



Department  
for Business  
Innovation & Skills

**RATIFICATION OF THE CONVENTION  
ON INTERNATIONAL INTERESTS IN  
MOBILE EQUIPMENT AND  
PROTOCOL THERETO ON MATTERS  
SPECIFIC TO AIRCRAFT EQUIPMENT**

Consultation on options for  
implementation

JUNE 2014

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# **Ratification of the Convention on international interests in mobile equipment and Protocol thereto on matters specific to aircraft equipment**

In July 2010, the Department for Business, Innovation and Skills (BIS) held a call for evidence asking for views on whether the UK should ratify the Convention on international interests in mobile equipment and Protocol thereto on matters specific to aircraft equipment (the treaty). This treaty aims to facilitate asset-based aircraft finance transactions by creating an international legal framework to govern the creation and registration of international interests (such as mortgages and leases) in helicopters, airframes and aircraft engines over a certain size and engine capacity.<sup>1</sup> The treaty creates a framework to deal with any disputes arising under the treaty, such as the ability of creditors to recover an item of aircraft equipment should there be a default on repayment. The majority of respondents to the consultation were in favour of ratification of the treaty, expecting airlines and leasing companies to benefit from lower financing costs for aircraft equipment due to a reduction in the risk to financiers involved in aircraft finance transactions. BIS published a response to the call for evidence on 6<sup>th</sup> December 2013, setting out the Government's intention to proceed with ratification.

The treaty includes a number of options for implementation. This consultation document asks for views on how the UK should implement the treaty.

Issued: 16<sup>th</sup> June 2014

Respond by: 11<sup>th</sup> August 2014

Enquiries to: Hayley Gowen, 4<sup>th</sup> Floor – Abbey 1, Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET, 020 7215 6096; hayley.gowen@bis.gsi.gov.uk

This consultation is relevant to: airlines; helicopter, airframe and aircraft engine manufacturers; banks and financiers involved in aircraft finance; aircraft leasing companies; insolvency practitioners; legal firms involved in aircraft finance transactions.

This consultation is UK wide. The UK Government retains responsibility for international relations and the regulation of aviation and air transport as set out in the Scotland Act 1998 and the Northern Ireland Act 1998. However, Northern Ireland may legislate on matters of civil aviation and navigation with the permission of the Secretary of State. The subject matter of the Convention and the Protocol are not within the legislative competency of the Welsh Assembly under the Government of Wales Act 1996.

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<sup>1</sup> The types of helicopters, aircraft frames and aircraft engines covered by the treaty are set out in Article I (2) (a) – (e)

## 1. Executive Summary

1. The UK Government is committed to ratifying the Convention on international interests in mobile equipment and the Protocol thereto on matters specific to aircraft equipment (the treaty). UK airlines need to raise large amounts of finance in order to purchase or lease helicopters, airframes and aircraft engines ("aircraft objects"). Boeing estimates that the global aircraft finance requirements in 2014 will be \$112 billion rising to \$139 billion in 2018<sup>2</sup>. When businesses are looking to add to their fleet, they have the option to purchase or hire helicopters, airframes and/or engines. Whichever option they choose, it is likely that they will need to raise finance through third parties.
2. The treaty aims to reduce the cost of raising aircraft finance for airlines and leasing companies by reducing the level of risk to the financiers involved in these transactions. The treaty establishes a harmonised international legal framework for the creation and registration of *international interests* (such as mortgages and leases) in helicopters, airframes and aircraft engines over a certain size and engine capacity<sup>3</sup>. The treaty provides a framework to deal with any disputes arising under the treaty such as the ability of creditors to recover an aircraft object should there be a default on repayments. In addition, the treaty enables interests to be registered against aircraft engines separately, something that is not possible on the UK's National Register of Aircraft Mortgages, where interests against aircraft engines must be included as part of an aircraft mortgage.
3. Ratification of the treaty is only one of the factors considered by aircraft financiers when agreeing an aircraft finance transaction. Therefore, depending on an airline's individual circumstances and how an airline chooses to raise finance, some airlines may not see a reduction in the cost of raising finance. However, the majority of the respondents to the Government's call for evidence on whether the UK should ratify the treaty in 2010 were in favour of ratification and thought it would lead to lower financing costs for UK airlines.
4. The treaty contains a number of options for implementation in the form of declarations. In this consultation, the Government is asking for views on the following areas:
  - (i) Whether any non-consensual rights, such as liens for unpaid airport and air navigation charges, should take priority over interests registered with the International Registry
  - (ii) Whether any non-consensual rights can be registered and treated as international interests
  - (iii) Whether the provisions of the treaty should apply to internal transactions (i.e. transactions where the aircraft object and all parties to the transaction are located in the same state when the agreement is concluded)

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<sup>2</sup> Boeing Capital Corporation, *Current Aircraft Finance Market Outlook 2014-2018*, <http://www.boeingcapital.com/cafmo/2013/brochure.pdf>

<sup>3</sup> The treaty excludes aircraft used in military, customs and police services

- (iv) Whether creditors can lease an object when it is located in the Contracting State with the agreement of the debtor
- (v) Whether creditors can exercise extra-judicial remedies without leave of the court
- (vi) Whether the treaty should apply to pre-existing interests
- (vii) Whether the term *speedy relief* should be defined
- (viii) Additional relief on insolvency
- (ix) The ability of creditors to de-register and export aircraft equipment
- (x) Whether the UK should name a designated entry point or points to pass information to the International Registry
- (xi) Whether the UK should make declarations in line with the OECD's Aviation Sector Understanding (ASU)
- (xii) An estimate of the costs to business of ratifying the treaty
- (xiii) Equality considerations

## 2. How to respond

5. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
6. The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/small-business-appeals-champions-and-non-economic-regulators>. The form can be submitted online, by email or by letter to:

Hayley Gowen  
Department of Business, Innovation and Skills  
4<sup>th</sup> Floor – Abbey 1  
1 Victoria Street  
London  
SW1H 0ET  
Tel: 020 7215 6096  
Email: [hayley.gowen@bis.gsi.gov.uk](mailto:hayley.gowen@bis.gsi.gov.uk)

7. A list of those organisations and individuals consulted is in Annex B. We would welcome suggestions of others who may wish to be involved in this consultation process.
8. You may make printed copies of this document without seeking permission.
9. Other versions of the document in Braille, other languages or audio-cassette are available on request.

## 3. Confidentiality & Data Protection

10. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
11. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## 4. Help with queries

12. Questions about the policy issues raised in the document can be addressed to:

Hayley Gowen  
 Department of Business, Innovation and Skills  
 4<sup>th</sup> Floor – Abbey 1  
 1 Victoria Street  
 London  
 SW1H 0ET  
 Tel: 020 7215 6096  
 Email: hayley.gowen@bis.gsi.gov.uk

The consultation principles are in Annex A.

