

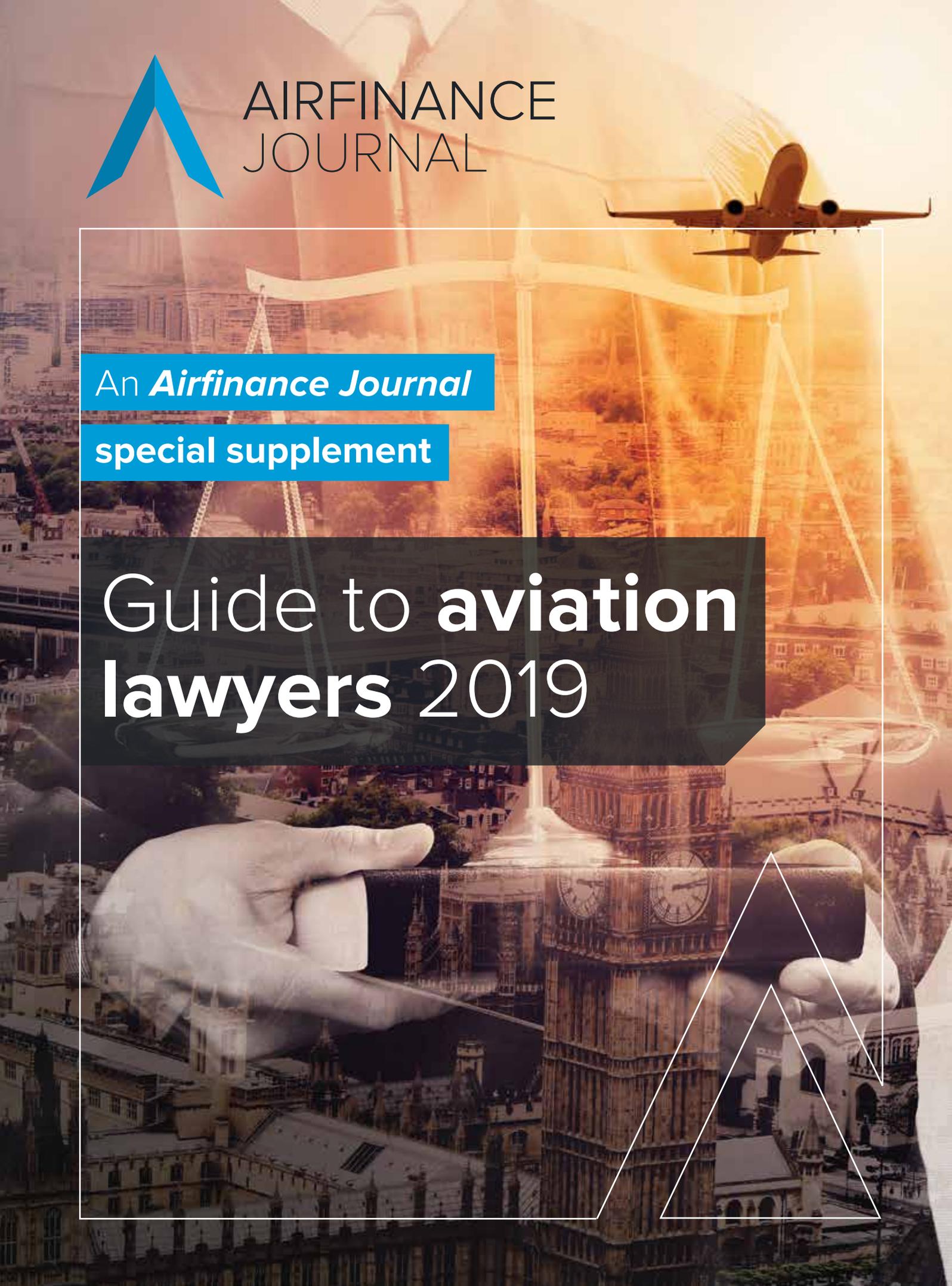


AIRFINANCE  
JOURNAL

An *Airfinance Journal*

special supplement

# Guide to **aviation** **lawyers** 2019



# Legal moves 2018-19

## Clifford Chance promotes Miller to partner



Madalyn Miller

Law firm Clifford Chance has confirmed the promotion of Asset Finance associate Madalyn Miller as partner.

Miller joined the Asset Finance team since 2012 and had been an associate in the Clifford Chance's Banking and Finance practice in New York.

Her asset finance experience involves representing underwriters, lenders, and lessors in a variety of asset finance transactions, including portfolio securitisations, acquisition financing, and secured lending.

In 2016, Miller was named by *Airfinance Journal* as one of just eight Rising Stars globally.

## Norton Rose Fulbright appoints US head of aviation

Global law firm Norton Rose Fulbright has appointed partner Alyssa Vazquez as its US head of aviation. In this role, Vazquez will oversee the firm's US aviation lawyers, who work with airlines, banks and financiers, lessors, manufacturers, insurers and export credit agencies.

She will promote the firm's aviation practice in the US and work closely with firm leaders from other global transport practices.

Vazquez's practice focuses on transportation finance with a particular focus on aviation matters. Her clients include leasing companies, borrowers, equity participants, lenders, lessees and airlines in finance, lease and acquisition matters in both domestic and cross-border transactions.

## Bird & Bird hires aviation partner

Law firm Bird & Bird has hired Richard Sharman as an aviation finance partner, based in its London office.

Sharman joins from the London office of Clifford Chance, where he was a senior associate.

Sharman handles aviation and other transportation transactions on behalf of financial institutions, aircraft leasing companies, airlines, arrangers and equity investors. His deals include commercial debt financings, operating leasing, structured tax-based financings, equity funds, export-credit, asset portfolio sales and purchases, joint ventures and Islamic financings. His experience also covers secondary debt trading, repossessions and restructurings.

Bird & Bird has been growing its aviation practice recently. The firm has hired Simon Gough, formerly a senior tax partner at Dentons & DLA, whose experience includes advising on aviation finance transactions and Pierpaolo Mastromarini, an aviation finance/export credit lawyer based in Italy. In addition, Bird & Bird will soon be adding to the team in Frankfurt led by Matthias Winter.

## Arthur Cox makes senior appointments

Irish law firm Arthur Cox has announced two senior appointments to strengthen and expand its aviation team.

Rob Murphy joins the firm as co-chair of Arthur Cox's aviation team. Murphy was most recently chief operating officer and general counsel at CDB Aviation. Prior to that he was a partner at the law firm Freshfields, where he was head of global aviation and asset finance. Laura Cunningham joins the firm's aviation

practice as a partner. Cunningham has been working internationally in aviation with Milbank, Tweed, Hadley & McCloy, principally in their London office, having also spent time in Milbank's Singapore office. Prior to Milbank, she worked in Freshfields' aviation and asset finance team, having trained and worked with Arthur Cox.

The firm's existing aviation practice is led by Caroline Devlin, who will now co-chair the aviation team with Murphy.

## Shebson to lead HFW new global management team



Jeremy Shebson

Law firm HFW has elected Jeremy Shebson as its new managing partner and re-elected Richard Crump as its senior partner.

Shebson is a partner in HFW's global aerospace group and a member of the firm's global strategy board. He also headed HFW's Brazil practice and drove the firm's recent cooperation arrangement with Brazilian law firm CAL. He will replace current managing partner Marcus Bowman, who is retiring from the firm after more than 30 years at HFW.

Crump has been HFW's senior partner for more than a decade and has now been re-elected four times.

Both started on 1 April 2019. Together, they will manage the strategy and operations of HFW's global business, which comprises more than 600 lawyers across six core industry groups: aerospace,

commodities, construction, energy and resources, insurance, and shipping.

The elections come amid a period of sustained global expansion at HFW. The firm added 24 new partners in 2018, including nine internal promotions and 15 lateral hires across Abu Dhabi, Brussels, Dubai, Hong Kong, Houston, London, Rio de Janeiro and Singapore. Also, HFW has re-elected London partner Giles Kavanagh as the head of its global aerospace practice and a member of the firm's management board.

HFW also promoted Singapore-based aviation claims and insurance specialist Terence Liew as one of nine new partners, spanning offices in Europe and Asia-Pacific and all six of the firm's global industry groups: aerospace, commodities, construction, energy, insurance and shipping.

## K&L Gates Tokyo hires counsel

**K**&L Gates' Tokyo office hired Tomohiro Kitada as a counsel in its banking and asset finance practice in November 2018.

Kitada joined from US bank BNY Mellon, where he was a managing director and managing counsel.

At K&L Gates, he will work closely with partner Robert E. Melson, Jr., a leader of both the firm's aircraft finance practice and the global finance practice area. He will also work with partner Takahiro Kawaguchi, who focuses his practice on Japanese operating lease (Jol) and Japanese operating lease with call option (Jolco) transactions.

Kitada's arrival follows the Singapore office's addition of James Bradley as a partner in the aircraft finance practice in December 2017 and of Kamil Ahmed as a counsel in February 2018.

Ahmed became a new partner at K&L Gates Straits Law in Singapore in early 2019. Prior to joining the firm, Ahmed worked for law firms in Asia, New York and Canada. K&L Gates' Singapore office merged with Straits Law at the start of this year.

## Clyde & Co hires Middle East partner

**L**aw firm Clyde & Co hired Taimur Malik as a new corporate finance partner for its Dubai office in September 2018.

Malik joined from US law firm Curtis, Mallet-Prevost, Colt & Mosle, where he was a partner in the Dubai and Muscat offices. Before that he was regional head of the legal department for Vale, one of



Taimur Malik

the world's largest metals and mining companies, overseeing legal matters for projects in Oman and in the wider Middle East region.

Malik has advised governments, sovereign wealth funds, financial institutions, listed companies and Fortune 500 companies on matters in countries across Asia, the Middle East and Africa.

## KWM Hong Kong grows aviation team

**K**atherine Ke has joined King & Wood Mallesons (KWM) Hong Kong as a partner. She has a particular focus in asset finance and the aviation sector.

Ke joins from Clifford Chance and has more than 15 years of experience advising Chinese and multinational clients on cross-border financing transactions. Native in Mandarin and fluent in English, she represents lead arrangers, lenders, sponsors and corporates in a range of PRC inbound and outbound transactions including general syndicated loans, project finance, structured finance, trade finance and receivables finance.

Her appointment follows the recruitment of Ashley Wong in January as a partner, responsible for leading the Hong Kong aviation practice.

