



# THE CAPE TOWN CONVENTION: A SUMMARY

## The purpose of the Cape Town Convention

The primary purpose of the Cape Town Convention is to protect the interest of the sellers, purchasers and creditors through the creation of an International Registry. It reduces the risks of lending for aircraft financiers, and for other parties involved in aircraft purchasing and leasing by establishing an international interest recognised in all contracting states. This reduces the cost of credit and in turn saves costs over the life of financing transactions. If you are a seller, purchaser or creditor of an aircraft object and fail to follow the procedures set forth in the Cape Town Convention your interest will be unperfected and you could lose your security to competing creditors or a subsequent purchaser – even if that party had prior and actual knowledge of your interest.

The Cape Town Convention creates an International Registry for the recording of international interests in “aircraft objects” and other mobile equipment dealing with the most significant aspects of buying, selling, leasing and financing aircraft, aircraft engines and helicopters including issues relating to defaults, remedies, insolvency, priorities, title, aircraft deregistration and the perfection and filing of liens against airframes and engines which meet the stipulated minimum size requirements. It is designed to overcome the difficulties associated with obtaining secure and readily enforceable rights over aircraft objects which by their nature have no fixed location.

## Application

The creation of the electronic International Registry enables individuals and organisations to register financial interests in aircraft objects, as well as search the register, using the manufacturer’s serial number thereby establishing priority of interests which is a key feature of any financing. Following a default, the rights of the creditor will include, with respect to any aircraft object financed in a contracting state, deregistering the aircraft object and arranging for its export, taking possession or control, selling or granting a lease in the aircraft object or collecting or receiving income or profits arising from the management or use of the aircraft object.

The Cape Town Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor relating to such interest is located in a contracting state. The fact that the creditor may be situated in a non-contracting state does not affect the applicability of the Cape Town Convention. The Cape Town Convention also applies where the aircraft object in question is registered in a contracting state.

Generally, the Cape Town Convention does not provide for filing of non-consensual liens such as mechanic liens. However, under Article 39, a contracting state may declare that certain categories of non-consensual rights or interests have priority over a registered international interest. The contracting states may also declare that certain non-consensual rights and interests are registrable. Many contracting states have made declarations giving priority to common law liens over an interest registered under the Cape Town Convention.

For example, a contracting state may make a declaration that all categories of non-consensual rights or interest under local law have priority over a registered international interest.

## Transactions that are affected

The Cape Town Convention affects buyers and sellers of aircraft or engines meeting the following criteria which are all defined as aircraft objects:

- Aircraft certificated to transport at least eight persons (including crew), or transport goods in excess of 6,050 lbs (2,750 kilograms).
- Helicopters certificated to transport at least five persons (including crew), or transport goods in excess of 990 lbs (450 kilograms).
- Piston or turbo-shaft engines rated at equal to or greater than 550 horsepower or the equivalent.
- Turbine engines with 1,750 lbs or more of thrust.

## Summary

The concept of the Cape Town Convention is of course good but largely benefits aircraft operators in developing countries whose court systems and legal regimes are less established and may deter financiers and lessors from doing business with local operators. From a domestic point of view, this is not particularly relevant to the UK whose legal system and courts are reliable and generally predictable.

The Cape Town Convention also strongly benefits aircraft manufacturers by opening up markets which were previously deemed too risky for creditors to lend into. It is therefore no surprise that the USA was one of the first contracting states to ratify the Cape Town Convention in order to facilitate



the likes of Boeing and EXIM bank gaining access to potential customers in Africa, the Middle East and Asia, other early signatories including Ethiopia, Malaysia, Nigeria, Oman, Panama and Pakistan.

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