Client Update

ACCESSION BY THE EUROPEAN COMMUNITY TO THE CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

(29 April 2009)

On 28 April 2009 the European Community (the “EC”) acceded to the Convention on International Interests in Mobile Equipment and its Aircraft Protocol (the “Cape Town Convention” or the “Convention”) which accession will come into effect on 1 August 2009.

The accession by the EC has been long awaited and is an important step in the development and progression of the Cape Town Convention. The delay in the EC acceding to the Cape Town Convention was caused by political tensions in relation to Gibraltar between the UK and Spain\(^1\). This issue was resolved after a compromise was reached between the UK and Spain thereby allowing the EC to ratify a number of international treaties including the Cape Town Convention.

Further ratification is required by the individual Member States of the EC in order for the Members States themselves to become Contracting States within the meaning of the Cape Town Convention. Ireland has already ratified the Cape Town Convention which has been given force of law in Ireland pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act 2005. Ireland was the first Member State to ratify the Convention and it has since also been ratified by Luxembourg. A number of Member States have signed the Convention including France, Germany, Italy and the UK and it is hoped that the EC accession will pave the way for these countries to each ratify the Convention.

The EC acceded to the Convention as a regional economic integration organisation and it covers those aspects of the Cape Town Convention in respect of which the EC has legal competence. The EC does not itself count as a Contracting State, however, it will have the rights and obligations of a Contracting State to the extent that it has competence over matters governed by the Convention. As required under the Convention the EC made a declaration under Article 48 of the Convention declaring the areas under the Convention over which it has jurisdiction which are matters relating to jurisdiction and the recognition and enforcement of judgments in civil and commercial matters\(^2\), insolvency proceedings\(^3\) and the law applicable to contractual obligations (Rome I)\(^4\). No declaration was made with regard to choice of law nor was a declaration made with regard to Alternative A or Alternative B in connection with insolvency remedies\(^5\).

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1. The issue related to the dispute between England and Spain over the sovereignty of Gibraltar. Spain had objected to British plans to appoint officials in Gibraltar to administer the treaties. Spain’s objection blocked EC ratification because all EC members must agree before Europe can ratify. The compromise involved a “post-boxing” system under which communications between Spain and Gibraltar involving the treaties will go through London.


5. Alternative A and Alternative B refer to the hard and soft approaches to insolvency remedies respectively. A Contracting State can adopt one of these or adopt neither and instead apply domestic insolvency law. Ireland has not adopted either Alternative A or Alternative B and domestic law applies.
Background: The Cape Town Convention is designed to establish an international legal regime for the creation, enforcement, registration and priority of security interests and interests held by chargees, conditional sellers and lessors in aircraft and aircraft engines. The objective of the Convention is to support asset-based financing by providing greater certainty, clarity and confidence to financiers resulting in increased levels of finance being made available to borrowers at a lower cost. The International Registry established pursuant to the Cape Town Convention is located in Ireland and is operated by Aviareto Limited. The Registry is an internet based electronic database (www.internationalregistry.aero) for the registration and protection of ‘international interests’ in aircraft and aircraft engines which are recognised by all Contracting States to the Convention with priority being determined on a ‘first-to-file’ basis. There are currently 28 Contracting States.

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