

# Civil Aviation Authorities' Guide

to the Cape Town Convention  
and the Aircraft Protocol

The Legal Advisory Panel of the

Aviation Working Group

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# Civil Aviation Authorities' Guide to the Cape Town Convention and the Aircraft Protocol

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## 1 Purpose of Guide

- (a) This Guide relates to the *Convention On International Interests In Mobile Equipment* (the **Convention**) and the *Protocol Thereto On Matters Specific To Aircraft Objects* (the **Protocol**, the Convention and the Protocol being together referred to as the **CTC**).<sup>1</sup> It has been produced by the Legal Advisory Panel (**LAP**) of the Aviation Working Group (the **AWG**),<sup>2</sup> which is comprised of law firms who are leading practitioners of international aviation leasing and finance law in the jurisdictions which have ratified the CTC.<sup>3</sup>
- (b) This Guide is intended to assist:
- (i) civil aviation authorities in Contracting States (**CAAs**) on the interpretation and implementation of, and compliance with, CTC terms in respect of:
    - (A) the (1) registration and de-registration of *aircraft* on or from the State's nationality aircraft register, in particular, de-registration by a creditor pursuant to Article IX(1) of the Protocol, and (2) the export and physical transfer of an *aircraft object* from the territory in which it is situated;
    - (B) the registration and discharge of interests which parallel, or relate or correspond to, *international interests* in aircraft, *airframes*, and *engines* on or from a CAA's aircraft mortgages or other register that records property interests in aircraft objects; and
    - (C) where a Contracting State has made a declaration under Article XIX of the Protocol establishing its CAA as the *designated entry point*, the information and other requirements for registration, amendment or discharge of international interests on the *International Registry* in respect of aircraft objects;
  - (ii) other authorities in a CAA's jurisdiction with responsibility for export and clearance of aircraft objects such as customs and tax authorities; and
  - (iii) practitioners advising on the foregoing activities.
- (c) This Guide provides a short summary of the CTC. It is of necessity high level and not exhaustive. Detailed and authoritative consideration of the CTC is to be found in the 5<sup>th</sup> edition of the Official Commentary to the CTC prepared by Professor Sir Roy Goode (the **OC**).<sup>4</sup> In the event of any conflict between this Guide and the OC, the latter prevails.
- (d) This Guide complements the Judicial Guide produced by the LAP for judges and practitioners. It can be found [here](#). Readers may find it helpful to refer to the Judicial Guide, which includes sections explaining in greater detail the CTC remedies and other key treaty provisions, when reviewing this Guide.
- (e) Expressions which are defined in Article 1 of the Convention or Article I of the Protocol have the same meanings when used in this Guide and are italicised when they first appear.

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<sup>1</sup> References to "Cape Town Convention" or the "CTC" in this Guide should be interpreted as references to the Convention and the Protocol read together.

<sup>2</sup> The AWG is a not for profit legal entity comprised of major aviation manufacturers, leasing companies and financial institutions, originally formed in 1994 at UNIDROIT's request to assist in the development of what became the Cape Town Convention. The group's statutory objectives are to contribute to the development and acceptance of policies, laws and regulations which facilitate advanced international aviation and leasing transactions and which address inefficiencies in relation to such transactions.

<sup>3</sup> The membership of the Legal Advisory Panel can be found [here](#).

<sup>4</sup> See paragraph 3.

## 2 Introduction to the CTC

- (a) The principal objective of the CTC is to facilitate the efficient financing and leasing of *aircraft objects*.
- (b) The key objectives of the CTC that are of note to CAAs are as follows:
  - (i) to provide a *creditor* with a range of basic default and insolvency-related remedies and, where there is evidence of *default*, a means of obtaining speedy relief pending final determination of its claim on the merits;
  - (ii) to establish an electronic international registry for the registration of international interests which will give notice of their existence to third parties and enable a creditor to preserve its priority against subsequently registered interests and against unregistered interests and other creditors in a debtor's insolvency; and
  - (iii) to ensure that the particular needs of the industry sector concerned are met.