Wong joined KWM from Mayer Brown. She also has more than 15 years of experience in aviation matters, including aircraft portfolio acquisitions and disposals, pre-delivery payments financing, sale and lease-back arrangements, acquisitions and disposals of new and used aircraft and engines, as well as dry and wet leasing of aircraft.

## Holland & Knight adds Hoover as partner

**F**lorida-based law firm Holland & Knight hired John Hoover as a partner in its structured finance practice focusing on commercial aircraft transactions in the summer of 2018.

Previously, he was a special counsel at Palo Alto, California-based law firm Cooley.

Hoover will be based in Holland & Knight's Washington, DC office.

He has experience in federal and state tax planning and compliance matters involving business aircraft, tax-exempt organisations, individuals, corporations, partnerships, estates, trusts and other entities. He has also represented clients in federal and state tax audits, particularly with respect to business aircraft.

## Chamberlain joins the Air Law Firm

**D**avid Chamberlain joined the Air Law Firm aircraft transactions team as a senior associate in November 2018.

Chamberlain had been working as a senior associate at Watson Farley & Williams since March 2015.

Previously, he was a solicitor at law firms Kennedys and Gates and Partners.

## Han Kun hires Baker McKenzie lawyer as counsel

**C**hinese law firm Han Kun Law Offices has hired ex-Baker McKenzie lawyer Ding Yi as a counsel in its Beijing office.

Ding, who joined Han Kun on 1 August 2018, worked at Baker McKenzie for eight years. Before that he was with King & Wood Mallesons in Shanghai.

Han Kun's aviation team now consists of two partners, one counsel (Ding) and 11 associates.

Baker McKenzie Hong Kong partner Andrew Lockhart says that while the firm has not hired a direct replacement for Ding, it has "got some younger talent coming up the ranks".

Lockhart adds that partner Allen Ng and special counsel Grace Li will continue to manage Ding's clients.

# Clifford Chance maintains top spot but rivals gain ground

*Airfinance Journal's* legal survey remains the most comprehensive of its type.

**A***irfinance Journal* 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 14 firms, compiling 1,550 deals overall, including transactions gathered from Deal Tracker.

This is the third year *Airfinance Journal* has used data from Deal Tracker for our legal survey and it provides us with a more accurate picture of the 2018 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 2018.

The survey continues to highlight less activity in the export credit agencies sector.

Export credit agency-backed structures are becoming scarce as a consequence of continued liquidity in the space.

The growth of emerging markets, particularly in Asia, has increased demand for new aircraft, in a leasing environment that is more competitive than ever. Transactions closed in Asia accounted for 27% of the year's total in 2016. They count for 30% today.

The activity in Europe has lowered over the past two years. Today, 35% of the submitted deals originate with European customers versus 40% in the 2016 Legal Survey. Europe still represents 540 transaction points. North America remains third by region with about the same percentage of transaction (21.5%).

Activity in Latin America has slightly decreased over the past two years. Some 4.3% of this year's total involves clients from that region, against 6% two years ago.

The activity in Africa remains at the previous year's level, while transactions in the Middle East are slightly lower than the previous year.

## Methodology

Aviation law firms are invited to submit deals to be included in Deal Tracker. The *Airfinance Journal* data team then reviews the different deals and selects those eligible for Deal Tracker.

This list is then used to select the most active law firms, which are then selected

by region and product type. The legal survey reviews transactions from 2018 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.

There are limitations to the survey. Client confidentiality may be an issue for law firms when submitting deals and some firms opted not to participate.

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 previous years, the survey records the overall number of deals for each law firm. A deal, as defined by the survey, represents one mandate and can include multiple aircraft and lawyers.

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.

For instance, a law firm that tops Africa or capital market rankings, receives five points and the second receives four points, and so on.

## Overall winners

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.

Clifford Chance came top in the Asia-Pacific, Europe, Middle East and Latin America, commercial loan, operating lease, and sale and purchase of aircraft. The firm's global asset finance group has topped the overall rankings in the Legal Survey for the seventh consecutive year.

"This achievement is a result of the continued trust our industry-leading clients have placed in our legal services offering and the dedication and expertise of our international network of lawyers in meeting their expectations," says William Glaister, Clifford Chance's global head of asset finance.

"The aviation finance sector continues to grow, with the establishment and expansion of leasing and funding platforms, and the level of aviation capital markets issuances are both clear indicators of investors' sustained interest in the asset class and in the corporate credit of operating lessors and strong airlines," he adds.

Banks and arrangers remain supportive of the sector, notwithstanding global trade tensions and incidents of insolvencies and restructurings. Macro trends, such as implementation of the OECD's BEPS [base erosion and profit shifting] project, ever-increasing regulatory restrictions on banks, accounting changes and global benchmark reform, continue to influence the types of structures industry participants are utilising and the commercial terms being negotiated by borrowers and financiers," says Glaister.

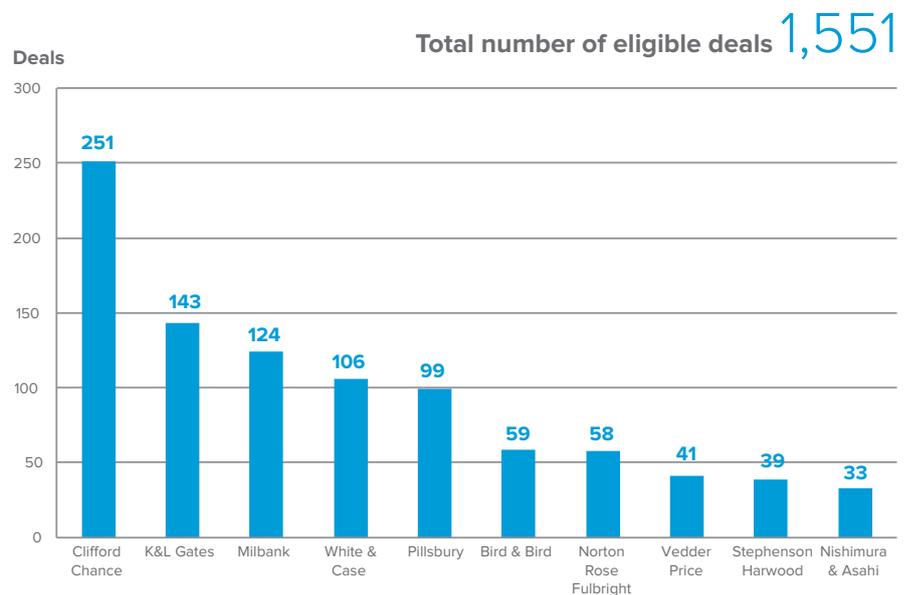
Clifford Chance anticipates a fundamental shift to capital markets-led products and techniques, as sophisticated investors continue to purchase and to trade asset-backed paper; and an expectation by aviation leasing and financing clients that their legal teams can provide finance, regulatory, tax and dispute resolution advice through a sector-focused lens and on a cross-border basis.

The contest between the other four lead firms is closed. Milbank remains second this year with a score of 31 while White & Case and Pillsbury are ranked equal fourth with a score of 25 each. K&L Gates, in third, is the firm which improved the most year-on-year with a score of 30 in 2018, up from 19 the previous year. ▲

### Top 10 law firms by score

Rank	Firm	Score
1	Clifford Chance	52
2	Milbank	31
3	K&L Gates	30
4	White & Case	25
4=	Pillsbury	25
6	Norton Rose Fulbright	12
7	Walkers	7
8	Stephenson Harwood	6
9	Delnessahou Tadesse	5
9=	Smith Gambrell & Russell	5
9=	Nishimura & Asahi	5

### Top 10 law firms by number of deals



## Africa

The African market recorded the same level of activity in 2018 as in 2017 with about 55 deals. Milbank came first in this market with 11 transactions closed.

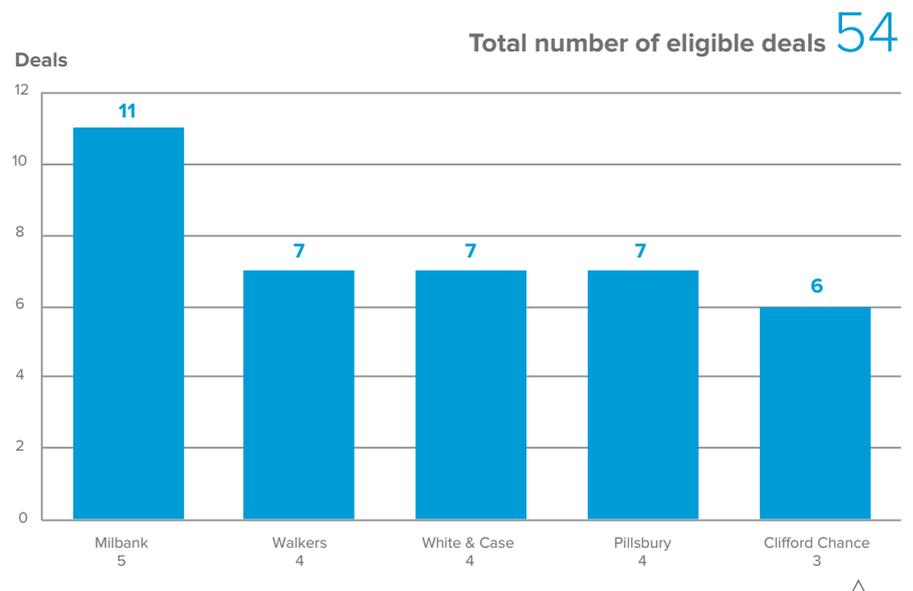
Commercial loans and operating leases were the bulk of the activity in that region in 2018. Ethiopian Airlines was a big issuer of debt in 2018 in Africa and financed several Boeing deliveries in using the Aircraft Finance Insurance consortium (AFIC)-supported financing structure. The financing marked the first time the African carrier used this product and it was also the first deal with a commercial junior debt.

It also represented the first-ever AFIC financing that involved both a 12-year senior and a seven-year junior loan facility for the financing of five Boeing 737-Max 8 aircraft. Three separate AFIC-backed facilities were negotiated and closed for three 777 freighters.

The transaction demonstrated the strength, capacity, efficiency and speed of AFIC-supported financing in the absence of US Exim, with the strong support of the AFIC insurers and the three leading AFIC lenders – SMBC, ING, Société Générale – bringing AFIC financing to the next stage.

“We were pleased to represent the AFIC insurers in connection with the financing of eight aircraft for Ethiopian Airlines. The financings demonstrated the strength of the AFIC product and the confidence that the market has in Ethiopian Airlines,” says Drew Fine, partner at Milbank.

