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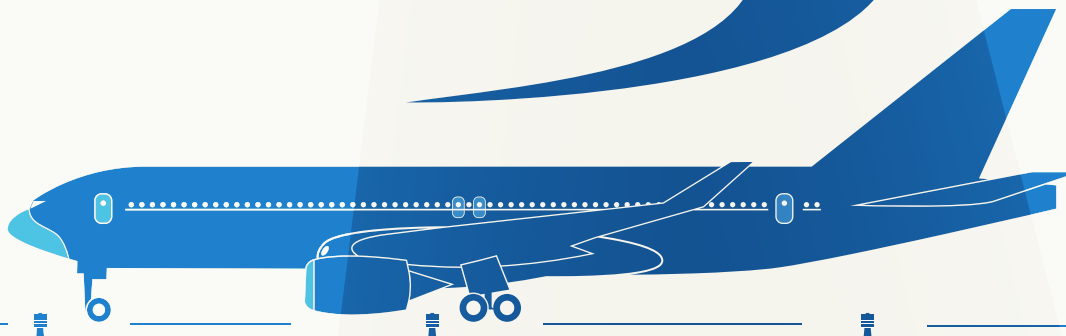
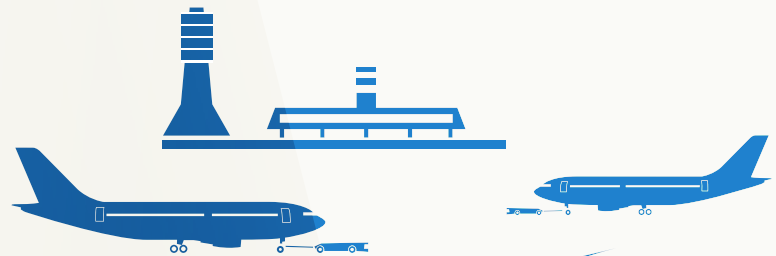
Guide to Aviation Lawyers 2015

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EDITOR'S LETTER

Cape Town isn't everything

Dickon Harris examines the perception of the Cape Town Convention among lessors, and wonders if investors should be more careful about relying too heavily on the convention when investing in aircraft debt.

Investors like the Cape Town Convention, and for obvious reasons. The treaty is designed to help creditors repossess their aircraft more easily from airlines. The convention emulates a lot of the US bankruptcy laws.

For many aviation investors, the Cape Town Convention offers a familiar piece of regulation when considering potential aircraft investments outside of North America. It is no accident that practically all of the non-US airlines that have used enhanced equipment trust certificates (EETCs) have relied on Cape Town.

Bankers state that investor are much more likely to accept a EETC if the issuing airline is based in a country that has ratified the treaty. Some lawyers privately confide that Turkish Airlines may have struggled even to issue its debut EETC this year if Turkey had not ratified the treaty in 2011.

But how well deserved is the Cape Town Convention's reputation among investors? Investors may relish the treaty but lessors, who have to repossess the aircraft, have a starkly different view about its strength.

An academic exercise?

Lessors state they pay little, or no, heed to the Cape Town Convention. Instead, leasing firms prefer to rely on their traditional risk mitigation strategies to help them repossess aircraft. They argue that no lessor is going to agree to rent out aircraft to a new country simply because it has ratified Cape Town. "Investors love it, but how many of them have repossessed an airplane?" queries one US lessor.

Lessors distrust the Cape Town Convention because there is no international body able to enforce it. In addition, there is little evidence to support its effectiveness. Lessors argue that the treaty's one test case to date has been SpiceJet, but most of the lessors involved in that deal had long delays before getting their aircraft back. One lessor summed up the treaty by saying it was at best "a great academic exercise in bureaucratic red tape".

Lawyers have a slightly different view. They argue that as there are so few court cases it will take years to assess the full impact of the convention. Part of the problem is that most repossessions do not go to trial. Most are simply negotiated. When an aircraft repossession does go to trial, it represents a serious breakdown of the commercial relationship between the bank/lessor and the airline. By the time it reaches court a repossession will have cost a bank or lessor hundreds of thousands of dollars on their non-performing asset.



It is within these fraught arenas where the treaty is being tested.

Lawyers argue the Cape Town Convention confers a significant advantage to any creditor wanting to repossess an aircraft, especially if it goes to court. If an aircraft is disputed, the presence of the treaty at least means it is much more likely the creditor will eventually get its aircraft back, and have a chance of recovering some return.

It is hard to assess fully the impact of the Cape Town Convention yet. SpiceJet gave a mixed signal to the aviation finance community, but there were signs that India acknowledged the priority of the treaty over local laws. The case also highlights the danger of relying too heavily on Cape Town as an investor. The treaty cannot offer any guarantee that the aircraft will be returned promptly.

The Cape Town Convention is changing laws all over the world for the better, and the work that the Aviation Working Group is doing should be encouraged. However, the best advice for investors is to check the airlines and lessors involved. A good lessor typically relies on the following to repossess aircraft: a cash security deposit from the airline, maintenance reserves, and a strong commercial relationship with the carrier that goes beyond just one asset. With this in place the odds of repossessing an aircraft, and ensuring a return on the asset, are much better.

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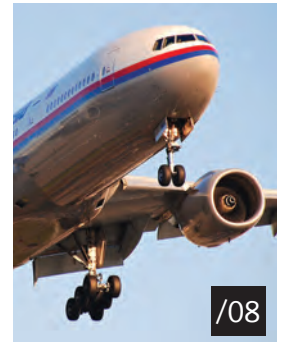
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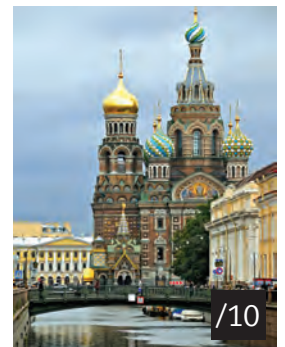
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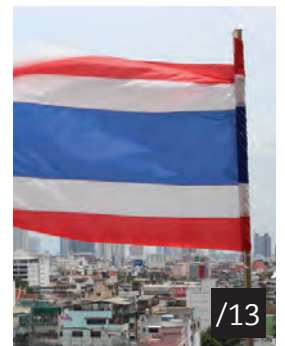
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Pictured left to right are Gerry Thornton, Stuart Kennedy, Chris Quinn and Rory McPhillips.

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LEGAL MARKET

Moves in 2015

September/October

Dentons recruits from Jones Day's New York team

Law firm Dentons has expanded its aviation finance department by hiring two new partners in its New York office.

Elizabeth Evans, the new global co-chair of the firm's aviation finance practice, is joining the firm with Deepak Reddy.

Both lawyers were previously at the New York office of Jones Day, with Evans working as a partner and Reddy as a counsel. They both joined Jones Day in 2010. Dentons' other co-chair of aviation finance is Nick Chandler, who is based in London.



Greenberg Traurig welcomes back partners

Former Greenberg Traurig shareholders Jeffrey Tenen and Israel Sanchez have rejoined

the law firm after a year at Hughes Hubbard & Reed.

Also joining the new Global Aircraft and Equipment Finance and Leasing Practice and returning to Greenberg Traurig is Ellen Fontanella, who will be joining as a senior associate.

Furey goes to Holland & Knight

Richard Furey has joined Holland & Knight as an aircraft finance partner. He will be based in the firm's New York office, and will divide his time between New York and Miami.

Furey moves from White & Case, where

he was a partner. The lawyer was selected as a Rising Star by *Airfinance Journal* in 2010 while still an associate.

Furey has significant experience in the aviation sector and has represented a variety of aircraft lessors, lenders and investors, including BBAM Aircraft Management, International Lease Finance Corporation, Aviation Capital Group, Wells Fargo Bank, BNP Paribas and Natixis.

February

Kennedys hires Clyde & Co team

Law firm Kennedys has hired six former Clyde & Co lawyers to its Singapore and Hong Kong aviation practices.

Peng Lim and Anita Quy have joined the Singapore office as partners, along with a team of four unnamed lawyers.

Kennedys has also appointed a third partner, Sarah Catchpole, who joins from Norton White in Sydney and will be based in Hong Kong.

March



Holland & Knight hires LA lawyer

Holland & Knight has recruited finance attorneys Brian Daigle, Ronald Goldberg and Warren Biro to join the firm's Los Angeles office.

The team, which was previously with Akin Gump, will be integrated into Holland & Knight's national structured finance and aircraft finance teams.

Daigle has joined as a partner, Goldberg as counsel and Biro as an associate.

Daigle practices in the area of global finance, working primarily on secured and unsecured lending transactions. He frequently works with aircraft lessors and airlines. He also has experience representing US and offshore investment funds.

"We are extremely pleased to be expanding our corporate finance capabilities in Los Angeles, an area where we have a heavy concentration of clients and potential clients," says John Pritchard, the New York based leader of Holland & Knight's structured finance team.

"Brian and Ron's sophisticated practice representing aircraft lessors, airlines and investment funds fits perfectly with our existing strengths and client base," he adds.

Goldberg has extensive experience in transactional banking, finance, leasing and derivatives. His practice is focused on hedge, private equity and distressed debt investment funds, as well as airlines and leasing companies.

May

Freshfields names new Hong Kong partner



Freshfields Bruckhaus Deringer has appointed Hong Kong-based Daniel French to partner in the firm's finance practice.

French has acted on a wide variety of aircraft financing transactions, ranging from straightforward operating leases to more complex tax-structured deals.

He recently advised China Eastern Airlines on a variety of structured financing transactions, and Cheung Kong on aviation sector projects.



LEGAL MARKET

Moves in 2015

Ince & Co adds to London aviation team

Law firm Ince & Co has appointed two new partners to work in the aviation department of its London office.

The first new partner, Anna Anatolitou, has more than 15 years' experience in the aviation sector, including two years spent as an in-house legal counsel of Air Arabia Group.

She previously led Bird & Bird's regional aviation practice in the United Arab Emirates. Anatolitou specializes in airline start-ups and advising more broadly on aviation litigation, regulatory and commercial issues.

James Hickland, the second new appointment, covers contract and tort issues, with particular focus on shipping and aviation. He has been at Ince & Co since September 2005 and was previously a senior associate at the firm.

June

Pillsbury partner goes to Winston & Strawn

Bill Bowers will chair Winston & Strawn's new transportation structured finance team.

Bowers was most recently a finance partner at Pillsbury. He previously worked as general counsel to GPA Capital and as associate general counsel to GE Capital Aviation Services. >>>

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LEGAL MARKET

Moves in 2015

The transportation structured finance team will focus on all transportation assets, including aircraft and aircraft engines. It is comprised of lawyers based in New York, Chicago, London and Washington DC.



Clifford Chance promotes rising star

Law firm Clifford Chance has appointed Paul Carrington as a partner in its Global Asset Finance Group.

Carrington focuses on the rail and aviation sectors, and acts for financiers, arrangers, manufacturers, leasing companies, operators and owners. He joined the firm in 2005 and progressed to senior associate in 2008.

Airfinance Journal selected Carrington as a Rising Star in 2013. The annual international awards pick the eight most promising aviation associates. Speaking about the promotion, he says: "I am delighted to become a partner after 10 enjoyable years at Clifford Chance. I look forward to expanding the firm's rail and aviation practice and, along with my colleagues in the Global Asset Finance Group, continuing to advise clients on complex, cutting-edge cross-border matters



WFW announces new aviation partner

Law firm Watson Farley & Williams (WFW) has promoted aviation lawyer Alexia Russell to partner.

Based in Paris, she specializes in asset finance, leasing and project finance, and mainly acts for banks and financial institutions, equity investors, export credit agencies and lessors.

Russell's asset finance and leasing practice focuses on transactions in the shipping, rail and aviation sectors. She trained and qualified at Freshfields

Bruckhaus Deringer in 2005. Before joining WFW, Russell worked at Stephenson Harwood in Paris.

Russell was selected by *Airfinance Journal* as one of its eight most promising legal associates in 2012, naming her a Rising Star.

July/August



Clifford Chance Singapore hires senior associate

Clifford Chance Singapore has hired Chapman Tripp senior associate Chad Morgan.

Originally from New Zealand, Morgan worked for Clifford Chance as a senior associate in the firm's Bangkok office between 2011 and 2013, before returning to Chapman Tripp in New Zealand for family reasons. He has now been rehired by Clifford Chance to work in its Singapore office as a senior associate reporting to partner Simon Briscoe. He replaces Mark Adams, who recently left the firm to return to the Caribbean and work for law firm Campbells.

K&L Gates hires White & Case lawyer

A former Tokyo-based White & Case associate has been hired by rival firm K&L Gates to work in its office in Orange County, California.

Amanda Darling is joining K&L Gates' banking and asset finance team. Darling worked in White & Case's asset finance and project finance team under partner Simon Collins. *Airfinance Journal* understands that White & Case expects to fill the vacant position through an internal move.

Pillsbury gets new partner

Law firm Pillsbury Winthrop Shaw Pittman has hired Barry Biggar as a new finance partner. He will be based in the firm's main office in New York.

Biggar was a partner at McGuire Woods before joining Pillsbury. He has more than 25 years' experience working in corporate law, representing companies in structured debt and tax-advantaged financings in the US domestic and cross-border markets.

Biggar has also represented issuers, underwriters and placement agents and privately placed debt securities issued to finance such assets.

"Barry's rich history of serving clients across a number of industries, including transportation, heavy industry and energy (traditional and renewables) will be an excellent complement to the range of services we offer our global clients," says finance section leader Jon Whitney.

He adds: "Barry is a welcome addition to our finance practice in New York, and will add a wealth of experience to our international cross-border finance team."



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NEWS ANALYSIS

Malaysia versus Cape Town

Michael Allen assesses the implications of the MAS Act for creditors of Malaysia Airlines.



The most improbable turn of events can alter the fate of an airline. Nobody could have foreseen the twin tragedies that would befall Malaysia Airlines last year when flight MH370 disappeared en route from Kuala Lumpur to Beijing and shortly after MH17 was shot out of the sky over eastern Ukraine.

The carrier, which has a proud operating history dating back to 1946 when it was known as Malaysia-Singapore Airlines, has recovered from fatal accidents before – in 1977 and 1995 – but the close timing of the two incidents last year damaged customer confidence in the carrier and exacerbated already existing financing issues.

The Malaysian government's response was to table a bill before parliament in November 2014 designed to expedite the restructuring of the airline, which is viewed as a vital national asset that employs thousands of people.

The Malaysian Airline System Berhad (Administration) Bill 2014 – or MAS Act, for short – is intended to help administer and manage MAS and its subsidiary companies “without disruption to their operations” and allows the appointment of an administrator to oversee the transfer of the airline's assets and liabilities to a new company called Malaysia Airlines Berhad (MAB). The old MAS will effectively become a shell company.

One lawyer compares this division of the company to the “good bank, bad bank” restructuring adopted by the UK government after it nationalized and split British bank Northern Rock into two separate companies.

In May, Malaysian sovereign wealth fund Khazanah Nasional appointed Mohammad Faiz Azmi, executive chairman of Pricewaterhouse Coopers Malaysia, as administrator. The Act gives Azmi more powers than would normally be available under Malaysian administration rules.

Market sources have called these “very concerning” powers. This is principally because they “cut across Cape Town”, a widely adopted treaty that supersedes domestic law to help creditors of airlines repossess their aircraft more easily in case of default.

By allowing the administrator to renegotiate contracts with creditors and potentially “cherry pick” what he wants from a contract the act threatens the supremacy of the Cape Town Convention (CTC) despite the fact that Malaysia is a signatory country.

Not only has this created an ugly precedent against Cape Town, but also caused disquiet among MAS's aviation lenders and lessors. A London-based lawyer says the act is a “major blow” to Cape Town if, in practice, the administrator “just ignores” the CTC.



“It’s an extremely broad act that gives the administrator very, very far reaching powers and [is] potentially an extremely worrying and threatening piece of legislation for owners and creditors.”

“Part of the Cape Town Convention was meant to give certainty to owners and creditors that they would get their aircraft back,” says the lawyer. “It’s an extremely broad act that gives the administrator very, very far reaching powers and [is] potentially an extremely worrying and threatening piece of legislation for owners and creditors.”

A 12-month stay of proceedings included in the Act prevents creditors from being able to sue the airline or the administrator, and even after the 12-month period expires the administrator retains immunity. The stay of proceedings can be reduced or extended with the consent of Malaysia’s minister of transport.

