



PARLIAMENTARY LIBRARY

Te Pātaka Rangahau ā Te Whare Pāremata

BILLS DIGEST

Digest No 1780

Civil Aviation (Cape Town Convention and Other Matters) Amendment Bill 2010

Date of Introduction:	31 May 2010
Portfolio:	Transport
Select Committee:	As at 01 June, 1st Reading not held.
Published: 01 June 2010 by John McSoriley BA LL.B, Barrister, Legislative Analyst P: (04) 817-9626 (Ext. 9626) F: (04) 817-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

"This Bill amends domestic legislation, including the Civil Aviation Act 1990 (the Act), the Personal Property Securities Act 1999 (the PPSA), as well as some company, insolvency, and statutory management legislation to enable New Zealand to accede to the Convention on International Interests in Mobile Equipment (the Cape Town Convention) and to the associated Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the Aircraft Protocol). The Bill also amends powers in the Civil Aviation Act 1990 relating to the making of civil aviation rules"¹.

Background

"Accession to the Cape Town Convention and the Aircraft Protocol by New Zealand will support an international legal regime to govern security interests in high-value mobile equipment (including aircraft), and potentially enable most commercial aircraft operators to secure savings in funding and transaction costs in future aircraft acquisitions"².

¹ Civil Aviation (Cape Town Convention and Other Matters) Amendment Bill, 2010 No 166-1, Explanatory note, General policy statement, p. 1.

² Ibid., p. 1.

"The introduction of more flexibility into civil aviation rule making will strike an appropriate balance between safeguards and functionality, making the process more responsive to developments in the aviation sector"³.

"International investors in, or lessors of, mobile equipment such as aircraft have had to rely on differing national laws to protect their investments. When there is a default by the debtor, recovery of the property sometimes requires protracted legal proceedings across more than one jurisdiction. Consequently, financiers seek a premium on their lending as a hedge against the risks involved.

"The Convention and the Aircraft Protocol are private legal agreements, supported by the International Institute for the Unification of Private Law (UNIDROIT) and the International Civil Aviation Organization (ICAO).

"They are intended to significantly improve financial security for investors from cross-border transactions in high-value mobile equipment, such as aircraft, rail rolling stock and space equipment.

"The Convention enables creditors (financiers) to register international security interests and provides standard remedies in the event of default by the debtor. The Aircraft Protocol supplements and modifies the Convention to meet the particular requirements of aircraft financing. The Aircraft Protocol offers creditors additional remedies, including the ability to require removal of an aircraft from the national civil aircraft register and export it.

"Consequently, organisations involved in aircraft financing will have more confidence in transactions, and the resulting reduction in risk will permit discounted finance costs. Debtors are in turn protected from unwarranted seizure of the assets by creditors, provided they have maintained their financial obligations.

"Accession to the Convention and Aircraft Protocol by New Zealand will support an international system to protect commercial security interests in mobile aircraft equipment, and potentially enable New Zealand aircraft operators to secure commercial advantages from savings in funding and transaction costs in future aircraft acquisitions"⁴.

Main Provisions

Commencement

The Bill provides that the provisions which implement the Cape Town Convention and the Aircraft Protocol, come into force on a date to be appointed by the Governor-General by Order in Council (*Part 1, Clauses 12 to 14*) and the rest of the clauses come into force on 1 August 2010 (*Clause 2*).

Rule Making under the Civil Aviation Act 1990

The Bill provides that an ordinary rule may require or provide for a matter to be determined, undertaken, or approved by the Authority, the Director, or other persons, or empower the Authority, the Director, or any other person to impose requirements or conditions. Amendments are also made to the provisions relating to matters which must be taken into account when ordinary rules are made (the requirement to take into account is extended to recommending the making of a rule) and the consultation requirements which must be observed before ordinary rules are made is amended to require the

³ Ibid., pp. 1 and 2.

⁴ <http://www.transport.govt.nz/ourwork/air/capetownconventionandaircraftprotocol/> National interest analysis: Convention on International Interests in Mobile Equipment 2001 and Protocol on Matters Specific to Aircraft Equipment 2001, Ministry of transport, 2001.

Also see National Interest Analysis: <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Also see: [Report of the International Treaty Examination by the Transport and Industrial Relations Select Committee](#).

Minister to publish a notice of his or her intention to make the rule and to consult with certain persons and the Environmental Risk Management Authority (*Part 1, Clause 5, amending Section 28 of the Act by substituting subsection (5) and inserting new subsection (5A' Clause 6, amending Section 3392) of the Act; Clause 7, amending Section 34 of the Act*)).

Comment

The present provision relating to the making of ordinary rules is not very straightforwardly expressed (*Section 28(5) of the Act*): " No ordinary rule shall be invalid because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities".

Copyright: © NZ Parliamentary Library, 2010

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.