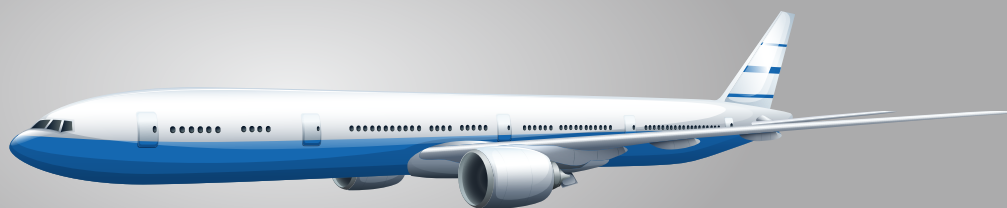


April 2025



All You Need to Know – Protection of Interests in Aircraft Objects Bill, 2025

Background

The Protection of Interests in Aircraft Objects Bill, 2025 (“**Bill**”) which was approved by both houses of Indian Parliament on April 4, 2025 and will come into effect after the President of India has signed it, implements the Convention on international interests in mobile equipment (“**Convention**”)¹ and the Protocol on matters specific to aircraft equipment (“**Protocol**”)² (together the “**Treaty**”), which were adopted by 53 countries in November 16, 2001. The Treaty is designed to create a uniform legal framework for financing and leasing high-value mobile equipment like aircraft, engines, and helicopters, particularly in cases of default or insolvency. The Treaty was signed by India in 2008, following which the state has made several attempts to ratify it and bring its national legislation in line with the Treaty. The International Civil Aviation Organization (ICAO) is the supervisory body for the treaty, and the International Institute for the Unification of Private Law (UNIDROIT) acts as depository of the same.

The Convention and the Protocol are private international law treaties, and accordingly only affect private international law transactions. Matters and affairs pertaining to public law are unaffected unless expressly stated otherwise. The Treaty aims to support aircraft leasing and financing by, *inter alia*, setting up remedies that are available in case of default or insolvency. As a result of implementation of the Treaty, financiers are expected to incur reduced risk, leading to lower financing costs. Further, debtors (including lessees and operators) are also protected from unwanted seizure of mobile equipment by creditors (including lessors and financiers).

The Convention and Protocol contain a number of optional provisions which contracting states (which are refers to a country that has ratified or acceded to the convention and its

protocols, thereby becoming a party to the treaty and subject to its provisions) can decide whether or not to adopt. These optional provisions are set out in the form of declarations and are an integral part of the Treaty system. Declarations made by states³ can be altered under the terms of the Convention and Protocol. India’s declarations under the Convention have been annexed at the Second Schedule of the Bill.

Frequently Asked Questions

What objects is the Bill applicable to?

The Bill is applicable to Aircraft Objects, which includes:

- **Airframes**- *Airframes that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport;*
- **Aircraft engines**- *Aircraft engines that are powered by jet propulsion or turbine or piston technology and: (i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and (ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent, together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;*
- **Helicopters**- *Heavier-than-air machines that are supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport: (i) at least five (5) persons including crew; or (ii) goods in excess of 450 kilograms, together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto.*

1 Convention: https://www.icao.int/sustainability/Documents/CPTConvention_AnnexA.pdf

2 Protocol: https://www.icao.int/sustainability/Documents/CPTConvention_Protocol_AnnexB.pdf

3 India’s declarations: <https://www.unidroit.org/instruments/security-interests/cape-town-convention/states-parties/d-india-ct/>

These definitions have been adopted in the Bill, however, airframes, aircraft engines and helicopters used in military, customs or police services have been excluded from the purview of 'aircraft objects'. It is pertinent to note that certain unmanned aerial vehicles/ drones and e-VTOLs may also be governed under the Bill so long as they are covered under the aforesaid definitions of "Aircraft" and "Helicopters" and categorized as such under the Bharatiya Vayuyan Adhiniyam, 2024 ("BV Act").

What is an international registry?

An international registry in relation to the Convention refers to international registration facilities established for the purposes of recording international interests. As per Article 16 of the Bill, an international interest for mobile equipment may be understood as an interest (such as a lessor's registrable right to aircraft owned by it and leased to a lessee) in a uniquely identifiable aircraft object.