If creditors were subject to the general Malaysian administration rules rather than the MAS Act they would be able to appeal to the courts and say the administrator is unreasonably holding on to their assets and does not need them for the administration, according to one Singapore-based lawyer.

“They’re giving the airline special protection basically,” says the lawyer. “The view here [at my firm] is it’s more to deal with employment contracts and the union, but they can also be used to deal with financing and leasings as well.”

Whether the administrator’s powers go so far as to allowing him to amend contracts unilaterally and impose terms on counterparties is still unclear.

“Until this is interpreted and tested in a court, who knows?” says another Singapore lawyer.

“Lessors and lenders don’t have the ability to influence the cherry picking as to what goes across. In a worst-case scenario, the shell of MAS survives and leases they don’t want are left in this shell, and lessors are approached by the shell saying, ‘We really don’t want to continue these leases; please take back your aircraft.’”

Delayed fleet decision

The first known example of the administrator at least implicitly threatening to use these powers was when the airline delayed its planned September 1 fleet decision and instead asked its creditors to consent to an interim sub-lease agreement, according to two sources with knowledge of the talks.



Previously, the carrier had intended to make a decision on which aircraft to transfer to MAB and which to return to creditors by September 1. Now, the entire fleet will be sub-leased to MAB from MAS and operated by this new entity for a period of six to 12 months, with the possibility of extending the sub-lease.

“You’re free not to accept – in a way,” one source told *Airfinance Journal* at the time. “They seem to imply that if we don’t want to accept we can, but then it means your aircraft will not be used by the airline and it will stop paying on September 1.”

While some creditors may accept the delay in the fleet decision being made – after all, they are still getting paid – it does prolong the wait to find out whether their assets will stay with MAS or be transferred to MAB.

As one lawyer says: “The position of most people is they don’t want the aircraft out of Malaysia. They want them in there.”

Questions remain about whether the old company will remain an airline or if it will become a servicing company to the carriers in Malaysia Airlines group. It could become a management company for the new company and, if this happens, it is possible that the new company will pay a fee to the old company for its management services.

What can creditors do?

Faced with such a degree of uncertainty and lack of enforcement action against the airline, creditors of MAS cannot be blamed for despairing at the situation, but there are some things they can do.

One lawyer advises that, although lenders and lessors cannot take enforcement action against the airline, they should reach out to their administrator or their contact at the airline to find out what their plans are. They should also check their documentation to find out the extent to which debts are outstanding against aircraft from airports and other authorities.

“If things go really bad, you can get an idea of what’s outstanding against the asset,” says the lawyer.

However, he cautions against being too hasty to take action, lest future relationships with the airline be damaged.

“If you’re fairly sure that it’s one of your aircraft that’s going to be returned, I guess you would start soft remarketing to see where you can place your aircraft,” he says.

“However, before you know your aircraft is going to be taken over by the new MAS – MAB – you don’t necessarily want to take presumptive action and sour any relationships.”



NEWS ANALYSIS

Sanctions vs subsidies: how is Russia coping?

The Russian government is supporting its aviation industry through a range of subsidies, with varying degrees of success. Joe Kavanagh reports.

Things are still tough for Russian aerospace companies. A weak rouble is hurting airlines with fixed-dollar leasing costs, and reducing demand on international routes, while the international sanctions on some of Russia's biggest companies continue to restrict the flow of liquidity into the country.

To help boost its struggling aviation sector, the government is introducing a range of measures. In March, for example, the government approved fresh subsidies on interest payments for Russian lessors. The measures apply to payments from Russian lessors to Russian banks, but only on the condition that they are for the purchase of Russian-built aircraft. Similar subsidies already existed for aircraft on finance leases, but they were extended to include aircraft on operating leases.

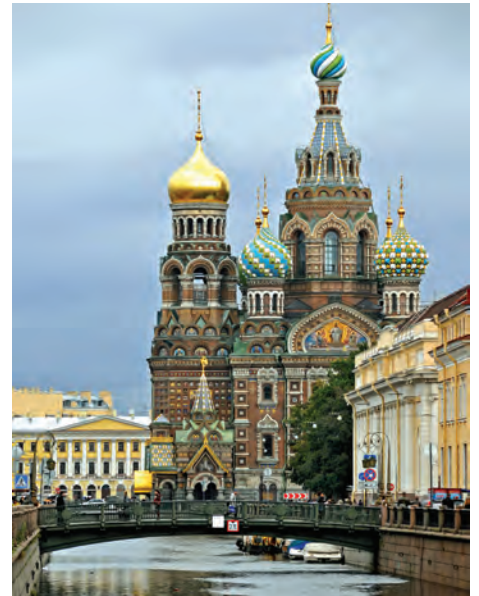
While the move is a welcome development for Russian companies, key figures in the country's aviation industry have raised doubts about how much help it is providing.

Geoff Burgess, partner at Debevoise & Plimpton, says: "The aircraft that could potentially qualify for these subsidies are pretty much only Russian-manufactured, and since there hasn't been a lot of new Russian manufacturing, there's only 40 aircraft in total. So it's not a major part of the market."

What would help the industry more is subsidizing the lease or purchase of western-manufactured aircraft. Despite the large number of Russian- or Ukrainian-manufactured jets being flown in Russia, the majority of aircraft flown by its airlines are western-manufactured. But as Dmitry Karamyslov, partner at Debevoise Plimpton, explains, it would be difficult for the government to bring about subsidies for western aircraft because of the likely political objections.

"That would have been the most efficient measure, although for political reasons we won't see this happening. This would mean subsidizing payments to foreign lessors, foreign states, foreign business, which wouldn't look very good from a political perspective," he says.

While the present subsidies for lessors fail to make life much easier for Russian



airlines and lessors, one move that is having more impact is VAT reductions on domestic flights. These are giving Russian carriers a little financial breathing-space by allowing them to make savings.

In April, the government reduced the rate of VAT applied to domestic flights from 18% to about 10%. Transaero's chief executive officer Olga Pleshakova told local reporters in April that VAT reductions would help the airline to save \$37 million.

Banks remain cautious

As far as western financiers are concerned, the risk of the Russian market has remained relatively unchanged since late 2014. Whether or not banks deal with Russian firms – at least those not prevented from accessing western capital by sanctions – still depends on their internal policies. For some banks, lending to Russian companies is out of the question; for others, business is still possible on a case-by-case basis.

Sanctions prevent banks from lending to a list of Russian companies, such as VEB, VTB, Sberbank and Gazprombank, some of which have aircraft leasing arms.

While western lending to certain companies is still impossible, the extraordinary



“Russia is facing a difficult situation at the moment. We continue discussing aircraft finance with our clients over there but in total respect of the sanctions imposed on the country.”

Marc Bourgade, head of aviation, Natixis

strain placed on the country’s airlines also makes lending to Russian carriers a risky proposition.

Marc Bourgade, head of aviation, export and infrastructure sectors and clients at Natixis, explains: “It is true that Russia is facing a difficult situation at the moment. We continue discussing aircraft finance with our clients over there but in total respect of the sanctions imposed on the country.”

Meanwhile, a spokesman for UK Export Finance (UKEF) says the organization “remains open to medium-term cover for

aerospace business to Russia”, adding that the downturn in the Russian market is affecting airline credit strengths.

The spokesman adds: “As for all aerospace deals, we would assess the credit standing of any proposed credit counterparty, whether they be an airline or operating lessor. Such credit assessment would determine our appetite, terms and pricing for any proposed support. Obviously, prevailing market conditions in Russia, and how they impact the aviation sector, will have a bearing on any airline rating.”

Regarding Russian airlines and lessors,

UKEF says it has a “preference for private sector buyers with a foreign exchange earning capability”.

However, while Russian carriers strip back their fleets in response to falling demand, a lack of financing is not the most pressing issue. Few Russian airlines are planning to expand aggressively given current market uncertainty. UTair, for example, is in the process of reducing its fleet by 40%, from 117 aircraft to 71, in order to make savings on lease payments. For the time being, the most urgent problems for Russian carriers are their cash positions.

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SPONSORED EDITORIAL

Leasing used aircraft equipment in unchartered jurisdictions

Ben Peacock, legal counsel, Rolls-Royce & Partners Finance Limited, reviews the appeal of the Cape Town Convention for engines.



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LIMITED

In an era of manufacturers boasting record order books for new aircraft and with the latest generation of aircraft being operated in ever greater numbers by airlines which would not before have taken new equipment, where can a lessor place old aircraft? What are the risks and rewards for lessors doing business in previously untested or unchartered jurisdictions?

While there will continue to be operators in developed jurisdictions which readily lease such used aircraft, negotiating power increasingly sits with the operators. To obtain higher returns, lessors are increasingly looking outside their comfort zone. Growing populations, increasing GDP, developing middle classes and often limited ground transportation options (national and cross-border) mean that developing economies have all the economic ingredients for air transport to be a key part of their future. The reward is clear: a long-term market for used equipment that will allow lessors to extract maximum economic potential from their used assets.

In a rush for that reward, and the natural assumption that transactions will run to plan, there is potential for the risks to be under-represented.

Lessors will always consider the legal risks associated with the operator's jurisdiction: title security and lessor rights on default are key aspects of this. The tools available to a lessor to manage such risks are both internal and external. The internal tools are active lease management and maintaining strong working

relationships with customers throughout the term. Ensuring timely payment and provision of documentation are a given but this is particularly important in jurisdictions where cultural norms on deadlines may be very different to what the lessor is used to. More unusually, and in the absence of political risk, insurance lessors are well advised to keep a close watch on the political environment in those jurisdictions where the lessor operates.

External management tools are reliance on law, both national and international. It should not be assumed that just because a country is deemed developing, it does not have a robust and independent legal and regulatory framework. However, the Convention on International Interests in Mobile Equipment (2001) and the related Aircraft Protocol (the Cape Town Convention) can provide an additional degree of legal certainty.

The Cape Town Convention has been widely discussed over the past 10 years and the benefits that it can bring to lessors, at least in principle, are now widely understood.

Its ratification in a jurisdiction does give lessors real comfort that their title to an asset is protected, together with the ability to effectively repossess their equipment upon an event of default. Notably for engine lessors, this protection applies to individual engines as well as to aircraft. This has given lessors confidence to deal with operators and jurisdictions that would previously have been very difficult. For airline operators located in developing jurisdictions that have properly ratified the Cape Town Convention, the benefits have been access to an increased choice of lessors and potentially lower financing costs.

As with all legislation, it is only known whether it is effective or just a paper right when it is tested in the courts. It is right to say that the Cape Town Convention remains in its infancy and is substantially untested. Even so, there are examples of where creditors have successfully

exercised their rights under the convention without having to go to court, and this may give lessors some confidence as to its effectiveness.

Greater tests will come when a lessor looks to rely on it in a jurisdiction where the rule of law is historically weaker or where the assets are being repossessed from a national airline, a symbol of state prestige. In any case, the advent of the convention can only be seen as a significant improvement in the environment creditors were faced with before its existence.

While the Cape Town Convention may provide lessors with some comfort as to greater security and enforceable rights in respect of their equipment in the event of a default, active lease management remains the critical day-to-day tool in managing equipment in new and untested jurisdictions. Lease management includes having in place a comprehensive lease agreement ensuring the lessor has a strong contractual position in respect to their ownership rights. Local law advice should be sought to ensure that the lease will be valid and enforceable in the jurisdiction and that any particular domestic law concerns are addressed.

Also, maintaining frequent communication with the customer throughout the term of the lease is important to enable a lessor to act promptly when needed. Finally, when it comes to untested jurisdictions in particular, having a plan for when things do not work out is essential.

Rolls-Royce & Partners Finance (RRPF), which provides short-, medium- and long-term spare engine leasing solutions with the largest worldwide portfolio of Rolls-Royce and International Aero Engine engines, has first-hand experience with the above. Since its formation in 1989, RRPF has rapidly expanded its customer base and, like market leading aircraft lessors, we have seen a change in the composition of our customer base in the past 10 years, with many more operators in developing jurisdictions joining as customers.

By applying the tools noted above, we have had a positive experience in dealing with such jurisdictions and given the market forces discussed, we expect to see this trend continuing in the future. ▲

Written with support from Matthew Andrews, Chief Counsel - Special Projects, Rolls-Royce plc.



NEWS ANALYSIS

Repossessing aircraft in Thailand

Michael Allen discusses some common problems lessors face when having to repossess their aircraft from Thailand.

Thailand's aviation industry is growing at a rapid pace, with a surge of start-up carriers entering the market. Recent entrants include New Gen Airways, Asia Atlantic Airlines and City Airways. The AeroTransport Data Bank indicates there are at least 236 commercial aircraft operating in Thailand.

However, aviation lawyers warn that repossessing aircraft in the country can be a long and difficult process. Multiple lawyers *Airfinance Journal* has spoken to have expressed their concerns over the difficulties of repossessing aircraft in Thailand, should a lessee default and refuse to return the aircraft.

"The system is not corrupt; it's just slow," says Fergus Evans, office managing partner at Clifford Chance in Bangkok.

Part of the difficulty is that the Thai Department of Civil Aviation (DCA) has to ask the airline for permission to deregister the aircraft, which the airline can refuse. The DCA can then apply for a court order, but this takes time.

"The Thai DCA does not want to incur liability with the airline because the airline could sue them if they deregister improperly. The Thai DCA is actually very cooperative and they are very nice people: they understand completely that our clients haven't been paid rent, but also understand that they don't have power to do it without a court order," adds Evans.

Whereas in some jurisdictions – such as the UK – owners of aircraft can resort to self-help and get their aircraft back on the same day, getting a Thai-registered aircraft back in a contested repossession can take between seven to 18 months, or even up to three years.

"In theory, the lessee could appeal all the way up to the Supreme Court, which could mean the process takes three-plus years," says Evans.

Common law versus civil code

One major obstacle to repossessing aircraft in Thailand is that the country is a civil code jurisdiction. Typically, aircraft repossessions in jurisdictions with an English common law base are much easier.

With some exceptions, countries' legal systems generally fall into one of two cat-



egories: those with an English common law base and those using civil code.

In a jurisdiction such as South Korea, which uses civil code, lawyers say that if a lessor ends up in a contested situation, it can take up to three years to get its aircraft back.

Two London-based partners at one law firm recommend that if possible lessors should not try to repossess their aircraft in Thailand, but wait for the aircraft to enter a common law jurisdiction, such as Singapore, and undertake the repossession from there.

However, if the aircraft is likely to remain only in Thailand or other civil code jurisdictions, lessors will have to face the fact that they may experience a long delay in getting their asset back.

Deregistering foreign aircraft

Airfinance Journal understands that foreign-registered aircraft are unlikely to encounter the same repossession hurdles as Thai-registered ones.

Take the case of Russian airline Nordwind, for example. In December 2014, one of its lessors terminated the lease on one of its aircraft for non-payment. Since the aircraft was Bermuda-registered, the Bermuda DCA then cancelled the Certificate of Registration. The lessor managed to repossess at Phuket Airport, where the aircraft was parked, because the Thai DCA gave the lessors an export permission. This happened in a one-week timeframe.

The fact that Phuket Airport is small and overcrowded certainly expedited the repossession, according to Alan Polivnick, a partner at Watson Farley & Williams' Bangkok office. However, it is also clear that the aircraft being foreign-registered made >>>



“The system is not corrupt; it’s just slow”

Fergus Evans, Clifford Chance

the process a lot quicker than if the aircraft had been Thai-registered, because the Thai DCA deals with the airline directly and only the airline can deregister the aircraft.

The absence of Cape Town

Despite it being relatively easy to repossess foreign-registered aircraft, Thai courts will only enforce judgments in other countries that would enforce Thai court judgments reciprocally.

A report on the country’s legal system by law firm Baker & McKenzie states: “The Thai system of jurisprudence is dualistic. The fact that Thailand has entered into a treaty or convention with a foreign country does not automatically give the provisions of such treaty or convention the force of law within Thailand.”

The report adds: “Thai law does not specifically provide for the direct enforcement or recognition of a foreign judgment in Thailand. Moreover, Thailand is not a party to any treaty or agreement by which a foreign court judgment may be entitled to recognition and enforcement in Thailand.”

