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THE CAPE TOWN CONVENTION ACT, 2025 VS. IBC: RESOLVING THE LESSOR'S DILEMMA IN INDIAN AVIATION INSOLVENCY

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ABSTRACT

India's aviation sector, projected to become the world's third-largest market by 2030, is also among the fastest-growing globally, with domestic passenger traffic expected to reach 300 million annually. Yet this growth has been accompanied by a structural vulnerability: It faces a critical paradox: while demand surges, the legal framework for aircraft leasing remains precarious. India's aviation insolvency framework has, until recently, been perceived by global lessors as structurally hostile to asset recovery. The insolvency of Go First in 2023 exposed a severe legislative lacuna where the *Insolvency and Bankruptcy Code, 2016* (IBC), came into direct conflict with India's international commitments under the *Cape Town Convention on International Interests in Mobile Equipment* (CTC) and its Aircraft Protocol. While Section 14 of the IBC imposes a moratorium to preserve the corporate debtor as a "going concern," the CTC mandates the immediate deregistration and export of aircraft objects to lessors upon default. This paper critically analyses the Protection of Interest in Aircraft Objects Act, 2025, which aims to overcome this problem by giving treaty obligations precedence over domestic insolvency laws. Specifically, the paper examines the adoption of "Alternative A" (the 60-day strict timeline) and the IDERA mechanism. However, the author argues that while the 2025 Act addresses the statutory hierarchy, operational bottlenecks—specifically statutory liens exercised by airport authorities for unpaid dues—remain a critical unresolved risk for the global aviation lessor. The paper concludes that without a comprehensive "non-obstante" override against all statutory liens, the "India Risk" premium in global leasing markets will persist.

Keywords: IBC, Cape Town Convention (CTC), Aviation Sector, Insolvency, Alternative A, Moratorium.

I. INTRODUCTION

The global aviation leasing market operates on a singular, fundamental premise: the certainty of repossession and enforceability. The danger of an airline defaulting is a calculated business risk for a lessor located in Singapore or Ireland; the risk of the legal system preventing the recovery of the asset is an unacceptable "jurisdictional risk." India has been seen through the prism of this latter risk for almost a decade; the insolvency of Go First in May 2023 further solidified this view.

When *Go First* filed for voluntary insolvency under Section 10 of the *Insolvency and Bankruptcy Code, 2016* (IBC), it triggered an immediate moratorium under Section 14(1)(d), legally prohibiting the recovery of any property occupied by the debtor.[1] Overnight, fifty-four aircraft—owned by foreign lessors but operated by *Go First*—were "frozen" in India under the moratorium imposed by Section 14. Despite India being a signatory to the *Cape Town Convention on International Interests in Mobile Equipment* (CTC) since 2008,[2] the National Company Law Tribunal (NCLT) prioritised the domestic IBC over the international treaty. The logic was standard bankruptcy theory: to save the airline (the "Going Concern"), the fleet must remain intact. Insolvency adjudicating authorities (NCLT) treated these aircraft as “essential assets” necessary to preserve the corporate debtor as a going concern, effectively suspending lessors’ contractual and treaty-based repossession rights for an indeterminate period.[3]

The outcome was not merely procedural delay, but a substantive denial of remedies that international lessors had priced into their transactions. Although India acceded to the CTC convention, its domestic insolvency framework failed to internalise the Convention’s core objective: ensuring rapid, predictable enforcement of creditor remedies in the event of default. In particular, the absence of a clear statutory carve-out for aircraft objects under the IBC allowed insolvency tribunals to prioritise debtor preservation over treaty obligations, thereby diluting the practical value of instruments such as the Irrevocable Deregistration and Export Request Authorisation (IDERA).[4]

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[1] Insolvency and Bankruptcy Code, 2016, § 14(1)(d) (India).

[2] India acceded to the Cape Town Convention and the Aircraft Protocol on March 31, 2008. See Convention on International Interests in Mobile Equipment, Nov. 16, 2001, 2307 U.N.T.S. 105 [hereinafter Cape Town Convention]; Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, Nov. 16, 2001, 2367 U.N.T.S. 517 [hereinafter Aircraft Protocol].

[3] SMBC Aviation Capital Ltd. v. Interim Resolution Professional of Go Airlines (India) Ltd., Comp. App. (AT) (Ins.) No. 593 of 2023, at ¶ 14 (Nat’l Co. L. App. Trib., New Delhi, May 22, 2023).

