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A SUPPLEMENT TO AIRFINANCE JOURNAL AUGUST 2016

A SPECIAL SUPPLEMENT

Guide to Aviation Lawyers 2016

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EDITOR'S LETTER

Basel IV is coming, so financiers must enjoy the good times

With more regulation on the way, the aviation industry should make the most of the current positive climate, writes Jack Dutton.

Over the past year, we have seen an active aviation finance market and a number of changes in regulation. The Cape Town Convention has evolved, with more countries – including the UK, Sweden and Spain – ratifying the convention to attract further aviation investment into their jurisdictions.

In this year's Guide to Aviation Lawyers, contributing firms discuss Cape Town, the legalities of letters of intent and Ireland as a leasing hub.

Another issue law firms and banks are starting to think about is Basel IV – the next wave of bank regulation coming from the Basel Committee on Banking Supervision.

The most recent framework, Basel III, was made in response to the 2008 financial crisis and was designed to reform the banks to strengthen regulation and supervision in the sector. It raised capital requirements, placed more emphasis on liquidity management and introduced the non-risk-based leverage ratio, causing banks to spend years raising hundreds of billions of dollars in capital to comply with regulation.

Although some of the top regulators – such as the Bank of England's Mark Carney – deny that the Basel IV framework exists, there has been a number of new standards set that suggest a pipeline of increased regulation is being developed.

In a paper published at the end of 2015, advisory firm KPMG said it was concerned about banks adopting a higher minimum leverage ratio rather than the 3% benchmark put forward by the Basel Committee, restrictions on how much banks can benefit using internal models to calculate their capital requirements and a tougher approach to bank stress testing.

All three of these concerns indicate a reformed version of Basel is on its way. Bankers and regulatory analysts expect that Basel IV is likely to increase the risk attributed to some assets, a key component in calculating capital requirements.

It is hard to quantify the impact of Basel IV right now, but many in the industry believe it is likely to have a negative effect on aviation lending. One aviation lawyer, who has been in discussion with his firm's clients about Basel IV, says it will "tighten the noose" around the banks providing aviation financing. He adds that the impact of Basel IV will become clearer during the next three years, as the industry starts to feel the full impact of Basel III on the banking sector.

Many banks believe it will increase the cost of capital for lending on aircraft finance transactions. For airlines and leasing companies, it could mean higher, less-competitive loan pricing for aircraft financing as the cost of liquidity goes

up for the banks. In a world where the future of export credit financing is uncertain, it will be detrimental for the market if the banks see their cost of funding swell.

All this is not helped by the fact that the US economy's growth keeps falling short of expectations. Recently, we learned that gross domestic product grew at a meagre 1.2% annual rate in the second quarter of 2016. There was also tepid growth in the first quarter, when the economy grew at 0.8%.

Not only is the US economy slowing down, but also there are changes in regulation that will affect the capital markets. The Dodd-Frank financial regulation bill, which is due to be amended before the end of the year, will likely affect how financially attractive the market finds aircraft securitisations. If securitisations become less economically attractive after the amendment, the industry may witness a flurry of issuances later this year.

Along with Basel IV, impacts of other geopolitical events on the aviation finance community, such as the UK's decision to leave the EU, are hard to gauge at this point in time. Some law firms have suggested that Brexit is likely to affect almost every aspect of the country's aviation industry – from the UK's access to the single aviation market, the exchange of air traffic rights and the role of UK Export Finance in financing Airbus aircraft.

Despite some of the uncertainties that lie ahead, now is a good time for airlines and lessors, with oil prices and interest rates at historic lows and the industry making year-on-year profit. Boeing forecasts that the industry will need 39,620 new aircraft over the next 20 years to meet global demand for air travel.

Although Basel IV is worrying a lot of people in the banking community, it will likely be two more years before we get a true idea of its consequences. For now, aircraft financiers should enjoy the good times, before the new wave of regulation rears its ugly head.



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Pictured left to right are Gerry Thornton, Stuart Kennedy, Chris Quinn and Rory McPhillips.

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NEWS

LEGAL MARKET MOVES

Airfinance Journal and *airfinancejournal.com* have reported on the key recent moves in the aviation legal sector.

Bell makes partner at Bird & Bird

Jim Bell has been made a partner in the London office of Bird & Bird.

Bell, who was selected by *Airfinance Journal* as one of its 2015 Rising Stars, was previously a senior associate in the London office of Allen & Overy.

The firm says that Bell has experience advising a range of clients on debt financing, export finance, operating leases, pre-delivery financing, portfolio sales, tax leasing products, capital markets products, Islamic finance and a range of other matters.

Airfinance Journal understands he played a leading role advising BNP Paribas on Transportation Partners' \$143.7 million Cofoco-backed bond for the refinancing of 10 ATR aircraft. The deal won *Airfinance Journal's* 2015 Export Credit Agency Deal of the Year award, presented in Miami in April.

Winston & Strawn hires partners from rival

Winston & Strawn has hired two aviation finance partners from rival firm Simmons & Simmons.

Mark Moody and Christopher Boresjo have joined Winston & Strawn's London office.

Boresjo and Moody have represented lessors, financial institutions and airlines and have represented clients on portfolio acquisitions and sales. They have also provided advice on leasing and other financings.

The former Simmons & Simmons lawyers were the last two aviation partners at the firm. Boresjo's experience involves operating leases, sales and purchases of aircraft, cross-border loan and lease agreements and airline joint ventures. Moody has worked on a wide variety of aircraft finance transactions, including tax-advantaged leases, Islamic financings, sale/leaseback structures and export credit-supported financings. In addition to London, Moody has practiced law in Frankfurt and Singapore.

Clifford Chance appoints partner

Clifford Chance has appointed Patrick O'Reilly as a partner in its New York Office.

According to his profile on the firm's website, O'Reilly has advised lenders, underwriters, operating lessors, manufacturers and export credit agencies on a range of aviation finance deals.

He has advised clients on deals such as Awas's 2015 asset-backed security and ILFC's 2014 \$1.5 billion term loan facility.

Debevoise promotes Karamyslov

Debevoise & Plimpton has made Dmitry Karamyslov an international counsel in its Moscow office.

Airfinance Journal understands that the role of counsel at Debevoise & Plimpton is equivalent to that of partner in other firms.

Karamyslov has experience in the Russian aircraft finance market, including operating and finance leases, aircraft purchases, secured debt, maintenance and repair and cross-border transactions. He has also worked on structuring issues such as aircraft registration, regulation and tax, according to his biography on the firm's website.

He advised Aeroflot for its 2011 orders for 16 777 aircraft, and American International Group in the \$7.6 billion sale of its 100% interest in ILFC to AerCap.

Pansadoro joins HFW

Barbara Pansadoro has joined Holman Fenwick Willan (HFW) as a senior associate in the firm's London office.

Pansadoro arrived from law firm Gide. Her previous clients include Turkish Airlines (THY) and SunExpress. She advised THY on its 2014 export credit agency-guaranteed tax lease for two A330s, which won Tax Lease Deal of the Year in *Airfinance Journal's* Deals of the Year Awards in 2014. She also advised the airline on an export credit agency-backed Jolco that won Tax Lease Deal of the Year 2013.

Her practice areas include pre-delivery financings, export credit-backed financings, commercial debt financings, tax-based cross-border financings, securitisations and financing transactions in general.

Pansadoro qualified as a solicitor in England and Wales and as an avvocato in Italy.

Milbank gets new associate

Law firm Milbank has brought in Dominic Pearson as an associate in its New York office.

Pearson previously worked as a senior associate at the San Francisco office of Pillsbury. He has also worked at Allen & Overy and Clyde & Co in London.

Pearson was part of the Pillsbury team which worked on the Jetscape asset-backed securities deal that closed in December 2014.

Leavitt makes partner

Holland & Knight has elevated Nathan Leavitt to partner in its San Francisco office.

Leavitt, who was an associate at the firm, was selected in 2014 as one of *Airfinance Journal's* Rising Stars.

Leavitt represents lessors and financial institutions, advising on the purchase, sale, lease, novation, financing and securitisation of commercial aircraft, engines and parts. He focuses on cross-border transactions, often with airlines operating in Latin America.

In 2014, Leavitt completed a nine-month secondment with the Latin America and Caribbean division of Gecas.

Pillsbury announces new partner

Jonathan Goldstein has joined Pillsbury's New York office as a partner.

Goldstein was previously head of transportation finance at Shearman and Sterling. He focuses on public offerings, private securities placements, structured financings, bank loans, leases, joint ventures and restructurings.

He was previously named as an *Airfinance Journal* Rising Star.

Ince & Co hires senior partner

Ince & Co has hired Tom Briggs as a partner for its Dubai office, according to a statement released by the firm.

Briggs advises on corporate, finance and commercial law matters, including M&A, primary and secondary fundraising, private equity, venture capital, joint ventures and project finance.

Before joining Ince & Co on 13 March, Briggs spent 15 years at Charles Russell Speechlys. For the past three years he was a partner and head of commercial/corporate in the firm's Bahrain office.

In 2008, he spent six months as acting general counsel to Gulf Air in Bahrain where he led a number of aircraft acquisitions, financings and leases.

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NEWS

Vedder Price names new capital markets head

Vedder Price has named Kevin MacLeod as the new head of its New York securities and capital markets group.

MacLeod joins Vedder Price from Milbank, where he was special counsel in the global securities group.

According to an announcement from Vedder Price, he focuses on advising the underwriters and issuers of debt securities. He has previously worked on enhanced equipment trust certificates, secured and unsecured high-yield notes, aircraft lease securitisations and Ex-Im Bank-guaranteed notes.

Mitchell joins Dentons London

Peter Mitchell, a senior associate in Watson Farley & Williams' (WFW) Singapore office, is moving to London to work for Dentons.

Mitchell will be a senior associate in the firm's banking and finance team.

He joined WFW in March 2012 and has been working in Siva Subramaniam's team. He previously worked for DLA Piper in Birmingham, UK.

Former ILFC lawyer sets up solo practice

A former ILFC lawyer has established a solo transactional law practice.

Under Fisher Legal, Shani Smith Fisher will advise clients on a variety of corporate, transactional and leasing and finance matters. This includes aircraft financings, operating leases, aircraft sale agreements, among other areas.

Her last position was in-house legal counsel at ILFC (now AerCap). She joined ILFC in 2011, and while working there negotiated and oversaw the documentation of more than \$2 billion of the company's financings. She also advised senior management on a range of other transactions, including leases and vendor agreements. She left AerCap in April 2015.

Speaking to *Airfinance Journal* from Los Angeles, Fisher says: "As a solo practitioner with years of

experience in both big law and the corporate world, I am able to offer clients sophisticated, commercially minded legal representation at an exceptional value."

Milbank Singapore hires Clifford Chance associate

Law firm Milbank, Tweed, Hadley & McCloy has hired Giles Fogwill as an associate in its Singapore office.

Giles joins from Clifford Chance's asset finance practice where he also spent time on secondment with SMBC Aviation Capital in Dublin and Gecas in Singapore.

Giles specialises in transportation finance with experience acting for a variety of operating lessors, airlines and financiers. He focuses in particular on cross-border asset financing, aviation sale/leasebacks, aircraft portfolio sales and general and structured financings. He also has experience working on operating leases, lease novations, enhanced equipment trust certificate offerings and asset-backed securitisations.

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SPONSORED EDITORIAL

International aviation – clearing the skies



Georgina O’Riordan



Seán Barton

Georgina O’Riordan, partner, aviation and asset financing and Seán Barton, partner, head of dispute and litigation at McCann Fitzgerald, examine the registration of international interests and non-consensual interests under the Cape Town Convention.

Registration of international interests under Cape Town Convention

The Convention on International Interests in Mobile Equipment adopted in Cape Town on 16 November 2001 (the Cape Town Convention) provides for the establishment of an International Registry on which certain legal interests (international interests) in relevant mobile equipment (which includes aircraft, aircraft engines and helicopters, known as aircraft objects) can be registered. The central premise is that if an international interest in the relevant mobile equipment is registrable under the Cape Town Convention (and its associated protocols), and is registered on the International Registry, that international interest will have priority over other international interests in the same mobile equipment which are unregistered or are subsequently registered.

The International Registry is established in Ireland and operates electronically at <https://www.internationalregistry.aero/ir-web>.

The registration of an invalid or unregistrable interest on the International Registry can result in serious adverse consequences for aircraft owners, lessors and financiers. It may call into question the title of such parties to an aircraft object, the value of security taken over such aircraft object and, practically speaking, may frustrate the sale of such aircraft object to a third party.

Because of the International Registry’s establishment in Ireland, the Irish courts have exclusive jurisdiction to deal with certain disputes under the Cape Town Convention, particularly those seeking amendment or erasure of entries on the International Registry where the registrant refuses to do so.

The Irish courts have demonstrated a willingness, in appropriate circumstances, to make orders directed to the International Registry to discharge invalid or improper registrations. The ability of the Irish courts to make an order directed to the International Registry may be particularly significant in circumstances where an order has been obtained against the registrant, in another jurisdiction, which has not been complied with.¹

Registration of non-consensual interests under Cape Town Convention

The Cape Town Convention permits the registration of certain non-consensual rights or interests, which can arise, and be registered, without the consent of the owner or operator of the asset. The ability to register interests on a non-consensual basis opens up the possibility of registrations being made illegitimately, or strategically directed at extracting a benefit from the owner or operator in return for removing the registration and/or withdrawing the underlying claim.

In order for a non-consensual interest to be validly registered it must be one that is recognised by a contracting state which is relevant to one or more of the parties to the underlying transaction or circumstances of registration. Article 40 allows for a contracting state to deposit a declaration with Unidroit, the official treaty depositary, listing the categories of non-consensual rights or interests that shall be registrable according to its law. On this basis, a right or interest that exists by virtue of a declaration (as opposed to agreement) may be registered as if it were an international interest – typical examples being the lien of a judgment creditor or liens for taxes or unpaid charges.

The corollary is, of course, that if a contracting state has not deposited such a declaration, the right to register such non-consensual rights or interests does not arise under the terms of the convention.

A list of those countries which have made Article 40 declarations is available at <http://www.unidroit.org/depositary-2001capetown?id=440>.

However, the International Registry depends to a significant extent on the good faith of the registrant. The registrar does not verify the interest of any registrant or the documents relied on in support of any registration. For this reason, it is theoretically possible to file a non-consensual interest even in the absence of an Article 40 declaration having been made.

¹In *PNC Equipment Finance LLC v Aviareto Limited and Link Aviation LL* (unreported decision of the High Court, 17 December 2012 in which McCann FitzGerald acted) the Irish High Court directed the respondent, which had failed to comply with a Minnesota court order directing discharge of the invalid registration, to procure discharge, failing which, the registrar was ordered to discharge the registration.

²Unreported decision of the High Court, 13 May 2013.

³Eg, *PNC Equipment Finance LLC v Aviareto Limited and Link Aviation LLC*, 2012/397 MCA, Order of Kearns P, 19 December 2012.

⁴*Belair Holdings Limited v Aviareto Limited and another* [2015] IEHC 569.

⁵Eg, *Maximus Air v Aviareto Limited and Jet Fleet International* 2015/292 MCA (in which McCann FitzGerald acted), Order of Mr Justice Gilligan, 16 November 2015.

“A number of examples have come before the Irish courts of questionable use of the right to register non-consensual liens where registrations have been made in the absence of a declaration by any relevant contracting state.”

A number of examples have come before the Irish courts of questionable use of the right to register non-consensual liens where registrations have been made in the absence of a declaration by any relevant contracting state. For example, in *Transfin-M v Stream Aero Investments SA and Aviareto Limited*², just four weeks after the proceedings were issued, the court concluded that the registration of the non-consensual interest was not valid on the basis that neither Russia nor Panama (the applicant being a Russian corporation and the respondent a Panama company) had made a declaration under Article 40.

