Overview & Status of Ratification - Cape Town Convention & Aircraft Protocol 2001

ICAO Legal Seminar, Nairobi, Kenya
Tan Siew Huay (Ms)
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Presentation Outline

- Aircraft Financing Considerations (*Background*)
- Cape Town Convention & Aircraft Protocol (*Overview*)
- Status of Ratifications (*African States*)
- Useful Resources
Aircraft Financing

A Historical View

Phase 1 - “Statism”
- State ownership / control / guarantee
- High degree of regulation
- Low probability of default

Phase 2 - Transition
- Advanced contracting practices
- Complex structures & reliance on favourable choice of law / forum
- Eroding phase 1 features

Phase 3 - “Privatism”
- Private ownership / control; less State guarantee
- Less regulation
- Increased probability of default

- Jeffrey Wool, Secretary General, Aviation Working Group
Aircraft Financing Considerations

**The Problem**
- Widely differing approaches among legal systems to security, title reservation & leasing rights
- Gives rise to uncertainty among financiers as to efficacy of their rights over aircraft which have no one fixed location
- Inhibits financing & increase borrowing costs
- Q: How to obtain secure & readily enforceable rights?

**Solution Sought**
- International legal regime with uniform rules to increase predictability & certainty & reduce risks in aviation asset-based financing & leasing
Cape Town Convention & Aircraft Protocol

- Convention & Aircraft Protocol are to be read & interpreted together as a single instrument

- Together establish rules —
  - that enable creation of an international interest in an aircraft object (airframes, aircraft engines & helicopters)
  - for determining priority between competing interests
  - that enable creation & operation of an International Registry (transparency & effectiveness against 3rd parties)
  - for quick & effective default remedies (enforcement measures), including speedy relief pending final determination of creditor’s claim & effectiveness in insolvency proceedings
  - for declarations for States (mandatory, opt-in & opt-out)

- More secure protection for creditors
- Good for lenders/lessors
- More financing available to acquire at lower cost
- Good for airlines/State
- Increased sales by manufacturer
- More jobs/export
Cape Town Convention & Aircraft Protocol

**Default Remedies (Enforcement Measures)**

- Parties may agree on what constitutes default
- Contractually agreed remedies for creditor include:
  - Take possession
  - Sell or grant a lease
  - Collect or receive income
  - Vesting of object in satisfaction (strict foreclosure)
  - Termination of agreement
- Protocol enhances creditor remedies on:
  - Deregistration of aircraft
  - Export & physical transfer of aircraft
- Speedy relief pending final determination of creditor’s claim

**Debtor Safeguards**

- Debtors honouring obligations to be given quiet possession against creditors
- Remedies to be exercised in commercially reasonable fashion
- Debtor against whom interim relief is given protection if creditor’s claim is ultimately unsuccessful
Insolvency Rules

- International interest effective in insolvency if registered
- Contracting State may opt into more effective insolvency provisions in Protocol
- Choice of 2 options:
  - Alternative A
  - Alternative B
  otherwise national law applies

Alternative A

- Contracting State specifies a waiting period in a declaration &
- Debtor, or insolvency administrator, must either
  - give possession to creditor within waiting period or
  - within that period cure all defaults & agree to perform all future obligations

Alternative B

- Debtor, or insolvency administrator, is required either
  - upon creditor’s request & within waiting period, state whether it will cure all defaults & agree to perform all future obligations, or
  - give creditor opportunity of taking possession.
- If not, the court may allow creditor to take possession
Ratification

• ICAO LEB Administrative Package
• Ratification Steps/Process
• Deposit ratification/accession instrument with UNIDROIT as depositary
• Accompanying Declarations – Mandatory, Opt-in &/or Opt-out
• Implementing legislation to ensure force of law & priority over conflicting laws
  • Effective date: date when Convention & Aircraft Protocol enters into force for ratifying/acceding State
• Compliance - Application in accordance with treaty terms
Ratification - Declarations

• OECD ASU Qualifying Declarations / Key Economic Declarations

  1. Insolvency (Alt. A with no more than 60 day waiting period) – Protocol, Art. XI(3)

  2. Method of exercising remedies: non-judicial remedies – Convention, Art. 54(2) and/or judicial timetables – Prot, Art. X (with up to 10 calendar days for conserving remedies (Conv, Art. 13(a)-(c)) and up to 30 calendar days for disposition remedies (Conv, Art. 13(d)-(e))

  3. De-registration and export request authorisation – Protocol, Art. XIII


• Lower financing cost benefit (from inclusion on OECD Discount List) not available without the above
## Status of Ratifications

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<thead>
<tr>
<th></th>
<th>Cape Town Convention</th>
<th>Cape Town Protocol</th>
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<tbody>
<tr>
<td>No. to enter into force</td>
<td>3</td>
<td>8</td>
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<tr>
<td>No. of Signatories</td>
<td>28</td>
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<td>No. of States Parties</td>
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### Date of entry into force

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<thead>
<tr>
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<th>Date of entry into force</th>
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<tr>
<td>Cape Town Convention</td>
<td>1 March 2006, as applied to aircraft equipment, in accordance with Article 49</td>
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<tr>
<td>Cape Town Protocol</td>
<td>1 March 2006, in accordance with Article XXVIII(1)</td>
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As at 26 Nov 2017
Status of Ratifications in Africa

20 African States have ratified/acceded as of November 2017

- Angola
- Cabo Verde
- Cameroon
- Congo
- Cote d’Ivoire
- Democratic Republic of the Congo
- Ethiopia
- Gabon
- Kenya
- Madagascar
- Malawi
- Mozambique
- Nigeria
- Rwanda
- Senegal
- Sierra Leone
- South Africa
- Swaziland
- Togo
- Tanzania

Burkina Faso has ratified. Pending entry into force.

This chart does not address implementation issues and, thus, does not address eligibility for the OECD ‘Cape Town Discount’
### Status of Ratifications in Africa

#### Cape Town Treaty with Aircraft Protocol

**Ensuring proper declarations and implementation**

<table>
<thead>
<tr>
<th>Eligible for OECD Discount</th>
<th>Awaiting OECD review</th>
<th>Qualifying declarations not adopted</th>
<th>Qualifying declarations, but implementation issues</th>
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<td>Angola</td>
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<td>Albania, Bahrain, Belarus, China</td>
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Useful Resources

- **ICAO Doc 9793** – Convention on International Interests in Mobile Equipment, *Signed at Cape Town on 16 November 2001*

- **ICAO Doc 9794** – Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment, *Signed at Cape Town on 16 November 2001*

- **ICAO Doc 9794** – Consolidated Text (Attachment to Resolution No. 1 of the Cape Town Diplomatic Conference)


- **ICAO’s Administrative Package** for Ratification / Accession - [https://www.icao.int/secretariat/legal/Administrative%20Packages/capeconprot_en.pdf](https://www.icao.int/secretariat/legal/Administrative%20Packages/capeconprot_en.pdf)

- **UNIDROIT website** – [www.unidroit.org](http://www.unidroit.org)

- **Aviation Working Group website** – [www.awg.aero](http://www.awg.aero)

- **Cape Town Convention Academic Project** – [www.ctcap.org](http://www.ctcap.org)
Thank you for your attention!