[4] Id. at 12 (noting the practical dilution of IDERA mechanisms in India prior to statutory reinforcement).

The consequences were immediate and terrible. The Aviation Working Group (AWG), a global watchdog, downgraded India's compliance score from "positive" to "negative," placing it alongside jurisdictions with high repossession risks.[5] This downgrade has tangible economic costs: Indian carriers face a "Country Risk Premium," effectively paying higher lease rentals than their global peers to insure against the risk of the Indian legal system. In effect, legal uncertainty was converted directly into higher capital costs.[6]

In response, the Ministry of Corporate Affairs issued a notification in October 2023 that attempted a limited executive intervention on the part of the Union Government, partially excluding aircraft from the scope of the IBC moratorium.[7] However, this measure did not resolve the fundamental conflict between treaty-based remedies and insolvency law, and it lacked statutory remedies. The enactment of the Protection of Interests in Aircraft Objects Act, 2025, marked a more decisive legislative response, seeking to restore creditor confidence by realigning domestic law with the Cape Town Convention framework.[8] It introduces the "Alternative A" insolvency regime, mandating that if an airline does not cure its default within 60 days, the aircraft *must* be returned to the lessor, notwithstanding any other law.

The 2025 Act acts as a "legislative patch," but operational hurdles remain. However, this paper argues that while the 2025 Act successfully resolves the *statutory* conflict between the IBC and the CTC, it may fail to resolve the *operational* conflict on the ground. There is now a new, greater threat: the "Lien Trap." Airport authorities frequently exercise a statutory lien over the aircraft for unpaid landing and parking fees, essentially holding the asset hostage, even if a lessor obtains a deregistration order under the new Act.[9] This paper analyses whether the 2025 Act is a "Gold Standard" solution or merely a partial fix that leaves the "Lessor's Dilemma" unresolved.

II. THE CAPE TOWN CONVENTION ACT, 2025 VS. IBC: RESOLVING THE LESSOR'S DILEMMA

A. THE PRE-2025 LEGAL POSITION: SUBORDINATION OF LESSOR RIGHTS UNDER THE IBC

Before the Protection of Interests in Aircraft Objects Act, 2025 was passed, the Insolvency and Bankruptcy Code, 2016, mostly governed aircraft leasing during insolvency. The crisis that arose in India's aviation insolvency regime was not the result of judicial error, but rather of a

[5] See Aviation Working Group, India Country Contact Group Statement (May 2023).
[6] See Primus Partners, Aircraft Leasing Industry: Has India Nailed the Landing?, at (May 02, 2023) (attributing high lease premiums to the "India Risk" factor).
[7] Ministry of Corporate Affairs, Notification S.O. 4321(E) (Oct. 3, 2023) (India).
[8] Protection of Interests in Aircraft Objects Act, 2025 (India).
[9] Airports Authority of India Act, 1994, § 42 (India).

structural mismatch between its domestic insolvency framework and its obligations under international treaties. The Insolvency and Bankruptcy Code, 2016 (IBC), is essentially a "debtor-in-possession" statute that puts corporate debtor revival ahead of individual creditor recovery.

Section 14(1)(d) of the IBC imposed a comprehensive moratorium prohibiting the recovery of any property occupied by or in possession of the corporate debtor during the period of the insolvency case.[10] This "rescue-first" requirement unintentionally caused conflict with international leasing norms when it was implemented in the aviation industry, where the main assets are leased rather than owned. Although aircraft operated under operating lease arrangements were indisputably owned by foreign lessors, insolvency adjudicating authorities consistently treated such aircraft as assets integrally connected to the debtor's business operations.

The Application of Section 14 (The Moratorium).