## 5. The proposals

13. In July 2010, the Department for Business, Innovation and Skills (BIS) held a call for evidence asking for views on whether the UK should ratify the treaty. Since that time BIS has been working with industry to understand the benefits of ratification to the UK.
14. The aviation and aerospace industries make a significant contribution, both directly and indirectly, to the UK economy. The air transport sector's turnover is around £26 billion and the sector provides around 120,000 jobs in the UK, supporting many more jobs indirectly.<sup>4</sup> These figures exclude the aerospace industry, which includes manufacturing. The aerospace sector contributes £24 billion to the economy every year and supports 230,000 jobs across the UK. UK aerospace has a 17% global market share, making it the number one aerospace industry in Europe and second globally behind the US and it exports circa 75% of what it produces<sup>5</sup>. In 2012, the UK's aerospace export balance was positive totalling £5.2 billion<sup>6</sup>.
15. The treaty aims to reduce the cost of raising aircraft finance by reducing the risk to creditors of lending to airlines and leasing companies. The treaty establishes a harmonised international legal framework for the creation and registration of *international interests* (such as mortgages and leases) in helicopters, airframes and aircraft engines over a certain size and engine capacity<sup>7</sup>. The treaty provides a framework to deal with any disputes arising under the treaty such as the ability of creditors to recover their aircraft object should there be a default on repayments and the remedies available to creditors whilst a court considers a claim. In addition, the treaty enables interests to be registered against aircraft engines separately, something that is not possible on the UK's National Register of Aircraft Mortgages, where interests against aircraft engines must be included as part of an aircraft mortgage. The majority of respondents to the consultation

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<sup>4</sup> *Draft Aviation Policy Framework* – Department for Transport – July 2012

<sup>5</sup> *Lifting off – Implementing the Strategic Vision for UK Aerospace* – HM Government – March 2013

<sup>6</sup> BIS analysis of data from HMRC Uktradeinfo.com

<sup>7</sup> The treaty excludes aircraft used in military, customs and police services

were in favour of ratification, expecting airlines to benefit from lower financing costs for aircraft objects as the provisions in the treaty would reduce the risk for financiers. BIS published a response to the call for evidence on 6<sup>th</sup> December 2013, setting out the Government's intention to proceed with ratification<sup>8</sup>.

### **Aircraft financing**

16. The purchase and/or leasing of new aircraft objects is expensive. Average prices for different models of aircraft can range from around \$60m-\$400m with prices varying according to factors such as engine choice, performance capability, fuel capacity and other design requirements specified by the customer. The cost of leasing a spare engine for a month can vary from between \$25,000 and \$120,000 per month. UK airlines and leasing companies therefore need to raise large amounts of finance in order to purchase or lease new aircraft objects. These transactions often involve multiple parties located in more than one jurisdiction across multiple time zones which can increase the legal and administrative complexity of the transactions.
17. The purchase and/or leasing of new helicopters, airframes and aircraft engines therefore requires high levels of financing. Boeing estimates that the global aircraft finance requirements in 2014 will be \$112 billion<sup>9</sup>. Airlines and leasing companies have access to a wide range of different sources of finance. Most airlines purchasing aircraft objects use asset-backed financing, usually over 10-12 years for airframes. Spare engines can be leased on timescales ranging from a single day to several years. However an airline or leasing company decides to finance new aircraft, it is likely that the business will need to raise finance through third parties. There are a number of options available to airlines as set out in Morrell (2007)<sup>10</sup> including:

### **Company financing**

Airline companies finance the purchase and/or leasing of new aircraft themselves either through cash reserves or income. They may also raise the necessary funds from equity capital raised from their shareholders.

### **Commercial bank lending**

Banks may provide airlines with the necessary finance either in the form of an overdraft or asset-secured loans. In the same way as mortgages, with asset-secured loans the bank would repossess the aircraft if the airline defaults on its loan repayments.

### **Export Credit Agencies (ECAs)**

ECAs are government or government-supported organisations which promote exports by offering guarantees or insurance on loans. In aircraft financing, the ECA would usually step in and cover the bank's financial losses in the event that the airline defaulted on its

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<sup>8</sup> <https://www.gov.uk/government/consultations/call-for-evidence-convention-on-international-interests-in-mobile-equipment-and-protocol-thereto-on-matters-specific-to-aircraft-equipment>

<sup>9</sup> Boeing Capital Corporation, *Current Aircraft Finance Market Outlook 2014-2018*, <http://www.boeingcapital.com/cafmo/2013/brochure.pdf>

<sup>10</sup> Morrell, P.S. (2007) *Airline Finance* 3<sup>rd</sup> Edition



loan or went into insolvency, seeking to repossess and remarket the asset to make recoveries. ECA guarantees or insurance may often be used in cases where banks are reluctant to lend the full amount owing to the large risks associated with the loan and the airlines.<sup>11</sup>

### **Operating leases**

Operating leases cover arrangements where one entity purchases an aircraft and then leases it on a temporary basis to an airline. Where an airline uses this to provide finance on delivery, the arrangement is referred to as sale/leaseback. The lessor would still need to find its own source of funds/finance to make the purchase. Aircraft leases come in a variety of forms, and an operating lease refers to an arrangement where ownership does not transfer to the lessees at the end of the term. Leases can be either dry or wet leases. Dry leases involve just the leasing of the aircraft while wet leases include the leasing of the crew and the pilots as well.

### **Financing Leases**

Under financing leases, a financier purchases the asset and leases it to the airline or leasing company. At the end of the lease, the airline or leasing company has the option to purchase the helicopter, airframe or aircraft engine. Financing leases are similar to hire-purchase agreements.

### **Enhanced Equipment Trust Certificates (EETCs)**

EETCs are bonds which airlines issue to finance aircraft. Under an EETC, the airline establishes a trust which issues certificates to investors and uses the raised funds to purchase the required aircraft which is then leased back to the airline. The airline makes lease payments to the trust which passes these on to the investors in the form of bond interest. These bonds are rated by credit agencies. EETCs involve financing leases and therefore ownership will transfer to the airline at the end of the lease.

### **Manufacturer support**

On occasion, manufacturers may provide airlines with the necessary finance. This may take the form of an operating lease or a residual value guarantee arrangement whereby the manufacturer guarantees the aircraft's value at the end of the lease or loan.

18. Each airline will consider which funding option is right for them and may use all of these options at different times. In all of these transactions, the level of financial risk is important in determining the cost of finance. There is evidence to suggest that the traditional sources of finance for airlines and leasing companies in the UK is changing with new investors, such as investors in the capital markets, who have traditionally invested in US airlines, providing a greater proportion of aircraft finance for airlines outside of the US. Following the economic downturn, the availability of commercial bank financing decreased as many banks sought to build up their capital reserves. Boeing expects the total share of aviation financing to be met by commercial banks to fall from

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<sup>11</sup> National ECAs include Ex-Im Bank (USA), UK Export Finance (formerly the Exports Credits Guarantee Department – ECGD), COFACE (France), Euler Hermes (Germany), NEXI (Japan), Export Development Corporations (EDC) (Canada), BNDES (Brazil) and SACE (Italy). All these institutions generally only provide guarantees, with actual finance being provided by banks, but BNDES, Ex-Im and EDC can lend money directly.

28% in 2013 to 25% in 2014<sup>12</sup>. As a response to this, a number of airlines have looked at alternative sources of finance<sup>13</sup>.

19. In the wake of the economic downturn, Export Credit Agencies (ECAs) increased the amount of support they provided to the sector through guaranteeing bank loans. However, a new Aviation Sector Understanding (ASU), governed by the Organisation for Economic Co-operation and Development (OECD), came into effect in 2013 which increased the cost of export credit support to airlines. Under the 2007 agreement, airlines expected to pay upfront fees of 4-7.5%, however this rose to 7.72% under the new agreement. In addition, the limit on loan-to-value arrangements which airlines will be able to secure will fall from 85% to 80%<sup>14</sup>. The European Export Credit Agencies, including UK Export Finance (UKEF) covered aircraft with a value of over \$10bn in 2012. However, the amount of support they will provide to the sector in 2014 is expected to fall.