## 3 The Official Commentary

- (a) At the time the CTC was adopted by the Diplomatic Conference in 2001, the Conference requested that an Official Commentary be prepared by Professor Sir Roy Goode, Chairman of the drafting committee that produced the text of the CTC. That OC is now in its fifth edition. It is an authoritative commentary and has a highly persuasive status as far as national courts and aviation authorities are concerned, particularly since it results from extensive consultation with negotiating governments, the International Civil Aviation Organisation, and participating observer organisations. It has been, and continues to be, relied on heavily by a wide range of industry participants, legal practitioners, aviation authorities and national courts. The OC can be purchased [here](#).
- (b) The OC is a substantial publication, running to 900 pages. To help parties navigate the OC, the AWG has produced the Principles-Based Guide to the Official Commentary (**PBG**). The PBG is a topical index to the OC, and a summary of the basic principles discussed in the OC, to be used as a resource for CAAs, practitioners and courts to locate the relevant passages of the OC. In parts of this Guide, where substantive matters under the CTC are addressed, they are footnoted by a reference to the relevant provision of the PBG, which in turn cross-references the pertinent passages of the OC. The PBG can be accessed [here](#).

## 4 Structure of the CTC

- (a) Article 3 of the Convention and Article IV of the Protocol set out the sphere of application of the CTC. The CTC applies:
  - (i) when, at the time of the conclusion of the *agreement* creating or providing for the *international interest*, a *debtor* is situated in a Contracting State (the **debtor connecting factor**); and
  - (ii) in relation to a *helicopter*, or to an *airframe* pertaining to an *aircraft*, registered in an *aircraft register* of a Contracting State which is the *State of registry*, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement (the **airframe connecting factor**).
- (b) The CTC only applies to aircraft objects meeting of a specified capacity or power requirements.
- (c) Article I(2) of the Protocol provides definitions of "aircraft engines", "aircraft objects", "airframes" and "helicopters" (and "aircraft", being such airframes with aircraft engines installed thereon or helicopters) and "aircraft register".

- (d) Aircraft objects used in military, customs or police services are excluded from the scope of the CTC.
- (e) Airframes and aircraft engines are treated as distinct objects. "Aircraft engine" does not include an engine installed on a helicopter at the time an international interest is constituted.
  - (i) The CTC states that ownership of, or another right or interest (including an international interest) in, an aircraft engine is not affected by its installation on or removal from any aircraft. That overrides conflicting national law.
  - (ii) Many aircraft nationality registers allow the specific engines installed on an airframe to be identified when the aircraft is registered (and, additionally, may allow a spare engine to be specified as a component or part of that aircraft at the time of registration). They usually do not permit an individual engine to be registered on a stand-alone basis, as the Chicago Convention does not provide for nationality registrations of such engines. The CTC recognises this arrangement in the formulation of the airframe connecting factor. If an aircraft lease or other arrangement involves an airframe connecting factor but not a debtor connecting factor, then the relevant aircraft engines will not fall within the CTC sphere of application. See paragraph 9(a) for further guidance.

## 5 Declarations made by Contracting State of CAA

- (a) A CAA must be familiar and take action in accordance with the declarations made by the Contracting State in which it is located.
- (b) Declarations allow a Contracting State to select whether it incorporates or excludes certain of the treaty terms, for example, a rule against the exercise of non-judicial remedies. Where the CTC expressly permits, a Contracting State may make a declaration applying (or dis-applying) specific provisions of the CTC. The terms of declarations, once made, are binding on all government entities to the same extent as any other of the CTC provisions and must be enforced as such.

## 6 Remedies

- (a) Chapter III of the Convention grants certain remedies to a creditor holding an international interest upon a debtor default.
- (b) A debtor and a creditor may agree in their contract as to the events that constitute a default. Such an agreement is binding.<sup>5</sup>
- (c) The remedies granted to a creditor by the Convention<sup>6</sup> include:
  - (i) In the case of a default under a security agreement, the right:
    - (A) to take possession or control of the object charged to it;
    - (B) to sell or grant a lease of any such object; and
  - (ii) In the case of a default under a title reservation agreement or a lease, the right to terminate the agreement and take possession or control of the relevant object.

In addition, in both cases, a creditor has the right to apply for a court order authorising or directing the exercise of such remedies even if leave of a court is not required.

<sup>5</sup> That binding nature is further strengthened where the relevant Contracting State has made a declaration under Article VIII of the Protocol permitting the parties to select the law governing their contract.

