



States' obligations under the Cape Town Instruments of 2001 and their relationship with national civil aviation law and practice

Role of CAAs and focus on deregistration and export remedies

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Role of CAAs and other state bodies

Key objectives of CTC of note to CAAs and other state bodies:

- 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
- the export and physical transfer of an aircraft object from the territory in which it is situated
- Recordation and enforcement of IDERAs, where declared
- 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
- 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

Guidance on implementation

- CTC provides creditors with remedies to de-register and export aircraft upon an event of default or insolvency scenario
- These remedies, including the role of CAAs and other state bodies, require that:
 - Civil Aviation Authorities
 - Export and Customs authorities
 - Airport and Navigation Authorities
 - Practitioners and officials be familiar with the obligations under CTC
- A contracting state may not impose domestic law, or lack thereof, for non-compliance with CTC
- AWG has produced guidance materials for CAAs, judges, and practitioners to guide on this process

Civil Aviation Authorities' Guide

to the Cape Town Convention and the Aircraft Protocol

The Legal Advisory Panel of the
Aviation Working Group
Published August 2023

Judicial Guide

to the Cape Town Convention and the Aircraft Protocol

The Legal Advisory Panel of the
Aviation Working Group
Published August 2023

Principles-Based Guide to the Official Commentary

on the Cape Town Convention and the Aircraft Protocol

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Principles-Based Guide to the Official Commentary on the Cape Town Convention and the Aircraft Protocol

Guidance on implementation

IDERA short-form model regulations¹²

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

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.

¹² Produced by the Aviation Working Group for use by Contracting States.

Compliance with CTC on CAA related items

- There are two forms of securing the article IX(1) remedies: (a) through court order, when declared so by the state, and (b) through an irrevocable de-registration and export request (IDERA)
 - Through court order - article X(6) of the protocol
 - Order for “advance relief” under Article 13 of the convention from a court .
 - 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.
 - Through IDERA - article XIII (3 and 4) of the protocol
 - An irrevocable de-registration and export request authorization (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).
 - The registry authority is required, without the need to receive a court order, to honor the IDERA
 - 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

Article IX — Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:
 - (a) procure the de-registration of the aircraft; and
 - (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the agreement except where such a provision is manifestly unreasonable.
4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:
 - (a) the request is properly submitted by the authorised party under a recorded irrevocable deregistration and export request authorisation; and
 - (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.
6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed deregistration and export to:
 - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

Article XIII — De-registration and export request authorisation

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recordation to the registry authority, that authorisation shall be so recorded.
3. The person in whose favour the authorisation has been issued (the "authorised party") or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously cooperate with and assist the authorised party in the exercise of the remedies specified in Article IX.

Article X — Modification of provisions regarding relief pending final determination

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.

2. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.

3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):

“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,

and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.

4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.

5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.

6. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) 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 Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

7. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

Article XI — Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

(a) the end of the waiting period; and

(b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.

3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.

4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.

5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

(a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and

(b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

8. With regard to the remedies in Article IX(1):

(a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and

(b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.

11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.

12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.

13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

Compliance with CTC – Role of CAAs and other state bodies - IDERAs

- A CAA (and other administrative officials) have an affirmative obligation, in addition to acting expeditiously, to co-operate with and assist an authorized party in the exercise of the de-registration and export remedies
 - If the registry authority in a Contracting State is not responsible for export authorizations 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
 - It is the duty of a Contracting State to ensure that under its national law all State organs or organizations authorized by the State effect or facilitate de-registration and export and physical delivery
 - 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
- Governments may not:
 - Impose conditions on or take action that adversely affect basic CTC rights, including on matters on which CTC is silent
 - Place conditions on ability to call default or exercise remedies, e.g., mandatory grace period
 - Add to the de-registration, export and IDERA provisions by permitting CAA to act in quasi judicial capacity and/or require debtor consent to exercise of IDERA

Role of CAAs and other state bodies – important note on safety laws and regulations

- 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 Official Commentary to CTC makes clear, “safety laws” do not apply to the remedy of deregistration, as that act has the immediate **effect of preventing** flight operations
- The core idea in that context, is compliance with safety requirements applicable to a standard ferry flight operation, it is not meant to link to more complex instruments like an export certificate of airworthiness, if otherwise applicable