The registry registers, *inter alia*, international interests, prospective international interests and registrable non-consensual rights and interests; assignments of international interests; acquisitions of international interests and subordination of such interests. For mobile equipment, an interest may be:

- Granted by the chargor under a security agreement⁴;
- Vested in a person who is the conditional seller under a title reservation agreement⁵; or
- Vested in a person who is the lessor under a leasing agreement⁶.

What are the requirements for an international interest to be constituted?

Under Article 7 of the Bill, an interest is constituted as an international interest if:

- It is in writing;
- Relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- Enables the object to be identified in conformity with the Protocol; and
- In the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or a maximum sum secured.

Where does the debtor have to be situated to fall within the

Bill's sphere of application?

The debtor, i.e. a chargor, conditional buyer or lessee of aircraft object, will fall within the ambit of the Bill if it has, in India:

- Its place of incorporation and formation;
- Its registered office or statutory seat;
- Its centre of administration; or
- Its place of business.

What are the remedies available in the event of default under the Bill?

Subject to conditions specified under the Bill, a Creditor, i.e. a conditional seller or lessor, or a chargee (i.e., entities that may register their interests in the international registry) may:

Type of Remedy	Conditional Seller or Lessor	Chargee
Default Remedy	<ul style="list-style-type: none"> • Take possession or control of any object charged to it; • Sell or grant a lease of any such object; • Collect or receive any income or profits arising from the management or use of any such object. 	Subject to declaration made pursuant to Section 54 of the Convention, annexed as the Second Schedule of the Bill, a charge may terminate the agreement and take possession or control of any object to which the agreement relates.
Court Order	The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.	Apply for a court order authorising or directing either of these acts.

What is the duration of registration under the Bill?

The registration of an international interest as defined in the Bill remains effective until discharged or until the expiry of the period specified in such registration.

What is the priority of competing interests in mobile equipment?

Subject to any non-consensual rights or interests, pre-declared by India, a registered interest has priority over any other interest subsequently registered and over an unregistered interest.

⁴ "Security Agreement" means "an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an aircraft object to secure the performance of any existing or future obligation of the chargor or a third person".

⁵ "Title Reservation Agreement" means "an agreement for the sale of an aircraft object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement".

⁶ "Leasing Agreement" means "an agreement by which one person (the lessor) grants a right to possession or control of an aircraft object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment".

What are non-consensual rights?

Non-consensual rights or interests refer to rights or interests conferred under Indian law pursuant to declarations made pursuant to Article 39 of the Convention, as set out in the Second Schedule of the Bill, to secure the performance of obligations, which typically include obligation to a state, a state entity or inter-governmental / private organisations. As such, India's declaration under Article 39 includes:

Liens in favour of airline employees for unpaid wages arising since the time of a declared default by that airline under a contract to finance or lease and aircraft object;

- Liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of that aircraft object and owed by the owner or operator of that aircraft object, arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and
- Liens in favour of repairers of an aircraft object in their possession to the extent of service or services performed on and value added to that aircraft object.

Non-consensual rights mentioned above have priority over international interests.

What are internal transactions? Does the Bill apply to such transactions?

An internal transaction refers to a transaction where the centre of the main interests of all parties to such transactions is situated, and the relevant object is located, in the same contracting state (in the present case, in India) at the time of the conclusion of the contract and where the interest created by the way of such a transaction has been registered in a national registry in that contracting state.

A contracting state may make a declaration under Article 50 of the Convention, excluding internal transactions from the scope of applicability in such state. We note that India has not made any such declarations, hence the Bill is applicable to such transactions.

Notably, aircraft leasing and financing transactions inter-se mainland India and International Financial Services Centre, Gift City ("IFSC") will be considered an "internal transaction" for the purposes of the Treaty and the Bill and provisions of the Bill will be applicable to the same

What is the effect of insolvency proceedings against a debtor?

In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with the Convention.

Non-consensual rights or interests made pursuant to declarations under Article 39 of the Convention have priority under Indian laws and shall have priority over a registered international interest, whether in or outside insolvency proceedings.

