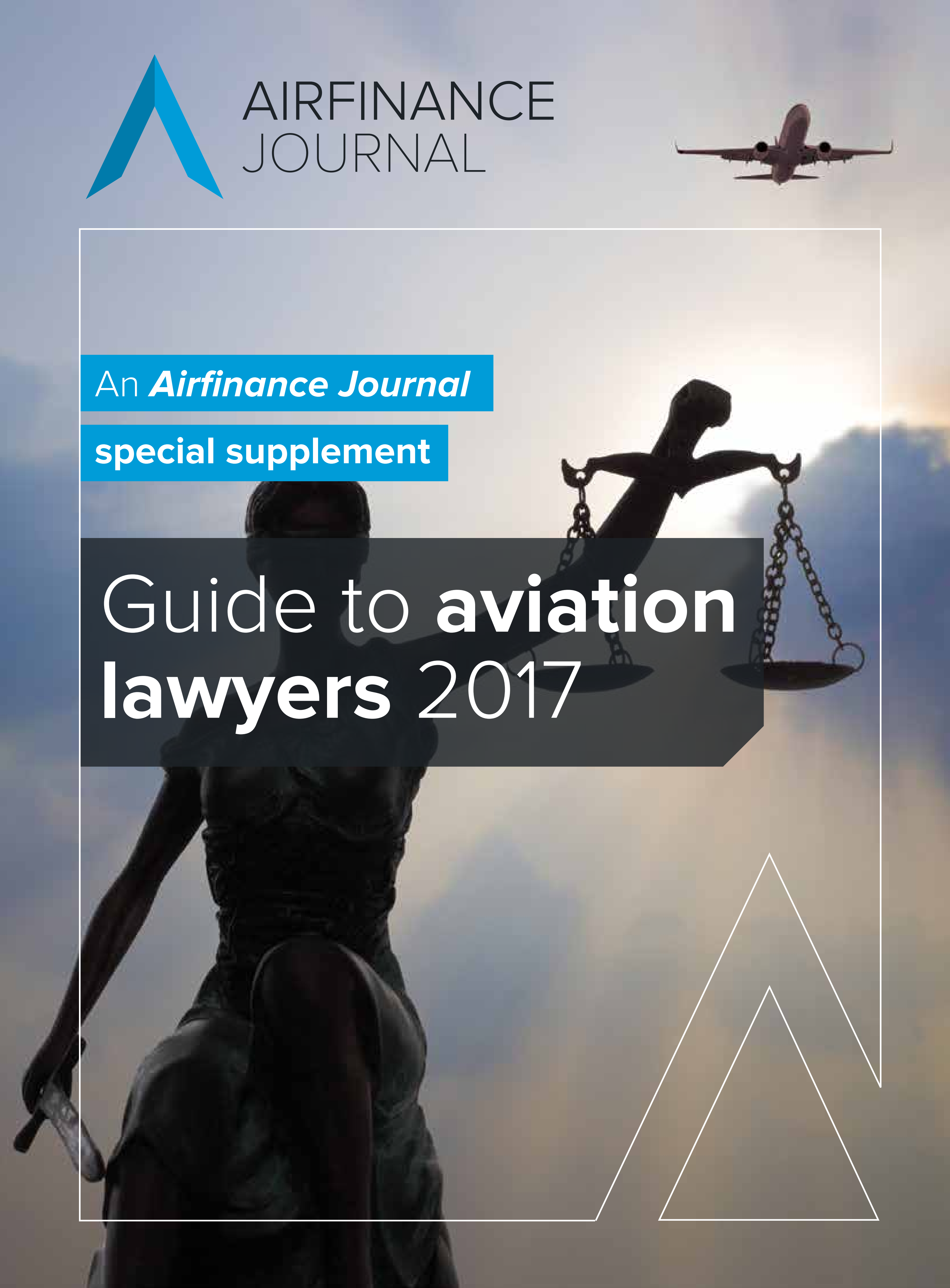
AIRFINANCE JOURNAL

An *Airfinance Journal* special supplement

Guide to **aviation lawyers** 2017



And the **winners are…**

Airfinance Journal announces the victors in the fifth year of its legal survey, which recognises the most active law firms in 2016 by region and product type.

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

Airfinance Journal received submissions from 22 firms, compiling 1,875 deals overall, including transactions gathered from Deal Tracker. This is the first year we have used data from Deal Tracker for our legal survey and it provides us with a more accurate picture of the 2016 activity because it includes law firms which were not able to submit or chose not to submit. The firms that did submit have the most accurate representation of their deals in 2016.

The survey reveals several shifts in aviation financing. Although there was a notable drop in financing involving the export credit agencies, arrangers have created innovative structures that have incorporated less traditional airfinance players, such as pension and insurance companies.

The growth of emerging markets, particularly in Asia, has increased demand for new aircraft, in a leasing environment that is more competitive than ever. With the low fuel prices, carriers and lessors have also seen ample opportunity to close second-hand aircraft deals and sell portfolios. This is why we introduced the Sale and Purchase category, which covers deals that entail a transfer of legal and/or beneficial ownership of an aircraft with no new financing involved.

Although this survey focuses purely on aircraft deals, it is worth noting that many law firms were involved with complex restructurings and aircraft repossessions in 2016. In addition, the significant leasing and legal consolidation that has occurred in the past few years has kept many firms busy. 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 Deal Tracker. The team then reviews the different deals and selects those eligible for Deal Tracker. This list is then used to select the most active law firms, which are then selected by region and product type.

"Aircraft financing activity remained very strong in 2016, with bank, bond, aircraft trading and operating lease markets all going strong."

Mark Lessard, partner, Pillsbury

The legal survey reviews deals from 2016 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 Deal Tracker 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 Deal Tracker is that we can offer a granular presentation of law firm activity by both product type and region. Of course, 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

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

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

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

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 Africa, Asia-Pacific, Europe, Middle East, Latin America, Commercial Loan, Operating Lease, Sale and Purchase and Structured Lease categories.

Reflecting on the deals done last year, Clifford Chance partner and global head of asset finance, William Glaister, says: "The aviation industry has seen robust growth over the past year, with high levels of bank liquidity, an active trading market in aircraft sales and operating lease portfolios (with attendant financings), a vibrant ABS [asset-backed securities] market and strong M&A interest in leasing companies.

"Investors are increasingly looking at aircraft-backed securities as a source of steady cash flows with attractive returns and low default rates; and we have seen strong borrower credits able to access the capital markets on both a secured and an unsecured basis."

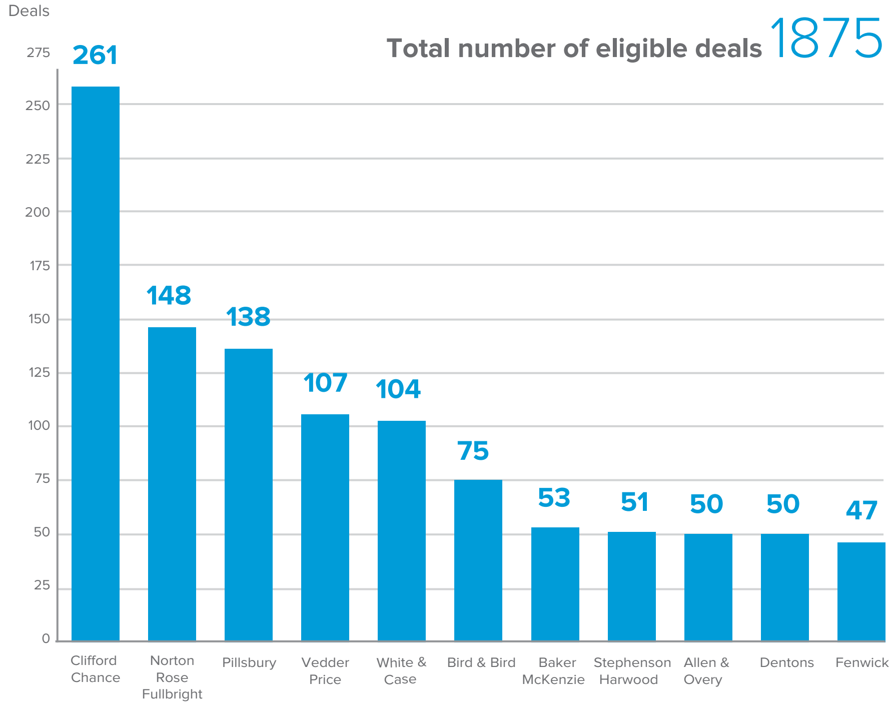
Pillsbury was ranked second overall in the survey. Mark Lessard, partner in the firm's New York office, says: "Aircraft financing activity remained very strong in 2016, with bank, bond, aircraft trading and operating lease markets all going strong. On the back of abundant debt and equity capital, there were significant transactions in all sectors of the industry."

Norton Rose Fulbright was placed third overall. Duncan Batchelor, global head of aviation at the firm, says: "The outlook is bright for the aviation industry despite challenging market conditions. The industry is enjoying high levels of interest from both new and experienced investors and financiers and there is diversity in funding. Fuel prices remain low, and new aircraft are being delivered to airlines."