<sup>6</sup> The Protocol provides for additional remedies in respect of the de-registration and export of aircraft and aircraft objects. These are considered further in paragraph 8.

- (d) The right of a creditor to exercise the remedies described in paragraph (c) is subject to the terms of the declaration under Article 54 of the Convention made by the relevant Contracting State.
  - (i) If the relevant Contracting State has made an Article 54 declaration requiring leave of the court for the exercise of these remedies, such leave must be obtained.
  - (ii) If the relevant Contracting State has made an Article 54 declaration permitting the exercise of these remedies without leave of the court (**self-help**), a creditor need not obtain a court order or any other judicial document. Under Article 54(2) of the Convention, the availability of self-help has priority over any inconsistent rules of procedure applicable under Article 14 of the Convention.
  - (iii) The relevant Article 54 declaration is that of the Contracting State in which exercise of the remedy is sought.

## 7 Insolvency

- (a) In a Contracting State which has made a declaration under Alternative A of Article XI of the Protocol, there are special remedies applicable on the debtor's insolvency in relation to aircraft objects designed to strengthen a creditor's position vis-à-vis the insolvency administrator or a debtor on the occurrence of an *insolvency-related event*. Article XI must be applied in any Contracting State where a debtor is subject to an insolvency proceeding.
- (b) Paragraphs 2 and 7 of Article XI, Alternative A, require the *insolvency administrator* or the debtor, as applicable, upon the occurrence of an insolvency-related event, either:
  - (i) to give possession of the relevant aircraft object to a creditor within the earlier of the "waiting period" declared by the Contracting State and the date on which a creditor would otherwise be entitled to possession under applicable law; or
  - (ii) within the above time to cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the agreement, which includes obligations under other transaction documents.

If an insolvency administrator or a debtor fails to give up possession after a creditor has become entitled to it under the above provisions or in any other way fails to fulfil its obligations under Alternative A that creditor can apply for and is entitled to obtain speedily a court order requiring the insolvency administrator or that debtor to give possession of the aircraft object to that creditor.

- (c) Paragraph 8 of Article XI, Alternative A, is critical to CAAs. It states that they (and other administrative authorities) shall make the remedies of de-registration and export available no later than five working days from the date on which a creditor has given notice of its entitlement to exercise such remedies under the Convention and Protocol.
- (d) Alternative A requires strict adherence to the timetable and extensions of time are precluded (although the parties may themselves agree to such extension or variation). Any moratorium or stay under insolvency laws may not apply to a creditor's exercise of any CTC remedy, including the de-registration and export, beyond the waiting period or earlier period under national law.

## 8 De-registration and Export – the Article IX(1) – General Points

- (a) Article IX of the Protocol provides a creditor with two fundamental remedies additional to those given in the Convention and elsewhere in the Protocol. These additional remedies are: (i) the de-registration of an aircraft from the State of registry and (ii) the export and physical transfer of an aircraft object from the territory where it is situated (hereinafter, when referred to collectively, the **Article IX(1) Remedies**). The remedies are separate and

distinct and may involve different authorities in the relevant Contracting State(s). One is not dependent on the other.

- (b) While the Article IX(1) Remedies are facilitated by the two declared “routes” described below, de-registration and export are substantive treaty-based remedies not dependent on these procedures and related mechanisms. Where a debtor has at any time so agreed, following default Contracting States must make such remedies available to a creditor (as a treaty obligation) in accordance with their procedural law in a manner that does not undermine these substantive remedies, subject only to modifications to such procedures (including on timing) necessarily entailed by any such declarations.
- (c) Under the CTC, as has been made clear by the OC,<sup>7</sup> where the relevant declarations have been made, there are two routes to securing the Article IX(1) Remedies.
  - (i) The first (the **court route**), via Article X(6) of the Protocol, is for a creditor to obtain either:
    - (A) an order for “advance relief” under Article 13 of the Convention from a court (a **home court**) in the jurisdiction where the aircraft is registered (or, where the remedy being sought is solely export of an aircraft object from another jurisdiction, then the jurisdiction in which that aircraft object is located), or
    - (B) equivalent relief from a foreign court with jurisdiction under the CTC, recognised by a home court;

and, in either case, notify the registry and other administrative authorities of the grant or (in the case of a foreign order) recognition by a home court of the order. The remedies must then be made available within five working days. That is a binding timetable under, and additional substantive requirements, or procedural steps (which cannot be done in such five-day period) are precluded by Article X(6) of the Protocol.

