

Cape Town Convention Academic Project

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12 June 2020

Professor Sir Roy Goode  
CBE QC FBA  
42 St John Street, Oxford  
OX1 2LH, United Kingdom

**Re – Cape Town Convention and aircraft protocol – voluntary arrangements, schemes of arrangements, and restructuring plans – definition of insolvency proceedings**

Dear Professor Sir Roy Goode,

I write to you in my capacity as director of the Cape Town Convention Academic Project (**'CTCAP'**).

In light of the need for enhanced guidance, the CTCAP is working on annotations to paragraphs 3.118 and 4.21 and any other the relevant provisions of the Official Commentary 4th Edition for the Cape Town Convention (the **'Convention'**) and its Aircraft Protocol (the **'Aircraft Protocol'**) to address the above referenced matters.

Based on our discussions and assessments, can you kindly confirm that the following reflects your views on these matters:

- 1) the question of whether a proceeding for a restructuring of debt and/or equity, such as a voluntary arrangement, scheme of arrangement, restructuring plan or similar falls within Article 30 of the Convention and Article XI of the Aircraft Protocol is to be determined by the definition of 'insolvency proceedings' in Article 1(l) of the Convention, not by national law;
- (2) such proceedings fall within the definition of 'insolvency proceedings' in the Convention where they are proceedings that (a) are formulated in an insolvency context, or by reason of actual or anticipated financial difficulties of the debtor company, and (b) are collective in that they are concluded on behalf of creditors generally or such classes of creditor as collectively represent a substantial part of the indebtedness;
- (3) for purposes of the definition of 'insolvency-related event':
  - a. such a proceeding, in which a court acts to facilitate a statutory process, and where the court's approval is required for its implementation, constitutes one where the 'assets and affairs of the debtor are subject to control or supervision by a court for purposes of reorganization', and
  - b. whether or not a moratorium on enforcement applies during a scheme is not relevant.

Please confirm that you intend to address these matters in a similar way in future Official Protocols.

Finally, please confirm that we may share this letter, and your reply to it, with interested parties.

Sincerely yours



Jeffrey Wool  
Director, Cape Town Convention Academic Project

**CC:** Louise Gullifer, University of Cambridge  
Ignacio Tirado, UNIDROIT

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Professor Jeffrey Wool  
Director  
Cape Town Academic Project

12 June 2020

Dear Professor Wool,

**Annotation to the aircraft Official Commentary**

Thank you for your letter of today's date.

As you know, I have always avoided involvement in these annotations, which are a matter for the Cape Town Convention Academic Project. But I have from the outset supported the annotations, which further develop the analysis for the benefit of the those working with the Cape Town Convention.

The proposed outline for the annotations you have sent me very much follow the approach I took, and with which you and other members of our group agreed, in our discussions relating to the UK Corporate Insolvency and Governance Bill now going through Parliament. I agree with its content.

In fact, I have included material very much along the same lines in the preliminary draft Official Commentary on the Cape Town Convention and Pretoria Protocol and intend to do so in any future edition of any of the existing Official Commentaries.

It will be quite some time before any new edition of the MAC Official Commentary is published and even longer for any new edition of the aircraft Official Commentary. I think therefore that just as readers have benefited from annotations to the Official Commentary in the past an annotation along the lines you have proposed above would provide valuable assistance to all users of the aircraft Official Commentary.

Please feel at liberty to share this letter with other interested parties.

With best wishes

