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## Cape Town Convention Academic Project

Facilitating the study of the Convention on International Interests in Mobile Equipment

# REPORTING ON ADMINISTRATIVE AND OTHER NON-JUDICIAL ACTIVITY

## I. Report (R)<sup>1</sup>

Item	Factual Information
1. Date of the transaction	Various – the administrative action involved three aircraft leased to SpiceJet Limited (“SpiceJet”) by entities related to BOC Aviation Pte. Ltd. (“BOC Aviation”), and the following aircraft were delivered to SpiceJet on the dates indicated below under leases dated 7 August 2013: <ul style="list-style-type: none"> <li>• MSN 37364: 9 October 2013</li> <li>• MSN 41397: 28 January 2014</li> <li>• MSN 41398: 1 May 2014</li> </ul>
2. Creditor	Wilmington Trust SP Services (Dublin) Limited (not in its individual capacity but solely as trustee) is the lessor for each aircraft
3. State of Creditor	Ireland
4. Debtor	SpiceJet Limited
5. State of Debtor	India
6. State and date of aircraft registration	All aircraft were registered in India, on the following dates: <ul style="list-style-type: none"> <li>• MSN 37364: 14 October 2013</li> <li>• MSN 41397: 3 February 2014</li> <li>• MSN 41398: 26 May 2014</li> </ul>

<sup>1</sup> Instructions and educational notes are included in the Annex.

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7. Summary of transaction structure	The Creditor for each aircraft leased such aircraft to the Debtor, and upon delivery to the Debtor each aircraft was registered in India
8. Recordation of IDERA	<p>An IDERA for each aircraft was executed by the Debtor and recorded by the Directorate General of Civil Aviation of India (“DGCA”) on the following dates:</p> <ul style="list-style-type: none"> <li>· MSN 37364: 3 October 2013</li> <li>· MSN 41397: 24 January 2014</li> <li>· MSN 41398: 21 May 2014</li> </ul>
9. Registrations with International Registry	Yes
<p>10. Commencement by Creditor of the exercise of CTC remedies:</p> <p>a) to obtain possession of the aircraft object</p> <p>b) to deregister the aircraft</p> <p>c) to export the aircraft object</p>	<p>The following steps were taken by the Creditor for each aircraft:</p> <ul style="list-style-type: none"> <li>· On 19 December 2014, lease termination notices for MSN 37364, MSN 41397, and MSN 41398 under the lease were sent separately to the Debtor</li> <li>· On 30 December 2014, three separate requests to de-register the three aircraft MSN 37364, MSN 31397, and MSN 41398 under the Irrevocable Deregistration and Export Request Authorization (“IDERA”) were sent to the DGCA</li> <li>· On 9 January 2015, a revised request to de-register such aircraft under the IDERA, in line with the draft Aircraft Rule 30(7) to be inserted in the Aircraft Rule 1937 was sent to the DGCA</li> <li>· On 9 January 2015, it was represented to the DGCA that the Creditor was the IDERA holder for all three aircraft and it was the only Registered Interest holder in respect of the three aircraft MSN 37364, MSN 41397, and MSN 41398</li> <li>· On 20 January 2015, a writ petition seeking, <i>inter alia</i>, an order directing the DGCA to de-register such aircraft was filed in the Delhi High Court in Delhi, India by the Creditor</li> <li>· At a hearing on 28 January 2015, the DGCA asked the Delhi High Court to adjourn the initial hearing in the matter to allow more time for the DGCA to consider the de-registration request</li> <li>· On 19 March 2015, the Delhi High Court ordered the DGCA to (i) de-register the aircraft “forthwith” and (ii) take a decision on export of the aircraft within two weeks</li> <li>· On 23 March 2015, SpiceJet Limited filed an appeal, i.d. LPA 170 of 2015 in the Delhi High Court against the Delhi High Court order dated 19 March 2015</li> <li>· On 23 March 2015, the Creditor requested that</li> </ul>

	<p>the DGCA suspend de-registration action pending a proposed settlement with the Debtor</p> <ul style="list-style-type: none"> <li>· On 2 April 2015, the Creditor advised the DGCA that it had concluded a settlement with the Debtor and it withdrew the de-registration request</li> <li>· On 7 April 2015, the Delhi High Court dismissed LPA No. 170 of 2015 filed by SpiceJet Limited as withdrawn in terms of the settlement arrived at between the Parties</li> </ul>
<p>11. Completion of the exercise of CTC remedies by Creditor:</p> <p>a) possession of the aircraft object</p> <p>b) de-registration of the aircraft</p> <p>c) export of the aircraft object</p>	<p>Not completed – see above reference to 2 April 2015 communication to DGCA regarding settlement between Debtor and Creditor. On 2 April 2015, the Creditor advised the DGCA that it had concluded a settlement with the Debtor and it withdrew the de-registration request.</p>
<p>12. Nature of governmental action sought and taken, including by which authority and where and when</p>	<p>De-registration under IDERA was sought under requests dated 30 December 2014 and 9 January 2015; no action to deregister the aircraft was taken by the DGCA</p>
<p>13. Related court order, if any, and timing therefor</p>	<p>The Creditor filed a writ petition numbered W.P.(C)747 of 2015 in the Delhi High Court on 20 January seeking, <i>inter alia</i>, an order directing the DGCA to de-register the three aircraft and facilitate their export by providing a Certificate of Airworthiness, a Ferry Flight Permit, and other relevant documents and an order granting such relief was issued on 19 March 2015</p>
<p>14. Other CTC related <b>technical information</b> pertinent to the replies to Questions 8 – 13 above</p>	<p>None</p>
<p>15. List and description of attachments, being official government documents</p>	<p>Court order dated 19 March 2015 by the Delhi High Court in writ petition numbered W.P.(C)747 of 2015</p>
<p>16. List the relevant parties and their contact details</p>	<p>BOC Aviation</p> <p>SpiceJet</p> <p>DGCA</p>