The above-noted court order would grant possession or control of the aircraft object to a creditor or otherwise remove possession of the aircraft from a debtor (e.g., in favour of the creditor's trustee or agent).

- (ii) The second (the **IDERA route**), by virtue of Articles XIII and IX(5) and (6) of the Protocol, is for a creditor to procure from a debtor an irrevocable de-registration and export request authorisation (IDERA) substantially in the form of the Annex to the Protocol and to lodge it with the registry authority. A CAA is required to record the IDERA (see Article XIII(1) of the Protocol).
  - (A) The registry authority (which may be the civil aviation authority or a division thereof or related or authorized agency) is then required, without the need to receive a court order,<sup>8</sup> to honour a request for de-registration and export from a party authorised in the IDERA (or, where it so certified, its certified designee).
  - (B) The IDERA route is extra-judicial and purely documentary, dispensing with the need for the registry authority to investigate external facts. A CAA may not require the consent of a debtor or any steps or materials dependent on the action of or cooperation by a debtor. A CAA may not impose additional conditions, require evidence of default, act in a quasi-judicial manner, or seek to mediate disputes or require negotiations.<sup>9</sup>
- (iii) On timing, as noted above, for de-registration and export, there is a five-working day time period in the contexts of insolvency (see Article XI(8) of the Protocol) and advance relief (see Article X(6) of the Protocol and, otherwise, a CAA (and other

<sup>7</sup> For a full discussion of these two approaches, see the provisions of the OC referred to in paragraphs 5.5.2 and 5.5.3 PBG.

<sup>8</sup> Paragraph 3.38 OC.

<sup>9</sup> Paragraphs 3.38, 3.39 and 3.40 OC.

administrative authorities) is under a general obligation to “expeditiously co-operate and assist a creditor, subject to applicable aviation safety laws” (see Article XIII(4) of the Protocol).

- (iv) A CAA (and other administrative officials) have an affirmative obligation, in addition to acting expeditiously, to co-operate with and assist an authorised party in the exercise of the de-registration and export remedies. If the registry authority in a Contracting State is not responsible for export authorisations or customs clearances of CTC Aircraft, then that other governmental agency so responsible is bound by the CTC to comply with this Article XIII(4) obligation.
- (d) It is the duty of a Contracting State to ensure that under its national law all State organs or organisations authorized by the State to effect or facilitate de-registration and export and physical delivery. For example, customs and export agencies are precluded from impeding, by action or inaction, the implementation of the Protocol provisions on de-registration and export including by requiring a procedure where a creditor cannot exercise these remedies directly without the co-operation of a debtor.
- (e) Whether a creditor follows the court route or the IDERA route, it is first necessary that the Contracting State shall have made a declaration applying the relevant Article – under Article XXX(2) applying Article X or under Article XXX(1) applying Article XIII.
- (f) A debtor must have agreed to the Article IX(1) Remedies. A debtor signing an IDERA satisfies the requirement that it has so agreed and there is no need for a debtor to provide a new agreement at the time of enforcement.
- (g) It is open to a creditor to procure the remedies of de-registration and export under national law, that is, outside of Article XI of the Protocol. That is by virtue of Article 12 of the Convention, which preserves agreed national law remedies.

## **9 The Article IX(1) Remedy – IDERA route – Additional Points**

- (a) Airframe registration factor

As noted above, the Protocol adds a further connecting factor by providing that the CTC also applies to a (qualifying) airframe or a helicopter, if such airframe or helicopter is, at the “time of conclusion” of the relevant agreement, registered or is subject to an agreement to be registered in a Contracting State’s national aircraft registry.