Top Ten Law Firms by Score

Rank	Firm	Score
1	Clifford Chance	56
2	Pillsbury	33
3	Norton Rose Fullbright	29
4	Vedder Price	17
5	White & Case	15
6	Dentons	9
7	Stephenson Harwood	7
8	Bird & Bird	6
9	Winston & Strawn	4
9	Baker McKenzie	4
9	Mason Hayes & Curran	4
9	Allen & Overy	4
10	Nishimura & Asahi	3
10	Morris James	3

Top Ten Law Firms by Number of Deals



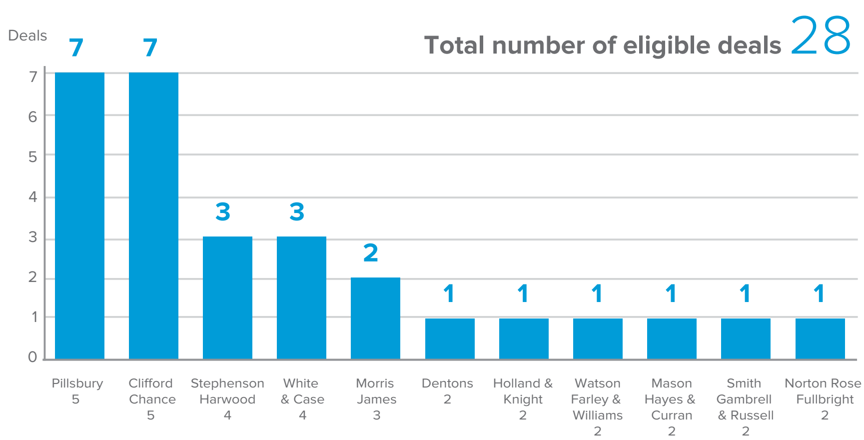
Africa

Commercial loan deals were popular in Africa in 2016, with 57.14% of the deals in Africa being commercial loans as a means to finance aircraft. The proportion of export credit deals were notably higher than in any other region, amounting to 14.29% of all the African deals that closed last year. This figure was nearly 10% higher than other areas of the world, with Asia-Pacific coming second with 4.72% of its deals being export credit agency-guaranteed.

Clifford Chance and Pillsbury came joint top in this category.

Paul Jebely, co-head of asset finance at Pillsbury, says: “The African market experienced notable turbulence over the last year, with airlines like Kenya Airways and South African Airways undergoing significant reorganisation, while what smelled like the nationalisation of Arik Air shook investor confidence – in Nigerian aviation specifically and African aviation generally.”

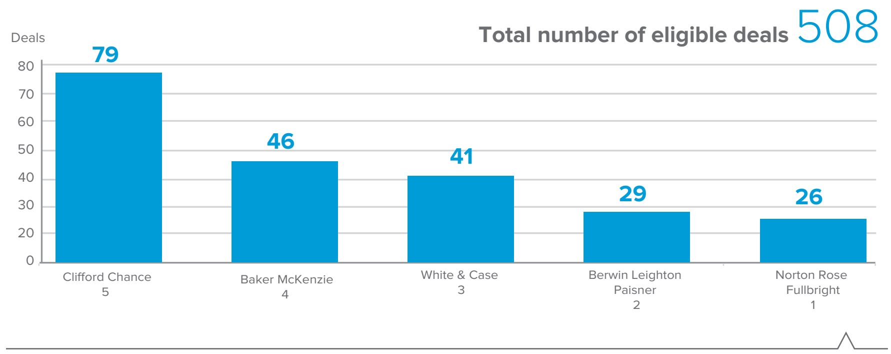
Among other transactions, Pillsbury served as lead counsel to Ethiopian Airlines in connection with the financing of a predelivery payment facility in an aggregate amount of $139 million, relating to the purchase of eight Airbus A350-900 passenger aircraft. The firm also served as lead counsel for the airline in connection with the permanent financing of the first of the A350-900s to deliver in 2017.



Michael Smith, partner at White & Case, which came second in this category, says: “In the medium term, robust demand for aircraft is predicted for Africa, and Africa is likely to take on a relatively greater role in the growth of aviation generally.

“Nonetheless, there are also a number of more immediate headwinds,” adds Smith. “These include competition from more established and better-funded airlines in the Middle East and Europe, airport infrastructure and labour issues, currency conversion concerns and geopolitical factors generally. Many of these complications are evident in the ongoing restructuring of Kenya Airways, where we are one of the advisers.”

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 and, although global aircraft orders are slowing down, this reduction in orders can hardly be seen in Asia.

China is one of the fastest-growing markets in this region. It is a market that international law firms are becoming increasingly familiar with, despite concerns about the so-called lower "China price" (Chinese law firms offering Chinese clients cheaper rates than international law firms.) offered to law firms for their services by Chinese airlines.

Andrew Lockhart, head of aircraft finance, Baker McKenzie, which came second in this category, says: "We expect that the China market will continue to expand. Similar to last year, we believe that domestic leasing and financing structures will remain popular, in particular the free-trade-zone structure involving domestic and cross-border leases. We also note the continued growth of the People's Republic of China [PRC] leasing companies. They are not only involved in the PRC deals, but are also active in cross-border transactions."

Baker McKenzie has recently represented various PRC leasing companies in transactions in China, Indonesia, Vietnam, Malaysia, France, Spain and Italy.

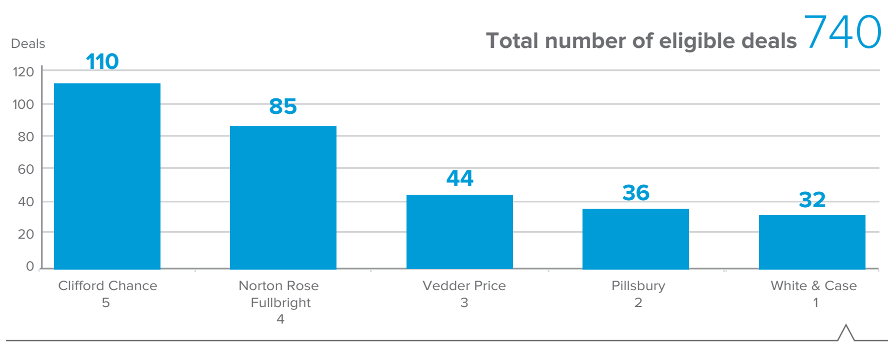
The region scored high in the sale and purchase category, accounting for 20.67% of the 508 Asian deals submitted. Operating leases and commercial loans were both well represented, accounting for 33.86% and 33.46%, respectively, of the total Asian deals.

South Korea has also become one of the most active new markets in Asian finance. The market has seen increased participation from Korean entities over the past year, whether financing widebody aircraft for first-tier carriers such as Emirates or setting up a new leasing company such as Crianza Aviation.

Last year was also strong for initial public offerings, with Asian lessors BOC Aviation and CDB Leasing listing on the Hong Kong Stock Exchange. Yet, despite the strong demand for low-cost travel in China, many of the region's low-cost carriers (LCCs) faced obstacles to growth. Challenges for LCCs can include getting the necessary approvals from the Chinese government to operate and gaining aircraft importation from National Development Reform Commission.

Even so, China still looks on course for steady growth, with Avolon in May forecasting that Chinese airlines will require an additional 3,200 aircraft in the next decade.

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.

After tapping the Norwegian capital markets several times, flag carrier Norwegian Air Shuttle raised $349.12 million through an enhanced equipment trust certificate (EETC) offering in May 2016. Morgan Stanley arranged the deal and Natixis provided the liquidity facility.

EasyJet also issued its debut Eurobond in February, raising €500 million ($560.82 million) in an offering that was a seven-year bullet repayment with a coupon of 1.75%, payable annually. The bond priced at 147 basis points over mid-swaps.

The operating lease and commercial debt markets have remained robust and several European carriers, such as Finnair and Air France, have been tapping the Japanese operating lease with call option (Jolco) market. Operating leases accounted for 23.38% of the deals, the lowest number only to North America (2.87%), while sale and purchase deals accounted for 19.05%.

William Glaister, global head of asset finance, Clifford Chance, London, says: "EU regulated financial institutions are still having to navigate their way through an increasingly complex regulatory framework, including, for example, Basel IV proposals, MiFID [Markets in Financial Instruments Directive] and BRRD [Bank Recovery and Resolution Directive], compared with the flexibility of alternative financiers and investors operating in other markets. Unsurprisingly, those arrangers and lenders able to participate in highly structured transactions and to take a degree of asset risk have been most active."

Some European carriers, especially the UK-based ones, have also felt a slight impact from the Brexit vote in last June's referendum. A weaker pound and investor uncertainty led to UK-based airline conglomerate IAG's profits fall by €460 million ($517 million) over the past year. Despite IAG chief executive, Willie Walsh, describing Brexit as "painful", he remained positive that the group would recover in 2017.

Some of the European leasing companies have shown less of a concern.

"The fact that the UK is leaving the European Union is not a positive for anyone, including Ireland for sure – it's our biggest trading partner and a very important ally," Aengus Kelly, chief executive officer, AerCap, told *Airfinance Journal* in an interview last year. "It'll have some impact, but it's not going to be a material impact on global demand for air travel."

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Matheson's Aviation Finance Group is one of Ireland's leading aircraft finance practices.

We act for major global airlines and aircraft leasing companies. We also advise asset financing banks on aircraft financing and leasing. Our specialist Aviation Tax Group advises on the taxation of aviation transactions.

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Winner, Seven Deals of the Year, including in Aviation Finance
Finance Dublin 2017

UCITS Law Firm of the Year
The Hedge Fund Journal 2017

Irish Tax Firm of the Year
European M&A Tax Deal of the Year
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Matheson is ranked in the FT50 most innovative law firms in Europe
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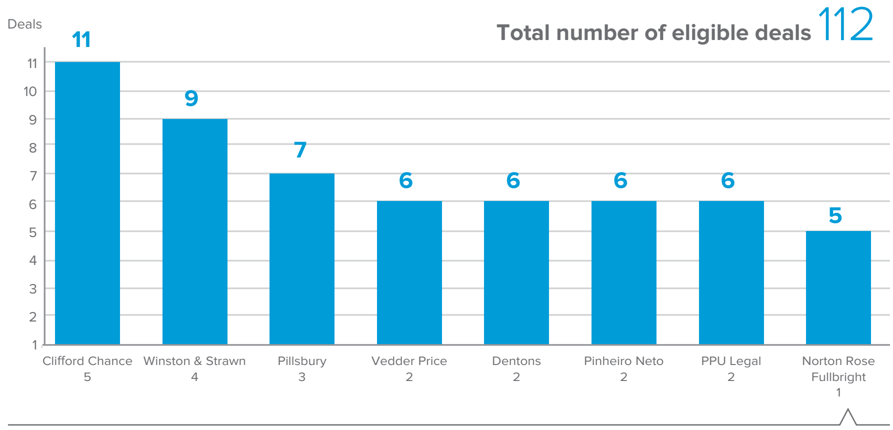
Latin America



Despite challenges in the region, such as a strong US dollar and falling commodity prices, in 2016 the airlines in Latin America were well prepared for volatility. Low-cost carrier Azul arranged the redelivery of 34 aircraft, while, by the end of 2016, fellow Brazilian carrier Gol improved its full-year operating margin outlook by one-third after a positive set of third-quarter earnings results.