### Provisions of the treaty

20. For the third parties, providing finance for aircraft transactions is risky as helicopters, airframes and aircraft engines are expensive to purchase and/or lease. Secondly, aircraft objects are a moveable asset and should a creditor need to take possession of the aircraft object, they cannot be sure in which jurisdiction the aircraft object will be located and therefore how easy or difficult it will be to take possession of the aircraft object. Creditors want to repossess their assets quickly in cases of default so that they can be put to use and generate an income as the depreciation rate is very high on idle aircraft which have a limited lifespan. In order to protect themselves, creditors factor this level of risk into aircraft finance transactions.
21. Pricing the level of risk for creditors is complicated not only by the fact that a creditor does not know where an aircraft object will be located at a particular time, but also by the differences in how various jurisdictions treat claims against aircraft objects by creditors and by the differences between insolvency laws in different jurisdictions. The treaty aims to reduce some of this risk by creating a single harmonised international framework for the creation and registration of international interests (such as mortgages and leases) and a framework to deal with disputes arising under the treaty, including insolvency related matters. This should provide greater certainty to creditors that they will be able to recover their aircraft object from a jurisdiction which has ratified the treaty. Since creditors should no longer need to price as high a level of risk into aircraft finance transactions for airlines based in these jurisdictions, these airlines and leasing companies should benefit from a reduction in the cost of raising finance. In turn, this may lead to increased sales of helicopters, airframes and aircraft engines by UK manufacturers. However, since the UK already provides a high level of protection for creditors, the extent to which UK airlines will benefit from a reduction in the cost of raising finance is unclear.

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<sup>12</sup> Boeing Capital Corporation, *Current Aircraft Finance Market Outlook 2014-2018*, <http://www.boeingcapital.com/cafmo/2013/brochure.pdf>

<sup>13</sup> Airline Fleet Management: *the next credit crunch*, published Mar-Apr 2012 <http://www.afm.aero/magazine/trading-legal-and-finance/item/283-the-next-credit-crunch>

<sup>14</sup> OECD *Arrangement on officially supported export credits*, October 2013 [http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=tad/pg\(2013\)11](http://search.oecd.org/officialdocuments/displaydocumentpdf/?doclanguage=en&cote=tad/pg(2013)11)

22. In addition, the treaty enables interests against aircraft engines to be registered separately, something that is not possible on the UK's National Register of Aircraft Mortgages where interests against aircraft engines have to be included as part of an aircraft mortgage. Under the treaty, interests in respect of aircraft engines over a certain capacity can be registered separately with the International Registry providing greater security for financiers and manufacturers that their interests are protected since engines are routinely moved between aircraft for maintenance reasons.
23. However, ratification of the treaty is only one factor considered by investors, financiers and the ratings agencies involved in rating capital markets transactions. Parties to these transactions consider a number of other factors outside the scope of this treaty such as an airline's own credit rating and repayment history. Therefore, depending on an airline's individual circumstances, airlines may not see any reduction in the cost of raising finance.
24. Under the treaty eligible interests can be registered with the International Registry, which is based in Dublin. Unlike the UK Register of Aircraft Mortgages, maintained by the Civil Aviation Authority (the CAA), the International Registry allows interests to be registered electronically twenty-four hours a day, seven days a week. Prospective interests can be registered on the International Registry, something that is not possible on the UK Register of Aircraft Mortgages other than in the form of a "priority notice". The Government believes this will make it more convenient for creditors to register interests, taking the pressure off closing complex finance transactions, which may be taking place across multiple jurisdictions and time zones.
25. The treaty establishes a clear system to prioritise international interests registered with the International Registry. Under the terms of the treaty, an interest registered on the International Registry takes priority over an unregistered interest or over any subsequently registered right or interest. It will not be mandatory to register interests with the International Registry, just as it is not mandatory to register interests with the National Register of Aircraft Mortgages. Businesses will be able to decide how best to protect their interests and could choose to register with just the International Registry, only the Register of Aircraft Mortgages (which will remain open), with both registers or neither. However, business choosing to register interests with both the International Registry and National Register of Aircraft Mortgages would be required to pay two sets of fees.
26. By ratifying the treaty, the UK will recognise interests on the International Registry under UK law. The treaty contains a number of optional provisions for adoption in the form of declarations. Some of these optional provisions fall within the competence of the EU. The EU issued a Decision on 6<sup>th</sup> April 2009 concerning these areas<sup>15</sup>. The Government is seeking views on which, if any, of the options within the competence of the UK, should be adopted.

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<sup>15</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:121:0003:0007:EN:PDF>

## Optional Provisions – Convention

### Non-consensual rights – Article 39<sup>16</sup>

27. Under the terms of the treaty, an interest registered on the International Registry has priority over an unregistered or subsequently registered right or interest. However, under Article 39(1) Contracting States may declare that the following interests have priority over an interest registered on the International Registry:
- (a) any non-consensual rights or interests with priority under national law over an equivalent interest; and
  - (b) all rights under national law to *arrest or detain* an aircraft object for payment of amounts owed directly related to the provision of public services in respect of that object or another object.
28. Under Article 39(4) this may include priority over any international interests registered prior to ratification of the treaty. Contracting States can either declare relevant non-consensual rights individually or can make a general declaration that all non-consensual rights (both current and future) with priority under national law will retain their priority under the terms of the treaty. These provisions set out the order of priority for claims over an asset allowing financiers to assess the level of risk in a transaction. Any non-consensual rights or liens declared under Article 39(1) would have priority in insolvency proceedings.
29. If the UK does not make a declaration in relation to Article 39(1)(a), interests registered on the International Registry will take priority over any non-consensual rights or liens which previously had priority under UK law over an equivalent interest.
30. The non-consensual rights and interests with priority under UK law include:
- Rights arising under article **14(5) of the Mortgaging of Aircraft Order 1972** which have priority over a UK registered mortgage being:
- a possessory lien in respect of work done on the aircraft; and
  - any right entitled to detain an aircraft pursuant to an Act of Parliament.
31. Examples of statutory detention rights in the UK, which fall within article 14(5) of the 1972 Order include:
- Regulations made under section 83 of the Transport Act 2000, being the Civil Aviation (Chargeable Air Services) (Detention and Sale of Aircraft for Eurocontrol) Regulations 2001 and the Civil Aviation (Chargeable Air Services)(Detention and Sale of Aircraft) Regulations 2001 to detain and sell an aircraft for unpaid charges relating to the provision of air navigation services

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<sup>16</sup> The Convention uses the Arabic numbering system and the Protocol uses the Roman numbering system

- Rights under Section 88 of the Civil Aviation Act 1982 to detain and sell aircraft for the non-payment of airport charges
32. The legislation referred to in paragraph 31 also makes provision for the application of proceeds of sale following a relevant detention – with a number of interests ranking above those of a secured creditor:
    - (i) customs or excise duty or VAT
    - (ii) expenses relating to detention and sale
    - (iii) airport charges
    - (iv) charges relating to air traffic services payable under section 73 of the Transport Act 2000
  33. As noted above, the Civil Aviation Authority (CAA) has the right to detain aircraft in respect of unpaid navigation service charges. The *fleet lien* enables the CAA to recover charges across an entire fleet by grounding one aircraft. Airports are granted similar powers to detain aircraft to recover unpaid airport charges.
  34. The Government believes these powers of detention work well in the UK and help the UK to fulfil its obligation to collect unpaid navigation service charges on behalf of the European Organisation for the Safety of Air Navigation (EUROCONTROL). Navigation service charges fund the provision of a service designed to ensure the safe and expeditious flow of traffic. It is therefore important that any outstanding charges can be recovered to safeguard this safety critical service.
  35. As a result the Government intends to declare under Article 39(1)(a) and Article 39(4) that all current and future non-consensual rights with priority under UK law against a UK registered mortgage will continue to have priority and that this priority will extend to any interest registered on the International Registry prior to ratification of the treaty in the UK. The government also proposes to make a declaration under Article 39(1)(b) that any rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to that aircraft object or another object are unaffected.

