AIRFINANCE
JOURNAL

An *Airfinance Journal* special supplement

Guide to **aviation lawyers** 2018

Legal moves 2017-18

A&L Goodbody hires aviation finance partner

A&L Goodbody hired David Berkery as a partner in its New York offices.

Berkery trained and qualified with Irish firm McCann FitzGerald and subsequently worked for Milbank Tweed Hadley & McCloy for more than five years. Most recently, Berkery was an associate in Milbank's New York office.

He will initially work in A&L Goodbody's New York office before moving to the firm's office in Dublin.

Berkery has more than 12 years' experience in Dublin, London and New York. He has advised financial institutions, airlines, aircraft lessors, investment banks and private investors. Berkery regularly advises on the acquisition, leasing, financing and trading of aircraft, vessels and rolling stock. He has a particular focus on asset-backed securitisations (ABS), private placements, enhanced equipment trust certificate offerings, secured and unsecured lending, portfolio sales and industry-specific joint ventures, mergers and acquisitions.

Berkery has worked on deals including: Aergo's METAL 2017-1 ABS; Castlelake's CLAS 2014-1, CLAS 2015-1, CLAS 2016-1 and CLAS 2017-1 ABS; Aldus Trust Leasing Aircraft Securitisation; Latam Airlines $250 million Spare Engine; and Einn Volant Aircraft Leasing, a $2 billion joint venture between GECAS and CDPQ.

Berkery has written an article on the ABS market, which you can read on page 70.

James gets leading role at asb law

Daniel James, formerly of Stevens & Bolton, was appointed as partner and head of aviation at asb law.

James advises clients on commercial transactions, leases and the financing of aircraft and components, as well as on matters involving repossession, insurance claims and regulation.

He will lead asb law's aviation team, which is based primarily out of offices near London Gatwick airport. The team provides support to businesses across the aviation industry, as well as aviation insurers.

Alina Nosek, who stepped down as head of aviation in April, remains an active part of the team.

McCann FitzGerald senior associate moves to New York

Irish law firm McCann FitzGerald appointed Richard Gill as senior associate in its New York office.

Gill is a senior associate in the aviation and asset finance group at McCann FitzGerald, acting for operating lessors and financiers in the aviation industry, including AerCap, Nordic Aviation Capital, Orix Aviation, BOC Aviation and GTLK Europe.

Gill advises on a variety of aviation and asset finance matters, including cross-border aircraft portfolio financings, export credit agency-backed financings, aircraft sale-and-leaseback transactions, capital market transactions (including aircraft securitisations) and debt restructurings. He also has experience drafting and negotiating aircraft leasing, servicing, financing and security agreements, as well as advising clients in connection with the acquisition and disposal of operating leasing companies.

Transportation Partners brings in Airasia legal manager

Nikesh Chahal, Transportation Partners

Transportation Partners hired Nikesh Chahal as a legal counsel in Singapore. The Singapore-based captive lessor of Lion Group states Chahal has worked in both business and commercial aviation, most recently as a legal manager at Airasia in Malaysia.

The Canadian has also lived and worked in India, South Africa, the United Arab Emirates and the United Kingdom.

WFW team decamps to HSF

Rex Rosales, the global head of transport at Watson Farley & Williams (WFW), and three other asset finance partners at the firm left to join rival Herbert Smith Freehills (HSF).

Along with Rosales, Jahnavi Ramachandran will join the firm in London, while Siva Subramaniam and Samuel Kolehmainen will join in Singapore.

Rosales has 30 years' experience as an aviation finance lawyer. He joined WFW in 2010 as part of a defection of five transport lawyers from Reed Smith.

K&L Gates promotes Grieger to counsel

Eiko Grieger, K&L Gates

K&L Gates promoted Eiko Grieger, a member of the firm's banking and asset finance practice group in Tokyo, to the position of counsel.

Grieger's promotion comes after the addition of other new aviation finance lawyers over the past year, including Seattle counsel Misha Kovacevic, Singapore partner James Bradley and counsel Kamil Ahmed, London partners Philip Perrotta and Sidanth Rajagopal and Tokyo counsel Robert Snodgrass.

K&L Gates now has more than 60 attorneys, including 20 partners and counsel, around the globe advising on aircraft finance matters.

Roy joins REN Legal

REN Legal appointed Sulagna Roy as counsel, further increasing the strength and depth of the law firm's core asset finance team.

Roy joins from Berwin Leighton Paisner, having previously worked at Debevoise & Plimpton after qualifying at Freshfields Bruckhaus Deringer.

She advises borrowers, financiers, lessors and lessees on a variety of structured aircraft finance transactions, with an emphasis on cross-border aircraft leasing transactions. Roy has particular experience in operating and finance lease transactions, the acquisition and disposal of aircraft, engines and leasing companies, sale-and-leaseback transactions, export credit financings, Japanese operating lease financing, registration and security issues.

Chow moves in at Mayer Brown

Hallam Chow, Mayer Brown

Hallam Chow, a former White & Case lawyer, joined Mayer Brown JSM's Beijing office as head of projects, China, in the firm's banking and finance practice.

Airfinance Journal understands Chow will do some aviation finance work, though projects will be his main focus.

"We do see him continuing to do aircraft work but it's fair to say that's not his primary focus," says a source at the firm.

Chow is known for his track record of working on deals for lenders, equity investors and lessees, particularly those in China, Latin America and the Middle East, as well as on deals relating to project financing, acquisition financing, structured financing, aircraft leases, energy and infrastructure, and oil and gas joint ventures.

SGR appoints Fisher to global transport practice

Law practice Smith, Gambrell & Russell hired Shani Smith Fisher as counsel to the firm's global transport practice. She is based in its Los Angeles office.

This comes after the appointment of Josh Gentner as partner in Chicago and Chris Raymond, who joined the firm's Atlanta office as an associate.

Fisher has more than a decade of experience in commercial transactions, representing clients ranging from individuals to large multinational corporations across various industries. With a strong background in commercial aviation finance and leasing, Fisher has represented operating lessors, airlines, investors and financiers in connection with operating and finance leases, structured financings, sale and leasebacks, purchase and sale agreements and related transactions.

With these recent additions, SGR's global transport practice now has more than 20 lawyers globally. In January 2017, the firm opened offices in London and Southampton in the UK led by aviation industry veterans Ben Graham-Evans, Mark Turnbull and Gareth Hawes. The UK practice has since added Sam Chapman and will be bringing in another experienced aviation lawyer in the coming months.

Reed Smith adds White & Case's asset finance team

Reed Smith's finance group in Paris welcomed a team from White & Case, to increase its international finance capabilities.

The team comprises partner Victoria Westcott, who was head of White & Case's asset finance practice in Paris, as well as Florent Rigaud (counsel), Elaine Porter (senior associate) and Abdullahi Mohammed (mid-level associate).

Westcott's practice covers asset finance work on aircraft, shipping finance, equipment and other large assets, in west Europe, central and eastern Europe, Asia, the Middle East and Africa. Her finance practice has a particular focus on transportation and social infrastructure, as well as conventional and renewable energy and oil and gas. Her clients include multilateral financing institutions and commercial banks, industrial sponsors and financial investors.

Westcott's practice ties in with that of current finance partner Fernand Arsanios, "adding additional depth to an existing area of strength for our team".

K&L Gates Rising Star makes partner

Amanda Darling, K&L Gates

Former *Airfinance Journal* Rising Star Amanda Darling has made partner at K&L Gates.

Speaking to *Airfinance Journal* from Charleston, South Carolina, Darling says she will continue to work for Japanese clients on Japanese operating lease and Japanese operating lease with call option transactions. She will also explore opportunities to act for US manufacturer Boeing.

"Primarily, I still continue to support the Japanese market… but perhaps looking to expand to more US-based lessors," says Darling.

"I'm excited and terrified at the same time," she adds, describing her feeling about her promotion. She was previously an associate and foreign legal consultant at K&L Gates. Before this, she was an asset and project finance associate at White & Case.

K&L Gates Singapore brings in Bradley as partner

K&L Gates Singapore hired James Bradley as a partner in the transportation finance practice area.

Bradley joins the US law firm from Norton Rose Fulbright.

Bradley tells *Airfinance Journal* he will work on Japanese operating lease with call options, Japanese operating leases, bulk sales, leasing and financings, private jet matters and restructurings. He will be the main partner in Singapore covering aviation finance.

He will work closely with K&L Gates partner Robert Melson, a leader of the firm's aircraft finance practice, as well as a

James Bradley, K&L Gates

coordinator for its banking and finance practice group.

"James is a key addition to our global aircraft finance and leasing team who brings significant experience to the Asia region, especially in relation to airline restructurings," said Melson.

Tan rejoins **Stephenson Harwood**

Aviation lawyer Ethan Tan rejoined Stephenson Harwood as a senior associate in the firm's Singapore office after leaving in 2015 for a two-year stint at Allen & Overy.

Tan tells *Airfinance Journal* that he will focus on three areas in his new role: private equity firms looking to invest in aviation; structured finance transactions; and deals in the Chinese market.

"Private equity is always looking for places to put their money and aviation has shown in Asia over the past couple of years that it is growing and it is an opportunity for them to make a decent amount of returns with a reasonable amount of risk," says Tan.

He adds that he also expects South-East Asia to generate plenty of work.

"Lion Air and Airasia are two of our biggest clients, so we are always seeing a lot of activity in terms of sale and leaseback and lessors trading among themselves," he says.

Tan rejoined Stephenson Harwood Singapore in August 2017. His previous role was as a senior associate at Allen & Overy Singapore. He worked as an associate at Stephenson Harwood Singapore between 2012 and 2015.

Reed Smith appoints London partner

Law firm Reed Smith brought in Richard Hakes as an aviation and shipping finance partner in London.

Hakes was previously at Reed Smith as an associate in 2007 before moving to Allen & Overy, where he was a senior associate in ship and aviation finance.

Hakes joins Reed Smith's growing asset finance practice, which has recently seen the arrival of aviation and aerospace finance lawyers Liz Evans in New York and Del Smith in northern Virginia, in addition to William Veatch and Catherine Young Hagerty in San Francisco.

Hakes will lead the firm's aviation finance practice in London. He has worked on a variety of transactions, some of which have combined commercial debt together with conventional and Islamic-compliant note issuances.

He also has experience in a wide range of structured and large-scale asset finance transactions, including export credit, commercial debt finance, Islamic finance, tax leasing, operating leasing, asset and portfolio disposals and acquisitions, joint ventures, securitisations, capital markets products and restructurings. He advises parties including banks, funds, arrangers, export credit agencies, ship owners, charterers, lessors, airlines and manufacturers.

Vedder Price hires transportation finance partner

Vedder Price hired Bill Gibson as a partner in its global transportation finance group, working in the law firm's London office for a short period before moving to its new Singapore office.

Gibson will focus on commercial aviation, acting for financiers, lessors and airlines on a range of cross-border leasing and financing transactions.

He was previously a partner in the banking and finance practice in Dentons' London office. He covered a range of financings involving various asset types and equipment portfolios, albeit with a focus on commercial aviation and aircraft and engine manufacturers.

Vedder Price's office in Singapore, which opened in 2016, continues the growth of the firm's global transportation finance group.

And the **winners are**...

Airfinance Journal announces the victors in the sixth year of its legal survey, which recognises the most active law firms in 2017 by region and product type.

Airfinance Journal would like to thank all the law firms which participated in our sixth legal survey this year. For those unfamiliar with the survey, aviation finance deals are counted based on submissions from law firms and *Airfinance Journal*'s Deal Tracker, and are subsequently aggregated to create the winners.

This year *Airfinance Journal* compiled 1,722 deals overall. Using both Deal Tracker and submissions gives us a more accurate picture of the activity of the law firms in 2017 even if they were not able to submit. Of course, the numbers of those which did submit will take into account all of the deals the firm closed last year, thus more accurately reflecting their activity in different aviation finance markets.

