraft. Prosper Preau (Airbus) is one of our designees on this issue and we have nominated Thomas Hanson (Boeing) to fill the other slot. During AIRP's ninth plenary meeting (**AIRP/9**) held 07-11.11.2022, the task force recommended, and WG1 accepted, that such baseline airworthiness criteria be developed. Having baseline airworthiness criteria should be useful in various XBT situations as well as other circumstances such as airworthiness assessments of AWG member aircraft leased to Russian operators if and when they are returned (see paragraph 5.1.4).

1.3 **Other AIRP matters.** Our primary designee to the AIRP, Paul Dillon (Abelo), participated in **AIRP/9**. Many subjects were covered during the plenary and working group sessions, but AIRP's deliverables directly impacting our XBT objectives were proposals to (i) add provisions in, or develop guidance for, Annex 6 to reduce duplication of certification and surveillance activities of AMOs and (ii) facilitate harmonization and mutual recognition of AMOs and acceptance of their maintenance. It was noted that the intent of these deliverables would be substantially achieved if States were to standardize and harmonize their applicable legislation by adopting recently amended maintenance organization SARPs in Annex 8 and associated changes to Annexes 1 and 6. These would enable a State to directly accept AMO approvals issued by another State or to carry out a reduced level of assessment and oversight if the State wished to issue its own approval (that is, re-issue the approval). AIRP/9 cautioned that it is impossible to mandate reduced assessment and oversight if a State desires to reissue approval as it is up to each State to decide what level of assessment is appropriate and how ongoing oversight should be carried out. AWG does not purport to have expertise on these issues but, as discussed in paragraph 42, strongly supports the principle of process and document standardization and global harmonization when safety and efficiency are thereby promoted.

2. AWG XBT Practitioners' Guide (XBT-PG) – developments and next steps

2.1 **Initial posting of XBT-PG.** After incorporating comments received from SG-3 members in January on a draft of the XBT-PG circulated in December 2022, and making edits to reflect details in and cross-references to the newly published ICAO XBT guidance.

2.2 **Further development of XBT-PG.** From inception, the XBT-PG was designed to be primarily, perhaps exclusively, an online resource so that it can be easily updated and revised based on AWG member experience. The core text of the recently posted XBT-PG is well-developed but many of the appendices contemplated in the text for checklists and recommended forms remain to be prepared. We are currently working on those. Going forward, SG-3 will be requesting input from AWG members regarding their experience with actual XBTs. Information about XBTs that successfully use ICAO best practices will be helpful to record as well as reports indicating specific ways a particular XBT would have benefited from adoption of such practices. This will provide

examples to cite for demonstrating the benefits of using XBT best practices while pinpointing jurisdictions where we might propose, and assist in implementation of, improved XBT processes and harmonized documentation.

2.3 Transfer document checklist. The AWG/IATA transfer document checklist is included as an appendix to the XBT-PG both as an example of checklists as such and as a suggested baseline for CAAs to use for providing transparency regarding deviations or additions from such checklist used in their XBTs. The original transfer document checklist was developed jointly by AWG and IATA and has been widely adopted. Early this year, IATA provided comments on updates proposed by AWG some time ago. An SG-3 team led by Aileen Carroll (AerCap) promptly considered IATA's suggestions and the document is now at or near completion. The updated version will be posted on the AWG and IATA websites and the XBT-PG will link to it.

3. **Advocacy for XBT process and documentation simplification and harmonization.**

3.1 Overview. The XBT-PG's overarching theme is that the XBT best practices recommended in the new ICAO XBT guidance simplify and harmonize (globally and intra-jurisdictionally) XBT processes and documentation thereby enhancing safety outcomes while improving efficiency. The XBT-PG aims to facilitate implementation of such best practices, with an initial focus on wider use of delegation; adoption of common checklists and forms (including early adoption of the revised export certificate of airworthiness and the new certificate of deregistration); use and acceptance of electronic records (see paragraph 4.2 and development of electronic platforms see paragraphs 4.3 and 4.4).