### Question 1

**Do you agree that the UK should make a general declaration that all existing and future non-consensual rights with priority under UK law over an interest equivalent to an international interest should retain their priority under the terms of the treaty, including over any interests registered on the International Registry prior to ratification of the treaty in the UK? Why?**

### Question 2

**Do you agree that the UK should make a declaration to retain any rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to that aircraft object or another object are unaffected? Why?**

#### **Registrable non-consensual rights or interests – Article 40**

36. In addition to the option to declare non-registrable non-consensual rights or liens with priority over registered interests (paragraphs 27-33), Article 40 of the Convention allows Contracting States to declare other categories of non-consensual rights which may be registered on the International Registry and treated as if they were international interests. Any registered non-consensual right would follow the International Registry's prioritisation system and would have priority over any subsequently registered interest but would be subordinate to any interest previously registered with the International Registry.
37. A non-consensual right under Article 40 does not need to have priority under UK law and a Contracting State cannot list the same non-consensual rights under Articles 39 and 40.
38. The Government believes there may be an advantage in registering some categories of non-consensual rights with the International Registry. This would provide creditors and holders of registrable non-consensual rights with certainty regarding the priority given to their interest, for example creditors who have obtained a judgment for a specific debt.

#### **Question 3**

**Do you think UK should make a declaration under article 40 to allow a judgment creditor to register:**

- (a) **Any specific type(s) of judgment debt, even where no separate enforcement order has been made?**
- (b) **Any judgment debt in respect of which a specific type of enforcement order has been made?**

#### **Question 4**

**If your answer is “yes” to either or both of the above questions, please list the types of judgment debt or the types of enforcement order that you think should give rise to the right of registration on the International Registry.**

#### **Internal transactions – Article 50**

39. Under the treaty, notices of national interests can be registered with the International Registry and treated as if they were international interests, following the same prioritisation rules. However, Contracting States may declare that the provisions in the treaty do not apply to internal transactions. Internal transactions are transactions where the aircraft object and all parties to the transaction are in the same state when the contract is concluded.

40. The effect of making a declaration under Article 50 is that the majority of remedies available to creditors in cases of default do not apply to national interests. The exception to this is the notice requirement on the proposed sale or lease of an aircraft object (Article 8 (4)) and the provision to vest an object as satisfaction of a charged obligation (Article 9 (1)). However, the registration and priority rules would continue to apply to national interests.
41. The Government has considered whether to declare that the provisions of the treaty do not apply to internal transactions and believes that this would add an unnecessary additional layer of complexity as it would create two different systems for registering international and national interests, increasing costs for airlines and creditors. Since registration on the International Registry is not mandatory, it would be up to creditors to decide how best to protect their interests. Accordingly, the Government proposes that the provisions of the treaty will apply to internal transactions that have been registered with the International Registry.

#### **Question 5:**

**Do you agree that the treaty should apply to internal transactions as well as international transactions? Why?**

#### **Determination of courts – Article 53**

42. Under Article 53, Contracting States can declare the relevant court or courts within the jurisdiction in respect of proceedings under the treaty (save for insolvency proceedings where the parties cannot choose the jurisdiction).
43. Due to the high value nature of these cases, it is likely that cases under the treaty will be heard in the High Court of Justice in England and Wales, the Court of Session in Scotland and the High Court of Justice in Northern Ireland. However, the Civil Procedure Rules for England and Wales provide that cases with a value over £25,000 can be commenced in either the County Court or the High Court. The Government proposes, as with other types of civil and commercial case, that the courts specified in Annex II of the Brussels I Regulation should have jurisdiction over these matters<sup>17</sup>.

#### **Whether the chargee of a charged object can grant a lease in the UK - Article 54(1)**

44. The treaty includes a number of remedies which are available to creditors in cases of default. One of these remedies allows a creditor to grant a lease of the aircraft object, provided that the debtor has agreed to this (Article 8 (1) (b)) or as relief granted by a court pending final determination of a claim under Article 13. However, the treaty allows a Contracting State to declare that a creditor cannot grant a lease of the object whilst the aircraft object is situated in the Contracting State's own territory (Article 54(1)).

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<sup>17</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:012:0001:0023:EN:PDF>

45. Since a creditor can only use this remedy if the debtor agrees or following an order from a court, and since creditors may already grant the lease of an object situated in the UK, the Government does not intend to make a declaration under Article 54(1).

### **Question 6**

**Do you agree that a creditor should be able to grant a lease whilst the aircraft object is situated in the UK in the event of a default? Why?**

### **Extra-judicial exercise of remedies – Article 54(2)**

46. The treaty contains a number of remedies available to creditors in cases of default without requiring leave of the court. These are known as extra-judicial remedies (Chapter XIV of Convention and Chapter II of Protocol). When ratifying the treaty, the UK must declare whether or not any such remedies are indeed available under the treaty without leave of the court. This does not apply to interim relief under Article 13.
47. The use of extra-judicial remedies (also known as self-help) is already permitted in the UK, except where a moratorium is in place where a company has entered administration. A moratorium of 28 days may also be in place for small companies whilst they put together a company voluntary arrangement. The remedies available without leave of the court, in the event of a default under the treaty are:
- taking possession/ control of an aircraft object;
  - selling/granting a lease;
  - receiving income/profits from an aircraft object.

The Government intends to maintain the position under current UK law and allow the use of extra-judicial remedies, except where a moratorium is in place as set out above.

### **Question 7**

**Do you agree that the UK should continue to allow the use of extra-judicial remedies except where a moratorium is in place? Alternatively, what problems/issues do you envisage (if any) if there is no court involvement? Why?**

### **Declarations regarding relief pending final determination of a claim – Article 55**

48. As stated above, the treaty contains an option for creditors to be granted interim relief whilst their claim is being determined (see Article 13). Article 43 sets out which courts have jurisdiction to grant interim relief.



49. Contracting States can by declaration exclude the provisions of Article 13 or Article 43 either wholly or in part (Article 55). The EU has competence over jurisdiction and enforcement of judgments by virtue of Council Regulation (EC) No 44/2001 and has made a declaration that where the debtor is domiciled in an EU Member State, that Member State will apply Articles 13 and 43 in accordance with Article 31 of the Regulation as interpreted by the Court of Justice in the context of Article 24 of the Brussels Convention of 27 September 1968.
50. Therefore the provisions under Article 13 and 43 will be available in the UK in accordance with the Regulation (known as Brussels I). This will maintain the current position under UK law.