The survey revealed several main trends in aviation financing. Last year continued to see the steady growth of emerging markets and a good amount of commercial lending. Although there was a notable drop in financing involving the export credit agencies (ECAs), arrangers created innovative structures that have incorporated less traditional air finance players, such as pension and insurance companies. The Aircraft Finance Insurance Consortium (AFIC) is a good example of using insurance capital to provide alternative financing options to borrowers.

The leasing environment remained extremely competitive, with some lease rate factors on the newer technology aircraft dropping to as low as the 0.5s.

With relatively low fuel prices, carriers and lessors also had ample opportunity to close second-hand aircraft deals and trade portfolios. This is why we introduced the Sale & Purchase category last year, which covers deals that entail a transfer of legal and/or beneficial ownership of an aircraft with no new financing involved.

Although this survey focuses purely on aircraft deals, it is worth noting that many law firms were involved with complex restructurings and aircraft repossessions in 2017. In addition, the significant leasing and legal consolidation occurring in the past few years has kept many firms busy too. *Airfinance Journal* recognises that we do not award firms points based on the size of the deal, but we thought it would be more appropriate to award points based on quantity of deals and activity in a given market.

Methodology

Aviation law firms are invited to submit deals to be included in Deal Tracker. The team then reviews the different deals and selects those eligible for Deal Tracker. This list is then used to select the most active law firms, which are then selected by region and product type.

The legal survey reviews deals from 2017 only. Markets change, as do law firms; however, this was the only way to offer an accurate snapshot of total global legal activity.

Our aim is to be transparent and impartial. All of the deals used to judge the winners are eventually loaded into Deal Tracker and can be reviewed by our readers. In this sense, our survey is unique. *Airfinance Journal* analysts assess each deal to verify them and to avoid double counting.

The benefit of using Deal Tracker is that it can offer a granular presentation of law firm activity by both product type and region. Of course, there are limitations to the survey. *Airfinance Journal* recognises that client confidentiality is an issue for law firms when submitting deals and some firms choose not to submit. As a consequence, the survey does not necessarily represent all of the deals in the market. But it remains the most comprehensive survey of its type, and crucially offers real insight into the aviation market. The survey gives a strong indication of which law firms are most favoured for certain deal types and for certain regions.

Overall rankings

Like last year, the survey records the overall number of deals for each law firm.
A deal, as defined by the survey, represents one mandate and can contain multiple aircraft. In addition to presenting the most active law firms by product and region, the survey also aggregates how law firms have performed to produce an overall ranking.

Law firms secure points based on where they are placed for each region, product and category. A law firm that tops Middle East, for instance, or Operating Lease, receives five points and the second receives four points, and so on.

We would like to extend our appreciation to all the law firms which submitted deals and worked with us this year for the legal survey. We look forward to continuing to work with you.

Clifford Chance comes out on top

The legal survey is split by product type, category and region. In addition to summarising the most active law firm by the number of deals, *Airfinance Journal* have also aggregated the results awarding points to firms based on how they place in each respective region and product type. We have produced overall rankings based on these results.

This year's overall winner is Clifford Chance, scoring 57 points. The firm came top in the Asia-Pacific, Europe, Latin America, Middle East, North America, Export Credit, Commercial Loan and Sale & Purchase categories.

Reflecting on the market over the past year, Clifford Chance partner and global head of asset finance, William Glaister, says: "The aviation finance industry continues to perform well, with high levels of trading of aircraft and operating lease portfolios and continued interest from investors and financiers, as shown by the active ABS [asset-backed securitisation] market and commercial debt financings, as well as by the growth in innovative fund platforms and structured financings.

"Pricing across these products has remained competitive, although the steady increase in jet fuel price and US-led interest rate rises may start to impact certain borrowers and airlines," adds Glaister.

Sustained regulatory and industry change, including the potential Libor transition, Basel IV proposals and IAS changes for lease accounting and financial instruments, will give rise to new challenges and opportunities for market participants."

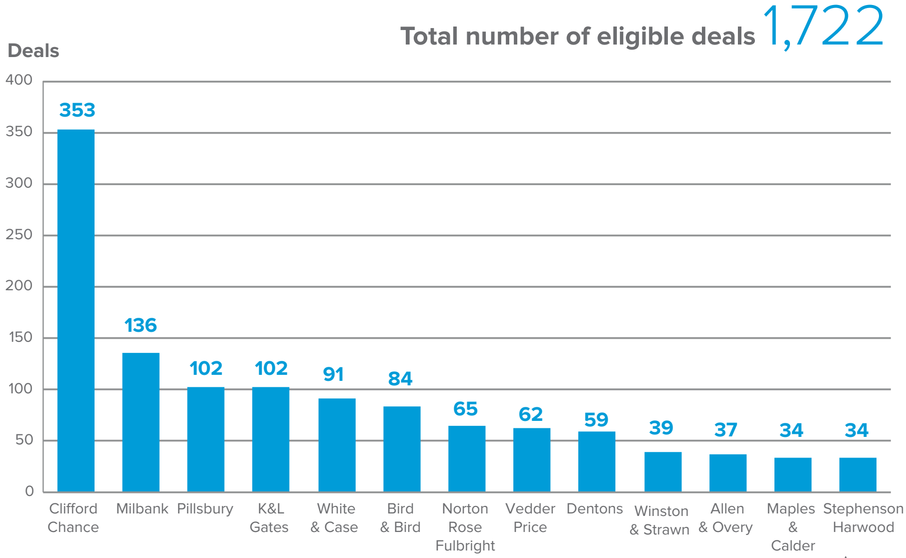
US-based law firm Milbank came second in the survey, scoring 32 points.

White & Case and Pillsbury were ranked joint third overall, scoring 25 points each. Justin Benson, a partner in White & Case's London office, says: "The aircraft finance market was very robust with continued strong performance from airlines globally (notwithstanding a few exceptions, such as Monarch, Air Berlin and Alitalia) and from operating lessors. There was plentiful liquidity on the debt side from both the banks and capital markets and from equity investors, notably in the Jolco [Japanese operating lease with call option] market, with investors willing to invest in new regions and airlines."

Top 10 law firms by score

Rank	Firm	Score
1	Clifford Chance	57
2	Milbank	32
3	White & Case	25
3=	Pillsbury	25
5	K&L Gates	19
6	Bird & Bird	17
7	Dentons	11
8	Vedder Price	8
8=	Allen & Overy	8
8=	Norton Rose Fulbright	8

Top 10 law firms by number of deals



Africa

The African market continued to grow over 2017, albeit at a slower rate than other parts of the world such as Asia-Pacific and the Middle East.

South African banks such as Nedbank and Investec remained active in the region, providing financing for carriers, including Air Cote D'Ivoire and Ethiopian Airlines.

Foreign lenders which have established themselves in Africa, such as Standard Chartered, continued to lend to local carriers, while African lenders which had not been typically active in aviation, such as State Bank of Mauritius, made a splash in the market financing UAE carrier Emirates for the first time.

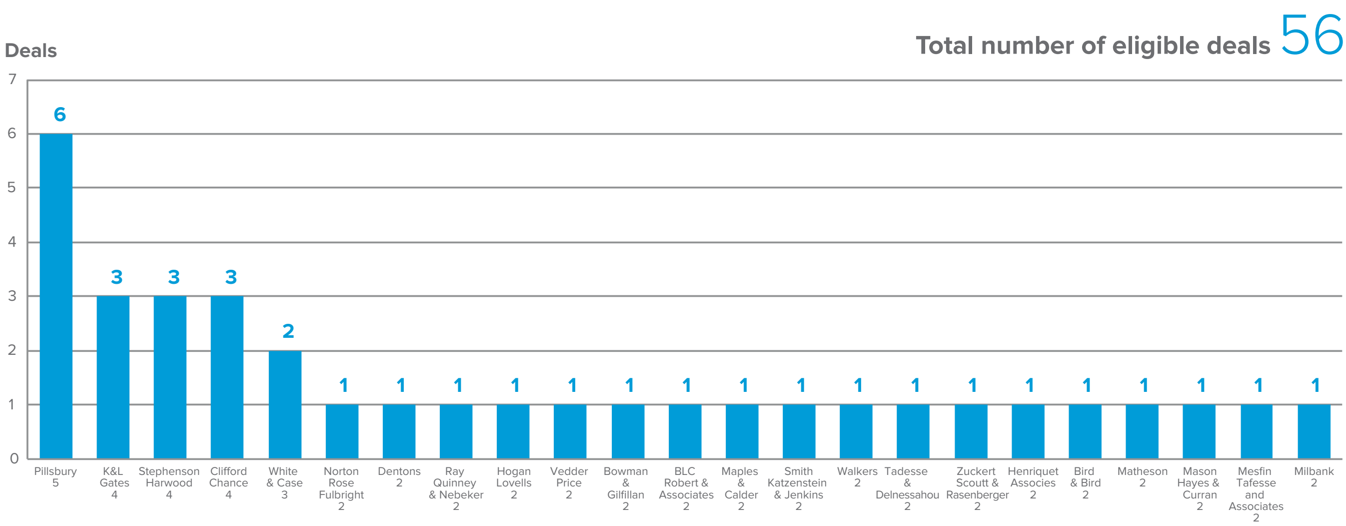
There continued to be a strong interest for turboprops to serve the untapped regional markets in Africa during the year. For example, pan-African carrier Fastjet secured a letter of intent (LoI) to operate three ATR72-600 aircraft for a period of 10 years. In November, Cemair became a new operator of the Q400, through the acquisition and lease of three new and pre-owned Q400 turboprops.

Paul Jebely, a partner at Pillsbury, the firm which came first in this category, says: "In aviation, Africa continues to rise, slowly but surely. We are in the privileged position of representing long-established players like Ethiopian Airlines, Investec and Nedbank, and we are now beginning to see the emergence of new sources of capital, both from Africa and elsewhere, to meet some growing demand (including from emerging carriers).

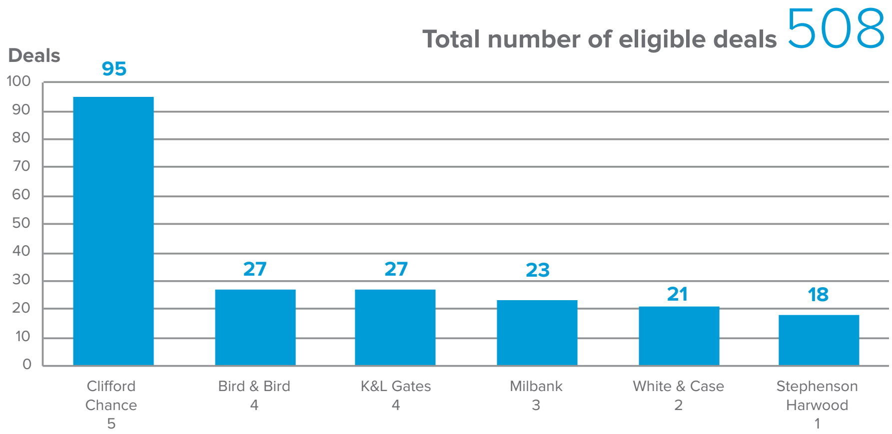
"In terms of the big picture, the most notable development in the African market for the past year was the new launch of the Single African Air Transport Market [SAATM] by the African Union in an attempt open African skies," adds Jebely.

SAATM looks to increase the continent's global share of the aviation industry. Although the continent accounts for 17% of the world's population, its proportion of air travel passengers hovers between 2% and 4%, according to a paper from International Air Transportation Association (Iata).

K&L Gates came joint second in this category. Sidanth Rajagopal, partner in K&L Gates' London office, says: "Throughout 2017, our London-based team represented lessors with the placement of aircraft into various LCCs [low-cost carriers] within Africa and we were also engaged to assist financiers who are actively funding lessors on their Africa-related leases. Outbound from Africa, we have worked with a leading South African bank while acting for the borrower in financing aircraft into Russia."