Procuring discharge and rectifying the registry – exclusive jurisdiction of the Irish High Court

Under Article 44(1) of the Cape Town Convention, the High Court of Ireland has exclusive jurisdiction to make orders directed to the registrar of the International Registry with regard to the discharge of invalid registrations. Such cases may be brought in the commercial division of the Irish High Court which, although a more costly procedure, allows for cases to be dealt with on an expedited basis.

This jurisdiction is rooted in Articles 44(2) and 44(3) of the convention, which permit a debtor to seek an order directing the registrar to discharge a registration. On this basis, the registrar must be named

as respondent in proceedings in which rectification of the registry is sought, and invariably as a co-respondent with the original registrant.

The Irish courts have, on several occasions, made such orders when presented with evidence of illegal or improper registrations³. Most recently, Ms Justice O'Malley, in granting an order to discharge an invalid registration⁴, noted that the Irish courts must be “conscious of purpose and principles of the convention” and the “importance of maintaining the integrity of the registry”. Additionally, the Irish courts have previously awarded the costs of the application against the registrant where it is clear that there was no proper basis under Article 40 for the registration in question⁵.

It is clear, therefore, that the Irish courts have a significant role in upholding the integrity of the International Registry. The preamble to the convention makes it clear that the purpose of the Cape Town Convention is to provide for the “creation, perfection and priority of international interests”, particularly in circumstances where the assets in question are constantly moving from one state to another. The Irish courts are well attuned to these principles and have demonstrated and developed a clear jurisprudence to protect and vindicate parties’ rights in accordance with the terms of the convention.

Those operating in the aviation sector should be aware and confident of the competence of the Irish courts as the correct forum for dealing with issues concerning doubtful non-consensual registrations in an effective, timely and efficient manner.

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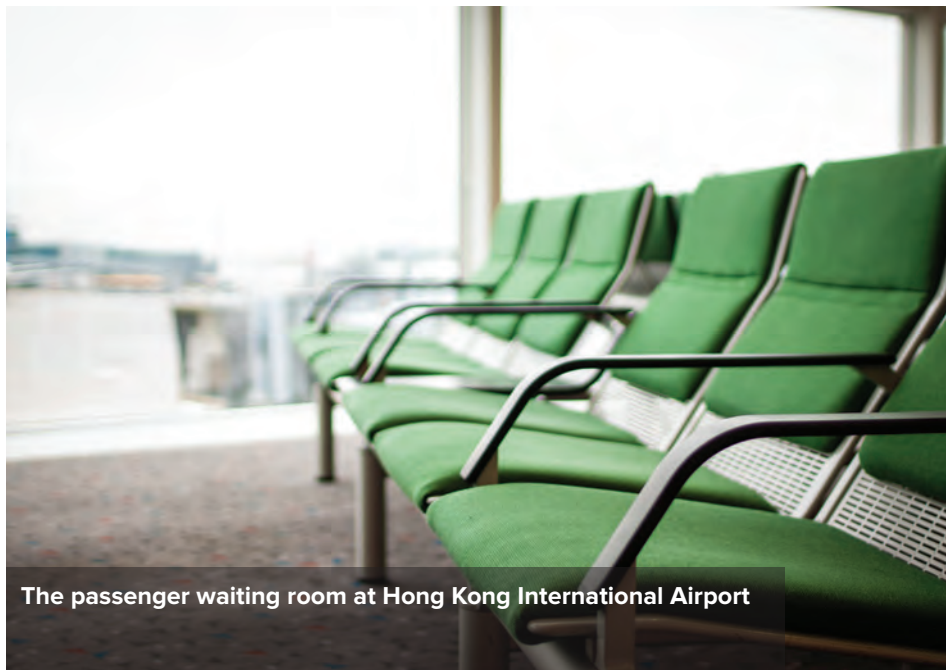
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REGIONAL ANALYSIS

Hong Kong's 'musical chairs'

A series of market moves has caused a stir among the aircraft finance practices in Hong Kong, with several firms having boosted their aviation presence here, reports Michael Allen.



The passenger waiting room at Hong Kong International Airport

The past year has seen a significant shake-up in the aviation finance law market in Hong Kong. At least four firms – Berwin Leighton Paisner (BLP), Holman Fenwick Willan, King & Wood Mallesons and Pillsbury – have either expanded their teams here or set up a practice.

But sources say that the moves are not so much new players coming into the market as old hands moving around and established firms with expertise in other practice areas looking to cash in on the boom in aviation finance in Asia.

One Hong Kong-based lawyer describes the process as “like musical chairs”.

“I’m not sure there are new entrants; they are just wearing new hats. It seems to be more a case of people moving around than someone totally new on the block,” said the source.

“The players have all been here for donkey’s years. The barriers to entry are quite high. The only way I think a firm could expand into this in Asia is to take someone from a firm that’s already here.”

BLP rebuilds a team

BLP lost two of its Asia-based partners earlier this year. Both Hong Kong-based partner Justin Sun and Singapore-based partner David Brotherton left the firm in early 2016 to join Holman Fenwick. In Hong Kong, BLP was quickly able to replenish its team with the integration of local boutique aviation law firm William KK Ho & Co. BLP claims the merger was unrelated to the departures and had been under discussions for 18 months.

“With hindsight, it looks like just a convenient way of rebuilding a team. We’d been affected by Holman Fenwick’s desire to get into this market, although the team in Singapore was much more affected in terms of numbers by that move than Hong Kong,” says Nigel Ward, a partner in BLP’s Hong Kong office.

In Singapore, newly appointed partner Simon Spells has been busy replenishing and strengthening the team, since Brotherton took his associates to Holman Fenwick. Spells tells *Airfinance Journal* that process is complete, and the Asia team has doubled

in size from 12 fee earners to 24.

Spells adds that he also has an of counsel joining from Clifford Chance, as well as two new associates from Norton Rose and Dentons.

William Ho, the managing partner of William KK Ho & Co who set up the firm in 2008, says the merger was a result of his foreseeing that he needed either to expand his firm rapidly via organic growth, or join forces with another practice.

“I did try a bit to expand the firm, but, of course, it’s easier said than done,” he says.

“Last year, I was aware that BLP was doing well as far as aviation finance is concerned. I saw a lot of synergies in working together and the vision is to build the best – the pre-eminent – asset finance team in Asia and globally.”

Ho’s firm enjoyed a good degree of success in Hong Kong and his brand was well-known among clients, particularly in mainland China. He recently scooped an award from *Airfinance Journal* for his work for China Southern on the delivery of the first export credit agency (ECA)-

“The only way a firm could expand into this in Asia is to take someone from a firm that’s already here.”

backed renminbi-denominated aircraft deal.

But, as one partner in Hong Kong says, the time may not be so good for boutique firms to go it alone.

“It’s always very dangerous as a lawyer to be in one business area,” the partner tells *Airfinance Journal*.

“If all you do is M&A or debt capital markets [for example], it really is all your eggs in one basket. I’m sure one of the reasons William did this was to diversify the areas he is in. It’s not so much a bad time to set up a boutique firm, but if all you do is aircraft finance, that’s quite a narrow business to be in because you need regulation, litigation and derivatives expertise, etc.”

Holman Fenwick: here comes the Sun

Holman Fenwick’s expansion in Asia has been led by Leigh Borrello, a partner who moves between the firm’s Sydney and Singapore offices. When he came on board in 2014 having spent nearly two decades as a partner at Norton Rose Fulbright, Borrello was given the mandate of expanding the aviation leasing and financing side of the business.

“The intention over the next couple of years is to have a team of people which, at least size-wise, is comparable to our competitors and hopefully at least on the expertise side is as good or better,” he says.

Justin Sun, who started work at Holman Fenwick’s Hong Kong office in late June, has a team of three associates. Sun is well regarded in the market for his contacts with Chinese clients, and these will certainly be of use to him at Holman.

He explains that, although the team has been boosted in both Hong Kong and Singapore with his and Brotherton’s appointment, the strategy for the firm continues to be that everybody works together across offices.

He says: “That’s part of our strategy and also kind of dictated by the asset we’ve been working for. Aircraft are a moveable asset and we do transactions from everywhere.”

King & Wood Mallesons: opportunities in China

King & Wood Mallesons has set up an aviation and asset finance team in Hong Kong headed by Tejaswi Nimmagadda. His team of five includes senior lawyer Kelvin Zha, who started his aviation career as an in-house lawyer at China Southern Airlines.

Nimmagadda says the practice’s strategy is to focus on international clients and give them the localised experience in China. This is tied into the firm’s recent history, when in 2012 Chinese firm King & Wood PRC Lawyers merged with Australian firm Mallesons Stephen Jaques. As a result of the merger, King & Wood Mallesons has 11 offices in China and more than 1,000 lawyers in the country.

King & Wood’s proposition is that it is a global firm with its headquarters in Asia, which it says is “quite unique” because most international firms have headquarters in London or the US.

“It means that the client experience is like a one-stop shop, particularly with entry into China because of that PRC [People’s Republic of China] local law capability we can offer, under the same instructions basically rather than appointing domestic counsel,” says Dina Moss, head of business development.

“Clients don’t think of the different jurisdictional issues; they just want to deal with the one team,” says Nimmagadda.

“We can also bring the international experience to the PRC players who are looking to internationalize their business.”

He adds that in the past, international aviation finance players mainly targeted only state-owned lessors and airlines.

“Now, because of the depth of the market but also trying to get their return hurdles they’ve decided to focus on second- and third-tier lessors and airlines. From our perspective, that requires more of a rigorous legal analysis because of the risks involved,” says Moss.

“You really need to put some more rigour into your analysis as to what happens after default, and look at local enforcement analysis if the worst were to happen. How do we repossess and take these people to court. On the airline front, what are going to be competing creditors? Those sorts of issues.”

Pillsbury goes to Hollywood

Pillsbury has opened its new Hong Kong office in the Kinwick Centre on Hollywood Road in the city’s Central district.

Paul Jebely’s team consists of associates

BLP confirms merger with William KK Ho & Co

British law firm Berwin Leighton Paisner (BLP) has confirmed a merger with Hong Kong firm William KK Ho & Co.

In a statement, BLP said that William KK Ho & Co partner William Ho and of counsel Jackson Chow will move to BLP’s Hong Kong office on 18 July 2016. Chow will join BLP as a partner.

Three associates, Karen He, Clara Lam and Calvin Leung will also join BLP, along with paralegal Victoria Li and three business services staff.

The arrivals of Ho and Chow come after the recent appointment of Colin Thaine as aviation business principal. Thaine joined BLP on 11 April.

BLP’s Hong Kong office opened in October 2011 and, along with its Beijing office, will now have 30 lawyers, including 11 partners.

Luca Denora, Sharon Nourani and Zara Machado – all of whom previously worked with him at Clyde & Co Hong Kong.

Airfinance Journal reported in February that Jebely had tendered his resignation from Clyde & Co. The following month, Pillsbury announced he would be establishing its new office in Hong Kong.

Jebely declined to name the other law firms he spoke to, saying in an interview with *Airfinance Journal* that it was “more than one and less than five” in what was a “very focused-fire exercise”.

He says: “I don’t have a crystal ball and I don’t know what the future of law looks like, but certainly at this time there is strength in numbers and the strength of the platform on which a practice operates makes a big difference. So it’s very difficult for small firms, no matter how strong they are in this specific practice area, to operate.

“I fundamentally believe that the timing is not right for boutique firms to practice in the commercial aviation finance sector servicing institutional clients.”

Pillsbury already has offices in Beijing and Shanghai, and Jebely says he is more likely to focus on other areas of the world from the Hong Kong office.

“It’s always very dangerous as a lawyer to be in one business area”

Jebely began his career working with African financial institutions doing business jets, and he continues to tap that continent’s market – even from Hong Kong, which is more than 11,000 kilometres and a 13-hour flight away.

“A lot of people will look at it and wonder, ‘How does that work from a time-zone perspective and geographic coverage?’ First of all, the geopolitical relationship between Asia and Africa is now greater than that between Asia and Europe or even Asia and the US,” he says.

Although aviation finance was the impetus for launching the Hong Kong office and, for now, remains the primary focus, Jebely will eventually branch out and service other areas as well.

He says: “Certainly, our aviation finance practice will grow, but if it’s a scenario where it’s five years from now and aviation finance is still the dominant practice, I probably haven’t done my job to the fullest extent.”

“One of the leading aviation finance firms in the world”

—Chambers

Powered by a team of highly rated lawyers in the U.S., Europe and Asia, Pillsbury’s global aviation finance practice has, in the last 5 years alone, helped a diverse range of market participants keep more than 1,500 commercial aircraft flying, reflecting an aggregate asset value of more than \$75 billion.

Find out why the most established names in aviation, as well as emerging players in the Americas, Europe, Africa, the Middle East and Asia, look to Pillsbury as their trusted advisor.

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SPONSORED EDITORIAL

A cautionary tale of letters of intent in aircraft transactions



Timothy Lynes



Brett Seifarth

Timothy Lynes, managing partner and Brett Seifarth, associate, at Katten Muchin Rosenman's Washington office, recalls *Global BTG LLC v National Air Cargo*, a case involving a breach of letter of intent for eight Boeing 747 Freighters.

Parties to aircraft purchase, lease and/or finance agreements many times rely on letters of intent (LOI) or term sheets to spell out the basic commercial terms of their transaction. With few exceptions, these parties do not consider the LOI to be a binding agreement in most respects; rather, these contracting tools are seen as agreements to agree.

However, in *Global BTG LLC v National Air Cargo*, the Ninth Circuit affirmed the trial court's award of \$8 million for breach of contract after a jury found that the defendant, National Air Cargo, breached an alleged exclusive LOI to purchase and finance up to eight Boeing 747 freighters. The court held that the absence of an exclusivity provision in the LOI does not make the contract non-exclusive as a matter of law when there are material questions of fact presented by conflicting extrinsic evidence as to the parties' intent.

The court further held that the question of exclusivity was in the proper province of the jury and substantial evidence supported the jury's verdict that a contract existed and was breached by National. The outcome of this case should serve as a warning to all those who use LOI as a prelude to the conclusion of the actual transaction documentation.

Global BTG LLC v National Air Cargo

In May 2010, National reached a preliminary agreement to purchase three Air France Boeing 747 aircraft for \$120 million and signed a purchase agreement with Japan Airlines for five 747 aircraft for \$192.5 million. National required financing to fund the purchase of these aircraft and needed to obtain financing quickly to meet the delivery dates in the aircraft purchase agreements. It engaged

various aircraft financiers, including Global BTG, Citibank, Deutsche Bank and Goldman Sachs.

Global and National signed a LOI on 18 July 2010 to enter into a sale and leaseback transaction with Global as the lessor and National as the lessee. The LOI, which was governed by New York law, provided for specific terms for many issues, such as aircraft serial numbers, delivery condition of the aircraft, the lease term, the security deposit, transaction costs, confidentiality, governing law and conditions precedent. The LOI was conditional in many other respects, such as aircraft purchase price, rental rates, lease structure, purchase option, maintenance reserves and return conditions.

The LOI was silent as to terms of exclusivity between the parties. It did state, however, that the sale and lease of the aircraft was subject to the following conditions:

- Global's board of directors' approval;
- satisfactory inspection of the aircraft and records;
- satisfactory tax and legal opinions; and
- mutually satisfactory lease or financing documentation.