### **Transitional provisions – Article 60**

51. The treaty establishes a prioritisation system for interests in helicopters, airframes and engines. Unless a Contracting State declares otherwise, the treaty does not apply to any interest or right registered on the relevant national register (in the UK this is the National Register of Aircraft Mortgages), prior to ratification of the treaty in the Contracting State in which the debtor is situated (Article 60). This means that pre-existing rights or interests registered on the National Register of Aircraft Mortgages would have priority over any interest subsequently registered on the International Registry.
52. Alternatively, the UK could specify a date by which pre-existing interests registered on the UK's Register of Aircraft Mortgages must be registered with the International Registry to retain their priority. The specified date must be a minimum of three years after the treaty comes in to force in the UK. Failure to re-register the interest would mean that the creditor's priority would be lost. Once made, and unlike declarations made under other articles, a declaration under Article 60 cannot be modified or withdrawn.
53. The Government believes that asking holders of pre-existing interests to re-register them on the International Registry will impose additional burdens on business in terms of time, legal costs and the fee to re-register an interest. The Government believes that this would create confusion and uncertainty concerning the priority of different interests over aircraft objects. For this reason, the Government does not intend to make a declaration under Article 60.

### **Question 8**

**Do you agree that pre-existing rights registered on the National Register of Aircraft Mortgages should retain their priority over subsequently registered interests on the International Registry? Why?**

### **Optional Provisions – Protocol**

#### **Choice of law – Article VIII**

54. Article VIII allows the parties to a transaction to decide on the law that will govern their contractual rights and obligations, either wholly or in part, provided that the Contracting State has made a declaration to this effect (Article XXX(1)). If a Contracting State does

not make a declaration, the governing law will be determined by the private international law of the forum State. The rights of creditors in insolvency proceedings cannot be chosen by the parties to the transaction.

55. The European Union has competence in this area as set out in EC Regulation 593/2008 (Rome I)<sup>18</sup>. This Regulation covers the law applicable to contractual obligations. The EU has not made a declaration regarding choice of law and the Rome I regulation will continue to apply in the UK.

### **Modification of provisions regarding relief pending final determination – Article X**

56. Article X contains a number of additional measures concerning the relief available to creditors whilst their claim is being determined by the court, however it only applies where a Contracting State has made a declaration under Article XXX(2). Article X amends the remedies available to creditors under Article 13. Article X contains a number of different options and Contracting States can decide whether to adopt all, some or none of them.
57. As noted in paragraph 49, the EU has competence over jurisdiction and enforcement of judgments by virtue of Council Regulation (EC) No 44/2001, Brussels I. The EU has not made a declaration regarding Article X. The EU has made a declaration that where the debtor is domiciled in an EU Member State, that Member State will apply Articles 13 and 43 in accordance with Article 31 of the Regulation as interpreted by the Court of Justice in the context of Article 24 of the Brussels Convention of 27 September 1968. Therefore some elements of Article X fall within the jurisdiction of the EU. However, the UK could change its national law to adopt some of the provisions of Article X.
58. Article 13(1) states that creditors can obtain *speedy relief* from a court pending final determination of their claim. The UK could change its national law to define the term *speedy*, where these provisions are consistent with the EU declaration regarding Article 13 in accordance with Article X(2). *Speedy* must be defined as obtaining relief within x working days from the date of filing the application for relief from the court.

## **Question 9**

**Do you think that the UK should define the term *speedy* and if so how?**

### **Remedies on insolvency – Article XI**

59. Under Article XXX(3) of the Protocol, a Contracting State may declare that it will apply the provisions of Article XI (remedies on insolvency). If a Contracting State makes a declaration under Article XXX(3), it has two alternatives: Alternative A or Alternative B. If a Contracting State makes a declaration adopting either alternative, the provisions of that alternative apply in their entirety – it is not possible for a Contracting State to elect to

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<sup>18</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:EN:PDF>

adopt some elements from Alternative A and some elements from Alternative B. If a Contracting State makes a declaration under Article XXX(3) of the Protocol, it is required to specify (i) the types of insolvency proceedings to which such Alternatives would apply, and (ii) the applicable time-period (the “waiting period”). If a Contracting State does not opt-in to either of these Alternatives, national insolvency law continues to apply.

60. Both Alternatives apply where any *insolvency-related event* has occurred. Insolvency related events are defined under Article I(2)(m) as:

- (i) *The commencement of the insolvency proceedings in respect of the debtor; or*
- (ii) *The declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action*

61. Alternatives A or B would only apply where a Contracting State that is the primary insolvency jurisdiction (i.e. the Contracting State in which the debtor’s centre of main interest is situated) has made a declaration under Article XXX(3).
62. The European Union has not made a declaration under the treaty. However this does not prevent an EU Member State from amending its national insolvency laws to have the same effect as if a declaration had been made in favour of either Alternative A or B.

### **Alternative A**

63. Alternative A requires, on the occurrence of an insolvency-related event, an insolvency practitioner or debtor to either (i) give up possession of the aircraft object to the creditor or (ii) cure all defaults and agree to perform all future obligations under the relevant transaction documents by the end of the specified waiting period. If under national insolvency law a creditor is entitled to possession prior to the end of the waiting period, that right is retained by Alternative A. Alternative A also requires the insolvency practitioner or the debtor to preserve the aircraft object and maintain it and its value in accordance with the transaction documents until possession of the aircraft object is given to the creditor.
64. Alternative A does not require a creditor to obtain permission from the court before taking possession of the aircraft object at the end of the waiting period. Under Alternative A, until the creditor has been given the opportunity to take possession of the aircraft object, the creditor can apply for any other forms of interim relief available under national law.
65. If an insolvency practitioner or debtor cures all defaults and agrees to perform all future obligations and fails to do so, a second waiting period does not apply and the creditor is entitled to immediate possession of the aircraft object.
66. Where a creditor takes possession of an aircraft object, the remedies of de-registration and export of the aircraft object are available and the registry authority must make these remedies available within 5 working days of notification from the creditor that they have a right to these remedies.

67. At the end of the waiting period, a court in a Contracting State cannot suspend, prevent or delay any of the remedies for enforcement of an interest over an aircraft object permitted by the treaty. Furthermore, the national court cannot vary any of the terms of the agreement between the debtor and the creditor without the consent of the creditor. Thus, a national court is precluded from exercising some of the powers that it has under national law and any automatic stay under national law that is inconsistent with Alternative A will not apply.
68. Under Alternative A, no interest or right has priority over registered interests, except any non-consensual rights of a category declared by the Contracting State under Article 39.