3.2 Coordination with ICAO and others. ICAO's plans for rolling out its new XBT guidance have not been finalized but AWG will actively support. We have proposed in-person meetings in Montreal at least annually with ICAO, IATA and various civil aviation authorities (CAAs) to assess progress and discuss opportunities for the XBT-TF to develop proposed supplements and revisions to the ICAO XBT guidance materials. A meeting of SG-3 in which IATA, ICAO, FAA, Irish Aviation Authority, and Bermuda Civil Aviation Authority participated was very useful in this regard. Materials of that meeting are in the [e-binder](#).

3.3 Consultations with civil aviation authorities (CAAs). SG-3 members have provided information, anecdotally and by answering a questionnaire circulated in December 2022, to identify those jurisdictions where XBT process and document improvements would produce the most immediate safety and efficiency benefits for their CAAs and other XBT participants. We are mindful that ICAO guidance materials are, for the most part, not mandates that ICAO member states are required to follow. Accordingly, we must consult with CAAs proactively to encourage and support their implementation of the best practices critical to realization of the potential efficiency and safety benefits underlying our efforts to date. We will need AWG member participation for such consultations and for securing support of operators, who will also benefit. The first detailed consultation on XBT is expected to be with Brazil's CAA during meetings scheduled for 13-14.06.

3.4 Support from AWG regional and national contact groups (RNCGs). We have engaged our global legal network, including and especially our Cape Town Convention RNCGs, to aid (pro bono) our XBT advocacy work. Their contributions will include researching pertinent existing legislation and regulations in their jurisdictions, for example, assessing whether delegation is permitted and uses the best practices encouraged by the ICAO guidance. There will likely be opportunities for RNCGs to prepare draft legislation, regulations, model forms, and checklists to facilitate adoption of various XBT best practices in their jurisdictions.

4. **Electronic records and XBT-related electronic platforms**

4.1 Use and acceptance of electronic records. This was expected to be a primary issue for the XBT-TF when its work commenced in 2017. However, by the final XBT-TF plenary meeting in January/February 2019, it had become clear that the aviation industry was well along in adopting and using electronic maintenance records, as well as developing protocols and systems to transfer records between owners and operators when an aircraft is moved. Full acceptance of electronic documents and records by CAAs in XBT and other contexts continues to progress, though at a slower speed -- even though encouraged by c-19 pandemic logistics. Our agenda for

rollout of the ICAO XBT guidance and the XBT-PG includes advocacy for such adoption and use (see **resolution 6**).

4.2 ICAO electronic documents and certificates task force (EDC-TF)

4.2.1 ICAO's Air Navigation Commission (**ANC**) recently created the EDC-TF to coordinate of work of its Flight Operations Panel (**FLTOPSP**), AIRP, and XBT-TF on developing electronic versions of various ICAO documents and certificates. These will include the following workstreams handled by the indicated group:

- **FLTOPSP** – aircraft operator's certificate, operational documents, and manuals
- **AIRP** – certificate of airworthiness and continuing airworthiness records
- **XBT-TF** – certificates of registration and de-registration

and, in each case, such other items as the groups may identify.

4.2.2 On 09.02 EDC-TF convened its first plenary meeting (**EDC-TF/1**). A presentation was given by ICAO's electronic personnel license task force (**EPL-TF**) whose development of an e-personnel license established various principles and issues that the EDC-TF will need to address when expanding the use of electronic documents and certificates. These principles and issues are summarized in the minutes of EDC-TF/1 and the EPL-TF presentation [both of which can be found in the [e-binder](#)].

4.2.3 AWG attended EDC-TF/1 and participated in sessions of XBT-TF (20.04) and FLTOPSP (27.04) and will attend the second EDC-TF plenary meeting (**EDC-TF/2**) scheduled for 25.05.