This is not uncommon in Asian jurisdictions, according to David Brotherton, a partner in Berwin Leighton Paisner’s Singapore office.

“There aren’t any countries in my mind that have reciprocal agreements with Thailand,” he says. “China’s the same. The difference is that China has implemented the Cape Town Convention, whereas Thailand has not.”

In the absence of the country being a signatory to the Cape Town Convention, lessors leasing into Thailand which want their aircraft back should seek to obtain a Deregistration Power of Attorney.

This is a document from the airline to the lessor/financier which states that, in the event of default, the airline grants the lessor/financier the power to sign whatever documents are required in order to deregister the aircraft from the Department of Civil Aviation and take it out of the country.

In some jurisdictions, this can be expressed as “irrevocable”, meaning the agreement cannot be revoked by the airline. In Thailand, however, there is a question mark over whether Thai law will treat the



Nordwind, a Russian airline, had one of its aircraft repossessed at Phuket Airport last year

agreement as irrevocable, or whether the airline will be able to revoke the agreement, according to Clifford Chance’s Evans.

He suggests that, to get around this problem, a statement can be included in the power of attorney that it can only be revoked with the consent of both parties.

Sebastian Smith, a partner at K&L Gates’ Singapore office, offers up some more advice.

Based on his firm’s experience working with local Thai counsel on aviation deals in Thailand, it is K&L Gates’ understanding that under Thai law mortgages can only be created over certain assets in Thailand.

“Unfortunately, this does not extend to aircraft,” he says.

Smith adds: “As mortgages cannot be created over aircraft, financing parties and airlines often enter into Thai law pledges; however, as the financing party must hand over the aircraft to the airline for operations, an innate benefit of the pledge is lost, that of possession.”

To this end, Thai law pledges need to be carefully drafted to document the control/rights of the financing parties and acknowledge that the airline is merely a custodian. Since the repossession may occur outside of Thailand, financing parties often ask for a New York law mortgage in addition to a Thai law pledge.

English law mortgages may not be suitable in light of the lex situs issues arising from the Blue Sky case. The judgment in this case – whose full title is Blue Sky One

Limited and Others v Mahan Air and Another (2010) – provided that one has to look at the domestic law of the lex situs of the aircraft (excluding its conflict of law rules) at the time the mortgage is created to determine if the mortgage is valid rather than the contractually agreed governing law, according to a 2011 report by law firm Conyers Dill & Pearman.

The biggest piece of advice Evans can give is that lessors should secure a personal guarantee from the director of the company if it is dealing with a small airline – if not for everything under the lease, then at least for the repossession.

“If you obtain a personal guarantee from the major shareholder and controlling directors, they then have to think twice about returning the aircraft, because in that scenario you can go after them directly,” he says.

However, Polivnick of Watson Farley & Williams prefers taking some sort of pledge over other assets.

“Notwithstanding having that personal guarantee, you would still need to go to court and sue on the guarantee, by which time the assets used as security will be sold to someone or worthless or whatever,” he says.

Polivnick adds: “Usually, the director will resign just before they have trouble. His guarantee will only be valued in his capacity as the director. He will say, ‘I’m no longer the director’. The court will say, ‘You need a guarantee from the director’.” ▲



SPONSORED EDITORIAL

Aviation finance - of diplomacy and war

Paul Jebely, global head of aviation finance at Clyde & Co, discusses strategy and leadership in aviation finance disputes and litigation.



Paul Jebely
GLOBAL HEAD OF
AVIATION FINANCE
CLYDE & Co.

Like diplomacy, the international and complex nature of aviation finance means that when disputes arise, they too tend to be international and complex. Like war, the risks of the outbreak of actual litigation increase in tough economic times – in aviation finance, such times are seen during the trough stages of the commercial aviation industry cycle.

This brief – and, possibly, timely – article is premised, for illustrative purposes, on the analogy that litigation is war, war is the failure of diplomacy, and both diplomacy and war require intelligent strategy and effective leadership. It offers a prescription for such strategy and leadership in the context of aviation finance litigation. A prescription is necessary because these critical items can be elusive in some corporate cultures, where it often proves extremely difficult to negotiate internal power dynamics effectively during the heat of battle on the ground (or in the air, as it were).

While a case study is unfeasible in a general article of this length, it is useful to highlight common subject matter of disputes and litigation in relation to aviation finance-related activities. These include issues arising out of aircraft/engine trading (including, particularly in the case of new metal, delayed or defective delivery); aircraft/engine leasing (including early termination and/or redelivery); aircraft/engine financing (including the enforcement of security and other recourse in default scenarios); aircraft/engine maintenance; and other related commercial activities (some of which may lead to antitrust or shareholder actions). It is also worth noting that superimposed onto most aviation finance litigation are also logistical considerations on seizure and repossession, court orders (including injunctive relief), self-help remedies, multi-jurisdictional enforcement strategies, and so on.

A time for diplomacy

The Rooseveltian edict “speak softly and carry a big stick” embodies the principles of coercive diplomacy. It is this school of diplomacy that is best applied to

aviation finance disputes – or, rather, the negotiated settlement thereof, ideally before the outbreak of actual litigation.

First, understand that a favourable settlement is almost always better than putting your commercial fate in the hands of a judge, arbitrator or, heaven forbid, jury. Each of these creates a wider possibility of potential outcomes. This is especially true of certain foreign jurisdictions – some of which basically resemble a black box of horrors in this regard.

Second, use the carrot and stick approach by offering a combination of enticement and threat of harm to try to induce the desired counterparty behaviour. This idiom (a reference to a cart driver dangling a carrot in front of a mule while holding a stick behind the mule) is used in diplomacy to describe the realist concept of “hard power”. It is worth highlighting that it is both carrot and stick (and not carrot or stick) that are to be used. The threat of disruptive and costly litigation is likely the most common stick that can be used by both sides (and the avoidance thereof can be considered a carrot).

Third, if litigation is imminent, prepare for wartime while continuing peacetime negotiations. In this context, find allies, starting with (outside) counsel. Select the right counsel because the right counsel can make all the difference. That noted, do not expect counsel to work miracles. Request an early honest assessment of the merits of the case and encourage frankness, because it is critical that expectations are managed and realistic objectives formulated. Do not select counsel based solely on their skills as an apparent fortuneteller, and bear in mind that “lie to me” is not a productive instruction to counsel. The most important considerations in appointing the right counsel are: the firm and lead lawyer’s experience in the substantive and procedural law, aviation industry experience, negotiation and problem-solving skills, the quality of their strategic advice and their fees. The order of importance may differ, but each is critical.

Finally, do not take or make it personal. The decision to litigate and how to litigate should be a rational commercial decision, whereby passion and chance are subordinate to commercial reason. Once counsel has provided an early assessment, consider applying the principles of real options analysis to the potential litigation at hand. During the analysis, avoid what is in aviation human factor study known as “negative target fixation”. The analysis should also account for potential collateral damage by pursuing or defending the litigation, including impact on shareholders, other contract parties, and >>>



“The best strategy often looks something like: prosecute/defend, frustrate and harm, create leverage and bargaining power, negotiate, settle on favourable terms, and move on.”

so on. Indeed, depending on the quantum of the claim, covenants and other contractual terms and the applicable disclosure rules (if any) may require disclosure of such litigation, including as a potential material adverse effect event. That noted, if on the receiving end of a statement of claim or an injunction in the midst of commercial negotiations, then defend, rather than pretend that it is still peacetime.

A time for war

The Clausewitzian concepts of the “culminating point” of attack and victory are pervasive in warfare strategy. It is these strategic concepts that are best applied to aviation finance litigation – or, rather, the negotiated settlement thereof, after the outbreak of actual litigation.

First, understand that going past the culminating point in any battle shifts the advantage from the aggressor to the defender. In short, not only is it counterproductive to proceed beyond the culminating point of attack or victory, doing so invites defeat because pushing your objectives too far will increase an opponent’s will to resist. The goal of the prosecuting party is to win the litigation before this point is reached. It follows that the goal of the defending party is conversely to bring the prosecuting party to its culminating point long before that party wins.

Second, map out a litigation strategy rooted in a clear understanding of commercially rational objectives. In a vacuum, free from the constraints of rationality or limited resources, aviation finance litigation could be for unlimited objectives – the legal equivalent of absolute war. Luckily, aviation finance litigation seldom, if ever, exists in such a vacuum, nor should it. While the best prosecution or defence strategy may be aggressive and forceful (but not ignorant of reality), it must also come with a well-defined exit strategy. The strategy should not only be to win (whatever that means in the specific context) but to do so at an acceptable cost. Litigation is often as much a battle of words and wits as it is a battle of wills and resources. In that light ask, “what would a win actually look like?” The best strategy often looks something like: prosecute/defend, frustrate and harm, create leverage and bargaining power, negotiate, settle on favourable terms and move on.

Third, be aware that aviation finance litigation can be an all-consuming affair for those involved in the day-to-day handling of the case and that, ultimately, the legal decision-making must be subordinate to the commercial. Further, while it is imperative that senior C-suite management be involved in, and ideally have ultimate oversight, the



C-suite should not become a bottleneck. The decision maker(s) with day-to-day responsibility for the case must be empowered to make quick decisions. It goes without saying that organization and good communication is critical.

There should be a single point of contact and instruction to counsel. Trust that if the other side identifies a weakness or disconnect in the relationship between counsel and client, they will seek to exploit it. Be prepared to do likewise. In that light, once counsel has been appointed, have faith in them and do not micromanage execution of the litigation strategy. Also, it is often a spectacular mistake to change counsel part way through a major litigation, which often results in paying more for the same or worse results. This is why it is important to select counsel carefully in the first instance.

Fourth, be as strong and aggressive as possible at key battles in the proceedings and, in doing so, do not separate the credibility of legal arguments from their substance. One such key battle is often forum, because it is critical to pick the right venue for any duel. Consider whether the forum – often a contractual matter – is adequate (ie, in terms of home court advantage, personal or subject matter jurisdiction, and so on) and, if not, consider whether there is room for forum shopping or argu-

ing inconvenient forum.

As a general matter, while there are certainly some drawbacks, it may be preferable to select arbitration over court, especially in terms of cost/time efficiency and confidentiality. Separately, if useful, counter claim or bring additional claims – including outside of the litigation forum to the extent helpful and possible.

Finally, be flexible and ready to negotiate a settlement at any time, especially at culminating points of attack or victory. Senior management, especially at the C-suite level, can make a key difference in such negotiations, especially if they are removed from the fray itself. Flexibility does not equate to indecisiveness, and a willingness to cease fire and negotiate does not equate to weakness. In aviation finance litigation, everything is variable to one degree or another – often the product of a continuous series of skirmishes between the parties.

Not everything about the litigation strategy can be determined in advance, and the unexpected (especially any unknown unknowns) is to be expected – and may change the final objective. Remember that the real win in the general strategy outlined above typically comes somewhere between “settle on favourable terms” and “move on”. ▲



AIRFINANCE JOURNAL LEGAL SURVEY

The winners

Airfinance Journal reveals the winners in the third year of its legal survey, which recognizes the most active law firms in 2014 by regions and financing structure.

First of all we would like to say thank you to all the law firms which participated in the survey. This is the third interaction of our revised legal survey. For those unfamiliar with the survey, it is based on the *Airfinance Journal* Deals Database, as well as submissions from the law firms. These results are aggregated to create the winners.

The survey has recorded a few general shifts in aviation financing. The significant amount of aircraft trading in the past two years, as well as the general demand for new and replacement aircraft, has meant there has been a steady level of financings and leases. The survey focuses purely on aircraft financings but it is worth noting that many law firms spent 2014 involved with complex restructurings.

In addition, the significant leasing consolidation occurring in the past few years has kept many firms busy too. In a similar vein, legal consolidation has also ensured that some law firms have expanded their practice into new geographies and practice areas. The law firms highlighted in the survey represent the market leaders in this space, and they continue to evolve and thrive in today's frothy aircraft finance market.

Methodology

The survey is based on both existing data as well as submissions. Aviation law firms are invited to submit deals to be included in the *Airfinance Deals Database*. The team then reviews the different deals and selects those eligible for the database. This list is combined with existing deals in the database, and the most active law firms are then selected by region and product type.

The legal survey reviews deals from 2014 only. This is significant because we recognize that markets change, as do law firms, however we felt this was the only way to offer an accu-

rate snapshot of total global legal activity.

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

The benefit of using the database is that we can offer a granular presentation of law firm activity by both product type and region. As we acknowledged last year, there are limitations to the survey. We recognize that client confidentiality is an issue for law firms when submitting deals. 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 regions, the survey also aggregates how law firms have performed to produce an overall ranking.

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

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 summarizing 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 Africa, Latin America, Middle East, Commercial Loans, and Operating Leases.

Reflecting on the deals done last year, Clifford Chance partner William Glaister, says: "We have seen an uptick in commercial loans in Europe, securitization and capital markets deals in New York, new operating lessors emerging throughout Asia and a general increase in M&A activity around the world."

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Top Law Firms by Score

Firm	Score
Clifford Chance	45
Allen & Overy	26
Norton Rose Fulbright	22
Dentons	21
White & Case	21
Stephenson Harwood	10
Clyde & Co	9
Vedder Price	9
K&L Gates	8
Freshfields	8
Milbank	7
Simmons & Simmons	7
Baker & McKenzie	6
GIDE LOYRETTE NOUEL LLP	3
Nishimura & Asahi	1



“We have seen an uptick in commercial loans in Europe, securitization and capital markets deals in New York, new operating lessors emerging throughout Asia and a general increase in M&A activity around the world.”

William Glaister, partner, Clifford Chance

Allen & Overy was ranked second overall in the survey. Allen & Overy partner Paul Nelson agrees that the capital markets have remained active.

“Unlike previous cycles, the capital markets industry continues and ABS [such as the Aldus ABS that won Capital Markets deal of the year] and EETC [such as the innovative BA EETC combined with Jolco and the more recent Turkish Airlines EETC] issuances will continue,” says Nelson.

Norton Rose Fulbright was placed third overall. Duncan Batchelor, partner and deputy head of aviation, Norton Rose Fulbright, reflects that the sector has been marked by innovation in financing.

“A number of innovative ways of funding aircraft have been developed over the past year, including the UK Export Finance-backed sukuk for aircraft, used for the first time by Emirates in April, which our Dubai, New York and London offices advised on. The development of new products is helping to attract new investors to the market, creating a bigger pool of investors for airlines to call upon.” ▲

Top Ten Law Firms by Number of Deals



Africa

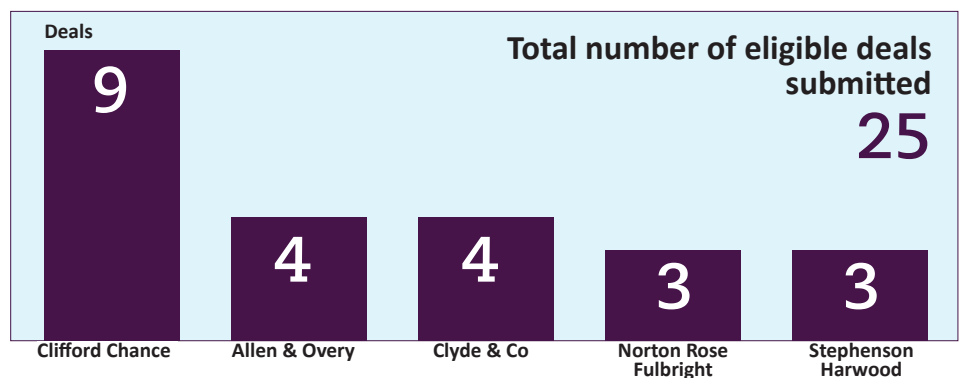
The lawyers working on African deals see the continent as a place with potential. The growth of Africa's economies has accelerated, and its fleet size has more than doubled in the past 10 years. Boeing forecasts that Africa will need about 1,100 new aircraft over the next 20 years, with two-thirds of those expanding the continent's fleet.

As more banks warm towards Africa, more investment has been finding its way into airlines to allow them to expand their fleets.

“Africa's growth opportunities reflect the size and diversity of the continent, and the breadth of our deals across Africa reflects this,” says Antony Single, a partner in Clifford Chance's asset finance group.