The core of the conflict resides in **Section 14(1)(d)** of the IBC. Upon the admission of an insolvency petition, this provision imposes an immediate moratorium, prohibiting the "recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor." In a standard manufacturing context, this provision prevents asset stripping, preserving the company's value. However, for an airline like *Go First*, which operated a fleet entirely composed of leased aircraft, the moratorium effectively suspended the property rights of foreign lessors. While the intent of the law was to preserve the "Going Concern" status of the airline, the practical effect was that lessors were compelled to maintain their assets within the jurisdiction without payment, creating a significant risk asymmetry that the international market had not priced in.[11]

Judicial Interpretation: *Go Airlines (India) Ltd. v. SMBC Aviation Capital Ltd.*

The judiciary's adherence to the statutory hierarchy was brought to light for the first time in the Go First insolvency proceedings (2023). Both the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) adopted a debtor-centric interpretation of the moratorium. Aircraft were characterised as "essential assets" required to preserve the airline as a going concern, and lessor repossession was viewed as incompatible with the objectives of resolution under the IBC.[12]

When lessors approached the NCLT and subsequently the NCLAT seeking repossession, they argued that the **Cape Town Convention (CTC)**—acceded to by India in 2008—should take

[10] Insolvency and Bankruptcy Code, 2016, supra note 1, § 14(1)(d).
[11] Velaga & Gupta, *supra* note 3, at 14.
[12] SMBC Aviation Capital Ltd. v. Interim Resolution Professional of Go Airlines (India) Ltd., Comp. App. (AT) (Ins.) No. 593 of 2023 (Nat'l Co. L. App. Trib., New Delhi, May 22, 2023).

precedence. The NCLAT, in its ruling on May 22, 2023, upheld the primacy of the IBC on two primary grounds:

- **Legislative Gap:** Although India had acceded to the CTC, there is no domestic law in this regard, as there was no enabling legislation at the time to give the treaty force of law over the IBC.
- **The "Essential Asset" Doctrine:** According to the Tribunal, the aircraft served as the "substratum" for the Corporate Debtor's business. Permitting repossession would immediately ground the airline, defeating the IBC's objective of value maximisation and corporate rescue.[13] The tribunal also reasoned that permitting deregistration and export of aircraft would irreversibly dismantle the corporate debtor's operational capability and frustrate any meaningful resolution process.

While this approach aligned with the traditional way of insolvency theory, it failed to account for the unique legal and commercial nature of aircraft leasing. Unlike conventional operational assets, leased aircraft are neither owned by the corporate debtor nor replaceable within insolvency timelines. Contrary to the expectations underlying cross-border leasing deals, the practical result of the moratorium was the effective seizure of lessor property for an extended period rather than its temporary retention.

The Unresolved Treaty–Municipal Law Conflict

The Go First Crisis exposed a deeper fundamental inconsistency between India's Treaty obligation and its domestic insolvency framework. Although India is a party and signatory to the CTC and the Aircraft Protocol in 2008, the Insolvency and Bankruptcy Code failed to internalise the Convention's core objective of ensuring swift and predictable enforcement of creditors' remedies during the insolvency.[14] In the absence of explicit legislative incorporation, insolvency tribunals treated the Convention as subordinate to the IBC, effectively neutralising treaty-based protections. This approach significantly weakened instruments such as the Despite administrative recognition, the IBC moratorium rendered the Irrevocable Deregistration and Export Request Authorisation (IDERA) unenforceable. As a result, actual enforcement depended more on domestic discretion than on international commitment, and India's adherence to treaties was mostly based on form rather than content.

The Regulatory Response: Notification of October 3, 2023

Acknowledging the friction between the municipal law and internation treaty's obligation, the Ministry of Corporate Affairs (MCA) issued Notification S.O. 4321(E) on October 3, 2023.[15] Exercising powers under Section 14(3) of the IBC, the notification announced to exempt "transactions, arrangements or agreements, or security interests under the Convention and the

[13] Id. at ¶ 21 (observing that aircraft are essential to the corporate debtor's operations).
[14] *Cape Town Convention*, *supra* note 2, at Preamble (stating the objective of efficient asset-based financing).
[15] Ministry of Corporate Affairs, Notification S.O. 4321(E), supra note 7.

Protocol, relating to aircraft, airframes, engines, helicopters, and related assets " from the moratorium.

Although this notification represented a change in the policy, it was an executive measure rather than a long-term legislative solution. Crucially, it did not apply to the Go First insolvency retroactively due to its hypothetical nature, which left current lessors without a remedy and required the enactment of the more comprehensive 2025 Act.

B. THE LEGISLATIVE RESPONSE: THE PROTECTION OF INTERESTS IN AIRCRAFT OBJECTS ACT, 2025

The Protection of Interests in Aircraft Objects Act, 2025, represents Parliament's attempt to resolve this long-standing conflict through primary legislation.[16] Unlike executive notifications or administrative circulars, the Act establishes a statutory framework expressly designed to give effect to India's obligations under the Cape Town Convention within domestic law. It also represents a paradigm shift from a "control-based" insolvency regime to a "rights-based" framework for aviation assets. By giving statutory force to the Cape Town Convention, the Act aims to decouple aircraft assets from the general insolvency process of the airline.

