lavery
Lawyers

The Cape Town Convention and the Evolution of the International Registry: Adapting to the Transactional Context of Aircraft Financing and Leasing

September 10, 2015

Author

Étienne Brassard

Partner, Lawyer

After eight years of operation, the International Registry established pursuant to the Cape Town Convention and the Aircraft Protocol (in force in Quebec since April 1, 2013) has undergone a significant update.

The Registry's website has undergone a complete overhaul in two phases, the first of which was launched in September 2013. The first phase coincided with the coming into force of the Fifth Edition of the *Regulations and Procedures for the International Registry*, enacted by the International Civil Aviation Organization.[1] The second phase, contemplated by the Sixth Edition of the Regulations,[2] was initially planned for mid-2014 but ultimately came into force on May 28, 2015.

"Generation II" of the Registry is an improvement which, in our view, will not only be easier for the various stakeholders to use, but also address the market's demand for lower transaction costs associated with the acquisition and financing of aircraft objects to which the Convention applies.

THE FIRST PHASE

In September 2013, the Registry first made it possible to register an international interest in several objects at once, as part of a single registration process. Assuming the registration type and the named parties are the same for each aircraft object,[3] an international interest[4] can be registered in up to 100 objects at the same time, instead of having to register each interest separately, as was formerly the case. Consider the example of a transaction where the same interest is registered against a fleet of 10 airplanes, each of which has four engines (for a total of 50 aircraft objects). The efficiency gain is easy to measure.

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

A user can now simply list the airplanes and engines affected by the registration, select the debtor and creditor, and register the interests in a single registration process.

Priority searches benefit the same way. Up to 100 aircraft objects can now be searched at the same time.

THE SECOND PHASE

We believe that the creation of a virtual “closing room” is the most significant improvement.

With the introduction of this closing room, Registry users can assemble and organize information on planned registrations of international interests so that the necessary approvals of all parties involved with the registrations may be obtained in advance thereof. The information regarding such planned registrations is called “prepositioned registrations” because their priority (or ranking) are being set in advance. Until such time as the parties consent to the closing of the transaction, and thus recognize that the prepositioned registrations are in effect, they are not considered registered and have no effect to bind the parties.

The closing room works as follows:

Assembling and managing the information required for a Closing Room

Any Registry user can create a closing room. Such a user is called the “coordinating entity” and is in charge of assembling and managing all the information required in order to preposition registrations in the closing room. The coordinating entity can give other Registry users access to the closing room, but that access is in “read only” mode. Only the coordinating entity has the power to enter or modify information in the closing room, based on comments received from the other users involved.

Locking the closing room, giving consents and paying fees

Once the parties have agreed to the prepositioned registrations, their descriptions and their chronological order (thereby agreeing to the priority of each international interest), the coordinating entity locks the closing room. The Registry then sends the parties a notification, with an attached “pre-registration report” that lists and describes all the prepositioned registrations, including the specified chronological order of any multiple registrations with respect to an aircraft object.

Each participant must then consent to the prepositioned registration within 10 days of the locking of the closing room. Otherwise, the closing room is automatically unlocked, unless the coordinating entity extends the locking period for an additional 10 days, which can be done up to 11 times.

Entering the prepositioned registrations in the International Registry database

The coordinating entity issues the instruction to authorize transmission to the International Registry after the required electronic consents have been obtained and the fees have been paid. The Registry then enters all the prepositioned registrations in the Registry database in the specified chronological order of the registrations. Only then are the international interests “registered” for the purposes of the Cape Town Convention.

CONCLUSION

These updates to the International Registry are clearly better suited to the ordinary course of aircraft financing and leasing transactions. Access to a closing room, and the ability to view prepositioned registrations, reduces mistakes and misunderstandings between the parties. Costs are reduced by eliminating the need for painstaking one-by-one registrations of international interests. Lastly, the ability to make changes before a closing room is locked gives the parties the flexibility required by their evolving negotiations and by the changes such negotiations can

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.

involve.

---

[1] Available online: http://www.icao.int/publications/Documents/9864_5ed.pdf.
[2] Available online: http://www.icao.int/publications/Documents/9864_6ed.pdf.
[3] See Article I, paragraph 2, letter (c) of the *Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific To Aircraft Equipment*, and Article II, paragraph 3, letter (a) of the *Convention on International Interests in Mobile Equipment* (Cape Town Convention) for a definition of "aircraft object."
[4] See Article 2 of the *Convention on International Interests in Mobile Equipment* (Cape Town Convention) for a definition of "international interest."

Copyright (c) Lavery, de Billy, S.E.N.C.R.L. - L.L.P.