- (i) Where such registration is made pursuant to an agreement for the future nationality registration of an airframe or helicopter, then registration is deemed to have been effected at the time the agreement creating the international interest or other registrable CTC interest was concluded.
- (ii) Subsequent de-registration (and re-registration on another aircraft registry) does not impact the effectiveness of the airframe connecting factor.
- (iii) As there is no nationality registration system available for separate aircraft engines, the airframe connecting factor does not apply to such aircraft objects. A (qualifying) aircraft engine will only fall within the CTC if a debtor connecting factor applies to the lease or other relevant agreement for that engine (and the other conditions for constitution of an international interest or other registrable CTC interest are satisfied). Therefore, there may be transactions where the CTC will apply to an airframe (by virtue of the airframe connecting factor only) and not to its related engines.
- (iv) It is advisable for a CAA to consider whether its existing registration rules and procedures need to be amended or supplemented to incorporate a system of tracking registered aircraft subject to the CTC, as different rules will apply to their de-registration and export.

- (v) The remedy of export and physical possession under Article IX(1)(b) of the Protocol is given in respect of an aircraft object and extends to uninstalled (qualifying) aircraft engines, subject to the debtor connecting factor and other CTC conditions.
- (b) Article XIII of the Protocol
- (i) If a Contracting State has made a declaration pursuant to Article XXX(1) of the Protocol to adopt the IDERA route, then Article XIII applies. This provides that where a debtor issues an IDERA in "substantially the form" of document annexed to the Protocol and it is submitted to a CAA, such authority shall record it.
  - (ii) The party submitting the IDERA will depend in part on whether the aircraft registry is an "owner-based" or "operator-based" register. A CAA's regulations may require only technical (a) amendments to the IDERA form to address the IDERA submission and recordation process, and (b) rules regarding IDERA revocations, amendments, and certified designee nominations, in each case which do not adversely impact rights under an IDERA or the timing aspects relating thereto.
  - (iii) Only one person is entitled to exercise Article IX(1) Remedies under an IDERA at any particular time. That person shall be the *authorised party* or, where the authorised party so certifies, its *certified designee*.
  - (iv) Articles IX(5) and XIII of the Protocol, each of which applies to IDERAs, refer to and condition the Article IX(1) Remedies on being in accordance with, applicable "aviation safety laws and regulations". The CTC does not define safety laws and regulations. As the OC makes clear, "safety laws" do not apply to the remedy of de-registration, as that act has the immediate effect preventing flight operations.<sup>10</sup> Thus, the safety provision is limited to the remedy of export. The core idea in that context, as seen in the attached model regulations, is compliance with safety requirements applicable to a standard ferry flight operation. Unlike the ordinary course, non-default context, it was not meant to link to more complex instruments like an export certificate of airworthiness, if otherwise applicable.
  - (v) A debtor may not revoke the IDERA without an authorised party's written consent. An authorised party may request the registry authority to remove a recorded IDERA. Only one IDERA may be recorded at any time. Only one party may be noted as the authorised party at any time, but an authorised party may appoint a certified designee. Only one party (only one debtor) may issue a single IDERA, and that party is the one otherwise entitled to procure de-registration, under national law,
  - (vi) The CTC does not define a "certified designee". This phrase means any party designated by an authorised party as its agent. There is no prescribed form of certified designee designation (but see suggested form attached (attachment 2) to the annex hereto). Such designation may be revoked or replaced without the debtor's consent.
  - (vii) If the registry authority requires, an authorised party must certify, when submitting a request under a recorded IDERA, that all interests registered on the International Registry which rank in priority to the relevant creditor's interest have been discharged or the holders thereof have consented to the exercise of the Article IX(1) Remedies by a creditor.
  - (viii) A creditor who is a *chargee* seeking to exercise the IDERA route must give reasonable prior written notice of the Article IX(1) Remedy to certain *interested persons*.

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<sup>10</sup> Paragraph 3.45 OC.