At the heart of the Act is the exclusion of aircraft objects from the operation of the IBC moratorium. By not applying Section 14 of the IBC to aircraft subject to international interests, the Act prevents insolvency proceedings from automatically suspending lessor remedies. This is a significant shift from the debtor-in-possession approach that had previously dominated the aviation industry's insolvency adjudication process.

Statutory Supremacy and the Non-Obstante Clause

The primary function of the 2025 Act is to resolve the hierarchy of laws. The Act includes a robust *non-obstante* clause (Section 4 read with Section 15), which explicitly states that in the event of a conflict between this Act and any other law (specifically including the IBC), the provisions of the 2025 Act shall prevail.[17]

This effectively removes the ambiguity that raised the *Go First* proceedings to an extreme point of conflict with the international treaty. The NCLT no longer retains the discretion to detain aircraft under the guise of "essential assets" if the conditions of the 2025 Act are triggered.

[16] Protection of Interests in Aircraft Objects Act, 2025, supra note 8.
[17] *Id. at § 9 (referring to the non-obstante clause overriding other laws).*

C. ADOPTION OF ALTERNATIVE A AND THE SIXTY-DAY HARD STOP

The key salient feature of this Act of 2025 is the adoption of "Alternative A" under Article XI of the Aircraft Protocol.[18] Under this regime, the insolvency administrator is required, within a maximum period of sixty days, either to cure all defaults and agree to perform future obligations under the lease or to give possession of the aircraft object to the lessor.[19] Upon the occurrence of an insolvency-related event, the insolvency administrator (Resolution Professional) now has a total "waiting period" of exactly 60 days only. Additionally, this obligation operates notwithstanding anything contained in any other law for the time being in force.

The addition of Alternative A reflects a deliberate policy decision to put things in clarity and prioritise and predictability ahead of the prolonged debtor protection. By imposing a non-extendable timeline, the Act seeks to prevent aircraft from being trapped in insolvency proceedings for extended periods. This will allow aircraft to be redeployed to solvent operators and preserve asset value. Unlike the IBC process, which can be extended up to 330 days, the 60-day deadline under Alternative A is absolute.[20] The NCLT is barred by the effect of this Act from extending this period or modifying the lessor's right after the window expires.

D. STATUTORY REINFORCEMENT OF THE IDERA MECHANISM

The Act further strengthens the enforcement architecture by granting statutory backing to the IDERA mechanism. It mandates that upon invocation by a lessor, the Directorate General of Civil Aviation must affect deregistration and facilitate export of the aircraft within a prescribed, non-discretionary timeframe.[21] Previously, the Directorate General of Civil Aviation (DGCA) would often pause deregistration if an insolvency moratorium was in place. This also reduces the possibility of regulatory delays or court intervention by turning what was once an administrative accommodation into a statutory obligation.

Under the 2025 Act/Rules, the DGCA is mandated to process a deregistration request from an IDERA holder within **5 working days**, without seeking consent from the operator or the Resolution Professional.[22] This aligns India with the "Standard" compliance requirements of the Aviation Working Group (AWG), theoretically allowing for rapid asset extraction.

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[18] Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment art. XI, Nov. 16, 2001, 2367 U.N.T.S. 517 [hereinafter Aircraft Protocol].
[19] *The Protection of Interests in Aircraft Objects Act, 2025*, *supra* note 8, at § 12.
[20] See Fox Mandal, Cleared for Takeoff: India's Long-Awaited Cape Town Act (June 30, 2025), (analysing the impact of the strict 60-day timeline on lessor confidence).
[21] Protection of Interests in Aircraft Objects Act, 2025, supra note 6, at § 7.
[22] *Aircraft Protocol*, *supra* note 18, at art. XIII (Authorisation of Request for De-registration and Export).

E. A DOCTRINAL SHIFT WITH PRACTICAL LIMITS

Collectively, these provisions signal a significant doctrinal shift in Indian aviation insolvency law. Recognising that access to international leasing markets depends on enforceable repossession rights, the 2025 Act transforms the legal environment from debtor preservation to creditor predictability. However, while the statutory hierarchy between the IBC and the Cape Town Convention has been formally resolved, the Act's effectiveness ultimately depends on whether it can overcome well-established operational practices or not.