In addition, the parties agreed that Global would use its best efforts to deliver to National on or before 22 July 2010 (four days after the LOI was executed) a memorandum of understanding (MOU) from a qualified lender

“The outcome of this case should serve as a warning to all those who use LOI as a prelude to the conclusion of the actual transaction documentation.”

to provide financing to purchase the aircraft. Despite these conditions precedent, the LOI stated it was “intended as a binding agreement” and that National and Global would “work together in good faith to implement the provisions hereof, to complete the transactions and to negotiate, execute and deliver all necessary and appropriate leases and other agreements in form and substance consistent with industry standards in a timely manner”.

On 23 July 2010, National’s agent contacted Global to terminate the contractual relationship between the parties, citing National’s need to secure financing for the Japan Airlines aircraft as soon as possible. In response, Global asserted that five business days is not a reasonable amount of time to obtain financing for these aircraft and expressed its desire to continue with the transaction, because it had already contacted 75 to 100 funding sources in the debt and capital markets to secure financing. Without moving forward with the transaction, such efforts could severely damage the reputation of both parties in the aviation industry, according to Global.

Global and National were not able to recover from the LOI dispute. National secured financing from Goldman Sachs for the three Air France 747s, but was not able to complete the transaction for the Japan Airlines aircraft. Global eventually sued for breach of contract and deceit, claiming that National breached an express agreement to sell and lease from Global the eight 747s and fraudulently induced Global to enter into the express agreement with material misrepresentations regarding exclusivity and the time period by which Global was to secure financing. National counter-claimed, asserting claims for intentional misrepresentation, negligent misrepresentation, breach of contract and promissory estoppel.

On cross motions for summary judgment, the United States District Court judge in California narrowed the triable issues by granting partial summary judgment to National on Global’s claim that the LOI required National to enter into at least one operating lease and partial summary judgment to Global on the issue of its capacity to contract. Importantly, it found that the LOI was ambiguous as to the exclusivity issue, which would require the jury to hear extrinsic evidence, ultimately creating a material issue of fact to preclude judgment as a matter of law before trial.

Finding in favour of Global at trial that the agreement was exclusive by default, the jury ultimately awarded \$8 million in damages to Global, which amounted to a broker fee of \$1.9 million per aircraft or about \$8 million.

On the limited issue on appeal, the Ninth Circuit concluded that the jury “saw and heard extensive evidence on why the LOI made no sense to Global without exclusivity”. The jury stated that the agreement “concerned eight specific aircraft, and two different brokers could not purchase and lease back the same aircraft.”

Lessons learned

There are several lessons to take from the case. First, the LOI was silent on exclusivity. The trial court’s ruling on the ambiguous nature of the LOI regarding exclusivity was perhaps the most important part of the case. Without that ruling, Global would be hard pressed to present evidence of National’s attempt to insert a provision that the LOI was to be non-exclusive and National’s allegedly tacit approval of striking the provision in light of Global’s fierce objection to such a provision. Global also was able to present expert testimony that letters of intent are intended to be exclusive across the aircraft finance industry, and that most deals are completed if they reach the term sheet stage.

It would be wise for the parties to reach an understanding on whether the LOI is to be exclusive and to indicate it in the LOI. Courts have held that under New York law, a preliminary agreement ordinarily does not create a binding contract; however, preliminary agreements can create binding obligations in certain circumstances.

There are five factors that the court considers when determining whether an agreement imposes a binding obligation to negotiate in good faith:

1. Whether the intent to be bound is revealed by the language of the agreement.
2. The context of the negotiations.
3. The existence of open terms.
4. Partial performance.
5. The necessity of putting the agreement in final form, as indicated by the customary form of such transactions.

Parties can provide certainty where a contract has express language regarding exclusivity.

The LOI also provided that it was intended to be a binding agreement between National and Global. This is not uncommon in LOIs but only as to termination, expiration, choice of law and confidentiality. It is unusual in a transaction where many of the structural elements of the transaction are open. In this case, many of the important terms of the transaction were conditional, such as

“Without moving forward with the transaction, such efforts could severely damage the reputation of both parties in the aviation industry, according to Global.”

aircraft purchase price, rental rates, lease structure, purchase option, maintenance reserves, return conditions and financing.

Finally, the terms of the LOI were clear that the sale and lease of the aircraft was conditioned on National obtaining acceptable financing and satisfactory documentation and that Global was to deliver an acceptable MOU from a qualified lender. Despite this seemingly clear language, it would have been helpful for the LOI to include also a provision describing what would happen on a termination or the failure of a party to perform the required conditions precedent. In a similar vein, such provisions could include terms that limit a party’s damages, specifically regarding the refundability or forfeit of any security deposit, indemnification for misrepresentations, or the allocation of transaction costs and expenses.

Had National protected itself by limiting its exposure on the failure of what were stated to be conditions, it may have avoided an \$8 million damages award for a deal that was never consummated.

Although this case is not a precedential decision that is binding on lower courts, it should serve as a fair warning for those parties seeking to use LOI in aircraft transactions. Even at the term sheet stage, parties should avoid the desire to take short cuts in order to conclude a deal quickly. With a careful eye to the future, aircraft lessors and financiers can use this contracting tool efficiently and avoid the many pitfalls that are present in the Global case.

REGIONAL ANALYSIS

Brazil delays foreign investment reform

Investors eyeing larger equity positions in Brazil's airlines will have to wait a little longer to buy up stock, after the country's lawmakers delayed a key piece of legislation. Joe Kavanagh reports.



Although the real has strengthened this year, it reached a record low of more than four to the dollar in 2015. This placed extraordinary strain on airline costs

Foreign investors are allowed to own no more than 20% of the shares of Brazilian carriers. In June, legislators came close to removing the limitations that prevent foreign companies from owning majority stakes.

The country's House of Representatives put forward a provisional measure (No 714), which, among other changes, would have removed the 20% limit. The most significant of the proposed changes was one that allowed foreign companies to hold up to 100% of stock in Brazilian carriers.

The bill was sent to the Senate for approval, but was only partly approved. Although much of the bill was passed, the sections regarding foreign investment into airlines did not make it into law.

The Senate said it would approve the measure only on the condition that the country's interim president veto the parts regarding the relaxation of foreign ownership rules. Some senators are understood to be concerned about the possible impact on the country's smaller regional airlines, and have demanded that the proposal be debated more thoroughly.

However, *Airfinance Journal* understands that the president is keen to get a version of the law off the ground again soon, although he is not an advocate of allowing foreign companies to own 100% of Brazilian carriers. Sources say another vote could take place in September.

Although the move has been delayed, it looks likely to be passed in the future. If Brazil does loosen its foreign investment laws, it will profoundly change the landscape of the country's aviation industry.

What does it mean for Brazilian carriers?

Market sources tell *Airfinance Journal* that loosening the laws could kick-start a fresh wave of investment into the country's airlines, boosting their investment appeal and potentially allowing them large injections of capital at a particularly difficult time in their history.

The move will be welcomed by some airlines, which could benefit from foreign companies buying up more stock.

John Rodgerson, chief financial officer at Brazilian low-cost carrier Azul, tells *Airfinance Journal* that he welcomes the move as long as Brazilian companies are allowed the same rights abroad.

He says: "We do support any law that increases foreign ownership in Brazilian carriers, as long as there is reciprocity given [in] bilateral agreements."

Felipe Bosenso Veneziano, from Brazilian law firm Pinheiro Neto Advogados, says the law would likely lead to a boost in investment in Brazilian carriers.

If the ownership reforms are finally amended, he says: "We would expect an increase in foreign investment in Brazilian airlines and air taxi companies, by both existing foreign shareholders and new investors. The end of the restriction would open the market for new and unprecedented opportunities."

He adds that objections to the measure stem from the fact that "people had the idea, wrongly, that to open up the market would adversely affect airlines by extinguishing local jobs and causing turmoil in the segment".

He notes that the ownership of Brazilian air-

lines is attractive to foreign companies, adding: "There is certainly appetite for investment."

Richard Furey, a partner in the New York office of Holland & Knight, also believes the relaxation of Brazilian foreign investment laws might boost foreign investment at a crucial time for the country's airlines.

He says: "This legislation could be a significant development for Brazil's aviation sector by potentially promoting greater investment, particularly at a time such as now, when the sector is dealing with increasing operational costs and decreasing passenger demand in some routes."

There is plenty of international appetite for equity stakes in the country's airlines – as shown by a number of recent deals.

In November 2015, HNA Group announced its intention to take a 23.7% stake in Azul, making it the single largest shareholder in the company. The \$450 million investment was announced when Brazil's economic problems were already well entrenched, which demonstrates how eager HNA Group was to join with the low-cost carrier.

In June the same year, United Airlines announced that it would take a 5% stake in the airline for \$100 million.

Meanwhile, Delta Airlines has held a minority stake – about 16% – in Gol's preferred stock since 2011. The US carrier has further supported its Brazilian partner by underwriting a \$300 million term loan that Gol closed in September 2015.

The deal made Delta the single largest foreign shareholder in the airline. Gol's controlling stakeholder is Fundo de Investimento em Participações Volluto, a Brazilian investment

fund that is owned by the airline's founders. It owns 100% of the airline's common shares and 34% of its preferred shares.

Many companies have placed long-term bets on Brazil. With the Brazilian real at 3.26 to the US dollar, compared with 2.23 in August 2014, investment in Brazilian airlines will seem attractive to those that believe they will weather the current storm. For those that do, the relaxation of foreign investment laws is all they need to grow their stakes.

Brazilian carriers suffer

There has rarely been a more difficult time to manage an airline in Brazil.

Falling passenger demand, investor uncertainty and currency exchange pressures have combined to create one of the most challenging operating environments in the country's history. With a weak local currency, fixed dollar costs such as lease rentals and debt payments become harder to bear.

There is even turmoil at the very top of government, as President Dilma Rousseff stands trial in the country's Senate for allegedly breaking fiscal rules by covering up a growing government deficit. She has been replaced by interim president Michel Temer.

“Brazil’s major airlines have responded to the macroeconomic troubles by cutting capacity.”

Brazil's major airlines have responded to the macroeconomic troubles by cutting capacity. Latam has announced plans to reduce aircraft commitments by 40%, while Gol has delayed deliveries and subleased more aircraft than usual to foreign airlines during its low season.

Allowing foreign companies to buy more of its stock would provide a welcome liquidity boost for Gol, as it grapples with falling demand and foreign exchange pressure.

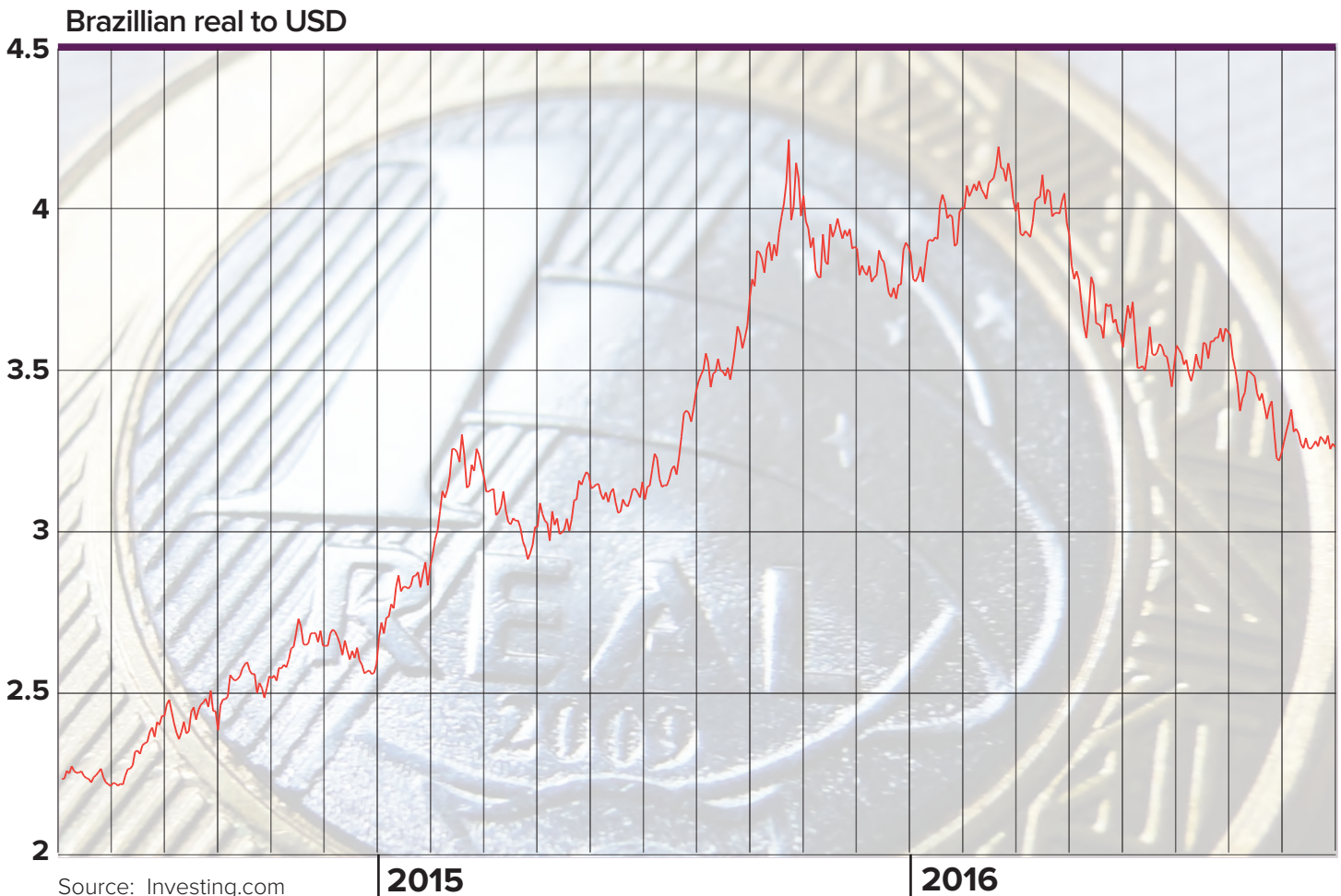
Although it has reshuffled its senior management in order to restore profitability, the airline has skirted bankruptcy in recent months. It was forced to make a debt exchange offer with bondholders and reach refinancing agreements with Brazilian banks, which allowed it to reduce principal payments until 2017.

In March, Gol brought in SkyWorks Capital to help it renegotiate lease agreements, and it also announced the hiring of PJT Partners to advise it on capital structure and liquidity.

In November last year, it announced a capacity reduction plan that included the deferral of 737-800 deliveries from Boeing. To date, the airline has returned about 15% of its total fleet and plans to reduce its capacity by between 6% and 8% this year.

Latam also drew attention to falling demand in Brazil during its most recent quarterly report.

In the first three months of 2016, Latam Airlines Brazil reduced capacity by 8.4% year on year. It also reduced routes between Brazil and the US, and expects to reduce available seat kilometres by 35% in the second quarter.



SPONSORED EDITORIAL

Contract practices under Cape Town Convention



Mary Townsend

Mary Townsend, senior associate at A&L Goodbody, talks about the role of Cape Town counsel and contract practices under the Convention.

During the past 12 months, the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on Matters Specific to Aircraft Equipment (Cape Town Convention) has taken effect in Australia, Ivory Coast, Denmark, Spain, Sweden and the UK.

A&L Goodbody has been advising on the convention for more than 10 years, since it was ratified by Ireland in 2006. During this time, we have gained considerable insight on how best to manage the legal and practical issues relating to our performance of this role.

Role of Cape Town counsel

The role of Cape Town counsel includes advising on the applicability of the convention providing advice on the creation of international interests under the convention, assisting clients in relation to the registration of those international interests with the International Registry and providing legal opinions to lessors and financiers confirming that relevant international interests have been registered.

“A&L Goodbody has been advising on the Cape Town Convention for more than 10 years, since it was ratified by Ireland in 2006.”