Last year was a successful one for Ethiopian Airlines, the largest carrier in Africa based on

Lawfirm	Deals	Points
Clifford Chance	9	5
Allen & Overy	4	4
Clyde & Co	4	4
Norton Rose Fulbright	3	3
Stephenson Harwood	3	3



fleet size. As well as ordering 20 737 Max 8s, the carrier leased four new Q400s in the first sharia-compliant transaction for an African airline. The Q400s were leased from a joint venture between a Middle Eastern bank and a Middle Eastern lessor and Export Development Canada providing a 75% guarantee on the financing.

Kenya Airways received an export credit agency-guaranteed financing through US Export-Import Bank for more than \$100 million to fund delivery of 787 and 777 aircraft. In July 2014, North African carrier Royal Air Maroc

issued a request for proposal to finance two 787-8 Dreamliners. In March 2014, Johannesburg-based carrier Comair announced its order for eight 737 Max aircraft, worth \$830 million at list prices, making up one of the largest African orders of the year.

Single says: “The importance of intra-African trade has seen a growth in the African airlines' networks, as well as a number of new entrants to the market, and the importance of trade with Asia means we are seeing an increase in the connections with Asia.” ▲



“We have seen many airlines replace or grow fleets during the year and this is a trend we expect to continue for the remainder of 2015 and into 2016.”

Andrew Lockhart, co-head Baker & McKenzie’s aviation practice.

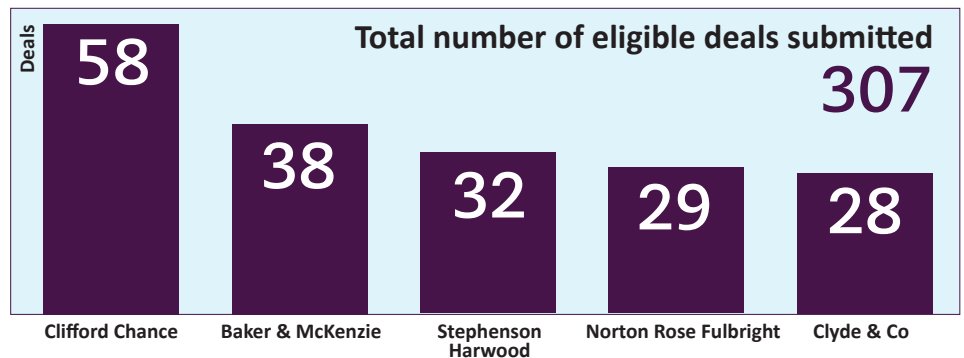
Asia-Pacific

The Asia-Pacific remains the biggest growth region in the world for aviation.

“We have seen many airlines replace or grow fleets during the year and this is a trend we expect to continue for the remainder of 2015 and into 2016,” says Andrew Lockhart, co-head of Baker & McKenzie’s aviation practice, the second most active firm in the region this year.

Indeed, it is difficult to find a major airline in the region that does not have fleet-expansion plans. Southeast Asian low-cost carriers are pursuing some of the most aggressive growth in the region, although many of the flag carriers and second-tier airlines also have high growth ambitions.

Lawfirm	Deals	Points
Clifford Chance	58	5
Baker & McKenzie	38	4
Stephenson Harwood	32	3
Norton Rose Fulbright	29	2
Clyde & Co	28	1



“What we have also seen is an expansion in the number of carriers based out of developing countries, as well as, of course, a number of new carriers in China as this market continues to expand,” adds Lockhart.

Of all the countries in the region, China is leading the way in terms of growth, says Lockhart’s colleague Harvey Lau, who also co-heads the practice.

He adds: “Following the Opinions on Accelerating the Development of the Aircraft Lending Industry published by the State Council of the PRC in late 2013, we have seen – and expect to see – a

rapid and continuous growth of the Chinese leasing companies’ involvement in aircraft transactions in both the domestic and overseas markets.”

Allen Ng, the firm’s partner in Hong Kong, adds that Hong Kong’s recent revisions to withholding tax on transactions between China and Hong Kong will “definitely” help Hong Kong to establish itself as a hub for Chinese aircraft leasing and financing.

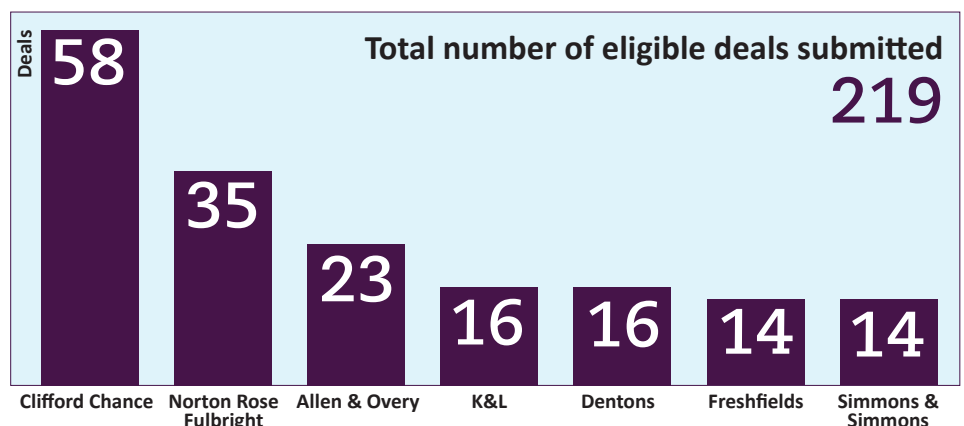
Ng says: “This could have a knock-on effect with lessors moving from the more traditional jurisdictions to Hong Kong for the China deals.” ▲

Europe

Europe remains a particularly active aviation hub. George Paterson, partner and head of Paris, Norton Rose Fulbright, says: “The market is becoming increasingly innovative with the introduction of new products and the tapping of alternative sources of finance. It is a very exciting time in Europe on the financing side.”

In general, the European deal market is broadly reliant on both operating leases and commercial loans. About 80% of all deals done in Europe in 2014 relied on these two traditional structures. This is unsurprising because last year airlines enjoyed a choice of cheap debt from banks and a competitive

Lawfirm	Deals	Points
Clifford Chance	58	5
Norton Rose Fulbright	35	4
Allen & Overy	23	3
K&L	16	2
Dentons	16	2
Freshfields	14	1
Simmons & Simmons	14	1



range of lessors looking to offer either leases or sale/leasebacks. This wide choice of financing continues.

This year, however, more carriers are choosing to issue bonds, and lessors are looking to tap the capital markets. Ryanair broke the record with its unsecured bond in 2014, which priced at midswaps plus 85 basis points with a coupon of 1.875%. It broke its own record this year with a new issuance that priced at midswaps plus 67 basis points with a

coupon of 1.125%. Turkish Airlines also issued the first EETC, making it the second carrier to issue a securitized aircraft debt.

As Paterson notes: “The aviation industry now benefits from a wider range of funding sources than ever before. There is a great deal of diversity in the European aviation finance market, particularly as aircraft become an increasingly acceptable asset class for institutional investors throughout Europe.” ▲



“As a result of increased traffic within Latin America, certain key airlines in the region have diversified their growth by entering into some of the region’s emerging aviation markets, such as Paraguay.”

Mark Moody, partner at Simmons & Simmons

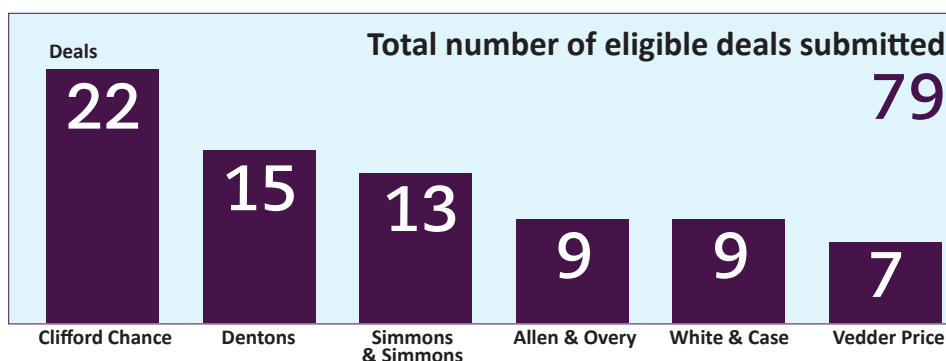
Latin America

Latin America has seen large increases in passenger demand in recent years, and a round of airline consolidations has boosted stability and competition in the region. In May, Latam became the first airline in Latin America to launch an enhanced equipment trust certificate (EETC), and several other large capital markets deals are likely to follow soon.

Mark Moody, partner at Simmons & Simmons, says that increased passenger traffic is driving Latin American carriers to enter emerging markets in the region.

“Over the past 12 months we have continued to act for several financial institutions and lessors on multiple transactions in Latin America where we are seeing several Latin American airlines growing and taking every opportunity to optimize usage and

Lawfirm	Deals	Points
Clifford Chance	22	5
Dentons	15	4
Simmons & Simmons	13	3
Allen & Overy	9	2
White & Case	9	2
Vedder Price	7	1



operations of their aircraft.

“As a result of increased traffic within Latin America, certain key airlines in the region have diversified their growth by entering into some of the region’s emerging aviation markets, such as Paraguay.”

Moody adds that the region’s biggest carriers have begun diversifying their sources of financing with new structures. He says: “Another visible trend for Latin American carriers such as Latam and Avianca is that they used a mixture of highly innovative financing and leasing opportunities to fund their

fleet expansion – Latam’s EETC being a landmark development for the region, paving the way for other airlines to follow.”

Looking ahead to 2016, Moody expects that new lessors and financiers will enter Latin America.

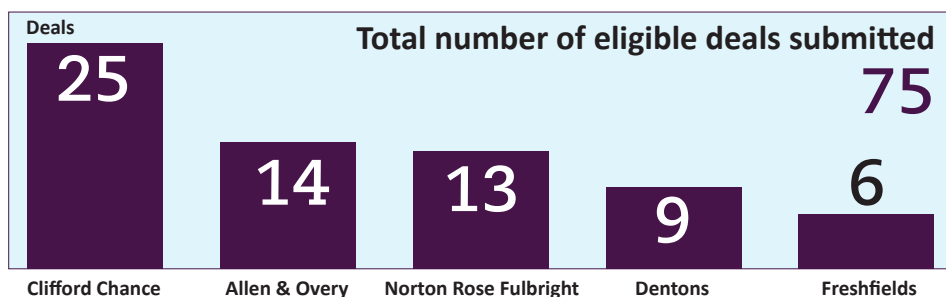
He adds: “As a result of continued legal developments in key aviation jurisdictions in Latin America such as Brazil, Chile and Colombia, we are seeing new entrants expressing a huge interest in the Latin American aviation finance market. We are working with some of these new entrants in advancing their understanding and comfort levels of jurisdictional risks in the region.” ▲

Middle East

The Middle East continues to be the home of some of the world’s fastest-expanding airlines. According to Boeing’s forecasts, Middle Eastern carriers will take the greatest number of widebody aircraft and the second greatest number of medium widebody aircraft from 2014 to 2034. Because of the high numbers of people passing through the Middle East on long-haul flights, widebodies will remain popular in the region.

Antony Single, a partner in Clifford Chance’s asset finance group based in Abu Dhabi, says: “The Middle East remains an important and growing region, and it is great to have the recognition for the strength and depth of our dedicated team on the ground.”

Lawfirm	Deals	Points
Clifford Chance	25	5
Allen & Overy	14	4
Norton Rose Fulbright	13	3
Dentons	9	2
Freshfields	6	1



Some of the major Middle Eastern deals in 2014 included Etihad’s order for 10 A380s, delivering between late 2014 and 2017. Abu Dhabi Commercial Bank provided the financing for the widebody aircraft. Another interesting Middle Eastern deal from last year included Emirates’ \$425 million loan from a group of three UAE banks to fund the purchase of two A380s.

Some UAE carriers sourced funding through the capital markets last year. Flydubai, a low cost-airline based in UAE, raised \$500 million through a five-year sukuk. The bond, which was unsecured and unrated, marked the first time a low-cost carrier had issued a sukuk, winning *Airfinance Journal’s* 2014

Middle East Deal of the Year:

“Diversity of funding sources is a key issue for our clients,” says Single. “We have seen a real growth in Islamic finance and the sukuk market, such as the \$913.026 million Emirates Airlines (Khadrawy) export credit-backed sukuk, and in the funds and private equity space.”

He adds: “The Middle Eastern banks are continuing to grow their portfolios and also to break out into the global market. The potential for the Iranian market to open up to international business is something that could be an exciting development for 2016.” ▲



“Bank funding for aircraft finance is increasingly available. A number of banks have entered the aviation market over the past year, particularly in Asia, where financiers are attracted by ever rising passenger numbers.”

Duncan Batchelor, partner and deputy head of aviation, Norton Rose Fulbright.

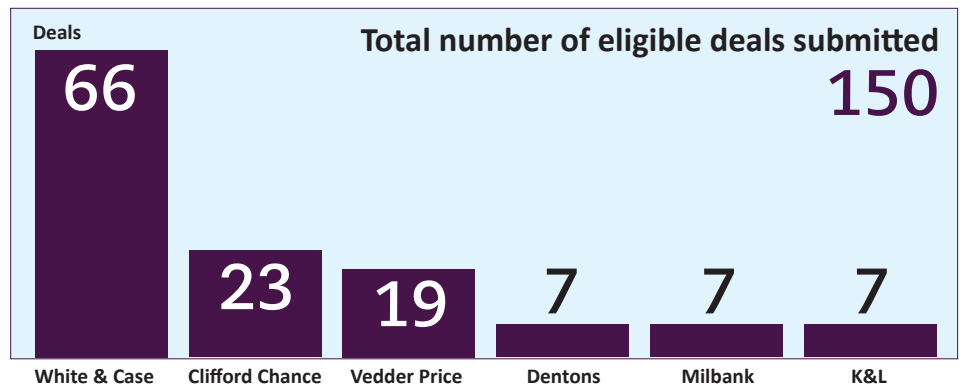
North America

US carriers have enjoyed a year of strong profits, prompted by capacity discipline and low fuel costs. American Airlines, Southwest and Alaska Airlines all posted record profits for the full year.

Mike Smith, partner at White & Case, points out the number of lessors and airlines that are accessing debt through private placements, as well as a resurgence in the market for enhanced equipment trust certificates (EETCs).

He says: “Over the past year, a number of lessors and airlines have been active in the unsecured debt markets. In addition, more issuers are accessing debt in the private placement market, sometimes in the form of secured notes. The EETC market has been active again – despite fewer US issuers now than a few years ago due to merger

Lawfirm	Deals	Points
White & Case	66	5
Clifford Chance	23	4
Vedder Price	19	3
Dentons	7	2
Milbank	7	2
K&L	7	2



activity – and this historically US-centric financing is being exported to other markets.”

Smith adds: “There have been significant joint-venture transactions and the creation of funds to acquire and lease aircraft. One consequence has been significant activity for aircraft sales subject to existing leases. Sale and leaseback transactions between airlines and leasing companies remain active.”

Christopher Frampton, partner at White & Case, adds that a decision not to reauthorize US

Ex-Im would likely have wide-reaching implications for the industry.

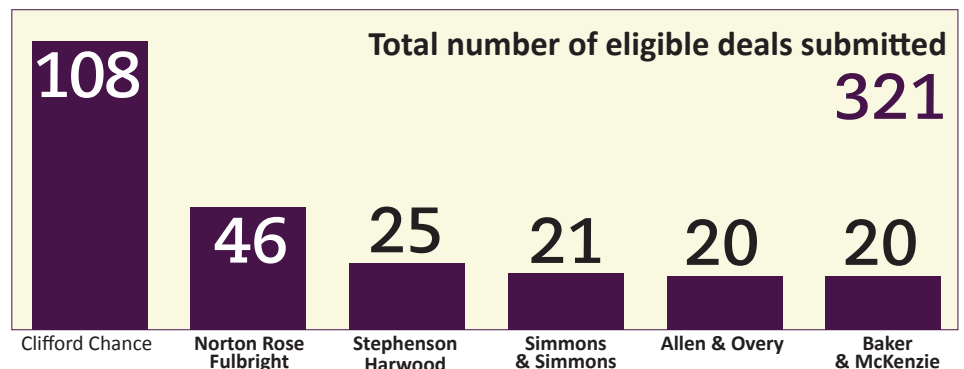
He adds: “Although the primary immediate direct impact of a decision to not reauthorize will likely be on Boeing, the consequences for lending to purchasers of Boeing-manufactured aircraft (in the capital markets or otherwise), for relevant operating lessors and for other market participants, remains to be determined, particularly if stress is thereby placed on funding sources in the aviation market as a whole.” ▲

Commercial loans

Lessors are predicted to own eventually anywhere up to 50% of the world’s leased fleet. However, many airlines are continuing to rely on funding their aircraft using commercial loans. Bank financings have become increasingly popular among airlines in the past few years. This is partly because the number of banks offering this to aviation has increased dramatically.