Another AFIC-supported financing closed on Royal Air Maroc last year. The transaction represented many firsts: the first



787 acquisition for the Moroccan carrier; its first AFIC transaction; and its first French lease structure, which diversified its funding sources. Other commercial loans closed for used aircraft last year in the African market, notably with Comair, Fastjet and SA Airlinck.

“Potential remains the best descriptor for aviation in Africa,” observes Paul Jebely, Pillsbury’s Hong Kong office managing partner. “On the positive side, Ethiopian Airlines continues to be the resilient star of the show despite a tragic setback [the 737 Max crash in March], and we are seeing new entrants into the African market offering new seats and funding. On the negative side, the implementation of the 2018 Single African Air Transport Market [SAATM] has yet to materialise,

the saga that is the restructure of South African Airways has seriously undermined confidence in the carrier, and the apparent nationalisation of Arik Air and other developments in Nigeria spooked many in the leasing and financing community. It remains foremost for the Nigerian authorities to re-establish confidence in their legal, regulatory and political framework,” says Jebely.

He adds: “We are in the privileged position of representing long-established players like Ethiopian Airlines, Investec, Rand Merchant Bank and Nedbank, and we are now beginning to see the emergence of new sources of capital, both from Africa and elsewhere, to meet some growing demand (including from emerging carriers).” ^

## Asia-Pacific

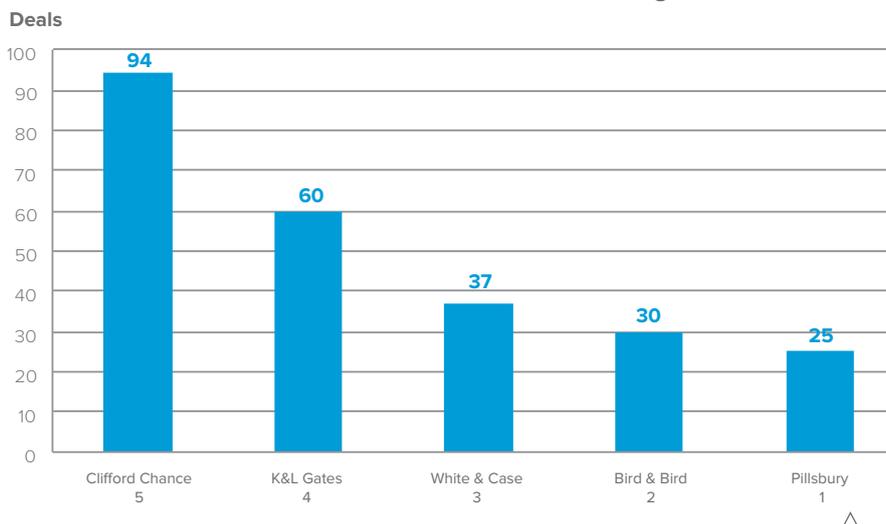
Clifford Chance maintained its lead in Asia-Pacific as the law firm closing the most transactions during the year.

The firm was particularly involved in Chinese lessor Ping An's first PDP financing for nine 737 Max deliveries. The \$330 million loan adopted a structure that balances between a conventional PDP financing and a working capital loan. This financing was on top of a lessor PDP financing to the lessee, Aeromexico.

Clifford Chance's Simon Briscoe says Asia continues to be a source of new equity for the aviation market with continued investor appetite from the People's Republic of China, South Korea and Japan seen on single aircraft deals, joint ventures, funds, portfolio acquisitions and the Japanese operating lease (Jol)/Jolco market.

"With highly liquid capital markets and a very competitive commercial debt market there is still sustained downward pressure on bank pricing," he adds.

Total number of eligible deals **469**



The firm's standout deals in the Asian market included advising on the Avolon joint venture with Cinda Leasing (HK) Limited to form Jade Aviation. Clifford Chance also acted as an adviser for Avolon's nine-aircraft

portfolio financing. It also advised Skyco International Financial Leasing on the sale and lease novation of eight A320s from an affiliate of AviaAM Leasing on lease to Aeroflot Russian Airlines. ▲

## Europe

Europe remains the number one market with 539 eligible deals submitted in 2018. Clifford Chance topped the rankings followed by K&L Gates and Milbank.

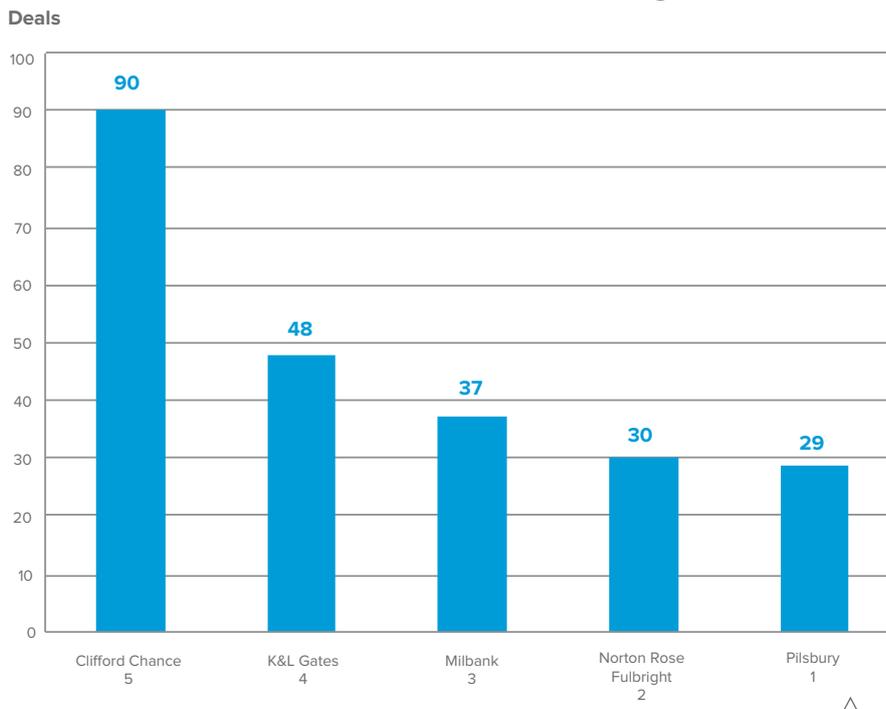
The European market continues to see airlines issuing on an unsecured basis in the European and US capital markets. In 2018, some companies, such as Nordic Aviation Capital, tapped the Jolco market for the first time (while Iberia returned to the market for the first time since 2004), reflecting the Japanese appetite for new issuers.

Another European landmark transaction featured British Airways' (BA) \$607 million EETC. Consistent with the 2013-1 precedent transaction, BA's 2018-1 EETC incorporates a Jolco tax equity. The Jolco structure allows BA (as a lessee) to raise additional proceeds while reducing overall transaction financing cost.

Clifford Chance said this transaction represented BA's first major secured financing post-Cape Town implementation in England and required negotiated revisions to BA's standard form lease. The purchase option for each aircraft is exercisable before the term of the EETC debt, and the transaction was novel in that it allows the airline to keep the EETC debt in place and convert the Jolco to a finance lease until the debt is repaid.

The law represented Nordic Aviation Capital on the \$227 million 12 Embraer 190 Jolco financing. In addition to the jurisdictions in which the aircraft were

Total number of eligible deals **539**



registered, English, Irish, Japanese and California law were all relevant to the transaction. The size and complexity of the transaction was significant given the number of aircraft, multiple jurisdictions and short timeframe in which to complete the transaction. The timing was such that all 12 closings took place within about a two-week

period in September 2018, which presented multiple challenges given the number of aircraft, jurisdictions and documents required.

K&L Gates partner Sidanth Rajagopal says the firm "worked extensively with lessor clients, including setting up lessors in Ireland and England". ▲

# Ireland's largest fleet of legal aviation partners



Our Aviation Finance partners (l-r):

Marie O'Brien, David Berkery, Séamus Ó Cróinín, Catherine Duffy, Maireadh Dale, Maria McElhinney

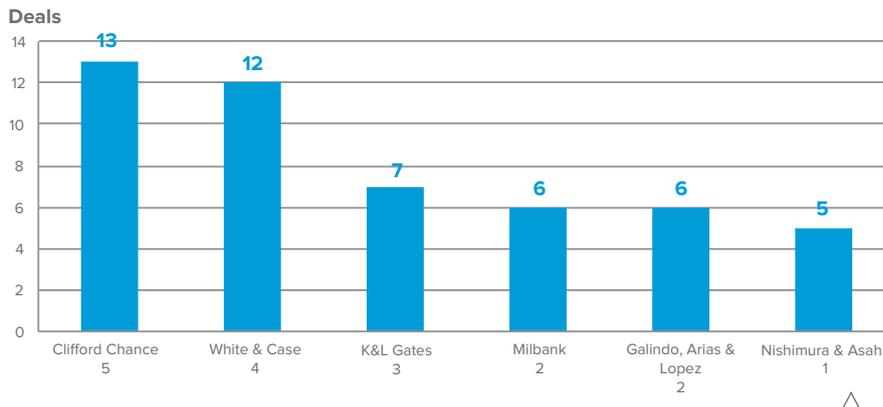
## Latin America

Total number of eligible deals **67**

Clifford Chance and White & Case were neck and neck in the Latin American region. It was a big change from the previous year when Clifford Chance had closed almost twice as many transactions than White & Case.

Avianca's UK Export Finance (UKEF)-guaranteed Japanese operating lease with call option (Jolco) financing for one 787 aircraft was a regional highlight in 2018. The transaction was Avianca's first UKEF-backed Jolco financing. It was also the first UKEF-guaranteed financing structured as part of a Jolco for a Latin American carrier.

Operating leases in the region accounted for one-third of the activity by structures. One landmark deal was a sale and leaseback transaction by Viva Air/Irelandia Aviation with GECAS for 10 A320s delivering over a two-year period. As part of the structure, GECAS financed the PDPs for each delivery. Last year also featured one of the largest aircraft



financing transactions in the Americas: the \$302 million financing of a 32-aircraft portfolio for LATAM Airlines Group, on behalf of a bank syndicate composed of five institutions. The mid-life aircraft portfolio had a 14.7 years weighted average age and featured 767 freighters. The company was raising cash to finance

its capital expenditures for the year. It opted for secured financing against its large unencumbered fleet.

