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## Ireland adopts the Cape Town Convention's "Alternative A"

### Introduction

The Irish government has signed an order pursuant to the State Airports (Shannon Group) Act 2014 (the "**Order**") giving immediate legal effect to the "Alternative A" insolvency provisions ("**Alternative A**") of the Cape Town Convention on International Interests in Mobile Equipment (the "**Cape Town Convention**") and the associated Aircraft Protocol (the "**Protocol**").

While Ireland ratified the Cape Town Convention in 2005 (being the first European country to do so), it did not at that time make a declaration in relation to the insolvency measures contained in the Protocol. The most notable impact of this was that the rules in relation to examinership (being Ireland's corporate insolvency recovery process) continued to apply. These rules can allow for a court enforced moratorium on enforcement rights for a period of 70 days (with the possibility of a further extension of 30 days or more).

### New Position

In line with the generally recognised benefits of the Convention in terms of providing certainty, speed and cost

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savings in insolvency and enforcement proceedings in respect of “aircraft objects” (as defined in the Convention), Alternative A provides a definite deadline for an insolvency administrator (in Ireland, an examiner) or debtor, as appropriate, and the creditor to negotiate the retention or return of the relevant aircraft object.

Upon the occurrence of an “insolvency-related event” (as defined in the Protocol), Alternative A requires the insolvency administrator of the debtor, by the earlier of: (a) the end of the relevant “waiting period” (being sixty days); or (b) the date on which the creditor would otherwise be entitled to possess the aircraft object, to either (i) give possession of the aircraft object to the creditor; or (ii) cure all defaults (other than a default constituted by the opening of insolvency proceedings) and agree to perform all future obligations under the relevant agreements.

Therefore, an insolvent debtor will have sixty days following an insolvency-related event to either discharge all liabilities due in respect of the relevant aircraft object to the creditor or to return the aircraft object to the creditor.

There is also an obligation on the insolvency officer to preserve the aircraft and maintain its value.

## ▣ A Welcome Development

The Order implementing Alternative A is a welcome development which enhances Ireland’s world class reputation in the aviation industry. Alternative A allows for an effective and efficient remedy that will only apply to transactions in the aircraft financing and leasing sphere. Its implementation is of particular significance in the area of aircraft backed securities and bonds (such as EETCs); it allows for the possibility of higher credit ratings for securities, resulting in reduced funding costs for borrowers.

The introduction of these provisions into Irish law brings our insolvency regime in this area in line with those already in place in other jurisdictions, including the USA and the UK and further bolsters Ireland’s attractiveness as a location for aircraft financing and leasing.

Commenting on the implementation of the insolvency provisions under the Cape Town Convention, the Minister for Transport, Tourism and Sport, Shane Ross TD stated that *“Ireland is already the global leader for aircraft leasing, with the top lessors in the world located here and making a significant contribution in terms of high-value job creation.”*

*This new legislation will send a clear signal to the world that we continue to strengthen our competitiveness in this highly mobile sector”.*

Should you have any queries or require any further information in respect of this note, or if you would like more information on the potential implications that it may have for your business and the sector in which you operate, please contact the authors of this briefing note or your usual Dillon Eustace.

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