Asia-Pacific



Asia-Pacific continues to be the fastest-growing region in the aviation finance and leasing industry. The fast pace of middle-class growth in the region is driving demand for flights, with some of the larger airlines, such as China Southern Airlines and Indigo Airlines, taking delivery of several aircraft a month.

In 2017, the Jolco market continued to be popular for Asian carriers and lessors, some of which are first-time issuers. One first-time lessor issuer was China-based CMB Leasing, which closed its first Jolco for three Airbus A321s in December. FPG AIM arranged the transaction and FPG acted as equity underwriter. BTMU, CCB Tokyo and NAB provided debt.

Asian lenders continued to increase their presence in the global aviation finance market. Clifford Chance came first in this year's survey, closing 95 deals in the region. Bird & Bird and K&L Gates were joint second, closing 27 deals each in 2017.

Fergus Evans, partner at Clifford Chance, says: "Asia continues to be a source of new equity for the aviation market with continued investor appetite from the PRC [People's Republic of China], Korea and Japan seen on single aircraft deals, portfolio acquisitions and the Jol/Jolco market."

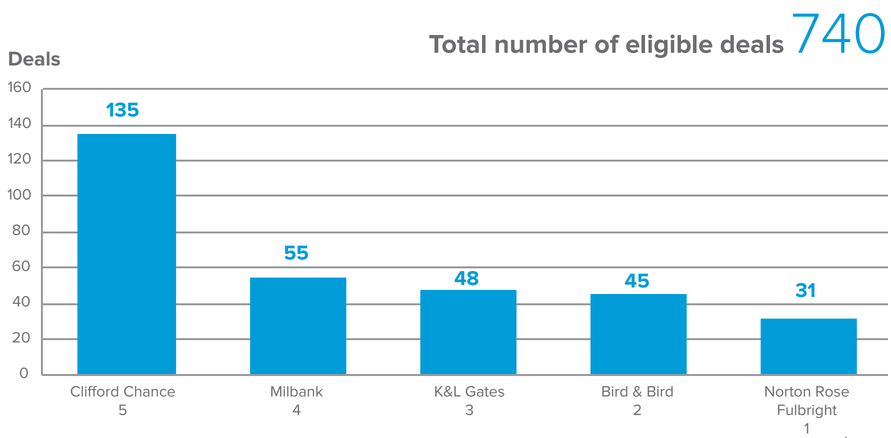
Simon Briscoe, from Clifford Chance Singapore, adds: "With highly liquid capital markets and a very competitive commercial debt market there is still sustained downward pressure on bank pricing."

Leo Fattorini, partner in Bird & Bird's Singapore office, says: "Asian airlines continue to add to their fleets to meet ever-increasing passenger demands, and Chinese investment into aircraft leasing continues to drive the market forward. As focus has continued to shift towards Asia, we have been fortunate to work on a significant number of the transactions happening in the region.

"A lot of the Asia lessors are trying to grow in any way they can – some of them, like CALC, have massive orders of their own," adds Fattorini. "Many are acquiring used aircraft in the market from other lessors as well."

Last year also saw a number of joint ventures and equity deals in the Asia-Pacific market, including Tokyo Century's agreement to buy a 20% stake in US lessor Aviation Capital Group (ACG) and the establishment of SDH Wings. SDH Wings, which was established by Standard Chartered and Sichuan Development, aims to have a portfolio of 65 aircraft by 2020, with Pembroke, the leasing arm of Standard Chartered, acting as a servicer.

Europe



Europe remains the most active part of the world for aircraft lessors, with Dublin seen as the global centre for aircraft leasing because of its low corporation tax, extensive network of tax treaties and history of aviation finance expertise.

Throughout 2017, the more established lessors with European bases, such as AerCap and Avolon, repeatedly issued paper on the capital markets to get access to cheap capital.

Last year also saw a number of new entrants on both the airline side and asset manager side. Air France's Joon and IAG's Level marked the arrival of low-cost long-haul airlines in the European market. Airborne Capital, a Dublin-based asset manager, which aims to have $5 billion of assets under management within the next five years, also launched in 2017.

The still-crowded European airline market had a number of insolvencies during 2017, including Air Berlin, Alitalia and Monarch. After filing for insolvency, Air Berlin was divided into two parts and acquired by Lufthansa and Easyjet. The continent's five largest airline groups – Ryanair, Easyjet, Air France KLM, IAG and Lufthansa – look likely to dominate a sector that, in the future, will continue to face disruptions from the development of the long-haul low-cost model, consolidation, increasing competition and Brexit.

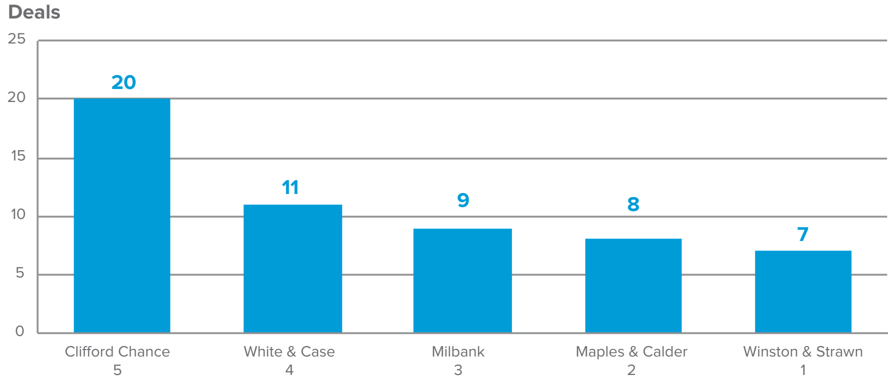
Jim Cameron, co-head of Milbank's European transportation finance group, says: "Twenty-seventeen was a busy year for Milbank in terms of European-related deals. The team has worked on many of the key deals in the sector. There has been a large volume of trading of aircraft portfolios involving European-based operating lessors with which we have been involved, as well as M&A activity, including Terra Firma's disposal of AWAS to DAE Capital, on which Milbank advised Terra Firma."

Nick Swinburne, co-head of Milbank's European transportation finance group, adds: "On the debt side, we have seen a number of warehouse and term loan portfolio financings led by the European banks for established Irish-based leasing companies, as well as new platforms.

"Borrowers have increasingly been able to negotiate more flexible covenant packages on bank debt deals, taking advantage of favourable market conditions. We have also seen more unsecured loan and bond issuances, including innovative structures such as German schuldschein [a loan instrument] issuances for operating lessors."

Latin America

Total number of eligible deals 89



"Latin America continues to focus on economic growth, and this free-market approach has redesigned the industry's landscape," says Zarrar Sehgal, partner and global head of transport and logistics at Clifford Chance, the firm that came first in this category. "With economic reforms, new competition and increased consumer demands, the Latin American aviation market is expected to grow at a higher-than-global average annual rate of 6% over the next 20 years, and we believe equity investment in the aircraft finance space will be a new market opportunity."

Out of 89 eligible deals in the region over the year, Clifford Chance worked on 20 of them. White & Case came second, closing 11 Latin American deals and Milbank was third, closing nine.

"There have been additional efforts by Latin American carriers to access the US capital markets through private placements and EETCs [enhanced equipment trust certificates], and we are also seeing an increase in the Jolco market by Latin American airlines," adds Sehgal. "In addition, Chinese lessors seem to be targeting the Latin American market as well."

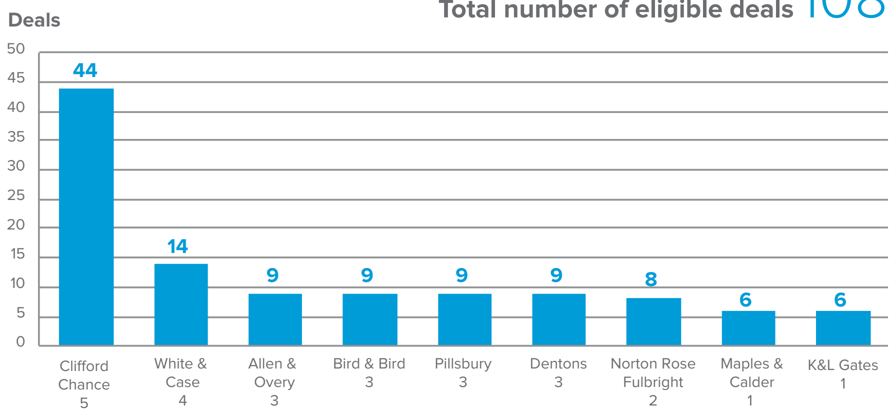
Such Chinese lessors include Ping An Leasing, which last year closed a sale and leaseback deal for four Airbus A321s with Latam.

White & Case advised Colombian airline Avianca to access the Jolco market to finance a series of aircraft, including two A320neos and one Boeing 787-8 aircraft, each registered with the US Federal Aviation Administration. The firm developed an innovative head lease/sublease structure, which achieved desired regulatory and tax treatment in each of Japan, Colombia and the US.

Chris Hansen, who heads up White & Case's Latin American aircraft finance practice, says: "In Latin America in 2017 we saw many airlines in the region begin to convert their large new aircraft orders from earlier in the decade to deliveries. In recent years, there had been some concern about whether the commercial markets would be able to close entirely the potential void left by the absence of US Ex-Im and the European ECAs to provide financing for Latin American airlines."

Middle East

Total number of eligible deals 108



The Middle Eastern airlines experienced many headwinds in 2017. The big three Middle Eastern carriers – Etihad Airways, Emirates Airline and Qatar Airways – had a challenging year in 2017 because of a number of factors, including increasing competition, overcapacity, a rise in fuel price and political obstacles.

Dubai-based Emirates noted in November that fuel price accounted for 26% of its operating costs. However, the airline still managed to post a profit of Dh2.8 billion ($760 million) for the financial year ending 31 March 2018, a 24% increase from 2016/17.

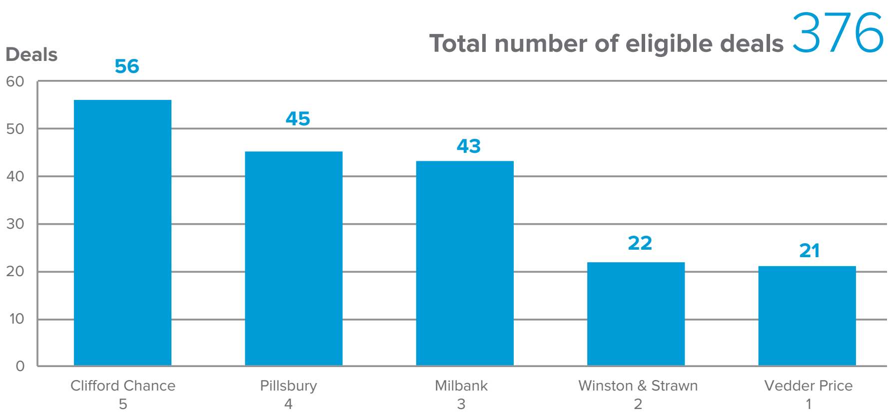
Emirates was not the only Middle Eastern carrier which had to rethink its strategy. After posting an eye-watering loss of $1.8 billion for the year 2016, Etihad had to review its equity partnerships and sold its stake in Darwin Airline, one of its equity partners. It also had to manage the insolvencies of equity partners Air Berlin and Alitalia, as well as a $1 billion write down on its fleet.

Qatar Airways faced its own difficulties after Saudi Arabia, Bahrain, Egypt, the United Arab Emirates, Yemen, Libya and the Maldives all severed diplomatic ties with Qatar in June 2017. They accused Qatar of supporting Islamist groups, including some backed by Iran. Despite proving challenging for the carrier, it has not defaulted on its lease payments.