The transaction is full recourse to LATAM, a global airline with \$1.5 billion in cash and a large footprint in Latin America. All the aircraft are cross-collateralised/cross-defaulted with each other. ▲

## North America

Total number of eligible deals **332**

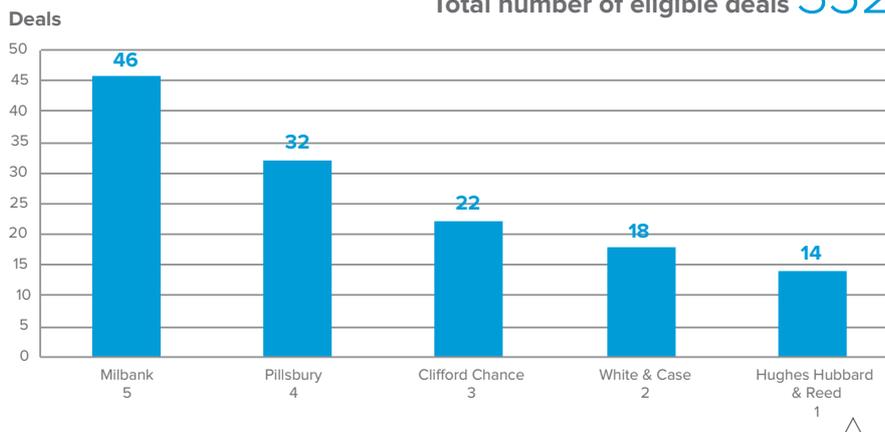
North America is often associated with capital markets. The region increased its dependence on this structure with 37% of the overall capital markets deals in 2018.

"US debt and equity sources have remained plentiful throughout 2018-19, with a very active structured portfolio debt market supporting an equally active asset trading market from the seed/warehouse phase through the term/take-out phase," says Mark Lessard, Pillsbury partner and finance section leader.

"This has resulted in multiple new leasing platforms, some of which have been launched on the back of a few large portfolio trades, and significantly reduced the time between ramp up and take-out. This fragmentation of the market comes as the largest lessors continue to sell metal to new entrants and equity shares to financial investors in the form of joint ventures, sidecars and E-notes (tradable by book-entry in many cases). On the airline side, the general credit picture continues to glow while a multiyear refueling exercise continues for large carriers, if at a slightly slower pace," he adds.

Lessard says the sale and leaseback market continues to be very attractive to airlines, but intense interest from investors has also led to innovative private placements and cross-border leasing structures.

Milbank, Pillsbury and Clifford Chance were the lead trio in the region last year.



Milbank was a clear winner with 46 transactions. The law firm was especially involved in two high-profile ABS deals in 2018: GECAS Starr 2018-1 and ALC Thunderbolt II.

The GECAS 2018-1 transaction brought a new development into the sector: it was the first aircraft ABS transaction to utilise a 144A tradable E-note.

The Thunderbolt II transaction, which also used tradable E-notes, was the first deal to use a Passive Foreign Investment Company (PFIC) tax structure that facilitates offshore ownership and removes tax-related transfer restrictions, with the goal of further broadening distribution and secondary market liquidity. The transaction used the DealVector platform to share more detailed models with investors in an effort to increase

transparency and facilitate investor analysis.

But the law firm was also involved in other interesting transactions: Willis Lease WEST IV \$373.4 million ABS, the only engine ABS deal last year; VX Cargo 2018-1, the 100% narrowbody freighter ABS transaction; and Horizon 2018-1.

"The North American aircraft finance market was very robust across the board in 2018," says Milbank's Fine. "The capital markets were particularly hot, with aircraft ABS having another record year and plenty of unsecured offerings and EETCs [enhanced equipment trust certificates]. When the ABS market is hot, that typically means the warehouse and other acquisition finance facilities are also plentiful. Overall, a banner year in the US aircraft finance market." ▲

## Matheson - Leading the Way in Aviation

Matheson provides Irish legal and tax advice on leasing, commercial debt and export credit agency supported financings, as well as aircraft, aircraft engine and helicopter portfolio trading. We advise on structured finance, ABS (asset-backed securitisation) and repackaging transactions relating to all such asset classes including the establishment of special purpose companies funded by public and private issuances, and can offer a range of services in connection with aviation related listings on the Irish Stock Exchange, the Vienna Stock Exchange and the Cayman Islands Stock Exchange.

We also have a strong aviation regulatory practice and regularly advise Irish airlines and leasing companies on airline licencing and registration issues with the Irish Aviation Authority and Commission for Aviation Regulation.

**Matheson. The law firm of choice for internationally focused companies and financial institutions doing business in and from Ireland.**

To find out more, please contact [rory.mcphillips@matheson.com](mailto:rory.mcphillips@matheson.com), [stuart.kennedy@matheson.com](mailto:stuart.kennedy@matheson.com), [yvonne.mcweeney@matheson.com](mailto:yvonne.mcweeney@matheson.com), or your usual Matheson contact.

**Aviation Finance Deals of the Year**  
Finance Dublin 2016, 2017, 2018  
and 2019

**Export Credit Deal of the Year**  
Airfinance Awards 2018

**Capital Markets Deal of the Year**  
Aviation 100 Global Leaders  
Awards 2019

**Top 20 Most Innovative Law Firm  
in Europe**  
Financial Times Innovative Lawyers  
Report 2018

**International Firm in the Americas**  
International Tax Review 2018

## Middle East

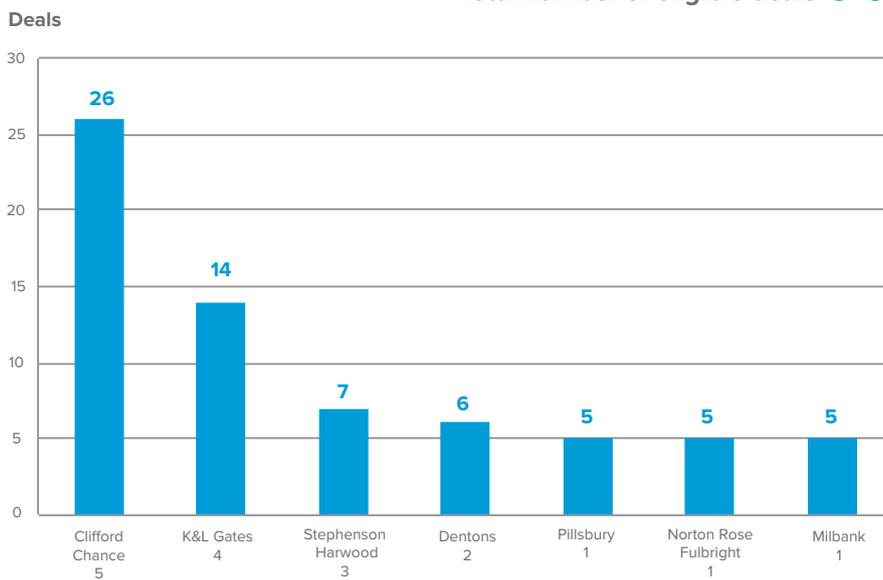
Total number of eligible deals **90**

Clifford Chance was a distant first in the Middle East last year. K&L Gates and Stephenson Harwood completed the trio of leading law firms in this region.

The big three Middle Eastern carriers, Etihad Airways, Emirates Airline and Qatar Airways, continue to see challenges.

Etihad financed a new 787-10 delivery through a senior loan from BNP Paribas and a mezzanine Murabaha facility from Warba Bank. The transaction was important because it was one of the first 787-10 aircraft delivered into the Etihad fleet and was financed using a combination of senior debt and Islamic mezzanine financing. It is notable that the borrower was a UAE entity incorporated in the Abu Dhabi Global Market region.

The region's only export credit agency (ECA)-supported transaction was a notable one: two Airbus A380 deliveries for Emirates. It marked the first ECA-supported Airbus aircraft financing for the Dubai-based carrier after the temporary closure of ECA activities. The transaction was also the first ECA financing in combination with Korean euro-denominated junior loan notes.



Another landmark deal in the region in 2018 was the asset-backed securities (ABS) portfolio sale (Kestrel) with debt placed in the US capital markets and equity placed in South Korea.

The transaction represented lessor Dubai Aerospace's inaugural ABS deal, which featured turboprops. It was also the first mid-life aircraft portfolio with E-notes sale into Asia. ▲

# THE ANNUAL 2019/20



Now in its 36th year, **The Annual** is a key resource for the aircraft financing industry. It features market analysis and commentary, and financial performance figures for over 100 airlines in 50 countries.

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## Capital Markets

**A**irfinance Journal received fewer submissions in 2018 featuring airline and lessor capital market transactions than the previous year. But it was on par with activity in 2016. In 2018, much of the action was in the Asian-Pacific region and North America.

The unsecured bond market had a busy 2018, with 46 deals closing for airlines and lessors during the year, according to data from *Airfinance Journal's* Deal Tracker.

The EETC market had a quiet year with \$2.5 billion-worth of transactions. Only American Airlines, United Airlines, Spirit Airlines and Air Canada issued notes to refinance new deliveries. Milbank's Fine agrees that the dearth in EETC issuance last year was because of the major US airlines, the prime EETC issuers, being successful from a liquidity perspective.

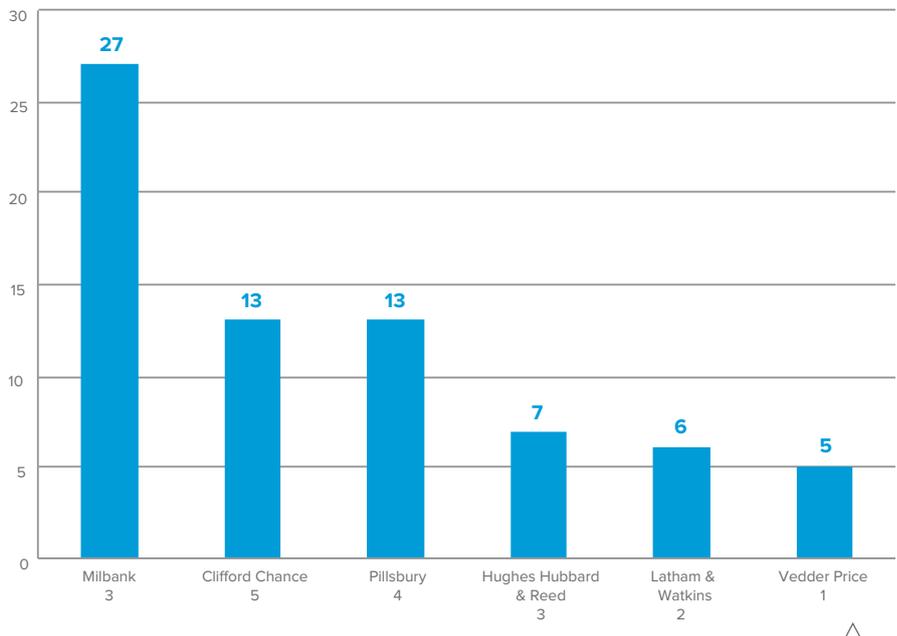
"The EETC market has been slower the last couple of years in large part due to the wide range of financing options available to US carriers, not least in the sale and leaseback market. However, we have seen more interest recently, including with non-US carriers, with transactions sometimes taking the form of private placements," says Pillsbury's Lessard.