Duncan Batchelor, partner and deputy head of aviation, Norton Rose Fulbright, says: “Bank funding for aircraft finance is increasingly available. A number of banks have entered the aviation market over the past year, particularly in Asia, where financiers are attracted by ever rising passenger numbers.

Lawfirm	Deals	Points
Clifford Chance	108	5
Norton Rose Fulbright	46	4
Stephenson Harwood	25	3
Simmons & Simmons	21	2
Allen & Overy	20	2
Baker & McKenzie	20	1



There are significant opportunities to offer financing to airlines keen to grow their fleets in order to meet increasing demand for air travel around the world.”

Many of these banks are offering a range of unsecured and secured financings. Some are simply offering unsecured deals to domestic airlines only. But banks do have access to cheap liquidity and this is being passed on to airlines.

In addition, a handful of European banks have returned to aviation, while several new Asian banks

have begun lending both to lessors and airlines. Established European lenders are also looking increasingly to syndicate down debt to new entrants because they want to book fees and leverage their relationships and expertise.

Looking back at 2014, commercial loans were prevalent across North America, Europe and the Asia-Pacific, which reflects the general need for aviation financing. ▲



“It is not only the airlines knocking on the ECAs’ doors but also a fair number of operating lessors, both established and new, who themselves seek to remain competitive.”

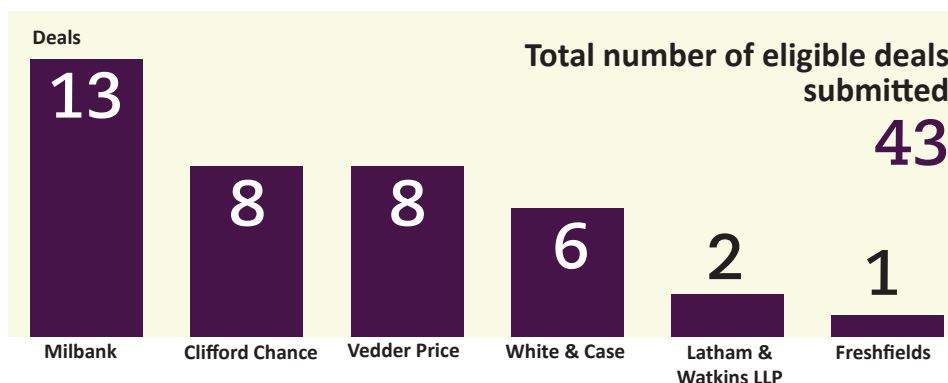
Mario Jacovides, global head of asset finance at Allen & Overy.

Capital Markets

Last year saw a slight decline in the number of enhanced equipment trust certificates (EETCs) issued compared to 2013. This was caused partly by aggressive fundraising by some US carriers in the previous year. In addition, many of the non-US airlines which had issued EETCs in 2013 were waiting for 2015 or later to issue EETCs because of their delivery schedules.

But the capital markets are here to stay. Several airlines and lessors have been regular issuers of unsecured bonds. Leasing firms BOC Aviation,

Lawfirm	Deals	Points
Milbank	13	5
Clifford Chance	8	4
Vedder Price	8	4
White & Case	6	3
Latham & Watkins LLP	2	2
Freshfields	1	1



AerCap and ALC all issued unsecured bonds. Many airlines chose to do more private placements. WestJet priced a \$400 million five-year private offering, while SAS closed a €35 million (\$46.3 million) private placement and Singapore Airlines approached Korean investors for a \$57 million junior loan.

“It has been a great year,” says Hugh Robertson, a partner at Milbank. “After a slow start in 2014, the capital markets again have found

favour with airlines and leasing companies. This year, three non-US airlines, two of which are new to the market, have issued EETCs. ABS [asset-backed securities] transactions that in prior years were more likely to be placed in the bank market are increasingly being placed in the capital markets. The migration of US Eximbank-, and to a lesser extent other ECA- [export credit agencies], supported transactions to the capital markets has continued.” ▲

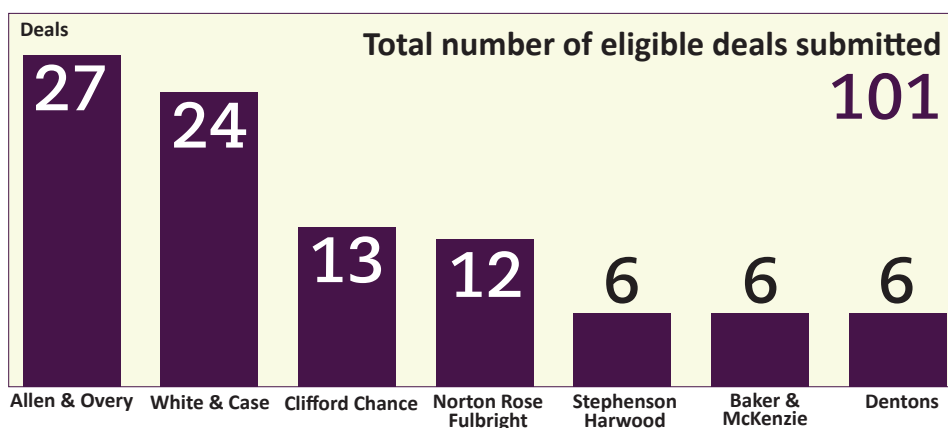
Export Credit

Export credit agencies (ECAs) are still actively underwriting financings, although the availability of cheap bank debt and increased ECA premiums introduced by new Aircraft Sector Understanding rules have impacted their attractiveness to airlines.

However, Mario Jacovides, global head of asset finance at Allen & Overy, notes that ECAs continue to account for a significant portion of new aircraft deliveries.

He says: “ECA-supported financings complement the bank market and their role has never been to compete with it. The ECAs are there both in the good times and the lean times. In the last 12 months we have seen a strong appetite for aviation debt both from existing players and new players in the market, including aviation funds. However, while

Lawfirm	Deals	Points
Allen & Overy	27	5
White & Case	24	4
Clifford Chance	13	3
Norton Rose Fulbright	12	2
Stephenson Harwood	6	1
Baker & McKenzie	6	1
Dentons	6	1



there is currently an abundance of such debt, it will be interesting to see how banks price their deals with the introduction of Basel III.”

He adds: “It is not only the airlines knocking on the ECAs’ doors but also a fair number of operating lessors, both established and new, who themselves seek to remain competitive.”

As Jacovides notes, ECAs continue to feature in a number of innovative financings for a range of carriers.

He says: “We were delighted to have assisted the ECAs in a number of market firsts, including the first Coface-backed ECA bond financing for Emirates; the first transaction to take advantage of Coface’s ability to offer guarantees on ATR aircraft for Avianca’s 15 ATR purchase; and this year, the world’s first UKEF-supported sukuk for Emirates (also the first ECA-supported pre-funded capital markets issuance for Airbus aircraft).” ▲



“The deal pipeline is strong and we are witnessing airlines reaping the benefits of lower fuel costs, shrinking margins, reduced lease rate factors and an abundance of demand on the equity side.”

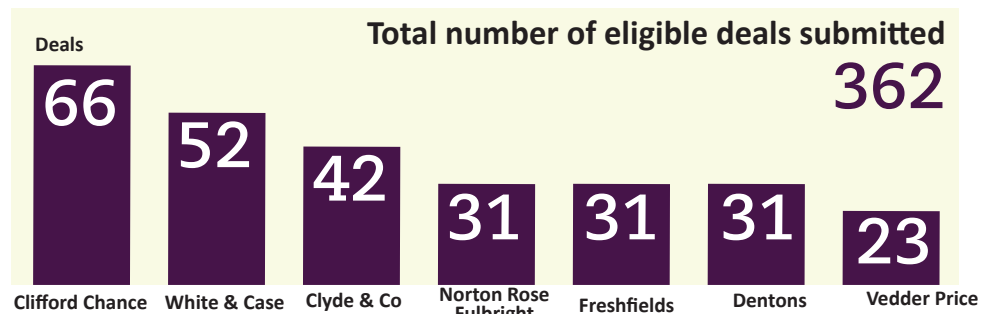
Robert Melson, partner, K&L Gates

Operating Leases

Operating leases continue to be popular with airlines. Operating leases consisted of just more than 40% of the 2014 deals submitted by law firms for the survey. Part of this reason has been because of the sheer need for aircraft replacement among airlines. In addition, many airlines have chosen to lease aircraft over the past two years to help mitigate the risk of new-technology aircraft entering the market.

Leases have always been popular with start-up airlines because they require less capital. As more investors entered the market in 2014, lessors had to compete more aggressively against each other – benefiting airlines which were then able to access slightly cheaper lease rates. Lessors have been

Lawfirm	Deals	Points
Clifford Chance	66	5
White & Case	52	4
Clyde & Co	42	3
Norton Rose Fulbright	31	2
Freshfields	31	2
Dentons	31	2
Vedder Price	23	1



acquiring plenty of aircraft through sale/leasebacks and this is in part because of their ease of access to capital. Lessors continued to tap the capital markets in 2014. It is a trend that continues.

Mike Smith, a partner at White & Case New York, says: “Aircraft operating lessors continue to utilize a number of sources of capital to support their growth. The lessors that can access the public debt markets, the 144A market and the 4(a)(2) private placement market have increasingly been doing so. The bilateral and syndicated debt markets have been active. Usually the loans are secured by aircraft

and leases, but the better credits can borrow on an unsecured basis.”

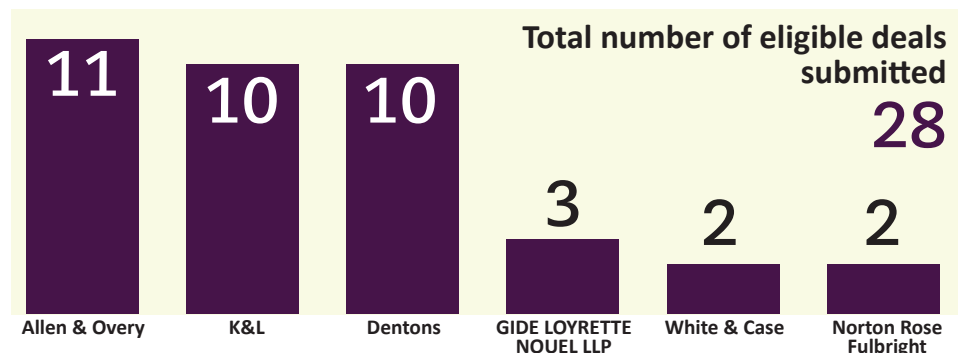
He adds: “Operating lessors looking to diversify their funding have been utilizing Asia-sourced financing, such as Hong Kong and Singapore note issuances and yen financings, although these could be limited going forward by recent market events. ECA [export credit agency] financing has become less important for operating lessors over the past year, but could become more attractive if there are disruptions to other sources of financing – and in the case of US Ex-Im Bank, assuming it is reauthorized as anticipated.” ▲

Structured Leases

Despite warnings from the Japanese government that their tax benefits could be limited after 2017, Japanese operating leases with call options (Jolcos) are still proving popular with airlines both inside and outside Japan. The structure takes advantage of accelerated depreciation in order to provide investors with significant tax savings.

Regional banks in Japan, which typically have not been exposed to aircraft finance, are bringing their excess liquidity to the space and providing airlines and lessors with more financing opportunities. This is largely being led by Development Bank of Japan, which, for example, syndicated a Jolco for Solaseed Air in July and sold off debt portions to seven regional banks.

Lawfirm	Deals	Points
Allen & Overy	11	5
K&L	10	4
Dentons	10	4
GIDE LOYRETTE NOUËL LLP	3	3
White & Case	2	2
Norton Rose Fulbright	2	2



While the established top-tier players are still favouring Jolcos as a cheap form of financing for renewing their fleets, newer, lesser-known airlines are entering the market. SunExpress, a joint venture between Turkish Airlines and Lufthansa, financed a new 737-800 with a Jolco in June.

Robert Melson, a partner at K&L Gates, the second most active firm in the structured lease market, told *Airfinance Journal* it is “clear” that the aircraft finance and leasing market is in a “very active phase”.

He adds: “The deal pipeline is strong and we are witnessing airlines reaping the benefits of lower fuel costs, shrinking margins, reduced lease rate factors and an abundance of demand on the equity side.”

“Debt capital markets have been particularly vibrant this year, with a significant number of ABS [asset-backed securities] deals closed for operating lessors. We believe this activity is set to continue, and that this practice will remain a bright spot for our firm and the sector more generally in months to come.” ▲



SPONSORED EDITORIAL

Aircraft finance – recent developments in Ireland

Marie O'Brien, partner at A&L Goodbody, looks at recent developments in Ireland relevant to the aircraft industry.



Marie O'Brien
PARTNER
A&L GOODBODY

Ireland has led the field in aircraft finance and leasing from the very early days of the industry. In recent years it has further consolidated its position as the key location for aircraft finance and leasing activities.

Ireland's offering to the aviation industry has grown and evolved to meet market demand. Some of the most notable recent developments include:

- the arrival of new entrants to the market establishing an Irish platform such as Chinese leasing companies and US private equity houses;
- the expansion of the asset class to include helicopter leasing platforms;
- the development of a number of different aircraft financing structures; and
- a revamp of Irish company legislation.

Growth in Chinese clients establishing in Ireland

With the Chinese aviation market tripling in size over the past decade, and four Chinese aviation operations locating their European headquarters in Ireland in the past three years, Ireland continues to be the central and international hub of aircraft leasing for Chinese lessors outside of China.

Over the next 20 years it has been predicted that Chinese airlines will need nearly 6,000 new aircraft, valued at \$780 billion, accounting for more than 40% of expected deliveries to the Asia-Pacific region. Funding of between \$110 billion and \$120 billion a year is expected for the foreseeable future. It is anticipated that many of these aircraft will be leased into China from Ireland.

A&L Goodbody has been committed to the Chinese market for a number of years and has invested in becoming the go-to law firm for Irish advice to Chinese companies looking to do business in Ireland. The firm's China Business Group is a multi-disciplinary group highly experienced in advising Chinese clients on their investment into Ireland and Europe. The group developed and launched the A&L China Programme, a two-way international lawyers' placement programme, and the first and only one of its kind in Ireland. It involves strategic international alliances with Chinese law firms, private and state-owned enterprises and universities, whereby senior Chinese lawyers work in A&L Goodbody's Dublin office for about four months, and similarly the firm's lawyers work in China. To date, more than 50 lawyers have taken part in the programme. Through this programme, and indeed by advising many of the top Chinese banks and leasing companies on establishing and financing aircraft platforms in Ireland, the firm has strengthened and nurtured important ties with the Chinese aviation industry.

Private equity

Private equity investment maintains an important position in the aviation leasing market and provides a significant source of equity, lending and leasing capital in aircraft financing transactions. This source of

investment has become very important in recent years, and is providing liquidity and investment to the market. A&L Goodbody has advised a number of private equity companies on establishing aircraft leasing operations in Ireland, either as a new start up or as part of a joint venture with an existing leasing company.

Helicopter platforms

Investment in the Irish aviation industry has expanded to include helicopters and foreign operated private jets. Irish helicopter leasing companies such as Waypoint and Milestone are leading the charge in Ireland for this asset class.

As of February, Waypoint had leased and operated helicopters in more than 20 countries on six continents, making it the largest independent global helicopter leasing company. In June, Milestone Aviation Group was acquired by GE Capital Aviation Services for more than \$1 billion. The Milestone fleet consists of 178 helicopters worth about \$3 billion, and it holds orders and options for another 121 aircraft with an aggregate purchase price of \$2.7 billion. The existing aircraft are being flown by 32 operators in 26 countries.