4.3 **Implementation and promotion of trusted communication facility (TCF).** The TCF system was detailed at the October 2021 AWG meeting. A full description of the TCF can be found in the [e-binder](#). The TCF became fully operational in November 2022. We are coordinating with the XBT advocacy efforts described above to encourage CAAs and others to open TCF accounts. We anticipate that the TCF will either be a part of, or supplement to, the e-XBT platform described below.

5. **Calendar age-based import restrictions (CABIRs) – next steps.** The ICAO XBT guidance notes the lack of correlation between calendar age and safety and that implementation of the XBT process efficiencies (such as delegation and document standardization) encouraged by such ICAO guidance would reduce resource issues often cited as justification for CABIRs while leading to more effective airworthiness assessments. AWG is cognizant of, and carefully assessing, the potential climate change (and related political) issues associated with facilitating use of older aircraft for more of their safe operational expected lives. Yet, several of our members operate in this space, and long useful lives are basic to the industry's economics. In addition, the draft EU taxonomy rules currently favor those with older fleets. All of the foregoing raise important policy points for AWG.

6. Global support network; relations with other organizations and groups

6.1 EASA and EU matters

6.1.1 **EASA Stakeholders' Advisory Body (SAB).** Ken Delaney (AerCap) is AWG's representative on the SAB, and his AerCap colleague Cathal Mullane is his designated substitute. They are monitoring SAB proceedings for issues of relevance to AWG members.

6.1.2 **SAB17.** The 17th meeting of SAB (**SAB17**) held 15-16.11-2022 covered matters including aviation's impact on climate change generally and EASA's "eco-labeling" project the intent of which is to assist ticket buyers in choosing a flight using the option of selecting routes identified (once airlines opt in) with an 'efficiency comparison label' (based on route and aircraft type). Although EASA has

advised that eco-labeling would be voluntary, the discussion nevertheless raised numerous and substantial issues regarding the quality and source of necessary data inputs, the need to recognize that aircraft types and specific tail numbers change constantly on given routes, and whether the project fits within EASA's safety remit. There was also discussion of EASA's cost-savings decision to replace certain SAB sub-groups, including the Engineering & Technical Committee (**EM.TEC**) discussed in paragraph 6.1.4 below. A copy of Ken's notes on these and other agenda items is in the [e-binder](#) and includes links to the presentations pertaining to environmental matters.

6.1.3 **SAB18.** The 18th meeting of SAB (**SAB18**) held 14-15.03 in Madrid also covered numerous topics, including continuation of the restructuring of EM.TEC. The eco-labeling project was discussed at SAB18 as well as a special dedicated session on 17.04. AWG has also requested that SAB be kept advised of the results of an EASA case study project on digitization as it could be relevant to SG-3 work on electronic records and platforms. The next plenary SAB plenary meeting (SAB19) is scheduled for 21-22.06.

6.1.4 **EASA Engineering & Technical Committee (EM.TEC).** Ken Delaney (Aercap) is also the AWG representative to EM.TEC which met on 01.12. The session dealt with numerous topics (see agenda in [e-binder](#)). AWG and several other industry group representatives raised concerns about EASA's plan to combine several working groups, including EM.TEC, into a consolidated "community group". This could make it more difficult for AWG to raise issues, particularly because EASA would not attend sessions of the consolidated group. EASA has agreed to revisit the new structure if industry were not satisfied with how it was functioning. AWG expressed disappointment with the postponement of RMT.0278 (see discussion in paragraph 6.1.5 immediately below), which EASA advised was due to resource constraints. AWG continued to advocate for remote airworthiness review certification (**ARC**) inspections which had proven useful during the covid-19 pandemic, but Airbus expressed reluctance to support remote ARC inspections because certain senses (e.g., smell) are lost. AWG suggested that a local EASA-approved designated person could address those concerns, as demonstrated by the FAA's acceptance of ARC inspections by designated airworthiness representatives (DARs). Consideration of this item will be continued. We note that AWG colleague Prosper Preau (Airbus) is also on EM.TEC representing the AeroSpace and Defense Industries Association of Europe.