On a cross-border transaction with counsel appointed in each relevant jurisdiction, it is the commercial practice that counsel in one jurisdiction will be appointed as Cape Town counsel tasked with looking at the transaction as a whole and considering the applicability of the convention to that transaction.

Irish counsel have often been chosen for this role because of expertise and familiarity with the convention, but since aircraft are commonly operated outside of Ireland under documents governed by New York, English or other governing laws, this task has required us, as Irish lawyers, to look beyond our usual role of advising as to Irish law and to look at the totality of the relevant transaction across multiple jurisdictions.

We have found that there are three key aspects to advising on a transaction as Cape Town counsel:

1. Advising on the relevant national law; when the convention took effect; what declarations have been made by the relevant jurisdiction as part of the ratification process; and, where applicable, the process for applications to the local aviation authority for authorised entry point codes.

2. Advising on the convention as a body of law independent of national laws.

This is a more difficult role for lawyers because it requires us to consider the convention outside of the constraints of national law and the concepts with which we are familiar; and to consider instead whether interests are created under the convention that are not dependent on national law.

For example, in the case of a New York law aircraft mortgage, the chief considerations to determine if the mortgage constitutes an international interest under the convention are:

- does it relate to an aircraft object within the meaning of the convention – ie, an airframe, aircraft engine or helicopter that meets the technical specifications set out in the protocol?
- is it a security agreement within the meaning of the convention?

Once it is established that a valid agreement has been created as a matter of the governing law of the mortgage, then, regardless of how it may be characterised as a matter of the governing law¹, the question of whether it is a “security agreement” or a “lease” or a “title reservation agreement” for the purposes of the convention is determined by the convention itself.

The definition of a security agreement in the convention is drafted to encompass security agreements in their widest context. If it is “an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an [aircraft] object to secure performance of any existing or future obligation of the chargor or a third person”, then it is a security agreement for the purposes of the convention. The governing law characterisation of an agreement is only relevant for the purposes of the remedies applicable to the international interest under the convention.

- does it meet the formal requirements of Article 7 of the convention – ie, in writing, relates to an object of which the debtor (in our case, the mortgagor) has power to dispose, describes the aircraft object by manufacturer, serial

number and model designator and enables the secured obligations to be determined?

- is there a connecting factor for the purposes of the convention – ie, is the mortgagor situated in a contracting state and/or is the airframe registered in a contracting state?

3. Assisting our clients with making registrations of the international interests on the International Registry.

We may be advising our clients on how to register their aircraft-owning entities as transacting user entities with the International Registry, or how to consent to or refuse an application made by another party.

As lawyers, we have established A&L Goodbody as a professional user entity which allows us to apply to transacting user entities to initiate, or to consent to, registrations on their behalf.

We are often involved in setting up a closing room. The closing room is a very useful functionality on the International Registry website for multiple aircraft multi-jurisdiction transactions. It allows us to pre-position registrations in a prescribed order to which each transacting party must consent before the registrations in the closing room go live.

Contract practices

When drafting documents that are intended to constitute international interests under the convention or reviewing documents as Cape Town counsel which are drafted by others, there are certain issues which we must consider:

- at a basic level, have the formal requirements of Article 7 been met?
- what representations are required in order to back up our analysis and conclusions as to the constitution of international interests under the document? Typically, these include that the airframe and engines are aircraft objects and meet the minimum technical specifications set out in the protocol, that the debtor is situated in a contracting state within the meaning of Article 4, and that the debtor has power to dispose of the relevant aircraft object;
- what covenants are required to facilitate the making of the registrations with the International Registry? Typically, these include that a party will register as a transacting user entity or will grant professional user authorisation to A&L Goodbody to allow us to complete the registrations, and a further assurance covenant by which the debtor agrees to enter into such further documents as are required in order to constitute an international interest under the convention.

¹For example, in the US and other jurisdictions, a conditional sale agreement or title reservation agreement and certain types of leases may be characterised as security agreements for the purposes of the governing law but for the purposes of the convention they would be a “title reservation agreement” or a “lease”.

THE ENGINE BEHIND AVIATION LEGAL ADVICE

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AIRFINANCE JOURNAL LEGAL SURVEY

And the winners are...

Airfinance Journal announces the victors in the fourth year of its legal survey, which recognises the most active law firms in 2015 by region and financing structure.

First, we would like to thank all the law firms which participated in our fourth legal survey. For those unfamiliar with the survey, aviation finance deals are counted based on submissions from law firms and are aggregated to create the winners.

The survey has recorded a few general shifts in aviation financing. The growth of emerging markets, particularly in Asia, has heightened the demand for new aircraft, meaning there has been a steady level of financings and leasing. The second-hand market is still as active as ever, as carriers and lessors that specialise in mid-life aircraft acquire assets and sell portfolios.

The survey focuses purely on aircraft financings but it is worth noting that many law firms spent 2015 involved in complex restructurings.

In addition, the significant leasing consolidation occurring in the past few years has kept many firms busy. In a similar vein, legal consolidation has also ensured that some law firms have expanded into new geographies and practice areas.

The law firms highlighted in the survey represent the market leaders in this space, and they continue to evolve and thrive in today's active aircraft finance market.

Methodology

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

The legal survey reviews deals from 2015 only. This is significant because we recognise that markets change, as do law firms; however, we felt 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 the database and can be reviewed by our readers. In this sense, our survey is unique. Our researchers assess each deal to verify them and to avoid double counting.

The benefit of using the database is that we can offer an in-depth presentation of law firm activity by both product type and region.

There are limitations to the survey. We recognise 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

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 regions, 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 North America, for instance, or Operating Leases receives five points and the second receives four points, and so on.

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

OVERALL WINNERS

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, we 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. The firm came top in the Asia-Pacific, Latin America, Commercial Loan, Export Credit and Operating Lease categories.

Reflecting on the deals done last year, Clifford Chance partner William Glaister says: "We have seen an uptick in portfolio sales, portfolio financings and new alternative investors in Asia-Pacific and an increase in M&A and funds activity around the world. Our success comes from having our team positioned in the right markets. Experts in every region display our ability to execute global transactions for our clients and that includes our recent success in the Middle East and Latin America."

Norton Rose Fulbright was ranked second overall in the survey. Duncan Batchelor, partner and deputy head of aviation at the firm, reflects that the sector has been marked by innovation in financing.

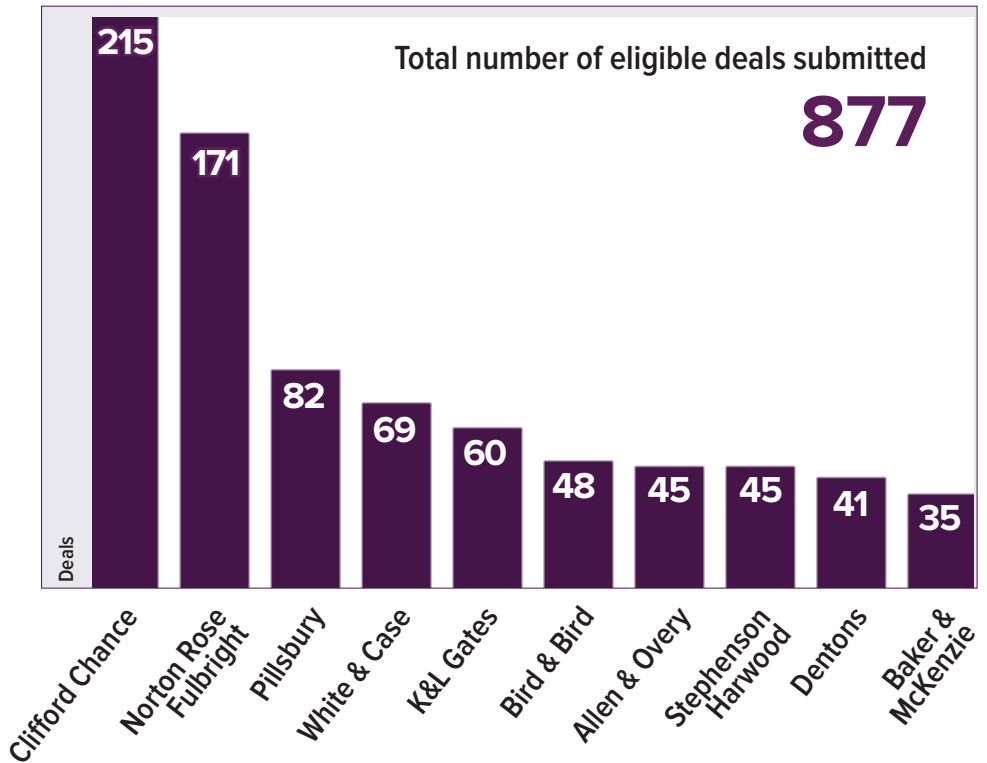
"The aviation finance market is becoming increasingly attractive to a diverse group of lenders and investors. While geopolitical disruption remains a threat and banks are thinking carefully about the impact of Basel IV and other regulations, airlines are benefiting from low interest rates, rising demand for air travel and a lower oil price," he tells *Airfinance Journal*.

Pillsbury was placed third overall. Mark Lessard, partner in the firm's New York office says: "Commercial debt remains plentiful for the time being largely due to the hard work of arrangers and borrowers in educating and widening the aviation banking base to include less traditional players, including many from Asia. Margins have stayed low for the best credits even while liquidity costs have ticked up for many institutions, resulting in a more complicated syndication environment."

Top Ten Law Firms by Score

Rank	Firm	Score
1	Clifford Chance	47
2	Norton Rose Fulbright	45
3	Pillsbury	25
4	White & Case	19
5	Allen & Overy	9
5	K&L Gates	9
6	Bird & Bird	7
6	Stephenson Harwood	7
7	Baker Mackenzie	6
7	Kaye Scholer	6
8	Dentons	4
9	BLP	3
9	Pinheiro	3
10	Wadia Ghandy	1

Top Ten Law Firms by Number of Deals



Africa

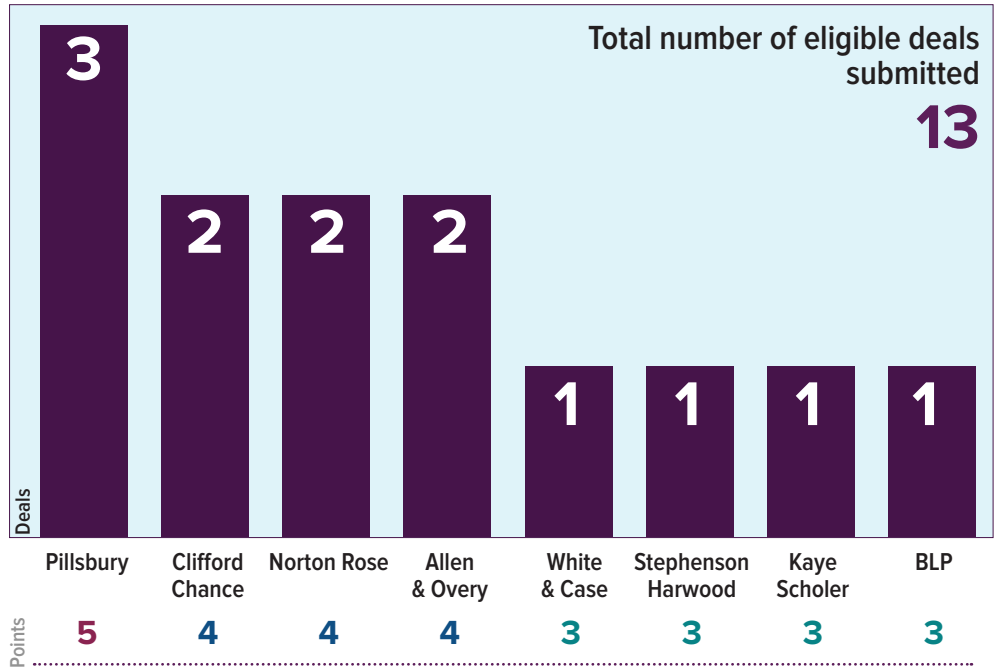
Paul Jebely, managing partner at Pillsbury, believes that over 2015, aircraft lessors have been increasing their African exposure.

“I view lessors as critical to African aviation development at this time, particularly as access to capital remains constrained for all but the top-tier flag carriers, and lessors are better able to access capital when back-leveraging African deals,” he tells *Airfinance Journal*, adding: “Back-leveraged operating lease transactions is also what we saw the most of.”

In 2015, South African banks, such as Nedbank and Investec, were among the more active in the region. Alternatives to commercial bank financing have also been available to carriers in Africa, through the African Export-Import Bank and some private equity players.

Export credit-backed deals made up 30.7% of all the eligible Africa deals submitted. But with the export agencies going through a period of inactivity, African carriers may have to resort to other forms of financing for aircraft in the future.

Operating leases are also popular in Africa, and commercial financing is available for the good credits. In 2015, Ethiopian Airlines added six Boeing 787-8s to its fleet, as part of a sale and leaseback transaction. Comair raised \$150 million in US Export-Import Bank guaranteed financing to fund the delivery of four new Boeing 737-800s. The timing of the deal was critical to secure the final commitment from US Ex-Im before its authorisation lapsed.



Despite some significant deals being closed in 2015, the region’s ageing fleet is in need of replacement. “The significant re-fleeting that the OEMs [original equipment manufacturers] continue to forecast is not yet underway by any meaningful measure, and we have seen an inclination toward older equipment to secure lift in a low fuel cost environment in more than a couple instances

where the market expected new orders from a carrier,” says Jebely.

He notes that Chinese participation in the African market remains limited relative to Chinese involvement in other sectors in Africa, such as infrastructure financing. However, Jebely says there is more interest from Chinese leasing firms today than there was 24 months ago.

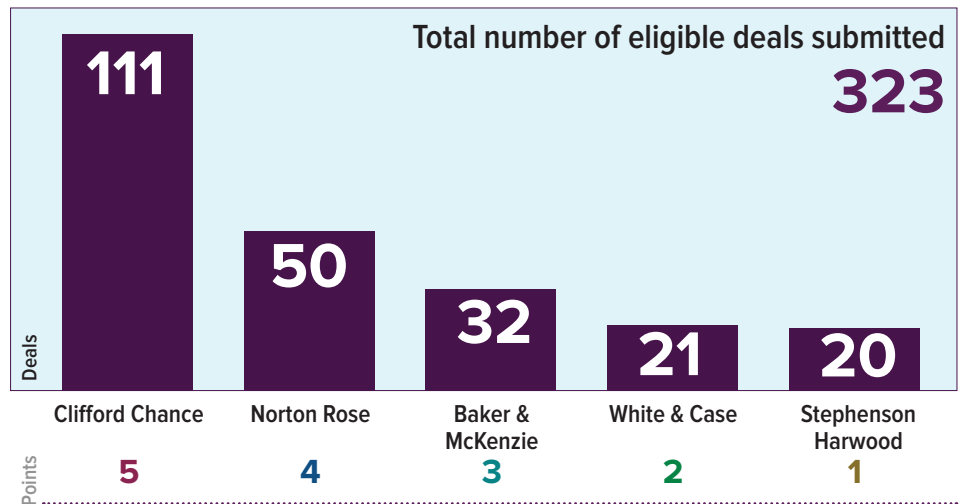
Asia-Pacific

The 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 – particularly low-cost ones – and airlines are racing to acquire enough aircraft to satisfy their broadening customer base.

At the centre of this growth is China, a market which international law firms are keen to increase their knowledge of and tap into, despite concerns about the so-called lower “China price” offered to law firms for their services by Chinese airlines.