With their diversified portfolios, the Middle Eastern lessors had an easier year than the airlines in the region. Dubai-based DAE Capital became a major leasing player after acquiring Irish lessor AWAS in August. Like AerCap in its 2014 acquisition of ILFC, DAE acquired a larger rival, tripling its fleet to 332 aircraft. The deal catapulted DAE from the 24th-largest lessor by aircraft count to the seventh, sandwiched between BBAM (395 aircraft) and BOC Aviation (327 aircraft). Since then, the lessor has been public about wanting to make a substantially large narrowbody order or acquire another leasing business to fund further growth.

Last year also saw an emerging demand from Middle Eastern investors for used aircraft. In December, Peregrine Aviation Topco – a company managed by NCB Capital, a bank based in Saudi Arabia – acquired an $800 million portfolio of 21 aircraft from AerCap. The portfolio consists of a mix of widebody and narrowbody aircraft. As part of the sale, AerCap provides lease management services to Peregrine and will retain an equity interest in the entity.

North America



North America continued to dominate in the capital markets category, making up 21.8% of deals in 2017. The North American airlines regularly tapped the capital markets to fund their fleets, with American Airlines being the main issuer. American carriers issued five out of six of the EETCs that came to market in 2017. The overall EETC market was not quite high as some previous years, perhaps because of the attractiveness of the sale-and-leaseback market.

"We have seen several market changes and trends affecting the industry in North America and Latin America. After over a decade of restructurings and mergers, North America is growing steadily, and Clifford Chance has seen new entrants into the lessor market, pension funds and insurance companies as new players and an increase in ABS, EETC, acquisition financings for lessor M&A transactions and lessor-investor joint-venture deals," says Sehgal.

He adds: "In particular, we are seeing more Chinese, Korean and Japanese lenders enter the North American market, and we are seeing a growing number of financings by way of private placements. Private placements can be a lower cost alternative to larger capital markets transactions, with similar pricing benefits as they attract the same kinds of investors."

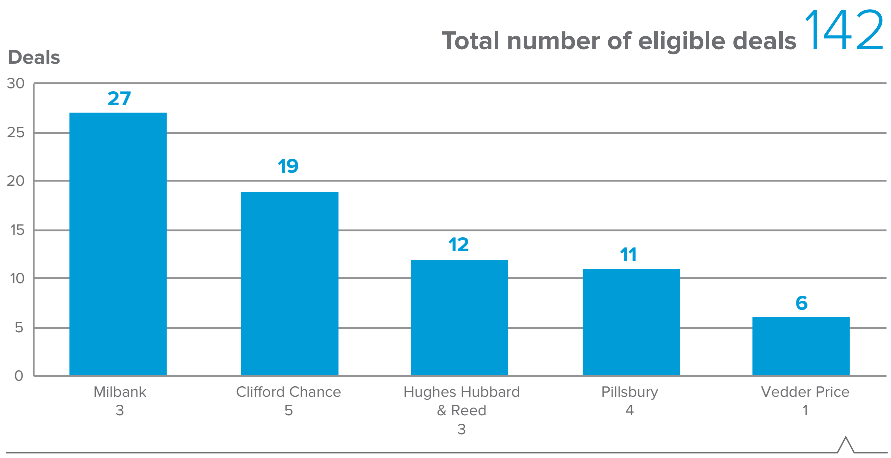
Clifford Chance came first in this region, acting on 56 deals out of the 376 North American deals overall. Pillsbury came second with 45 deals and Milbank was a close third with 43 deals.

Mark Lessard, partner at Pillsbury, says: "Unsecured funding has remained attractive for the highest-rated lessors (though some of them have recently begun to diversify their capital structures with a measure of secured funding). As in prior years, these factors have made it difficult for many banks to compete for lessor business on a balance sheet basis, pushing margins to lower and lower levels.

"Private equity investors are taking advantage of the available debt funding and continuing to show significant appetite for mid-life assets. Some of them are buying into E-note issuances, while others are looking to set up sidecars, funds or joint ventures with their leasing company partners, who in turn have been taking advantage of the opportunity to derisk and to increase their fee-based income. Warehouse facility terms remain accommodating, though certain financial covenants appear to be tightening slightly when it comes to non-recourse transactions."

He adds: "US airline credits continue to shine for the most part, striking excellent terms in the sale-leaseback markets which, in contrast to prior years, has taken up a lot of the aircraft collateral that might have typically been financed with mortgage debt. This last year also saw the first US Jolco structure, which was undertaken by CA-CIB [Crédit Agricole Corporate and Investment Bank] and American."

Capital Markets



In 2017, the volume and demand of the capital markets in aviation was high, resulting in attractive pricing. Capital market deals accounted for 26% of the financing for all Boeing deliveries to December, according to the US manufacturer's latest Current Aircraft Financing Market Outlook.

Taking advantage of record low coupons, airlines and leasing companies had raised more than $61 billion in the capital markets in 2017.

The aircraft ABS market had its most active year post-financial crisis, with 14 deals closing in 2017. Capital markets sources anticipate there being a similar level of activity this year, with a mixture of existing and first-time issuers. ABS markets are attractive to aircraft lessors for several reasons. Some use the product as an equity sale of assets, where they retain the right to manage the assets as a servicer but sell the equity to new investors. Other lessors use the structure for portfolio refinancing, where the lessor retains the equity in the aircraft. The E-note market continues to develop with new investors and a better understanding of the potential and limits of the product.

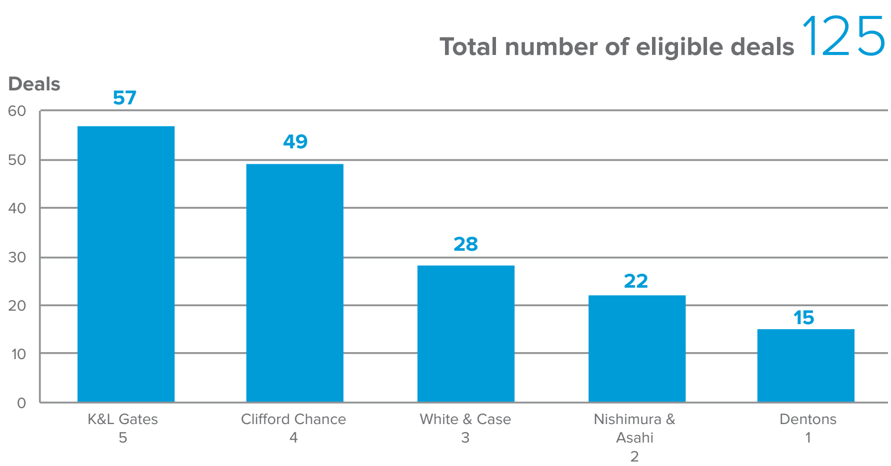
The enhanced equipment trust certificate (EETC) market had an increase in non-US investors participating, as well as ongoing demand from several airlines. EETCs for airlines outside the US price much wider than US airline EETCs. Often, non-US airlines can access cheaper financing than EETCs through Jolcos, tax leases, sale and leasebacks and bank loans.

The unsecured bond market has also remained a popular financing source for lessors and airlines. The majority of the top 10 lessors took advantage of the low interest rate environment and locked in low-priced unsecured funding in 2017. Deals were used to fund aircraft acquisitions, for general corporate purposes and to help acquire other leasing companies in M&A transactions.

Milbank came first in this category, helping to execute 27 deals over the course of 2017.

Drew Fine, global head of Milbank's transportation finance group, says: "Milbank was particularly strong in capital markets issuances in 2017. There were a record 14 aircraft ABS issuances in 2017 and Milbank had a leading role on 13 of these deals. Likewise, Milbank had a dominant position in EETC offerings and other capital markets issuances. It's hard to imagine there ever being a better aviation capital markets year than 2017, but 2018 has continued at the same pace that 2017 left off."

Structured Lease



Some 125 structured lease deals closed in 2017, comprising 13.77% of all the deals accounted for during the year.

The Jolco market continued to be a popular source of financing among carriers, with a growth of Japanese equity coming into aviation in the search for higher yield. Jolco investors used only to look at new aircraft deliveries with top-tier credits; now the market has matured and is starting to see deals close for used assets and weaker-credit carriers in new jurisdictions.

Established Jolco players such as Air France, Lufthansa, Emirates and Flydubai continued to close transactions for new-technology aircraft, such as 787 and 737 Max models. New entrants into this market in 2017 included American Airlines, Nordic Aviation Capital and CMIG.

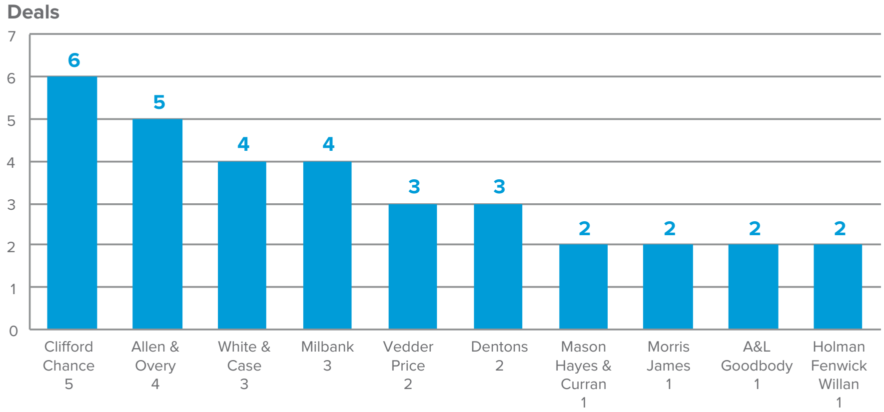
The American Airlines transaction, which closed in March 2017 to help fund one A321, overcame a significant hurdle. It was the first Jolco to close for a US carrier. The viability of US-Japan Jolcos rests on an ambiguous clause in the Protocol to the US-Japan Income Tax Treaty signed more than a decade ago, in November 2003, meaning that deals have historically been difficult to close. The tax lease remained popular with airlines and was sometimes used in conjunction with other structures. One example of this was Turkish Airlines, which in December closed a French tax lease combined with an AFIC product to fund two 777 freighters.

K&L Gates came first in this category, working on 57 deals over the course of 2017. Clifford Chance came second with 49 deals and White & Case third with 28 deals.

Sebastian Smith, partner in K&L Gates' Tokyo office, says: "The global appetite for aircraft financing and leasing has led to a corresponding interest by airlines, lessors and banks for new financing products – by way of example we have seen new lessee entrants into the Jolco market as well as a vibrant mezzanine lending in Jolco structures by our bank and non-bank financial institution clients. As a firm, K&L Gates continues to be highly invested in this market."

Export Credit

Total number of eligible deals 27



In 2017, the US and European export credit agencies (ECAs) remained limited in the work they could do because of political obstacles. To compensate for this, ECAs had to think outside the box when closing deals, and look at more innovative ways of financing aircraft.

UK Export Finance (UKEF) closed one of the most innovative transactions of 2017, guaranteeing financing for two Boeing 787-8 aircraft operating with LOT Polish Airlines. The transaction stood out because it was the first time UKEF had supported financing for Boeing aircraft, and not just the engines, in more than 20 years. UKEF could provide support because the engines installed on the aircraft were manufactured by Rolls-Royce, enabling the transaction to be categorised as a UK export.

Similarly, Italian export credit agency SACE managed to finance aircraft through non-typical means when it provided financing for three 737-800s. SACE would not typically guarantee financing on US-made Boeing aircraft, but was able to do so because of “several eligible Italian exports” involved in the deal, including Italian-made seats.

In the absence of traditional ECA financing being available, the AFIC product emerged.