6.1.5 **European Plan for Aviation Safety (EPAS) 2022-26.** The 11th EPAS was issued in the fourth quarter of 2021. Although AWG has no direct involvement in the work program of EPAS, the following rulemaking tasks (**RMTs**) could bear on our XBT efforts regarding standardization of airworthiness assessment processes and the ICAO baseline airworthiness criteria project are thus being monitored:

- **RMT.0521: Airworthiness review process** (Performance of a full review of the airworthiness review process to introduce an improved framework to mitigate the risks linked to a faulty airworthiness review with potential safety consequences where the actual airworthiness status of the aircraft is below the standard). Potentially relevant to.
- **RMT.0278: Importing of aircraft from other regulatory systems and Part 21 Subpart H review** (Develop criteria for importing of aircraft from other regulatory systems and Part 21 Subpart H review considering recommendations from the ICAO airworthiness panel). As noted above, EASA has postponed initiating this project.

Our objective would be to assure that the outcomes of these RMTs are not in conflict with the corresponding ICAO XBT efforts or, if the final approach of an RMT represents an improved practice, that it is incorporated in the next ICAO XBT guidance and the XBT-PG.

6.1.6 **EU working group on rehabilitation of aircraft.** At the start of the Russian/Ukraine conflict in February 2022 and the subsequent imposition of sanctions impacting aircraft leased to Russian operators, we initiated a safety and aircraft preservation (**SAAP**) project to establish a sanctions-compliant protocol for receiving records and other information about the condition, maintenance, and usage of AWG member aircraft in Russia with a view towards facilitating the applicable states of registration for such aircraft under the Chicago Convention (generally, Ireland and Bermuda) to assess the airworthiness of such aircraft if and when returned to their owners. For political reasons, the SAAP project itself did not gain traction with potential sponsoring organizations, but did lead to formation of an EU working group tasked with the same and related matters. AWG

sought and received approval to participate on this working group which, drawing on the output of our SAAP project and advice of other working group members, developed a list of considerations for evaluating airworthiness of aircraft on return from uncertain oversight and maintenance situations such as now exist with regard to our members' aircraft in Russia. The working group gave the list to ICAO which indicated an intention to finalize and distribute it to Member States. That has not yet happened, likely because after the return of several essentially unused 737MAX aircraft to AWG members, there was a long period when no additional aircraft were returned. The recent return of a few more aircraft to AWG members prompted us to request in March 2023 that the Irish Aviation Authority (as a state member of the EU working group) inquire about the intentions of ICAO but we have gotten no further information.

6.2 **IATA.** We continue consulting with IATA on various matters and stand ready to conduct all XBT and other matters jointly with them. IATA representatives attended our 16.01 XBT meeting in Dublin and as noted above is now engaged with updating the transfer document checklist. However, although our interests appear to remain well aligned, IATA has advised that many of its members do not consider XBT issues to be a priority. Thus, while continuing to participate constructively, IATA has not stepped up its XBT efforts and has been unwilling to formally proceed jointly with AWG in connection with most XBT-TF matters.

6.3 **Maintenance management team (MMT).** The MMT is a group consisting of representatives from the FAA, EASA, TCCA (Canada) and ANAC (Brazil) and participation by various aviation industry groups including IATA, AIA, and GAMA, among others. MMT hopes to set standards for mutual acceptance of maintenance done in the four MMT jurisdictions. Due to resource resource constraints we had monitored the work of MMT but not participated actively in its work. However, we noted the agenda for its 12.2022 annual meeting included discussion on use and acceptance of electronic records by its aviation authority members, whose greater adoption could accelerate the same by other aviation authorities generally and reveal relevant concerns and obstacles.