- (ix) Translations of the Protocol form of IDERA are acceptable - but material variations of the text must be avoided as these may contravene a Contracting State's CTC obligations.
- (c) The CTC does not require an authorised party named on the IDERA to be the holder of an international interest which has been registered on the International Registry.
- (d) A debtor must be in default for a creditor to be entitled to exercise the Article XI(1) Remedies (and any other CTC remedies). The agreement constituting the international interest need not have been terminated. As IDERAs are purely documentary, upon submission of an IDERA for enforcement by an authorised party (or, where it has so certified), its certified designee, a CAA may not require the consent of or cooperation by a debtor or evidence of default, act in a quasi-judicial manner, or fail to enforce Article IX(1) remedies on account of a debtor challenging the default or asserting defences to it.
- (e) Unless and until a creditor advises the CAA of a default by a debtor, the person entitled to de-register an aircraft under national law retains that right.<sup>11</sup>
- (f) An IDERA is not a national law power of attorney and any restrictions, including its potential revocability, duration, or any requirements on execution formalities under national law which may apply to such powers do not apply to IDERAs. In line with Article 14 of the Convention, the foregoing does not preclude technical requirements in line with national procedural law which do not adversely impact rights under an IDERA or the timing aspects relating thereto.
- (g) The following is a checklist for CAAs in countries that have made a declaration under article XXX(1) of the Protocol to follow the IDERA route:
  - (i) has the CAA created a portal or other mechanism for registration of IDERAs, such being mandatory?
  - (ii) has the CAA included in the portal a mechanism for acceptance of designations of certified designees, such being mandatory?
  - (iii) has the CAA published rules relating to the documentary requirements for registration of IDERAs and certified designee designations? Consideration should be given to the use of short form model regulations noted in paragraph 11 and set out in the annex hereto.
  - (iv) has the CAA published rules relating to the procedure for exercise of rights under IDERAs and certified designee designations?
  - (v) has the CAA established a clear processing period for de-registration through use of IDERAs and certified designee designations?

## 10 Designated Entry Points (DEP)

- (a) A Contracting State, by virtue of Article XIX of the Protocol, may designate an entity as the entry point through which information required for registrations on the International Registry (**IR Information**) may be transmitted. Such designation applies to airframes and helicopters of which that State is the State of registry or is the intended State of registry (pursuant to an agreement noted in Article IV(1) of the Protocol).
  - (i) Use of the DEP may be optional or compulsory, to be determined by the individual Contracting State.

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<sup>11</sup> Paragraph 3.39(3) OC.

- (ii) Compulsory use of the DEP for aircraft engines is not possible, as there is no system of nationality registration.
  - (iii) Use of the DEP for registrable non-consensual rights and interests is not possible.
- (b) DEPs must operate during working hours and may be further designated as an “authorising entry point” (**AEP**) or a “direct entry point” (**DP**). As of the date of this Guide, there are currently no DPs, as they present a range of practical and legal problems.
- (i) An AEP authorises transmission of IR Information to the International Registry. The AEP will provide an applicant party with a mandatory unique authorisation code (**AEP Code**) which must be included with the IR Information to make a valid registration.
  - (ii) A DP transmits the IR Information to the International Registry directly.
- (c) If an airframe is registered in a Contracting State which has an AEP, but the transaction involves an international interest to a debtor in a Contracting State which does not have a DEP, it may be advisable for the parties to obtain an AEP Code from the State of registry when seeking to register the international interest on the International Registry.
- (d) A registration effected in contravention of the requirements of DEP shall be invalid. However, if the parties apply for an AEP Code and it is not obtainable under the AEP procedures (for example, because a registration mark has not yet been assigned to the airframe), the International Registry regulations provide that such registration is valid. The electronic system includes a box with the words "no code available" to address such situation.
- (e) The International Registry regulations also provide that an AEP Code is not required for a discharge of a registration.
- (f) Contracting States may impose additional requirements relating to use of DEPs, including prescribed forms and reasonable fees. These may not adversely impact rights under an IDERA or the timing aspects relating thereto and its issuance or enforcement materially more difficult.

## 11 IDERA Regulations

- (a) For Contracting States that made a declaration with respect to Article XIII of the Protocol, annexed to this Guide is a set of short-form model regulations. It attaches (attachment 1) the IDERA form which is annexed to the Protocol.
- (b) This form model regulation reflects, if adopted would implement, and if followed would ensure compliance with, the CTC requirements relating IDERAs. It could also serve as a substantive checklist to use in reviewing or revising current regulations.

IDERA short-form model regulations<sup>12</sup>

**Regulations of the Civil Aviation Authority of [Country] (IDERA)**

1. **Purpose and Effect:** The purpose of this regulation is to provide procedures for (a) recording and cancelling an IDERA, and (b) De-Registering Aircraft and Exporting Aircraft Objects under an IDERA. This regulation applies to Aircraft registered in the [Country] and, for purposes of any Export remedies, Aircraft Objects located in the [Country], and is effective on entry into force [ *date* ] of the Treaty, provided that Sections 4, 5, and 7 apply to an IDERA recorded by the Registry Authority prior to that date. This regulation prevails over conflicting law.