The following section, therefore, examines the principal unresolved risk confronting lessors: the continued assertion of statutory liens by airport authorities and other public bodies, which threatens to undermine the practical utility of the reforms introduced by the 2025 Act.

III. CRITICAL ANALYSIS: THE UNRESOLVED OPERATIONAL RISK—THE "LIEN TRAP" IN AIRCRAFT REPOSSESSION

While the Protection of Interests in Aircraft Objects Act, 2025, resolves the formal conflict between the Insolvency and Bankruptcy Code, 2016 and India's obligations under the Cape Town Convention, it does not fully address the operational realities of aircraft repossession in India. The main unresolved risk that confronts the lessors is the continued claims of statutory liens by the airport authorities and other public bodies for the unpaid dues. This phenomenon is commonly described by the industry participants as the "Lien Trap," which poses a significant problem and threat to the effectiveness of the 2025 Act and undermines the predictability promised by the Cape Town regime.[23]

A. STATUTORY LIENS OF AIRPORT AUTHORITIES AND PUBLIC BODIES

In India Airport operators and public authorities frequently claim a statutory lien over the aircraft for unpaid landing charges, parking fees, navigation charges, fuel dues, and other statutory levies. These claims are backed its grounding through the provisions of the Airport Authority of India Act, 1994, airport concession agreements, and delegated regulations, which permit the detention of aircraft until outstanding dues are discharged.[24]

[23] See International Bar Association, Indian Aviation Takes Off with Cape Town Convention (July 10, 2025), (discussing the persisting issue of non-consensual rights and liens).
[24] Airports Authority of India Act, 1994, § 42 (India).

From the perspective of airport authorities, such liens serve a legitimate revenue-protection function, particularly in cases of financially distressed airlines. However, these liens function as de facto possessory claims over aircraft in which the airline has no ownership stake, according to international lessors. In contrast to traditional creditor claims, statutory airport liens externalise the airline's financial difficulties to lessors by attaching to aircraft held by third parties rather than the debtor's assets.

The issue is not just theoretical. Airport operators frequently prevent the physical ownership of the aircraft until their outstanding debts are paid, even in cases when lessors have successfully obtained a deregistration order from the Directorate General of Civil Aviation. In these situations, repossession rights are becoming illusory due to legal entitlement in the absence of physical control.

B. CONFLICT BETWEEN THE 2025 ACT AND AIRPORT AUTHORITY DUES

In order to grant aircraft repossession rights precedence "notwithstanding anything contained in any other law for the time being in force," the 2025 Act includes a broad non-obstante clause. This phrasing seems broad enough in its reading of textual context to supersede conflicting statutory provisions, such as those that allow airport liens. However, the Act does not expressly address the treatment of airport authority dues or clarify whether such liens are extinguished, postponed, or subordinated upon invocation of Cape Town remedies.[25]

The main legal question is whether the non-obstante clause in the 2025 Act overrides the detention rights under the AAI Act of 1994.

- **Article 39 Declarations:** Under the Cape Town Convention, which allows Contradicting States to declare specific categories of the non-consensual rights, such as liens for unpaid employee wages, taxes, or repair charges, and unpaid public service dues, that take priority over a registered international interest, both inside and outside insolvency proceedings. [26]

This legislative silence in the very Act of 2025 creates interpretive ambiguity. Airport Authorities may argue that their statutory powers operate independently of insolvency law and could apply even where aircraft are excluded from the IBC moratorium. However, lessors will probably argue that allowing aircraft to be detained for third-party debts undermines the Act's purpose and violates India's treaty obligations.

[25] *See generally* Sarin & Co., *Aircraft Repossession in India: An Overview* (2017) (detailing the historical friction between airport dues and lessor rights).
[26] Cape Town Convention, supra note 2, at art. 39 (Rights having priority without registration).

The risk of fragmented adjudication—where every High Court, insolvency tribunals, or regulatory authorities could take diverse stances, increases in the absence of clear guidance. In practice, this uncertainty incentivises airport operators to assert maximal leverage, knowing that lessors are commercially pressured to clear dues to recover high-value assets. The result is a shift from legal enforcement to negotiated settlements, undermining the predictability that the Cape Town Convention seeks to guarantee.

