



STATUTORY INSTRUMENTS.

S.I. No. 927 of 2005.

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INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT (CAPE TOWN CONVENTION)  
(DECLARATIONS) ORDER 2005.

(Prn. A9/0182)

S.I. No. 927 of 2005.

INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT (CAPE TOWN CONVENTION)  
(DECLARATIONS) ORDER 2005.

WHEREAS the Convention on International Interests in Mobile Equipment, opened for signature at Cape Town on 16 November 2001, and the Protocol to that Convention in Matters Specific to Aircraft Equipment provide for the making of various declarations by acceding States, the Government, in exercise of the power conferred on it by section 5 of the International Interests in Mobile Equipment (Cape Town Convention) Act 2005, hereby makes the following order:

**Citation.**

1. This Order may be cited as the International Interests in Mobile Equipment (Cape Town Convention) (Declarations) Order 2005.

**Interpretation.**

2. (1) In these Regulations, unless the context otherwise requires—

“Companies Acts” means the Companies Act 1963 and any Act that is required to be read as one with that Act;

“company” means a company registered under the Companies Acts;

“enactment” includes a statutory instrument made under an Act;

“state entity” means—

(a) a body, whether incorporated or not, that is established or constituted by an enactment for a public purpose, or

(b) a body appointed by a Minister under the authority of an enactment, or

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 29th July, 2005.*

(c) a company whose shares, or a majority of whose shares are vested in the State or a Minister on behalf of the State, or

(d) a company in respect of which the State or a Minister on behalf of the State has power to appoint all or a majority of the directors.

(2) Words and expressions used in this Order that are defined in the International Interests in Mobile Equipment (Cape Town Convention) Act 2005 have the same meanings as they have in that Act.

(3) Subject to subparagraph (2), words and expressions used in this Order that are also used in the Cape Town Convention and the Aircraft Protocol have the same meanings as they have in that Convention and Protocol.

**Declarations to give effect to certain Articles under the Cape Town Convention.**

3. (1) In accordance with Article 39 of the Cape Town Convention, it is declared—

(a) that when, under a law of the State, a non-consensual right or interest (other than a right or interest to which Article 40 of the Cape Town Convention applies) has priority over an interest in an object equivalent to that of the holder of a registered international interest, that right or interest has priority over a registered international interest, whether in or outside insolvency proceedings, and

(b) that if—

(i) the State or any State entity, or

(ii) any intergovernmental organisation of which the State or any such entity is a member, or

(iii) any private provider,

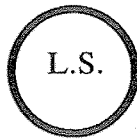
has provided a public service, nothing in that Convention affects the right of the State, entity, organisation or provider to arrest or detain, in accordance with the laws of the State, an object for the payment of amounts owed to the State or

any such entity, organisation or provider for those services in respect of that object or another object.

(2) In accordance with subarticle 2 of Article 54 of the Cape Town Convention, it is declared that a creditor who wishes to exercise a remedy that is available to the creditor under a provision of that Convention is not required to make an application to the High Court for leave to exercise that remedy unless the provision expressly requires the creditor to make such an application.

**Declarations to give effect to certain Articles under the Aircraft Protocol.**

4. In accordance with Article XXX of the Aircraft Protocol, it is declared that Articles VIII, XII and XIII, and subarticle 3 of Article X, of that Protocol apply to and in respect of the State.



GIVEN under the Official Seal of the Government, this 25th day of July, 2005.

BERTIE AHERN,  
Taoiseach.

## EXPLANATORY NOTE.

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Order specifies the declarations made on behalf of the State on ratifying the Cape Town Convention and the associated Aircraft Protocol. The Convention and Protocol allow contracting States a certain amount of latitude to tailor those instruments to their particular circumstances by enabling them to make declarations as to whether they will or will not adhere to particular provisions of those instruments.

Consequently, in accordance with section 5 of the International Interests in Mobile Equipment (Cape Town Convention) Act 2005, the Order makes declarations as contemplated by Article 39 and subarticle 2 of Article 54 of the Convention and Article XXX of the Protocol.

The declaration contemplated by Article 39 gives priority to all Irish non-consensual rights (i.e. rights established under Irish law) and reserves rights of arrest and detention of aircraft where payments are due to agencies providing public services.

The declaration contemplated by subarticle 2 of Article 54 permits remedies under the Convention to be exercised without requiring leave of the Courts.

The declarations contemplated by Article XXX apply the following:

- Article XIII (which allows the parties to an agreement to agree on the law that is to apply to their contract);
- Article XII (which requires the courts of a Contracting State in which an aircraft is situated to cooperate to the maximum extent possible with foreign courts);
- Article XIII (which requires registry authorities, such as the Irish Aviation Authority, to facilitate the de-registration and export of aircraft under the Convention whenever it is necessary to do so);
- Subarticle 3 of Article X (which extends the range of orders that a Court can make under Article 13 to include orders for the sale of an object if the debtor and creditor agree),

These declarations accord with normal Irish legal practice.

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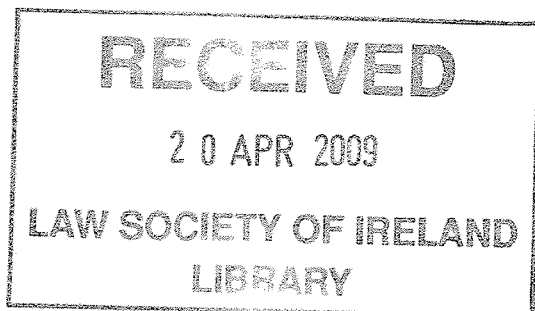
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Because section 7 of the Act already makes the High Court the relevant Court for the purposes of the Convention and Protocol, no declaration is required in respect of Article 53 of the Convention (which contemplates the making of a declaration as to which court of the State is to be the relevant court for the purpose of adjudicating legal proceedings arising under the Convention).

Declarations are not being made in respect of Articles 40, 50, 52, 54(1), 55 and 60 of the Convention, or in respect of Article's XIX, XXIV, XXIX or those provisions of Article XXX that relate to Articles X (other than subarticle 3), XI and XXI. Those Articles and provisions deal with matters that are already adequately covered by Irish law and administration.

The declarations contemplated by Article 48 of the Convention and Article XXVII of the Protocol are relevant only to Regional Economic Integration Organizations, such as the European Union.



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