2. **Background:** The [Country] is a Contracting State to the Treaty and made a declaration under Article XXX(1) of the Protocol providing for the recording and enforcement of IDERAs.

3. **IDERA Recordation:** The Registry Authority will accept and record an IDERA if it: (a) is submitted in writing to the Registry Authority substantially in the form set forth in the Protocol; (b) identifies an Aircraft registered or to be registered in the [Country]n Aircraft Register; and (c) is signed by an Applicant. The Registry Authority will record an IDERA within five working days of receipt, and will promptly confirm to the Applicant, the Authorised Party and any Certified Designee (if applicable) that recordation is complete. No IDERA may be recorded for an Aircraft if a prior IDERA has been recorded by the Registry Authority for that Aircraft which has not been revoked in accordance with Section 5. Without limiting the Registry Authority's authority to De-Register aircraft under applicable law, once an IDERA has been recorded in respect of an Aircraft, the Applicant may not request that the Aircraft be De-Registered, unless the IDERA has been revoked in accordance with Section 5.

4. **Certified Designee:** The Registry Authority will accept and record a Designation, whereby an Authorised Party appoints a Certified Designee, if: (a) it is submitted in writing to the Registry Authority; (b) it identifies the Certified Designee appointed by the Authorised Party and the IDERA to which it applies; (c) no other Designation is recorded for the relevant IDERA; and (d) it is signed by the Authorised Party. The Registry Authority will record a Designation within five working days of receipt, and will promptly confirm to the Authorised Party and the Certified Designee that recordation is complete. An Applicant shall have no power to issue a revocation in respect to a Designation.

5. **Revocation of an IDERA:** An IDERA may be revoked and shall be of no further effect if a revocation: (a) is submitted in writing to the Registry Authority, (b) identifies the IDERA to which it applies; and (c) is signed by the Authorised Party. The Registry Authority will record a revocation within five working days of receipt, and will promptly confirm to the Applicant, the Authorised Party and any Certified Designee (if applicable) that recordation is complete. An Applicant shall have no power to issue a revocation in respect of an IDERA. Once a revocation has been recorded, the revoked IDERA shall have no further force and effect and the Registry Authority will take no action in respect of it. The validity of an IDERA shall not be affected by the revocation of a related Designation.

6. **IDERA Remedies:** If an IDERA is recorded, an Authorised Party, or, if a Designation is also recorded, its Certified Designee shall be the sole person authorised to deliver a request and exercise the remedies specified in this regulation and in Article IX(1) of the Protocol pursuant to such IDERA.

7. **Exercise of Remedies:** A request to exercise IDERA remedies will be accepted by the Registry Authority if it: (a) is submitted in writing, identifying the applicable rights and remedies that are to be exercised; (b) identifies an IDERA recorded in the [Country]n Aircraft Register; (c) in line with Article IX(5) of the Protocol, the Authorized Party certifies that there are no registered interests in the Treaty's international registry ranking in priority to that of the Authorised Party, or, if there are, that they been discharged or the holders thereof have consented to the exercise of such IDERA remedies, and (d) is

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<sup>12</sup> Produced by the Aviation Working Group for use by Contracting States.

signed by the Authorised Party (or Certified Designee, if applicable). The Registry Authority will honour each request submitted in accordance with this Section, to the extent so requested, by effecting the De-registration of the Aircraft, and taking all action within its power to effect or facilitate the Export of the Aircraft and any Related Engines in an expeditious manner, and, in any event, within five working days of receipt of the request. The Registry Authority will promptly provide a certificate to the Authorised Party (or Certified Designee, if applicable) evidencing De-Registration. No additional consent, approval, court or other order or decision, additional requirements, condition or any other action shall be required in order for the Registry Authority to comply with any request made under this Section. The exercise of any Export remedy shall be subject to applicable Export-Related Safety Laws.

8. **Engines:** A request with respect to an Aircraft will be honoured under Section 7 without regard to the identity of the engines and other equipment then installed on that Aircraft. Export remedies under Section 7 will be made available for any Related Engines which are not then installed on the Aircraft.