Relationship between CTC and XBT

- Both the Chicago Convention (CC) and CTC are binding international treaties imposing international law obligations
- There are no direct conflicts between CC and CTC
- CC is a foundational framework treaty with technical annexes and much related normative and guidance materials
 - Chapter III covers nationality of aircraft
 - See Art 18 (no dual registration) and 19 (registration and transfer thereof made in accordance with the laws of the state of nationality). NB: CTC rules become such national law, when correctly implemented
 - CTC does not address “registration” or “transfers of registration” as such
 - For these purposes, CTC only addresses “de-registration” and “export” - which is not the subject of CC-mandated international rules; they are left to national law (the new ICAO Registration Manual provided helpful guidance including on matters related to CTC (see next slide))
- CTC is specific, a *lex specialis*
 - CTC has specific operative rules on de-registration and export triggered always by a ‘default’ defined in CTC
 - It does not cover the ordinary course situations
 - In default (including insolvency) situations, time is of the essence. CTC has several time bound rules for action by government officials and courts. That is driven by the need for promptness and predictability
 - CTC has a ‘safety’ requirement on export – that means safe operations for a specific export (ferry, special permission) flight, not general and continuing airworthiness; thus, an export ECofA condition is CTC- violative
- The Registration helps coordinate state practice with the CTC treaty requirements in the special default scenario

CTC controls XBT aspects in default (IDERA) situation

- **De-registration Upon Request of IDERA Holder's Authorized Party or Certified Designee**
 - Mandatory so long as IDERA request properly submitted
 - No subjective judgments allowed, e.g., no validation or confirmation, no investigation into alleged default
 - CAA may not act as a dispute mediator or in a quasi-dispute avoidance or resolution capacity, formally or informally
 - No imposition of conditions that may otherwise apply in a non-IDERA situation - CTC supersedes any conflicting national law
 - Policy rationale: achieving CTC's objectives depends upon prompt de-registration and physical removal of the aircraft at request of IDERA holder
 - Note: de-registration and physical removal/export of aircraft are treated as separate matters
- **Exportation Upon Request of IDERA Holder's Authorized Party or Certified Designee**
 - In non-IDERA situation, Section 5.5.3 of Registration Manual requires applicant to take certain actions (e.g., removal of registration and nationality marks; return original CofR and CofA; other documents required by national law)
 - In IDERA situation, as a condition to export but not de-registration, applicant may only be required to undertake such actions to the extent "within its power" and only "as soon as practicable"
 - For example, if a State normally requires an ECofA as a condition of export, such "shall" not apply in an IDERA situation
 - Expedited physical removal applies to CAA as well as other agencies of State of Registration
 - If the aircraft is physically in a CTC jurisdiction that is not the State of Registration, physical removal protocols on prompt release apply

Practical issues faced, or which might be faced by CAAs (applying above and for discussion)

1. What action, if any, should a CAA take in connection with exercising an IDERA or facilitating export
 - Upon the commencement of bankruptcy / insolvency proceedings
 - During the CTC-related court proceedings
2. Can or should a CAA intervene in either such court proceedings
3. What does 'in accordance with applicable safety laws and regulations' mean (P, arts IX (5), X(6)(b), and IX(5)(b))
4. What sources of information are available to CAA to provide authoritative or reliable CTC information –
 - on questions of interpretation, and especially on
 - gap filling (see C, art 5(2))

Practical issues faced, or which might be faced by CAAs (applying above and for discussion)

5. On IDERAs -

- What does it mean to 'record' an IDERA
- What is the scope of a CAA's obligation to 'expeditiously co-operate and assist' an IDERA holder (P, art XIII(4))
 - How does this relate to 'non-judicial remedies', if declared under C, art 54(2)
 - How does this apply to the remedy of export, if an aircraft has been de-registered
 - How does this apply to remedies against spare or removed engines
- What should a CAA do if an IDERA holder cannot be located or no longer exists
- Can more than one IDERA be accepted and recorded for an aircraft object
- What procedures apply to a CAA's dealing with an 'certified designee' of an IDERA holder
- What steps should a CAA take to comply with applicable timetables, as declared
- Can an aircraft be deregistered while in flight, and, if so, with what implications

6. What is a CAA's obligation in respect of deregistration and export absent a lodged IDERA (or if no relevant declaration was made)