

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

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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**

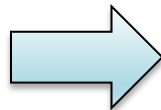
- Jeffrey Wool, Secretary General, Aviation Working Group

Aircraft Financing Considerations

Airline Credit Ratings

Aircraft Collateral

Jurisdiction & Legal Framework



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)

- | | | |
|---|---|--|
| <ul style="list-style-type: none">• More secure protection for creditors• Good for lenders/lessors | <ul style="list-style-type: none">• More financing available to acquire at lower cost• Good for airlines/State | <ul style="list-style-type: none">• 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

IDERA

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

Cape Town Convention & Aircraft Protocol

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 Botherwise 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
 4. Choice of law – Protocol, Art. VIII
- Lower financing cost benefit (from inclusion on OECD Discount List) not available without the above

Status of Ratifications

	Cape Town Convention	Cape Town Protocol
No. to enter into force	3	8
No. of Signatories	28	28
No. of States Parties	69	69

	Date of entry into force
Cape Town Convention	<u>1 March 2006</u> , as applied to aircraft equipment, in accordance with Article 49
Cape Town Protocol	<u>1 March 2006</u> , in accordance with Article XXVIII(1)

- http://www.icao.int/secretariat/legal/List%20of%20Parties/CapeTown-Conv_EN.pdf
- http://www.icao.int/secretariat/legal/List%20of%20Parties/CapeTown-Prot_EN.pdf

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.

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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

<i>Eligible for OECD Discount</i>	<i>Awaiting OECD review</i>	<i>Qualifying declarations not adopted</i>	<i>Qualifying declarations, but implementation issues</i>	
<p>Angola</p>  <p>Canada</p>  <p>Indonesia</p>  <p>Luxembourg</p>  <p>Mongolia</p>  <p>Nigeria</p>  <p>Pakistan</p>  <p>Senegal</p>  <p>Tajikistan</p> 	<p>Cape Verde</p>  <p>Jordan</p>  <p>Mozambique</p>  <p>United Kingdom</p> 	<p>Albania</p>  <p>Bhutan</p>  <p>Colombia</p>  <p>Egypt</p>  <p>Latvia</p>  <p>Saudi Arabia</p>  <p>Aruba</p>  <p>USA</p> 	<p>Australia</p>  <p>Ethiopia</p>  <p>Kazakhstan</p>  <p>Malaysia</p>  <p>Myanmar</p>  <p>Norway</p>  <p>Panama</p>  <p>Singapore</p>  <p>Turkey</p> 	
<p>Brazil</p>  <p>Fiji</p>  <p>Kenya</p>  <p>Malta</p>  <p>New Zealand</p>  <p>Oman</p>  <p>Rwanda</p>  <p>Sweden</p>  <p>Vietnam</p> 	<p>Denmark</p>  <p>Ireland</p>  <p>Madagascar</p>  <p>Malawi</p>  <p>San Marino</p>  <p>Togo</p> 	<p>Bahrain</p>  <p>Cameroon</p>  <p>Congo</p>  <p>Antilles</p>  <p>Mexico</p> 	<p>Belarus</p>  <p>China</p>  <p>Cuba</p>  <p>Kuwait</p>  <p>Spain</p> 	<p>Afghanistan</p>  <p>India</p>  <p>South Africa</p>  <p>Ukraine</p>  <p>Bangladesh</p>  <p>Russia</p>  <p>Tanzania</p>  <p>UAE</p> 

From Aviation Working Group

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)
- **Official Commentary** by Professor Roy Goode - Available at www.ctcap.org & www.internationalregistry.aero (For purchase of book version – <http://www.unidroit.org/english/conventions/mobile-equipment/publications/commentaryconvention&aircraftprotocol.pdf>)
- **ICAO's Administrative Package** for Ratification / Accession - https://www.icao.int/secretariat/legal/Administrative%20Packages/capeconprot_en.pdf
- **UNIDROIT** website – www.unidroit.org
- **Aviation Working Group** website – www.awg.aero
- **Cape Town Convention Academic Project** – www.ctcap.org

Thank you
for your attention!