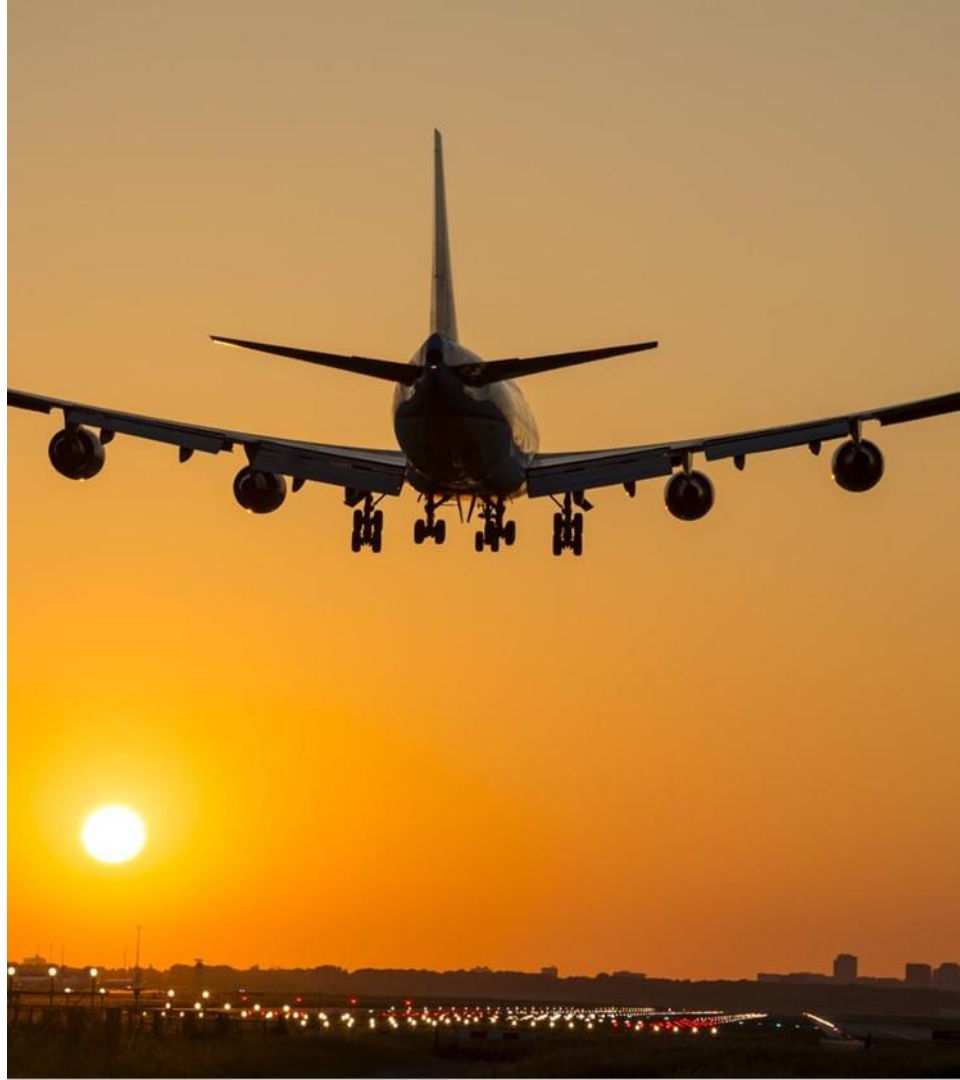


Cape Town Convention

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The Cape Town Convention

- Convention on International Interests In Mobile Equipment
- Protocol on Matters Specific To Aircraft Equipment
- Opened for signature since 2001
- In force since 2006
- International treaty jointly sponsored by ICAO and Unidroit
- Optional provisions
- Contracting States make a series of declarations opting in or out



The problems

- How do you create legal interests in an aircraft?
 - E.g. mortgages, leases, title retention ..
- Will those interests be recognised in different jurisdictions?
- What is the position concerning priorities between competing interests?
- What remedies does a creditor have if its counterparty is in default?
- What insolvency laws might prevent a creditor exercising these remedies?
- What liens might arise over the aircraft which have priority to its interests?



The Cape Town Convention

The solutions

- To provide for the creation of a *sui generis* “international interest” which will be recognised in all Contracting States
- To provide the creditor with a range of basic default and insolvency-related remedies
- To establish an electronic international registry for the registration of international interests
- Purpose is to give notice of international interests and to preserve priority



The International Interest

- What documents may create an international interest?
- What formalities are required to create an international interest?
- What connection must there be with Cape Town?



The Cape Town Convention (cont.)

- International interests arise under
- Security agreements
 - an agreement by which a [borrower] grants or agrees to grant to a [lender] an interest (including an ownership interest) in or over an [airframe/engine] to secure the performance of any existing or future obligation of the [borrower] or a third person
- Title retention agreements
- Leases
- Sales, prospective interests and assignments may also be registered

The Cape Town Convention – Formalities

An international interest is created where

- It is in writing
- It relates to an asset in respect of which the relevant person has a power of disposal
- The asset is specifically identifiable (by msn)
- It states the obligations secured

The Aircraft Protocol applies to airframes and engines separately

Cape Town Convention

Connecting Factor

International interests may be registered

- If the debtor is located in a Contracting State, for the airframe and engines
- If the debtor is not located in a Contracting State but aircraft is registered in one for the airframe only



Guiding Principles

- CTC has autonomous rules of interpretation
- CTC has primacy over conflicting domestic law
- CTC is binding on Contracting States
- Timetables are mandatory
- Local procedural law must be applied consistently with substantive provisions of CTC



Priorities

- First in time of registration rule
- “A registered interest has priority over any other interest subsequently registered and over an unregistered interest”
- Limited exceptions
 - E.g. Non-consensual rights under Art 39



Remedies (Chapter III CTC)

Remedies depend on nature of international interest but may include:

- To take possession or control of the aircraft
- To terminate a lease agreement
- To sell or grant a lease of the aircraft
- To apply for a court order authorising the above
- Contracting States have the right to opt out of provisions permitting extra judicial (self-help) remedies



Extra-judicial remedies

States that have opted out of extra-judicial remedies include

- Argentina
- Brazil
- Colombia
- Kuwait
- Mexico
- PRC
- Romania
- Spain
- UAE



Relief pending final determination

- Article 13
- Protective remedies pending final determination



Cape Town Convention

The Aircraft Protocol allows Contracting States to adopt one of three alternatives following the commencement of insolvency proceedings by the debtor

- Leave its insolvency laws unchanged
- Adopt "Alternative A"
- Adopt "Alternative B"



Alternative A – 'Hard option'

Article XI.2

Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:

- a) the end of the *waiting period*; and
- b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.



Alternative A – 'Hard option'

Article XI.7

The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.



Alternative B – 'Soft option'



The Cape Town Convention

Additional remedies specified in the Aircraft Protocol include

- The right to procure deregistration, export and physical transfer of an aircraft
- Court route
 - Article X.6 AP within 5 days of relief being granted under Article 13
- IDERA Route
 - Arts IX.5 and XIII AP
 - IDERA should be lodged with Aviation Authority
 - "Subject to any applicable safety laws and regulations", Aviation Authority will deregister at creditor's request



The Cape Town Convention Jurisdiction

- Article 42
 - Permits exclusive jurisdiction by agreement
- Article 43
- Article XXI AP



Materials

- www.unidroit.org
- www.awg.aero
- <https://ctcap.org>
- Official commentary, 5th edition
- Compliance index
- Practitioners' Guide
- Judicial Handbook



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