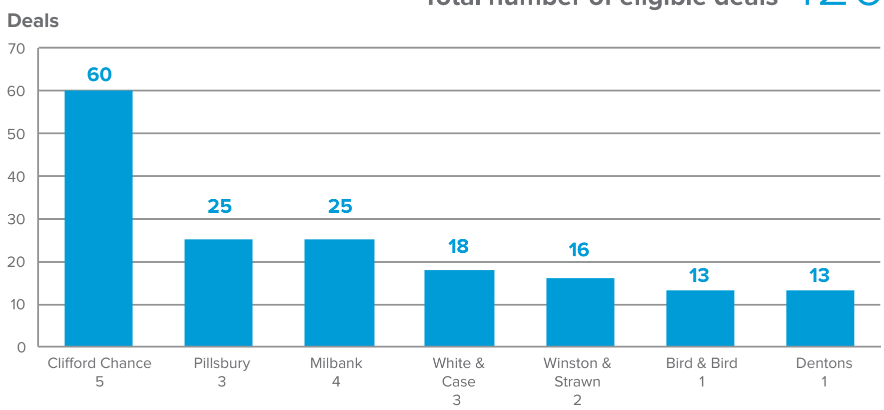
Mike Smith, an aircraft finance partner in White & Case’s New York office, comments: “We are seeing significant interest in the AFIC product by a number of airlines, lessors and financiers. It is proving to be a flexible platform and has already been combined in various transactions with junior loans, Jolco, French tax leases and other features.”

He adds: “A capital markets offering of AFIC-insured notes will happen in the near to medium term. The AFIC structure can also be adapted for other kinds of capital-intensive needs (since, among other things, AFIC is not constrained by WTO requirements). Once again, the global aircraft finance community is at the forefront of innovation.”

The market also saw a number of ECA combinations with other financial structures. In September, Norwegian Air Shuttle closed the first UKEF-guaranteed debt financing for a Boeing aircraft in combination with a Jolco. The deal, which financed one 787-9, was also the first Jolco financing closed by Norwegian.

Sales & Purchases

Total number of eligible deals 420



The sale and purchase market was active in 2017, with *Airfinance Journal* compiling 420 deals that closed over the course of the year, making up 4.1% of the total number of deals aggregated for 2017.

The number of sale and purchase deals in 2017 was significantly higher than 2016’s figure of 348. A high number of lease novations, coupled with strong balance sheets of airlines and lessors may be behind this increase. Many of the deals submitted were for second-hand or regional aircraft that are more affordable for airlines or lessors to pay for in cash. It was also common to see lease novations turn into sale and purchase transactions, because many airlines and lessors would buy the aircraft when it got to the end of its lease.

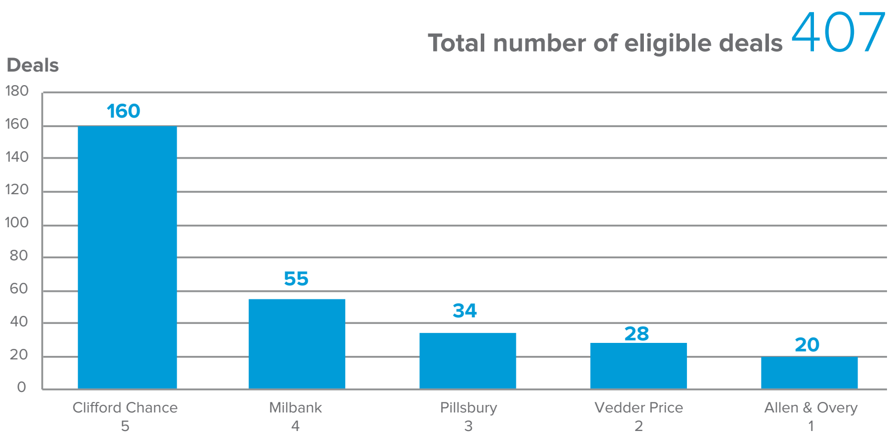
Clifford Chance came first in this category, acting on 60 deals in 2017. Pillsbury and Milbank were joint second, with 25 deals each.

Jim Pascale, partner in Milbank’s New York office, says: “The demand for aircraft equity and residual risk continued to strengthen as we witnessed significant bidding wars for all aircraft portfolios and leasing platforms on the market.

“Notably, the hopeful buyers were comprised of not only the usual aviation investors and existing lessors but a new and growing group of traditional private equity and investment funds looking to expand their aviation investment portfolios. The strength of the demand across the capital structure has clearly made it possible for lessors to efficiently renew their fleets through larger portfolio sales.”

Paul Jebely, partner at Pillsbury, says: “We continued to see significant secondary market trading of single assets and small portfolios over the past year. Many lessors also continued to pursue fleet growth via pre-delivery sale-and-lease-back transactions – as opposed to placing direct orders. Though not aircraft trading in the strict sense, we expect to see continued M&A activity among lessors.”

Commercial Loan



The commercial loan market accounted for 23.6% of the eligible deals submitted in 2017. However, with the rise of the capital markets and strong corporate balance sheets that are increasingly able to fund aircraft acquisitions in cash, this number has dropped substantially from last year, where these products accounted for 35.79% of the total deals submitted.

In 2017, the low interest rate environment and abundance of liquidity available meant bank financings were popular with airlines globally. This popularity is down to banks becoming active in aviation and hence pricing for bank funding become more competitive. This competition has had a negative effect on banks' margins, which have been compressed, meaning that some banks are more ready to look at financing weaker credits.

There is concern among some bankers that the increasing activity of the ABS market is causing a softening of banking covenants. Along with this, deals are getting more and more borrower-friendly because the banks and the issuers have increasing confidence in ABS takeouts, which is helping to drive the tightening of spreads and weakening of terms.

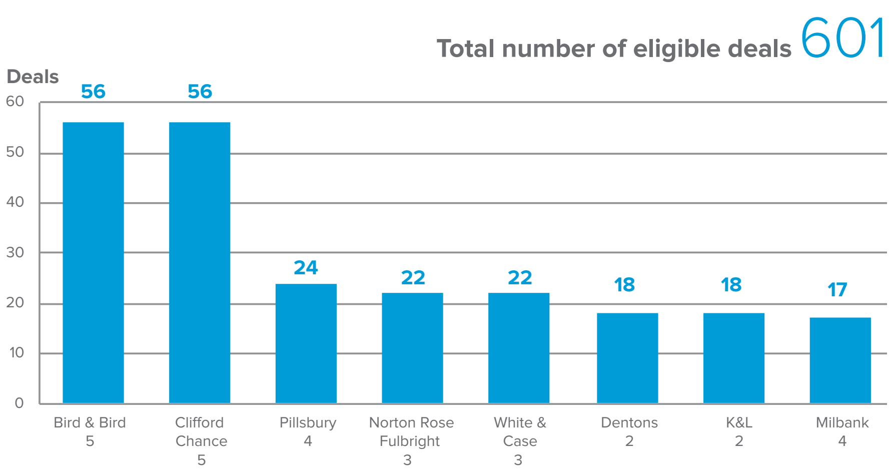
Last year saw the emergence of Aircraft Finance Insurance Consortium (AFIC), a product made in lieu of the export credit agencies, which have not been very active at financing aircraft because of political obstacles. It was a successful first year, with the Boeing aircraft product closing 16 deals amounting to more than $1.5 billion in assets.

Although some market participants are sceptical it will have staying power, Airbus is developing a competing product called Balthazar, which is due to hit the market this autumn, and indicates there is a significant demand from the insurance companies to guarantee aircraft transactions.

Helfried Schwarz, partner in Milbank's New York office, says: "Notwithstanding the ongoing pressure on margins, as well as regulatory challenges faced by traditional lenders, the commercial loan market remained resilient across all products and asset classes."

He adds: "In 2017, Milbank was involved in both secured and unsecured term loan and revolving credit facilities for commercial and business jets, as well as engines and spare parts. The year was noteworthy for the introduction of a non-payment insurance product for new Boeing aircraft by the Aircraft Finance Insurance Consortium led by Marsh, in part to replace the lack of support from US Ex-Im."

Operating Leases



Operating leasing continues to be one most popular financing solutions in the market, providing for about 40% of all aircraft deliveries. This figure is expected to rise to 50% within the next decade.

As the leasing market gets more competitive, short leases on newer assets has become more commonplace. However, there were some deals where tenors were longer than is typically expected for those assets. For example, DAE Capital closed a sale and leaseback with Gulf Air to lease five Boeing 787s for 15 years – longer than the typical new aircraft lease of 12 years.

With low interest rates and aviation being a higher-yielding sector relative to others, a slew of new leasing companies have entered the market, mainly from China. However, with the US Federal Reserve looking to hike rates four times this year, many market observers believe the influx of new lessors will slow down.

"There continues to be strong demand for operating leasing globally, and particularly in Asia," says Jim Bell, a partner at Bird & Bird, the firm which came first in this category.

"It's not all been good news for operating lessors in the past 12 months though – there were a couple of notable insolvencies but luckily repossessions have been relatively painless, and most aircraft were quickly placed elsewhere," he adds.

Some of the firm's highlights of 2017 include advising Airasia on the sale and leaseback of 10 Airbus A320neo aircraft from GECAS, including the first Neo to enter the Malaysian market and the first to come off the Airbus final assembly line in Tianjin.

Bird & Bird also advised Air Berlin and the insolvency practitioner in the novation or termination of many aircraft leases with numerous operating lessors. The firm also advised Virgin Atlantic on an emergency operating lease where the airline had quickly to take delivery of four former Air Berlin A330-200s because its incoming 787 deliveries had issues with their Trent 1000 engines.

Rising **stars**

Airfinance Journal recognises eight of the most promising legal associates for 2017.

Brendan McCarthy

Senior associate, Allen & Overy

London

"If you're not offering insight, or not adding your own experience, you're not offering value to the transaction."

Brendan McCarthy, Allen & Overy

Although Dublin-native Brendan McCarthy grew up in a city famous for its vibrant aircraft leasing sector, it was not until he landed a job in law firm McCann FitzGerald and spent time as a trainee in its aviation practice that he began to appreciate how enjoyable working in the industry could be.

"I think it's one of Ireland's best kept secrets in many ways, in that it's not an industry that people have huge knowledge of unless they're working in it, so it's kind of fortuitous that I ended up working here," he says.

Moving to London to work for Allen & Overy in 2013, McCarthy has been involved in many high-profile transactions, such as advising UKEF, US-Exim and NEXI on the ECA-backed financing of two Boeing 787 aircraft for Lot Airlines – a landmark deal because it was the first UKEF-supported financing for Boeing aircraft.

"It can be challenging," says McCarthy, describing the workload. "Different times of the year bring different sorts of pressure… but I think it's about knowing what your limits are and what you can and can't do, and the time you have available to you."

A major trend he is seeing is a tendency towards bigger lessor portfolio transactions.

"The deals are for bigger batches of aircraft, and that brings challenges in terms of the scale and complexity of those deals," he says. "Twenty to 30 aircraft going to different jurisdictions can be difficult to manage and for people to read into and understand."

Lawyers need to get their priorities straight to ensure such transactions close.

"You can go into these things with a big bang, throwing pieces of paper round the place and doing things for people, then get two weeks in and think, 'I should have thought of this and thought about that'," says McCarthy.

"You need to step back and think what the purpose and the big picture is, and how do I get everyone to buy into how it's going to be done.

When he gets a break from work, McCarthy likes taking his miniature schnauzer for walks in London's Victoria Park or on Hampstead Heath, as well as catching the latest movies at the cinema – although he says 1997's Air Force One starring Harrison Ford remains a favourite aviation-related film.

Christopher Healy

Senior associate, Bird & Bird

Hong Kong

"There was so much going on in Asia, compared to in the UK, with Asian aviation on the up."

