



Unite the Union response to DBIS call for evidence on the Cape Town Convention

This response is submitted by Unite the union. Unite is the UK's largest trade union with over 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, energy, construction, transport, local government, education, health and not for profit sectors.

Introduction

Unite recognises that there are legal impediments in certain countries that restrict the availability, or increase the cost, of aircraft finance. The Cape Town Convention creates an international legal framework that solves many of these problems. It gives predictable rules that facilitate the financing and leasing of aircraft and engines by reducing risk and legal uncertainty, particularly in bankruptcy.

This legal predictability is crucial as it allows lenders to rely on access to, and the value of, the aircraft on an airline default. Financiers wanting to lend to airlines in legal systems without the Cape Town (or equivalent) legal framework are forced to make lending decisions based largely on the credit of the airline. This is a problem for airlines that do not have a strong credit, particularly those in developing countries.

The Cape Town Convention was signed by a number of countries, including the United Kingdom, in 2001. To date, nearly 30 countries have ratified the Cape Town Convention, including China, India and the United States. The UK has yet to ratify this Convention. Ratification by the UK will accelerate the widespread adoption of the Cape Town Convention, which will lead to increased availability of financing to overseas airlines thereby increasing sales of aircraft and engines manufactured in the UK.

The Cape Town Convention is a mixed treaty in which legal competence is shared between the European Community and the European Member States. In April 2009, The European Community acceded to the Cape Town

Convention. Accession by the European Community has cleared the way for ratification by the European Member States.

3.1 Cross-border aircraft financing and leasing potentially attract the laws of different countries with differing rules on creditors' rights and the protection of security interests. To what extent do you consider that this affects

- (a) the complexity of the transactions;**
- (b) the predictability of legal outcomes;**
- (c) the availability of finance or leasing facilities;**
- (d) the cost?**

Unite understands that the need to analyse differing creditors' rights and security interests in cross-border transactions affect all of the issues raised in (a) to (d) above.

Unite also understands that (i) greater complexity and cost in structuring a transaction; and (ii) less predictability and availability of financing, all create an environment whereby it is unnecessarily difficult to achieve sales/export – hitting the bottom line for UK companies, leading to inevitable additional concerns for Unite members in the current economic climate.

3.2 If any of the factors in question 3.1 apply, to what extent do you consider that the difficulties you have identified affect:

- (a) the rating of aircraft receivables;**
- (b) the cost of export credit insurance;**
- (c) the cost of financing or leasing aircraft?**

Unite understands that the difficulties outlined in 3.1 above have a detrimental effect on financing costs; making it more difficult to finance the purchase of aircraft and aircraft engines in an environment where the UK administration should be doing all it can to promote the success of UK exporters and airlines.

3.3 The Convention and Protocol embody an international legal regime for the creation, perfection and priority of international interests and outright sales. To what extent, if at all, do you consider such a regime would help to reduce any problems you have identified in your answer to question 3.1?

The Convention and Protocol creates a regime which has the effect of mitigating, to a very great extent, the issues raised in 3.1 above; whilst having no corresponding disadvantages. Given the potential benefits, Unite members are very firmly in favour of prompt UK ratification.

3.4 Do you:

- (a) consider that the International Registry system, which provides for registration of international interests in and sales of airframes, aircraft engines and helicopters, with priority**

over unregistered national interests, is an advantage or a disadvantage? Please explain your answer.

- (b) Do you find the ability to register an international interest against an aircraft engine separately from the airframe helpful or not helpful? Please explain your answer.**

Unite has no experience of the International Registry and therefore cannot pass comment.

- 3.5 The Cape Town Convention sets no time limit for the completion and registration of transactions, and completion gives priority to the registered international interest as from the time of registration of the prospective international interest without the need for any additional registration. Do you consider this to be advantageous?**

Unite has no experience of registering international interests and therefore cannot pass comment.

- 3.6 Do you know of difficulties experienced in (a) repossessing UK registered aircraft or engines situated in a foreign country or (b) exercising other default remedies over such assets in a foreign country. If so, please give details.**

Unite understands that the difficulties highlighted in this question are aspects which do exist and must be taken into account when structuring an aircraft or engine financing. To the extent that the Convention and Protocol has the effect of mitigating the issues which have a direct effect on UK exporters and airlines, Unite members consider this to be a compelling reason for prompt UK ratification. Even if mitigation is only partial, with no downside to ratification, why would the UK government not take advantage of the potential?

- 3.7 The Cape Town Convention confers on the creditor the right, on adducing evidence of default, to obtain early judicial relief pending final determination of the case. Do you consider this useful? Please explain your answer.**

Unite does not feel suitably qualified to provide substantive comments on this, but understand that this specific right is of limited value in the UK.

- 3.8. The Aircraft Protocol confers on the creditor the additional default remedies of de-registration (removal of an aircraft from a nationality register) and export. How useful do you consider these additional remedies to be?**

Unite has no direct experience of the matters referred to in this question; but does understand that providers of asset backed leasing or financing place considerable value in the remedies.

- 3.9. In light of your answers to the above questions:**

- a) Do you favour ratification of the Convention and Protocol; if so
b) what impact do you consider these instruments will have on your sector of the aviation industry.
c) If the answer to question 3.9(a) is yes, within what time scale should the UK proceed to ratification? Please give reasons for your answer.

Unite members that work in the aviation industry favour ratification; and Unite therefore strongly favours ratification.

At a time when the economy has been subject to the worst recession in recent history, ratification by the UK of these instruments would show to our members that all measures are being taken to provide the best possible chance for the industry to recover and grow further in the UK.

To the extent that ratification would provide a level playing field for UK airlines and manufacturers in the industry (as against countries that have already ratified the convention) through, amongst other things, financing from an increased number of sources, we believe that ratification must be completed as soon as possible by the United Kingdom.

3.10 Do you have any other comments you would like to make?

Unite has no further comments, but would welcome the ability to meet with BIS officials to discuss the timeline for ratification.

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