The lessor unsecured bond market was healthy in 2018 with an estimated \$14 billion-worth of deals but this fell way short of the \$20 billion recorded the previous year.

The aircraft ABS industry saw heavy issuance growth between 2016 and 2017, from \$4.2 billion to \$6.6 billion. Last year the sector reached an all-time high of \$7.3 billion in new issue volume.

The ABS product continued to improve and the biggest development last year was the introduction of equity offerings pursuant to 144A. That new element was

Deals



Total number of eligible deals

introduced first with the GECAS deal: the tradable E-notes.

Fine says the 144A tradable equity market has given ABS issuers more options from an investor standpoint.

"The 144A equity product permits investors to purchase smaller pieces of equity and ultimately results in more liquidity," he says. "The ABS market has continued red-hot during the first half of 2019."

Clifford Chance was also instrumental in the creation of tradable E-notes in structured aircraft portfolio financings and in the incorporation of Japanese equity investment in these structures.

"The introduction and proliferation of tradable E-notes has resulted in a number

of large fund investors previously familiar with structured aircraft portfolio financings taking "anchor" positions in E-notes," says New York partner Zarrar Sehgal.

It has also created opportunities for a broader group of new equity investors to take smaller positions in these structured transactions.

"The creation of the first structured aircraft portfolio financing with Japanese equity further expanded the market for equity investors outside of the core base of US fund and insurance investors," adds Sehgal. "The increasing number of new investors in the structured aircraft capital markets space could help to keep the cost of capital relatively low and serve to keep that market frothy." ▲

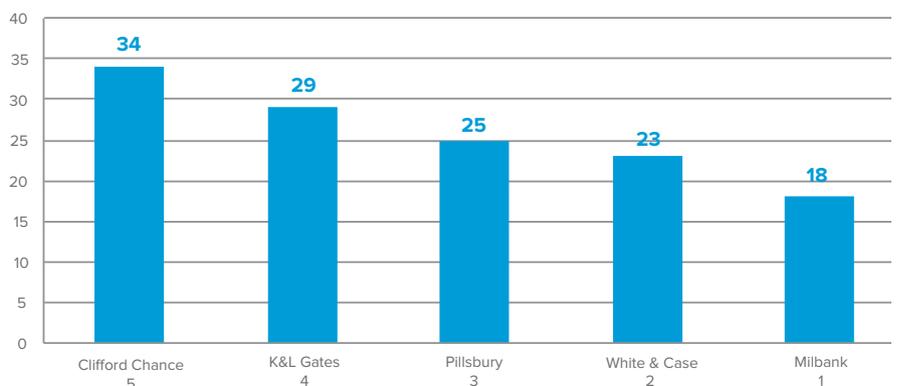
## Sales & Purchases

**C**lifford Chance was the most active law firm in the sale and purchase market in 2018, ahead of K&L Gates and Pillsbury.

"We saw a range of sale and purchase transactions not only between lessors and investors, but also on the airline front," says K&L Gates Charleston & New York partner Amanda Darling.

"There was a significant uptick of direct sales and purchases at the airline level, in particular in relation to vintage aircraft where the airline was operating the aircraft pursuant to a lease," she adds.

Deals



Total number of eligible deals

## Export Credit

“Now that US Exim has been restored to its full capacity, market participants are reasonably optimistic about a resurgence of support for Boeing deliveries,” says Milbank New York partner Helfried Schwarz.

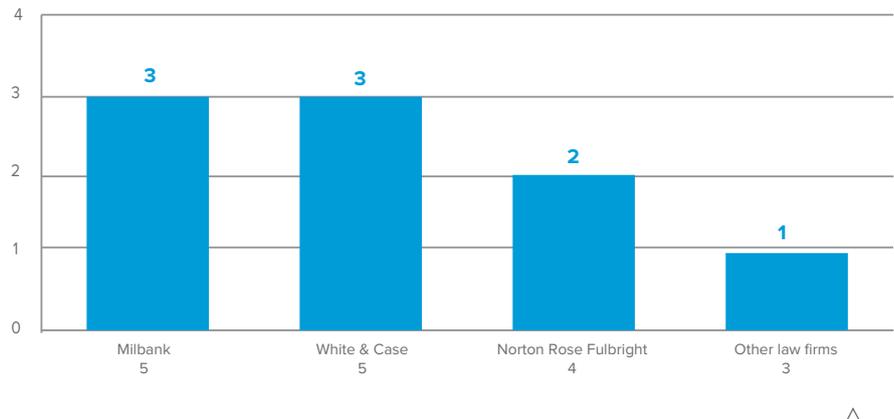
“It remains to be seen what direction the new board will take and the level of support it is willing to provide. This will likely be part of the political discussion in connection with the upcoming reauthorisation of US Exim,” he adds.

Milbank and White & Case were joint winners in the export credit category, which included deals ranging from the A380 model (Emirates) to the ATR42-600 model (Aeromar).

The export credit market was also fairly represented in Africa last year with Rwandair, which refinanced two A330-200 deliveries with KfW IPEX-Bank and Deutsche Pfandbriefbank. The transaction marked the return of Airbus ECA-support.

Solenta also financed two ATR72-600 deliveries in the ECA market with Export Development Canada on the debt side.

Deals



Total number of eligible deals 10

Earlier this year Air Senegal was in the market for two A320neo deliveries.

The Aeromar transaction was innovative because it represented a take-out of manufacturer financing with ECA support for turboprops into Mexico. The transaction is an export credit agency-guaranteed debt that refinanced manufacturer-supported sales of a

batch of relatively new ATR42/72 aircraft.

This deal was particularly complex because it involved the refinancing of sales finance, with ECA-guaranteed financing (Bpifrance/SACE and Export Development Canada) separately supporting different aircraft. It also included commercial debt for aircraft that were all in operation. ▲

## Structured Lease

K&L Gates was the clear winner in the structured lease category in 2018 with half of the total's eligible transactions recorded by *Airfinance Journal*.

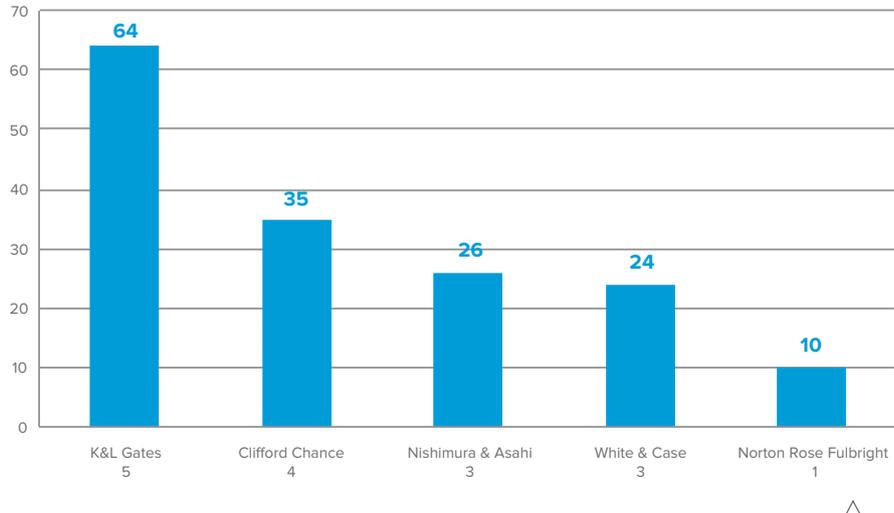
The firm says it has seen consistent interest in the aviation finance sector utilising Jol/Jolco transactions, with some novel transaction structures being used. K&L Gates advised Virgin Australia on its first-ever Jolco financing, for six used 737-800 aircraft.

“This transaction involved two separate sets of lenders with different hot button issues. We were responsible for negotiating the financing and leasing documentation with such lenders simultaneously, which was a logistically challenging undertaking, particularly in light of this being the airline's first-ever Jolco financing,” says Singapore-based partner James Bradley.

The transaction was unique because of a combination of financing complex assets in local Australian dollars (vintage aircraft), using a complex structure to ameliorate any tax burden (ie, the structure was in strict application of the Australian/Japanese tax scheme to mitigate any withholding tax under the Jolco leases) and introducing a new name to the Jolco market.

Bradley says the firm sees more interest and activity across the board in Jolco space in Vietnam. “We recently acted on behalf of VietJet on Jolco transactions financed

Deals



Total number of eligible deals 124

by BNP Paribas and Natixis. These VietJet Jolco financings are a landmark Jolco transaction completed for any Vietnamese company. Moreover, they are indicative that there is an expansion of the Jolco market, and equity arrangers and equity investors are becoming more flexible as to the airline credit,” he says.

K&L Gates also recently advised a major Japanese leasing company and Asset Brok'Air International in a Jolco transaction with ICBC Aviation Leasing for two new A321neo aircraft leased to Vietnam Airlines.

This was ICBC Aviation Leasing's first Jolco financing involving a Vietnamese lessee.

“In 2018, we observed an increased enthusiasm for structured lease transactions and, in particular, we saw new airlines (some in brand-new jurisdictions) availing themselves of the popular Jolco product; initial indications are the proposed change to the Japanese taxation laws are having little-to-no impact on the appetite for Japanese investors to continue their Jolco involvement,” says K&L Gates Tokyo-based partner Bob Melson. ▲



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## Commercial Loan

Clifford Chance was the most active law firm in the commercial debt market in 2018, ahead of Milbank and Pillsbury. The firm recorded more than 100 transactions during the year, or more than 25% of the total submissions.

“Whether it be term loan facilities, revolving credit facilities or warehouses, the commercial loan market was very strong in 2018”, says Milbank’s Fine.