The airline raised its full-year earnings before interest and tax margin guidance to 6% from 4%, as cost reductions offset declining passenger revenues to generate a net profit for the quarter. Net income for the third quarter reached R$65.9 million ($20.6 million), compared with a loss of R$2.1 billion in the same period last year.

Gol attributed the change to its capacity management efforts and other cost reductions, as well as the strengthening of the Brazilian real.

"The Latin American economy has been fairly tough and growth has been slower in certain countries in the region," says Mark Moody, partner, Winston & Strawn, which came second in the Latin America category.

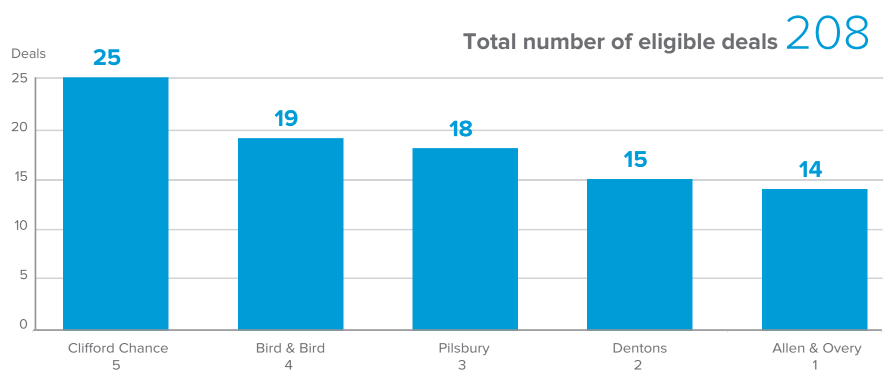
"Nevertheless," he adds, "the Latin American aviation market has continued to be resilient despite challenging conditions in certain jurisdictions. Several airlines in the region are being very disciplined with their fleet-renewal programmes, which is resulting in more operating lease structures being utilised."

Latin America had the highest proportion of operating lease deals of any region, accounting for 40.18% of the deals overall. Commercial loans also made up a large portion of the deals at 38.39%. Capital markets and export credit made up particularly low levels, with 1.79% and 3.57%, respectively.

Winston & Strawn has worked on several deals for LATAM Airlines, acting for a syndicate of European and Japanese banks in the financing of several Airbus A350 and A320neo aircraft for the South American carrier.

"Most of the aircraft financing activity in Latin America involves operating leasing and, in particular, we are seeing an increase in Chinese lessors in that market. In addition, there has been some capital markets activity, and our most notable recent transactions include representing LATAM Airlines in an unsecured bond offering and in a private placement of a junior tranche of notes under their existing EETC [enhanced equipment trust certificate] transaction," says Emily DiStefano, partner in Clifford Chance's New York office.

Middle East



There were some innovative capital markets issuances from the biggest carriers in the Middle East, but commercial bank lending and operating leases still dominated the submissions, amounting to 65.79% of the deals.

The largest Middle Eastern capital markets deal of 2016 was Etihad Airways' $1.5 billion sukuk, which closed in November. The fact that it was initially planned to be about $1 billion and was upsized by 150% demonstrated the appetite from sukuk investors for aviation credits.

"The large airlines in the Middle East continue to source a wide variety of new and traditional financing options to satisfy their growing fleet and to maintain a diverse financing portfolio," says Jim Bell, partner, Bird & Bird, the second most active firm in the region in this year's survey.

He adds: "We are very well placed to support airlines, lessors and financiers who are active in the region on the full range of financing options – from sale and leaseback to Islamic finance, and from tax leasing to innovative debt capital markets products."

During the past 12 months, the firm advised Emirates on the sale and leaseback of three Airbus A380s and EMP (as bookrunner) on the debt capital markets financing of one Airbus A380 and two Boeing 777s for Emirates, which won *Airfinance Journal*'s 2016 Innovative Deal of the Year.

Bird & Bird also advised Etihad on the sale and leaseback and predelivery payment financing of nine Boeing 787-9 Dreamliners with Goshawk and BBAM, and advised the same airline on the sale and leaseback of two Airbus A380s using a combination of Islamic finance and the first-ever Abu Dhabi Global Markets (ADGM) company, winning *Airfinance Journal*'s 2016 Sale and Leaseback Deal of the Year.

Antony Single, a partner at Clifford Chance's office in Abu Dhabi, who also worked on the ADGM transaction, says: "There has been a marked increase in the number of operating lease financings in which regional banks and financial institutions have been participating. We have also seen a growth in the number of regional institutions investing in equity structures and funds. A key trend has been the increase in Sharia-compliant transactions – in particular, more complex structures using a combination of conventional and Islamic finance."

North America

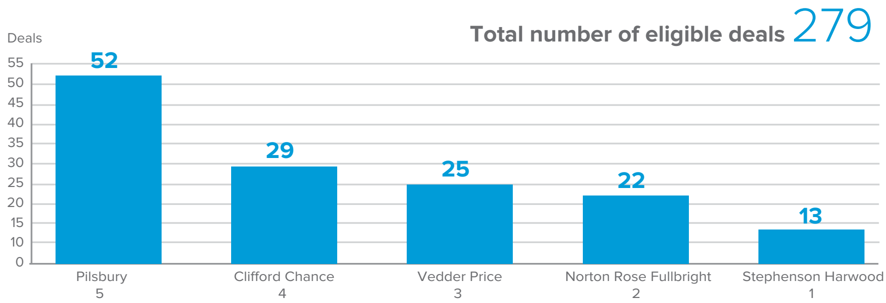
North America continues to dominate in the capital markets category, making up 20.07% of deals in 2016. Another interesting trend that emerged from the survey is that North American carriers have the lowest percentage of operating lease deals, with only 2.87% of all deals. This is a stark contrast to Latin America, which leases 40.18% of its aircraft.

One of the standout deals from the last year included Labrador Aviation Finance, GECAS's first aviation issuance since 2014. The deal set a number of firsts, including being the first-ever asset-backed securities (ABS) deal with equity placed in South Korea and the best-priced aircraft ABS transaction on a spread basis in 2016. The transaction's $603 million A tranche priced at 2.83% spread over the 5.57-year swap rate and its $106 million B tranche priced at 3.83% spread over the 5.57-year swap rate.

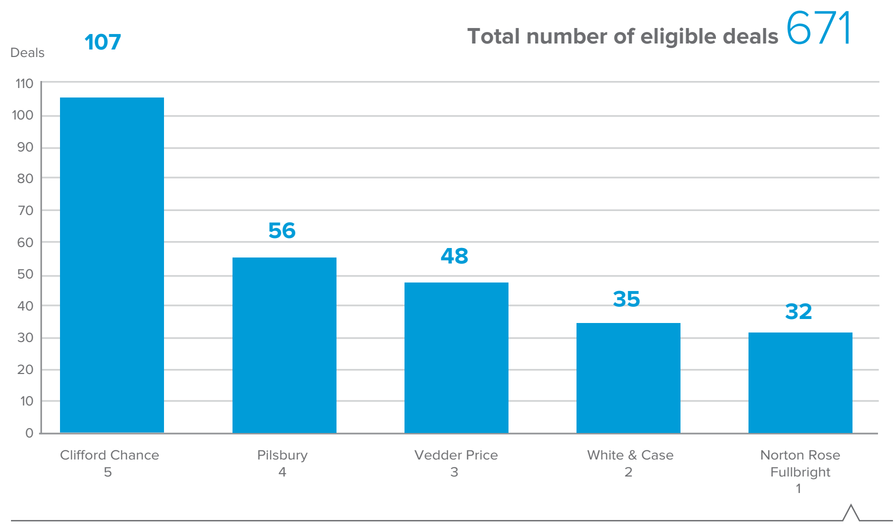
North American airlines continued regularly to tap the capital markets to fund their fleets, with American Airlines being the main issuer. The airline tapped the enhanced equipment trust certificate (EETC) market more than any other carrier in 2016 by issuing $2.8 billion in three separate EETC deals. United Airlines also issued an EETC in 2016, achieving the lowest pricing for an EETC, with an AA tranche pricing at 2.875% and an A tranche pricing at 3.100%.

"American Airlines continued its major fleet-renewal and financing programme in 2016, though the deliveries will begin to tail off a bit starting in 2017. Alaska Airlines did its first round of secured financings in a while to raise capital for its acquisition of Virgin America. Pillsbury acted for dozens of banks financing dozens of aircraft for these two airlines alone in 2016, not to mention several other airlines, including low-cost carriers Allegiant and Spirit," says Mark Lessard, partner at Pillsbury, which came first in this category.

"Meanwhile," he adds, "US-based leasing companies have been growing at a rapid clip in recent years and have turned toward larger transactions to achieve economies of scale in their financing arrangements. Many leasing companies put fresh warehouse facilities in place in 2016 and also sought to trim their portfolios to keep their average fleet age down. Pillsbury acted for the lending syndicates on a number of these transactions, including a $400 million BBAM-managed Incline warehouse facility and the $400 million Aircastle secured portfolio financing."



Commercial Loan



The commercial loan market has remained active throughout 2016, making up 35.79% of the eligible deals submitted. In the low interest rate environment and with an abundance of liquidity available, 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 (ECAs) have been inactive throughout much of 2016, the commercial market is in good health, meaning that the loss of the ECAs has not been a big burden for most airlines.

Africa, a region which usually heavily relies on ECA-guaranteed financing, scored the highest percentage of deals that were financed through commercial banks, accounting for 57.14% of all the deals that African companies closed in 2016. Such a high percentage infers that commercial financing has been able successfully to fill the gap left by a dearth of ECA financing.