“China plays an ever increasingly significant role in the rapid growth of the aviation industry in Asia, led by local airlines and supported by the government,” says Keith Sandilands, a partner and Asia head of aviation for Norton Rose Fulbright, the firm which came second in this category.

He adds: “Large-scale outbound investment from China and, to a lesser extent, throughout Asia, is becoming a feature of the market, together with a notable increase in non-traditional financiers which, together with banks, capital markets and private equity, are contributing to the continued flow of finance into the aviation industry.”



Outside of China, the southeast Asian market is another buoyant region, despite issues about currency volatility in the larger local markets such as Indonesia, says Simon Briscoe, head of asset finance in Asia-Pacific for Clifford Chance, the law firm which came first in this category.

He adds that lessors are following developments such as the large orders for new aircraft being placed by Airasia, Vietjet and

Malaysia Airlines with great interest.

“In North Asia, the PRC [People’s Republic of China] market continues to absorb large numbers of aircraft, although the liquidity of the domestic PRC financing institutions, both in dollar and RMB [renminbi] terms, means less opportunity for international banks, and even the non-PRC leasing companies are finding it more challenging in terms of placements,” says Briscoe.

Europe

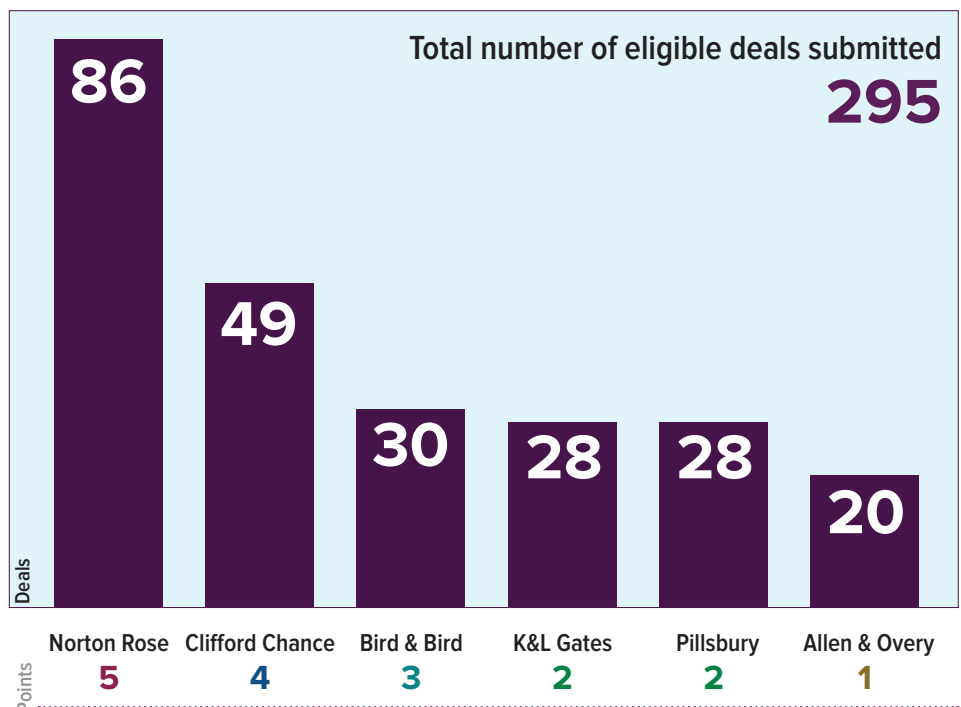
In Europe, the aviation finance market has seen an increasing number of airlines issuing on an unsecured basis and tapping the European and US capital markets. The operating lease and commercial debt markets have remained robust and several European carriers have been tapping the Jolco market.

One of the biggest European deals of the year was Ryanair’s second eurobond, which broke its first record for the lowest coupon in an aviation issuance.

The eight-year €850 million (\$949.3 million) offering had a coupon of 1.125%, which, as well as being the lowest coupon in an aviation issuance, was the lowest coupon achieved for an Irish corporate and the joint lowest coupon for any seven-year BBB+ eurobond.

Virgin Atlantic closed another landmark transaction, tapping a new form of financing. The airline raised capital from airport landing slots, issuing the first slot-backed bond in Europe. The transaction unlocked a new source of capital, and reached out to investors such as pension funds, insurance groups and specialist infrastructure debt funds, which seek long-term capital to match their maturities.

In terms of scale, International Airlines Group’s €1 billion convertible bond was among the most impressive. Split into five-year and a seven-year tranches, its size and



low interest rates made it one of the more memorable European deals in 2015.

“Europe is an increasingly diverse aviation finance market. We are seeing a steady stream of new lenders, insurance companies,

private equity and pension funds investing in aviation in many different ways, attracted by the wide range of options to buy, lease and finance aircraft available in the region,” says Norton Rose Fulbright’s Batchelor.

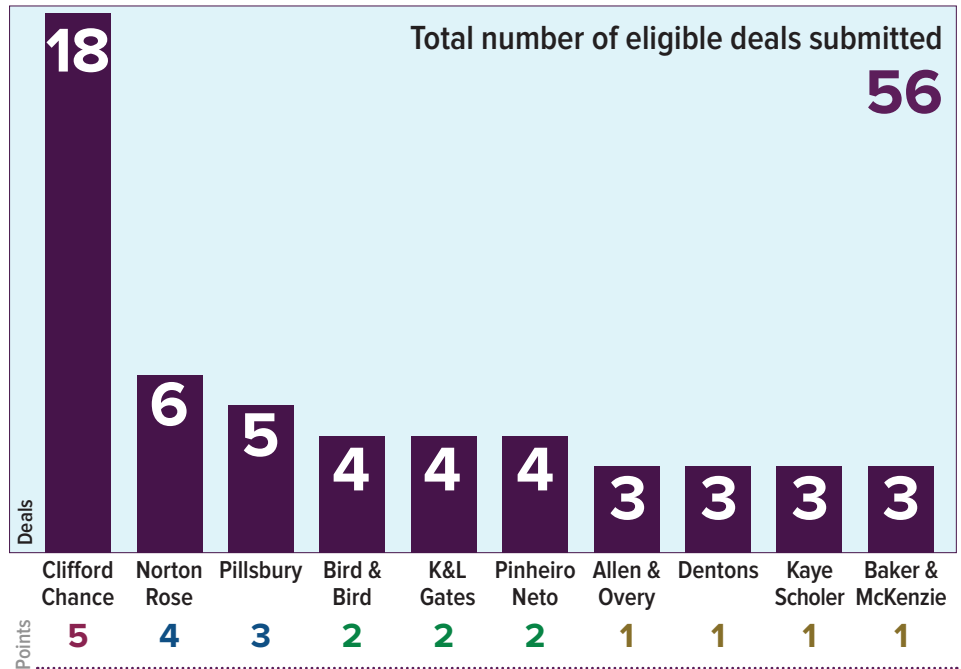
Latin America

For a region that has experienced considerable economic slowdown during the past year, 2015 has seen some exciting deals coming out of Latin America. The region's highest value aircraft deal of 2015 was Chile-based Latam's debut enhanced equipment trust certificate (EETC), a deal that initially raised \$664 million before it was upsized to more than \$1 billion.

Clifford Chance advised the airline on the transaction. It was the first aircraft-backed EETC to come out of the Latin America.

In the region, 7.1% of the eligible deals submitted were via the capital markets, 32.1% were commercial loan deals, 5.4% were export credit deals, 39.3% were operating leases and 16.1% were structured leases. Despite economic difficulty caused by a strong US dollar and falling commodity prices, robust traffic growth in the region is likely to attract new financiers over the coming years. Boeing's 2016 Current Market Outlook forecasts a 5.6% average annual growth in Latin America from 2016 to 2035.

Emily DiStefano, partner in Clifford Chance's asset finance group, tells *Airfinance Journal*: "Latin America's growth opportunities reflect the size and diversity of the region, and the breadth of our deals across



the region reflects this. The importance of historically dominant airlines such as Latam and emerging regional carriers outside of Brazil have created an evolving market for

aviation, and these airlines are looking to expand beyond leasing through alternative financing sources such as high-yield bonds and EETC transactions."

Middle East

Last year saw some innovative capital markets issuances from some of the biggest carriers in the Middle East, but commercial bank lending and operating leases still dominated the submissions.

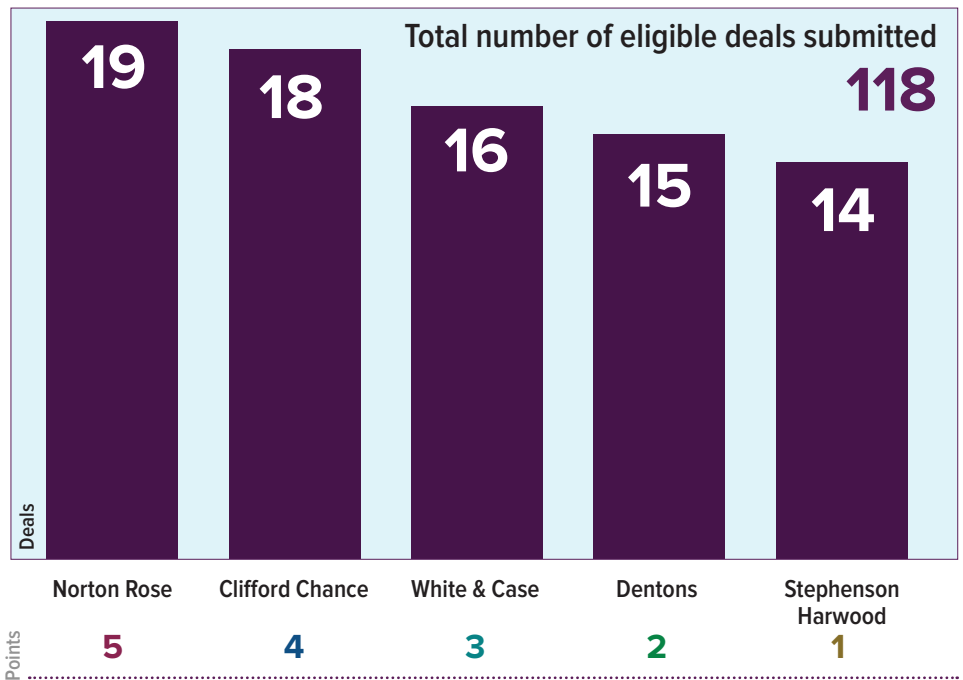
"The Middle East remains an important region in the aviation sector," says Antony Single, partner in Clifford Chance's asset finance group. "Diversity of funding sources is a key issue for our clients – we have seen a real growth in Islamic finance and the sukuk market, such as the historic ECGD Emirates sukuk deal that closed last year."

Emirates' \$913 million ECGD-guaranteed sukuk funded the delivery of four new A380s and is the largest capital markets offering involving a guarantee from an export credit agency (ECA). The bond, which amortises in March 2025, is the first sukuk bond to be guaranteed by the UK ECA.

Elsewhere in the region, the aviation finance community saw innovative structures from Etihad Partners, which closed a collateralised loan obligation for the airline's equity partners. It was the first of its type to be done with aircraft and featured seven different obligations, many of which were weak credits.

Some of the Gulf airlines found new investors for widebody aircraft.

Mario Jacovides, global head of structured and asset finance at Allen & Overy, says: "We have seen new financing sourc-



es last year where we represented Etihad in its 100% Korean-backed financing, which was structured as a 15-year fixed-coupon full payout finance lease for an A380 and represented a landmark deal for the Korean market."

Going forward, Clifford Chance's Single believes there may be opportunities in Iran.

He says: "The opening up of the Iranian market to international business and the start of deals there should be an exciting development for 2017 and beyond."

North America

The air finance community has seen some major deals come out of North America in the past year.

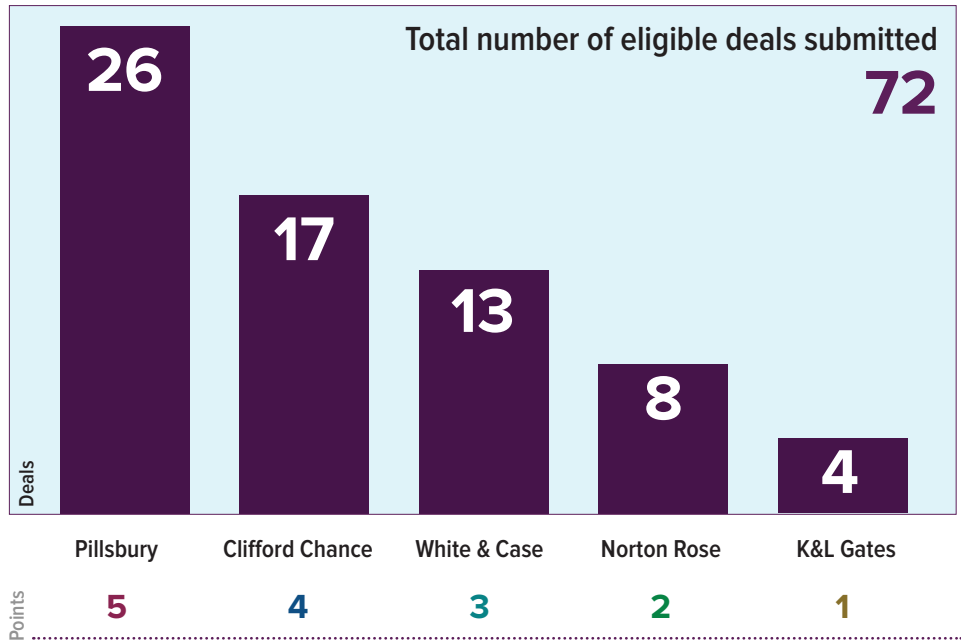
There was a spate of capital markets issuances from some of the airlines and lessors, making up 22.2% of all the eligible deals. One of the most notable capital markets deals in this region was Element Financial's asset-backed security (ABS), the largest and most widely syndicated aircraft ABS deals since 2007. The deal, which was secured against 49 aircraft, helped the US company grow its presence in the leasing market.

Although there was a large proportion of capital markets deals in this category, commercial loan deals were the most common product in this region, making up 59.7% of all the eligible deals submitted.

Along with the lessors, some of region's larger carriers, such as American and United, raised large amounts of secured debt from a wide array of domestic and international banks.

Low-cost carriers such as Frontier and Spirit have also been financing new deliveries, with the latter issuing its debut EETC in 2015.

"Market analysts have been talking about US reflecting for several years, and after some delay following the financial crisis, the last 18 months have seen the US majors integrate large numbers of new deliveries into their fleets using well-established financing techniques, including commercial debt,



EETCs, private placements and operating leasing," says Lessard at Pillsbury's New York office.

"US lessors have remained attractive credits, increasingly favouring the economies of scale offered by unsecured financings and large portfolio transactions. Lenders also seem to like the diversity offered by large portfolios and have shown themselves willing

to fund blind-pool warehouse facilities for established platforms, especially where there is a prospect of take-out financing."

Lessard adds: "Meanwhile, US private equity and Asian corporate capital have continued to flow into the leasing space, whether through aircraft trading, ABS [asset-backed security] equity sales or joint-venture arrangements."