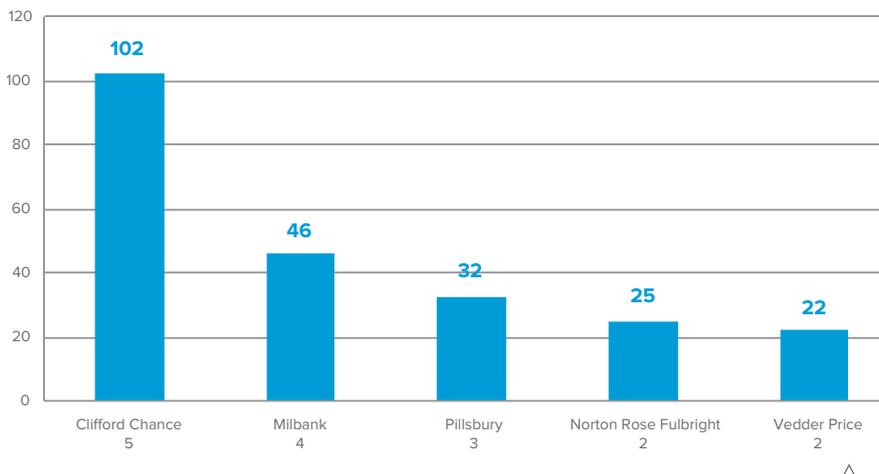
“This includes loans made to aircraft leasing companies and airlines globally. Large term loan facilities and warehouses were made available with the goal of eventually being taken out by ABS. Also, AFIC-supported financings continued at a steady pace with the 50th AFIC insured aircraft being financed,” he adds.

The traditional aviation banks have faced intense competition on airline mortgage debt from the sale and leaseback, Jolco and bond/private placement markets, among others, according to Pillsbury’s Jebely.

“As a result,” he says, “many of them

Deals

Total number of eligible deals **373**



have honed in on lessor portfolio/warehouse financings, which require significantly more expertise to underwrite and syndicate. Notwithstanding, competition among banks and an overall shortage of product to finance (made worse by the 737 Max delays) has kept

margins tight. Continued regulatory tightening hasn’t helped either. Many banks appear to be eagerly awaiting the day when their ability to move quickly and their emphasis of long-term relationships will become more valued again by the market.”

## Operating Leases

Operating leases are one of the most popular financing solutions in the market, providing more than 40% of all aircraft deliveries. Last year saw many transactions among leasing companies in the M&A market.

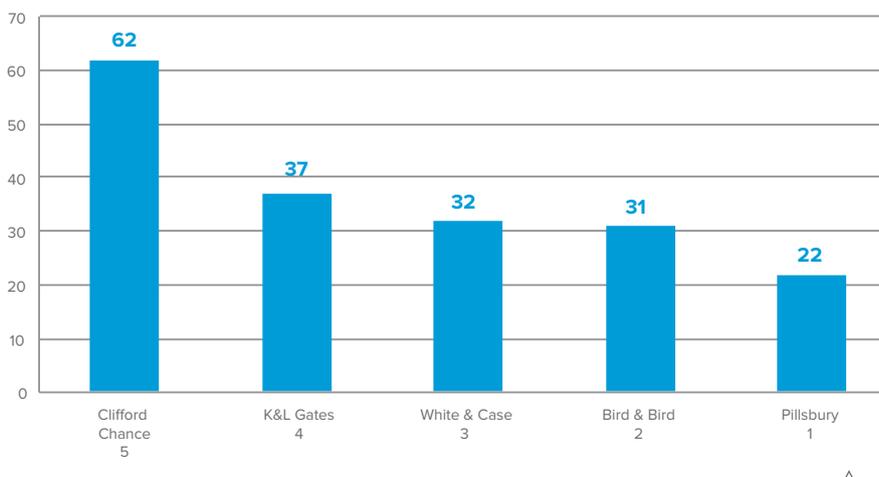
Goshawk Aviation acquired Irish lessor Sky Aviation Leasing International from the Public Sector Pension Investment Board, one of Canada’s largest pension investment managers, and private equity firm ATL Partners in September 2018.

*Airfinance Journal* reported on 31 May 2018 that Goshawk had been involved in the bidding process, along with Avic International Leasing and Aviation Capital Group. Chinese lessor Avic was originally the frontrunner, but was pipped to the post by Goshawk. The acquisition accelerates Goshawk’s already fast growth trajectory with the addition of 51 young aircraft with long leases.

One of the largest transactions in 2018 involved AirAsia Group. It entered into agreements to dispose of its aircraft leasing operations (Asia Aviation Capital) to entities managed by BBAM for \$1.18 billion. Under the terms of the agreement, Fly Leasing purchased 33 aircraft and seven engines, Incline B Aviation acquired 38 aircraft and seven engines and Nomura Babcock & Brown acquired 13 aircraft. Of the 84-aircraft portfolio, 79 are leased back to

Deals

Total number of eligible deals **584**



AirAsia and its affiliates. Fly and Incline also entered agreements to acquire 48 aircraft ordered by AirAsia, and took an option on a further 50 deliveries.

AirAsia Group also sold a 25-aircraft portfolio from Asia Aviation Capital to entities controlled by Castllake for a reported \$768 million. The most innovative product-related transaction involved the A220-300 type. European carrier AirBaltic mandated a series of sale and leasebacks to the leasing community: Avation and CMB Leasing. The transaction represented the first open

market sale and leasebacks for the type: up to that point the asset was derided by competitors and shunned by investors with just 249 sales accumulated over eight years.

The carrier has since added FPG Amentum as a lessor customer.

Darling of K&L Gates Charleston and New York says: “Within the JOL market we have seen an exponential upsurge of new investors, and a steady increase by well-established and existing investors – the investors are leasing to a significant cross-section of airlines all around the world”

# Rising stars

*Airfinance Journal* recognises seven of the most promising legal associates for 2018.

## Angela Atherden

Senior associate, Conyers  
Bermuda



*Angela is respected by her peers, is a mentor to junior attorneys and a reliable, hard-working resource to the partners of Conyers.*

**Julie McLean**, director, global head of aviation finance practice, Conyers

Angela Atherden has extensive experience advising banks, airlines and leasing companies on the financing of commercial and private aircraft, aircraft portfolio securitisations, sale and leasebacks, pre-delivery payment (PDP) and warehouse facilities, and has worked on several of the most significant aircraft securitisations and financings in the market.

Her practice covers all aspects of corporate and commercial law, including international asset finance with a focus on aviation finance and debt and equity offerings.

Last year she worked on two large lessor transactions: Avolon's \$4.75 billion term loan repricing at Libor plus 2% with a Libor floor of 0.75% as well as three-year extension to January 2025; and Avolon's \$1 billion 5.125% senior unsecured notes offerings due 2023. Conyers worked

alongside Weil, Gotshal & Manges to provide Bermuda law advice to Avolon Holdings Limited.

Atherden has worked on some of the most significant Bermuda-domiciled aviation asset-backed securitisations (ABS) transactions over the past year, including extensive work on the groundbreaking START Ltd, MAPS 2019-1 Limited and START II Ltd.

She helped the firm provide Cayman Islands legal advice for the listing of the notes issued by START Ltd and the equity certificates issued by START Holding Ltd. This transaction brought a new development into the ABS market last year: the first aircraft ABS transaction to utilise a 144A tradable E-Note.

Atherden was also involved in advising two new issuers in 2018: Merx Aviation and Zephyrus Aviation Capital.

Conyers acted for the issuer, MAPS 2018-1 Limited, for Merx Aviation's inaugural ABS composed of \$506.5 million in three tranches of notes secured on a portfolio of 25 aircraft.

The firm also advised Zephyrus Aviation Capital, alongside Vedder Price and A&L Goodbody, on the new lessor's debut ABS, which financed a portfolio of 21 aircraft acquired from Avolon.

Atherden advised Castlflake in June 2018 on a \$911.3 million ABS transaction, and acted for Air Lease's Thunderbolt II ABS, which launched in July 2018.

The \$450 million mid-life aircraft ABS is secured against 18 aircraft. This transaction incorporated a groundbreaking 144A tradable E-note. Thunderbolt II was the first aircraft ABS deal to use a passive foreign investment company tax structure that facilitates offshore ownership and removes tax-related transfer restrictions.

"Angela is respected by her peers, is a mentor to junior attorneys and a reliable, hard-working resource to the partners of Conyers.

She is a highly valued member of our aviation team and we are proud of the high-quality service she provides to clients.

Her work on the ABS matters is evidence that she is able to provide effective advice on large-scale transactions on deals which require a high degree of project management, technical advice and responsiveness," says Julie McLean, director, global head of aviation finance practice, Conyers.

Atherden was promoted from associate to counsel on 1 April, in the Bermuda office

of Conyers, in the aviation team of the corporate department.

Atherden is the co-author of the Bermuda chapter of Aircraft Finance (Sweet & Maxwell) 2018 and 2019 and Chambers Aviation Finance 2019 Guide.

## Stephen Gardiner

Senior associate, Matheson  
Dublin



*As a qualified pilot with a huge technical knowledge of aircraft, Stephen immediately shows competence to clients.*

**Chris Quinn**, Matheson's aviation finance group

Stephen Gardiner is a senior associate lawyer at Matheson aviation finance and transportation group but his interest and experience in aviation also extends beyond the office.

Gardiner is a qualified private pilot and holds a private pilot licence issued by the Irish Aviation Authority.

He is also a tutor and lecturer on the Law Society of Ireland's Diploma in Aviation Leasing and Finance, and Certificate in Aviation Leasing and Finance courses.

Gardiner has gained considerable experience in advising aircraft owners, airlines, aircraft leasing companies and international financial institutions on all aspects of the financing and leasing of aircraft, aircraft engines, machinery and helicopters.

He has developed a wide-ranging practice and regularly advises on the structuring of aircraft financing and leasing transactions, as well as on aircraft sales, acquisitions and repossessions.

Gardiner acts for a number of international aircraft financiers, lessors and airlines, and has recently advised on aircraft portfolio trading, sale and leaseback transactions, export credit agency financings, enhanced equipment trust certificate (EETC) transactions, Japanese operating lease with call options (Jolco) and AFIC financings, among others.

He has significant experience in advising clients on the applicability of the Cape Town Convention and Aircraft Protocol, including the more practical aspects, such as setting up transacting user entities on the International Registry and carrying out registrations and discharges.

He regularly advises on the establishment of orphan and special purpose vehicle aircraft financing and leasing structures, as well as the establishment of aircraft leasing and trading platforms. He also advises international airlines and Irish aircraft-leasing platform on operating leasing and aircraft financing arrangements.

Recent highlights includes acting for an international bank on the provision of a secured bridge credit facility of up to \$600 million to an affiliate of a major international aircraft lessor, which was secured over a fleet of 11 commercial aircraft. Gardiner also advised an international airline on a PDP financing facility and long-term sale and leaseback of 25 new aircraft with three different lessors.

