

The Cape Town Convention in Qatar – what you need to know

October 7, 2020

Qatar recently acceded to the Convention on International Interests on Mobile Equipment 2001, together with the Aircraft Equipment Protocol (Cape Town). To date, 80 states globally are contracting states and many of these states have already implemented Cape Town into their domestic laws.

Cape Town aims to create a uniform regime governing the interests of a lessor or holder of a mortgage in high-value civil aircraft, aircraft engines and helicopters (Aircraft Objects), based on:

- the recognition of "international interests" in Aircraft Objects;
- such international interests being recognised in all Cape Town contracting states (Contracting States); and
- international interests being registered at an electronic international registration system (the International Registry).

Is Cape Town enforceable in Qatar?

Yes. According to the Qatar Constitution (the Constitution), in order for international treaties and conventions to be implemented and enforceable in Qatar as part of its domestic law, Qatar's Head of State, the Emir, must conclude such treaty or convention by decree. By virtue of Emiri Decree Number 52 of 2020, published under the Official Gazette issue No.12 dated 16 July 2020, Cape Town is now enforceable under Qatari domestic laws (effective as from 16 June 2020).

Contracting State declarations – what are the key choices?

When states ratify Cape Town (and sometimes after they have ratified), they can pick and choose between certain provisions they want to adopt, provisions of which they prefer diluted versions and their own laws.

Key choices include:

- what remedies will be available on default;
- whether those remedies can be exercised without going to court;
- what, if any, interim remedies (for example, a court order immobilising the aircraft or for its sale and the application of the sale proceeds) will be available pending the outcome of any court proceedings that are required;
- whether the ratifying state's aviation authority and other authorities must act on an irrevocable deregistration and

export request authorisation (IDERA); and

- whether a state or private entity will have rights in respect of unpaid taxes, fines, fees or charges (e.g. for landing fees or engine repair charges) to an Aircraft Object that rank ahead of registered international interests and whether such claims need to be registered.

Default remedies – the key declarations made by Qatar

Where Cape Town is in force, for creditors to obtain the fullest benefit of Cape Town's remedies:

- the states that are relevant to the transaction need to have adopted (via Contracting State declarations) the most creditor-friendly version of Cape Town;
- the transaction documents need to specify which Cape Town remedies will be available and what events will be defaults triggering that availability;
- the documents should also provide for the granting of an IDERA and its being recorded at the civil aviation authority on whose register the aircraft or helicopter is or will be registered; and
- the parties need to contract out of those parts of Cape Town which are optional and which do not reflect their commercial deal. The parties can exclude Cape Town's quiet enjoyment provisions, for instance.

Qatar has made key creditor-friendly declarations, including relating to the following:

- **Choosing to adopt the Alternative A insolvency regime:** The benefit of adopting the Alternative A regime is that it provides some comfort to creditors that the local laws, which would otherwise be more debtor-friendly, will not apply (most insolvency regimes in civil law countries tend to be more debtor-friendly). Under Alternative A, broadly, if the insolvency officer or debtor is unable to cure all defaults and agree to perform all future obligations within a 60-day "waiting period", the administrator or debtor must give the creditor the opportunity to take possession of the Aircraft Object by the end of the waiting period. In the meantime, the insolvency officer/debtor must preserve the Aircraft Object and maintain it and its value; and
- **The use of IDERAs:** Cape Town allows Contracting States to declare that their aircraft registry and other authorities must act on IDERAs to allow the holder of the IDERA to de-register and export an aircraft from their territory on a default (i.e. the Qatar Civil Aviation Authority (QCAA) must recognise and act upon IDERAs).

What are the advantages for aircraft financiers/lessors?

For financiers or lessors (each a creditor), the virtues of Cape Town are that it aims to:

- bring speed, certainty and cost savings to repossession, deregistration and export of Aircraft Objects on an insolvency or other default where the Aircraft Object is located in a country whose laws would otherwise not be creditor-friendly; and
- protect creditors' interests in Aircraft Objects by:
 - providing for the registration of "international interests" in those Aircraft Objects at a single, web-based

International Registry that is open 24/7;

- subjecting those interests to a simple priority regime whose main principles are:
 - registered international interests beat unregistered ones;
 - earlier registrations beat later registrations; and
 - parties can vary priorities by agreeing and (for increased protection) registering subordination arrangements at the International Registry.

Cape Town also gives ratifying states a choice of three insolvency regimes relating to Aircraft Objects:

- Alternative A;
- Alternative B; or
- (for states choosing neither) sticking with their own insolvency laws.

Contracting States can also choose whether to apply any given regime to all or a type of insolvency proceedings. Qatar has chosen to implement the Alternative A regime.

For airlines and other aircraft operators, Cape Town's virtues are that improved creditors' rights can translate into better pricing. For example, airlines in states that have implemented Cape Town's Alternative A insolvency regime – with a "waiting period" of up to 60 days – have achieved impressive pricing on their capital markets financings of aircraft.

The QFC – a favourable alternative regime?

Yes – we understand that the Qatar Financial Centre (QFC) offers an aircraft leasing and financing regulatory regime, which specifically caters for the incorporation of commonly utilised asset finance-related entities, such as special purpose companies, holding companies and trusts. Another important component of the QFC's offering is its competitive tax regime. The QFC's tax offering, combined with a well-protected access right to an efficient and wide tax treaty network and the recent implementation of Cape Town, enable Qatar and the QFC to position themselves favourably as an emerging destination for aviation-related transactions.

Benefits of the QFC's platform include a number of tax advantages that outperform in many instances, in terms of attractiveness and compliance with international standards, those offered by other more established aircraft financing jurisdictions. Examples of such benefits include:

- the non-taxation of foreign sourced income;
- the exemption of dividends;
- the exemption of qualifying capital gains on shares (under a participation exemption provision);
- the eligibility for a tax-exempt status for holding companies and special purpose companies used in structuring a financing transaction;
- a concessionary treatment for Islamic finance transactions;
- the absence of withholding tax on outbound payments of interest, royalties, fees, etc.

- the absence of individual income/wealth tax; and
- the absence of transaction and transfer taxes.

Consequently, the QFC may be considered as a conducive environment for companies operating in the aviation finance space, including leasing companies, funds manufacturers' marketing divisions and support services. For example, we understand that Airbus has set up a limited liability company in the QFC to provide advisory and consulting services in Qatar. The QFC is also home to other companies with extensive aviation business capabilities, including aircraft management companies, asset and fund managers and corporate service specialists (such as aircraft engineering company, Pratt & Whitney).

A copy of Cape Town can be found [here](#) and the Protocol can be found [here](#).

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