Developments in aircraft financing structures

The variety and flexibility of structures available to borrowers in aircraft financing is one of the key advantages that Ireland offers to facilitate investment in aircraft through the country. The use of Section 110 companies for aircraft financing platforms continues to be very popular, and the development of regulated aircraft funds is expected in the near future.

In early 2014 the Irish Stock Exchange (ISE) announced its intention to launch The Aviation Exchange, a dedicated exchange for aviation-related debt and other instruments. This move is aimed at providing a low-cost platform for the listing of aviation securities along with other globally quoted and traded securities. The Aviation Exchange aims to offer a low-cost platform while delivering increased visibility and greater investor reach.





“The A&LG China Programme, a two-way international lawyers’ placement programme, is the first of its kind in Ireland. Chinese lawyers work in A&L Goodbody’s Dublin office for about four months, while the firm’s lawyers work in China.”

Twenty-six specialist debt instruments with a total value of \$12.7 billion are listed on ISE markets by issuers from the aviation industry. This includes a \$927 million enhanced equipment trust certificate from International Airlines Group, bonds totalling more than \$1 billion associated with Emirates Airlines and a \$636 million asset-backed security from Avolon.

A number of Ex-Im-backed deals structured through Ireland have listed the relevant securities on the ISE, and this trend is set to continue.

Companies Act 2014

The Irish companies’ law legislation was overhauled with effect from June 1 by the introduction of the new Companies Act 2014. The objective of the new Act is to increase the competitiveness of Irish companies by reforming the law and consolidating the previous legislation. Some of the key changes relevant to the aircraft industry include:

- the need to convert existing companies either to a Company Limited by Shares or Designated Activity Company;
- the introduction of a new priority filing system for security filings; and
- amendment of the constitutional documents of the Irish company, which include removing the need for an object clause to provide for unlimited capacity.

New and existing companies need to be aware of the implications of the new Act, including various conversion obligations and options, the most appropriate form of constitution that a company should adopt and tax considerations.

Conclusion

A combination of the critical mass of key aircraft companies in Ireland and the country’s position at the forefront of innovation in the market sets Ireland apart as a jurisdiction of choice in the aircraft finance and leasing industry. ▲

Introduction to A&L Goodbody

A&L Goodbody is internationally recognized as one of Ireland’s leading law firms delivering the full range of corporate legal services. The firm has advised clients on the full range of aviation finance and leasing transactions since the 1970s. Its aviation practice consists of four finance partners: Catherine Duffy, Seamus O’Croíin, Marie O’Brien and Maireadh Dale, as well as two tax partners, Peter Maher and James Somerville, making it one of the largest and most experienced aircraft finance teams in Ireland.



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SPONSORED EDITORIAL

How the Irish Companies Act 2014 impacts aviation

McCann FitzGerald partners Catherine Deane and Georgina O’Riordan assess the impact of the new Irish Companies Act that has come into force this summer.



Catherine Deane
PARTNER
MCCANN FITZGERALD



Georgina O’Riordan
PARTNER
MCCANN FITZGERALD

The Companies Act 2014 (the Act) came into effect on June 1, consolidating the previous companies acts and many of the related statutory instruments into a single statute and introducing significant reforms to Irish company law. The Act is intended to make it easier for a company to do business in Ireland, whether domestically or by using Ireland as a regional or a global base.

The key changes introduced by the Act include provision for new types of companies, as well as changes to those companies’ constitution, governance, capacity, organization and procedures.

This article provides a brief overview of a number of these key changes, and how aircraft owners/lessors/financiers might respond to these changes.

Company types and conversion

The Act introduces several new company types, with the most significant changes being made to the existing private company limited by shares. The existing private company limited by shares is the most common company type for aircraft financing and leasing transactions.

The Act regards the new form of private company limited by shares (LTD) as the paradigm type of company and is drafted to apply primarily to an LTD, with modifications to that paradigm being made in respect of each

other type of company. An LTD is a more streamlined, simplified form of company with a single constitutional document (without an objects clause). It is expected that the LTD will be attractive to many aircraft owners and lessors.

The other type of private company limited by shares is the designated activity company (DAC). The DAC is the closest in form to the existing private company limited by shares, primarily because of the continued existence of an objects clause in the DAC’s memorandum. Generally, any private company limited by shares that is required by its financing documents to have its objects limited in its constitutional documents will need to re-register as a DAC.

The Act provides that the validity of an act done by a DAC is not compromised by virtue of anything set out in its objects clause. The doctrine of constructive notice has also been removed so that a third party is not bound to enquire as to whether a DAC is acting within its objects. Banks, insurance undertakings, state companies and existing private limited companies that have debentures listed on a regulated market cannot become an LTD and must become a DAC (or another acceptable form of company).

Dialogue is necessary between directors, shareholders and other stakeholders (including lenders) as to the most appropriate company form to be adopted. Consideration must also be given to restrictions or conditions in contracts that limit the ability of a company to change its name or constitutional documents. An existing private company limited by shares has 18 months (commencing on June 1 2015) to decide which form of company it will become. If no action is taken, and they are eligible to do so, such company will default to the new LTD company type. In the meantime, the Act applies to such a company as though it is a DAC.

If an existing company re-registers as a DAC, then the name of the company will change. This needs to be borne in mind in the context of the existing filings made in the company’s name with local registries.

On the commencement of the Act, other company types, such as unlimited companies, PLCs and companies limited by guarantee (without a share capital), automatically



“For the first time in Irish law two private Irish companies can merge and have the assets and liabilities (and corporate identity).”

converted to their equivalent company types under the Act.

The Act also sets out new definitions for the terms “subsidiary”, “holding company”, “wholly owned subsidiary” and “group of companies”. These provisions aim to merge the previous definitions of these terms as defined by section 155 of the Companies Act 1963 and as provided for in Regulation 4 of the European Communities (Companies: Group Accounts) Regulations 1992. In particular, the new definition of “holding company” and “subsidiary company” will, in effect, combine into single definitions, the previous definitions of “holding company” and “subsidiary company” provided for in section 155 of the 1963 Act and the separate definitions of “parent undertaking” and “subsidiary undertaking” in the Group Accounts Regulations. These new definitions will be of particular relevance in the context of Irish law non-consolidation opinions.

Governance

Directors and directors' duties

An LTD may have a single director; however, the single director is not permitted to be the company secretary. All other companies must have at least two directors.

The Act also introduces an optional requirement to register with the Companies Registration Office (CRO) the name of every person who has unqualified authority to bind an LTD and to authorize others to do so. Once authorized by the board of directors and registered with the CRO, a “registered person” is taken to be duly authorized until the CRO is notified to the contrary.

The Act clarifies the position on directors' duties by placing the common law fiduciary duties of a director on a statutory basis. These duties apply to all directors, whether or not they were appointed formally. The Act provides that where a director breaches his or her statutory fiduciary duties, the director may be personally liable to account to the company for any gain made as a result of the breach and/or may be required to indemnify the company for any loss or damage resulting from the breach. Such a breach will not affect the enforceability of any contract. It is,

however, worth noting that the Act does not impact the other statutory duties of directors (for example, under legislation relating to data protection, employment law and financial services regulation).

Compliance statements and audit committees

The Act provides that directors of certain types of companies which meet specific turnover thresholds must prepare a compliance policy statement (Statement). The Statement must set out the company's policies on its compliance with its obligations under the Act (the contravention of which is a category one or two offence, or a serious market abuse or prospectus offence) and tax law (Obligations).

The directors of such companies must include, with their directors' report for every financial year, a statement acknowledging that they are responsible for ensuring the company's compliance with the Obligations and confirming that appropriate structures to secure material compliance with the company's Obligations have been put in place and are reviewed during the financial year. If these actions have not been taken, an explanation of the reasons why not must be provided.

Directors of large companies (defined as a company whose balance sheet total exceeds €25 million and whose turnover exceeds €50 million) must establish an audit committee (with as a member at least one independent non-executive director who has competence in accounting and auditing) or state in their directors' report that they have not done so and explain why not.

Practice and procedure

Summary Approval Procedure

A key change under the Act is the introduction of the Summary Approval Procedure (SAP), a streamlined validation procedure which creates an avenue whereby activities that would otherwise be restricted under the Act (including reductions in company capital, financial assistance for the purpose of an acquisition of shares and prohibition of loans, etc, to directors and connected persons) may be undertaken by a company subject to the shareholders passing an appropriate resolution after the making of a declaration by the directors.

Mergers

For the first time in Irish law it is possible to effect a merger between two private Irish companies (provided that neither of the companies is a PLC and at least one is a private company limited by shares) so that the assets and liabilities (and corporate identity) of one are transferred to the other before the former is dissolved without going into liquidation.

The process for mergers under the Act is similar to the current cross-border regime, although in an entirely domestic framework, with the exception that a domestic merger may be effected using the SAP (requiring the unanimous consent of all shareholders entitled to vote in each merging company) as an alternative to a High Court order. Divisions of an Irish private company are also permitted by the Act, although these must be done by way of application to the High Court.

Charges and debentures

The definition of a “charge” which is registrable is modified (including removing from it a charge created over an interest in cash or in the balance of a financial account or a deposit and a charge over shares, bonds or debt instruments) and registration procedures have changed considerably (providing for the option of a one- or two-stage registration process). All charges must now be filed with the CRO online.

Unless the priority of a charge is governed by another legal regime, priority is now determined by reference to the date on which the CRO receives the prescribed particulars, rather than the date of the creation of the charge.

Given the number of reforms the Act introduces, the above merely touches on some of the more significant changes arising from the Act that may be of immediate relevance to the aviation community.

For further information on any change discussed in this article or on the Act generally, please contact either: Catherine Deane, Joe Fay, Hilary Marren or Georgina O'Riordan.

Please note that this article is a high-level overview of certain aspects of the Companies Act 2014 and is for general guidance only. It should not be regarded as a substitute for professional advice. ▲



RISINGS STARS 2015

Legal high-fliers

Airfinance Journal recognizes eight of the most promising legal associates for 2015.

Jim Bell – Allen & Overy



Jim Bell took an unlikely path into aviation finance: he studied engineering and worked for six years advising on telecoms networks around the world. At one stage he was working in 19 different countries, including in Asia and Africa.

Bell began his aviation career as an associate at Clyde & Co in 2008 before joining Allen & Overy's London office in 2011. One of Bell's strengths is his expertise in sharia-compliant transactions, recently closing a murabaha loan for Kuwait Airways.

"It was an innovative structure that involved participation by three Middle Eastern banks and also involved a number of parties in the leasing chain," he tells *Airfinance Journal*. "Although I had worked on numerous other Islamic financings, this was my first murabaha transaction."

Bell has also represented JP Morgan on several occasions, including on the first Coface-supported bond issuance for an Airbus A380 aircraft for Emirates, which won *Airfinance Journal's* Export Credit Agency Deal of the Year in 2013.

"That deal was a real milestone for me because it precipitated the expansion of the European export credit agency [ECA] capital markets product which, at the time of the economic crisis, was very helpful in providing an alternative source of funding to the airline industry. That was the game changer which took a good two years of negotiation before it got across the line," he says.

He also advised the bank on the largest ECA-backed bond for Airbus aircraft in

financial value and the number of aircraft. The deal involved Latin American carrier Latam funding the delivery of 12 A320 aircraft through a UKEF-backed bond.

As well as export and sharia financing, Bell has advised on operating leasing, debt financing, predelivery payment financing, portfolio sales, tax leasing products, securitizations and engine financing.

Paul Nelson, a partner at Allen & Overy, says: "Jim has acted on some of the most innovative deals in the market, and is very popular with clients for his depth of knowledge and commercial approach."

Michelle Runagall-Orlic – Stephenson Harwood



Michelle Runagall-Orlic started her career with Freshfields Bruckhaus Deringer in London, before spending time in the firm's Beijing and Hong Kong offices. She joined Stephenson Harwood's aviation and structured

finance team in Singapore in 2012.

Runagall-Orlic has worked on Ex-Im-guaranteed financings, capital markets financings, private placements, syndicated debt, original equipment manufacturer contracts, sale/lease-backs, refinancings, private jet acquisitions/ financings, and charter arrangements, satellite financings and Jolcos (Japanese operating lease with call options).

She also has acted for private equity funds

and investors on joint ventures and private M&A transactions in the transportation sector.

Runagall-Orlic acted on what at the time was the world's largest aircraft order, made up of 234 A320 and A321 aircraft, valued at \$24 billion ordered by Lion Air. She played a key role in negotiating a number of provisions of the purchase agreement with Airbus, and also led the negotiations for Lion Air's order of the Pratt & Whitney engines for the aircraft.

"It was extremely difficult on a number of levels. You've got to consider assets that don't yet exist on the market and haven't been tested commercially, which are delivering over the course of 20 years in the future. That really opened my eyes to a lot of technical and engineering aspects. You don't usually have to have such foresight," she tells *Airfinance Journal*.

Runagall-Orlic has strong experience on cross-border aircraft financing and leasing. She recently worked on the first Myanmar-Japan cross-border financing for aircraft. Another one of her standout deals includes acting for Transportation Partners and the issuer on the US Ex-Im-guaranteed bond issuance for the financing of 23 737-900ER aircraft.

Runagall-Orlic speaks a number of languages, including French and Mandarin, and travels regularly. She recently returned from a trip to Greenland, where she crossed the ice cap by dog sled.

She is an advanced scuba diver, having recently gone diving in Iceland and Komodo Island, Indonesia, and has also trained in ballet with the Royal Academy of Dance, studied classical piano and has undergone private pilot's license training. Runagall-Orlic also enjoys horse riding and archery.

Saugata Mukherjee, a partner for Stephenson Harwood in Singapore, says: "Michelle is an excellent finance lawyer. She's pro-active, thorough and efficient in her approach. Her ability to find legally sound solutions to difficult commercial issues is exceptional. She's highly regarded by her peers and clients alike. She has the ability to adapt her approach to effectively service a diverse range of clients and transactions; her excellent reputation in the market is clearly well deserved. Michelle is definitely set to become one of the leading aviation finance lawyers across the global network."



“I often get prevailed upon by family and friends to wheel out the calligraphy skills.”

Jo Syrett, Milbank

Christopher Hardisty – Clifford Chance



Christopher Hardisty is a senior associate based in the Clifford Chance London office. He joined the company in 2002 and has previously worked in the firm's Tokyo and New York offices.

One of his favourite deals over the past year is the \$814 million Deucalion asset-backed security (ABS) – issuer DCAL Aviation Finance – for DVB, which launched in February.

“It was a landmark deal for the client, which took time to put together and involved a number of different Clifford Chance offices, including lawyers in New York and London from our corporate, asset finance and capital markets teams,” he tells *Airfinance Journal*. “The portfolio is mainly composed of Airbus aircraft and is unique for recent aircraft ABS deals where by value 55% of the portfolio is widebody aircraft.”

Hardisty has advised clients on securitizations, unsecured loans, finance lease transactions, operating leases, aircraft portfolio acquisitions and sales, restructurings, predelivery payment financings and export credit agency financings.

He advised DVB Bank on its \$667 million debut securitization through its investment fund Deucalion. He has also acted for Gecas on numerous different multi-aircraft portfolio sales, including to ICBC, Avolon, Awas, SMBC, ILFC and Orix.

Hardisty also advised Doric Nimrod Air Finance Alpha Limited on its \$587 million EETC transaction for the acquisition of four A380-800 aircraft to be leased by Emirates, which won *Airfinance Journal's* Innovative Deal of the Year 2012.

He has worked on several Ex-Im Bank financings, acting for lenders, including PK Airfinance, on multiple secured aircraft financings, such as for Awas, TAP, Korean Air Lines, Philippine Airlines, Q Aviation

and Amentum Capital, as well as GE, Japan Corporation and DVB Bank on the refinancing of an existing \$250 million facility to Alitalia for 20 aircraft and new financing for two aircraft.

Hardisty follows the fortunes of football clubs Liverpool and Fulham. He also plays squash and cricket occasionally. He says: “I’ve got split loyalties with Liverpool and Fulham. Being in London, I’ve seen a lot more Fulham games than Liverpool games over the last three years, but obviously that hasn’t gone well because they’re sliding back.”

Jo Syrett – Milbank



Jo Syrett joined Milbank in 2012, having previously worked for a number of years at Slaughter and May in London.

During her time at Milbank she spent time on secondment to SMBC Aviation Capital's commercial negotiation team and has advised the lessor as well.