## **Alternative B**

69. Alternative B requires the insolvency practitioner or the debtor to give notice to the creditor, upon the creditor's request, whether they will cure the defaults and perform all future obligations or give possession of the aircraft object to the creditor within the time period specified in the declaration. This is subject to any additional steps or guarantee that a court may order.
70. If the insolvency practitioner or debtor fails to give notice of their intention, the court may permit the creditor to take possession of the aircraft object upon such terms as the court orders. The aircraft object cannot be sold pending a decision by the court.
71. The main differences between Alternative A and Alternative B are as follows. Under Alternative B the recovery of the aircraft object has to be initiated by the creditor and recovery of an aircraft object requires a court order, which may include conditions imposed at the court's discretion. Alternative B does not make available the remedies of de-registration and export of the aircraft object on an expedited basis. Furthermore, under Alternative B, the creditor has to provide evidence of its claim and proof that an international interest has been registered.
72. The majority of respondents to the call for evidence cited the adoption of Alternative A as, economically, the most important provision in the treaty and argued that adopting Alternative A with a waiting period of 60 days would provide greater certainty that creditors could recover their aircraft objects. The majority of respondents to the call for evidence thought that this would lower the cost of raising aircraft finance, particularly in the capital markets. The majority of Contracting States that have ratified the treaty have adopted Alternative A with a waiting period of 60 days.
73. Other respondents to the call for evidence stated the adoption of either Alternative is not necessary in the UK since UK insolvency law is robust and well-established and would not be improved by adopting either Alternative. In addition, the majority of creditors are able to recover their aircraft object within 60 days through the courts.
74. No respondents to the call for evidence were in favour of Alternative B and the Government does not believe that Alternative B would provide greater clarity for creditors, debtors and insolvency practitioners in the UK compared with national law. As such the UK does not intend to adopt Alternative B.

75. The Government recognises that the UK insolvency law does not contain an explicit date when a creditor can recover their aircraft object and recognises that a court order may be needed. However, the Government also believes that UK insolvency law works well and is not aware that any creditor has been unable to recover an aircraft object. Under UK insolvency law, on administration a general moratorium is imposed preventing the commencement or continuance of legal proceedings against the company in administration without the permission of the court or the insolvency practitioner.
76. Adopting Alternative A could lower the cost of raising aircraft finance, particularly in the capital markets. It could, however, also restrict the ability of an airline in financial difficulties from effecting a turnaround of its business using the rescue provisions of the UK's insolvency regime. A primary objective of the UK insolvency regime is the rescue, through administration, of viable businesses in distress, preserving, amongst other things, business value and jobs. Giving additional rights to some creditors could undermine this objective and impact adversely on other stakeholders. Any proposal to change the existing balance of interests and rights in an insolvency situation will require careful consideration and analysis of the impact. Adoption of Alternative A would require changes to UK insolvency law in respect of aircraft objects but it is not proposed to extend this to other assets of the insolvent company.

**Question 10.**

**Should the UK adopt provisions in accordance with Alternative A or retain existing national insolvency law and why?**

**Question 11**

**What impact do you think adopting Alternative A would have on the rescue of viable businesses in distress?**

**Question 12.**

**If you believe the UK should adopt provisions in accordance with Alternative A, what waiting period should the UK adopt?**

**Question 13.**

**If the UK does adopt Alternative A, what level of discount to the cost of financing would likely be attributable specifically to this measure?**

### **Insolvency assistance – Article XII**

77. Article XII allows a Contracting State to opt-in to provisions concerning the insolvency assistance that courts in one Contracting State are able to provide to foreign courts on the insolvency of a business or individual.
78. By making a declaration under Article XII, UK courts would be obliged to co-operate to the maximum extent possible, in accordance with UK law, with foreign courts carrying out the remedies under Article XI. Any support given would be in addition to the co-operation the UK is required to provide as a signatory to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency.
79. The UNCITRAL Model Law on Cross-Border Insolvency<sup>19</sup> aims to address cross-border insolvency proceedings by focusing on access to the courts on enacting States, recognition of proceedings, relief and co-operation and co-ordination.
80. The EU has competence in this area and as such the UK will not make a declaration.

### **De-registration and export request authorisation – Article XIII**

81. Under the treaty, one of the remedies available to creditors in cases of default is to apply for the de-registration and export of an aircraft object. One route for procuring this is via a court order where a declaration has been made to that effect. An alternative route is for the debtor to provide the creditor with an irrevocable de-registration and export request authorisation (IDERA) under Article XIII for presentation to the registry authority. This route is only available to creditors if the UK makes a declaration under Article XXX(1) of the Protocol.
82. The IDERA must be in the form annexed to the treaty and cannot be revoked by the debtor without the consent in writing of the creditor. The authorisation can only be removed at the request of the creditor and the creditor is the sole person authorised to exercise the remedies of de-registration and export.
83. The registry authority must expeditiously co-operate with and assist the creditor in the exercise of the remedies of de-registration and export under Article IX.
84. This provision is designed to make it easier for creditors to enforce the remedies available to them should a party default on repayments. The Government believes that this measure could increase confidence that a creditor can regain its aircraft object in cases of default. De-registration of an aircraft object with the consent of the mortgage holder can already be procured through the use of *irrevocable powers of attorney*, therefore the Government proposes to make a declaration in favour of this provision and allow creditors to make use of the IDERA system. Use of the IDERA is subject to *applicable aviation and safety laws and regulations*, so the CAA, as regulator, could still prevent an aircraft being exported if there was a relevant concern.

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<sup>19</sup> [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html)

#### Question 14

**Do you agree that the UK should allow debtors to provide creditors with an IDERA to enable a creditor to apply for the de-registration and export of an aircraft object in cases of default? Why?**

#### **Designated entry points – Article XIX**

85. Article XIX allows Contracting States to make a declaration to designate an *entry point* or *entry points* to pass information required for registration, or alternatively, to authorise registration, to the International Registry for airframes and helicopters registered in the UK for nationality purposes. Contracting States cannot nominate a designated entry point for notices of national interest or any non-consensual right or interest arising under the laws of another State or any airframe or helicopter registered in another Contracting State.
86. Contracting States can decide whether to nominate a designated entry point for all or some types of transactions and use of the entry point can be mandatory or optional. However, since engines are not registered for nationality purposes in the same way as airframes and helicopters, an entry point cannot be mandatory for the registration of interests against aircraft engines.
87. The Government has considered this declaration and believes that requiring holders of interests to submit information through a designated entry point would add an additional burden to the registration of international interests for UK businesses and could result in increased costs. As a result, the UK is not intending to designate an entry point or points. Instead, holders of international interests will be able to register their interests with the International Registry directly.

#### Question 15:

**Do you agree that the UK should not designate any entry points for the passing of information on registration of international interests in helicopters and airframes to the International Registry? Why?**

#### **Relationship with the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft – Article XXIV**

88. Article XXIV states that the treaty supersedes the Rome Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (the Rome Convention) for Contracting States which are party to that treaty unless a Contracting State makes a declaration that these provisions will not apply.
89. The Rome Convention was agreed in 1933 and it aims to limit the rights of creditors or owners of aircraft to detain aircraft whilst pursuing a claim against a debtor. As the UK is not a party to the Rome Convention, it will not make a declaration under this Article.

