

May 5, 2023

Shri Jyotiraditya M. Scindia
Hon'ble Minister
Ministry of Civil Aviation
Rajiv Gandhi Bhavan, Safdarjung Airport
New Delhi – 110 003

Re: Go Airlines (India) Limited (Go First) Insolvency and Aircraft Deregistration and Export Issues

Dear Hon'ble Minister,

Reference our previous letter dated April 18, 2023 (*Annexure 1*), we would like to bring to your attention that Go First has filed a petition for voluntary insolvency under Section 10 of the Insolvency and Bankruptcy Code, 2016 ('Code') before the National Company Law Tribunal (NCLT), New Delhi.

The matter was heard by the NCLT on Thursday, May 4, 2023 and order reserved. In case the petition is admitted, a moratorium under Section 14 of the Code would be imposed.

Section 14 of the Code provides for a blanket moratorium of six months, extendable by three months on the admission of an application for insolvency. Upon declaration of such a moratorium, recovery of assets by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor, is prohibited.

Whereas, *Alternative A* to the Aircraft Protocol (*Annexure 2*), provides that upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, give possession of the aircraft object to the creditor no later than the earlier of (1) the end of the waiting period, which per India's Declaration (*Annexure 3*), is two calendar months i.e., 60 days, and (2) the date the creditor would otherwise be entitled to possession under Indian law.

Thus, there is a conflict between India's treaty obligation under the Cape Town Convention ('CTC') and the Code, which can be overcome by enacting a law underpinning the CTC, a draft of which was published by the Government in 2018.

Also, and of immediate practical import, in compliance with CTC obligations, India amended its Aircraft Rules to include Rule 30(7), (*Annexure 4*) which provides that the Directorate General of Civil Aviation ('DGCA') shall cancel registration of an aircraft within five working days, without seeking consent or any document from the operator of the aircraft or any other person, if an application is received from the IDERA holder along with specified documents.

India also enacted Rule 32A (*Annexure 5*) which provides that the DGCA consequent upon cancellation of registration of an aircraft under sub-rule (7) of Rule 30 shall take action to facilitate the export and physical transfer of the aircraft, along with spare engine, if any.

In order to facilitate the de-registration and export processes in line with India's treaty obligations, the DGCA issued *AIC 12 of 2018* dated November 16, 2018 (the 'SOP') (***Annexure 6***), which provides a mechanism for payment of dues to the Government and entities as covered in the proviso to Rule 30(7) of the Aircraft Rules in respect of outstandings for a period of three months preceding the date the IDERA application.

AWG would request you to make provisions so that the rightful owners/ lessors are allowed to repossess and export their equipment ***where they terminated the leasing of aircraft equipment before commencement of the moratorium thus ending the airline's right to possession*** (and that the terms of Alternative A (summarized above) are strictly complied with for any other leases). This would send a positive signal to the world towards India's leadership and commitment to adherence with international best practices with implications for India's increased score in the CTC Compliance Index.

Thank you for considering these items. May we once again request a short meeting with you to elaborate on the actions noted above.

Sincerely yours,



Jeffrey Wool
Secretary General
Aviation Working Group
jeffrey.wool@awg.aero

CC: Hon'ble Jyotiraditya M. Scindia, Minister of Civil Aviation
CC: Mr. Rajiv Bansal, Secretary, Ministry of Civil Aviation
CC: Mr. Satyendra Kumar Mishra, Joint Secretary, Ministry of Civil Aviation
CC: Mr. Francois Collet, Airbus; Co-Chair, AWG
CC: Mr. Salil Gupte, President, Boeing India
CC: Mr. Sheel Shukla, Airbus India
CC: Mr. Ravi Nath, RNC (Coordinator, India Contact Group)

Shri Jyotiraditya M. Scindia
Hon'ble Minister
Minister of Civil Aviation
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi – 110 003

18th April 2023

Re: Reducing Cost of Civil Aircraft in India

Dear Hon'ble Minister,

India is a signatory to the Cape Town Convention and ratified it in 2008. It has been effective in reducing cost of acquisition of Aircraft in India.