“My time at SMBC was incredibly invaluable. You see the deal from start to finish and get a great insight into how businesses work when they evaluate deals,” she tells *Airfinance Journal*.

Syrett advises banks, airlines, leasing companies, funds and investors. She led the team which advised Tui Travel on the order of 60 737 Max aircraft from Boeing and purchase options for up to a further 90 aircraft. The deal is valued at \$6.1 billion at list prices. Syrett advised on all aspects of the purchase documentation. She also advised Vueling and IAG Group on Vueling's agreements with Airbus and IAE for the purchase of 62 narrowbody passenger jets, as well as options to purchase a further 58 aircraft.

Syrett was part of the team that advised the lead structuring agent for British Airways' \$927 million hybrid enhanced equipment trust certificate (EETC), which was awarded *Airfinance Journal's* Innovative Deal of the Year for 2013.

She also led the Milbank team that advised the syndicate of lenders on a novel \$805 million asset-backed revolving credit facility for British Airways. That deal was secured against 105 aircraft and 38 engines. The deal included an incremental facility, which also provided the ability to include spare parts within the security at a later date. Syrett structured and prepared all of the documentation in connection with the transaction.

More recently, she led a team which advised on a \$1.75 billion replacement for the British Airways 2012 revolving credit facility, which closed in June.

Syrett has two pet dogs and is a keen calligrapher.

“I often get prevailed upon by family and friends to wheel out the calligraphy skills,” she says. “I’m more of an abstract artist than a representational artist. I enjoy creating abstract letters and alphabets, as well as stuff everyone likes me to do like the old English and italic handwriting for when they want a wedding invitation or something like that.”

Felipe Bonsenso Veneziano – Pinheiro Neto Advogados



Felipe Bonsenso Veneziano joined Brazilian law firm Pinheiro Neto Advogados in early 2010.

The first big deal Veneziano was involved on was the merger between Brazilian carrier TAM and LAN Chile for the creation of Latam Airlines Group, the largest airline holdings company in Latin America.

He has just finished working on the Latam enhanced equipment trust certificate (EETC), *Airfinance Journal's* Deal of the Month in June.

“It was almost a personal product for me. I'd been studying and reading about the Cape Town Convention for several years. We had the





“It was incredible being able to work on the first EETC for Latin America, for the first delivery of the A350 for TAM. It was a truly spectacular landmark in my career.”

Felipe Bonsenso Veneziano, Pinheiro Neto Advogados

opportunity to work on this EETC – I put a lot on that. And it was incredible being able to work on the first EETC for Latin America, for the first delivery of the A350 for TAM. It was a truly spectacular landmark in my career,” he tells *Airfinance Journal*.

Veneziano has worked on the delivery of more than 150 aircraft to a number of local airlines in Brazil, including TAM, Azul and Gol. These deals consisted of a mixture of ECA-supported loans, sale/leaseback transactions and operating leases. Veneziano was involved in some of the first financings subject to the Cape Town Convention in Brazil.

Veneziano has worked on delivering several

aircraft to TAM – working with the Industrial and Commercial Bank of China to deliver four A320s and working with Banc of America Leasing to lease three A321s to the Brazilian carrier. He also helped restructure the carrier’s fleet, covering a portfolio of almost 130 aircraft.

When not working on aviation deals, Veneziano enjoys long-distance running, spending time outdoors and snowboarding. He says: “I’ve lived in Vermont for two years and enjoy snowboarding and other winter activities when I can get out of Brazil and go somewhere with snow. My main personal interest is aviation, but I enjoy running and travelling too.”

Stephen Temple – Dentons



“I’ve always been a bit of an airplane geek since I was a small boy. I did law and I think the airplane geekery sort of pushes you in one direction and once I’d had experience in



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“I’ve always been a bit of an airplane geek. Once I had experience in the department I knew it was for me.”

Stephen Temple, Dentons

the department I knew that it was for me,” Stephen Temple tells *Airfinance Journal*. Temple joined Dentons as a trainee in 2006, spending six months of his training contract with the aviation team in London and six months with the aviation team in Abu Dhabi. He joined the London aircraft finance team on qualification in 2008.

His first major client was Qatar Airways, which he started working with during his training at the firm. Over the past 18 months, Temple has been the lead associate working for Qatar Airways with partner Paul Holland. Temple is the principal client contact, managing all aspects of the airline’s

aircraft financing work and supervising a team of three junior lawyers.

In 2013, he spent eight months on secondment with HSBC Bank, working on a variety of export credit-backed transactions, including the first Coface-backed ATR financing (with capital markets take-out option).

One of Temple’s most memorable deals was when he acted for Qatar Airways on its \$1.7 billion acquisition of a 9.99% stake in International Consolidated Airlines Group, the owner of British Airways and Iberia.

“It was a large undertaking, which involved several different departments across

the firm, and there were challenges in coordinating the responsibilities of all those departments and delivering it in a tight timeframe. It was a lot of late nights,” he tells *Airfinance Journal*.

Temple acted for South American carrier Latam Airlines on a \$900 million sale/leaseback transaction for eight Boeing 777 aircraft on lease to Brazilian carrier TAM involving the purchase by Aircastle and leaseback of the aircraft to Latam and concurrent prepayment/unwind of the existing Italian tax lease and US Ex-Im-backed bond financings in respect of the aircraft.

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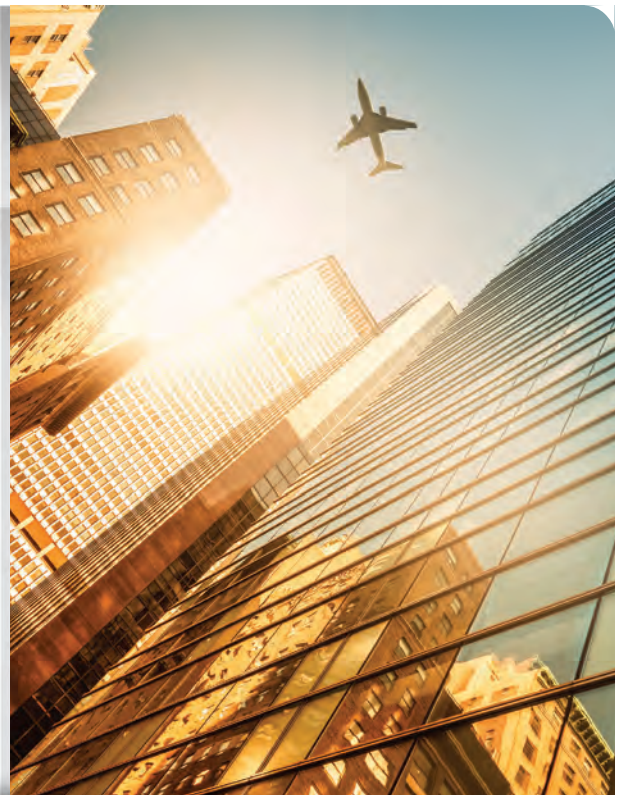
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“Nothing really beats an evening in front of the fire by one of the many beaches off Highway One, the California coastal road, drinking a beer or glass of wine while the sun sets.”

Dominic Pearson, Pillsbury

Temple also acted for Qatar on a series of French tax lease financings for six A380 jets, forming the tax structures with several different banks.

“As Qatar sponsors Barcelona football club, to celebrate closing the tax leases, we all went on a ferry A380 flight with the Barcelona team,” he says. Temple had lunch next to Barcelona forward Neymar and watched them play Malaga at the Camp Nou. “It was a one-sided affair,” he adds.

Alyssa Vazquez – Norton Rose Fulbright



Alyssa Vazquez is senior counsel in the New York aviation practice of Norton Rose Fulbright, joining the firm in 2008.

“At my previous firm, I worked extensively as a summer associate in the aviation

finance group and I liked the transactions and I liked the people. That’s how I got into it – I liked that there was something tangible at the end,” she tells *Airfinance Journal*.

Vazquez’s highlight of the last year was advising Sciens Aviation Special Opportunities Investment Fund II, a \$595 million fund sponsored and managed by Apollo Aviation. There were a total of 35 leased aircraft – including A319s, A320s, A321s, A330s, 737-700s and 737-800s – spread over three facilities.

“We were able to get many different aircraft in many different jurisdictions into facilities in a short timeframe. It was an important deal for the client,” she tells *Airfinance Journal*.

She continues to play a lead role in advising Mitsui on its joint venture with GE Aviation, a strategic partnership formed to develop the GE9X, an engine for the new-generation widebody aircraft. She also is representing Boeing Capital Corpora-

tion (BCC) in relation to a lease extension agreement for 78 717 aircraft on lease to AirTran Airways from BCC which are being subleased to Delta.

In her spare time Vazquez enjoys barre classes in her home state New Jersey. A barre is a stationary handrail that is used for ballet training and warm-up exercises. Vazquez enjoys watching American football, supporting both Penn State and the Pittsburgh Steelers.

“The Steelers are usually pretty good; Penn State will hopefully be good this year,” she says. “I generally see Penn State more; I don’t make it to as many Steelers games. Penn State is the university I went to and it’s about four hours from here and Pittsburgh is my professional team, which is about a seven-hour drive.”

Sean Corrigan, aviation finance partner, Norton Rose Fulbright in New York, says: “Alyssa stands out not only for her technical ability but for her ability to quickly win the trust of clients and the trust of the teams of lawyers she leads. She has extensive experience advising on a wide range of complex aviation finance transactions and draws on this experience to ensure the best outcome for our clients. Alyssa is responsible for some of our most valued clients, who demonstrate their trust in her by regularly instructing her to handle some of their most significant and complex matters.”

Dominic Pearson – Pillsbury



Dominic Pearson admits that he got into aviation law “partly by accident and partly on purpose”. After reading Aeronautical Engineering for his undergraduate degree, he began pilot training with the Royal Air

Force. In 2004, he had a change of heart and started training as an aviation finance lawyer

in Clyde & Co’s aviation team in London. After two-and-a-half years as an associate at Allen & Overy, Pearson joined Pillsbury’s San Francisco office in February 2014.

Pearson’s highlight over the past year was working on the Jetscape \$380 million asset-backed securitization (ABS). “Pillsbury acted for the underwriters and I was originally brought in to assist with one component of the transaction,” he tells *Airfinance Journal*.

He adds: “As the transaction wore on, my participation ballooned and I ended up, unexpectedly, coordinating, running and leading the aircraft closings into the portfolio. I thoroughly enjoyed working with local counsel in so many jurisdictions simultaneously, and playing a significant part in the first ABS featuring an all-Embraer E-Jet portfolio.”

Another memorable transaction for Pearson was acting for Global Jet Capital (GJC), a newly formed private equity venture specializing in corporate jet aircraft, in an orphan trust structured secured financing of a new Gulfstream G650 to an Azeri borrower.

“I had not worked on a corporate jet transaction for some time, and it was an honour representing GJC in its very first transaction,” he says.

Pearson has acted for European export credit agencies (ECAs) and the US Ex-Im Bank in ECA-backed aircraft financings. He has acted on commercial financings, pre-delivery payment financings, capital markets financings, portfolio securitizations, aircraft sales and purchases and debt restructurings. More recently, he has acted for many US-based operating lessors, adding to his experience negotiating and drafting operating leases.

Pearson enjoys some of the activities California has to offer, including sailing, hiking and skiing. He has just started sailing lessons and enjoys sailing around San Francisco Bay and the Golden Gate. He also has a taste for the local wine, often enjoying the offerings of Napa and Sonoma wine country.

He says: “Nothing really beats an evening in front of the fire by one of the many beaches off Highway One, the California coastal road, drinking a beer or glass of wine while the sun sets.” ▲



SPONSORED EDITORIAL

Lessons from Kingfisher and SpiceJet

Stewart B Herman, a partner at Katten Muchin Rosenman LLP, examines aircraft deregistration and repossession in India.



Stewart B Herman
PARTNER
KATTEN MUCHIN
ROSENMAN LLP

In 2012, Kingfisher Airlines, one of India's major carriers, ceased operations. India and its courts delayed responses to the request of lessors and financiers to deregister and repossess their aircraft, upsetting the market for aircraft leasing and financing in India.

The Cape Town Convention on International Interests in Mobile Equipment, which is designed to address such situations, could not protect the lessors and financiers because India ratified the treaty after the delivery of the aircraft at issue. Many commentators believe that India's response to the Kingfisher case foreshadows the country's responses to future airline bankruptcies within the scope of the Cape Town Convention, and requests for aircraft deregistration and repossession.

Although India ratified the Cape Town Convention in 2008, it has not passed legislation to give the treaty effect. Thus, aircraft lessors and financiers are still left to the mercy of local laws. Further, the issue of aircraft repossession is complicated by the intersection of India's bankruptcy, tax and private international law obligations, as well as its general airline industry.⁽¹⁾

The Indian Directorate General of Civil Aviation (DGCA) may provide the largest hurdle to aircraft financiers and lessors attempting to

deregister and repossess their aircraft, as it did in the Kingfisher case.⁽²⁾

This article discusses the Kingfisher saga, as well as its impact on other Indian airlines – SpiceJet, in particular – and the global financing and leasing sector.

The article also discusses the SpiceJet case, which successfully thwarted bankruptcy amid attempts from aircraft lessors and financiers to deregister and repossess their aircraft. SpiceJet is a case study in the lessons realized from Kingfisher in many ways.

Kingfisher and its impact on other Indian airlines and the financing and leasing sector

The Indian aviation industry has suffered financial strain since 2007. The strain was in part because of the global financial crisis, as well as several highly publicized incidents involving Indian regulatory agencies, including the Indian tax authority and aircraft financiers and lessors.

The collapse of Kingfisher, and subsequent events, presented challenges to aircraft financiers and lessors.⁽³⁾ Also, the collapse of the airline may predict India's commitment to its international legal obligations with regard to the remedial scheme of the Cape Town Convention.

India's response to the Kingfisher case shaped the behaviour of various stakeholders in the aviation industry, in particular lessors and financiers, which may be to the detriment of the industry and burgeoning Indian economy. The Kingfisher case should inform future bankruptcies, including the current issues facing the financially distressed airline, SpiceJet.

Pre-Kingfisher

Before the Kingfisher case, the Bombay High Court provided some indication that it is sympathetic to

aircraft lessors and financiers. Aer Lingus Limited vs Authority of India established that aircraft owners cannot be deprived of their rights to deregister and repossess their aircraft in circumstances where the lessee has outstanding airport parking fees.⁽⁴⁾

The case is factually different from Kingfisher. However, it raises an important question as to whether Indian courts will come to the rescue of lessors and financiers in cases involving distressed lessees and allow them to vindicate their rights to deregister and repossess their aircraft. This question plagued the Kingfisher saga, and the question remains open and untested in India in the post-Cape Town Convention context.⁽⁵⁾

The Kingfisher case

DGCA suspended Kingfisher's operations because the airline could no longer repay its debts, and Kingfisher eventually ceased operations. At the time operations ceased, Kingfisher reported more than \$1 billion in debt. The airline reportedly continued to expand its operations even during a period of growing financial distress,⁽⁶⁾ which had an influence on the global leasing and financing sector. The experiences of DVB Bank and International Lease Finance Corporation (ILFC) show the hurdles to aircraft deregistration and repossession in India.

DVB was an acquisition financier for two A320-232 aircraft. DVB sought to deregister and gain possession of its aircraft after Kingfisher began its financial collapse. DVB successfully repossessed one of its aircraft, because it was outside of India, but faced difficulty in the deregistration process. Kingfisher objected to the deregistration of the aircraft, claiming that it had ownership rights. This objection led DVB to sue DGCA and Kingfisher. Kingfisher argued that it had a purchase option and an acquired equity interest in the aircraft through payment of rent to the lessor under the lease agreement.⁽⁷⁾

A local court ultimately directed DGCA to deregister the aircraft. The court, however, did not go into the merits of Kingfisher's claims that the deregistration of the aircraft conflicted with the airline's right to exercise its purchase option.⁽⁸⁾



⁽¹⁾ Nithya Narayanan, Aircraft Repossession in India – Turbulence Ahead, Buckle Up! 38 Annals of Air and Space Law 445-60 (2013).

⁽²⁾ India's Misbehavior Undermines Cape Town Convention, Air Finance (March 13 2013), <http://www.airfinancejournal.com/Article/3341264/Indias-misbehaviour-undermines-Cape-Town-convention.html> [hereinafter India's Misbehavior].

