

# Cape Town Convention Law 2009 and its likely impact on aircraft financing in the Cayman Islands

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In July 2009 the Cayman Islands enacted the Cape Town Convention Law, 2009 (the "Law"). The Law follows the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (the "Convention"), which came into effect on 1 March 2006. The intention of the Convention has been to standardise transactions involving moveable property with respect to aircraft objects such as airframes, aircraft engines and helicopters.

As an Overseas Territory of the United Kingdom with limited constitutional powers, the Convention can only directly apply to the Cayman Islands through extension by the United Kingdom at the request of the Cayman Islands. The United Kingdom has signed but not yet ratified the Convention however despite this, the Cayman Islands has given domestic effect to the Convention in order to implement its provisions.

## The Convention

The Convention creates international standards for registration of ownership, security interests, leases and conditional sales contracts. It also provides various legal remedies for defaults in financing agreements, including repossessions and the effect of particular states' bankruptcy laws.

The Convention focuses on the practical needs of parties and persons affected by secured financing transactions involving aircraft and aircraft objects. Its aim is to reduce the financial risk to creditors by (a) facilitating the financing of the acquisition and use of aircraft; (b) facilitating the utilisation of asset based financing and leasing of aircraft; (c) ensuring that interests in aircraft are recognised and protected universally; and (d) providing secure and readily enforceable default remedies given the easily identifiable and high value mobile equipment being dealt with.

It is also intended to apply to cross border financing and leasing transactions where the application of the law of the place where the aircraft is situated at the time of default does not adequately provide for the settlement of disputes concerning the validity, enforceability and priority ranking of security rights.

## Protection of "International Interests"

Under the legal framework of the Convention, an international registration facility (the "International Registry") has been created to provide for the registration and protection of 'international interests' that are recognised by all ratifying states. Priority is determined on a "first-to-file" basis.

An 'international interest' means any interest in an aircraft or aircraft object that is held by a creditor that is either: (a) granted by the charger under a security agreement; or (b) vested in a person who is the conditional seller under a title reservation agreement; or (c) vested in a person who is the lessor under a leasing agreement (as determined under the domestic rules of the law applicable by virtue of the rules of private international law). This definition extends to the proceeds of such aircraft or object.

Registration of interests in aircraft assets serves as a notification mechanism to the user community and is considered to be best practice for owners/agents to protect their financial interest in those assets. A 'prospective international interest' can also be registered to establish priority of interest prior to the closing of a transaction with that interest automatically becoming a perfected international interest on closing of the transaction and execution and delivery of the relevant finance documents.

The 'Convention state' nexus required to give access to the International Registry for an 'international interest' structured in the Cayman Islands is provided by the lessee/debtor, who will be from a state that has ratified the Convention and Protocol.

The Law will apply when a financing agreement or a contract of sale is entered into that creates an 'international interest' and the debtor or seller is situated in a Convention State or is a Cayman exempted company or exempted limited partnership that has made an irrevocable election in writing to 'opt in' to the Law, either generally or with respect to a particular interest, pursuant to the provisions of section 3(2) of the Law. Such election must be noted in the Register of Mortgages and Charges of the Cayman entity and is then deemed conclusive proof of the election.

Regardless of the Cayman entity 'opting-in', an international interest (including prospective

international interests) in an aircraft (not engines) can still be registered in the International Registry if (a) the aircraft is registered in a Convention State or (b) the debtor is situated in a Convention State.

## **Conclusion**

The rationale behind the Cayman Islands government enacting domestic legislation to recognise the Convention is based on the premise that if there is a structure which involves a Cayman Islands entity owning an aircraft which is leased to an operator in a Convention State, then financiers have the additional comfort of having Convention-type remedies against the Cayman owner. Many aircraft finance structures involve Cayman entities in order to enhance the security position of the financier through providing bankruptcy remoteness to the Cayman entity. The Law now enhances the existing status of the Cayman Islands and addresses the concerns of financiers objecting to any entity in the structure not recognising the Convention by providing them with access to the benefits of the Convention. Financiers can now rely on the certainty of the International Registry and of international enforcement.

The Cayman Islands aircraft finance market continues to grow and in efforts to ensure that it remains competitive and attractive to creditors, the Cayman Islands government has ensured the Law provides for all of the benefits of the Convention. The Cayman Islands already provides sophisticated structures for aircraft financing and its willingness to apply the provisions of the Convention shows that the Cayman Islands on its own accord, notwithstanding the delay of the United Kingdom, chooses to ensure that it continues to be forward thinking and responsive to market demands.

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