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A brief note on implementation of the Cape Town Convention in Spain

Alfonso López-Ibor

Ventura Garcés & López-Ibor Abogados
Madrid

Spain has implemented the Convention on international interests in Mobile equipment (hereinafter, Cape Town Convention) effective on the 1 March 2016 because of its accession to the Aircraft Protocol which took place on 27th November 2015. This implementation has given rise to several practical issues, some of which have been already resolved. First, it is important to point out that international treaties validly adopted and published in Spain become not only part of Spanish law, but also their legal provisions prevail over Spanish internal rules so that there is a treaty override over Spanish law (article 96 of the Spanish condition). Secondly, Spain has formulated several “declarations” (in fact, reservations under international law). The most significant is the reservation to article 54(2) of the Convention which requires the consent of a Spanish Court to exercise any Cape Town remedies in Spain. This means that self-help remedies can’t be exercised by a financial bank or a lessor without Spanish court action due process of law. Another significant exception is the exclusion (under article 39 (1) of the Convention) of all the categories of non-Spanish consensual rights or interests from the Cape town system, of which extend not only to existing categories but also those that may be created in the future. The existing categories are already wide and included, inter alia, tax claims, debts to the employees for the salaries of last month, credits of insurers for the last two years. The terms of the Spanish declaration are so, that on my view, would also cover the right of retention of a workshop over an aircraft if the operator has not pay the repairer invoice. Aircraft arrest for non-payment of navigational changes on airport fees also falls outside of the Cape Town Convention and the Spanish declaration would seem to permit even fleet liens in this area (declaration pursuant to article 39 (1)(b)) which would be something novel in this jurisdiction).

Thirdly, the incorporation to the Cape Town Convention has brought about very significant changes in the Spanish system of aircraft registration in connection with leases to Spanish operators, the most common transaction. Aircraft leases have now to be recorded not only in the Spanish Aircraft Register, which is an operator’s Register but also in the Spanish Register of Deeds, the so-called Register of Good and Chattels (“*Registro de Bienes y Propiedades*”), which is run by law officers who carefully vet the relevant document before accepting registration. A consequence of this is that the process of registration has



become more complex and time consuming. It is worth noting that previously leases were only recorded in Spanish Aircraft Register, a more flexible institution, and that the Spanish Register of Goods and Chattels was not concerned about possessory rights but only with ownership title and security rights. The registration by non-Spanish owners of aircraft title was only voluntary and therefore seldom carried out. The Register of Goods and Chattels is particularly demanding about the proper registration of the lease chain and the appropriate evidence of legal capacity of the parties to the transaction. A further complication is the requirement to obtain Spanish tax registration (NIF) for lessor’s head lessors, sublessors, and owners (if registered), even though the leases and transfer of title are not subject to Spanish taxation. This requirement is a side consequence of Spanish strict legislation on money anti laundering.

The IDERA is recorded by the Spanish Aircraft Register although it is also noted by the Register of Goods and Chattels. For this purpose, there is an official form which accurately reflects the text in the Aircraft Protocol. There is no actual experience on the implementation of IDERA in Spain, except that the Spanish Aircraft Register will also require that the lessor or the financial bank also files the

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notice of default under the lease. The practice of the Spanish registers is to admit only the recordation of one IDERA per aircraft. However, authorized designated parties entitled to exercise an IDERA can be recorded.

Spain has also designated an entry point for the purposes of filings under the International Register, which is the Register of Goods and Chattels, and which is the authority issuing the AEP codes for aircrafts. Engines can be recorded in the International Register without Spanish AEP codes.

Finally, it is appropriate to emphasize that Spanish security law is very different from the Cape Town system in enforcement, which may create serious problems in the future. Spanish law does not recognize leases or conditional sales as creating true security interests. The same can be said of prospective interests created under the Cape Town Convention. Needless the enforcement of international interests will be difficult, and the Spanish Court will have a hard task in adjusting them to traditional Spanish security law, as the Cape Town Convention says very little on the actual procedure for enforcement.