He has also acted for a large international lessor and its Irish leasing platform on all matters of Irish law relating to the sale of 16 commercial aircraft with a total value of about \$900 million.

Chris Quinn of Matheson's aviation finance group says: "Stephen is an extremely capable and very experienced lawyer. As a qualified pilot with a huge technical knowledge of aircraft, Stephen immediately demonstrates competence to clients, which instils both confidence and trust in clients and which has generated multiple and repeat instructions from those clients."

## Chris Knight Senior associate, Pillsbury London

Chris Knight is a talented and ambitious lawyer who plays an essential role in some of the most complex transactions undertaken by Pillsbury's aircraft finance and leasing practice in London. He is consistently praised by clients and counterparties for his technical skills,



*In 2016 he undertook a six-month secondment at Emirates Airline during what was an exceptionally busy period for Emirates Legal.*

strong aviation industry knowledge and commitment to client service.

Knight's practice focuses on acting for funds, banks, lessors, airlines and export credit agencies on a wide range of high-value, cross-border aircraft and engine finance transactions.

His extensive transactional experience spans loan/mortgage transactions, PDP financings, export credit agency-supported deals, sale and leasebacks, finance and operating leases, novations, Jolcos, original equipment manufacturer purchase agreements and engine maintenance and support agreements.

In 2016 he undertook a six-month secondment at Emirates Airline in Dubai during what was an exceptionally busy period for Emirates Legal. While at

Emirates, Knight worked alongside the finance, engineering and insurance teams in advising on multiple Airbus A380 and Boeing 777-300ER deliveries, as well as a range of redeliveries and other ad hoc matters.

He is a frequent participant at industry events, and has recently had an article published on the potentially revolutionary nature of predictive maintenance and blockchain in the aircraft finance sphere.

Knight's increasing level of seniority frequently has him leading transactions. His deal portfolio includes:

- acting for major financial institutions in Japan and Bahrain on the secured financing for the purchase by a large Middle Eastern operator of several 737-900 aircraft;
- representing a large international bank on the PDP financing of multiple 737-800 and 787-9 aircraft to household name operators based in the UK and Norway;
- assisting a significant African lender on its financing of a lessor purchase of a number of 777-200ER aircraft;
- advising an export credit agency on the financing of seven Bombardier Q400s and, separately, on the assumption by an incoming lessor of various aircraft loans;
- leading a refinancing of three 777-300ERs involving multiple jurisdictions and an Islamic financing element;
- advising Oaktree and Worldstar Aviation on a 21-portfolio ABS-backed aircraft purchase from Investec, as well as, separately, on ongoing warehouse facility-related matters;
- working on various A350-900 Jolco transactions for a national flag carrier, structured with senior and junior debt from major international financial institutions and utilising differing sources of Japanese equity;
- representing numerous major lessors, including Macquarie, Jackson Square Aviation, Accipiter and Vermillion on a vast array of aircraft trades, involving the purchase, sale and novation of various Airbus and Boeing aircraft; and
- acting for Emirates on all aspects of a range of new A380 and 777 aircraft deliveries over many years.

## Jaesuk (Jay) Yoo Senior associate, Debevoise & Plimpton New York

New York-based Jay Yoo has been a longstanding member of the Debevoise & Plimpton aviation finance practice and has developed into a valued member of the team. He joined the firm from Columbia Law School.



Yoo has a knowledge base about aircraft “metal” issues and aircraft-related equipment (from an operator perspective) that is “second to none”. His deep understanding of how aircraft operations, maintenance and refurbishment work in the real world, together with his legal expertise and mastery of structures and documentation, make him a “peerless practitioner” among other aviation finance attorneys of his class year. “It’s clear to our airline clients that Jay is on another level in terms of legal and aviation knowledge when compared to his deal counterparts”, says Debevoise & Plimpton.

“It’s clear to our airline clients that Jay is on another level in terms of legal and aviation knowledge when compared to his deal counterparts.”

Debevoise & Plimpton

Yoo has extensive experience working with the firm’s airline clients and has mastered the transaction structures they use (and depend on) for their financing needs.

His work on American Airlines, Spirit Airlines and JetBlue Airways matters over the past year alone has included leading roles in:

- public offerings by Spirit and Delta of EETCs, including follow-on offerings of junior classes of certificates;
- work on the commitment and backstop financing aspects of American’s landmark order of 787 aircraft in 2018;
- very large and complex cross-border sale and leasebacks and Japanese operating leases for American opposite Japanese-based equity investors such as ORIX Aviation and BBAM; and
- mortgage financing programmes for Spirit and JetBlue.

Yoo’s expertise includes other types of financing structures that are extremely important to airlines, such as:

- export credit agency-backed facilities (BNDES and EDC);
- manufacturer PDP financings;
- Jolcos; and
- secured corporate revolvers and term loans.

**Hetty Lam**  
Senior associate, Clifford Chance  
Hong Kong



“Her deep involvement in Chinese aviation deals provides both international and mainland clients a unique and comprehensive perspective in this very significant market.”

Lam has experience in asset finance and general financing and specialises in cross-border leasing and financing transactions within the aviation sector. She has advised clients on a wide range of transaction types, including operating and finance leases, commercial debt financing on limited or full recourse basis, portfolio asset sales and novations, tax leasing and aviation joint ventures and share sales.

Her deal portfolio includes many joint-venture transactions for lessors in China.

She has acted as a lead associate for MCAP on its joint venture with Cheung Kong Holdings and the related sale and novation of a portfolio of aircraft.

Lam also advised Sichuan Development International on its joint venture with Standard Chartered Bank/Pembroke and the related sale, novation and financing of a portfolio of aircraft, as well as Avolon on its joint venture with Cinda Leasing (HK) and the related sale and novation of a portfolio of aircraft.

Lam also assisted CDB Aviation on its portfolio sales to various People’s Republic of China (PRC) leasing companies (including AVIC, Cinda, Zhongyuan and Tibet Financial Leasing).

She also provided assistance to various international lessors on their first operating lease structures to PRC airlines through PRC free-trade zone intermediate lessors.

Her other Chinese lessor clients include: BoComm Leasing in relation to defaults, insolvencies and repossessions of certain Air Berlin aircraft; Ping An Leasing for the sale and leaseback of two A321s to VietJet; and CMB Leasing for its finance lease of two 777 aircraft to Turkish Airlines.

She has also assisted GECAS with its portfolio sale of 22 aircraft to Cheung Kong Holdings, which was *Airfinance Journal’s* APAC Deal of the Year 2015, as well as other GECAS portfolio sales to various other lessors (including Aviation Capital Group, ALAFCO, Avolon, BoComm Leasing, CCB Leasing, CDB Leasing, Fuyo, Merx, ORIX Aviation and Pembroke).

William Glaister, Clifford Chance’s global head of asset finance, says: “Hetty has been the lead associate on many of the most significant recent deals in Greater China as well as covering a very broad range of transactions in this market, including leasing and trading, financing, M&A and joint ventures and distress and default-related work.

Her deep involvement in Chinese aviation deals provides both international and mainland clients a unique and comprehensive perspective in this very significant market.”

**Fabio Miceli**  
Senior associate, Holland & Knight  
London

Fabio Miceli is described as a true “up and comer” in the aviation finance industry. He is a senior level associate in the London office of Holland & Knight and plays a crucial role in the firm’s globally renowned aviation finance practice.



*Fabio is the consummate deal leader, with a great knack for bringing order to multi-party transactions and finding workable solutions for complex issues.*

**William Piels**, transportation finance practice group leader, Holland & Knight

Immediately after graduating from the University of Pretoria, he joined the firm which would become Norton Rose Fulbright (South Africa). Soon after, Miceli joined the banking and finance team and aviation finance sub-team, and advised various aviation clients, including airlines, such as South African Express Airways, on their aircraft acquisitions, aircraft trade deals and lease extensions. The latter included *The Banker's* 2012 Structured Finance Deal of the Year – Africa.

Miceli was also part of the Norton Rose Fulbright team that launched and hosted the African Aviation School, attended by various key industry players such as banks, lessors, manufacturers and insurers.

After more than six years at Norton Rose Fulbright, he joined Freshfields Bruckhaus Deringer, where he was a key associate on their transportation finance team. After about nine months at Freshfields,

Miceli joined Holland & Knight in February 2017. He advises on a wide variety of general finance, asset and structured transactions, particularly aircraft acquisition, trading and leasing.

Robert Ricketts, London chair of Holland & Knight's transportation finance practice, says "Fabio is an invaluable member of the team and has tremendous interpersonal skills and an excellent commercial understanding to get the deal done."

Typical transactions include operating leases, purchase and sale transactions, pre-delivery payment financing, secured aircraft and engine lending transactions, cross-border financings, corporate jet financings, warehouse loan facility financings, new aircraft deliveries and restructurings.

Miceli undertook a nine-month secondment with the London and Shannon, Ireland, offices of GECAS between May 2018 and January 2019. He advised on a range of aviation matters, including, primarily, sale and novation transactions, as well as leasing transactions, acquisitions, general terms agreements with maintenance, repair and overhaul providers, compliance matters, tax queries and due diligence exercises.

William Piels, Holland & Knight's transportation finance practice group leader, says: "Fabio possesses a tremendous depth of industry and jurisdictional knowledge that is broadly appreciated by our clients. He is the consummate deal leader, with a great knack for bringing order to multiparty transactions and finding workable solutions for complex issues."

### Donal Keane Senior associate, Allen & Overy London

Donal Keane is a senior associate in the structured and asset finance group of Allen & Overy. He has experience advising across the entire spectrum of aviation transactions on both borrower and lender side, having advised lessors, banks, funds and airlines.

Keane has advised on debt and bond issue transactions and has particular experience in acting for purchasers of large asset portfolios. He is currently advising a European lessor on its acquisition and financing of a major portfolio of regional aircraft. Keane regularly advises a number of fund clients on aircraft financings and has experience acting for clients on both restructurings and aircraft repossessions. He works closely with Fuse, Allen & Overy's in-house innovation space, to deploy successfully legal technology on transactions in order to enhance efficiency and effectiveness.

Keane has completed two secondments with lessor and asset management clients in Dublin, allowing him to gain valuable insight into clients' businesses and their needs.