## **OECD's Aviation Sector Understanding (ASU)**

90. The Sector Understanding on Export Credits for Civil Aircraft is an annex to the OECD Arrangement on Officially Supported Export Credits. The annex, which is commonly referred to as the Aviation Sector Understanding (ASU), sets out the internationally agreed rules for officially supported export credits in the aviation sector. The ASU provides a framework for export credit agencies (ECAs) to set the price and levels of cover for export credit support so that all participating states use the same principles creating a level playing field. The current participants in the ASU are Australia, Brazil, Canada, the EU, Japan, Korea, New Zealand, Norway, Switzerland and the US. The ECA in the UK is UK Export Finance (UKEF).
91. Under the ASU, a buyer/lessor in a Contracting State which has ratified the treaty, incorporating certain declarations, is eligible for a discount of up to 10% on the premium rate of their export credit support. The level of the discount is at the discretion of the ECA.
92. The ASU states which declarations under the treaty must be made and which must not be made in order for a Contracting State to meet the requirements of the ASU. The declarations that Contracting States must make are:
- (i) Adoption of Alternative A on insolvency proceedings (paragraphs 63-68, Article XI) with a maximum waiting period of 60 days
  - (ii) Ability to de-register and export an aircraft object (paragraphs 81-84, Article XIII)
  - (iii) Allowing parties to agree which law should govern their contractual rights and obligations (paragraphs 54-55, Article VIII)
93. The Contracting State must also make one of the following two declarations:
- (iv) Declare that the remedies available to creditors on default, which are available in the treaty without leave of the court, are indeed available without leave of the court (paragraphs 46-47, Article 54(2))
  - (v) Declare that the additional remedies available to creditors pending final determination of their claim (see paragraphs 56-58, Article X), are available, with the exception of the requirement to allow parties to an agreement to disapply the ability of the court to protect debtors as set out in Article 13(2). The term *speedy* should be defined as no more than a certain number of days, depending on the type of relief to be granted.
94. In addition, Contracting States should not make the following declarations:
- (i) A declaration to exclude the remedies available to creditors pending final determination of their claim (see paragraphs 48-50, Article 55) unless the Contracting State has made declaration (iv) above.



- (ii) A declaration opting-out of provisions which state that the treaty supersedes the Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft (see paragraph 88-89, Article XXIV)
  - (iii) A declaration preventing the granting of a lease in the Contracting State's territory (see paragraphs 44-45, Article 54(1))
95. The EU has not made a declaration regarding insolvency, however Member States can amend national law to reflect Alternative A or B under Article XI. In light of this, the ASU states that a Member State shall be deemed to have made the qualifying declaration regarding insolvency provisions provided that its national law has been amended to reflect the terms of Alternative A with a maximum waiting period of 60 days.
96. The EU has made a declaration disapplying Article VIII regarding the choice of law and under Article 55 in respect of the availability of interim remedies pending final determination of a claim. The ASU also states that the requirements regarding choice of law and remedies will be considered to be satisfied if the laws of the EU or the relevant Member State are substantially similar to those set out in the treaty. The OECD has confirmed that the laws of the EU with regard to choice of law are substantially similar.
97. If the UK makes declarations in line with the OECD's ASU, UK businesses which apply for and are granted export credit support would be eligible for a discount of up to 10% on the premium charged by the export credit agency, at the discretion of the export credit agency.

## **Question 16**

**Considering your answers to the other questions in this consultation, do you believe the UK should make declarations in line with the Aviation Sector Understanding? Why?**

## **Estimate of costs to ratify the treaty**

98. The Impact Assessment which accompanies this consultation document sets out the current best understanding of the costs and benefits of ratifying the treaty in the UK. This Impact Assessment will be updated following the consultation. The Impact Assessment estimates that the familiarisation costs to business as a result of ratifying the treaty are a one-off cost of £5,000 per business. However, since some businesses will already be familiar with the provisions of the treaty and the International Registry, not all businesses will incur these familiarisation costs.

## **Question 17**

**Do you agree with the Government's estimate of a one-off familiarisation cost to business of £5,000 to understand the provisions of the treaty and the declarations made by the UK? Why?**

### **Equality considerations**

99. BIS has a duty to give due regard as to whether its policies would have an adverse impact on any communities or groups within communities. BIS has considered the policy options contained in this document and since the ability to register international interests on the International Registry would not be mandatory and since the UK's national register would remain available to register interests, BIS is not aware that adopting the treaty with the declarations as outlined in this consultation document would affect a particular group.

#### **Question 18**

**In your view, would any of the proposals in this document have an adverse impact on any community or group within a community? Why?**

## 6. Consultation questions

### Question 1

Do you agree that the UK should make a general declaration that all existing and future non-consensual rights with priority under UK law over an interest equivalent to an international interest should retain their priority under the terms of the treaty, including over any interests registered on the International Registry prior to ratification of the treaty in the UK? Why?

### Question 2

Do you agree that the UK should make a declaration to retain any rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to that aircraft object or another object are unaffected? Why?

### Question 3

Do you think UK should make a declaration under article 40 to allow a judgment creditor to register:

- (a) Any specific type(s) of judgment debt, even where no separate enforcement order has been made ? or
- (b) Any judgment debt in respect of which a specific type of enforcement order has been made?

### Question 4

If your answer is “yes” to either or both of the above questions, please list the types of judgment debt or the types of enforcement order that you think should give rise to the right of registration on the International Registry.

### Question 5:

Do you agree that the treaty should apply to internal transactions as well as international transactions? Why?

### Question 6

Do you agree that a creditor should be able to grant a lease whilst the aircraft object is situated in the UK in the event of a default. Why?

#### Question 7

Do you agree that the UK should continue to allow the use of extra-judicial remedies except where a moratorium is in place? Alternatively, what problems/issues do you envisage (if any) if there is no court involvement? Why?

#### Question 8

Do you agree that pre-existing rights registered on the National Register of Aircraft Mortgages should retain their priority over subsequently registered interests on the International Registry? Why?

#### Question 9

Do you think that the UK should define the term *speedy* and if so how?

#### Question 10.

Should the UK adopt provisions in accordance with Alternative A or retain existing national insolvency law and why?

#### Question 11

What impact do you think adopting Alternative A would have on the rescue of viable businesses in distress?

#### Question 12.

If you believe the UK should adopt provisions in accordance with Alternative A, what waiting period should the UK adopt?

#### Question 13.

If the UK does adopt Alternative A, what level of discount to the cost of financing would likely be attributable specifically to this measure?

#### Question 14

Do you agree that the UK should allow debtors to provide creditors with an IDERA to enable a creditor to apply for the de-registration and export of an aircraft object in cases of default? Why?

#### Question 15:

Do you agree that the UK should not designate any entry points for the passing of information on registration of international interests in helicopters and airframes to the International Registry? Why?

#### Question 16

Considering your answers to the other questions in this consultation, do you believe the UK should make declarations in line with the Aviation Sector Understanding? Why?

#### Question 17

Do you agree with the Government's estimate of a one-off familiarisation cost to business of £5,000 to understand the provisions of the treaty and the declarations made by the UK? Why?

#### Question 18

In your view, would any of the proposals in this document have an adverse impact on any community or group within a community? Why?

## 7. What happens next?

100. BIS will consider the responses to this consultation and will publish a response within three months of the close of the consultation. The response will set out how the Government intends to implement the treaty and a timetable for ratification. The Government plans to implement the necessary changes to domestic legislation by means of a single statutory instrument, so far as possible since this will make it easier for business to see how the implementing changes have been effected. We anticipate a number of consequential changes to different pieces of existing legislation. The Government aims to achieve a coherent overall legislative framework, whereby processes, rights and other matters in existing legislation will dovetail with the new regime implemented by the treaty.

## Annex A: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

### Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402  
or e-mail to: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

However, if you wish to comment on the specific policy proposals, you should contact the policy lead (see section 2).