Christopher Healy, Senior associate, Bird & Bird

The son of a Chinese mother and British father, Christopher Healy left his native Hong Kong in 1997, the year of the handover of sovereignty to China, to study geography at University College London. He returned in 2011 after the economic downturn resulting from the 2007-08 global financial crisis drove him out of England to seek greener pastures.

"I had been in the UK for the better part of 12 years and the recession was not particularly kind to London," Healy tells *Airfinance Journal*.

"There was so much going on in Asia, compared to in the UK, with Asian aviation on the up," he adds.

Having trained at London-based law firm Devonshires between 2005 and 2007, Healy joined Bird & Bird in London in 2007. He stayed until December 2010, before moving to Hong Kong as an associate with Richards Butler (in association with Reed Smith) in 2011. In 2014, he joined Clyde and Co in Hong Kong, before returning to Bird & Bird in the firm's Hong Kong office in December 2015.

Healy has acted for many major airlines – including Airasia and Indigo – and even completed his own stint in the legal team of Virgin Atlantic Airways during the summer and autumn of 2010, although he quickly found that in-house legal work at airlines can present some unusual situations.

"There was a time I was called up by a policeman somewhere in Canada because one of the flights had been forced to land there because of a disruptive passenger," he says.

Working for airlines at major law firms also provides excitements of its own. Late last year, his firm was acting for two of its airline clients on sale and leaseback transactions and received notice that three new Airbus aircraft were scheduled to be delivered on the same day.

"The unusual aspect of this was that one aircraft was scheduled to deliver at each of the Airbus plants at Toulouse, Hamburg and Tianjin," says Healy.

"But with more than a bit of teamwork, and our extensive experience with assisting airlines with new aircraft deliveries, we managed to get everything in place for the deliveries to happen, although one delivery eventually slipped due to technical reasons and happened a couple of days later."

Airasia then invited Healy to the Tianjin delivery ceremony, as it was the first Airbus A320neo to be delivered at Airbus's China facility and Airasia's first delivery out of Tianjin for "a number of years".

He says: "Being able to take part in the delivery and – literally – to touch the metal more than made up for the loss of the delivery location hat-trick."

Richard Evans

Senior associate, Clifford Chance
Singapore

It's hard to spend all your day working in and around a particular industry without learning a reasonable amount about it.

Richard Evans, Clifford Chance

Interview time is hard to grab with *Airfinance Journal*'s Rising Stars. Clifford Chance's Richard Evans was stuck on another call when *Airfinance Journal* telephoned his office for this interview and had to be rung back half-an-hour later.

"It's a bit hectic at the moment to be honest," the Londoner says on picking up the phone.

Evans studied law at Oxford University before joining Clifford Chance eight years ago. He moved to Singapore two years ago because his partner was studying an MBA there, and the pair decided to stay a while longer. They plan to relocate back to London in November.

"I think there will probably be more focus on the European side [when I move back]. Even before moving out to Asia I had a reasonable focus on the Asian side, particularly the banking and capital markets deals, and that will probably remain when I go back to Europe," he says.

When Evans joined Clifford Chance, he expected to end up in litigation, but after a six-month stint at Airbus in Toulouse, aviation began to grow on him.

"It's hard to spend all your day working in and around a particular industry without learning a reasonable amount about it, and as you learn about it, it becomes more interesting, so it's self-fulfilling that you become interested in – not necessarily the technical side of it – but the industry element," he says.

Once Evans moves back to England, he plans to stay there for the "mid-term".

"[I've got] no particular plan to move elsewhere anymore, but never say never because I'm someone who quite likes living in different places. Working in asset finance does give you that opportunity to move around relatively easily for a lawyer," he says.

Evans says one interesting transaction he has worked on recently was a bank syndicate financing for SIA Group subsidiary Scoot.

"It was Scoot's first financing and there were a few quirks to the structure and educational round for the parties," he says.

When he does manage to catch a break from work, Evans enjoys travelling and rugby.

"I'm quite into sport, a big rugby fan, which is a bit harder to find out in Singapore," he says. "It's not much fun watching matches at three in the morning."

Ethan Tan

Senior associate, Stephenson Harwood
Singapore

I love finance and the adrenaline of doing real-life transactions.

Ethan Tan, Stephenson Harwood

When Ethan Tan is not busy closing aviation finance transactions, he loves spending time on the ocean.

"In Singapore, we still have conscription, so I'm actually from the navy," he says, referring to the country's two-year mandatory national service.

"I just love being out on the sea – going out and thinking and reflecting on life," adds Tan.

Such downtime is surely needed: Tan estimates his team has received about 10 new instructions over the past few weeks alone.

Tan, who admits he was attracted to law by reading too many novels by legal thriller writer John Grisham as a teenager, started off his career in the public sector working for Singapore's Supreme Court, but always wanted to go into private-sector transactional work.

"You don't even get to apply for the Supreme Court role. The government simply calls you up – and literally no one says no to them, so I did a two-year contract with them," he says.

"Once I finished that and got that on my CV, I was quite clear I wanted to get back into the private sector. I love finance and the adrenaline of doing real-life transactions."

Tan applied directly for the aviation team when he joined Stephenson Harwood in 2012.

"At the risk of sounding freaky, I think for some reason there's always been an affinity between myself and aviation. When I was in school, I did an internship with one of the biggest banks in Singapore – OCBC – and as part of that project I was posted to the aviation finance department.

"That really got me interested in the industry and I found out it's a very big growth area, especially out here in Asia. There seems to be a lot of exciting developments of airlines growing their fleets."

Tan advised Indonesian carrier Lion Air on the then largest-ever aircraft order for 234 Airbus aircraft worth $24 billion at list prices, as well as advising Lion's leasing arm, Transportation Partners, on its $1.1 billion Ex-Im Bank financing of a fleet of Boeing 737-900ER aircraft.

"Lion Air has expanded a lot over the last 10 years, and they're still expanding very aggressively," he says.

Tan adds that doing deals in a developing country jurisdiction such as Indonesia involves a lot of "behind-the-scenes" challenges.

"Regulators often don't even have things in black and white in terms of their process and procedures, so a lot of things are figuring things out as you go along and getting them comfortable with things," he says.

"As lawyers we just need to be very flexible and nimble and need to anticipate these things coming up and put in place contingency plans to do it."

As well as lion-branded airlines, Tan also has an interest in the real thing.

"Sometimes, if I can afford to, I'll get out to places like Botswana and go out camping in the wild and have animals walking around you," he says. "I've literally followed lions around on foot."

Yvonne McWeeney
Senior associate, Matheson
Dublin

From day one, when I saw the transactions and the fast paced nature of it, I knew it was something that interested me.

Yvonne McWeeney, Matheson

Besides aircraft finance, Yvonne McWeeney has another major passion: horses.

"I've been involved in horses from a very young age. Our family attends lots of horse shows around the country every year. The most significant is the Royal Dublin Society Horse show in August; I go there with my father," she says.

Fortunately for her workload, the family steeds reside far north of Dublin at the family home in County Leitrim, leaving her free to focus on the numerous high-profile aircraft financing transactions crossing her desk.

One of those deals was advising BBAM on the issuance of $1.21 billion secured notes and acting as Irish counsel in connection with the acquisition of a portfolio of 48 aircraft with leases attached – a deal which scooped *Airfinance Journal*'s North America Deal of the Year 2015.

"That was the largest ABS [asset-backed security] for over a decade. With 48 aircraft backing the notes and 48 Irish companies involved in the structure, the Irish element was quite significant in that transaction. The Matheson team were involved all through the structure in terms of the initial structuring, funding, and had a significant involvement in the novation of the aircraft as they moved into the ABS," she says.

"While it is difficult to choose one transaction as my favourite, I think that was a milestone for me in terms of the volume."

Such a large transaction can entail years of work for a law firm.

"We are still very much involved [in that deal] on the Irish law side. That transaction really shows the strength and depth of how an Irish counsel can support a deal and support a venture throughout its lifetime as the deal goes through its natural life," says McWeeney.

"The same can be said for the support and advice we provide to businesses establishing leasing platforms in Ireland; it is very rewarding to see those businesses progress and develop."

McWeeney studied a combined business and legal studies bachelor degree at University College Dublin and had been interested in business all the way through school.

When she finished university, she joined Matheson's summer internship programme in 2006 in its then banking department. She then worked within the aviation group for three years before starting her traineeship with Matheson and becoming a solicitor.

"From day one, when I saw the transactions and the fast paced nature of it, I knew it was something that interested me. From the moment I was involved in my first deal, I knew this was something that would really give me job satisfaction, so knew it was something that would always keep me interested. I've been bitten by the aviation bug."

Rhian Clayton-Payne
Senior associate, HFW
Singapore

We have clients here who are AAA-rated lessors who, in the last year, have only managed to get one RFP, which is just madness compared to what their previous dealbook was.

Rhian Clayton-Payne, HFW

Singapore-based Rhian Clayton-Payne gained experience in the Chinese market early in her legal career, though not in aviation finance. During a secondment to the Guangzhou office of British firm Wragge & Co, she worked on intellectual property cases for vacuum cleaner manufacturer Dyson.

"I used to get on the train at about 5am in the dark at Hung Hom and get the train over the border," says Clayton-Payne, referring to the Kowloon-Guangzhou Through Train that takes about two hours. She based herself in Hong Kong over the weekend with her partner and commuted into Guangzhou for the week.

Now, as an aviation finance lawyer, Clayton-Payne often works on Chinese free-trade zone (FTZ) transactions.

"Probably one of the most interesting things I'm doing at the moment is less a deal and more of a long-term project setting up for a client in the Shanghai free-trade zone," she says.

Clayton-Payne adds that foreign leasing companies are finding it harder to compete in China.

"That market is just so saturated with Chinese leasing companies, who perhaps take a more liberal approach to their security packages and transaction documentation compared to more sophisticated foreign lessors, so the airlines are more inclined to go for the quicker and easier route," she says.

"We have clients here who are AAA-rated lessors who, in the last year, have only managed to get one RFP [request for proposal], which is just madness compared to what their previous dealbook was. It's basically that they can't compete with the pricing and tax deals of the onshore leasing companies."

Having studied English Literature at King's College London, the South Londoner describes herself as being more adept at language-based than numerical-based subjects, so taking further study in law seemed an obvious choice for her.

"I started looking at internships in the City [of London] and it just became quite obvious early on that without either a legal or accountancy qualification it was going to be slower progress," she says.

"I had had prior interest in law insomuch as some of my parents' friends were lawyers. It's a career that you feel you know something about without actually having participated in it, so it was quite an easy choice."

After her training at Wragge & Co, she joined Berwin Leighton Paisner in Singapore in October 2012. In 2016, she was among the associates that partner David Brotherton took with him when he resigned from BLP and moved to HFW.

Outside of work, Clayton-Payne loves to travel.

"One of the best things about being in Singapore is the opportunity for travel. There are hundreds of flights daily to short-haul destinations in South-East Asia," she says.

Freyda Mechlowicz

Special counsel, Milbank

New York City

I've cut my teeth on ABS deals and have continued to be on a lot of the ones we've done and, of course, Milbank has been involved in almost every one.

Freyda Mechlowicz, Milbank

Hailing from Oregon, USA, Freyda Mechlowicz descends from Polish and Russian parents who emigrated to New York City and New Jersey. Her bachelor studies brought her back to the east coast, where she still has family, to Brandeis University just outside Boston. After a year-out back in Oregon where she worked temp jobs in Portland, Mechlowicz returned east to study a juris doctor at Columbia Law School.

Her foot in the door at New York City-headquartered Milbank came in the form of a summer associate job there in 2002 as a second year law student, during which time she spent a few weeks in the transportation and space group.

"I had a really great experience and the type of work was really interesting, so when I came back as a first year [associate], I chose them and they chose me," she says.

Since becoming a Milbank associate in October 2004, Mechlowicz has worked major aircraft transactions, describing her forte as being warehouse facilities and asset-backed securities (ABS).