Harry Upcott, aviation partner, says:



*Donal is recognised for his solutions-orientated approach and his wide-ranging aviation sector experience, particularly with regard to matters involving operating lessors, including portfolio sales, warehouse financings and leasing transactions.*

**Harry Upcott**, aviation partner

"Donal is recognised for his solutions-orientated approach and his wide-ranging aviation sector experience, particularly with regard to matters involving operating lessors, including portfolio sales, warehouse financings and leasing transactions."

Keane's experience list includes many lessor entities: Minsheng on the purchasing of two 737 aircraft from the manufacturer to be leased to Easter Jet; PK AirFinance on operating lessor financing to AWAS and FPG Amentum, which incorporated US trust structures.

He also advised GECAS on the operating leasing of aircraft to various airlines; Dubai Aerospace on the acquisition and financing of a portfolio of ATR aircraft using an ijara lease structure; and a major operating lessor on the acquisition and financing aspects of the purchasing of an entire regional aircraft fleet, totalling 49 aircraft. ▲

# An introduction to the **Global Aircraft Trading System (GATS)**

David Berkery, Partner, A&L Goodbody

**T**he Aviation Working Group (AWG) is a not-for-profit legal entity comprising aviation industry players who collaborate to advance the international aviation financing and leasing. In spring 2019, AWG announced that it had contracted with technology solutions company Fexco to build, support and operate the the Global Aircraft Trading System (GATS) platform. AWG also published drafts of the standard form documents underpinning the system to allow industry participants to familiarise themselves with their terms before GATS officially goes live in the spring of 2020.

## **Modernising aircraft equipment trading and financing**

The trading and financing of aircraft equipment subject to leases is an increasingly important part of the aviation industry. In recent years, as the number of such trades has significantly increased, inefficiencies have developed. That has resulted in wasted time and resources for airlines, lessors and financiers alike.

The main purposes of GATS are to facilitate the trading and financing of aircraft equipment by reducing the burdens on all players. It also promotes aircraft equipment trading and financing in an efficient, secure and predictable manner which protects the rights of all parties involved including and especially the relevant lessee's rights under the applicable aircraft lease agreement.

Through GATS users are permitted to create, transfer and secure interests in aircraft equipment without disturbing the existing leasing arrangements or having an impact on the contractual rights or protections of the parties to the lease agreement relating to such aircraft equipment.

There are multiple parties involved when aircraft equipment subject to a lease is traded. For example, the seller, the buyer, the lessee leasing the aircraft equipment, any lender providing financing to the seller prior to the trade and any lender proposing to provide financing to the buyer to make the trade.

Each of these interested parties can use GATS for different purposes. The participants with the most direct

involvement in the system are the owners and secured financiers of aircraft equipment. These participants are permitted to use GATS to create, transfer and secure interests in aircraft equipment.

Participation in and use of GATS to effect and record transfers is entirely voluntary.

## **How GATS will work**

GATS builds on the practice of holding aircraft equipment in trusts, with bare legal title to the aircraft equipment being held by a professional trustee on behalf of a beneficiary bearing the economic risks and benefits of ownership of the aircraft equipment.

A common law trust is an equitable obligation that creates a fiduciary relationship in which one party, the owner trustee, agrees to hold title to assets for the benefit of another party, the beneficiary. The owner trustee is the bare legal owner of the assets on trust for the beneficiary.

This practice is well established and widely adopted for aircraft equipment ownership in the United States. It has been used in Ireland and elsewhere. GATS will expand this practice globally.

One of the principal benefits of holding aircraft equipment in a trust is that the economic and beneficial ownership of that aircraft equipment can be transferred from one party to another without having an impact on the contractual rights, remedies and protections agreed in the relevant lease agreement. The professional trustee is the lessor of record both before and after the transfer so there should be no need to novate or assign the lease agreement as a result of a beneficial interest transfer.

To further and substantially increase efficiency, GATS features standard forms of transfer documents executed electronically through the GATS platform. A GATS user will be prompted to provide factual information for example, details of a transferor and transferee. These will be automatically populated into the final form GATS documents to be executed and delivered electronically through the GATS portal so that the transfer is completed 100% electronically.

Details of ownership and security interests created through GATS and the



*The main purposes of GATS are to facilitate the trading and financing of aircraft equipment by reducing the burdens on all players.*

David Berkery, Partner, A&L Goodbody

aircraft equipment held in a GATS trust will be recorded in an electronic ledger, using secure technology, searchable by any user of the system. The GATS electronic ledger is immediately updated following each transfer to ensure that an accurate, live record of ownership of each piece of aircraft equipment in the system is maintained.

## **Reduces the burdens on and time required by lessees, lessors and financiers**

After a GATS trust has been created, the beneficiary shall be permitted to transfer the beneficial interest to another party, subject to any conditions to a transfer of interests in the aircraft equipment set out in the relevant aircraft lease agreement. The trust remains intact and the contractual terms of the agreements (including lease documents) entered into by the owner trustee of that trust are unaffected by the beneficial interest transfer.

Lessees that wish to have advance conditions to transfer (advance

requirements) populated in the GATS system would require such in their lease terms and would utilise the electronic system to confirm the satisfaction (or waiver) of those requirements.

**Protection of rights of lessees**

The rights of a lessee of aircraft equipment held in a GATS trust are protected in two ways:

1. GATS enables both a transfer of the beneficial interest in a GATS trust and the creation of a security interest in a GATS trust to take effect without changing the contractual provisions of the lease agreement, fully respecting and reinforcing the ‘no increased obligations’ protections of the lessee.
2. Any agreed requirements in the lease to be met prior to a transfer of an interest in the aircraft equipment held in a GATS trust can be added to the GATS platform (in an encrypted format) as ‘advance requirements’. The GATS platform will not permit the beneficial interest in such GATS trust to be transferred (or subjected to a security interest) unless each of the agreed advance requirements has been marked as satisfied on the system by the lessee. This strengthens the position of lessees compared to current practice, where a lessee would only have an after-the-fact contractual claim in connection with a disputed transfer.

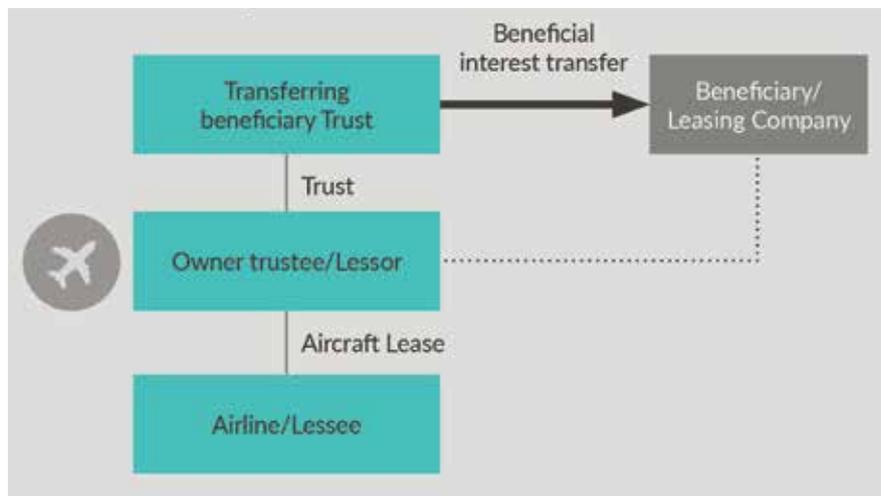
**Granting security interest through GATS**

In addition to a standard mortgage over the relevant aircraft equipment and a security assignment of the relevant lease agreement, a secured lender advancing funds against aircraft equipment owned by a GATS trust will also be permitted to take security over the beneficial interest in the GATS trust.

From the perspective of a lessee, any agreed conditions (advance requirements) which must be met in order to grant security over the beneficial interest in the GATS trust can be enshrined on the GATS platform as pre-conditions to the system allowing the grant of the security interest to be completed through GATS.

If the beneficiary defaults on its secured financing, and the secured party is entitled to enforce its security, the secured party will be permitted to transfer the beneficial interest in the GATS trust to itself or to a third party. Any such transfer would be subject to the same terms, conditions and restrictions as are agreed with the lessee in respect of a regular beneficial interest transfer.

Transfers through GATS



**Interaction of GATS with the Cape Town Convention**

While there is no legal relationship between GATS and the Cape Town Convention (CTC), the two are complementary. CTC, an international treaty, deals with the creation and effects, including in insolvency, of ‘international interests’ in and sales of aircraft and engines. CTC contemplates registration with the International Registry relating to transactions within its scope.

GATS does not deal with direct interests in aircraft and engines as it is based on beneficial interests in trusts over aircraft and engines. No registrations in the CTC International Registry are to be made in connection with transfers of or security over GATS beneficial interests. However, the lease from a GATS trust to an airline, an absolute or security assignment of that lease, and any mortgage over the aircraft or engines held in the GATS trust remain subject to CTC, and, without limitation, should be the subject of CTC registrations.

**GATS jurisdictions**

GATS is a global system with the GATS platform accessible worldwide. Initially, each GATS trust will be formed in one of Ireland, Singapore or the United States. The laws of each applicable jurisdiction will govern the instruments used to create, transfer and grant security interests in such GATS trusts. AWG may expand the list of available jurisdictions over time. This initial trust-jurisdiction limitation does not limit the use of GATS in transactions to airlines worldwide, provided that trusts are recognised in an airline’s jurisdiction. Building on the requirement in the CTC to recognise trusts, AWG is working to

advance global recognition of trusts in the GATS context.

**Tax implications**

A GATS objective is to have the GATS trust treated as a transparent entity (a pass-through) for tax purposes, i.e. for the tax authority to look through the trust to the beneficiary. The standard forms of trust instrument contain features designed to support the treatment of the trust as transparent for tax purposes in Ireland, Singapore or the United States (as appropriate).

A beneficiary tax resident in the US, Ireland or Singapore should be entitled to claim tax depreciation on the consideration incurred for the acquisition of the beneficial interest in the aircraft held in a GATS trust considered transparent for tax purposes.

In general, the transfer of a beneficial interest in a GATS trust should be within the scope of transfer taxes.

Tax treatment of a GATS trust and each GATS transaction will depend on the pertinent facts and circumstances and the tax legislation in each jurisdiction. Specific tax advice should be sought in each case.

**Outlook**

The legal theory behind GATS is sound. The need to modernise current novation practices is clear and the move toward electronic transaction management is inevitable. Changes to long-accepted practices will not happen overnight but the aircraft leasing companies and financiers who are embracing GATS and taking steps already to get themselves ‘GATS-ready’ are likely to benefit the most from the efficiencies created by the system. ▲

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