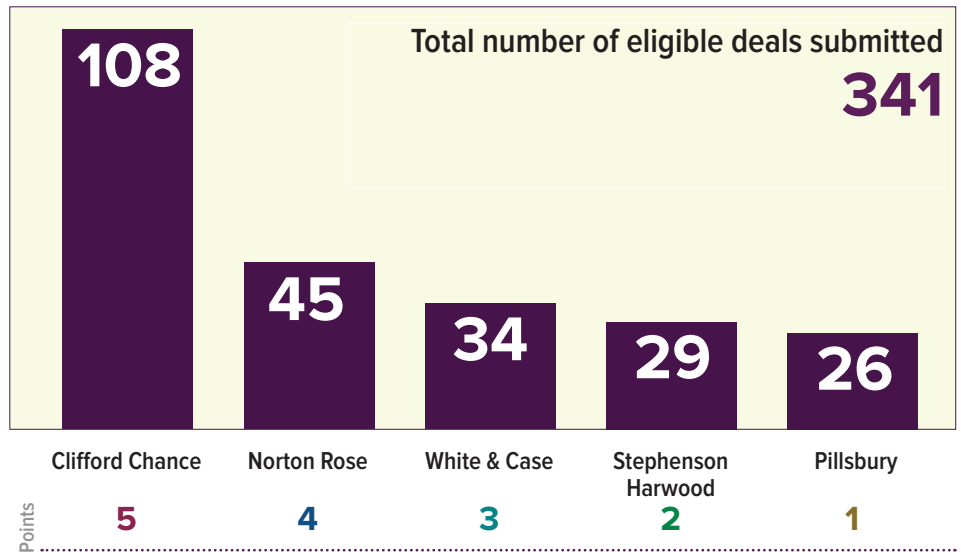
Commercial loans

The commercial loan market has remained active throughout 2015, making up 38.8% of the eligible deals submitted. Although the leasing market is projected to grow to nearly half of the market share, with low interest rates, bank financings are becoming increasingly popular with airlines in different regions. More banks are becoming active in aviation, and prices for bank funding have become more competitive.

Although the export credit agencies have been inactive throughout much of 2016, the commercial market is in good health, meaning the loss of the ECAs has not been a big burden for most airlines.

"Commercial lenders have started to express their strength in the aviation sector as markets such as Asia-Pacific, the Americas and Middle East grow and turn toward more traditional financing methods. The significant amount of bank/non-bank sector liquidity has proven extremely competitive in terms of pricing and scale," Clifford Chance's Glaister tells *Airfinance Journal*.

One of the major commercial loan deals of the year was Aercap's \$817 million loan, which was secured against 22 aircraft,



including four Boeing 737-800s, four Airbus A320neos, three 787-9s and two A350s.

In 2015, the market welcomed new banks from regions such as the Middle East and Asia-Pacific.

Many of these new banks are attracted

to aviation because of the increased global demand and passenger traffic. Some of the older aviation finance banks have returned to or been more active in the market, showing that aviation is an industry that offers attractive returns.

Capital Markets

The capital markets continue to provide competitive forms of financing for airlines that have access to them. In Asia this year, two major lessors – BOC Aviation and CDB Leasing – tapped the equity capital markets with initial public offerings in Hong Kong.

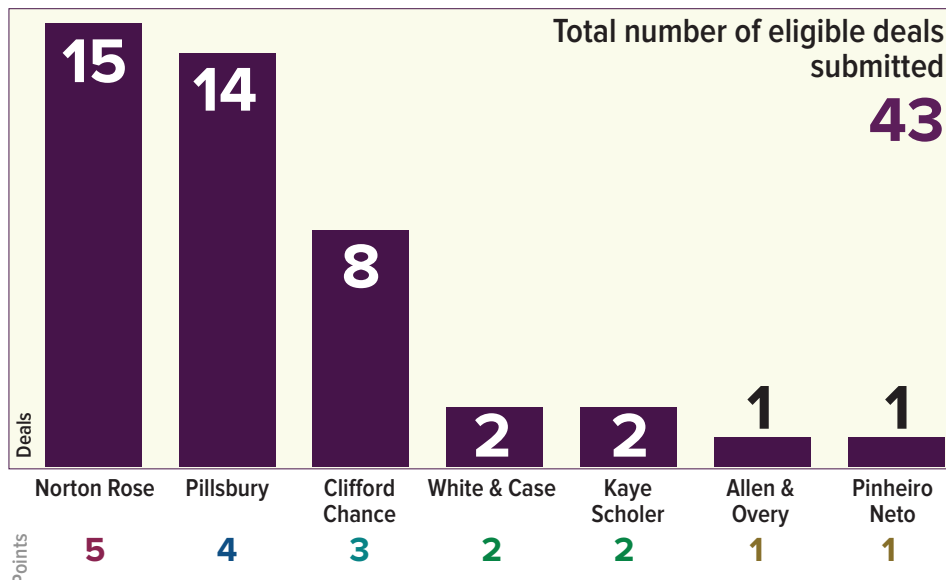
Mark Lessard, a partner in New York for Pillsbury, the firm which came second in this category, says: “In 2015-16, the aviation capital markets continued their march toward broader internationalization on the back of the Cape Town Convention, with an ever-widening investor base becoming more familiar with the highly granular asset and legal risks involved.”

Lessard noted that there have recently been some “groundbreaking” enhanced equipment trust certificates (EETCs) by non-US airlines, including Latam, THY and Norwegian, after the success of EETCs in common law jurisdictions by Air Canada, British Airways and Virgin Australia.

“Execution timeframes on EETCs are as short as they have ever been, with some established issuers able to tap the market in two weeks or less,” he says.

While the asset-backed securitisation (ABS) market has seen some success, such as in BOC Aviation’s debut ABS, Lessard says it remains “more fragmented and less standardised” than the EETC market.

This comes despite “record issuance in 2015 as lessors took advantage of the efficient form of staple financing to capitalise on intense



private equity appetite for exposure to the leasing sector”.

He adds: “The ABS market has essentially segmented into two typologies, with the newer and more liquid portfolios likely to attract a wider range of more conservative, long-term investors, while the older portfolio securitisations offer higher yields and a more rapid return of capital as a larger number of less liquid assets are run-off, starting almost immediately following closing.

“However, there remain important differences between transactions, typically put in place to deal with the particularities of a given portfolio (all the more important that these transactions are non-recourse). The main difficulty for some investors remains cash-flow unpredictability, but the rating agencies have worked hard to develop robust methodologies in recent years and there appears to be increased confidence by investors in their ultimate recovery of principal.”

Export Credit

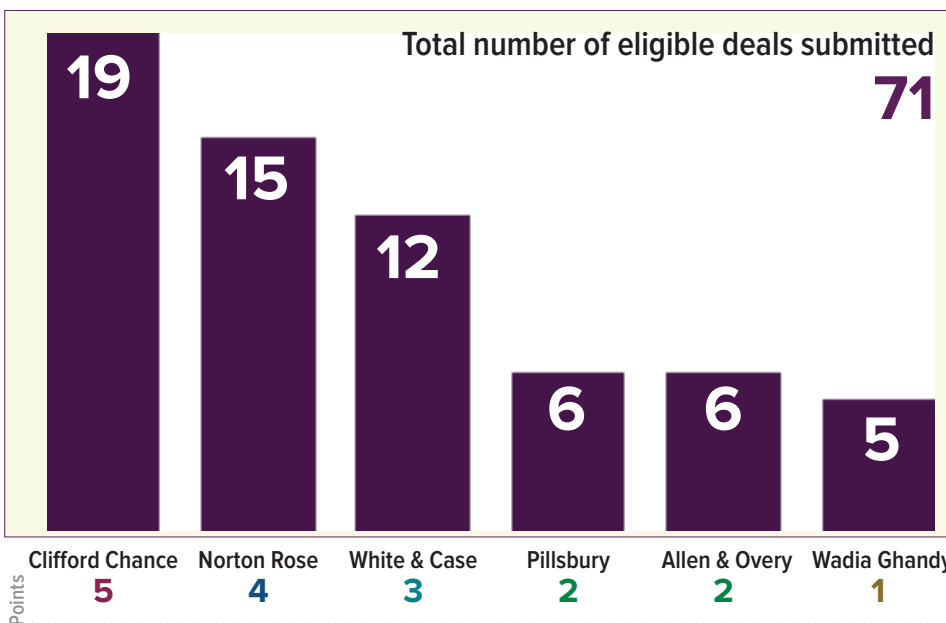
The export credit market has been weak this year, because of a number of factors. While the US Ex-Im Bank was granted reauthorization in December with a mandate until 30 September 2019, the bank cannot do any deals at the moment.

As its vice-president of transportation Robert Roy said at the 14th Annual China Airfinance Conference in Shanghai, all transactions need to be approved by the bank’s board of directors, which is missing its third member. Ex-Im requires a board of three to make a quorum, but now only has two directors.

Michael Smith, a partner in New York for White & Case, says: “I would expect there to be some pent-up demand for Ex-Im Bank financing once Ex-Im Bank is able to approve new transactions above the current \$10 million threshold.

“Asian carriers and lessors will likely be significant customers again given the size of their orderbooks. Ex-Im Bank financing may be particularly useful in the case of widebodies and freighters. Capital markets products with Ex-Im Bank support should also figure prominently.”

Justin Benson, a partner in White & Case’s London office, says: “The widespread availability of cheap funding sources



available to airlines and lessors coupled with recent geopolitical issues have resulted in a continued reduction in the demand for and availability of export credit support from the European ECAs [export credit agencies].

“Notwithstanding this, we have continued to play a very active role for our clients in export credit financing of different aircraft types both for new delivery financings as well as in restructurings of existing financings.”



Operating Leases

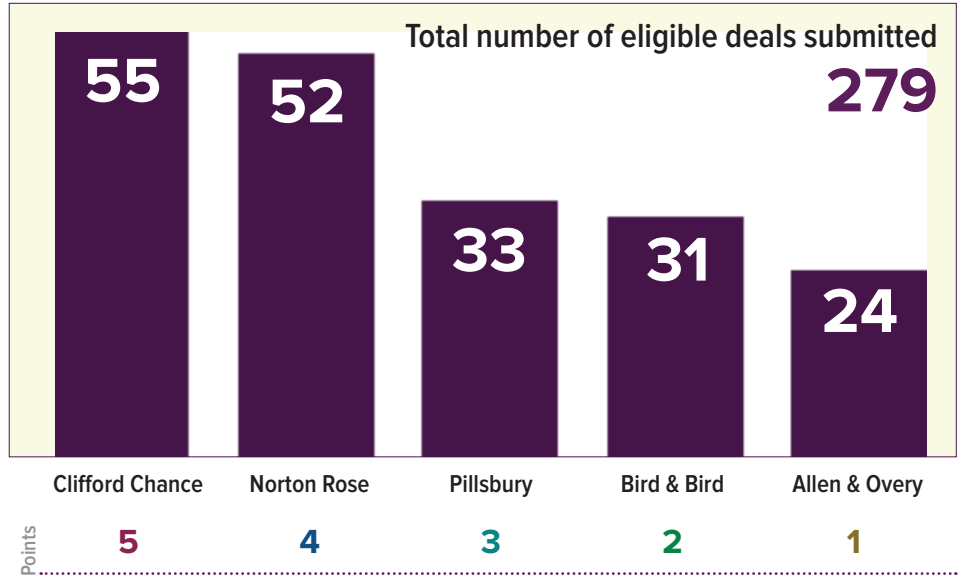
Operating leasing is one of the most popular financing solutions in the market, providing for about 40% of all aircraft deliveries.

“The leasing business remains attractive to investors, as evidenced by the recent successful IPOs [initial public offerings] of BOC Aviation and CDB Leasing in Hong Kong, the strong interest in CIT’s commercial aircraft portfolio sale and Airasia’s reported decision to mandate advisers to assist in the disposal of a stake in its leasing affiliate Asia Aviation Capital,” says Leo Fattorini, a partner in Singapore for Bird & Bird.

“As a result, we expect to continue to see new entrants to the leasing market in this region, as well as further consolidation along the lines of Bohai’s acquisition of Avolon.”

Fattorini believes that the introduction of new aircraft types will drive the operating lease business in the coming years.

“With Airbus A320neo production ramping up in 2016 and given that many of the region’s LCCs [low-cost carriers] have made substantial orders for the type, it’s no surprise that operating



lessors from inside and outside the Asia-Pacific region have been keen to seal sale and leaseback deals with Asia-based airlines for 2016 and 2017 Neo deliveries,” he says.

“We expect this trend to continue

as Neo production rates increase, with carriers who have placed larger orders also looking to more diverse methods of financing their new deliveries, whether in the form of debt finance, structured finance or through the capital markets.”

Structured Leases

The structured leasing market remains strong this year, seeing a greater presence of German investment. For example, *Airfinance Journal* reported in April that Emirates had closed two structured sale and leaseback for two 777-300ERs (MSNs 41359 and 41370). German company EMP Structured Assets arranged the transaction, while Germany’s Dekabank provided a senior loan.

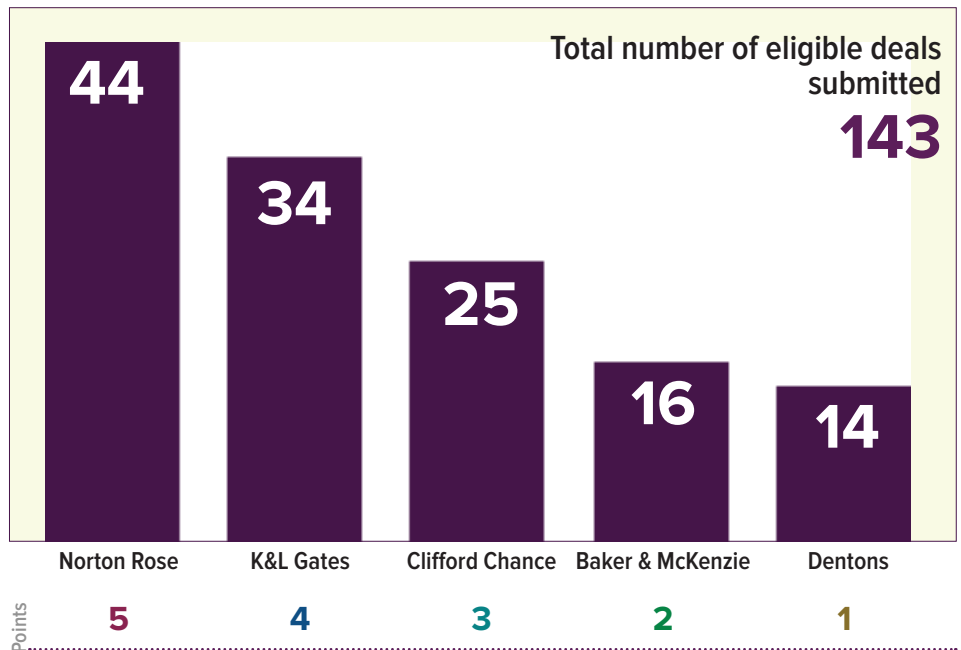
Despite some uncertainty in the market last year about the future viability of the Japanese operating lease with call option (Jolco), market players argue that the structure is set to remain popular and in-demand this year.

George Paterson, a partner at Norton Rose Fulbright, the firm which came first in this category, Jolcos are set to remain popular with Chinese airlines.

“They will undoubtedly look to other forms of optimised financing as they need to secure finance from a wide range of sources to cover the cost of a significant orderbook,” he adds.

Indeed, *Airfinance Journal*’s Jolco Survey this year recorded several Jolcos for Chinese companies, including China Eastern Airlines and ICBC Financial Leasing.

In an interview with *Airfinance Journal*, Hisanaga Tanimura, chief executive officer of Japanese equity arranger FPG, said that his company would be targeting Jolco investments for Chinese airlines and lessors.



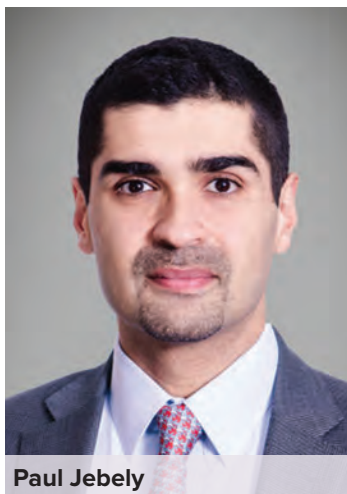
Robert Melson, a partner, head of aircraft finance and leasing, and practice group coordinator at K&L Gates, says: “The structured leasing market continued its uptick in deal volume this past year, with the Jolco market remaining red hot.