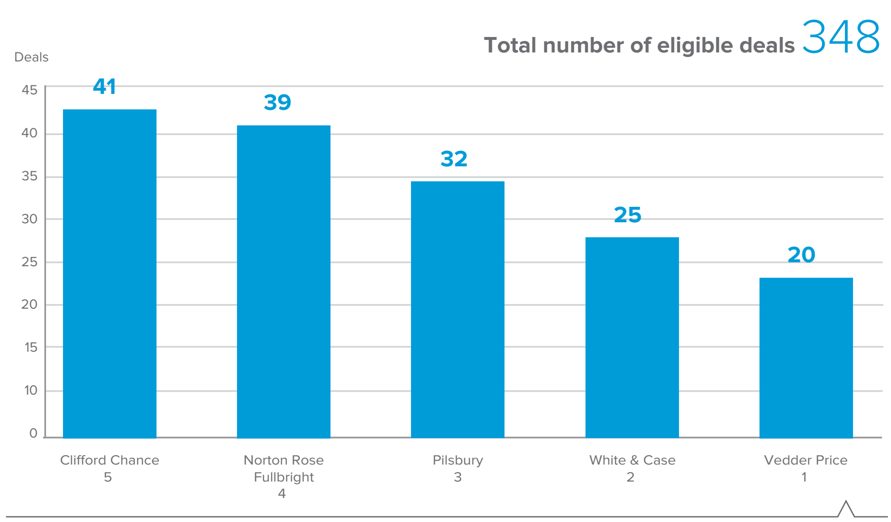
"Our bank clients kept us busy acting on lessor portfolio and warehouse transactions, in addition to large fleet financing initiatives with the likes of American and Alaska. Bank loan pricing stayed very competitive even in the face of Basel IV, as arrangers continued to work their syndication capabilities to develop new sources of bank and institutional capital. As a result of these efforts, we have a much more educated, developed and international lender base than before," says Jonathan Goldstein, a partner at Pillsbury, which came second in this category.

One of the largest commercial deals that closed in 2016 was Accipiter's $1.2 billion refinancing of 43 aircraft purchased in 2014 from three lessors. The deal marked the first portfolio financing for the lessor, which was funded with a large group of banks (see *Airfinance Journal's* Bank Loan of the Year 2016, page 10).

Another notable commercial deal that closed in 2016 was AerCap's $740 million acquisition of a portfolio of 37 aircraft, leased to 32 airlines in 26 jurisdictions.

"In terms of commercial debt, pricing remains competitive, with traditional banks having to deal with the challenges of continued regulatory pressures and a low interest rate environment. The search for yield continues to generate innovative solutions, such as debt funding platforms and structured portfolio financings, and to attract alternative financiers from all regions," says William Glaister, global head of asset finance, Clifford Chance, London.

Sale and Purchase



The sale and purchase market was active, with *Airfinance Journal* compiling 348 deals that closed over the course of 2016.

Many of these deals were for second-hand or regional aircraft that are more affordable for airlines or lessors to pay for in cash. It was also common to see lease notations turn into sale and purchase transactions, because many airlines and lessors would buy the aircraft when it got to the end of its lease.

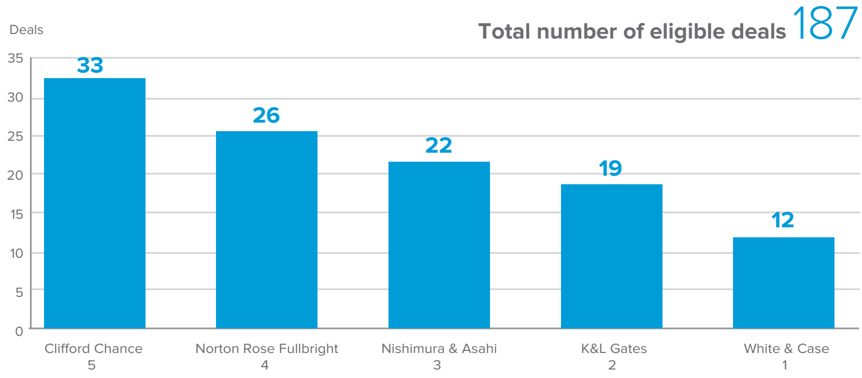
The regions that had the highest proportion of deals in the sale and purchase category included Asia-Pacific, with 20.67%, Europe, with 19.05%, and North America, with 28.32% of the deals.

North America likely had the highest proportion of sale and purchase deals because a lot of the North American carriers have strong balance sheets, and are therefore able to acquire aircraft without the assistance of banks or lessors.

The regions that scored the lowest in this category were Africa, with 0% of deals, Latin America, with 4.46%, and the Middle East, with 8.65% of the deals.

One example of a regional aircraft deal in this category was Santander's sale of three Bombardier CRJ1000s to AeroCentury and Gulf One. Law firm BLP advised on the transaction, which involved the sale of the entire share capital of the special purpose vehicles owning the aircraft.

Structured Lease



The structured leasing market remains strong and has seen the emergence of new investors to this space. In October, Stellwagen Finance, which has its headquarters in Dublin, tapped the Spanish banks to close a structured sale and leaseback deal for an Emirates Boeing 777-300ER (MSN 42338).

Bankinter, Banco Popular and Caixabank, which had traditionally financed only Spanish operating leases, provided the senior tranche of a commercial loan used to fund the acquisition of the aircraft. UAE-based Noorbank is providing the junior debt through a Murabaha loan.

The Japanese operating lease with call option (Jolco) market also remained popular in 2016, with companies such as CALC and Lufthansa continuing to tap the market on a regular basis because of its ultra-low financing costs.

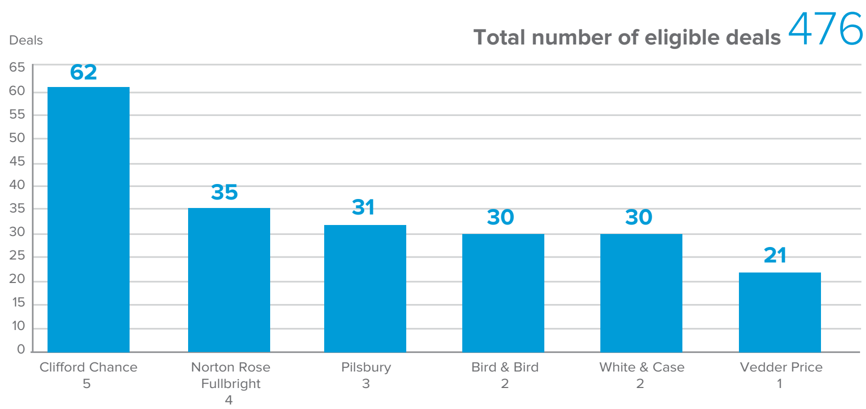
However, some jurisdictions where risk is high have unnerved Jolco market participants. For example, in Turkey, which has been experiencing challenging conditions in its tourist sector because of terrorist attacks and geopolitical instability, *Airfinance Journal* reported last year that equity appetite for Jolcos in the region was falling.

But Turkish carriers saw plenty of activity in another structured lease: the French tax lease. In June 2016, Turkish Airlines tapped this market, closing a French tax lease for two new Airbus A321-200s. SunExpress, a joint venture between Turkish Airlines and Lufthansa, financed five Boeing 737-800s through a US Ex-Im-backed French tax lease in the second quarter of 2016.

Duncan Batchelor, partner at Norton Rose Fulbright, says: "The market remains highly dynamic. In particular, we have seen many Jolco transactions. The Jolco market appears strong and investors are becoming more familiar with other airline names. We have advised the main financing banks in the aviation market, including BNP Paribas, Sumitomo Mitsui Banking Corporation, CA-CIB [Crédit Agricole Corporate and Investment Bank] and The Bank of Tokyo-Mitsubishi UFJ, on structured lease and lending facilities, as well as various airlines.

"As well as many Jolco transactions, we advised CA-CIB Bank on commercial debt financing combined with a French optimised lease structure of five new Airbus A321-200 aircraft for Turkish Airlines, involving a syndicate of international banks, arranged by Crédit Agricole Corporate and Investment Bank."

Operating Lease



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

"The operating lease sector continues to drive the market, with established lessors continuing to expand their leasing books and new entrants taking an assertive position in terms of portfolio acquisitions and M&A deals," says William Glaister, global head of asset finance, Clifford Chance, London.

He adds: "Chinese, Asia-Pacific and Middle Eastern players have become very active alongside the larger global leasing companies. We anticipate some airline defaults, for weaker credits, and a potential shift in financing options for airlines reporting under IAS [international accounting standards] when the new lease accounting rules come into effect."

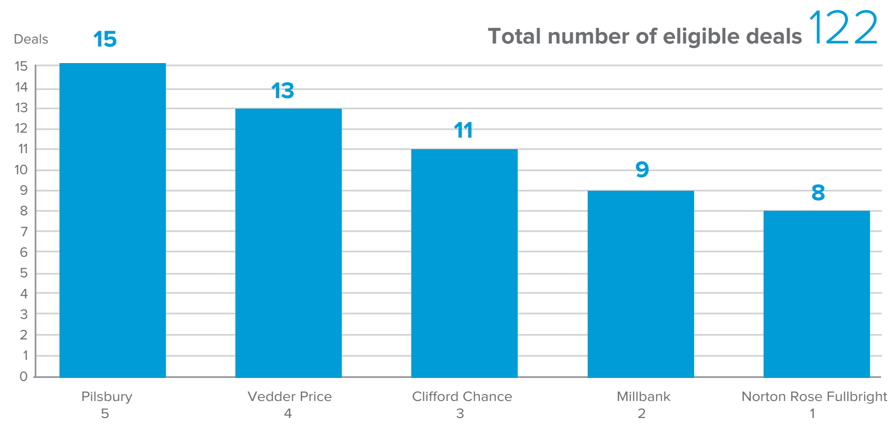
Arguably the biggest leasing M&A in 2016 was Bohai Leasing's acquisition of Avolon. The acquisition, which was completed barely a year after Avolon's initial public offering (IPO) in weak market conditions, delivered a 55% return to the shareholders who invested in the IPO in December 2014. The acquisition catapulted Avolon into the top five leasing firms in the world with a fleet of more than 400 aircraft and gave it an equity injection of $1.2 billion to drive organic and acquisition growth, such as its recent purchase of CIT Aerospace.