The Convention has force of law, except where it conflicts with our law. A few such areas are at Annexure-A.

A Bill was drawn up by your Ministry to remove the anomalies and was gazetted on 13th April, 2022 (and after public comments), again on 20th July, 2022.

Due to difficulties in implementing the Convention's requirements, and non passing of the Bill, India's score on the Convention compliance index has dropped from 69 to 63.5.

If the Bill is enacted into law, the India country score will increase and its airlines and the flying public will benefit.

May we request a short meeting with your goodself to expand on the above theme and help in meeting the Hon'ble Prime Minister's objective of giving a fillip to the Aviation sector of India?

Yours sincerely,



Jeffrey Wool
Secretary General
Aviation Working Group
jeffrey.wool@awg.aero

ISSUES FACED IN INDIA RE: THE CONVENTION AND PROTOCOL

- **Recording of IDERA**: The DGCA, despite a well settled procedure, causes immense delays in recording IDERA's and issuing SRN numbers. Also, several objections which are inconsequential are often raised.
- **Delays in de-registering aircraft**: The DGCA, despite having a very clear and concise AIC in this regard, often does not follow its own procedure to de-register aircraft. AIC 12 of 2018 mandates de-registration of aircraft within five working days, experience has shown that often much longer periods of time are taken to de-register.
- **Illegal Third Party Dues**: The DGCA has been levying third party dues (accrued by the defaulting lessee) on lessors before allowing export of the aircraft from India. This is also at variation with the DGCA's own AIC 12 of 2018.
- **Issue re: GST**: At the time of export, customs authorities insist on clearance from the GST department. The GST laws do not record aircraft wise GST dues and also do not recognize payment of the defaulting lessee's GST by a third party (lessor for example). As such, either court intervention is required or cooperation from the defaulting party / lessee.
- **Direct conflict with the Insolvency and Bankruptcy Code, 2016**: The IBC, 2016 provides for a blanket moratorium on the admission of an application for insolvency. When such a moratorium is ordered, there is a prohibition on recovery of leased assets which includes aircraft leased to Indian airlines.

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.

India's Declarations

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS the **Convention on International Interests in Mobile Equipment** was adopted at Cape Town on the Sixteenth Day of November of the Year Two Thousand One which Convention is reproduced word for word in the Annexure to this document;

AND WHEREAS it is fit and expedient to confirm and accede to the aforesaid Convention;

NOW, THEREFORE, BE IT KNOWN that the Government of the Republic of India, having seen and considered the said Convention, do hereby confirm and accede to the same with the following declarations:

(i) *Form No. 1 (Specific opt-in declarations under Article 39 (l) {a})*

The following categories of non-consensual right or interest have priority under its laws over an interest in an aircraft object equivalent to that of the holder of a registered international interest and shall have priority over a registered international interest, whether in or outside insolvency proceedings, namely:-

- (a) 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 to lease an aircraft object;
- (b) 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, and arising since the time of a default by that owner or operator under a contract to finance or lease that aircraft object; and

- (c) 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.

(ii) *Form No. 4 (General opt-in declarations under Article 39 (1) {b})*

Nothing in the Convention shall affect its right or that of any entity thereof, or any intergovernmental organisation in which India is a member, or other private provider of public services in India, to arrest or detain an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the service or services by it in respect of that object or another aircraft object.

(iii) *Form No. 6 (Opt-in declarations under Article 40)*

The following categories of non-consensual right or interest shall be registrable under the Convention as regards any category of aircraft object as if the right or interest were an international interest and shall be regulated accordingly, namely:-

- (a) liens in favour of airline employees for unpaid wages arising prior to the time of a declared default by that airline under a contract to finance or lease an aircraft object;
- (b) liens or other rights of an authority of India relating to taxes or other unpaid charges arising from or related to the use of an aircraft object and owed by the owner or operator of that aircraft object, and arising prior to the time of a declared default by that owner or operator under a contract to finance or lease that aircraft object; and
- (c) rights of a person obtaining a court order permitting attachment of an aircraft object in partial or full satisfaction of a legal judgment.