9. **Further Actions:** The Authorised Party (or Certified Designee, if applicable) will, to the extent within its reasonable control, but not as a condition to the De-registration and Export of the Aircraft, remove or cover the Registry's nationality marks on the Aircraft, return to the Registry Authority the original certificate of registration and certificate of airworthiness for the Aircraft, and change the Aircraft's transponder code so that it no longer indicates that such Aircraft is registered in [Country].

10. **Document Execution:** Any document delivered hereunder by an Applicant, Authorised Party or Certified Designee, as the case may be, may, if any of the foregoing is not a natural person, be executed by an Officer of any of the foregoing, or under any other document legally authorizing execution on the foregoing's behalf.

## **IDERA regulations**

### **Defined Terms**

Terms used without definition in this regulation have the meanings given in the Treaty.

**Applicant:** an entity or person that has applied or is applying for the registration of an Aircraft in the Registry.

**Certified Designee:** an entity or person named in a Designation as the certified designee under an IDERA.

**Designation:** the appointment of a Certified Designee by an Authorised Party in respect of an IDERA.

**De-Registration:** removal of the registration of an Aircraft from the Aircraft Register and promptly providing a certificate evidencing De-Registration to the Authorised Party or Certified Designee, as applicable.

**Export:** export and physical transfer of an Aircraft from the territory of [Country].

**Export-Related Safety Laws:** applicable laws and regulations of [Country] which permit the operation in its airspace of an aircraft under a ferry or other special flight permit issued by the applicable aviation authorities but excluding any requirement (i) for the issuance of an export certificate of airworthiness, or (ii) for any documents in the possession of, or any action by, an operator of an aircraft.

**IDERA:** an irrevocable de-registration and export request authorization, the form of which is appended to the Protocol.

**Officer:** of an entity is (i) a member of its board of directors, (ii) its chief executive, operating, financial or legal officer, (iii) a vice president, (iv) its secretary or an assistant secretary, (v) its treasurer or assistant treasurer, (vi) a member or general partner, (vii) a trustee or (v) any other person or entity whose signing authority is acceptable to the Registry Authority.

**Registry Authority:** Civil Aviation Authority of [Country].

**Related Engine:** an engine to which the Treaty applies and the Authorised Party (or Certified Designee, if applicable) certifies to the Registry Authority is an engine to which the underlying documentation signed by the Applicant, and giving rise to the IDERA, applies.

**Treaty:** the Convention on International Interests in Mobile Equipment, 2001 (the **Convention**), as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 2001 (the **Protocol**), and including the declarations lodged by [Country] in connection with its accession to the Convention and Protocol.

**Attachment 1 to Annex: IDERA form**

**Form of irrevocable de-registration and export request authorization**

Annex referred to in Article XIII of the Protocol

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]\* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
  - (a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944, and
  - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
  - (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

\_\_\_\_\_  
Agreed to and lodged this  
[insert date]

By: [insert name of signatory]  
Its: [insert title of signatory]

\_\_\_\_\_  
[insert relevant notational details]

\* Select the term that reflects the relevant nationality registration criterion



## Attachment 2 to Annex: Form of Certified Designation Letter

To: [Name of CAA]

Date: [\_\_\_\_]

Re: Confirmation of Certified Designee in relation to the Irrevocable De-registration and Export Request Authorisation dated [\_\_\_\_], relating to the [\_\_\_\_] aircraft bearing manufacturer's serial number [\_\_\_\_] and Registration [\_\_\_\_] issued by [\_\_\_\_] naming the undersigned as "authorized party" (the "IDERA").

We, the authorised party under the IDERA, do hereby confirm that [\_\_\_\_] is our certified designee for the purposes of exercising all of our rights and remedies under:

- (a) Article IX(1) of the Protocol to the Convention on Matters Specific to Aircraft Equipment opened for signature on 16 November 2001 at Cape Town, South Africa (the "**Protocol**");
- (b) the IDERA; and
- (c) all applicable laws of [\_\_\_\_] implementing the foregoing.

2. We make this designation in accordance with Article XIII of the Protocol.

This letter will be filed with the [name of CAA] for registration.