Remedies available on insolvency:

India has opted for Alternative A as per Form No. 23 (General Declaration under Article XXX(3) in respect of Article XI of the Convention), according to which, the insolvency administrator or the debtor, as applicable, shall, subject to conditions stipulated under the Convention, give possession of the aircraft object to the creditor no later than the earlier of (i) the end of the waiting period; and (ii) the date on which the creditor would be entitled to possession of the aircraft object if the Bill did not apply⁷. We note that India has opted for two months as the waiting period, within which maximum period, a **creditor shall** be able to possess the aircraft object or a **debtor shall cure the relevant default**, upon occurrence of a insolvency related event.

Further, it may be relevant to note that in terms of India's Insolvency and Bankruptcy Code, 2016 ("**Code**"), the Ministry of Corporate Affairs issued a notification on October 3, 2023, which excludes transactions, arrangements and agreements under the Treaty from the scope of Section 14 of the Code (which provides for a temporary halt on certain actions against a corporate debtor during the pendency of moratorium) ("**Notification**") upon commencement of the corporate insolvency resolution process ("**CIRP**"). The recognition of Alternative A under the Bill, will provide an alternate remedy mechanism for Cape Town Creditors that becomes operative when a lessee enters into "insolvency proceedings", which in the Indian context presumably refers to the initiating of the CIRP under IBC. While the Bill states that it shall prevail in the event of any inconsistency with any other Indian law, it remains to be seen how the two laws will be interpreted together.

What is a de-registration and export request authorisation?

An irrevocable de-registration and export request authorisation

⁷ Under the relevant agreement or law



(IDERA) allows lessors to deregister aircraft and repossess them in case of default, simplifying aircraft leasing operations and protecting lessor interests. The person in whose favour the authorisation has been issued, or its certified designee is the sole person entitled to exercise the IDERA as a remedy. Such authorisation cannot be revoked by the debtor without the consent in writing of the authorised party.

What happens if the Bill is in conflict with any other law in force?

Once the Bill has received the President's assent and has become an Act, any consistency between a provision of the Act and any other law for the time being in force, the provisions of the Act shall prevail to the extent of such inconsistency. It may be relevant to note that the provisions of the Bill, Convention or the Act shall not affect the rights of the Central Government, any entity thereof, any other provider of public services in India or any inter-government organisation to arrest or detain an aircraft object under any law in force, for the payment of any amount due to the Government of India or any such entity or provider of public services or organisation, directly relating to the service or services provided by it in respect of that aircraft objects.

How will the Bill once it has been promulgated be implemented?

We note that while the Bill aligns India's aircraft leasing and

framework ecosystem with global standard, additional steps may still have to be undertaken to further streamline India's domestic laws with the Treaty. Although the Bill provides, through Section 9, an overriding effect to the provisions contained therein, vis-à-vis other laws in force; it may be necessary to amend other central acts to give greater effect to the Treaty and its enactment in India. An amendment to acts such as the Code of Civil Procedure (1908), the Specific Relief Act (1963), the Companies Act (2013), and the Code may facilitate further alignment of the Bill with domestic laws and avoid disputes related to interpretation and interplay of the laws.

The Bill permits the Central Government to make rules that are necessary to carry out its provisions. For instance, while the Bill itself contains several provisions that provide procedural clarity, specific rules pertaining to the applicability of provisions such as IDERA may be necessary. As such, we note that at present, the process pertaining to IDERA, is addressed through Rule 30(7) of the Aircraft Rules, 1937 and Aeronautical Information Circular (AIC) 8/2019 dated March 14, 2019. It may be relevant to note that while IDERA is meant to be a default remedy available to a creditor, in recent cases⁸, the Directorate General of Civil Aviation (DGCA) has delayed or not processed de-registration of aircraft. Accordingly, rules that implement specific provisions of the Bill may remove any deficiencies in efficient enactment of the Treaty.

⁸ In *Accipiter Investments Aircraft 2 Limited and Ors. Vs. Union of India and Ors.* (MANU/DE/3110/2024), the Delhi High Court directed the DGCA to process the deregistration applications filed for the fifty-four aircraft as per Rule 30(7) of the Aircraft Rules, 1937.

Please feel free to address any further questions or request for advice to:

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