

**CTC COMPLIANCE INDEX
WATCHLIST NOTICE****11 May 2023****Contracting State:** India**On watch** since 11 May 2023**Previous updates:** N/A**Category:** Medium (current score: 63.5)**Variable(s) under assessment:** Variable B (current score: 3)**Outlook:** **Negative** – SEE PARAMETERS BELOW**Facts:**

On 10 May 2023, the National Company Law Tribunal: New Delhi Special Bench (the ‘court’) issued an order admitting the application by Go Airlines (India) Limited (‘GoFirst’) to initiate a corporate insolvency resolution process against itself pursuant to Section 10 of the Insolvency and Bankruptcy Code, 2016 (‘IBC 2016’) (the ‘GoFirst insolvency proceedings’) and imposing a moratorium pursuant to Section 14(1) of the IBC 2016. Among other things, the moratorium prohibits ‘the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of [GoFirst]’.

Prior to such order, certain lessors terminated the leasing of aircraft to GoFirst in accordance with the terms of the respective leases and filed deregistration applications pursuant to IDERAs with the DGCA. As of the date hereof, the five working day timetable under the DGCA’s SOP for the deregistration of aircraft has lapsed for certain applications and no requested deregistrations have yet been effected.

CTC Analysis:

The GoFirst insolvency proceedings constitute an insolvency-related event under Article I(2)(m)(i) of the Protocol. As such, Alternative A of Article XI of the Protocol, as declared by India, applies. The Alternative A timeline will commence, and its other provisions take effect from, 10 May 2023.

Under Article XI(2) of the Protocol, the insolvency administrator or the debtor, as applicable, must give possession of the aircraft object to the creditor no later than the earlier of (a) the end of the waiting period as declared by India (which is 60 days); and (b) the date on which the creditor would be entitled to possession of the aircraft object if Article XI(2) did not apply (i.e. if earlier under national law excluding the effect of CTC).¹

Scoring outlook:

¹ AWG understands that, pursuant to Embassy Property Developments Pvt. Ltd. vs State of Karnataka and Ors. (Civil Appeal Nos. 9170-9172 of 2019), the Supreme Court of India has held that an asset owned by a third party (i.e. a lessor), but which is in the possession of the debtor under contractual arrangements (i.e. a lease), is specifically excluded from the moratorium’s prohibition on recovery of certain property that is occupied by or in possession of the debtor where such contractual arrangements were terminated or expired prior to the commencement of the moratorium. In such a case, the asset is neither the ‘property’ of the debtor nor is it lawfully ‘occupied by’ nor is it lawfully ‘in the possession of’ the debtor. To the extent a lessor’s aircraft object is covered by such exclusion to the moratorium per the Embassy ruling, such aircraft object is required to be returned immediately (not at the end of the 60-day waiting period) in accordance with Article XI(2)(b).

The GoFirst insolvency proceedings are a material development that implicates CTC compliance in India. India's variable A score (currently: 3.5) under the compliance index formula indicates that there are gaps in primacy, notably in respect of bankruptcy legislation. The developments thus far in the GoFirst insolvency proceedings confirm that current score, which addresses legislation, regulations, and rules impacting CTC implementation. The DGCA's failure to process IDERA deregistration applications for aircraft whose leases were terminated prior to the imposition of the moratorium within the timetable set forth in its SOP results in a **negative** outlook for India's scoring on variable B (currently: 3) under the compliance index formula, which addresses whether CTC requirements are met in practice.

Notices will be issued every two weeks with updates on further developments until a scoring determination is made.

While the country remains on the CTC Compliance Watchlist (the 'watchlist'), its scorecard should be viewed with caution as it does not yet reflect the potential impact of ongoing material developments that has resulted in the watchlist placement.

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