(iv) *Form No. 10 (General declarations under Article 52)*

The Convention shall apply to all its territorial units.

(v) *Form No. 11 (Declarations under Article 53)*

All the High Courts within their respective territorial Jurisdiction are the relevant courts for the purpose of Article 1 and Chapter XII of the Convention.

(vi) *Form No. 13 (Mandatory declaration under Article 54 (2))*

Any and all remedies available to the creditor under the Convention which are not expressed under the relevant provision thereof to require application to the court may be exercised without court action and without leave to the court.

IN TESTIMONY WHEREOF, I, Pratibha Devisingh Patil, President of India, have signed these Presents and affixed hereunto my seal at New Delhi this the Seventeenth Day of Phalguna of the Saka Year One Thousand Nine Hundred and Twenty Nine corresponding to the Seventh Day of March of the Year Two Thousand and Eight A. D. in the Fifty Ninth Year of the Republic of India.

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS the **Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment** was adopted at **Cape Town on the Sixteenth Day of November of the Year Two Thousand One** which Protocol is reproduced word for word in the Annexure to this document;

AND WHEREAS it is fit and expedient to confirm and accede to the aforesaid Protocol;

NOW, THEREFORE, BE IT KNOWN that the Government of the Republic of India, having seen and considered the said Protocol, do hereby confirm and accede to the same with the following declarations:

(i) *Form No. 19 (Opt-in declaration under Article XXX (1) in respect of Article VIII)*

India will apply Article VIII.

(ii) *Form No. 21 (Opt-in declarations under Article XXX (2) in respect of Article X) providing for the application of the entirety of Article X*

India will apply Article X of the Protocol in its entirety and the number of working days to be used for the purposes of the time limit laid down in Article X (2) of the Protocol shall be that equal to no more than:

- (a) ten (10) working days in respect of the remedies specified in Article 13 (1) (a), (b) and (c) of the Convention (respectively, preservation of aircraft objects and their value; possession, control or custody of aircraft objects; and, immobilisation of aircraft objects); and
- (b) thirty (30) working days in respect of the remedies specified in Article 13 (1) (d) and (e) of the Convention (respectively, lease or management of aircraft objects and the income thereof; and, sale and application of proceeds from aircraft objects).

- (iii) *Form No. 23 (General opt-in declarations under Article XXX (3) in respect of Article XI) providing for the application of Alternative A in its entirety to all types of insolvency proceedings*

India will apply Article XI, Alternative A, of the Protocol in its entirety to all types of insolvency proceedings, and that the waiting period for the purposes of Article XI (3) of that Alternative shall be two (2) calendar months.

- (iv) *Form No. 26 (Opt-in declaration under Article XXX (l) in respect of Article XII)*

India will apply Article XII.

- (v) *Form No. 27 (Opt-in declaration under Article XXX (l) in respect of Article XIII)*

India will apply Article XIII.

IN TESTIMONY WHEREOF, I, Pratibha Devisingh Patil, President of India, have signed these Presents and affixed hereunto my seal at New Delhi this the Seventeenth Day of Phalguna of the Saka Year One Thousand Nine Hundred and Twenty Nine corresponding to the Seventh Day of March of the Year Two Thousand and Eight A. D. in the Fifty Ninth Year of the Republic of India.

THE AIRCRAFT RULES, 1937

Rule 30: Certificate of Registration:

- (7) The registration of an aircraft registered in India, to which the provisions of the Cape Town Convention and Cape Town Protocol apply, shall be cancelled by the Central Government, within five working days, without seeking consent or any document from the operator of the aircraft or any other person, if an application is received from the IDERA Holder along with:—
- (i) the original or notarised copy of the IDERA recorded with the Director- General; and
 - (ii) a priority search report from the International Registry regarding all Registered Interests in the aircraft ranking in priority along with a certificate from the IDERA Holder that all registered interests ranking in priority to that of the IDERA Holder in the priority search report have been discharged or that the holders of such interests have consented to the deregistration and export of the aircraft:

Provided that such cancellation of registration of the aircraft shall not affect the right of the Central Government or of any entity thereof, or any inter-governmental organisation in which India is a member, or other private provider of public services in India, to arrest or detain or attach or sell an aircraft object under its laws for payment of amounts owed to the Government of India, any such entity, organisation or provider directly relating to the services provided by such aircraft in respect of that object.