The acquisitions of regional lessors Aldus Aviation and Jetscape by Nordic Aviation Capital (NAC) were also among the biggest leasing M&A deals of the year. The acquisitions allowed NAC to become the dominant player in the regional market, bringing its fleet up to 294 aircraft and 48 managed aircraft. After the acquisitions, NAC also had a further 74 aircraft on order, comprising 20 E-Jets and 54 ATRs.

Mark Lessard, a partner at Pillsbury, which came third in this category, says: "Lessors continued to diversify their balance sheets and chase growth targets by raising new capital, including significant amounts of equity capital through managed vehicles such as ABS [asset-backed securities] and joint ventures.

"Pillsbury acted for Aircastle in the establishment of a joint venture with IBJ Leasing, after which we put in place a warehouse facility and the acquisition and long-term financing arrangements for a series of aircraft. We are also active for a number of lessors in the acquisition and sale of aircraft portfolios."

Capital Markets



In 2016, the volume and demand of the capital markets in aviation has been high, resulting in attractive pricing. The E-Note market continues to develop with new investors and a better understanding of the potential and limits of the product.

One of the largest aviation-related capital markets deals of the year was BOC Aviation's $1.13 billion initial public offering (IPO), which closed on 1 June. The deal stood out by being the largest-ever global aircraft lessor IPO and set a precedent for being the first major leasing company to list in Hong Kong.

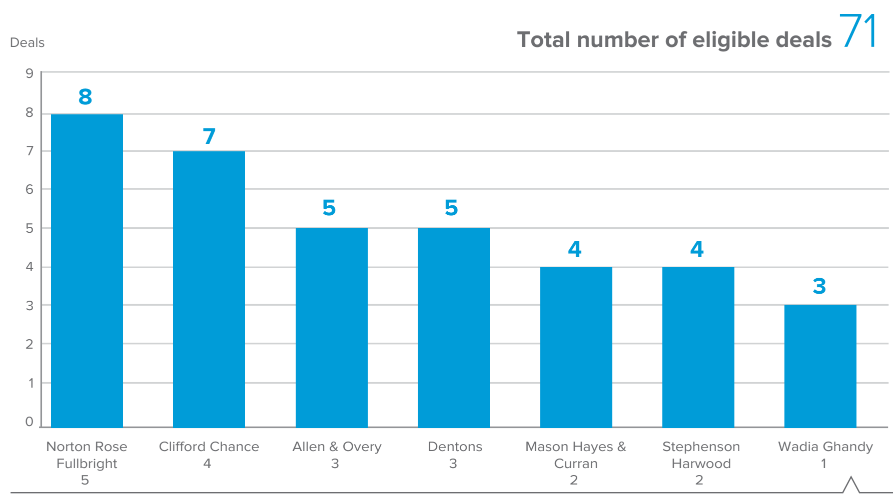
The Schuldschein market – the largest private placement market in Europe – has gained a presence in the aviation space, with Lufthansa and Goshawk closing deals last year.

"Pillsbury was active in some capacity on practically every ABS [asset-backed security] or EETC [enhanced equipment trust certificate] transaction that came to market, notably acting for Mizuho as sole lead on GECAS's first 144A ABS in over a decade, which involved the placement of the E-Note with a group of Korean investors [the first E-Note ever sold in Asia]," says Jonathan Goldstein, partner at Pillsbury, which came first in this category.

He adds: "The ABS market also continued to diversify, with several mid- to end-of-life aircraft transactions with the likes of Castlelake, Apollo and AerGen. American and United made strong use of the EETC market [collectively issuing almost $5 billion], while Norwegian came to market with a $350 million deal using an Irish SPV structure."

Kevin MacLeod, head of New York capital markets at Vedder Price, says: "We have seen during the past 12 months continued deep liquidity and greater diversification of the investor base. In particular, we have seen increased interest and investment from Asian investors, notably in Japan and South Korea, which supported issuance in the ABS market, the EETC market and the unsecured market for aircraft lessors. These liquidity trends paired with general pricing conditions enabled issuers to achieve record pricing and supported market entries by new issuers."

Export Credit



The export credit market has been weak this year, due to a number of factors. While the US Export-Import Bank of the United States (Ex-Im Bank) was granted reauthorisation in December 2015 with a mandate until 30 September 2019, the bank cannot do any commercial aviation deals at the moment.

All transactions need to be approved by Ex-Im's board of directors, which is missing its third member. The bank requires a board of three to make a quorum, but currently has only two directors.

Also, in mid-April, President Trump announced he would nominate former Republican representative Scott Garrett, a critic of the bank, as its new head, raising questions about Ex-Im's future.

The Airbus export credit agencies (ECAs) – Bpi (the French public investment bank, Bpifrance, which has taken over state export guarantees activity from Coface), Euler Hermes and UK Export Finance – are still unable to guarantee financing for Airbus aircraft because of an ongoing criminal investigation into Airbus by the UK's Serious Fraud Office. The aircraft manufacturer is being investigated in connection to inaccuracies in some of its export credit applications.

George Paterson, head of the Paris office of Norton Rose Fulbright and lead for the Paris aviation team, says: "There has been less activity in the export credit market over the past year due to the situations involving both Airbus and Boeing. However, we have acted on a large number of Export Development Canada transactions in 2016, as well as transactions involving Sace as well as Coface [now Bpi]."

William Glaister, global head of asset finance, Clifford Chance, London, adds: "The absence of active ECA financings for Airbus and Boeing aircraft has resulted in ground-breaking products."

More recently, the absence of the Airbus and Boeing ECAs has seen an increasing number of deals in which an ECA which would not traditionally guarantee financing of the assets do so. For example, UK Export Finance has started financing 787 aircraft. Although 787s are primarily made in the US, the UK ECA is able to get around this because the aircraft run with Rolls-Royce Trent engines.

Also, as a result of the ECAs being inactive, a new insurance-guaranteed product has emerged in the market, with ING closing the first deal for a 747-8I with Korean Air Lines in April.

Rising **Stars**

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

Amanda Darling

K&L Gates

Charleston, South Carolina

"I transformed my ship finance experience into aviation finance and went from strength to strength."

Amanda Darling, K&L Gates

As a science undergraduate at Melbourne's Deakin University, Amanda Darling used to sneak in to her then-boyfriend's law classes in her free time, enjoying a break from her science classes, which she enjoyed less.

Immediately after graduation, she enrolled in a Graduate Entry Bachelor of Laws at Queensland University of Technology in Brisbane and started working as a paralegal. She relocated to London in 2006 and continued paralegal work, and kept on studying via distance learning, before landing a role with Norton Rose's ship finance team. By 2010, she found an opportunity with Ince & Co in Singapore and relocated there, but eventually returned to Australia to study her Masters of Law.

When she was three-quarters of the way through this degree, a recruiter called her and asked if she would be interested in relocating to Tokyo to work in aviation finance for White & Case.

"I had never been to Japan and had done only minimal work in aviation at this stage – but it seemed like a great opportunity and one not to turn down without exploring in full. I flew to Tokyo for the interview – and the rest, as they say, is history."

She adds: "I transformed my ship finance experience into aviation finance experience and went from strength to strength. For me, there was no turning back; aviation finance gave my job satisfaction I didn't know was possible."

Because of a change in personal circumstances, Darling left White & Case and moved to K&L Gates.

While Darling says it is difficult to choose one single transaction as her favourite, the one that stands out is probably being at the ground level of a Dreamliner component financing transaction, whereby a large international airline group would purchase spare part components for the Dreamliner and would then sell these to a third party and lease them back (under an umbrella sale and leaseback agreement).

Other deal highlights for Darling include representing a syndicate of lenders led by BNP Paribas Singapore for the Japanese operating lease with call option financing of three A320 aircraft to ICBC Leasing on long-term lease to Garuda Indonesia; representing Tokyo Century Corporation as junior lender in the capacity of lead attorney on a portfolio purchase and financing transaction between AerCap (as seller and continuing servicer) and subsidiaries of Magnetar; and representing Minsheng Financial Leasing Corporation as lead English law adviser in its portfolio acquisition and financing of aircraft on lease to various airlines.

Grace (Yichun) Li

Baker McKenzie

Shanghai

Shanghai-native Grace (Yichun) Li feels lucky to be working in the aircraft financing and leasing industry in China.

"When I first started in China, you could only get lessee-oriented work because the PRC [People's Republic of China] law didn't permit Chinese companies to do finance leasing or operating lease business, so airlines could only lease from international lessors," she tells *Airfinance Journal*.

"That changed in 2006 when the CBRC [China Banking Regulatory Commission] promulgated a new law saying the Chinese banks can set up their own subsidiaries to do operating leasing. After that, the domestic business was really booming."

Li studied at the East China University of Political Science and Law from 2000 to 2004, and then decided to go to Durham University in England for further study of International Trade Law.

On her return to China, her goal was to find a job in the foreign direct investment or mergers and acquisitions area, and she found a job with Chinese firm Fangda Partners, focusing on initial public offerings and private equity. However, the working style there turned out to be far from ideal.

Grace (Yichun) Li, Baker McKenzie

"The lifestyle was crazy; I had to stay up for 24 hours one to two days per week. So I decided I needed to change," says Li.

She found an opening with Baker McKenzie in Shanghai and started work under the supervision of aviation partner Harvey Lau.

"He is one of the few lawyers who worked in PRC-related aviation work back to the early '90s," says Li.

Under Lau, Li acted on many transactions for lenders, lessors and airlines. These include acting for China Construction Bank (Asia) in the financing with CCB Financial Leasing Corporation for five aircraft on lease to Shenzhen Airlines with a deal volume of $83 million. On the lessor side, she acted for Bank of Communications Financial Leasing in the financing with Deutsche Bank, Singapore Branch as lender for one A330 aircraft on lease to Singapore Airlines with a deal volume of $38 million.