However, if India's declarations under Article 39 preserve the priority of public service dues, then the 2025 Act cannot force an airport to release an aircraft until those specific dues are cleared. Under the IBC, Section 238 gave the Code an overriding effect. However, litigation often ensued over whether airport dues constituted "current dues" (payable during the moratorium) or "pre-CIRP dues." Unless the 2025 Act specifically limits liens to the obligations of the individual aircraft rather than the airline's entire fleet-wide debt, it runs the risk of becoming entangled in the same interpretive loop (General Lien vs. Particular Lien).

C. PHYSICAL CONTROL VS. LEGAL DEREGISTRATION: WHERE ENFORCEMENT BREAKS DOWN

The 2025 Act empowers the DGCA to issue a deregistration order within 5 days. However, there is a distinct gap between *regulatory deregistration* and *physical export*.

The Standoff:

A lessor may possess a valid IDERA deregistration certificate, but physically moving the aircraft requires access to the runway, clearance from Air Traffic Control (ATC), and other customs exit approval.

The "Solvent" Airline Risk:

This risk is not limited to insolvency only. Even if an airline is solvent but defaults on lease payments, airport authorities may block the export of the aircraft to leverage payment for the airline's unrelated debts. However, the 2025 Act clarifies the insolvency process, but the practical enforcement on the tarmac relies on the cooperation of entities (Airports/Customs) that are not directly governed by the Act's primary mandates.

Airport authorities and public bodies may continue to assert liens irrespective of the airline's insolvency status, and regulatory coordination challenges persist. Because of this, even solvent airline failures could result in the same physical control issues that beset insolvency situations, hence reducing the Act's usefulness.

The 2025 Act has a structural flaw that is shown by this enforcement gap. Parliament has made legal rights clearer, but it hasn't completely harmonised the obligations of all the stakeholders involved in the export of aircraft. Without an integrated enforcement framework binding airport authorities and ancillary agencies, the risk remains that aircraft will continue to be immobilised even after satisfaction of statutory conditions under the Act.

D. THE RETROSPECTIVITY GAP: THE "LEFT BEHIND" FLEET

A critical limitation of the 2025 Act is its prospective nature. The Act does not explicitly state whether its provisions apply retrospectively to insolvencies commenced prior to its enactment. For lessors affected by legacy cases, including the residual proceedings of Go First or earlier airline insolvencies, this uncertainty is critical.

The Go First Remnants:

The Act applies to insolvencies initiated after its enactment. It does not automatically rescue the lessors of *Go First* or the other legacy insolvencies who are still trapped in the NCLT/IBC cycle. If interpreted as purely prospective as seen in this case, the Act offers no relief to lessors whose aircraft remain entangled in ongoing proceedings initiated before 2025. Such an interpretation would weaken the Act's restorative purpose and prolong the reputational damage caused by earlier enforcement failures. However, retrospective application raises concerns regarding interference with vested rights and settled proceedings, particularly where claims of other creditors have crystallised.

Unless the Courts interpret the Act as "declaratory" (clarifying existing law rather than creating new law), these lessors remain subject to the "Essential Asset" doctrine, creating a two-tier market where new leases are safe, but old leases remain toxic assets. The absence of legislative clarity on this issue again shifts the burden to judicial interpretation, increasing the risk of inconsistent outcomes and prolonged litigation.

E. COMPARATIVE PERSPECTIVE: TREATMENT OF LIENS IN OTHER CAPE TOWN JURISDICTIONS

A comparative view of other Cape Town Convention jurisdictions highlights the seriousness of the lien issue. Major aviation hubs such as Ireland and Singapore, while recognising limited statutory liens, typically subordinate such claims to Cape Town Convention remedies or require their settlement through insolvency processes rather than through physical detention of aircraft. In these jurisdictions, priority is given to maintaining predictable repossession timelines, even if this results in certain public dues being treated as unsecured claims.[27]

[27] See Insolvency Law Academy, The Aircraft Protocol of the Cape Town Convention and Its Applicability Under Indian Insolvency Regime, at 12 (2024) (recommending the subordination of statutory liens to align with global standards).

By contrast, jurisdictions that permit airport authorities to detain aircraft for unpaid dues have consistently been rated as higher-risk markets by global lessors. The Aviation Working Group's compliance assessments reflect this reality, treating physical control barriers as functionally equivalent to legal non-compliance.

