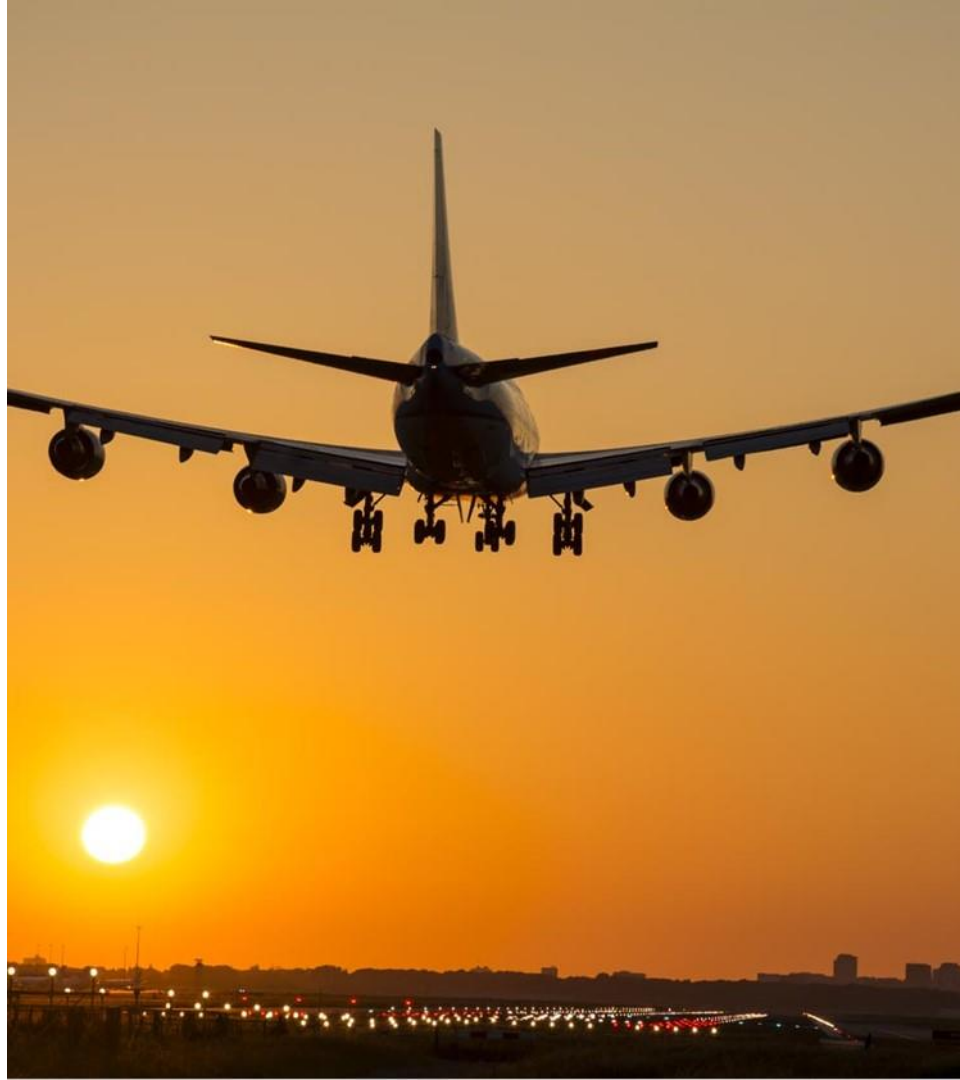


# Cape Town Convention Advance Relief

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# Advance relief under the CTC

- What does it consist of?
- Why is it needed?
- When is it available?
- The duties of a court
- What courts have jurisdiction?
- Consequences for deregistration and export



# Article 13 CTC

- Relief pending final determination of a claim
- Speedy relief in the form of such one or more of the following orders as the creditor requests:
  - preservation of the object and its value;
  - possession, control or custody of the object;
  - immobilisation of the object; and
  - lease or, except where covered by sub-paragraphs [above], management of the object and the income therefrom
- Subject to agreement “at any time” by debtor
- Contracting State may opt out



# Article X Aircraft Protocol

- “speedy” ...means within such number of working days ... is specified in a declaration made by the Contracting State in which the application is made
- Additional relief:
  - sale and application of proceeds [of the aircraft object]
- Subject to agreement “at any time” by debtor
- Contracting State must opt in



# Why is advance relief needed?

- Aircraft are rapidly depreciating assets
- Creditors could be deprived of the asset and of the right to generate income pending dispute resolution



# When is advance relief available?

- Creditor must adduce evidence of a default by a debtor
- “The debtor and the creditor may at any time agree in writing as to the events that constitute a default” – Art 11 CTC
- Burden of proof of a default: “Sufficient evidence of default is adduced to enable the court, having regard to the need for prompt action to protect the creditor’s interests, to conclude that it is proper to grant the relief sought” (OC para 4.117)



# Duties of the court

- Court has no discretion as to whether to grant relief
- Balance of convenience irrelevant
- Likelihood of success irrelevant
- Article 13.2 CTC: “court may impose such terms as it considers necessary to protect [the debtor]”
- General Principle: Local procedural law must be applied consistently with substantive provisions of CTC
- Article X.5 AP: The creditor and the debtor..... may agree in writing to exclude the application of Article 13(2) of the CTC
  - Opt-in provision



# Jurisdiction

What courts have jurisdiction to grant advance relief?

- Courts of a Contracting State chosen by the parties (Art 42 CTC)
  - Exclusive jurisdiction if so agreed, subject to below
- Courts of the Contracting State on the territory of which the object is situated (Article 43 CTC)
  - For remedies specified in Arts 13.1(a), (b), and (c) CTC
- Courts of a Contracting State on the territory of which the debtor is situated (Article 43 CTC)
  - For remedies specified in Arts 13.1 (d) CTC and X.3 AP
- Courts of a Contracting State which is the State of Registry





# Jurisdiction – Worked Example

- Lessor in Ireland leases an aircraft to Lessee situated in Malaysia
- Aircraft is registered in Vietnam
- Lessor and Lessee have agreed courts of England have exclusive jurisdiction
- Lessee defaults in paying rent
- Lessor seeks interim relief by way of an order for the possession, control and custody of the aircraft (Art 13.1(b) CTC)
- Aircraft is in Indonesia
- Courts of England, Vietnam and Indonesia have jurisdiction
- Lessor obtains the order in England
- What rights does the Lessor then have in Vietnam, Indonesia and Malaysia?



# Deregistration – court route

- Article X.6 (a) AP
- Remedies of deregistration and export must be made available by relevant authorities
- No later than five working days after the creditor notifies such authorities that the relief specified in Article [13.1 CTC] is granted; or
- In the case of relief granted by a foreign court, recognised by a court of that Contracting State,
- and that the creditor is entitled to procure those remedies in accordance with the [CTC]
- What is meant by “recognised”?



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