Structure and contents of an aircraft lease agreement

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Agenda

• Different clauses and why they are there
• The timeline
  – Before delivery
  – Delivery
  – During the Lease Term
  – Termination/expiry
  – Unlimited by time
Basic of a lease

- Transfer of possession
- For a fixed term
- Consideration
- Quiet enjoyment
- Default
## Finance leases vs Operating leases

<table>
<thead>
<tr>
<th>Finance lease</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Financing ultimate acquisition of aircraft by lessee</td>
</tr>
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<td>• e.g. full pay out hire purchase agreement</td>
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<tr>
<td>• A credit operation</td>
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<tr>
<td>• For lessor, aircraft is <em>security</em></td>
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<th>Operating lease</th>
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<tr>
<td>• Lessee only pays for the right to use the aircraft</td>
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<tr>
<td>• No economic interest</td>
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<tr>
<td>• A trading operation</td>
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<tr>
<td>• For lessor, aircraft is <em>asset</em></td>
</tr>
</tbody>
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Definitions and Interpretation

For example:

• Engine vs engine
Representations and warranties

• What is a representation?
• Statement as to question of fact or of law
• Made by the lessee
• To induce the lessor to enter into the agreement
• Establish an agreed legal and factual framework
Conditions precedent

These are conditions which must be satisfied before the lessor becomes obliged to lease the aircraft to the lessee

- Corporate documents
- Legal opinions
- Cape Town registrations
- Deregistration Powers of Attorney
- IDERAs
"The Lessor warrants and agrees that, provided that no Termination Event has occurred and is continuing, the Lessor shall not, through its own acts, interfere during the Lease Period with the use, possession and quiet enjoyment of the Aircraft by the Lessee."
Delivery

- Inspection and delivery process
- New and second hand aircraft
- "As is, where is"
Fixed vs floating rate

"Net lease"
Lessee responsible for maintenance, insurance, property taxes etc.
Rent – hell or high water

- Obligation to pay rent absolute and unconditional
- No set-off or counterclaim
- Unavailability, unairworthiness of aircraft etc..
- Breach by any party of its obligations under the lease
- Insolvency of a party
- Lack of authorisation of the Lease Agreement
Indemnities

- Third party indemnity
- Tax indemnity
Undertakings

- Corporate
- Information on aircraft
- Liens
- Maintenance, repair, operation (including maintenance reserves)
- Sub-leasing
- Cape Town Convention
- Sanctions
Events of Default
Redelivery Condition
Governing Law and Jurisdiction