⁽³⁾ Ashwin Ramanathan and Nithya Narayanan, Aviation Disputes in India: Flying

Unchartered Skies, Acquisition International, June 1 2014, at 86.

⁽⁴⁾ Narayanan at 445-60.

⁽⁵⁾ Id.

⁽⁶⁾ Id.

⁽⁷⁾ Id.

⁽⁸⁾ Id.



Like DVB, ILFC faced similar hurdles in regaining possession of its six leased aircraft. It took the company six months to secure the successful removal of one of its A321 aircraft.⁽⁹⁾

The Kingfisher case demonstrated the willingness of Indian courts to rescue lessors and financiers, but there is a limit to that generosity. The courts typically aided in scenarios where the lease agreement was unilaterally terminated or the aircraft was outside of India's jurisdiction. It remains open whether Indian courts will entertain an argument that a purchase option in a lease agreement creates equity rights for the lessee and, thus, deregistration and repossession in favour of the lessor is in conflict with the lessee's equity interest.⁽¹⁰⁾

Kingfisher's impact on other airlines and the financing and leasing sector

Commentators predicted that post-Kingfisher, it would be more difficult for Indian airlines to secure financing and leasing opportunities. They also predicted a rise in leasing rates and the price of loans. Many commentators also noted that India's behaviour in the Kingfisher case undermined the Cape Town Convention.⁽¹¹⁾

The financing and leasing sector reacted as predicted. Lessors demanded premiums to cover risk in leasing aircraft to Indian airlines – eg, one-year security deposits, rather than the standard three-month security deposit. They also demanded a commitment to hire the aircraft for as long as nine years. Some lessors even sought government guarantees for the aircraft.⁽¹²⁾

Indian airlines suffered as well. IndiGo is India's most profitable airline and is set to have 20 A321 and 184 A320 aircraft delivered over the next few years.⁽¹³⁾ Much of IndiGo's ability to stay unscathed from the Kingfisher saga is because it remained debt free during the period the Kingfisher debacle occurred.⁽¹⁴⁾ By contrast, Jet Airways and SpiceJet witnessed jumps in aircraft leasing costs compared to previous years.⁽¹⁵⁾

The future realized

While the Cape Town Convention did not apply in the Kingfisher case, many commentators believed it could foreshadow India's response to a future airline bankruptcy.

At the end of 2014 and the beginning of 2015, two major events occurred in the Indian aviation community. First, India amended its aircraft rules to provide protection for lessors and financiers. The new sub-rule requires the DGCA to deregister an aircraft provided certain conditions.⁽¹⁷⁾ Second, SpiceJet came under increasing financial pressure, resulting in its lessors terminating their leases with the airline and demanding the return of their aircraft. SpiceJet is the first airline to test India's commitment to the Cape Town Convention and its new sub-rule.⁽¹⁸⁾

Much like the Kingfisher case, several lessors, frustrated by the DGCA's hesitation and delay, sought relief in court. Two such lessors are Wilmington Trust SP Services (Dublin) Limited and Awas. The Delhi High Court, interpreting the sub-rule, recently issued an order stating that the DGCA must deregister the aircraft and has no discretion in the matter.⁽¹⁹⁾ The Delhi High Court also requested that the DGCA delay deregistration of the aircraft so that SpiceJet could potentially reach settlements, which the airline did with Wilmington Trust.⁽²⁰⁾

Five other lessors also pursued actions against SpiceJet in the Madras High Court.⁽²¹⁾

SpiceJet originally disputed that these five companies were the actual lessors for the applicable aircraft. Recently, SpiceJet and BBAM, manager of the five leasing companies, entered into an in-principle understanding. BBAM agreed to suspend its court action requesting to wind up SpiceJet and deregister the five aircraft. The parties still need to satisfy the terms of settlement and execute definitive agreements.⁽²²⁾

The SpiceJet case should lessen some of the uncertainty surrounding the Kingfisher saga, but the case still does not give complete assurance to financiers and lessors. In February, SpiceJet had a change of ownership and a wave of fresh funding to reinvigorate the ailing airline, allowing it to repay its debts and saving it from potential bankruptcy.^[23] The Delhi High Court's response, granting but delaying deregistration, may be in part because SpiceJet improved its financial position. Financiers and lessors must be careful to recognize that those facts may have coloured the Delhi High Court's response.

The SpiceJet case seems to indicate that Indian courts are serious about the country's commitment to the Cape Town Convention and their willingness to allow lessors to vindicate their right to repossess and deregister their aircraft. The case also indicates the courts' desire to protect ailing airlines, at least where an airline can and does improve its financial position. Lessors and financiers, however, should still be wary that India would protect their rights and interest over the rights and interests of Indian airlines. India still has not passed legislation giving effect to the Cape Town Convention. Thus, lessors and financiers may still be at the mercy of Indian courts, preventing further growth in India's already distressed airline industry.

Conclusion

India's response to airline bankruptcy and attempts by lessors and financiers to repossess aircraft is still untested. Although SpiceJet provides the potential for India to rectify the damage caused by the Kingfisher case, if Kingfisher, however, is an indicator, the courts are likely to be unsympathetic to the rights of lessors and financiers in the aviation industry. Their natural response will be to raise the barriers to financing or exit the market. ▲

⁽⁹⁾ Kingfisher Suspension Raises Question for Lessors & Financiers, Could Add to India's Cost Pressures, Center for Aviation (March 28 2013), <http://centreforaviation.com/analysis/kingfisher-suspension-raises-question-for-lessors-financiers-could-add-to-indias-cost-pressures-102603>.

⁽¹⁰⁾ Narayanan at 445-60.

⁽¹¹⁾ India's Misbehavior, *supra* note 2.

⁽¹²⁾ Karthikeyan Sundaram, Kingfisher Default Said to Raise Airline Costs: Corporate India, Bloomberg (September 20 2013), <http://www.bloomberg.com/news/articles/2013-09-19/kingfisher-default-said-to-raise-airline-costs-corporate-india> (hereinafter Kingfisher Default).

⁽¹³⁾ India's Misbehavior, *supra* note 2.

⁽¹⁴⁾ Indigo FY13 Profit Rises to Rs 993 Crore, the Hindu (Sept 24 2013), <http://www.thehindu.com/business/Industry/indigo-fy13-profit-rises-to-rs-993-crore/article5163806.ece>.

⁽¹⁵⁾ Kingfisher Default, *supra* note 12.

⁽¹⁶⁾ India's Misbehavior, *supra* note 2.

⁽¹⁷⁾ Ministry of Civil Aviation Rules (3rd Amendment), 2015, Gazette of India, Rule 30(7) (Feb 10 2015).

⁽¹⁸⁾ Legacy of Kingfisher Airlines Debacle Hangs over Repossession Row between BOC

Aviation and SpiceJet, AvTrader (Jan 23 2015), <http://www.avitrader.com/2015/01/23/legacy-of-kingfisher-airlines-debacle-hangs-over-repossession-row-between-boc-aviation-and-spicejet/>.

⁽¹⁹⁾ Awas 39423 Ireland Ltd & Ors. vs Directorate General of Civil Aviation, (2015) WP(C) 871/2015 India; & Anr And Wilmington Trust SP Services (Dublin) Limited vs Directorate General of Civil Aviation & Anr, (2015) WP(C) 747/2015 (India).

⁽²⁰⁾ Court Asks DGCA Not to De-register SpiceJet Planes till April 6 (March 26 2015), <http://profit.ndtv.com/news/industries/article-court-asks-dgca-not-to-de-register-spicejetplanes-till-april-6-749545>.

⁽²¹⁾ Madras HC Allows Lessors to Issue Notice to SpiceJet on Winding Up Petitions (March 27 2015), http://www.business-standard.com/article/companies/madras-hcorders-to-issue-notice-to-spicejet-on-winding-up-petitions-115032600310_1.html (hereinafter Madras HC Allows Lessors to Issue Notice).

⁽²²⁾ SpiceJet Reaches In-Principle Settlement with BBAM (April 1 2015), <http://dashboard.flightglobal.com/app/#/articles/410799?context=email>.

^[23] Madras HC Allows Lessors to Issue Notice, *supra* note 6.



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Examining Ireland's appeal for aviation

Matheson's aviation team – Chris Quinn, partner, Gerry Thornton, partner, Stuart Kennedy, associate, and Rory McPhillips, associate – assess how Ireland's commercial and regulatory environment has allowed it to become a dominant force in aviation.



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Ireland continues to build on its reputation as a centre of excellence for aircraft financing and leasing, and its position has been further enhanced in recent years. There are a number of reasons why Ireland attracts investment in this area, which include its favourable tax regime, a wide double tax treaty network and professional expertise. These factors, combined with a government which is committed to growing and supporting the industry, mean that Ireland has become the obvious location through which to finance and lease aircraft.

Taxation developments*12.5% 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.

Irish section 110 companies

It is critical to ensure that aircraft finance can be raised in a tax-efficient way. In structured finance and securitization transactions, an Irish section 110 company is commonly used to raise debt financing to acquire assets on a tax-neutral basis.

An Irish section 110 company is a standard Irish special purpose company which satisfies the conditions of section 110 of the Taxes Consolidation Act 1997 of Ireland. An Irish section 110 company is generally entitled to claim a tax deduction for all of its financing expenses, including (subject to some conditions) its profit-linked financing expenses. Therefore, it is generally possible to ensure that an Irish section 110 company can acquire assets using debt financing on a tax-neutral basis by ensuring that the Irish section 110 company pays out all of its return in respect of those assets as tax-deductible interest payments to lenders and investors.

Since 2011, the categories of assets that an Irish section 110 company may acquire have been extended to include plant and machinery, which includes aircraft and rolling stock. As a result of

these changes, Irish section 110 companies have proven to be very attractive vehicles to satisfy the bankruptcy-remote requirements of financing banks in aircraft financing transactions. This trend of using bankruptcy-remote Irish section 110 companies in aircraft financing transactions has continued in 2014 and 2015.

Expansion of double tax treaty network

Ireland has signed 72 double tax treaties (68 of which are in force). Ireland's most recently signed double tax treaties include those with Ukraine, Thailand, Botswana, Uzbekistan, 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.

Tax credit for non-treaty withholding taxes

Tax treaties play a key role in Ireland's successful leasing industry by reducing or eliminating withholding taxes on inbound lease rental payments. Tax treaties allow Irish lessors to claim tax credits against their Irish corporation tax for any unrelieved foreign withholding taxes. In the past an Irish lessor could not claim a similar tax credit for foreign withholding taxes where no tax treaty applied.

In recent developments, an Irish lessor carrying on a trade in Ireland may now also claim a tax credit for foreign withholding taxes on lease rentals where there is no applicable tax treaty. 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.

New investment

The Irish leasing market has been very active in recent years with strong investment from the US, China and Japan in particular. Below are just some of the larger investments in or through Ireland in the past year.





“The State Airports Act 2014 enables the Irish government to make an order giving the Cape Town Convention Alternative A insolvency remedy force of law in Ireland.”

Cheung Kong Holdings Limited opened a European leasing arm, Accipiter Holdings Limited, whose offices are based in Dublin. The move comes after Cheung Kong's entry into the aviation leasing market in November 2014 through the purchase of almost \$2 billion-worth of Airbus and Boeing aircraft from GE Capital Aviation Services, Bank of China, BOC Aviation and Jackson Square Aviation, as well as a joint venture with MC Aviation Partners.

In December 2014, Dublin-headquartered Avolon Holdings Limited announced an initial public offering on the New York Stock Exchange of 13,636,363 common shares. The shares were initially priced at \$20 per common share.

In July, Bohai Leasing Company Limited, the Chinese leasing and financial services company, announced it was to acquire a 20% strategic interest in Avolon at a price of \$26 per common share.

Dómhnal Slattery, Avolon's chief executive officer, said: “The acquisition of a 20% stake in Avolon by Bohai, at a premium to our current share price, reflects their confidence in the outlook for the sector, the attractiveness of the Avolon investment case and the strength of our global franchise.”

In July, the European Commission announced it had conditionally cleared the proposed acquisition by International Consolidated Airlines Group (IAG) of Aer Lingus under the EU Merger Regulation. The clearance decision is conditional on the following commitments, which address the commission's concerns: the release of five daily slot pairs at London Gatwick Airport to facilitate the entry of competing airlines on routes from London to both Dublin and Belfast; and Aer Lingus continuing to carry connecting passengers to use the long-haul flights of competing airlines out of London Heathrow, Gatwick, Manchester, Amsterdam, Shannon and Dublin.

CIT Aerospace entered into a strategic relationship with Century Tokyo Leasing Corporation to form joint ventures in the US and Ireland through which they expect to amass \$2 billion-worth of assets by the end of 2017.

Awas, the Ireland-based aviation lessor, reached agreement with Macquarie for the sale of 90 aircraft in a transaction estimated at a value of about \$4 billion. Macquarie reported that “the portfolio comprises 90 modern, current-generation commercial passenger aircraft leased to 40 airlines. The weighted average age of the fleet is approximately two years with an average remaining lease term of 6.5 years”.

In June, Irish-based SMBC Aviation Capital announced it had ordered an additional 10 737 Max 8 passenger jets from Boeing at the Paris Air Show. This order is added to a 2014 order placed by the lessor for 80 737 Max 8s.

Capital market deals

AerCap Ireland Capital Limited and AerCap Global Aviation Trust (each wholly owned subsidiaries of AerCap Holdings) issued \$1 billion of senior notes, consisting of \$500 million aggregate principal amount of 4.250% Senior Notes due 2020 and

\$500 million aggregate principal amount of 4.625% Senior Notes due 2022. The issuance was upsized from an original target of \$800 million after strong demand.

Element Financial Corporation announced an asset-backed securities (ABS) \$1.21 billion debt offering of ECAF I Ltd, Series 2015-1 Notes, which was listed on the Irish Stock Exchange. David McKerrill, president of Element's rail and aviation group, described the transaction as “the largest pooled aircraft ABS transaction in nearly a decade”.

Cape Town Convention and Aircraft Protocol

Aviaretto Limited, an Irish limited liability company, which is a joint venture between the Irish government and Sita, was, in 2012, 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 is located in Ireland, the lenders will obtain the benefit of the Cape Town Convention and Aircraft Protocol. The added protection afforded under the Cape Town Convention and Aircraft Protocol has been increasingly relied on by lenders and, in certain transactions, has replaced traditional local law mortgages where obtaining such mortgages was inefficient from a time and cost perspective.

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

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

In giving judgment, the Irish Commercial Court stated that “...the Court must be conscious of the purpose and principles of the Convention and importance of maintaining the integrity of the Registry”.

The decisions illustrate the willingness of the

Irish Commercial Court to accept jurisdiction to hear substantive causes of action in disputes relating to registrations originating entirely outside Ireland under the provisions of the Cape Town Convention and Aircraft Protocol, which were given effect in Ireland pursuant to the International Interests in Mobile Equipment (Cape Town Convention) Act 2005.

The approach of the Irish courts to uphold and maintain the integrity of the International Registry, coupled with the speedy resolution of such disputes by the Irish Commercial Court, will greatly aid the proper and efficient functioning of the International Registry, and provide comfort to parties seeking to discharge unwarranted International Registry registrations that such discharges can be done in a timely, effective and efficient manner.

The State Airports (Shannon Group) Act 2014, which was enacted in 2014, will enable the Irish government to make an order giving the Cape Town Convention Alternative A insolvency remedy force of law in Ireland. Such an order is expected by the final quarter of 2015. This will be very similar to the US Chapter 1110 insolvency remedy and will provide that, in the case of an insolvency-related event of a lessee, mortgagor or conditional purchaser, the lessor, mortgagee or conditional seller will be entitled to the return of the aircraft within 60 days unless certain criteria are met.

Irish Aviation Authority

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

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

Conclusion

Ireland's reputation as a centre of excellence for the aircraft financing and leasing sector remains strong. Combining the ability to use section 110 companies to include aircraft assets, with the existing taxation benefits, is an additional tool in the box that permits the aviation financing structures required by aviation sector investors and lenders. As a result, Irish section 110 companies are now frequently used in aviation financing and leasing structures.

Ireland will continue to expand its double tax treaty network over the coming years, demonstrating its commitment to the aviation financing and leasing sector. ▲

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