“The equity demand in the Jolco market

continues to outpace the availability of aircraft tier-one airlines bring to market for the product. This has led to fierce competition among the leasing companies that arrange the equity for Jolco transactions. It has also led to equity deciding to finance non tier-one airlines that previously had not had access to the Jolco product.”

SPONSORED EDITORIAL

Aviation finance unchained – potential of blockchain technology



Paul Jebely



Mark Lessard

Paul Jebely, partner, finance, Hong Kong, and Mark Lessard, partner, finance, New York at Pillsbury discuss the implications of distributed ledger technology (DLT) for aviation finance.

Blockchain technology, also called distributed ledger technology (DLT), is best known for its use in the cryptocurrency known as Bitcoin. This revolutionary technology has garnered great interest in the financial sector, mobilising public and private sector players seeking to reduce or eliminate entire categories of transaction costs and create deeper, more liquid capital markets.

Given the amount of aircraft trading and financing activity in the market, and the concomitant novation fatigue afflicting many airlines, the time is ripe for a thought experiment on the potential application of this disruptive technology to aircraft finance.

New technology

A blockchain is a ledger of transactions between parties on a network. The difference between a blockchain and a traditional database, such as DTC or the international registry, is that the ledger is distributed. That is, each party on the network maintains a complete copy of the ledger. The parties all participate collectively in the validation and recordation of transactions via a consensus protocol. There is no single arbiter of truth (no exchange, no bank, no custodian) clearing and settling those transactions. Thus, a blockchain ledger can efficiently record transactions without costs and delays caused by intermediaries.

Bitcoin was the first application of

blockchain technology, but blockchains can be used to clear, settle, validate and record transactions in any asset that can be digitized. T+3 settlement delays need no longer exist. Capital tables, including asset-specific attributes, such as tranching or tax attributes that might vary from one transaction to the next, would be managed algorithmically from agreement to execution to performance, without the opportunity for human error. As such, some economists predict that the liquidity and value of securities issued on legacy systems will be lower in comparison with securities issued on blockchain-based systems.

DLT also makes possible the use of so-called smart contracts – ie, contracts embedded in computer code that can implement themselves automatically on the occurrence of discrete events. Examples of smart contracts include algorithms automating rent payments in leases that may have derived from external inputs and coupon payments based on the calendar day, as well as security instruments attaching to specific property.

It all sounds far-fetched, but proof-of-concept testing is underway in various sectors, including financial services, insurance, media, healthcare, as well as the public sector. The blockchains that have captured the imaginations (and budgets) of many financial institutions are known as private blockchains because only certain pre-approved participants may join them. These blockchains use a variety of means to

ensure the identity of parties to a transaction and to achieve consensus as to the validity of transactions.

The application of DLT to the real estate sector has been studied in order, for instance, to establish a unique ledger where transfers of title can be recorded and searched without the aid of intermediaries or recourse to often-inaccurate government-held land registries.

Potential applications

There are at least three logical applications, centred on the themes of ease of documentation and enhanced record keeping, particularly concerning title, security interest and payment tracking.

1. The introduction of smart contracts in operating lease and financing transactions.
2. The implementation of a public tracking registry for ownership and security interests in airframes, engines and parts.
3. The implementation of a private trading platform for debt and equity interests in aircraft.

Needless to say, the above developments would have a major impact on secondary asset and lease trading (ie, the novation process), as well as loan trading, syndication and securitization.



Potential issues

While the technology is advancing very quickly, any successful implementation of these potential applications will need to navigate a complex patchwork of cross-border commercial, aviation and tax laws and regulations, including:

- legal backdrop: a public title-tracking registry for aircraft would likely require significant legal changes to domestic and international law. For this reason, a private platform for trading in aircraft interests (established pursuant to a commercial network services contract) might be more feasible in the near term, though the terms and conditions of these types of trades will need to be standardised before parties can trade with confidence. It will also take some time for market practice and judicial precedent around smart contracts to crystallise. Nevertheless, all financial innovations must go through this adaptive process and fear of the unknown will not prevent innovation;
- asset servicing: a private trading platform would require servicing arrangements. Not all servicers are created equal and differences can have a real economic impact on the value of aircraft interests. Aircraft servicing will never become as commoditised as mortgage servicing, but liquidity could be increased by promoting industry-wide standards and rating or monitoring servicers as rating agencies currently do;
- transfer taxes: the inadvertent sale of an aircraft while located in the wrong jurisdiction can easily result in upward of 20% or 30% in transfer taxes. It is possible, however, to imagine that with the right public databases, algorithms could digitally track aircraft locations. Until this can be achieved with a high level of confidence, manual input from an intermediary will remain a requirement for equity trades;
- withholding taxes: leases and financings into different jurisdictions, and related holdings of debt and equity interests, must be structured carefully to limit the risk of withholding tax. Most legal systems generally require a trustee or other intermediary to act as withholding agent with respect to cross-border payments in order to authenticate the recipients and withhold tax where necessary. In order to fully automate these transactions, an algorithm would need to incorporate a process for making and verifying tax certifications and automatically withholding where these cannot be made. There would most likely still need to be a tax agent to remit and process any actual withholdings;
- securities laws and compliance: one of the key benefits to DLT is the ease with which secondary trading can take place. In this context, parties need to have the confidence that counterparties meet securities law and legal compliance requirements, includ-

ing with respect to sanctions and money laundering. As in the case of withholding taxes, this would need to be managed in a private blockchain system with appropriate verification mechanisms, to the extent that human agency could legally and practically be dispensed with; and

- insurance: care would need to be taken to ensure that appropriate backstop policies cover aircraft interest owners for contingent liability, especially in jurisdictions where passive holders of aircraft interests may be subject to claims. If the economies of scale are sufficient, one can envision that these risks would be insurable in an economically viable manner.

The history of aviation finance, one of the most capital-intensive industries, reflects a decades-long arc of increasing volume and liquidity. This is because in large part to the development of now indispensable debt and equity financing techniques, from operating leasing to private equity, and securitization to portfolio lending. These technologies have been succeeded because of the dedicated efforts of industry participants and inter-governmental agencies which have created the conditions, such as the groundbreaking Cape Town Convention, for their emergence.

While certainly having the potential to be disruptive, blockchain trading of aircraft interests will be no different in requiring a global coordinated approach in order to achieve its full potential.

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RISING STARS 2016

Legal high-fliers

Airfinance Journal recognises eight of the most promising legal associates for 2016.



Guy Espitalier-Noel

Stephenson Harwood
London

Guy Espitalier-Noel studied law at Cambridge University, trained at Slaughter and May and then spent a number of years specialising in asset finance at Freshfields before he joined Stephenson Harwood in 2012.

Although his legal career did not start in aviation, he had a passion for

aircraft from a young age. He notes: "It started from basic, underlying plane-geekery. My dad was an engineer at Rolls-Royce and I've always been an aviation enthusiast."

Before joining Stephenson Harwood, he spent 18 months working in-house at General Electric on engine sales and servicing contracts. He says it was "fascinating" to spend time at one of the world's largest companies, particularly one with a strong engineering focus.

Espitalier-Noel advises the firm's banking and leasing clients on a range of transactions, including operating lease financings, commercial loans, aircraft sales and purchases and pre-delivery purchase (PDP) financings.

A personal highlight was advising DVB Bank on the financings and PDPs of A330s and A320neos between Scandinavian Airlines and Airbus. He enjoyed working with the manufacturer and advising DVB as a potential purchaser of the aircraft. His experience at General Electric was helpful in this, he adds.

He has also advised a series of banks, including DVB, BNP, BTMU, ANZ and Société Générale, on limited recourse financings managed by Novus Aviation.

"Espitalier-Noel is a keen snowboarder, despite describing his first trip as a 'total ordeal' because of having started later in life than most."

Richard Parsons, head of aviation at Stephenson Harwood, says: "Having worked with Guy for many years, both at Freshfields and Stephenson Harwood, I can say that he is a first rate aviation finance lawyer and a key member of our team. His robust and commercial approach, coupled with strong industry knowledge, makes him a trusted adviser to many of our most significant clients. I have every confidence in Guy's ability to manage transactions from document negotiation through to closing under minimal supervision."

A Tottenham Hotspur fan, Guy says that much of his spare time is taken up by his three young children. He is a keen snowboarder, despite describing his first trip as a "total ordeal" because of having started later in life than most. He is making sure his kids start earlier than he did.



Carrie Friesen-Meyers

Holland & Knight
San Francisco

After graduating from Harvard Law School, Carrie Friesen-Meyers clerked for one year with US District Judge David Carter, in the Central District of California.

She then practiced for six years in the asset-based finance group at Skadden, Arps, Slate, Meagher & Flom, before

joining Holland & Knight at the beginning of 2015.

"Friesen-Meyers played a leading role in the firm's team advising BBAM on its \$1.2 billion, 49-aircraft asset-backed securities deal, which won *Airfinance Journal's* 2015 North America Deal of the Year."

She has played a leading role in the firm's team advising BBAM on its \$1.2 billion, 49-aircraft asset-backed securities deal, which won *Airfinance Journal's* 2015 North America Deal of the Year.

She has also been involved on numerous aircraft deals with South African Airways, advised Gecas on its negotiation with Airbus for the firm order of 60 Airbus A320neo-family aircraft and acted for CIT on the formation of a joint venture with Century Tokyo Leasing Corporation on the acquisition and financing of 22 aircraft.

Speaking about her deal highlights, Friesen-Meyers notes the formation of Aviation Capital Group's joint venture last year.

"It was very enjoyable to work with top-flight financial powers Chow Tai Fook Enterprises and NWS Holdings while representing one of the world's leading aircraft leasing companies, Aviation Capital Group, in establishing an important joint venture," she says.

John Pritchard, global chair of the structured finance practice, says: "Carrie has been a great addition to our group. When I work with her, I have confidence the work is handled efficiently and thoughtfully. She is always looking for ways to ensure the client is well represented and protected, while producing top-quality documents."

Holland & Knight's structured finance practice group leader, William Piels, adds: "Carrie's combination of analytical and organizational skills inspire confidence in our clients. We count on her to play a key leadership role on our challenging projects."

Friesen-Meyers also speaks French, Spanish, German and Mandarin, and has lived, worked or travelled in more than 30 countries.

RISING STARS 2016



Manolis Hatziapostolou

Winston & Strawn
London

After graduating from Aristotle University of Thessaloniki with a degree in biology in 1995, Manolis Hatziapostolou spent a few years as a project manager for International Post Corporation. His work soon took him to London, where he has lived and worked ever since.

“I found myself in London by accident,” he admits, adding: “I am so grateful and lucky that this happened.”

“Manolis goes the extra mile for the clients and is very cognizant of the ultimate goals of the client and the parties on the other side.”

He says he finds London exciting because of the opportunities in the city. He feels that his career could not have progressed as quickly in Greece as in London, which he calls the legal and financial hub.

After making the switch to law, he received his graduate diploma from City University London before qualifying with Dentons in 2007, in the firm’s asset finance department. He was then hired by Simmons & Simmons, where he stayed until April this year. He was one of the two associates who joined partners Mark Moody and Christopher Boresjo when they left the firm to join Winston & Strawn.

His recent deal experience includes acting for Aviation Capital Group in its purchase of a portfolio of 20 aircraft from Gecas. The aircraft are on lease to numerous different lessees across a range of jurisdictions, requiring extensive negotiations with many parties. Despite this, however, he says the deal ran smoothly and was very enjoyable.

Hatziapostolou enjoys working on complex deals, adding that his motto is “the more parties on a deal the better”.

He also acted for the lenders in the refinancing of more than 30 Airbus aircraft by Latam. Hatziapostolou says he is interested by Latin America and has completed numerous deals for his clients across the region.

Mark Moody, a partner in the firm’s London office, says: “Manolis goes the extra mile for the clients and is very cognizant of the ultimate goals of the client and the parties on the other side.”

Hatziapostolou tries to maintain a healthy lifestyle by playing squash once a week, meditating and practicing yoga. He admits that, now he is British, he also complains about the weather with every other sentence.



Caroline Joyce

Watson Farley & Williams
London

Caroline Joyce graduated from St John’s College, Cambridge, in 2002 and has an MA in law.

She qualified as a solicitor in 2007 with Fieldfisher, before joining Clyde & Co for a couple of years, during which time she completed a six-month secondment to Engine Lease Finance Corporation

in Shannon. She then worked as in-house counsel until 2012 at Eversholt Rail Group, the rolling stock leasing company (formerly known as HSBC Rail).

After that, she says: “I wanted to tick some things off my bucket list.”

So for the following year she took a sabbatical, which included travel to Asia, the US, the Middle East and South America. As well as visiting friends in the industry, she spent some time volunteering on a farm and a few weeks tasting wine in Argentina.

She was then offered a position at Watson Farley & Williams, where she has worked as a senior associate since 2014.

Among other deals, Joyce was the lead associate advising the investors on Virgin Atlantic’s innovative capital markets issuance in 2014, which used the airline’s slots at London Heathrow as collateral. The deal, which won *Airfinance Journal’s* Capital Markets Deal of the Year 2015, was the first time that airport slots had been collateralised in Europe. She says that this complex transaction involved her working full-time for about a year.

“Joyce has travelled travel to Asia, the US, the Middle East and South America. As well as visiting friends in the industry, she spent some time volunteering on a farm and a few weeks tasting wine in Argentina.”

Joyce has also worked on a range of export credit agency financings, involving Coface, UK Export Finance, SEK and Sace.

Rex Rosales, global head of transport at Watson Farley & Williams, says: “Caroline is a highly regarded member of our core aviation team. She is respected by the entire team, is a mentor to the less experienced lawyers and provides a high-quality service to clients.”

He adds: “Caroline’s work on the Virgin slots deal in particular proves that she is able to provide effective solutions, including producing bespoke documents and clear and concise advice under high pressure, which is something that the vast majority of her peers are unable to do.”

RISING STARS 2016



Jason Kaplan

Hughes Hubbard
New York

Jason Kaplan admits that working in aviation was not his original plan, but says: “I just fell into it and really liked the people.”

Having completed a degree in accounting at Pace University in 2004, followed by an MBA at the same institution in 2007, Kaplan entered the world of corporate ser-

vices. However, he soon realised it was not for him. He then joined Milbank for a summer programme, and discovered an interest in commercial aviation.

He says: “I really like the international and the multifaceted aspect of each deal, the fact that you are dealing with lessors, financiers and airlines. You get to become more client facing as you become more senior, which I have enjoyed. I’ve also enjoyed doing

“I’ve been brewing beer for about five or six years now, with a friend from law school. We brew about 10 times a year,”

marketing trips and visiting Florida and other places.”

At Hughes Hubbard, Kaplan has advised clients on a range of significant transactions. In 2014, he worked on the creation of Blackbird Capital, a joint venture between Air Lease and Napier Park, as well as the related \$750 million warehouse financing.

He represented Wells Fargo as one of the initial purchasers of Awas’s debut ABS issuance, a \$261 million deal, in 2015.

He also acted for Deutsche Bank and some of the other initial purchasers on BBAM’s 2015 ABS, a \$1.2 billion deal secured against 49 aircraft, which is one of the largest ABS transactions in terms of deal volume and the number of aircraft in the collateral pool.

Kaplan says that in his spare time he likes to practice brewing his own beer. “I’ve been doing that for about five or six years now, with a friend from law school. We brew about 10 times a year,” he says.