On the airline side, she acted for Air China in the lease termination for 27 aircraft in 2016 and 2017 with different underlying financing structures, with ING, HSBC, Société Générale, BNP Paribas and Natixis as counterparties.

Having worked for Baker McKenzie for more than 10 years, Li recognises her language skills as a key advantage to her work. She speaks fluent Mandarin Chinese, English and Shanghainese, the local Shanghai dialect.

She says: "Traditionally, the business has been based mostly in Hong Kong or Singapore with English speaking lawyers, but we can speak Chinese to our clients in China and English to our clients outside China. Most of the Chinese leasing companies are either in Beijing or Shanghai, so I can speak Shanghainese to the local lessors here."

Chris Marrable

Holman Fenwick Willan
Singapore

"When I started working, I got a real interest in travelling to Asia."

Chris Marrable, Holman Fenwick Willan

Hailing from the English county of Suffolk, Chris Marrable always dreamt of working in Southeast Asia. As a child, he travelled extensively with his parents because his father was involved in Formula One racing as a marketing director. His first trip to Asia was to Japan as an eight-year-old for the Japanese Grand Prix.

Before joining the Singapore office of Holman Fenwick Willan (HFW) two years ago, Marrable spent eight years at law firm Osborne Clark in London.

"Increasingly, I was doing private equity with a focus on asset-backed lending, and started building up the asset finance team there. The partner's main practice was rolling stock but also some aviation," he says.

However, his career goal was always to work in Asia, so he started reaching out and looking for options in that part of the world.

"When I started working, I got a real interest in travelling to Asia. From 2005 onwards, I started making regular trips there," he says.

Fortunately, he was able to find a job with HFW and relocate to Singapore.

"It's a fantastic city, Singapore. It has a combination of the best of Asian cities, but is one of the most developed cities at the same time. My wife and I have got a little boy who is just coming up to five years old, so it's a fantastic place for him."

Marrable has worked on many transactions over the past 12 months, including acting as counsel to BNP Paribas, Cathay United Bank and Taipei Fubon Commercial Bank in a limited recourse financing to Deucalion in the financing of two A330 aircraft on lease to China Airlines. He also advised BNP Paribas on a limited recourse financing to AWAS in the financing of one A320 aircraft on lease to VietJet.

Besides being a seasoned traveller, Marrable is also a keen scuba diver with an Advanced Open Water qualification and has made dives in Indonesia, the Philippines and elsewhere. Surprisingly, his hobby has even led to him furthering his professional network.

During one dive, his diving partner turned out to be an employee of Lufthansa Technik in Singapore and they ended up trading business cards – presumably once they were out of the water.

Nai Ying Kwok

King & Wood Mallesons
Sydney

Nai Ying Kwok, King & Wood Mallesons

Sydney-based Nai Ying Kwok began his career as an aviation finance lawyer at the time of the 2008 global financial crisis (GFC) – something he actually considers lucky.

"It was good as a young lawyer," he recalls. "If I had started pre-GFC when Mallesons was doing lots and lots of aviation deals with all kinds like Allco [Financial Group], who were one of Mallesons' biggest clients, I would have been working on a really long series of transactions, but because of the GFC, I think I managed to get involved in a much more varied number of transactions."

He only came into law "a little bit later in life", having initially completed a degree in information technology (IT). After working in IT for a couple of years, he became interested in intellectual property. Wanting to explore law more, he did a Juris Doctor at Melbourne University, before spending a year in Japan working for Anderson Mori & Tomotsune.

After that, he joined Mallesons Stephen Jaques (one of the firms that later merged into King & Wood Mallesons).

"I think our practice at Mallesons, especially in the Sydney office, is quite aviation focused and I think John [Canning] has got a very strong aviation finance and lender practice in Australia," says Kwok.

At King & Wood Mallesons (KWM), Kwok has worked on many significant transactions, including acting for Investec Bank as investment manager to Goshawk Aviation Fund on the purchase, financing, leasing and novations of leases of more than 14 Boeing and Airbus aircraft leased to airlines in various jurisdictions, including Australia, Spain, Brazil, Kazakhstan and Indonesia.

He also acted for Goldman Sachs (the structuring agent and bookrunner) as part of its Australian counsel team in the $800 million enhanced equipment note offering by Virgin Australia.

Kwok plans to relocate to KWM's Hong Kong office this summer.

When he is not working, Kwok enjoys travelling with his partner.

"We are looking at a trip to South Africa this year. We have really done as much travelling as we can all over the world. We have been to Iceland to look at the Northern Lights," he says.

Kwok has not completely forgotten his IT background and still enjoys playing computer games.

"I still have a little bit of a nerdy side to me and I'm still interested in that kind of stuff," he says.

Kwok describes his Nintendo Switch – a home games console-cum-tablet computer – as a "godsend".

"In the legal practice, how much time do you have to commit to play computer games? With the Switch, you can take it out of your bag and play it. Over the last five to six years, we have all been really time poor and I have found you have not been able to spend a lot of time on hobbies."

Asked whether he thinks he is not alone in his penchant for video games in the aviation finance law community, Kwok says: "I think all of them enjoy a game of FIFA*, especially the younger ones."

*A football-based video game series

Luke Elliott

Allen & Overy
London

Durham History graduate Luke Elliott went straight from university to a training contract with Magic Circle firm Allen & Overy, rising from a trainee to senior associate. He had no particular previous interest in aviation, but fell into the industry through an asset finance seat under partner Harry Upcott.

"I very much enjoyed that seat and I asked to qualify here," he tells *Airfinance Journal*. "It surprises you what takes your interest and captures your imagination."

Since then, he reckons aviation has been about the majority of his practice and, over the past few years, he has become increasingly specialised in the aviation field. In 2015, Elliott spent a year seconded to UK Export Finance (UKEF), which gave him "a lot of perspective from a lot of different angles".

“The nature of UKEF being a sub-department of the Treasury means you get to see the political aspect of these things.”

Luke Elliott, Allen & Overy

“The nature of UKEF being a sub-department of the Treasury means you get to see the political aspect of these things,” he says.

“Being the civil service, they are much more egalitarian in their approach, so they give you more access to the commercial side of the transactions,” he adds.

At Allen & Overy, a highlight transaction for Elliott was acting for BNP Paribas as arranger and placement agent as note trustee on the world’s first euro-denominated export credit agency bond issuance for the refinancing of five ATR aircraft on lease to Avianca Group. Also, he advised Arab Banking Corporation on the lease financing of four Airbus A320 aircraft on lease to Saudi Arabian Airlines.

Elliott, who comes from the south-west London district of Wimbledon and used to spend part of his summers working at the world-famous tennis event hosted there, is an avid sports fan, and plays squash, tennis and hockey.

He also has an interest in drama, having most recently watched the play The Goat, or Who Is Sylvia? at The Old Vic theatre in London.

He lives in Balham, London, with his wife and young son, Ludo, who is nearly two years old.

Marcus Pyke

Bird & Bird

London

Bird & Bird associate Marcus Pyke enjoys the fast-paced transactional nature of aviation finance work. Having aspired to become a lawyer since he was a child,

Marcus Pyke, Bird & Bird

he qualified as a general banking lawyer working at Herbert Smith Freehills, but quickly found his dream position with a law firm in Paris, utilising the French he had mastered at university.

The work at this firm, Simmons & Simmons, turned out to be nearly all aviation finance, and Pyke thoroughly enjoyed this new field, despite being exposed as a child to the tragic side of the industry by his grandfather, who worked as an air accident investigator.

“I think aviation finance is a great area to be in because it is so international, but in terms of the insurance side of things, I don’t think I have the patience for the long drawn-out litigation process. I’m very much more into the fast-paced transaction side of things," he tells *Airfinance Journal*.

After his stint in Paris, Pyke moved back to London with Simmons & Simmons, where he spent five years, before moving to Bird & Bird in 2016.

There, he has worked on operating lease, export credit and commercial financing transactions. A highlight for Pyke was advising Etihad on the sale and leaseback of two A320s from Natixis – which won *Airfinance Journal*'s Sale and Leaseback Deal of the Year 2016.

"We have got a good team and a lot of guys with experience in-house. I think that really comes across when people have a real passion for the industry, and that is really infectious," he says.

As part of his role, Pyke serves as Bird & Bird's main representative to the European Regions Airline Association, which gives him insight into the state of regional carriers in Europe.

"Business there is pretty much all up for grabs and keeps us very busy," he says.

Outside of law, Pyke's "big passion" is cricket, and in the summer months he tries to play the sport as many weekends as he can in Kent, a county in the south-east England. He likes a spot of golf as well, "when the wife allows". Pyke lives in Lincolnshire, commuting into London each day, and has an 18-month-old daughter.

Rakhi Savjani

Pillsbury

London

I found the work interesting and intellectually stimulating.

Rakhi Savjani, Pillsbury

Rakhi Savjani studied law at the London School of Economics and Political Science.

Having trained at DLA Piper, she qualified into asset finance in 2011 because she "found the work interesting and intellectually stimulating and particularly enjoyed the global nature of the aviation industry". She moved to Pillsbury with partners Graham Tyler and Debra Erni and three other lawyers in May 2014.

Savjani says she enjoys the "variety and quality of work and clients from all over the world". She adds that "no two deals are ever the same and there is always a new and interesting challenge in different jurisdictions and between different contracting parties".

Savjani acts for clients across the aviation industry, including several operating lessors, major Middle Eastern airlines and financial institutions. Among other deals, Savjani has played a leading role in the firm's team advising Emirates as the lessee on the listing of AA4+ on the LSE specialist fund market, which previously won *Airfinance Journal*'s Editor's Deal of the Year.

Another deal highlight for Savjani is representing a major Irish-based lessor in lease restructuring arrangements regarding four A320 aircraft subject to lease suspension arrangements and new lease agreements (in lieu of a more typical subleasing structure) and registration in a new jurisdiction involving substitute Asian and Indian airlines. This transaction included producing bespoke documents and some of the aircraft were also the subject of Japanese operating lease with call option financings, which "added a layer of complication and extra coordination into the mix".