"I've cut my teeth on ABS deals and have continued to be on a lot of the ones we've done and, of course, Milbank has been involved in almost every one," she says.

Mechlowicz also finds time for pro bono work such as assisting charity Her Justice on divorce cases, many for women who have experienced domestic violence. This non-aviation experience brings diversity to an otherwise highly specialised career.

"It's definitely really satisfying to have an important impact in someone's life and navigate a system that is sometimes overwhelming, and get them to an end result that they would have a hard time getting to on their own," she says.

Mechlowicz who is a parent of two children, has recently retreated to South Orange, New Jersey, from Brooklyn to find a home with a backyard to raise a family with her partner, an insurance broker.

"We're trying to explore our new home a lot and see some of the things around here. We live pretty close to a zoo and some wildlife areas – big preserved forest land," she says, describing a living environment that combines easy access to metropolitan New York City while retaining some of the natural beauty familiar from her home state.

Asked if there is any sign yet that legal work runs in the family, Mechlowicz says: "My older one wants to be an artist and a teacher – and fairy princess."

Chen Jie

King & Wood Mallesons

Beijing

After graduating from law school, Chen Jie received an offer from Run Ming Law Office and worked under renowned Chinese aviation finance lawyer Yi Liu.

"I learned a lot from lawyer Yi Liu and it helped me grow very fast when I entered the industry," Chen tells *Airfinance Journal*.

After the experiences in Run Ming, she worked as an in-house lawyer for China Aircraft Leasing (CALC). But Chen decided

I preferred to have an overview of the whole market, rather than gaining ideas from just a single customer.

Chen Jie, King & Wood Mallesons

it would be a better choice for her career to return to a law firm.

"I preferred to have an overview of the whole market, rather than gaining ideas from just a single customer," she says.

Chen, who joined King & Wood Mallesons in 2016, expects Chinese airlines to benefit from increasing travel demand in China. She adds that this presents a great opportunity for Chinese lessors, though new leasing entrants in China may find it difficult to secure deals because "airlines prefer to trust those top brands".

Among Chen's standout transactions, she assisted Beijing-based Xiamen Aircraft Leasing on the transfer and leaseback of three 12-year-old Boeing 737-900s between three holding project companies of Xiamen Aircraft Leasing and Shenzhen Airlines in 2017.

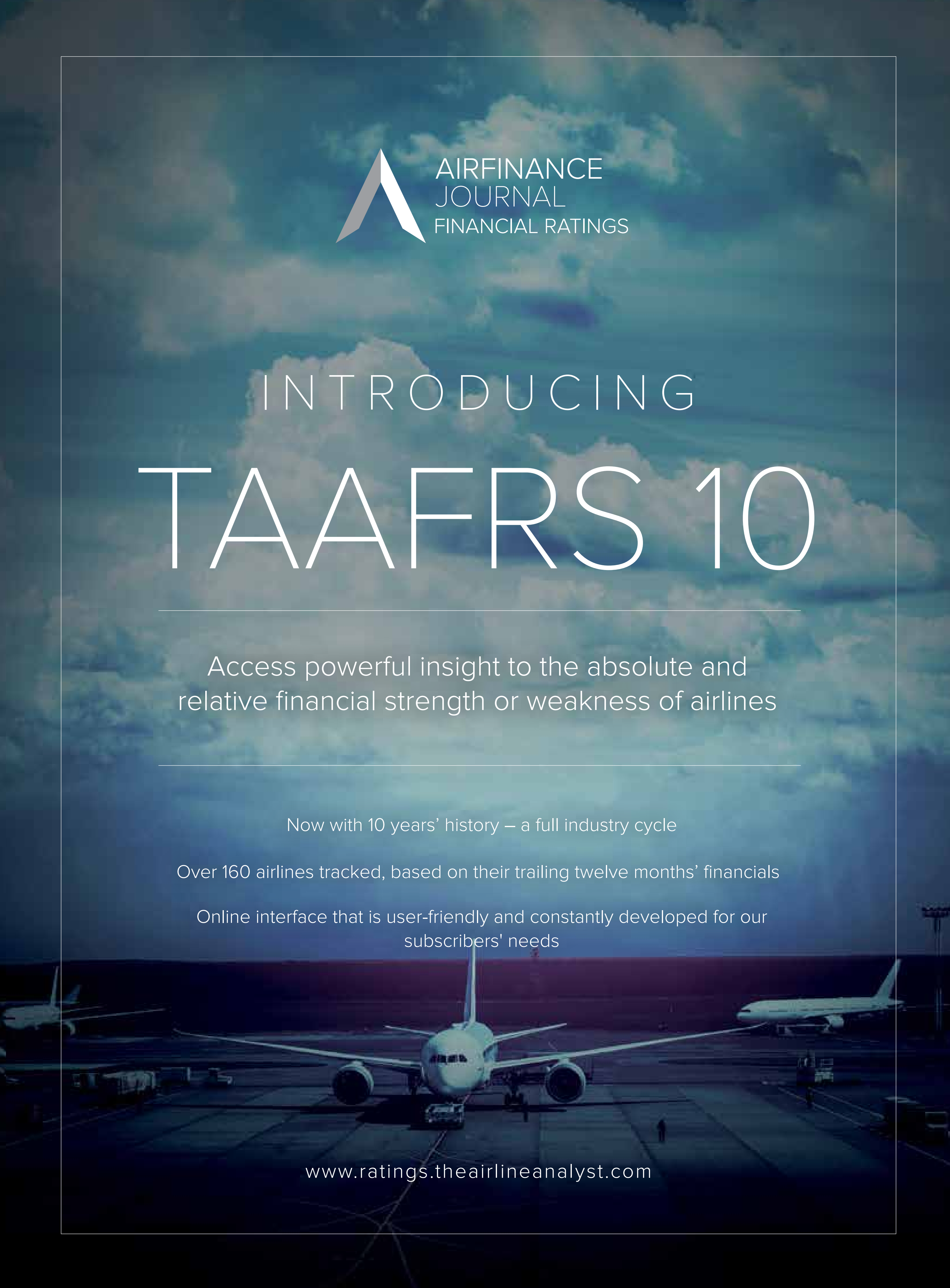
She also assisted China Development Bank's Henan branch in providing financing to a joint-venture leasing company in Henan province to lease aircraft to Russian airlines.

Other challenges for lessors include old aircraft disposal and asset management, Chen says.

Chen thinks Chinese lawyers should try their best to become the leaders of the industry. The role for Chinese lawyers among overseas counsels is not only limited to taking the lead in large-scale cases, but to give customers all-round support, especially in the People's Republic of China.

"We need to do more communication and it is not an easy task for Chinese lawyers to do things like this, but we need to manage it during our work," says Chen.

In her free time, Chen enjoys watching movies and chatting with friends.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Recent structural developments in **aircraft ABS transactions**

David Berkery, partner at A&L Goodbody discusses the increased liquidity of E-notes, co-issuer structures and other changes in asset backed securitisations.

Since 2013, the demand for aircraft ABS (asset-backed securitisation) transactions has gone from strength to strength. Last year saw a record number (14) of ABS deals close and 2018 is on course to at least match that number.

For many aircraft lessors, access to the capital markets is a crucial component of their capital structure.

The model of raising equity capital, using a warehouse facility to acquire a portfolio of aircraft, refinancing the expensive warehouse debt through an ABS take-out (and repeat) has proven to be very successful and has allowed mid-sized lessors especially to grow rapidly.

The ABS product has shown incredible versatility in recent years in terms of the age and the types of assets in the pools, as well as the willingness of the market to allow for high concentrations of emerging market exposure. Also, in terms of how the vehicle has been structured in order to maximise tax efficiencies and to meet the specific needs of the equity investors and/or potential future equity investors.

> *"The challenge was to create a truly diverse, amalgamated collateral pool without disturbing the tax structuring of the equity in the portfolio on the CLAST 2014-1 deal."*

Ground-breaking deal

The *CLAST 2014-1 (Castlelake)* deal was ground-breaking for a number of reasons. The number of aircraft in the pool (79) and their weighted average age (17.5 years) were some distance beyond what the market had seen at that point. The transaction repurposed the ABS product as not just a means of moving aircraft off-balance sheet, but as a new and inexpensive financing source for mid-life and end-of-life aircraft.

The deal was also ground-breaking from a structuring perspective. The nature of the sponsor as a fund manager, rather than a more traditional aircraft lessor, meant that the equity in the ABS vehicle needed to be held by multiple different funds, each with its own tax and structuring considerations.

The challenge was to create a truly diverse, amalgamated collateral pool without disturbing the tax structuring of the equity in the portfolio. In particular, ensuring that US-sourced income in the structure was not used to pay dividends to non-US persons, for which a 30% withholding would apply.

Borrowing heavily from enhanced equipment trust certificate technology, the dual-level issuer structure was created. The assets would be held in separate silos depending on their lessee locations and expected flight patterns. Each silo would sit beneath a sub-issuer, which would issue cross-collateralised and cross-guaranteed notes to a single master issuer, a pass-through trust, which would amalgamate the debt cash flows and issue master notes to the debt investors.

The individual sub-issuers had separate equity investors, so there was no cross-contamination from a tax perspective of the residual cash flows from the portfolio. The structure has been replicated a number of times since – *CLAST 2015-1, CLAST 2016-1, CLAST 2017-1, CLAST 2018-1 (all Castlelake), AASET 2014-1, AASET 2015-1, AASET 2016-1, AASET 2016-2, AASET 2017-1 and AASET 2018-1 (all Apollo Aviation).*

Initial preferences for Luxembourg-based holding structures for non-US assets have largely been replaced by Irish based sub-issuers, particularly since the Luxembourg transfer pricing rules came into effect.

Co-issuer structures

More recently, similar tax considerations have been addressed by way of a co-issuer structure. These involve an entity that is Bermuda or Cayman incorporated but Irish tax resident, and a Delaware limited liability company subsidiary. They act as co-issuers of the ABS notes on a joint and several basis – *Blackbird 2016-1 (Napier Park/ALC), Labrador (GECAS), Thunderbolt (ALC), Falcon (DAE), Sprite 2017-1 (World Star), KDAC (DVB), METAL 2017-1 (Aergo) and MAPS 2018-1 (Merx*).

Aircraft deriving US-sourced income are held by subsidiaries of the Delaware co-issuer with cash flow from those assets held in separate (US) sub-accounts and the non-US aircraft are held by subsidiaries of the Irish co-issuer. This structure isolates the US-sourced "fixed or determinable, annual or periodical gains, profits and income" so that dividends paid from such amounts are paid only to US-persons. If such dividends were paid to non-US persons, withholding tax of 30% could apply.

The co-issuer structure has become the most frequently used structure for the product, with the US co-issuer seen as adding some flexibility in the event of a secondary trade of the equity interests (or E-notes) and/or re-leasing of assets to US-based lessees. This is true even for transactions in which the sponsor has retained the equity in the vehicle at closing and does not need a blocker to capture the US-sourced cash flow and for transactions which do not involve any US lessees at closing – eg, *MAPS 2018-1 (Merx*).

That said, the single issuer structure is still used from time to time in retained equity ABS deals – *HAIL 2017 (Aergen), Prop 2017-1 (Elix), S-Jets 2017-1 (Sky).* Such a structure could limit the universe of third parties to which the sponsor could potentially sell the E-notes. This is the case particularly in circumstances in which the E-note investors do not have the ability to appoint a majority of the directors on the board.

Recycled entities

Another significant structural change which has developed in recent years stems from the more pragmatic approach the rating agencies have been willing to take to the use (under certain circumstances) of what previously would have been deemed to be "stale" aircraft-owning special purpose companies as "recycled entities".

The logic behind the approach is sound. An entity which was previously used in a warehouse or acquisition finance facility, and subject to special purpose covenants in the transaction documents to which it was a party and/or in its constitutional documents, should not be materially more likely to have incurred unknown third-party liabilities than a new entity formed specifically for the aircraft ABS.