THE AIRCRAFT RULES, 1937

Rule 32A: Export of aircraft:


The Central Government shall, consequent upon cancellation of registration of an aircraft under sub-rule (7) of rule 30, if an application is made by the IDERA Holder for export of the same aircraft, take action to facilitate the export and physical transfer of the aircraft, along with spare engine, if any, subject to: —

- (i) the payment of outstanding dues in respect of the aircraft; and
- (ii) the compliance of the rules and regulations relating to safety of the aircraft operation.

Telephone No. : 011-24622495 Aeronautical : VIDDYAYX E-Mail: dri@dgca.delhi.nic.in Fax 011-24652760	GOVERNMENT OF INDIA AERONAUTICAL INFORMATION SERVICES DIRECTOR GENERAL OF CIVIL AVIATION OPPOSITE SAFDARJUNG AIRPORT <u>NEW DELHI-110003</u>	AIC Sl. No. 12/2018 16 th November, 2018
---	--	--

File No.09/13/2013-IR

This AIC is issued for dissemination of the directions of Ministry of Civil Aviation in their letter No. AV.11012/1/2014-A dated 28.09.2018 and related directive dated 15.11.2018.


(B.S. BHULLAR)

Director General of Civil Aviation

**STANDARD OPERATING PROCEDURE FOR IMPLEMENTATION OF RULE 32A
RELATING TO EXPORT OF AIRCRAFT COVERED UNDER CAPE TOWN
CONVENTION**

The following Standard Operating Procedure (SOP) shall be followed by all concerned for implementation of Rule 32A of the Aircraft Rules, 1937.

1. All the airport operators will designate an officer for dealing with matters relating to Rule 32A and communicate the name and contact details, including the e-mail address, of the concerned officer to the Director of Airworthiness, DGCA Headquarters, by e-mail. They shall keep DGCA apprised about any changes in the contact details of such persons from time to time as and when such changes take place. DGCA will compile a list of such contact persons and shall place the same on its website and keep it updated.
2. As and when an occasion requiring deregistration of an aircraft under sub-rule (7) of Rule 30 of the Aircraft Rules, 1937 arises, IDERA Holder will file a request with DGCA in the format given at Appendix 'A'.
3. On receipt of the deregistration request from an IDERA Holder as per Appendix 'A', DGCA will immediately post this fact on its website giving the date of receipt of the request, the type and registration No. of the aircraft and the name of the operator in whose name the aircraft is registered. DGCA will also issue an e-mail in this regard to all the contact persons referred in para 1.
4. DGCA will take necessary action to deregister the aircraft in accordance with sub-rule (7) of Rule 30 and communicate by e-mail the date of deregistration to all contact persons as per para 1.

5. The airport operators will calculate the outstanding dues related to the aircraft in question for a period of three months immediately preceding the **date of declared default** i.e. the date on which the request for deregistration was received in DGCA, and raise bills within five working days of the first e-mail received from DGCA as per para 3. Any dues prior to three months preceding the date of declared default shall not be included in the aforesaid calculation. The airport operator will forward the bills to the IDERA Holder by e-mail with copy to DGCA and will also indicate the necessary bank details to enable electronic payment.
6. Any other organization covered under the proviso to sub-rule (7) of rule 30 and having outstanding dues pertaining to the aircraft in question, may also raise bills and intimate DGCA about it within five working days from the date of declared default. DGCA will inform the IDERA Holder by e-mail about such liability also if notified within five working days of the date of declared default. DGCA will not be responsible for any dues that are not notified to it within the specified period of five working days.
7. Without affecting the liability of the airline operator/s, IDERA Holder, on receipt of the bills by e-mail from the concerned airport operator/s and the organization/s referred in para 6, may make the payment for the same. If such be the case, the airport operator/s and the other organization/s shall issue a certificate to the IDERA Holder within two working days of receiving the payment, stating that the bills raised by them in respect of the aircraft have been cleared. Such certificate shall be forwarded to the IDERA Holder by e-mail with copy to DGCA.
8. The IDERA Holder will submit to DGCA a copy of the certificate of payment of bills given under para 7, along with his request for permission to export the aircraft from India. On receipt of such a request, DGCA will issue the necessary permissions promptly as provided in Rule 32A.
9. Once the permission is granted by DGCA for the aircraft to fly out of India, the IDERA Holder will send an e-mail to the concerned airport operator forwarding a copy of DGCA's permission and indicating the exact date of the flight out of India and requesting for a bill with respect to any dues accrued for the aircraft after the date of declared default up to the date of departure. The airport operator will raise a bill for such dues within one working day and send the same to the IDERA Holder by e-mail with copy to DGCA, along with the necessary bank details to enable electronic payment. Once the IDERA Holder makes the payment, the aircraft can depart from India in accordance with DGCA's permission and no airport operator shall prevent the aircraft from leaving India.