## II. Comments on report

<p>No comments</p>
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### III. Comments on comments

No comments

## Annex – Instructions and Educational Notes

### Section I:

**Question 1:** Insert the closing date of the transaction, including the effective dates of any amendments to transaction documents to the extent relevant to the application of CTC.

**Question 2:** Insert the legal name of the Creditor, as appearing in the transaction documents. Include contact details, if available. A ‘Creditor’ under CTC is a ‘chargee’ (holder of a security interest), a ‘lessor’ (under a leasing agreement), or a ‘conditional seller’ (under a title reservation agreement).

**Question 3:** Insert the State where the Creditor is incorporated or formed.

**Question 4:** Insert the legal name of the Debtor, as appearing in the transaction documents. Include contact details, if available. A ‘Debtor’ under CTC is a ‘chargor’ (granting a security interest), a ‘lessee’ (under a leasing agreement), or a ‘conditional buyer’ (under a title reservation agreement).

**Question 5:** Insert the State where Debtor is incorporated or formed, and, if the report addresses insolvency related items, the State in which its centre of main interests is situated. If the foregoing is not the basis of CTC application, add the other State or States in which the Debtor is situated for purposes of Article 4 of the Convention.

**Question 6:** Insert the State where the aircraft is registered under the Chicago Convention of 1944 and the date on which it was registered in that State. If there was an earlier agreement to register the aircraft in that State, add that fact and the date of such agreement. If the aircraft has changed registrations during the term of the transaction, add the prior State of registration and the date of registration and de-registration in that State.

**Question 7:** Insert a simple and basic summary of the transaction structure, using CTC defined terms. For example: ‘party X as debtor (chargor) entered into a security agreement (international interest) with party Y as creditor (chargee) on date 1, then as creditor (lessor) entered into a leasing agreement (international interest) of the aircraft that was subject to that security agreement with an airline, party Z as debtor (lessee), on date 2. Party X is situated in Singapore, party y is situated in the US, and party Z is situated in China. The aircraft was registered in the US on date 1 and re-registered in China on date 2. Include actual names, dates, and aircraft object type (manufacturer name, model, and serial number). It would be helpful to annex a schematic of the transaction structure depicting CTC relevant facts.

**Question 8:** Insert whether an IDERA was recorded, and, if so, when and in which State. Where the base of operation and the State of Registration are different, add a statement to that effect. Include any significant delay between submission and recordation of the IDERA.

**Question 9:** Insert the type of registrations made with the International Registry and the dates made. Include a description of any delays or inability to obtain AEP codes to make registrations.

**Question 10:** Insert the dates when, and place where, the Creditor took affirmative legal steps to actually exercise CTC remedies seeking: a) possession, b) de-registration, and/or c) export. List these dates and places separately. Do not include dates of notices of default which were not conjoined with such actual exercise of CTC remedies.

**Question 11:** Insert the dates when, and place where, the Creditor obtained: a) possession (actual or constructive), b) de-registration, and c) export. List these dates and places separately.

**Question 12:** Insert the specific government action sought and taken, including the name and place of the government entity and the relevant dates.

**Question 13:** If the Creditor sought a court order, insert a statement, if applicable, that a court order was sought and/or issued, including the nature of the court order (for example, was it an order under Article 13 of the Convention) and the relevant dates.

**Question 14:** Insert CTC-related **technical information** which is pertinent to the replies to other questions. Only technical information may be included. Here are three examples. Ex. I: Possession was not obtained for 60 days given the applicability of an enforcement stay during bankruptcy proceedings. Ex. II: Possession was delayed given that airport X asserted a right of detention under Article 39(1)(b) of the Convention. Ex. III: No IDERA was recorded as State x did not have procedures in place to record IDERAs. Important note: **the Project will not include any information submitted under Question 13 if it is not prima facie factual, technical information.**

**Question 15:** Insert references to, and, if possible, attach copies of official government documents relevant to questions 8 – 14 above and the schematic noted in respect of question 7 above.

**Question 16:** Insert the names and contact details of the relevant parties, meaning, the parties to the reported transaction **and** the government authority taking CTC-related action. Include email addresses (which will not be made public).

### Section II:

Insert comments on questions 1-15 of the report specifically identifying the sub-section of the report the comment refers to. The comments must be limited to factual and technical information.

### Section III:

Insert comments on comments provided in Section II specifically identifying the sub-section of the report the comment refers to. The comments must be limited to factual and technical information.