Savjani says one of the highlights of her career was attending a delivery in Toulouse on behalf of an airline client where she had to work through various challenges in the delivery room because the lessor did not have its funds in place and the airline needed to ferry the aircraft to enter into commercial operation in a short period of time. She enjoyed making use of her analytical, commercial and free drafting skills, and recalls that "seeing the tangible asset that I had been working on documentation for was exciting".

Graham Tyler, co-head of Pillsbury's asset finance practice, says: "Seeing a lawyer transform from a trainee solicitor to a superbly effective senior associate is always rewarding. Rakhi has distinguished herself not only through her legal knowledge, but also through her exceptional client service. Rakhi always brings a common sense, practical and thoughtful approach to the different issues that we face on our deals and is a pleasure to work with."

Savjani is a keen traveller and one of her hobbies is Bollywood dancing, which taps into her Indian heritage.

Rebecca Quayle

Berwin Leighton Paisner

London

Rebecca Quayle always wanted to be a lawyer and so took the traditional path to qualifying, studying law at University of Waikato in New Zealand, before practicing at Simpson Grierson in Auckland.

Rebecca Quayle, Berwin Leighton Paisner

Two years after qualifying, Clifford Chance was recruiting for finance lawyers, providing the opportunity to move overseas. Quayle was offered a role in the firm's aircraft finance team. The role and transition into aviation took her around the world, allowing her to travel extensively for transactions and work in Hong Kong, as well as in the London office.

One of the most interesting deals Quayle has worked on recently has been the introduction of Sukhoi SuperJets to CityJet's fleet.

"The documentation and the negotiation of the transaction was incredibly interesting as there were many additional issues to consider which arose from CityJet being the first western European operator of the aircraft," she tells *Airfinance Journal*.

"We had to consider a number of different matters that you don't usually have to think about when you are working with an aircraft which is already well-established in the market, and I enjoyed gaining more of an insight into the technical and operational considerations."

She adds that one of the highlights of the transaction was having the opportunity to visit the SuperJet International hangar in Venice during negotiation meetings.

"We saw the aircraft at various stages, from when it was a green aircraft until it was fully kitted out. It was a working reminder of when we had to have the documentation agreed by," she says.

Another deal highlight for Quayle was acting for CCB Financial Leasing negotiating and documenting the sale and leaseback of 11 A321 aircraft for Wizz Air.

Quayle says that one thing she likes about the industry is that people tend to stay in it.

"I had a long career break while my children were very small and when I returned to the industry many of the same faces were still there, albeit in different places," she says.

Quayle enjoys reading, supporting the New Zealand wine industry, running and spending time outdoors and with her friends and family. She lives near Richmond Park in south-west London. She is married with three children, aged 12, 10 and eight.

Ireland's aviation **excellence**

Matheson partners, **Rory McPhillips**, **Stuart Kennedy**, **Gerry Thornton** and **Kevin Smith**, who have advised numerous Chinese state-owned enterprises and other market entrants in establishing their leasing platforms in Ireland, assess how Ireland's commercial and regulatory environment has allowed it to become a dominant force in aviation and continue to attract new leasing platforms.

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. These include its favourable tax regime, a wide double tax treaty network, ease of access to the EU and OECD, a well-developed common law legal system, professional expertise and a competitive business environment.

In addition, Ireland boasts a highly skilled and motivated workforce coupled with an exceptional third level educational system. This is emphasised by the UCD Michael Smurfit Graduate Business School offering the only master's degree in Europe in aviation finance and the Law Society of Ireland offering a diploma in aviation leasing and finance.

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.

"Ireland boasts a highly skilled and motivated workforce coupled with an exceptional third level educational system."

Taxation developments: 12.5% tax 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 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 are as follows:

- Chinese lessors continue to be attracted to Ireland and there are now at least seven Chinese leasing companies with operations in the country, all of which benefit from Ireland's favourable tax regime, its professional expertise and its location in the European Union. Most recently Ping An Aircraft Leasing and SinoSinga commenced operations in Ireland, and there are several others currently exploring opportunities;
- Avolon Holdings Limited, the Irish-based leasing company, announced in April that it had completed its $10.38 billion acquisition of CIT Group Inc's aircraft leasing business. The acquisition resulted in Avolon becoming the third-largest aircraft lessor with a combined fleet of about 868 aircraft valued at more than $43 billion;
- In April, Dubai Aerospace Enterprise announced that it had reached agreement with Terra Firma, alongside co-investors and Canada Pension Plan Investment Board, to acquire the Dublin-based aircraft lessor AWAS. After the acquisition, Dubai Aerospace Enterprise will have an owned, managed and committed aircraft fleet of 394 aircraft with a total value of more than $14 billion; and
- CIT Group Inc announced in March that it had sold its 30% ownership stake in the commercial aircraft leasing joint ventures TC-CIT Aviation Ireland Limited and TC-CIT Aviation US, Inc to its joint-venture partner Tokyo Century Corporation. The joint-venture entities have been renamed TC Skyward Aviation Ireland Limited and TC Skyward Aviation US, Inc, respectively.

In addition to Ireland's 12.5% Irish corporation tax rate, Irish lessors carrying on a trade in Ireland may 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 were as follows:

- Castlelake, an alternative investment firm specialising in aircraft, priced its $916 million asset-backed security in August. The transaction was backed by 52 aircraft and one aircraft engine;
- in May 2016, Norwegian Air Shuttle raised about $349.1 million in an enhanced equipment trust certificate transaction to finance 10 aircraft through Torefjorden DAC, a wholly owned subsidiary of Arctic Aviation Assets Limited, which in turn is Norwegian Air Shuttle's wholly owned Irish leasing subsidiary. This represented NAS's first public EETC transaction;
- in February, Elix Aviation Capital priced the first all-turboprop asset-backed securitisation. Proceeds from the loans will be used to acquire a portfolio of 63 turboprop aircraft that are initially leased to 17 airlines located in 12 countries with an initial total value of about $545.1 million; and
- Dubai Aerospace Enterprise, announced its inaugural aircraft securitisation in February. Falcon Aerospace and Falcon Aerospace USA will issue $410 million of asset-backed secured term loans. Proceeds of the loans will be used to purchase 21 in-production, narrowbody aircraft. Dubai Aerospace Enterprise (DAE) will act as servicer for the transaction.

Expansion of double tax treaty network

Ireland has signed 72 double tax treaties (all of which are now in force). Its most recently signed double tax treaties include treaties with 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. In particular, negotiations for new double tax treaties with Azerbaijan, Ghana, Kazakhstan, Oman and Turkmenistan have concluded and these double tax treaties are expected to be signed shortly.

Cape Town Convention and Aircraft Protocol

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

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 are 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.

> *Ireland was one of the first Contracting States to the International Registry and Aircraft Protocol.*

In addition, the International Interests in Mobile Equipment (Cape Town Convention) (Aircraft Protocol) Order 2017 signed on 2 May adopted into Irish law the Alternative A insolvency provisions of the Aircraft Protocol to the Cape Town Convention. This is similar to the US Section 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, Italy, Norway, Spain and Mexico, among others, 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 (EASA) 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 (irrevocable deregistration and export request authorisation) with the Irish Aviation Authority.

Conclusion

Ireland's reputation as a centre of excellence for the aircraft financing and leasing sector remains strong. It 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.

Ireland adopts the Alternative A insolvency remedy under **Cape Town Convention**

Catherine Duffy, head of aircraft finance, A&L Goodbody, discusses the impact of Ireland adopting Alternative A insolvency remedy.

Alternative A of the Cape Town Convention now has the force of law in Ireland, after the signing of an order by the Irish government on 10 May. The Cape Town Convention creates an international uniform body of law applicable to interests in aircraft assets for the protection of financiers, lessors and conditional sellers, and to establish basic remedies available to them under agreements relating to the aircraft assets. A&L Goodbody has been advising on the Cape Town Convention for more than 10 years, since it was ratified by Ireland in 2006.

What is Alternative A?

By giving force of law to Alternative A, Ireland will apply a regime substantially similar to the long-established Chapter 1110 insolvency remedy in the US. It will apply to aircraft assets that are the subject of a lease, a security agreement or a conditional sale agreement registered on the international registry such that:

- within 60 days of an insolvency or threatened insolvency of a lessee, mortgagor or conditional purchaser, the lessor, financier or conditional seller will either get the aircraft asset back or all defaults (other than the default occasioned by the insolvency itself) will have been cured and an undertaking given as to future obligations;
- the aircraft will be preserved and its value will be maintained during the 60-day period; and
- Irish administrative authorities will cooperate in the exercise of remedies subject to aviation safety requirements.

Why is Alternative A important?

Giving force of law to Alternative A in Ireland is important because it:

- confirms the Irish government's continued support and commitment to Ireland as a leading jurisdiction for aircraft financing;
- gives Irish leasing companies and airlines access to reduced cost funding;
- augments Ireland's legal and fiscal regime and enhances Ireland's position as a leading location for financing and leasing aircraft; and
- facilitates particular types of financing structures in the aviation sector including non-US enhanced equipment trust certificates (EETCs), bond issuances and other capital market and structured finance transactions.

What does it mean for Ireland?

With the introduction of Alternative A, Ireland meets all of the key elements to execute a successful and competitively priced EETC, including:

- having an established rule of law;
- being a Cape Town Contracting State with Alternative A adoption; and
- having a favourable fiscal and legal regime which is sufficiently flexible to support the structure and liquidity profile of a US EETC to access and optimise the established investor base.

While EETCs are airline based, the change in Ireland will not just benefit the Irish airlines but will potentially benefit other airlines based in Europe, Asia and the Middle East. It will particularly benefit those which have ratified and implemented the Cape Town Convention, including Alternative A, by providing the opportunity to locate the issuer vehicle in Ireland to avail of our legal and fiscal regime, as well as maximise the pricing and return to investors.

Looking ahead, as the capital markets evolve and the investor base expands and becomes more comfortable with non-US airlines and the non-US legal environment, we would hope to see more non-US EETCs through Ireland and perhaps even non-US dollar-denominated issuances.