Despite the enactment of the 2025 Act, India's existing framework continues to resemble jurisdictions where statutory liens prevail, unless such liens are expressly neutralised or subordinated. In the absence of clear legislative clarification, India risks maintaining only formal compliance with the Cape Town Convention while falling short of the practical enforcement standards expected by global aviation markets.

To achieve a "Gold Standard" rating, India must mirror jurisdictions like **Ireland** and the **UK**:

Strict "Particular" Liens: In these jurisdictions, an airport can only detain an aircraft for the debts *specifically incurred by that aircraft*. They cannot hold Aircraft A hostage for the unpaid parking fees of Aircraft B (fleet liens).

The "Fleet Lien" Ban: Ideally, the 2025 Act should have expressly prohibited the creation or enforcement of "fleet liens" against third-party asset owners. In the absence of such a provision, aircraft lessors remain compelled to discharge the operational debts of insolvent airlines merely to recover their own assets, a risk that will inevitably continue to be reflected in higher lease premiums for Indian operators.[28]

IV. CONCLUSION: FROM "INDIA RISK" TO GLOBAL STANDARD—A CONDITIONAL TRANSITION

The enactment of the Protection of Interests in Aircraft Objects Act, 2025 represents the most consequential reform in Indian aviation finance since sectoral liberalisation. For the first time, Parliament has unequivocally reordered the statutory hierarchy by prioritising India's Cape Town Convention obligations over the debtor-centric framework of the Insolvency and Bankruptcy Code, 2016. By excluding aircraft objects from the Section 14 moratorium, adopting Alternative A with a strict sixty-day repossession timeline, and reinforcing the IDERA mechanism, the Act signals a decisive shift from a debtor-preservation model to one grounded in creditor predictability.

[28] *See generally* Int'l Bar Ass'n, *Report on Enforcement and Enforceability Considerations for Aircraft Leasing and Financing*, at 8 (2019) (highlighting that "fleet liens" remain a critical barrier to repossession in jurisdictions like India).

In doctrinal terms, this intervention constitutes a genuine structural cure. It directly overturns the legal uncertainty exposed in the Go First insolvency, removes tribunal discretion to treat third-party aircraft as "essential assets," and aligns India with the global gold standard for aviation insolvency regimes. The market has acknowledged this shift: the Aviation Working Group's upgrade of India's compliance outlook reflects acceptance of the legislative intent and marks an important step towards neutralising the long-standing "India Risk" premium in aircraft leasing.

However, the reform's effectiveness is constrained by unresolved operational realities. While the Act resolves the judicial conflict, it exposes a parallel administrative one. The continued assertion of statutory liens by airport authorities and tax departments, the gap between legal deregistration and physical export, and the absence of explicit clarification on lien hierarchy collectively undermine the certainty of repossession. As long as aircraft can be detained for an airline's unrelated operational dues, the risk faced by lessors merely shifts—from insolvency tribunals to executive actors such as airports and customs authorities.

As a result, the 2025 Act functions less as a complete solution and more as a conditional one. The legal framework now permits swift repossession, but functional enforcement remains fragmented. "India Risk" be really neutralised only when a test case under the Act results in an unobstructed physical export within the sixty-day deadline, free from lien-based hindrance. Until then, global markets are likely to price this residual uncertainty into Indian lease premiums.

The road ahead therefore lies beyond the statute. To move from formal compliance to functional creditor protection, India must harmonise enforcement across institutions. This requires explicit clarification—whether through executive directions or statutory amendment—that airport liens are particular rather than fleet-wide, coordination between aviation regulators and airport authorities, and judicial reinforcement that repossession rights under the 2025 Act cannot be indirectly defeated. Successful implementation would unlock the OECD Cape Town Discount, translating legal reform into tangible financial savings for Indian airlines.[29]

Ultimately, India's aspiration to emerge as a global aviation hub depends not only on legislative alignment with international norms, but also on the credibility of its enforcement ecosystem. The 2025 Act has opened the door to global confidence. Whether Indian aviation can fully walk through it will depend on the State's ability to restrain its own enforcement actors. The law is no longer the primary obstacle; execution is.

[29] Organisation for Economic Co-operation and Development (OECD), Arrangement on Officially Supported Export Credits: Sector Understanding on Export Credits for Civil Aircraft (2011), annex 1.