Annex V: Reinvigorating GATS



Reinvigorating GATS – AWG Meeting

May 2023

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Hard assessment of GATS and action

- Despite the substantial benefits of GATS (and future uses of its e-platform) and absence of substantive objections (save issues on Chinese tax), GATS has not been successful
- Exiting COVID - and with increased aircraft trading, we are now at a GATS inflection point in the sense of acceleration towards success or failure
- What are the adverse consequences of failure:
 - 1. None of the benefits of GATS (see slide 6) will be realized
 - 2. No scope to use GATS platform for other applications (e.g. derivative interest trading)
 - 3. Loss of sunk cost (approximate US\$650k) + US\$500k contingent liability to Fexco due in 2027
 - 4. No reduction in AWG membership fees and additional funds to aid in AWG work
 - 5. Costs re close-down of platform (and/or remove transactions from it)
 - 6. AWG reputational hit
- Action needed to succeed:
 - Renewed lessor engagement and real commitment to GATS and GATS platform
 - Renewed lessor efforts to improve airline adoption (including incentives, noting legal costs covered)
 - Response to airline critique (see next slide)

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ANNEX – Presentation to Airlines

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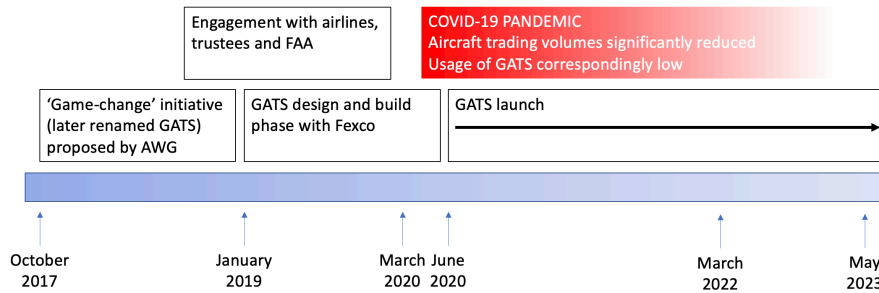
Reinvigorating GATS (Presentation to Airlines)

May 2023

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GATS Timeline



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GATS benefits

- Preservation of airline control and protections through 'Advance Requirements'
- Removes need for lease novations and provides significant time and costs savings
- Increase in liquidity will lead to better market conditions for airlines
- Enhances process only; does not interfere with commercial agreement between lessor and airline
- Best in class standard form trust documentation
- Electronic execution through digital signatures, meeting highest legal standards

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Responses to airline resistance over GATS

Point of resistance	Response
Perception that GATS 'hurts' airlines	<ul style="list-style-type: none"> • Preservation of airline control and protections through Advance Requirements and 'technological block' on trade • Reduces burden on airline resources (addresses 'novation fatigue'), reducing internal costs to airlines
Perception that GATS grants limited or no benefits for airlines	<ul style="list-style-type: none"> • Preservation of airline control and protections through Advance Requirements and 'technological block' on trade • Increase in liquidity will lead to better market conditions for airlines
GATS makes it easier for lessors to trade aircraft, which some airlines prefer be curtailed	<ul style="list-style-type: none"> • GATS itself neither permits nor restricts trading; it does not interfere with the commercial agreement between the lessor and the airline as to what restrictions are placed on the lessor trading the aircraft • To the extent the lease agreement permits or restricts trading, the use of GATS makes it easier for airlines to manage that process and enforce restrictions in their favor
Discomfort with use of owner trusts; some tax authorities do not recognize trusts	<ul style="list-style-type: none"> • Owner trust structures now very common in aircraft leasing • While recognised that there are issues relating to tax in some jurisdictions, in the vast majority of jurisdictions there are no commercial or tax issues
Comfortable with trusts but no desire to move away from 'manual' trust documentation and process	<ul style="list-style-type: none"> • (See above response on benefits to airlines)
Investment of time/resource needed by airline to understand new system and GATS trust documents	<ul style="list-style-type: none"> • Website easy to use; no subscription or transaction costs; <u>similar to IR</u> • Training can be provided to airlines free of charge • Helpful and comprehensive FAQs on website (https://e-gats.aero/help)
Unsupportive airline outside counsel, advising airlines not to use GATS	<ul style="list-style-type: none"> • Advice from outside counsel may be misguided or based on false information about GATS, or be serving self-interest and not the airline's best interests

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