For further detail on Ireland's adoption of Alternative A, or any other aircraft finance queries, please contact an A&L Goodbody aircraft finance partner: Catherine Duffy, Seamus O'Croinin, Marie O'Brien, Maireadh Dale or Maria McElhinney. With five dedicated aircraft finance partners, A&L Goodbody has the largest aircraft finance team in Ireland, and it is recognised by the international aviation industry as the Irish law firm of choice for experienced and sophisticated advice on aircraft financing.

"By giving force of law to Alternative A, Ireland will apply a regime substantially similar to the long-established Chapter 1110 insolvency remedy in the US."

Catherine Duffy, head of aircraft finance, A&L Goodbody

Bermuda aircraft portfolio securitisations – a better structure

Jason Piney, director of the corporate department at Conyers Dill & Pearman, looks into the benefits of choosing Bermuda as a jurisdiction for aircraft transactions.

Since the resurgence of the aircraft asset-backed securitisation (ABS) in 2011, there have been 29 ABS transactions raising an aggregate total amount of $15.4 billion, according to data from Kroll Bond Rating agency.

ABS deals have evolved since the transactions that completed before the 2008 financial crisis with more innovative deals being successfully completed on the basis of diverse pools of aircraft, such as regional jets and turboprops.

As the market continues its resurgence, Bermuda has remained the preferred jurisdiction for structuring ABS deals with an offshore component.

This was demonstrated most recently in February, with Elix Aviation Capital launching its $411 million debut ABS deal through Prop 2017-1 Limited, a Bermuda company. This is the first ABS to be secured entirely against turboprop aircraft.

In December, GE Capital Aviation Services' sponsored $709 million acquisition financing of 20 commercial passenger aircraft and related notes issuance was launched through Labrador Aviation Finance, a Bermuda company.

This is the first ABS to sell an equity certificate into Asia, specifically into South Korea. This transaction was named *Airfinance Journal*'s Editor's Deal of the Year 2016.

This article examines the reasons why Bermuda remains the ideal jurisdiction for structuring ABS deals and notes some recent developments in the jurisdiction.

Why Bermuda?

Before 2008, several ABS holding companies and issuers established in Bermuda, including Aircastle, Fly Leasing and Genesis Lease, which all successfully launched on the New York Stock Exchange.

After the financial crisis in 2008, GECAS's June 2011 $290 million aircraft engine securitisation transaction, Rotor, was the first ABS placed into the capital markets since 2007. Bermuda has been the venue for all of GECAS's securitisation transactions since the Rotor transaction.

ABS structuring

Several key structuring objectives of an ABS deal are considered below, together with an examination of how Bermuda vehicles can be used to help achieve these goals:

- off balance sheet;
- bankruptcy remoteness;
- separateness;
- certainty of security interest priority; and
- rating agency-approved insolvency regime.

Off balance sheet

Often an ABS transaction will require an orphan special purpose vehicle (SPV), meaning that it is not part of the originator's corporate group. By selling the asset to the orphan SPV, the asset is removed from the originator's balance sheet. When an orphan is required, the SPV is incorporated with all the shares issued to a trustee (also offshore) pursuant to a charitable or purpose trust. A Bermuda purpose trust is of particular benefit in an ABS transaction structured in this manner, as the purpose trust is a trust designed to fulfil purposes rather than one for beneficiaries.

The purposes of the trust and, therefore, the duties of the trustees, can be clearly linked to the contemplated transactions – namely, to subscribe for shares of the SPV, retain those shares and support the activities of the SPV in the transactions.

A charitable trust has charities as the beneficiaries where, depending on circumstances, a conflict of interest may arise, or where the trust could be open to challenge that the trustees are really acting in the interests and for the benefit of those who benefit from the structure.

Bankruptcy remoteness

The SPV is usually created in such a way that it is bankruptcy remote, which means that the aircraft sold to the SPV are not at risk if either the originator becomes insolvent. As the SPV should not be permitted to incur indebtedness other than the asset-secured loans, the SPV is unlikely to become insolvent as a result of its own activities.

"As the market continues its resurgence, Bermuda has remained the preferred jurisdiction for structuring ABS deals with an offshore component."

Jason Piney, Conyers Dill & Pearman

Operating under a flexible corporate regime, the following protections are generally put in place for a Bermuda SPV:

- the SPV's objects and powers are limited to entering into the specific transactions related to the securitisation;
- the trustee, pursuant to the purpose trust, is not allowed to sell the

shares, merge or amalgamate the SPV, continue the SPV into another jurisdiction or make any other structural changes to the SPV, such as amending its constitutional documents. If a purpose trust is used, these requirements can be set out in the trust deed, whereas if a charitable trust is used, the trustee must enter into a separate undertaking. This is a further advantage of using a purpose trust whereby everything can be set out in one document; and
- it is important to ensure that the SPV will not be petitioned into winding up (bankruptcy) and the trustee of the purpose trust, together with the note holders, indenture trustee and other service providers will agree not to petition the SPV into bankruptcy.

Separateness

Securitisation transactions are typically structured to avoid the risk of the SPV's assets being treated as belonging to the originator, to another third party, or to a creditor or liquidator of a third-party company, which has a claim on the assets. Maintaining this separateness can be achieved by using a Bermuda SPV:

- as a general rule, Bermuda law recognises the separate and distinct existence of a Bermuda company from its shareholders and subsidiaries. Save in very limited exceptions, a Bermuda court, a liquidator appointed by a Bermuda court or the official receiver of Bermuda, has no power under Bermuda law to consolidate assets; and
- separateness covenants which appear in the transaction documents can be reflected in the SPV's constitutional documents (including, for example, requiring that the SPV observes all corporate formalities necessary to remain a separate legal entity and maintains its assets and liabilities separate and distinct from unrelated parties).

Security interest priority

Security is paramount in an ABS transaction where the parties require certainty with respect to the security granted by the issuer or borrower and aircraft-owning entities in terms of perfection, priority and notice to third parties. Bermuda provides a statutory framework that ensures certainty of security interest priority with a public, central register of security interests.

Importantly, on registration of the charge, the charge will have priority in Bermuda over any unregistered charges and over any subsequently registered charges, in respect of the assets that are the subject of the charge, to the extent that Bermuda law governs the priority of a charge.

In certain other offshore jurisdictions, no public, central register is available and filings are made in internal registers that can only be searched at the registered office of the company.

Rating agency-approved insolvency regime

Rating agencies and lenders are familiar with Bermuda's insolvency regime, which provides a flexible framework, built on known jurisprudence of the UK and other Commonwealth jurisdictions for both debtors and creditors.

Bermuda's insolvency regime facilitates:

- the swift and inexpensive appointment of receivers by secured creditors;
- the use of schemes of arrangement to effect restructuring;
- restructuring through the use and court appointment of so-called light touch provisional liquidators, appointed by the court to work with the boards of companies or with Chapter 11 trustees (if there is a US element) or other foreign appointees to restructure Bermuda companies; and
- winding up through the appointment of liquidators with full powers to realise the assets of the company and make payment to creditors.

Benefits of Bermuda SPVs

There are a number of benefits that Bermuda can offer aircraft leasing companies.

Tax neutral: Bermuda is tax neutral. There are no income, profit or capital gains taxes in Bermuda, and the Minister of Finance will grant an assurance to Bermuda companies that they will not be liable to pay any such taxes before 31 March 2035. This is particularly attractive to holding companies with subsidiary operations in, or significant income arising from, more than one country, such as aircraft leasing companies.

Further, subsidiaries and orphan SPVs can use Bermuda's tax neutrality to establish a tax-efficient business structure.

Flexibility and expertise: Bermuda-exempted companies are extremely flexible and are routinely used as SPVs in structured finance, asset finance and leasing transactions. An SPV can be incorporated within one to two business days, and the ongoing statutory requirements of the SPV are straightforward and inexpensive.

Bermuda's corporate law is flexible and largely based on the corporate law of the UK, with a final appeal to the Privy Council of the House of Lords in England. Bermuda companies are listed on most major stock exchanges around the world, and the major stock exchanges are familiar with Bermuda's legal system and regulatory environment.

Recent developments

Cape Town: in August 2016, Bermuda passed the necessary domestic legislation to permit the UK to extend the Cape Town Convention to Bermuda, as one of its Overseas Territories. Such extension is expected to occur in the latter half of 2017. Accordingly, a creditor or secured party engaged with a Bermuda SPV will soon be afforded all the rights, benefits and protections afforded to creditors under the Convention.

Bermuda LLCs: Bermuda limited liability companies (LLCs) were introduced in late 2016. The central provisions of the applicable Bermuda legislation were closely modelled on the corresponding provisions of the Delaware LLC legislation. A Bermuda LLC can be used as a flexible and cost-effective aircraft-owning entity, with the same statutory framework applicable to security assets on the assets of a Bermuda LLC.

Bermuda Stock Exchange (BSX): the EU Market Abuse Regime (MAR) introduced wide-ranging additional administrative obligations (and possible civil and criminal sanctions) for issuers, including in connection with listed ABS deals. Issuers may consider listing on the BSX, which is not bound by or subject to any EU directives or regulations, including MAR and is considerably more flexible in its approach.

The BSX is a member of the World Federation of Exchanges and, in March, was awarded Acquisition International's Excellence Award, 2016 for Most Outstanding Offshore Stock Exchange.

Bermuda – the offshore jurisdiction of choice

Bermuda vehicles offer unique yet flexible structures that are capable of being used in today's innovative ABS transactions. In addition to an attractive infrastructure, Bermuda provides a statutory framework that facilitates structured finance transactions. In particular, Bermuda law is conducive for the SPV model because it ensures the integrity of bankruptcy remoteness, the separate legal personality of an SPV and the certainty of security interest priority.

In addition, Bermuda maintains a favourable reputation among investors, lenders, rating agencies and service providers. As a jurisdiction, Bermuda is ideally placed to support the parties to ABS deals with a commercial approach and considerable expertise.

Above & Beyond

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