The efficiency created by this is difficult to overstate. Fewer or no lease novations and reduced lessee interaction allows aircraft to be transferred into the structure in a much shorter period. This means sellers receive their purchase prices a lot quicker. They are not all fortunate enough to have the benefit of a parent as creditworthy as GE, which can guarantee return of the purchase price (with interest) in the event of failing to transfer the aircraft within the purchase period and therefore allow them to receive almost all of the purchase price within days of closing the note issuance.

This means that the vehicle does not suffer from too much negative carry on the debt between the date of note issuance and the aircraft delivery date. Such negative carry can be mitigated somewhat in any event, in a loan format aircraft ABS at least, through the use of a delayed draw mechanism whereby only a portion of the debt proceeds are raised at closing and the remainder are committed but not funded until a later date – eg, *CLAST 2017-1 (Castlelake).*

Liquid E-notes

Although aircraft ABS debt has been in high demand in recent years, the E-notes in these vehicles have been a lot less liquid. The market for third-party equity in aircraft ABS vehicles in recent years has been limited primarily to hedge funds and private equity funds with different return expectations and different views of control rights to those of more passive institutional investors.

For most E-note investors, an ability to appoint a majority of the directors of the board of the issuer is a prerequisite for their investment. This placed pressure on the non-consolidation analysis for issuers which had their centre of main interests in Ireland after the enactment of the Companies Act, 2014 in Ireland. This Act included a change to the definition of a "subsidiary" under Irish company law from a share capital-based test (easily addressed through the use of a charitable trust holding the issuer's share capital and the issuance of E-notes mirroring the economics of equity ownership) to a test of "dominant influence and control".

> *"Aircraft ABS debt has been in high demand in recent years, the equity interests (or E-notes) in these vehicles have been a lot less liquid. The market for third-party equity in aircraft ABS vehicles in recent years has been limited."*

Nonetheless, A&L Goodbody, working with a number of frequent arrangers of these deals, has managed to mitigate the consolidation risks in a manner which has been accepted by the market and each of the primary rating agencies active in the industry. This is notwithstanding the equity's ability to appoint a majority of the board.

Very recently, the *STAR 2018-1 (GECAS)* deal came to market featuring listed, tradeable, equity interests. The structure used involves the parent co-issuer issuing E-notes to an orphaned, special purpose vehicle, the E-note holder. That E-note holder then issues equity certificates to multiple investors. While it remains to be seen, the early indications are that these liquid equity certificates will attract a new class of investor to the aircraft ABS product. For example, those with a greater risk appetite and higher yield desire than the current investors on the BB/B rated tranche of debt but which do not have the same control expectations as the traditional private equity investors in E-notes to date should be receptive to this product.

At the time of writing, at least one other deal is preparing to come to market with the same tradeable equity feature and it is likely that more will follow.

Overall, the trends for aircraft ABS look good. Each year brings new first-time sponsors and new investors. The structures have proven to be dynamic and malleable, while the transaction documentation has been simplified and is more approachable for new investors than it was just a few years ago.

The introduction of a more liquid E-note shows the continued drive towards innovation among the arrangers of these transactions and, market conditions allowing, could give rise to the next wave of aircraft ABS transactions.

GDPR and the aircraft finance industry – key steps to compliance

Paul Lavery, partner, head of technology and innovation, and Georgina O'Riordan, partner, aviation, at McCann FitzGerald, explore what the new EU regulation will mean for aircraft financiers.

The General Data Protection Regulation (GDPR), which came into effect on 25 May, has replaced existing data protection law in Ireland and across the European Union. While many fundamental concepts and principles remain broadly the same, GDPR provides for significant changes which will have wide ranging impacts on a broad range of sectors.

Although it might not be immediately apparent, GDPR has significant implications for the aircraft finance industry. Below we set out details of why GDPR is relevant to the aircraft finance industry, the key changes that GDPR brings about and key steps that should be taken now to ensure compliance with GDPR.

Why is GDPR relevant to the aircraft finance industry?

GDPR primarily applies to companies which are established in Europe and which process personal data in the context of those establishments. However, GDPR also applies to data controllers and data processors based outside of the EU which offer goods or services within the EU. For companies operating in the aircraft finance industry, the types of personal data that are likely to be processed routinely include:

- **employee personal data** – any company that has employees will collect personal data in relation to those employees in the context of the employment relationship (eg, CVs, contracts of employment, performance reviews and records of sick leave);
- **director personal data** – where a company does not have employees but does have non-executive directors, it is likely that such company will collect an amount of personal data in respect of such directors;
- **AML/KYC data** – undertaking appropriate anti-money laundering (AML) and know your customer/client (KYC) processes is a key part of many aircraft finance transactions, including gathering personal data in relation to legal owners, beneficial owners and key employees; and
- **shareholder data** – depending on the structure of the company, it might hold personal data about its shareholders.

Key changes under GDPR

The principles of data protection law under GDPR are broadly similar to those which exist under current data protection law, such that GDPR is in many ways an evolution of current data protection law requirements. However, some changes that have been introduced could rightly be regarded as revolutionary, including:

- **fines** – perhaps the most radical feature of GDPR is the introduction of potentially severe administrative fines for non-compliance. GDPR empowers national data protection supervisory authorities to issue fines of up to 4% of the annual worldwide turnover of the undertaking to which the non-compliant company belongs or €20 million ($23 million), whichever is the greater;
- **liability** – data controllers and data processors may be liable to individuals for damage caused by a breach of GDPR. A single undertaking may be jointly liable for breaches by other entities involved in the relevant processing; however, a court will be entitled to apportion compensation by taking into account the culpability of the relevant data controller(s) and data processor(s);
- **security breach notifications** – a data controller is now obliged to inform the relevant supervisory authority of a personal data security breach as soon as possible and, "where feasible", not later than 72 hours after becoming aware of the breach. The data controller might also be required to inform the affected data subjects where there is a high risk to the individuals' rights;
- **extended rights for individuals** – GDPR focuses on giving individuals more control over their personal data. In addition to existing rights, such as the rights of access and rectification, it provides for a new right to restrict the processing of personal data in certain circumstances to storage only. The right to erasure, or "right to be forgotten", is also explicitly set out in GDPR;
- **demonstrating compliance** – one of the most novel features of GDPR is that it imposes an obligation on companies to be able to demonstrate their compliance with the obligations under GDPR. This includes keeping records of all processing activities carried out and updating internal policies to demonstrate compliance with obligations under GDPR (eg, a policy outlining how the controller deals with data subject requests);
- **data protection officers** – certain companies are now obliged to appoint a data protection officer to oversee compliance with GDPR. In these cases, the data protection officer must have certain designated functions, and they are given a form of protected employment status. It is also possible to appoint an external data protection officer on an outsourced basis; and
- **lead supervisory authority** – GDPR introduces a modified one-stop-shop system, whereby businesses established in the EU will be subject to the oversight of a lead supervisory authority. If they are established in more than one EU member state, then, depending on how they organise their affairs, they might have a single lead supervisory authority and other concerned supervisory authorities, or they may be subject to oversight by multiple lead supervisory authorities.

Key steps to compliance with GDPR

In order to ensure compliance with GDPR, companies should take the following key steps:

- **gathering information and gap analysis** – in order to undertake a GDPR compliance project, it is essential to first gather information in relation to a company's current processing of personal data, including details of how personal data is collected, how it is processed and what third parties have access to that data. It is also important to gather copies of any current data protection policies and procedures, so that they can be reviewed for data protection compliance;
- **drafting a data protection policy** – as mentioned above, being able to

demonstrate compliance with GDPR is a key requirement of the new law. A key part of this will be to draft a data protection policy that sets out how the company will comply with its obligations, and the records that it will keep to monitor compliance;

- **consider whether data collection is necessary** – companies should consider the life cycle of data, from collection to deletion, when considering whether their data processing is necessary, relevant and proportionate and when updating their data protection policies;
- **policies to deal with requests from data subjects** – companies should make themselves aware of the rights of data subjects under GDPR and consider updating internal processes so they can deal with requests from data subjects to exercise these rights;
- **data protection notices** – all data protection notices in company use will need to be updated to comply with the additional requirements under GDPR. If the company has identified that it requires additional data protection notices as part of its gap analysis, these will need to be drafted and provided to the relevant data subjects;
- **contracts with data processors** – where a company engages a third-party service provider to process personal data on its behalf, that third party is regarded as a processor. As of 25 May, GDPR requires companies to update their contracts with their processors to include detailed specific obligations. Accordingly, companies should engage as soon as possible with their third-party processors to ensure that amendment agreements or data-processing agreements are put in place;
- **identification of supervisory authority** – if an organisation operates in more than one EU member state, it should identify its lead supervisory authority;
- **appointment of data protection officers** – companies should consider whether they need to appoint a data protection officer (DPO). GDPR requires certain organisations to designate a DPO. Organisations requiring DPOs include public authorities, organisations whose activities involve the regular and systematic monitoring of data subjects on a large scale and organisations which process what is currently known as "sensitive personal data" on a large scale. In our experience, companies within the aircraft finance industry have generally not been required to appoint DPOs, but this needs to be considered on a case-by-case basis; and
- **implementation and training** – a key part of all GDPR projects will be implementing a data protection policy and related procedures to ensure on-going compliance. This is likely to involve specific training for staff who are responsible for handling personal data, and general awareness training for other staff members.

Common issues that arise in aircraft finance industry GDPR projects

In our work on GDPR projects with companies which operate in the aircraft finance industry, we have identified the following common issues that arise:

- **complexity** – the aircraft finance industry often employs complex group structures. Identifying the relevant companies within a group that hold and process data, and determining the correct data protection analysis for that processing, can be challenging. It can also require input from multiple stakeholders, and an understanding of the underlying rationale for the various structures;
- **consent** – a common mistake that we encounter in GDPR projects is an assumption that all processing should be undertaken on the basis of consent. In our experience, it is very rare for aircraft finance companies to use consent as the basis for their processing, for two reasons. The first is because there are more suitable bases for processing available, such as where the processing is required to comply with a legal obligation (eg, most AML/KYC data-processing activities). The second is because of the difficulties that relying on consent can present under GDPR (eg, consent can be withdrawn at any time by the individual concerned); and
- **intra-group transfers** – the international nature of the aircraft finance industry means that it is very common to identify international flows of personal data between companies. GDPR includes a general restriction on the transfer of personal data outside of the European Economic Area, which is subject to certain exemptions. We have found that our clients have generally opted to facilitate such transfers through adopting intra-group data transfer agreements that incorporate EU Commission-approved standard contractual clauses. Depending on the nature of the group involved, putting in place such intra-group data transfer agreements can be a time-consuming process.

Paul Lavery

Paul Lavery is the head of the firm's technology and innovation group and advises on a wide range of information technology, data protection, intellectual property, confidentiality and freedom of information issues.

Lavery is a leading expert on data protection and has advised a large number of clients, including many within the aircraft finance sector, on their projects to comply with the EU General Data Protection Regulation, including advising on the main obligations relevant to such clients and the notices, documents and agreements required to ensure GDPR compliance.

Georgina O'Riordan

Georgina O'Riordan's practice focuses on banking and asset finance transactions. She advises leading aircraft lessors, lenders and arrangers on all aspects of aircraft financing and leasing. This includes cross-border leasing transactions, sale and leaseback transactions, secured lending, portfolio acquisitions and disposals and the establishment of leasing and financing platforms in Ireland.

O'Riordan also advises clients on aircraft repossessions, the registration and operation of aircraft in Ireland and the establishment of Irish joint-venture vehicles for the acquisition and financing of aircraft.

Acknowledgments to Douglas McMahon, senior associate, technology and innovation, and Ian Payne, associate, aviation finance

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