

Malta: Legislative History Report

In an effort to preserve the efficacy of the rules under the CTC, the ratification process required some fine-tuning of ancillary laws. This helped Malta create a better framework for a consistent operation of the Convention and Protocol.

Pursuant to the Legal Group Recommendations [See Annex 1] and beyond, the Maltese regulatory framework on aviation was amended as further described below –

- The unification of the law on aircraft registration and aircraft security;
- The introduction of a single Register of Aircraft and Aircraft Mortgages;
- The provision for the recordation of any irrevocable de-registration and export request authorization;
- The provision of extensive powers of secured creditors to oppose cancellation of the register;
- The annotation of information of any international security interest and the debtor thereof registered in the IR, is so requested;
- The provision for the registration of a prohibitory notice to bar the recordation of further mortgages in the domestic Register, thus giving exclusive domain to the interests recorded in the International Registry.

What follows is a tabular listing of some of the most important regulatory changes that were deemed necessary (based on research results and findings) in order to align, to the extent possible, our domestic law with the provisions of the CTC & Aircraft Protocol.

| | Issue | Reasoning for proposed amendment | Proposed amendment |
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| 1 | International interest; fractional interests | Although not expressly dealt with in the Convention, it is widely understood that fractional interests may however be treated as a separate international | To grant legal recognition to fractional ownership interests. |

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| | | interest under the Convention and that each sale of a fractional interest in an aircraft object is separately registrable as a sale in the International Registry. Similarly each purchase of a fractional interest may be financed by a different creditor which takes security over the particular fractional interest it has financed and each such security constitutes a distinct international interest and is registrable as such. ¹ | |
| 2 | International interest; aircraft engines | Aircraft engines are treated separately from the airframes on which they may be installed. Under traditional civil law rules, ownership of an object annexed to or removed from a larger object passes to or from the owner of the latter by the principle of accession or severance and under the Convention they are treated as separate objects. | To amend civil law rules on accession to clarify the position regarding security over engines. |
| 3 | Remedies of chargee | To provide improved protection for lessors under a leasing agreement and for conditional sellers under a title reservation agreement by way of self help remedies | Although Maltese law already provided fairly strong creditor rights in the aviation sector, it was proposed to adjust existing law to grant additional rights as provided for in the Convention and Protocol. Furthermore, Malta opted to permit self |

¹ Prof. Sir Roy Goode, *Official Commentary on the Convention on International Interests in Mobile Equipment and Protocol Thereto on matters specific to aircraft equipment*, p. 31.

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| | | | help remedies without the requirement of leave of court as per C – Art.54(2) Declaration. ² |
| 4 | Compatibility of irrevocable nature of IDERA with national law on mandate | The adoption of Article XIII of the Protocol on De-registration and export request authorization required that the irrevocable nature of such mandate, when granted as security, be legally recognized and rendered fully enforceable in Malta. | To introduce rules on irrevocable mandate granted by way of security. |
| 5 | The type of claims secured by a special privilege on aircraft | The Convention refers to two categories of special privileges, namely – (i) those arising by virtue of law, which enjoy super-priority, and (ii) those which when registered in the International Registry constitute a special privilege and enjoy such status subject to certain conditions. | To introduce two separate categories of special privileges as are substantively declared in Malta’s C-article 39(1)(a) and C-article 40 Declarations. |
| 6 | The effects of registrable special privileges | In order to protect the proprietary interests of the aircraft owner, a registrable special privilege will only attach to the aircraft when registered in the I.R. and only if the claim is created by the owner of the aircraft or an authorized person. | To introduce a list of registrable special privileges as are substantively declared in C-article 40 Declaration. |
| 7 | The ranking of creditors | Whereas the non-consensual rights as are declared under a C-article 39(1)(a) Declaration enjoy super-priority over all other debts to which an aircraft | To introduce rules to regulate the ranking of creditors. This has been done under Article 44 of the Aircraft Registration |

² Pursuant to subarticle 2 of Article 54 of the Convention, it is declared that all remedies available to the creditor under the Convention or Protocol which are not expressed under the provision thereof to require application to the court, may be exercised without leave of court or other court action.

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| | <p>may be subject, the registrable special privileges shall, when registered in the I.R., only rank in relation to the respective title of debtor.</p> <p>Subject to the above, any debt secured by a mortgage registered in the domestic Register, or a charge registered in the I.R., such debt shall rank after debts secured by a possessory lien.</p> <p>Furthermore, security interests governed by a foreign law and duly recognized under the Maltese Aircraft Registration Act rank after the possessory liens and registered privileges or mortgages registered in the I.R. prior to the date of registration of the relevant foreign security interest.</p> | Act. |
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Other amendments were made as follows –

The Civil Code

- To clarify the rules on changes to the interest payable or the modalities for the calculation of interest on a debt secured by a privilege or hypothec;
- To introduce rules on security by title transfer;
- To make some other generic clarifications relating to financial transactions.

The Code of Organisation and Civil Procedure

- To extend the application of the provision of court approved sales also to aircraft;
- To provide for (a) an executive warrant or arrest of aircraft and (b) a precautionary warrant of arrest of aircraft, that essentially mirror the current rules and procedures laid out for ships.

All of the above proposals have been incorporated into law under the terms of Act VIII of 2010.

Note: For more details on the legislative process and relevant time-lines, please refer to the Country Summary Note.

Enclosures:

Annex 1 : Legal Group Recommendations, Consultation Document.