## **Annex B: List of individuals/organisations consulted**

Aberdeen airport

Airbus

Aircraft Owners and Pilots Association

Airport Operators Association

Allen & Overy

Association of Business Recovery Professionals

Aviareto

Aviation Safety Support International

Aviation Working Group

Bank of Scotland

Barclays Bank

Belfast International Airport Limited

Birmingham Airport Limited

Blackpool Airport Limited

Boeing

Bombardier

Bond Dickinson

Bristol Airport

British Airline Pilots Association

British Airways

British Exporters Association

British Business and General Aviation Association

British Microlight Aircraft Association

BRM Solicitors  
Brodies LLP  
Burgess Salmon LLP  
Cantor Fitzgerald  
Cardiff International Airport Limited  
Charles Russell LLP  
Citibank  
Clark Ricketts LLP  
Clifford Chance LLP  
Clyde and Co  
Clydesdale Bank PLC  
Cravath Swaine & Moore LLP  
Debevoise and Plimpton  
Deloitte  
DLA Piper  
Easy Jet  
Embraer  
Engine Lease Finance Corporation  
Eurocontrol  
European Bank for Reconstruction and Redevelopment  
European High Yield Association  
Exeter and Devon Airport  
Field Fresher Waterhouse  
Freshfields Bruckhaus Deringer  
Gatwick Airport Limited



GE Capital Aviation Services  
General Aviation Safety Council  
Gibson Dunn and Cruthcer  
Glasgow Airport Limited  
Glasgow Prestwick Airport Limited  
Guild of Air Pilots and Air Navigators  
Guild of Air Traffic Controllers  
Harper Macleod LLP  
Heathrow Airport Limited  
Helicopter Club of Great Britain  
Hill Dickinson  
Hogan Lovells International LLP  
Holman Fenwick Willan LLP  
Insol International  
Insolvency Lawyers Association  
Insonomy  
Invest Northern Ireland  
Investec Bank PLC  
JP Morgan  
K & L Gates  
Kennedys Aviation LLP  
Kings & Wood Mallesons SJ Berwin  
KPMG  
Lathan and Watkins  
Law Society of Scotland

Ledingham Chalmers

Lester Aldridge

Light Aircraft Association

Linklaters LLP

Liverpool John Lennon Airport

Lloyds Bank

London Luton Airport

London Southend Airport

Machins Solicitors

Manchester Airport Plc

Milbank Tweed Hadley and McCloy LLP

McManus Kearney Solicitors

Moody's

Morton Fraser Solicitors

Newcastle International Airport Limited

Norton Rose Fulbright

Professor Sir Roy Goode

PwC

Rolls-Royce

Royal Bank of Scotland

Ryanair

Santander UK

Shoosmiths Solicitors

Simmons and Simmons

SITA

Slaughter and May  
Sloane Helicopters  
SNR Denton  
Southampton Airport Limited  
Standard and Poors  
Stansted Airport Limited  
Stephenson Harwood LLP  
Sumitomo Mitsubishi Banking Corporation  
The City of London Law Society  
TUI Travel  
Unique Helicopters  
Virgin Atlantic Airways  
Watson Farley Williams  
White and Case LLP  
Woodgate Executive Air Charter Ltd

## Annex C: Ratification of the Convention on International Interests in mobile equipment and Protocol thereto on matters specific to aircraft equipment response form

The closing date for this consultation is 11/08/2014

Name:

Organisation (if applicable):

Address:

Please return completed forms to: Hayley Gowen, 4<sup>th</sup> Floor – Abbey 1, Department for Business, Innovation and Skills, 1 Victoria Street, London, SW1H 0ET, 020 7215 6096; hayley.gowen@bis.gsi.gov.uk

Please tick the box which is most relevant for you:

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Question 1 (paragraphs 27-35)

Do you agree that the UK should make a general declaration that all existing and future non-consensual rights with priority under UK law over an interest equivalent to an international interest should retain their priority under the terms of the treaty, including over any interests registered on the International Registry prior to ratification of the treaty in the UK? Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

#### Question 2 (paragraphs 27-35)

Do you agree that the UK should make a declaration to retain any rights to arrest or detain an aircraft object for non-payment of amounts owing for the provision of public services relating to that aircraft object or another object are unaffected? Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

#### Question 3 (paragraphs 36-38)

Do you think UK should make a declaration under article 40 to allow a judgment creditor to register:

- (a) Any specific type(s) of judgment debt, even where no separate enforcement order has been made ? or
- (b) Any judgment debt in respect of which a specific type of enforcement order has been made?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

#### Question 4 (paragraphs 36-38)

If your answer is “yes” to either or both of the above questions, please list the types of judgment debt or the types of enforcement order that you think should give rise to the right of registration on the International Registry.

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

## Question 5 (paragraphs 39-41)

Do you agree that the treaty should apply to internal transactions as well as international transactions? Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

## Question 6 (paragraphs 44-45)

Do you agree that a creditor should be able to grant a lease whilst the aircraft object is situated in the UK in the event of a default. Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

## Question 7 (paragraphs 46-47)

Do you agree that the UK should continue to allow the use of extra-judicial remedies except where a moratorium is in place? Alternatively, what problems/issues do you envisage (if any) if there is no court involvement? Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

## Question 8 (paragraphs 51-53)

Do you agree that pre-existing rights registered on the National Register of Aircraft Mortgages should retain their priority over subsequently registered interests on the International Registry? Why?

☐ Yes ☐ No ☐ Not sure

Comments:

## Question 9 (paragraphs 56-58)

Do you think that the UK should define the term *speedy* and if so how?

☐ Yes ☐ No ☐ Not sure

Comments:

## Question 10 (paragraphs 59-76)

Should the UK adopt provisions in accordance with Alternative A or retain existing national insolvency law and why?

☐ Yes ☐ No ☐ Not sure

Comments:

## Question 11 (paragraphs 59-76)

What impact do you think adopting Alternative A would have on the rescue of viable businesses in distress?

☐ Yes ☐ No ☐ Not sure

Comments:

#### Question 12 (paragraphs 59-76)

If you believe the UK should adopt provisions in accordance with Alternative A, what waiting period should the UK adopt?

☐ Yes ☐ No ☐ Not sure

Comments:

#### Question 13 (paragraphs 59-76)

If the UK does adopt Alternative A, what level of discount to the cost of financing would likely be attributable specifically to this measure?

☐ Yes ☐ No ☐ Not sure

Comments:

#### Question 14 (paragraphs 81-84)

Do you agree that the UK should allow debtors to provide creditors with an IDERA to enable a creditor to apply for the de-registration and export of an aircraft object in cases of default?  
Why?

☐ Yes ☐ No ☐ Not sure



Comments:

Question 15 (paragraphs 85-87)

Do you agree that the UK should not designate any entry points for the passing of information on registration of international interests in helicopters and airframes to the International Registry? Why?

☐ Yes ☐ No ☐ Not sure

Comments:

Question 16 (paragraphs 90-97)

Considering your answers to the other questions in this consultation, do you believe the UK should make declarations in line with the Aviation Sector Understanding? Why?

☐ Yes ☐ No ☐ Not sure

Comments:

Question 17 (paragraph 98)

Do you agree with the Government's estimate of a one-off familiarisation cost to business of £5,000 to understand the provisions of the treaty and the declarations made by the UK? Why?

☐ Yes ☐ No ☐ Not sure

Comments:

### Question 18 (paragraph 99)

In your view, would any of the proposals in this document have an adverse impact on any community or group within a community? Why?

☐ Yes                      ☐ No                      ☐ Not sure

Comments:

### **Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☐

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☐ Yes                      ☐ No

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