He adds: “One of the reasons I like it is it makes you focus on details. That’s something you can really carry to work.”

Following a process carefully and making sure all the steps have been fulfilled is what closing an aircraft finance deal has in common with the world of home brewing, he adds, although he stresses that, in the case of brewing, “the end product is a little more enjoyable”.

Steven Chung, a partner at Hughes Hubbard, says: “Clients know that Jason is a go-to person on their most important matters, and appreciate his ability to bring sensible solutions to tough issues. Jason’s greatest strength is his ability to execute and close complicated matters by keeping all of the parties focused on the issues that really matter.”



Manuela Krach

Kaye Scholer
London

Manuela Krach is dual-qualified as a solicitor in England and Wales and as a rechtsanwältin in Germany.

She studied law at the University of Trier, Germany, receiving her doctorate in 2011. Her training was completed in Frankfurt with Cleary Gottlieb, and she then

worked as a paralegal at Clifford Chance. She moved to Kaye Scholer in November 2011.

“I find something interesting in almost every deal,” she says.

Recent highlights include representing Sri Lankan Airlines on a \$650 million PDP and long-term financing deal for five A300-300s. The deal won *Airfinance Journal’s* PDP Deal of the Year in 2015, because of the innovative way it combined two major operating lessors on the same deal.

She also represents Vietnamese low-cost carrier Vietjet regularly on its PDP and sale and leaseback deals. She enjoyed attending the delivery of an Airbus A321 to the airline last year, which was its first A321 and was the 9,000th aircraft delivery for the manufacturer.

Krach has worked on transactions involving up to eight different jurisdictions at once, and counts these among the most interesting deals. She says: “Those kinds of transactions are very challenging but something I really enjoy.”

“I find something interesting in almost every deal.”

Philip Perrotta, co-head of Kaye Scholer’s aviation finance and leasing practice, says: “Manuela is fast emerging as an excellent aviation finance lawyer and a great ambassador for our practice and our firm. At this stage, there is no limit to what she can achieve in the aviation finance arena, and we look forward to watching her continued stellar progress on her way to the top of the profession.”

When not advising clients, Krach enjoys travelling. She also trains in kickboxing once a week, saying: “I go to the park with my kickboxing instructor and do some training once a week to let off some steam.”

RISING STARS 2016



Madalyn Miller

Clifford Chance
New York

For Madalyn Miller, a senior associate in the New York office of Clifford Chance, one of the main perks of the job is the people she works with. She says: “I have a lot of really good relationships here that have lasted many, many years.”

She adds: “I started working in asset finance and realised half way through my rotation that it was a group where I was really comfortable. You could say it’s where I found my aviation finance calling.”

Miller joined Clifford Chance after graduating from Columbia Law School in 2011. She has worked on several major deals, including those that have been successful in *Airfinance Journal’s* Deal of the Year Awards: the BOC Aviation and DVB Bank debut asset-backed securities (ABS) in 2015, and Willis Lease Finance Corporation’s \$390 million securitisation in 2011, which won Engine Deal of the Year in 2012.

Working on debut securitisations involves guiding clients

“Miller is a qualified scuba diver, so clients can be assured that she is rarely out of her depth.”

through the process, which Miller says she enjoys. “The DVB ABS and BOC Aviation transactions were two of the best experiences that I’ve had in my career. Both transactions had innovative components and great team environments where everyone was working together to accomplish the final product,” she says.

Miller explains that it was also satisfying to see elements of the documentation being used in subsequent ABS deals, such as the one closed by Aergen earlier this year, which was also a debut issuance.

Miller is a qualified scuba diver, so clients can be assured that she is rarely out of her depth. She is also a fan of rock music. “One of the main reasons I came to New York City in the first place is because I’m a big music fan, and there’s no better place in the world to see music than here,” she says.

Zarrar Sehgal, head of Clifford Chance’s global transport and logistics practice, mentions Miller for the “breadth of her capabilities and experience across the full range of financing structures”.

He adds: “Madalyn is an excellent lawyer who receives outstanding feedback from leading clients in the aviation sector in the US and across the globe.”



Richard Walton

Milbank
London

Richard Walton is a senior associate in the London office of Milbank. He joined the firm in 2011, having spent nine years working at Freshfields, followed by nine months seconded to Aercap. In 2012 he spent eight months working in Milbank’s New York office.

Walton says he enjoys “the opportunity to meet and work with a large variety of clients from all over the world and all walks of life.”

He was the lead associate advising Citi and Goldman Sachs as joint bookrunners on the \$814 million EETC financing of three 777-300ERs for Turkish Airlines. He completed a roadshow alongside the airline to meet US investors and help them to understand insolvency law and the ratification of the Cape Town Treaty as related to the deal.

He adds: “There’s always a good pipeline of deals coming along that gives you exposure to different kinds of work.”

He also let the Milbank team advising a syndicate of lenders on a \$740 million portfolio financing credit facility issued by a joint venture between KKR and DVB, which was created to finance the purchase of 37 aircraft from Aercap.

He has also worked extensively with Magnetar Capital on a range of deals related to the establishment of its aircraft leasing and ownership platform, including equity and debt funding structures and aircraft acquisitions.

James Cameron, co-head of the transportation and space group in London, notes: “Richard is the go-to guy for many of our most valued clients, and is particularly adept at managing large, structured, multi-party transactions. He is incredibly bright, mentally agile, hard-working and always calm under pressure. It is for these reasons that clients have asked Richard to work on many of the sector’s most innovative transactions, including financing, M&A and capital markets deals.”

“Walton completed a roadshow alongside Turkish Airlines to meet US investors and help them to understand insolvency law and the ratification of the Cape Town Treaty as related to the deal.”

Walton is a keen traveler, having completed several safaris in recent years. He had the rare opportunity to see mountain gorillas face-to-face while trekking in Rwanda, and is hoping to travel to Borneo next year.

SPONSORED EDITORIAL

Importance of Irish aviation sector



Chris Quinn



Gerry Thornton



Rory McPhillips



Stuart Kennedy

Matheson's aviation team – Chris Quinn, partner, Gerry Thornton, partner, Rory McPhillips, partner, and Stuart Kennedy, associate – discuss how Ireland's commercial and regulatory environment gives it the edge over other jurisdictions in aviation.

Ireland continues to build on its reputation as a centre of excellence for aircraft financing and leasing and its position has been further enhanced in recent years. There are a number of reasons why Ireland attracts investment in this area, which include its favourable tax regime, a wide double tax treaty network and professional expertise.

These factors combined with a government which is committed to growing and supporting the industry mean that Ireland has become the obvious location through which to finance and lease aircraft.

Taxation developments – 12.5% corporation tax rate

The Irish government has repeated its commitment to maintaining the 12.5% corporation tax rate for active trading companies. This commitment has been welcomed by the aircraft financing and leasing community. The 12.5% corporation tax rate has continued to attract aircraft investment to Ireland and the Irish leasing market has been very active in recent years, with strong investment from the US, China and Japan, in particular.

Some of the larger investments structured through or from Ireland in the past year include:

- Chinese lessors continue to be attracted to Ireland and there are now at least seven Chinese leasing companies with operations in Ireland, all of which benefit from the country's favourable tax regime, its professional expertise and its location on the edge of the European Union. Most recently, Ping An Aircraft Leasing commenced operations in Ireland and there are several others exploring opportunities;
- Avolon, the Irish-based leasing company, announced in January that Bohai Leasing was investing an incremental \$1.2 billion of equity capital in the business, bringing Avolon's total available liquidity to \$2 billion to accelerate growth in 2016 and beyond. After the completion of the merger of Avolon and Hong Kong Aviation Capital in January, Avolon assumed management of Hong Kong Aviation Capital and became the core aircraft leasing brand for Bohai Leasing and its parent, HNA Group;
- Norwegian Air Shuttle, acting through its Irish wholly owned leasing subsidiary, Arctic Aviation Assets, ordered an additional 19 Boeing 787-9 aircraft in the final quarter of 2015, with options on a further 10. Chief executive Bjørn Kjos stated that the order is "essential to further strengthen the company", adding that its long-haul, low-cost operation has been achieving average load factors above 90%. The order, valued at about \$5 billion at catalogue prices, is the largest single deal for the type from a European customer of Boeing;
- TC-CIT Aviation Ireland, an Irish joint-venture company between Century Tokyo Leasing and CIT Aerospace, further expanded its portfolio of aircraft during 2015 and 2016 and expects to amass \$2 billion-worth of assets by the end of 2017. John Morabito, CIT Aerospace's group head of financial institutions commented that the joint venture "allows us to be more competitive, it gives us opportunities to win more transactions we could not do in the current CIT structure".

In addition to Ireland's 12.5% Irish corporation tax rate, Irish lessors carrying on a trade in Ireland may now also claim a tax credit for foreign withholding taxes on lease rentals where there is no tax treaty relief available. The relief is granted on a unilateral basis by Irish domestic law.

This tax credit has positioned Ireland as an attractive leasing jurisdiction for leasing aircraft and other assets into jurisdictions which do not have a wide tax treaty network and has opened up new markets for Irish lessors.

Aircraft securitisation

Ireland has also developed a vibrant aircraft securitisation industry, which allows airlines and investors access to alternative funding from capital markets sources on a tax-efficient basis. Some of the larger capital markets aircraft transactions in the past year include:

- Element Financial Corporation closed an asset-backed securities (ABS) \$1.21 billion debt offering of ECAF I, Series 2015-1 notes which was listed on the Irish Stock Exchange in June 2015. David McKerrall, president of Element's rail and aviation group, described it as "the largest pooled-aircraft ABS transaction in nearly a decade";
- Castlake, an alternative investment firm specialising in aircraft, priced its \$713.21 million asset-backed security in December 2015. The transaction was backed by 54 aircraft and six aircraft engines with a weighted average age of about 15 years. The portfolio is on lease to 23 airlines in 18 different countries;
- Norwegian Air Shuttle (NAS) raised about \$349.1 million in an enhanced equipment trust certificate (EETC) transaction in May to finance 10 aircraft through Torefjorden DAC, a wholly owned subsidiary of Arctic Aviation Assets Limited, which in turn is NAS's wholly owned Irish leasing subsidiary. This represented NAS's first public EETC transaction; and
- SMBC Aviation Capital, one of the world's leading aircraft leasing companies, announced in July that its wholly owned subsidiary, SMBC Aviation Capital DAC, closed the sale of \$500 million of its 2.65% senior unsecured notes due 2021. The notes were fully and unconditionally guaranteed by SMBC Aviation Capital.

Expansion of double tax treaty network

Ireland has signed 72 double tax treaties (70 of which are now in force). Its most recently signed double tax treaties include those with Germany, Thailand, Zambia, Botswana, Uzbekistan, Ukraine, Kuwait, Qatar, Bahrain, Saudi Arabia, Armenia, Egypt and Ethiopia.

The Irish tax authorities are very active in increasing the number of treaties to which Ireland is a party, particularly with emerging market and Middle East jurisdictions.

Cape Town Convention and Aircraft Protocol

Aviareto Limited, an Irish limited liability company, which is a joint venture between the Irish government and air transport IT and communications specialist SITA, was, in 2016, reappointed as the registrar to the International Registry for a further five years.

"Owners and lenders choose Ireland as the State of Registration to remove deregistration risk and protect the residual value of the aircraft by having the aircraft registered with a European Aviation Safety Agency registry."

Ireland was one of the first contracting states to the International Registry and Aircraft Protocol and this has been another reason why lenders favour Ireland as a jurisdiction for aircraft financing.

If the borrower and mortgagor is located in Ireland, the lenders will obtain the benefit of the Cape Town Convention and Aircraft Protocol. The added protection afforded under the Cape Town Convention and Aircraft Protocol has been increasingly relied on by lenders and in certain transactions has replaced traditional local law mortgages where obtaining such mortgages was inefficient from a time and cost perspective.

In addition, the decisions of the Irish High Court in *PNC Equipment Finance v Aviareto Limited and Link Aviation* (unreported, High Court 19 December 2012), *TransFin-M, Ltd v Stream AeroInvestments SA and Aviareto Limited* (unreported, High Court, Commercial Division, 18 April 2013) and *Belair Holdings v Etole Holdings and Aviareto* (unreported, High Court, Commercial Division, 26 March 2015) all illustrate that frivolous or unwarranted registrations made on the International Registry may ultimately be removed at the direction of the Irish courts and at the expense of the registrant.

The most recent decision issued on 26 March 2015 was the first case concerning the Cape Town Convention and Aircraft Protocol that was actively defended. Again, the Irish Commercial Court granted an order in favour of the applicant to discharge an Article 40 (registrable non-consensual right or interest) registration made by the first named respondent. The registration in question was made without a valid basis under the Cape Town Convention given that no declaration had been made by any relevant contracting state under Article 40 governing categories of interests the respondent erroneously sought to protect.

In giving judgment, the Irish Commercial Court stated that "...the court must be

conscious of the purpose and principles of the convention and importance of maintaining the integrity of the registry".

The decisions illustrate the willingness of the Irish Commercial Court to accept jurisdiction to hear substantive causes of action in disputes relating to registrations originating entirely outside Ireland under the provisions of the Cape Town Convention and Aircraft Protocol, which were given effect in Ireland pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act 2005. The approach of the Irish courts to uphold and maintain the integrity of the International Registry, coupled with the speedy resolution of such disputes by the Irish Commercial Court, will greatly aid the proper and efficient functioning of the International Registry, and provide comfort to parties seeking to discharge unwarranted International Registry registrations that such discharges can be done in a timely, effective and efficient manner.

The State Airports (Shannon Group) Act 2014 will enable the Irish government to make an order giving the Cape Town Convention Alternative A insolvency remedy force of law in Ireland. Such an order is expected by the final quarter of 2016. This will be very similar to the US Chapter 1110 insolvency remedy and will provide that in the case of an insolvency-related event of a lessee, mortgagor or conditional purchaser, the lessor, mortgagee or conditional seller will be entitled to the return of the aircraft within 60 days unless certain criteria are met.

Irish Aviation Authority

Many aircraft that are operated in countries such as Russia and Italy are registered with the Irish Aviation Authority. Owners and lenders choose Ireland as the State of Registration to remove deregistration risk and protect the residual value of the aircraft by having the aircraft registered with a European Aviation Safety Agency registry.

This trend has continued in recent years and has been further bolstered by the fact that registration of an aircraft in a contracting state to the Cape Town Convention and Aircraft Protocol satisfies one of the connecting factors under the convention and protocol to create an international interest. Further protection can be afforded through registration of an Idera (an Irrevocable De-Registration and Export Request Authorization) with the Irish Aviation Authority.

Ireland's reputation as a centre of excellence for the aircraft financing and leasing sector remains strong. The country has seen a continued growth in the number of new leasing platforms being established and in lessors participating in capital market and securitisation transactions to finance their leasing activities. These trends are expected to continue.



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EVENTS

2017 EVENT CALENDAR

19th Annual Global Airfinance Conference

Dublin, 17th Jan -19th Jan 2017

2nd Annual Africa Airfinance Conference

Addis Ababa, 16th Feb - 17th Feb 2017

The Inaugural Korea Airfinance Conference

Seoul, 9th Mar - 10th Mar 2017

6th Annual Japan Airfinance Conference

Tokyo, 20th Apr - 21st Apr 2017

37th Annual North America Airfinance Conference

18th May - 19th May 2017

15th Annual China Airfinance Conference

Shanghai, 7th Jun - 8th Jun 2017

13th Annual Latin America Airfinance Conference

Rio De Janeiro, 12th Sep - 13th Sept 2017

15th Annual Middle East Airfinance Conference

Dubai, 2017

18th Annual Asia-Pacific Airfinance Conference

Hong Kong, 2017

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