Appendix A

Application for Irrevocable Deregistration and Export Request Authorisation (IDERA) Deregistration

Please complete this form then print, sign and submit as instructed below. Alternatively, print, then complete in BLOCK CAPITALS using black or blue ink.

In accordance with and pursuant to sub-rule (7) of Rule 30 of the Aircraft Rules, 1937 and Article IX(1) of the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment (the Protocol) this is a request from the Authorised Party or the Certified Designee (where the Authorised Party has certified a designee under Article XIII(3) of the Protocol which has not been revoked) under the Irrevocable Deregistration and Export Request Authorisation (IDERA) of the aircraft specified to remove the aircraft from the Civil Aircraft Register.

SECTION 1 - Aircraft Details

Item No.	Registration mark	VT-
1.	Name and address of Manufacturer	
2.	Type and Model of Aircraft	
3.	Manufacturer's serial number	
4.	Type and model of Engines	
5.	Manufacturer serial number of Engines	
6.	Name and registered address of Owner	
7.	Name and registered address of Lessor	
8.	Name and registered address of Lessee	
9.	Any other person having rights in or over the object(mortgagee)	

SECTION 2 - Authorised Party or Certified Designee details
(as currently recorded in the IDERA or in the unrevoked Certified Designee Letter)

The applicant is: (Please tick the appropriate box)

☐

Authorised Party

☐

Certified Designee

Name	
Address	
Email	
Telephone	

SECTION 3 - Details of National Aviation Authority (NAA) to be notified upon deregistration (optional)

Country	
NAA to be notified of	
NAA contact email or fax	

SECTION 4 – Request for deregistration

We, the certified designee (under the authority of Article XIII (3) of the Protocol to the Convention on International Interests in Mobile Equipment on matters specific to Aircraft Equipment), or the authorised party (under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment), request the deregistration of the Aircraft identified above from the Indian Civil Aircraft Register as soon as practicable but, in any event, within 5 working days of receiving the request.

We enclose herewith a copy of the certificate of international interests on the aircraft downloaded from the website of the International Registry which shows that: (Please tick the appropriate box)

- ☐ The Aircraft is not subject to any registered interest that ranks in priority to the international interest that the authorised party holds in the Aircraft; **OR**
- ☐ The Aircraft is subject to a registered interest that ranks in priority to the international interest that the authorised party holds in the Aircraft. The holder of the higher-ranking registered interest has consented to the deregistration and export of the Aircraft and a copy of the consent is enclosed.

DECLARATION

I hereby declare that the above particulars are true in every respect and that nothing has been concealed or withheld by me. I have studied the relevant Aircraft Rules and Civil Aviation Requirements.

Signature(s).....

Authorised Party OR Certified Designee /Authorised signatory of the Authorised Party OR Certified Designee, whichever is applicable (Director, Company Secretary or other authorised signatory)

Name.....

(Block letters)

Designation.....

(Block letters)

Date.....

Encl.:

1. Original recorded IDERA or a notarised copy thereof.
2. In case of Certified Designee, a copy of the relevant document.